

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



ORIGINAL

In the Matter of)
)
)
BENCO DENTAL SUPPLY CO.,)
a corporation,)
)
HENRY SCHEIN, INC.,)
a corporation, and)
)
)
PATTERSON COMPANIES, INC.)
a corporation.)
)
)
_____)

DOCKET NO. 9379

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I. INTRODUCTION

The three largest dental product distributors conspired to sustain elevated prices for dental supplies and equipment by refusing to “recognize, work with, or offer discounts to” buying group customers—groups comprised of dental practitioners who sought to leverage collective purchasing power to obtain lower prices. The dental product distribution market is highly concentrated, consisting of three distributors that together comprise approximately 75% of the distribution market in the United States: Henry Schein, Inc. (“Schein”), Patterson Companies, Inc. (“Patterson”), and Benco Dental Supply Co. (“Benco”) (together, “Respondents” or the “Big Three”). Through unambiguous written communication and a myriad of telephone and in-person exchanges, the Big Three formed an agreement to stamp out buying groups.

The evidence at trial will consist of contemporaneous emails and messages reflecting an agreement to “stay out of” buying groups. High-ranking executives with knowledge of the conspiracy repeatedly referenced the agreement among the Big Three in written communications:

- *“Confidential and not for discussion . . . our 2 largest competitors stay out of these [buying groups] as well If you hear differently and have specific proof please send that to me.”*¹
- *“Schein, Benco, and Patterson have always said no [to buying groups].”*²
- *“Maybe what you should do is make sure you tell [Schein] and [Patterson] to hold their positions as we [Benco] are.”*³

The evidence also reflects recurrent inter-firm communications in which the Big Three openly discussed buying groups and agreed on a coordinated response. These communications

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

² CX0106 at -001 (PDCO00027980).

³ CX0023 at -001 (BDS-FTC00009881).

were not casual or accidental—instead, the evidence consists of numerous private communications in which the leaders of the Big Three contacted each other with the specific purpose of discussing buying groups.

For example, direct evidence will show that Benco and Patterson agreed *in writing* to refuse to “recognize, work with, or offer discounts to buying groups,”⁴ and then confronted each other on suspicions of cheating following that agreement. Similarly, direct evidence will show that Benco and Schein exchanged competitive bidding information regarding buying groups on multiple occasions. Benco’s Managing Director admitted in testimony that { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }⁵ Likewise, the evidence will show that Benco attempted to invite the number four distributor, Burkhardt, on at least three separate occasions to join the conspiracy.

The executives knew these communications were unlawful and testified that they made them feel “*uneasy*,” were “*against company rules*,”⁶ and { [REDACTED] }⁷ The only logical explanation for these repeated inter-firm communications is that they were pursuant to a scheme to coordinate competitive activity—there is simply no procompetitive justification, and Respondents have offered none.

These communications with competitors and coordinated conduct occurred against the backdrop of a rising threat: each conspirator understood that the buying group model could result in a significant decline in margins and a dramatic change in the dental distribution model—a fate that befell the medical supply distribution market when buying groups entered the

⁴ CX0090 at -001 (PDCO00010912)

⁵ { [REDACTED] }

⁶ CX0306 (Foley IH Tr.) at 177:15-178:18.

⁷ { [REDACTED] }

scene. The Big Three feared that if one competitor sold to buying groups, there was a significant risk of “other competitors then following suit” resulting in a “*huge price war*.”⁸ Rather than letting competition run its course, Respondents violated the antitrust laws.

The direct and circumstantial evidence in this case compels the finding of a conspiracy. Respondents “consciously committed to a common scheme” to maintain high prices for dental products by refusing to discount to or compete for buying group customers. As such, this is a price-fixing case subject to *per se* condemnation. But even under an abbreviated rule of reason analysis, the evidence shows that Respondents’ conspiracy resulted in obvious harm in the form of higher prices on dental products. Respondents have not offered any procompetitive justification, and for good reason. No such justification exists.

II. BACKGROUND

A. The Rise of Buying Groups Triggers the Conspiracy.

1. Changes in Dental Industry Give Rise to Buying Groups.

There were approximately 200,000 dentists practicing in the United States in 2017.⁹ The vast majority of those dentists are independent dentists—solo practitioners or small group dental practices with one or a few locations.¹⁰ These dentists are often referred to as “private practices”¹¹ and { }¹² Sales to

⁸ CX2113 at -001 (Henry Schein-000740470).

⁹ { }; Health Policy Institute, *Supply of Dentists in the U.S.: 2001-2017*, https://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIdata_SOD_2017.xlsx?la=en at Table 1 (last visited Sept. 25, 2018).

¹⁰ { }; American Dental Associations, *Characteristics of Private Dental Practices*, http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIData_SDPC_2014.xlsx?la=en at Table 1 (last visited Sept. 25, 2018).

¹¹ CX0311 (Sullivan Investigational Hearing (“IH”) Tr.) at 85:16-19; { }

independent dentists are quite profitable to Respondents—{ [REDACTED] }¹³

Respondents also sell dental products to corporate dental practices known as dental service organizations (“DSOs”).¹⁴ DSOs are a growing segment in dentistry and consist of large group practices that have multiple locations combined under a single ownership structure.¹⁵ Respondents also sell to other customer segments including: healthcare clinics for indigent populations known as Community Health Centers (“CHCs”), institutional and government customers, and dental schools.¹⁶

Independent dentists have faced significant challenges over the past decade due to decreasing insurance reimbursements, increased student debt, and the growth of corporate dentistry or DSOs.¹⁷ Buying groups cropped up as a means for independent dentists to combat these challenges by leveraging purchasing power of a group while at the same time remaining independent.¹⁸ Sometimes referred to as “buying clubs,” “group purchasing organizations,” or

¹² CX2585 (Henry Schein-000072709); { [REDACTED] }

¹³ { [REDACTED] }

¹⁴ { [REDACTED] }; CX0310 (Steck IH Tr.) at 26:7-15; CX0306 (Foley IH Tr.) at 15:7-23; { [REDACTED] }. Schein and Patterson serve their DSO customers through divisions known as “Special Markets.” Benco serves its DSO customers through its “Strategic Markets” division. CX0306 (Foley IH Tr.) at 12:7-11; { [REDACTED] }

¹⁵ CX0310 (Steck IH Tr.) at 126:18-22; { [REDACTED] }

¹⁶ CX0306 (Foley IH Tr.) at 14:16-23, 49:11-19; { [REDACTED] }; Montana Primary Care Association, *What is a Community Health Center?*, <http://www.mtpca.org/health-centers/community-health-center/> (last visited Sept. 25, 2018).

¹⁷ { [REDACTED] }

¹⁸ *See, e.g.*, { [REDACTED] }

“GPOs,” the defining characteristic of a buying group is an entity that aggregates negotiating leverage on behalf of *independent dentists*.¹⁹

Buying groups market themselves as a means of helping independent dentists survive. For example, the president of Kois Buyers Group testified that the company was created “to allow the smaller dentists an option to compete with the larger companies, by reducing some of their overhead.”²⁰ [REDACTED]

[REDACTED]²¹

Respondents had a common understanding that a buying group is a collection of independent dentists banding together to negotiate lower prices.²² Importantly, Respondents also understood the distinction between buying groups of independent dentists and other forms of dental entities that aggregated purchasing power, such as CHCs²³ and DSOs.²⁴

2. The Rise of Buying Groups Threatened Respondents’ Margins.

Buying groups began to take hold in the dental industry around 2011.²⁵ Since that time, they have steadily cemented their position in providing value to independent dentists. The rise of

¹⁹ CX0311 (Sullivan IH Tr.) at 115:11-116:3 (buying group and GPO historically used interchangeably); [REDACTED]; CX1156 at -001 (BDS-FTC00017053).

²⁰ CX0321 (Kois Jr. IH Tr.) at 35:22-24.

²¹ [REDACTED]; *see also* CX0146 at -001-002 (PDCO 00030182).

²² [REDACTED]; CX0311 (Sullivan IH Tr.) at 113:18-24; [REDACTED]

²³ *See, e.g.*, CX8005 (Muller Dep. Tr.) at 278:14-18 (Schein contract clause that prohibits CHC buying groups from extending their negotiated pricing to private practice dentists).

²⁴ *See, e.g.*, CX0158 at -002 (PDCO 00031277) (Special Markets “definition will not include group purchasing organizations (GPOs).”).

²⁵ *See, e.g.*, CX8025 (Sullivan Dep. Tr.) at 66:21-67:15.

buying groups terrified Respondents.²⁶ Each Respondent understood that buying groups could slash margins²⁷—as occurred in the medical supply distribution market when GPOs arrived there.²⁸ Schein feared that if one of the Big Three sold to buying groups, there was a risk of “other competitors then following suit” resulting in a “huge price war.”²⁹ Benco was concerned about { [REDACTED]

{ [REDACTED] }³⁰ Similarly, Patterson identified the { [REDACTED] } as a potential threat.³¹

At the same time that buying groups threatened the full-service distribution model, they also offered growth opportunities to individual distributors. By recruiting members and passing on dental supplies savings, buying groups amassed loyal customers that individual distributors could secure by negotiating with the buying group—a more streamlined and efficient process than negotiating with every individual member. Dental distributors found it profitable to work with buying groups. For example, { [REDACTED]

²⁶ See, e.g., { [REDACTED] }; CX2618 at -001 (HS-0013750); { [REDACTED] }; CX0015 at -001 (BDS-FTC00016083) (referring to buying group Smile Source as “terrifying”); { [REDACTED] }; CX2377 at -001 (Henry Schein-000267660).

²⁷ See, e.g., { [REDACTED] }; CX8003 (Foley Dep. Tr.) at 132:9-133:7 (informing direct reports that buying groups erode margins); CX0054 at -001 (BDS-FTC00003743) (“rise of buying groups, decline of margin, flat market share”); { [REDACTED] }.

²⁸ See, e.g., CX1156 at -001 (BDS-FTC00017053) (“GPOs are why medical works at the margins they do.”); CX0165 at -001 (Henry Schein-000004705) (“Dealing with GPOs is incredibly risky on many fronts . . . as soon as we start doing this we will turn into medical, margins will go down . . .”); CX3419 at -001 (PDCO 00021240) (referring to GPOs in medical as a “necessary evil”).

²⁹ CX2113 at -001 (Henry Schein-000740470).

³⁰ { [REDACTED] }

³¹ { [REDACTED] }

[REDACTED] }³³ Similarly, [REDACTED] { [REDACTED] }³⁴

B. Channels of Distribution of Dental Supplies and Equipment.

There are three main distribution channels for the purchase of dental products: (1) full-service distributors; (2) mail-order or internet distributors; and (3) direct-selling manufacturers. Respondents are the only “full-service” distributors of dental supplies and equipment with a national footprint.³⁵

Full-service distributors offer a comprehensive selection of dental supplies and equipment from a variety of manufacturers.³⁶ Full-service distributors provide dentists with a one-stop shop for supplies, and they typically deliver within a day or two³⁷—this is important because it allows dentists to avoid carrying large inventories in their office space. For this reason, [REDACTED]

[REDACTED] }³⁸ In addition to supplies and equipment, full-service

³² See, e.g., { [REDACTED] }; see also { [REDACTED] }.

³³ { [REDACTED] }.

³⁴ { [REDACTED] }; see also { [REDACTED] }.

³⁵ See, e.g., { [REDACTED] }.

³⁶ CX0311 (Sullivan IH Tr.) at 45:19-46:2; { [REDACTED] }.

³⁷ See, e.g., { [REDACTED] }.

³⁸ { [REDACTED] }.

distributors also offer a variety of value-added services, including sales representatives, equipment servicing, sales professional support, and practice management software.³⁹ The dental distributors are highly consolidated with the Big Three collectively controlling [REDACTED] of the distribution market in 2014.⁴⁰

Dentists can also purchase supplies from mail-order/internet distributors and, to some extent, from direct-selling manufacturers. Unlike the full-service distributors, mail-order or internet distributors do not generally employ sales representatives or service technicians.⁴¹

[REDACTED] }⁴² Finally, dentists can purchase only certain limited supplies from direct-selling manufacturers. Direct-selling manufacturers typically specialize in niche products, such as root canal supplies.⁴³ They do not typically sell the full array of products that a dentist would need to run their business;⁴⁴ instead, many of the products are only available through distributors.⁴⁵

III. ARGUMENT

The evidence at trial will show that Respondents violated Section 5 of the FTC Act by conspiring to prevent the decline of prices in the dental product industry through an agreement

[REDACTED] }.

³⁹ See, e.g., CX0311 (Sullivan IH Tr.) at 45:19-46:6; CX5005 at -006 (Form 10-K for Patterson Companies 2017).

⁴⁰ [REDACTED] }; see also CX2742 -032 (Henry Schein-000067286) (2011-2013 Strategic Plan, “In the United States, the top three distributors have a combined market share of over 80% in the dental supplies and equipment market.”).

⁴¹ [REDACTED] }; CX0305 (Cavaretta IH Tr.) at 48:14-19.

⁴² [REDACTED] }

⁴³ CX8030 (Baytosh Dep. Tr.) at 57:20-58:15; [REDACTED] }
[REDACTED] }

⁴⁴ [REDACTED] }; CX8030 (Baytosh Dep. Tr.) at 57:7-15.

⁴⁵ CX0321 (Kois IH Tr.) at 84:3-15.

not to discount to or otherwise compete for business from dental buying groups. The evidence will show that this conspiracy resulted in higher prices for dental supplies than would have existed absent the agreement and is *per se* unlawful (Count I), and in any event is unlawful under a quick look or inherently suspect rule of reason analysis (Counts II and III). The evidence will also establish that Benco attempted to further restrain trade by colluding with a fourth dental distributor, Burkhart. While that attempt failed, it constitutes an unsuccessful attempt to fix prices in violation of Section 5 of the FTC Act (Count IV).

An agreement under Section 1 of the Sherman Act⁴⁶ is defined as a “unity of purpose or a common design and understanding.”⁴⁷ The Supreme Court has also described an agreement as a “conscious commitment to a common scheme designed to achieve an unlawful objective.”⁴⁸

A “tacit” agreement is just as much an antitrust violation as an “express” agreement.⁴⁹ Further, an inter-firm exchange of competitive information followed by tacit coordination is sufficient to find a violation of Section 1 of the Sherman Act.⁵⁰ Indeed, “[i]t is not necessary to find an express agreement . . . but it is sufficient that a concert of action be contemplated and that defendants conform to the arrangement.”⁵¹

⁴⁶ Section 5 of the FTC Act prohibits unfair methods of competition, including conduct that violates Section 1 of the Sherman Act. A Section 1 violation requires proof of (1) a contract, combination, or conspiracy among two or more separate entities that (2) unreasonably restrains trade. *Realcomp II, Ltd. v. FTC*, 635 F.3d 815, 827 (6th Cir. 2011).

⁴⁷ *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771 (1984).

⁴⁸ *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984); *see also FTC v. Lukens Steel Co.*, 454 F. Supp. 1182, 1189 (D.D.C. 1978) (“An inference of concerted action is warranted where the totality of circumstances reveals a “unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement.”).

⁴⁹ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553 (2007).

⁵⁰ *United States v. Foley*, 598 F.2d 1323, 1332-34 (4th Cir. 1979) (finding an agreement where defendants adopted similar business policy following receipt of competitive information from a competitor).

⁵¹ *Esco Corp. v. United States*, 340 F.2d 1000, 1008 (9th Cir. 1965).

A plaintiff need only establish that a defendant violated Section 1 by a preponderance of the evidence.⁵² In other words, a plaintiff need only present evidence that is sufficient to allow the fact-finder “to infer that the conspiratorial explanation is more likely than not.”⁵³

A conspiracy may be established through either direct or circumstantial evidence, or a combination of the two. Because it is unlikely that conspirators will formally sign a written agreement, proof of conspiracies rarely consists of direct evidence of an explicit agreement.⁵⁴ Generally, conspiracies are proven through inferences that may fairly be drawn from the behavior of the alleged conspirators, *i.e.* circumstantial evidence.⁵⁵ Circumstantial evidence is no less persuasive than direct evidence, however.⁵⁶

In evaluating the existence of an antitrust conspiracy, courts must consider the “totality of the evidence.”⁵⁷ When viewing evidence, “[t]he character and effect of a conspiracy are not to be judged by dismembering it and view its separate parts, but only by looking at it as a whole.”⁵⁸

A. Respondents Agreed to Refuse to Offer Discounts or Otherwise Compete for Business from Buying Groups.

As described below, the evidence at trial will establish a conspiracy by the Big Three distributors to refuse to discount to or compete for the business of buying groups. Complaint Counsel will produce powerful evidence of collusion, including direct and circumstantial evidence of an agreement and extensive evidence of additional plus factors.

⁵² *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 656 (7th Cir. 2002); *In re Novartis Corp.*, Docket No. 9279, 1999 FTC LEXIS 63, at *50 (May 27, 1999); *In re Trans Union Corp.*, Docket No. D-9255, 1998 FTC LEXIS 88, at *117-18 (July 31, 1998).

⁵³ *In re Publ’n Paper Antitrust Litig.*, 690 F.3d 51, 63 (2d Cir. 2012); PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW (hereinafter “Areeda & Hovenkamp”) ¶1403(b).

⁵⁴ *Esco Corp.*, 340 F.2d at 1006-07; *Elec. Books Antitrust Litig.*, 859 F. Supp. 2d 671, 681 (S.D.N.Y. 2012).

⁵⁵ *Monsanto Co.*, 465 U.S. at 764.

⁵⁶ *United States v. Apple Inc.*, 952 F. Supp. 2d 638, 689 (S.D.N.Y. 2013), *aff’d* 791 F.3d 290 (2015).

⁵⁷ *Publ’n Paper Antitrust Litig.*, 690 F.3d at 64.

⁵⁸ *Cont’l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962) *superseded by statute on other grounds*, Foreign Trade Antitrust Improvement Act of 1982, 15 U.S.C. § 6a.

1. Benco Acted as the Ringleader.

Complaint Counsel will show that the smallest of the Big Three, Benco, orchestrated the conspiracy. [REDACTED] [REDACTED], for the first time joining the likes of Schein and Patterson.⁵⁹ By that year, buying groups began to take hold in dental. As the smallest distributor of the Big Three, Benco had the most to gain by selling to buying groups—buying groups offered the potential upside of a new customer base. Conversely, Benco had the most to lose if its top competitors started discounting to buying groups.⁶⁰

Benco had a longstanding no-buying group policy, which it instituted when buying groups were merely a nascent customer segment.⁶¹ Benco knew that its no-buying group policy was not sustainable if Patterson and Schein began selling to buying groups; and [REDACTED]

[REDACTED] } [REDACTED]
[REDACTED]⁶² [REDACTED]⁶³

⁵⁹ { [REDACTED] }
⁶⁰ *See, e.g.,* { [REDACTED] }.

⁶¹ { [REDACTED] }; CX1372 at -002 (BDS-FTC00013042) (May microblog posting from Chuck Cohen, “Benco does NOT currently recognize as a single customer . . . Any kind of GPO whether they provide additional services or not.”); CX1131 at -001 (BDS-FTC00095338) (Mar. 24, 2011 email from Pat Ryan to Regional Manager: “We do not participate in buying groups. Ever.”); CX1120 at -001 (BDS00403324) (Mar. 2011, Cohen instructed sales representative, “[W]e don’t offer discounts to buying groups or similar groups of dentists . . .).

⁶² { [REDACTED] }.

⁶³ { [REDACTED] }.

Thus, against the backdrop of a changing dental distribution landscape, Benco's Managing Director, Chuck Cohen,⁶⁴ leveraged his close personal relationships with his counterparts at Patterson and Schein to cease competing for buying group business. He did this through repeated email, text, telephone, and in-person communications. Cohen began by first contacting Schein, then Patterson, then Burkhardt. Moreover, [REDACTED]

[REDACTED]⁶⁵

2. **Benco and Schein Communications Prove an Agreement to Refuse to Discount to or Compete For Buying Group Customers.**

The evidence will show that Benco and Schein entered into an agreement to refuse buying group customers in 2011.⁶⁶ Henry Schein Dental ("HSD") President Tim Sullivan and Benco's Cohen had a close relationship—they considered each other friends and spoke regularly. The evidence will show that Cohen initiated contact with Sullivan after he learned that Schein was working with buying groups. Complaint Counsel will present direct evidence that Sullivan and Cohen exchanged competitively sensitive information regarding bidding on buying groups through a series of telephone calls, emails, and text messages. The evidence will also show that Schein abruptly altered its prior pro-buying group position to match Benco's no-buying group policy. Each company sought to ensure that the other upheld its end of the bargain, with evidence of Benco and Schein monitoring each other's behavior toward buying groups and confronting each other upon suspicions of cheating.

⁶⁴ Appendix A to Complaint Counsel's Pre-Trial Brief provides titles for relevant individuals in this action.

⁶⁵ { [REDACTED]

[REDACTED] }.
⁶⁶ The conspiracy started to fall apart in 2015 after Benco entered into a settlement agreement with the Texas Attorney General requiring it to log its competitor communications. CX6004 at -012-013.

a) *Schein and Benco Exchanged Competitive Information Regarding Buying Groups.*

The evidence at trial will establish that Cohen and Sullivan spoke on multiple occasions regarding buying groups, and regularly communicated by telephone and via text message, email, and in person at various industry events.⁶⁷

In September 2011, a buying group, Smile Source, approached Benco explaining that it worked with Schein and offering Benco the opportunity to take business from Schein.⁶⁸ Over the next several weeks and months, Cohen and Sullivan exchanged numerous communications, including dozens of text messages and multiple phone calls.⁶⁹ { [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] }

⁶⁷ CX6027 (Communications summary exhibit); CX0311 (Sullivan IH Tr.) at 272:5-10 (“Q. In the last ten years how often had you seen Mr. Cohen in person? A. . . . [T]en, twelve, fifteen. I’d see him at least once a year at a DTA event. We were both on the board for a period of time. I usually see him at at least one major trade show or convention.”); { [REDACTED]

[REDACTED] }.

⁶⁸ CX1333 at -001 (BDS00154807) (“We currently use Henry Schein for our services, but, want to see what sort of relationship could be established with Benco.”).

⁶⁹ CX6027 at -006-018 (Communications summary exhibit) (65 text messages and 13 phone calls between October 6, 2011 and December 5, 2011); *see also* CX1043 (BDS-FTC00006424) (October 6, 2011); CX1044 (BDS-FTC00006433) (October 12, 2011); CX1356 (BDS-FTC00006443) (October 14, 2011); CX1049 (BDS-FTC00006609) (December 12, 2011).

⁷⁰ { [REDACTED] }; CX0311 (Sullivan IH Tr.) at 260:25-263:24, 269:2-8; CX8025 (Sullivan Dep. Tr.) at 344:15-345:13.

⁷¹ { [REDACTED] }

⁷² { [REDACTED] }; *see also* CX0018 at -001-002 (BDS-FTC00008498) (Cohen intending to send a note to Sullivan that outlines Benco’s policy on not working with GPOs, defined as “management/purchasing services with no ownership stake in the individual practices”).

[REDACTED]

[REDACTED]⁷³ indicating that the communications were in furtherance of an agreement.⁷⁴

- b) *Following Communications, Benco Monitored and Confronted Schein On Suspicion of Cheating, Establishing a Conscious Commitment to a Common Scheme.*

The evidence will show that following these initial communications, Benco monitored⁷⁵ and continually confronted Schein on suspicions of cheating. Such evidence is indicative of a conscious commitment to a common scheme.⁷⁶

First, in January 2012, Benco Director of Strategic Markets Patrick Ryan suspected Schein of cheating by working with a buying group called Unified Smiles.⁷⁷ Ryan forwarded an email regarding Unified Smiles to Cohen, and wrote, “*For Timmy [Sullivan] conversation.*”⁷⁸ Cohen responded, “*Talking this AM...*”⁷⁹ In fact, phone and text records establish that Cohen

⁷³ { [REDACTED] }

⁷⁴ *Ross v. Bank of Am., N. Am.*, No. 05-7116, 2012 U.S. Dist. LEXIS 19760, at *17-18 (S.D.N.Y. Feb. 8, 2012) (providing competitors with sensitive business information is against unilateral interests); *In re High Pressure Laminates Antitrust Litig.*, No. 00-MDL-1368, 2006 U.S. Dist. LEXIS 29431, at *11 (S.D.N.Y. May 15, 2006) (defendants’ sharing of confidential information with competitors was against individual economic self-interest and probative of conspiracy).

⁷⁵ *See, e.g.*, CX1288 at -001 (BDS-FTC00088766) (“Schein just dumped the last GPO they had. In Utah.”).

⁷⁶ *United States v. Beaver*, 515 F.3d 730, 738 (7th Cir. 2008) (finding existence of agreement based in part on evidence of co-conspirators confronting each other when they believed someone was cheating); *United States v. Giordano*, 261 F.3d 1134, 1139-40 (11th Cir. 2001) (finding sufficient evidence of agreement based in part on evidence of complaints of cheating); *United States v. Foley*, 598 F.2d 1323, 1332, 1334 (4th Cir. 1979) (same).

⁷⁷ CX1052 at -001 (BDS-FTC00092825).

⁷⁸ CX1052 at -001 (BDS-FTC00092825) (emphasis added).

⁷⁹ CX1052 at -001 (BDS-FTC00092825) (emphasis added); *see also* { [REDACTED] }

and Sullivan spoke that morning for 12 minutes.⁸⁰ The evidence will show that neither Schein nor Benco bid on Unified Smiles.⁸¹

Second, a few months later, in July 2012, Ryan learned that Schein was selling to a different buying group, Smile Source. Ryan’s reaction to the information reflects surprise that Schein would be working with Smile Source, and seeks to confront Schein regarding the cheating. Ryan wrote to his boss (Cohen): “*Better tell your buddy Tim to knock this shit off[.]*”⁸² The evidence will show that the information { [REDACTED] }⁸³ Cohen agreed to confront Sullivan:

*Please resend this e-mail without your comment on top so that I can print & send to Tim with a note. The good news is: perhaps they’re looking to us because Schein told them NO. That works for me.*⁸⁴

{ [REDACTED] }⁸⁵

Indeed, the evidence will reflect multiple occasions in which Cohen mailed notes to Sullivan.⁸⁶

Third, Benco approached Schein regarding cheating again in March 2013. Cohen had received information from a sales representative that Schein was selling to a buying group in Raleigh, North Carolina.⁸⁷ Cohen’s calendar entry and phone records confirm that Cohen and

⁸⁰ CX6027 at -019 (Communications summary exhibit) (January 13, 2012 phone call).

⁸¹ CX2062 at -001 (Henry Schein-000176969); CX1144 at -001 (BDS00609252).

⁸² CX0018 at -001 (BDS-FTC00008498) (emphasis added).

⁸³ { [REDACTED] }

⁸⁴ CX0018 at -001 (BDS-FTC00008498) (emphasis added).

⁸⁵ { [REDACTED] }

⁸⁶ CX1353 at -001 (BDS-FTC00006311) (August 2011 email referencing a note from Cohen to Sullivan); CX1297 at -001 (BDS-FTC00006700) (January 2012 email from Sullivan to Cohen: “Another Note?! You like writing those don’t you?”).

⁸⁷ CX0061 at -001 (BDS-FTC00009697).

Sullivan spoke regarding “Buying Groups” on March 25, 2013.⁸⁸ Following the call, Cohen texted Sullivan with further details:

{ [REDACTED] }⁸⁹

Fourth, Schein and Benco communicated about Smile Source once more in the fall of 2013 when Smile Source approached both companies regarding potentially working together.⁹⁰

The evidence will show that Ryan again suspected Schein of cheating,⁹¹ and this time, Ryan communicated with Schein directly. { [REDACTED] }

{ [REDACTED] }⁹² Foley (Schein) testified that Ryan (Benco) informed him that Benco would not bid on Smile Source and reiterated Benco’s no-buying group policy.⁹³

{ [REDACTED] }⁹⁴

Written communications confirm what transpired on the call. Ryan wrote:

[Smile Source is] [v]ery familiar. Talked to them three times. Nothing is different. *Randy at Schein and I talked specifically about them. Buh-bye.*⁹⁵

⁸⁸ CX0058 at -001 (BDS00028233) (completed calendar entry “Call Tim Sullivan re: Buying Groups”); CX6027 at -027 (Communications summary exhibit).

⁸⁹ CX6027 at -028 (Communications summary exhibit) (emphasis added); CX0060 at -001 (excerpt of BDS-AZ00040489) (emphasis added); { [REDACTED] } (emphasis added).

⁹⁰ Schein worked with Smile Source prior to the conspiracy, but as discussed in more detail *infra* Section III(A)(2)(c), that relationship ended in early 2012.

⁹¹ CX1158 at -001 (BDS-FTC00024318).

⁹² CX6027 at -036 (Communications summary exhibit); { [REDACTED] }

⁹³ CX0306 (Foley IH Tr.) at 176:17-20, 183:4-7, 185:5-8; CX8003 (Foley Dep. Tr.) at 354:7-355:10 (“I saw Benco come across the screen . . . Pat Ryan . . . he basically was making a statement – it was around the Smile Source time – that they didn’t like working with buying groups and wasn’t going to bid on it.”).

⁹⁴ CX6027 at -036 (Communications summary exhibit); { [REDACTED] }

⁹⁵ CX0019 at -001 (BDS-FTC00002808) (emphasis added).

Foley reported the call within Schein and indicated that he was concerned about collusion:

[R]emind me to tell you about my conversation with Pat Ryan at SM Benco. *They're anti Buying Group and Smile Source recently reached out to them. I'm being careful not to cross any boundaries, like collusion.*⁹⁶

Foley testified that he was “uneasy” about the discussion because it was regarding a potential customer and it is “*against company . . . rules*” to discuss customers with competitors.⁹⁷

This evidence is particularly significant because following these communications, neither Schein nor Benco seriously pursued Smile Source business. The evidence will show that Benco affirmatively denied Smile Source,⁹⁸ { [REDACTED] }⁹⁹ Absent an agreement,¹⁰⁰ it would have been in each Respondent’s interest to gain business from Smile

⁹⁶ CX0243 at -001 (Henry Schein-000170759) (emphasis added).

⁹⁷ CX0306 (Foley IH Tr.) at 177:15-178:16.

⁹⁸ { [REDACTED] }; CX0004 (BDS-FTC00006383).

⁹⁹ Schein argues it offered to do business with Smile Source but { [REDACTED] }

{ [REDACTED] } { [REDACTED] }
 { [REDACTED] } Compare { [REDACTED] } with { [REDACTED] } and { [REDACTED] }.

¹⁰⁰ Such actions against self-interest tend to exclude the likelihood of independent action. *RE/Max Int’l v. Realty One*, 173 F.3d 995, 1009 (6th Cir. 1999) (actions against self-interest will consistently tend to exclude the likelihood of independent conduct); *see also Toys “R” Us v. FTC*, 221 F.3d 928, 935 (7th Cir. 2000) (calling it “suspicious” to deprive oneself of a profitable sales account); *Petruzzi’s IGA Supermarkets v. Darling-Delaware Co.*, 998 F.2d 1224, 1245 (3d Cir. 1993) (“[A]bsent an agreement it does not make sense for defendants not to bid on an account . . .”).

Source.¹⁰¹ Indeed, internal emails show that Schein recognized the significant revenue it was foregoing by not serving Smile Source.¹⁰²

c) *Following Communications with Benco, Schein Pursued an Anti-Buying Group Strategy Just Like Benco's Strategy.*

Schein had historically worked with some buying groups. For example, Schein had a contract with a buying group called Smile Source from 2008, as well as the Dental Cooperative of Utah from 2007.¹⁰³ The evidence at trial will show that following communications with Benco, Schein did an about face and initiated a no-buying group strategy, providing further evidence of an agreement.¹⁰⁴

By December 2011, Schein's practice of working with buying groups had changed. Schein executive, Foley, turned down a buying group, informing them of Schein's new policy: "[U]nless you have some 'ownership' of your practices Henry Schein considers your business model as a Buying Group, and *we no longer participate in Buying Groups.*"¹⁰⁵ That same month, Sullivan referred to buying groups as a "slippery slope" and indicated that he did not

¹⁰¹ See { [REDACTED] }.

¹⁰² CX2113 at -001 (Henry Schein-000740470) (referring to Smile Source account as "\$1 million and growing" in 2010); { [REDACTED] }

{ [REDACTED] }; CX2150 at -001 (Henry Schein-00130321 (Randy Foley discussing Smile Source in 2011, "14 of 23 members were not previously Schein customers . . . They can increase Schein's % of business with new members who are currently Schein customers (eliminate cherry picking from other distributors-direct companies)).

¹⁰³ CX0174 at -001 (Henry Schein-000011439) (2014 email discussing end of relationship with Utah Co-op after 8 years of working together); CX8034 (Cavaretta Dep. Tr.) at 68:17-23; CX8005 (Muller Dep. Tr.) at 263:22-265:22.

¹⁰⁴ *United States v. Apple, Inc.*, 952 F. Supp. 2d 638, 690 (S.D.N.Y. 2013) ("An abrupt shift from defendants' past behavior . . . may provide sufficient evidence of an illegal conspiracy.").

¹⁰⁵ CX2062 at -001 (Henry Schein-000176969) (emphasis added).

“want [Schein] to be the first company to open the floodgates to the dangerous world of GPOs.”¹⁰⁶

The evidence at trial will show that, following communications with Benco in 2011, Sullivan and other Schein executives directed the salesforce to refuse buying groups.¹⁰⁷ For example, on July 17, 2012, then-Northwest Zone Manager (Jake Meadows) wrote that a *sales representatives’ decision to sell to a buying group was “against what Tim Sullivan has directed us to do in regards to supporting Buying groups.”*¹⁰⁸ In addition, Schein began requiring its DSO customers to agree that that they would not become a buying group.¹⁰⁹

¹⁰⁶ CX2458 at -001 (HS-00232391) (emphasis added) (Dec. 22, 2011, Western Zone Manager: “I just met with Tim [Sullivan], Dave and John about the Merit Dent [buying] group. As you can imagine they feel the same as we do that we don’t want to be the first company to open the floodgates to the dangerous world of GPOs.”); CX2456 at -001 (Henry Schein-001594941) (December 2011 email, “I am still of position that we do NOT want to lead in getting this [Dental GPO] initiative started in dental. I think that it is a very slippery slope.”).

¹⁰⁷ See, e.g., CX2062 at -001 (Henry Schein-000176969) (Schein rejects buying group Unified Smiles because Schein “no longer participate[s] in Buying Groups.”); CX0169 at -001 (Henry Schein-000075749) (Sept. 24, 2012, sales representative wrote: “*Everyone keeps saying we don’t do GPO’s.*”) (emphasis added); CX0169 at -001 (Henry Schein-000075749) (Sept. 24, 2012, Western Region Manager: “*The Co-op [Dental Co-op of Utah, a buying group] is exactly what we are trying to avoid.*”) (emphasis added); CX2351 at -001 (Henry Schein-000109725) (Sept. 10, 2013, Jake Meadows wrote, “[*Smile Source is a] GPO group purchasing organization. The goal a GPO (sic) is unionize buyers and get better pricing . . . Continue the battle locally.*”) (emphasis added); { [REDACTED] } (emphasis added); CX0174 at -001 (Henry Schein-000011439) (July 18, 2014, a Zone Manager stated, “*From Tim [Sullivan], HSD does not want to enter the GPO world.*”) (emphasis added); CX0176 at -001 (Henry Schein-000004474) (Nov. 3, 2015, Jake Meadows: “[*Tim Sullivan] was going off about how we do not have any buying group agreements and that we will not do them. Soap boxing about HSD and buying groups.*”) (emphasis added); CX0176 at -002 (Henry Schein-000004474) (Nov. 2015, Sullivan wrote, “I had just informed Hal (and team) that we do not have plans to open up new Buying Groups . . .”).

¹⁰⁸ CX0170 at -001 (Henry Schein-000045132) (emphasis added).

¹⁰⁹ { [REDACTED] }; CX0186 at -002 (Henry Schein-000043066) (“In our prime vendor agreement we spelled out specific terms and restrictions about these consulting offices to prevent Dental Gator from being a typical GPO.”); see also CX2066 at -001 (Henry Schein-000178511).

While Sullivan was not typically involved in decisions on whether to sell to customers,¹¹⁰ when it came to buying groups, he personally directed his colleagues to “shut down” or refuse to bid on buying groups.¹¹¹ Schein ended its relationship with the Dental Cooperative of Utah and Steadfast Dental, two buying groups Schein worked with prior to 2011.¹¹² Similarly, while Schein previously considered Smile Source to be a “great partner,”¹¹³ { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁵ After the Smile Source relationship ended, Foley wrote, “We ended the Smile Source relationship when they became more of a GPO then (sic) a ‘management company.’”¹¹⁶

The evidence will show that Sullivan was happy the Smile Source relationship ended. He wrote that he was more concerned with “*what we can do to KILL the buying group model!*” than

¹¹⁰ CX0311 (Sullivan IH Tr.) 33:3-34:6 (“Q. Do you spend any time on specific customer accounts. A. Rarely. . .”).

¹¹¹ CX0246 at -001 (Henry Schein-000091189) (Tim Sullivan: “The Dec ‘offsite’ last year I left with a goal to see if we could get Hal [Muller] to shut [buying group, Dental Gator] down”); CX2219 at -001 (Henry Schein-000082883) (“I [spoke with] Joe today about the [PGMS buying group] agreement. Tim was not in favor of it.”); { [REDACTED] }

¹¹² Schein began selling to Steadfast in 2010. By June 2014, Schein ceased doing business with Steadfast because the relationship was “counter to [Schein’s] business practices.” CX2653 at -002 (Henry Schein-000144936); *see also* CX2216 at -001 (Henry Schein-000034704) (Western Area Director regarding Steadfast: “GPO’s are popping up like crazy so it is nice when we can shut one down”); CX8010 (Titus Dep. Tr.) at 63:1-21. Similarly, in July 2014, Schein shut down the Dental Co-op of Utah, a group it had previously worked with for eight years. { [REDACTED] }; CX8010 (Titus Dep. Tr.) at 64:20-65:10.

¹¹³ CX2115 at -001 (Henry Schein-000105047).

¹¹⁴ { [REDACTED] }

¹¹⁵ { [REDACTED] }

¹¹⁶ CX2107 at -002 (Henry Schein-000104677); *see also* CX2624 at -001 (Henry Schein-000008166) (“[W]e invited [Smile Source] to find a new distributor.”); CX2349 at -001 (Henry Schein-00530282) (explaining that “it was more our choice I believe to stop doing business with” Smile Source, as “[i]t’s closer to a GPO”).

the lost revenues from the Smile Source account.¹¹⁷ This email is telling because in 2010—prior to the agreement with Benco—Sullivan was concerned about losing Smile Source as an account because “They [we]re \$1 million and growing.”¹¹⁸

3. Benco and Patterson Communications Prove an Agreement to Refuse to Discount to or Compete For Buying Group Customers.

Complaint Counsel will establish that Patterson joined the agreement to refuse to discount to or compete for buying group customers in February 2013. The evidence of an agreement between Benco and Patterson is *direct and unambiguous*: written communications between Benco’s Cohen and Patterson’s then-President, Paul Guggenheim,¹¹⁹ reflect a meeting of the minds to refuse to discount to or compete for buying groups.¹²⁰

a) Patterson and Benco Agreed Not to Compete for Buying Group Customers.

The evidence at trial will establish that in early 2013, Dr. Brent Mason and other dentists in New Mexico created a new buying group called the New Mexico Dental Cooperative (“NMDC”). Dr. Mason sent an email to prospective member dentists informing them that NMDC had “partnered with Patterson Dental.”¹²¹ When Cohen learned of Patterson’s potential involvement with the NMDC from a Benco salesperson, he wrote, “*We don’t recognize buying*

¹¹⁷ CX0199 at -001 (Henry Schein-000178388) (emphasis added).

¹¹⁸ CX2113 at -001 (Henry Schein-000740470); *see also* CX2115 at -001 (Henry Schein-000105047) (describing Smile Source as a “great partner.”).

¹¹⁹ {

_____ }
_____ }

¹²⁰ *In re Publ’n Paper Antitrust Litig.*, 690 F.3d 51, 63 (2d Cir. 2012) (“Unambiguous evidence of an agreement . . . is all the proof a plaintiff needs” to establish a violation of Section 1); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 662 (7th Cir. 2002) (evidence that a manager stated there was an “understanding” in the industry not to undercut each other’s prices constituted evidence of an explicit agreement).

¹²¹ CX0055 at -004 (BDS00028207).

groups . . . I'll reach out to my counterpart at Patterson to let him know what's going on in NM."¹²²

Five minutes later, Cohen forwarded the email chain to his counterpart, Guggenheim:

*Just wanted to let you know about some noise I've picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.*¹²³

Guggenheim immediately forwarded the email to his VPs of Sales (David Misiak) and Marketing (Tim Rogan), letting them know of Benco's competitive position.¹²⁴ A few hours later, Guggenheim accepted Cohen's invitation to collude:

*Thanks for the heads up. I'll investigate the situation. We feel the same way about these.*¹²⁵

This email chain constitutes direct evidence of a meeting of the minds between Patterson and Benco, specifying the terms of the no-buying group agreement. { [REDACTED]

[REDACTED] }¹²⁶

Notably, Cohen was keenly aware of the potential antitrust violation these communications would raise. Cohen revealed his intent in communicating with Guggenheim about the buying group; he texted: { [REDACTED]

[REDACTED] }¹²⁷

¹²² CX0055 at -001 (BDS00028207) (emphasis added).

¹²³ CX0056 at -001 (BDS-FTC00009442) (emphasis added).

¹²⁴ CX0091 at -001 (PDCO 00010908).

¹²⁵ CX0090 at -001 (PDCO 00010912) (emphasis added).

¹²⁶ { [REDACTED] }.

¹²⁷ { [REDACTED] } (emphasis added).

Just three days after the February 8, 2013 communication between Cohen and Guggenheim, Patterson decided *not* to put in a bid to work with the NMDC as originally expected.¹²⁸ This came as a surprise to Dr. Mason who testified that, prior to February 8, 2013, he understood that Patterson had agreed to be the preferred vendor for the buying group.¹²⁹

b) *Following Communications, Patterson Monitored and Confronted Benco On Suspicion of Cheating, Establishing a Conscious Commitment to a Common Scheme.*

Following the agreement with Benco, Patterson actively monitored and confronted Benco on suspicions of cheating. As discussed in more detail *infra* Section III(A)(5), in June 2013, Guggenheim confronted Cohen when Patterson suspected Benco of working with a buying group in violation of the agreement. Guggenheim wrote: “*Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? . . . I’m wondering if your position on buying groups is still as you articulated back in February?*”¹³⁰ In response, Cohen provided a detailed explanation of the basis for Benco’s work with Atlantic Dental Care.¹³¹ This confrontation establishes a conscious commitment to a common scheme.¹³²

c) *Following Communications with Benco, Patterson Pursued an Anti-Buying Group Strategy Just like Benco’s Strategy.*

The evidence will show that following communications with Benco, Patterson pursued an anti-buying group strategy. At the time of Guggenheim and Cohen’s email exchange regarding NMDC, { [REDACTED] }¹³³

¹²⁸ CX8035 (Mason Dep. Tr.) at 54:15-55:11; CX4090 at -001-002 (PDCO 00151225).

¹²⁹ CX8035 (Mason Dep. Tr.) at 86:17-88:7.

¹³⁰ CX3301 at -002 (Patterson 0001594).

¹³¹ CX3301 at -001 (Patterson 0001594).

¹³² *United States v. Beaver*, 515 F.3d 730, 738 (7th Cir. 2008) (finding existence of agreement based in part on evidence of co-conspirators confronting each other when they believed someone was cheating); *United States v. Giordano*, 261 F.3d 1134, 1139-40 (11th Cir. 2001) (same).

¹³³ { [REDACTED] }

Within a few weeks of entering into the agreement, however, Patterson began instructing sales representatives to “stay out” of buying groups.¹³⁴ Indeed, { [REDACTED] }¹³⁵ The evidence will show that Patterson’s salesforce understood the “clear” message that Patterson “steer[ed] clear of all buying groups.”¹³⁶

In 2013, Patterson created a Special Markets division to manage large accounts.¹³⁷ The President of this new division, Neal McFadden, { [REDACTED] }¹³⁸ { [REDACTED] }¹³⁹ { [REDACTED] }¹⁴⁰ To ensure that the salesforce stayed away from buying groups, McFadden and Misiak sent a memo to regional and branch managers that explicitly excluded the possibility of working with buying groups: Special Markets “definition will not include group purchasing organizations (GPOs).”¹⁴¹ In compliance with that directive, Patterson

¹³⁴ CX0093 at -001 (PDCO 00051886) (Feb. 27, 2013, instructing sales representative to “stay out” of buying group); *see also* CX0106 at -001 (PDCO 00027980) (Aug. 2013, “We don’t need GPO’s in the dental business”); CX3010 at -001 (PDCO 00028076) (Dec. 2013, “[A]s of now we are not working with GPO’s.”); CX3016 at -001 (PDCO 00039987) (Apr. 2014, Neal McFadden instructing branch manager, “I am sure we should pass on these [GPO’s].”).

¹³⁵ { [REDACTED] }

¹³⁶ *See, e.g.*, CX3342 at -001 (PDCO00026303) (“I want to make sure that GPO’s are not something we as a company are choosing to partner with at this point. I know Dave [Misiak] has been clear about this in the past and I wanted to verify that this still is the case.”); CX3128 at -001 (PDCO 00026075) (Oct. 2014, McFadden to branch manager: “As a rule we are trying our best to steer clear of all buying groups.”).

¹³⁷ CX0158 at -002 (PDCO 00031277).

¹³⁸ { [REDACTED] }

¹³⁹ { [REDACTED] }; CX0106 at -001 (PDCO 00027980) (“Is it worth it to explore GPO?????”).

¹⁴⁰ { [REDACTED] }

¹⁴¹ CX0158 at -002 (PDCO 00031277).

consistently denied buying groups.¹⁴² For example, Patterson turned down Smile Source in 2013 in spite of its members' \$14 million annual spend,¹⁴³ because it was a buying group.¹⁴⁴

4. Respondents' Internal Emails Reflect An Agreement Among the Big Three.

The evidence will show that executives from the Big Three expressed confidence that their top two rivals were not competing for buying groups customers, providing further direct evidence of a conspiracy.

- Shortly after Patterson joined the agreement, Misiak (VP of Sales) directed a Regional Manager to refuse a buying group, explaining that Patterson's largest competitors refuse buying groups as well:

*Confidential and not for discussion ... our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me.*¹⁴⁵

Misiak could not have spoken confidently of Schein and Benco's views regarding competing for buying groups absent knowledge of collusion.¹⁴⁶ That Misiak wanted to keep this message a

¹⁴² See, e.g., CX3086 at -001 (PDCO00021905) ("We have explored this opportunity [with Kois] . . . and decided to pass at this time due to the implications to our margins and therefore our Sales Reps."); CX3031 at -001 (PDCO 00050286) ("Patterson Dental has made the decision not to respond to the [GDA] RFP at this time.").

¹⁴³ CX0297 at -001 (PDCO00021213); CX0147 at -001 (PDCO 00021163).

¹⁴⁴ CX3009 at -001 (PDCO00027968) ("[W]e have said no to smile source. It is a direct competition (sic) to our sales reps. They are [a] buying club . . .").

¹⁴⁵ CX0093 at -001 (PDCO 00051886) (emphasis added).

¹⁴⁶ *B&R Supermarket, Inc. v. Visa, Inc.*, Case No. C-16-01150, 2016 U.S. Dist. LEXIS 136204 (N.D. Cal. Sept. 30, 2016) (finding defendants' statements constituted direct evidence of a conspiracy reasoning that the VP "could not speak so confidently on behalf of *all* networks save and except for her knowledge of collusion.").

secret adds further weight to the evidence of conspiracy.¹⁴⁷ [REDACTED]

[REDACTED]¹⁴⁸

- The same day, Misiak wrote to his boss, Guggenheim, “I’ve coached [Regional Manager] on how to stay out of this [buying group] with grace. *I’m concerned that Schein and Benco sneak into these co-op bids and deny it. . . .*”¹⁴⁹ Misiak’s concern regarding cheating is indicative of an agreement.

- In August 2013, Patterson VP of Marketing, Tim Rogan, cautioned McFadden, who was interested in exploring a buying group: “*We don’t need GPO’s in the dental business. Schein, Benco, Patterson have always said no. I believe it is our duty to uphold this and protect this great industry.*”¹⁵⁰ Following this exchange, McFadden did not pursue buying group business.¹⁵¹

- In September 2013, Benco executive, Ryan, wrote to Cohen in response to concern that the number four distributor (Burkhart) was selling to buying groups: “*CHUCK – maybe what you should do is make sure you tell Tim [Sullivan] and Paul [Guggenheim] to hold their positions as we are.*”¹⁵² Shortly after this exchange, as discussed *infra* Section III(A)(7), Cohen approached Burkhart about joining the conspiracy.

- On June 12, 2014, McFadden of Patterson texted a former colleague who was working for a buying group: “[*W*]e’ve signed an agreement that we won’t work with GPO’s.”¹⁵³

¹⁴⁷ *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 681 F. Supp. 2d 141, 176 (D. Conn. 2009) (finding attempts to conceal communications was indicative of an agreement).

¹⁴⁸ [REDACTED].

¹⁴⁹ CX0092 at -001 (PDCO 00051878).

¹⁵⁰ CX0106 at -001 (PDCO 00027980) (emphasis added).

¹⁵¹ *See, e.g.*, CX3016 at -001 (PDCO 00039987) (“I am sure we should pass on these groups.”).

¹⁵² CX0023 at -001 (BDS-FTC00009881) (emphasis added).

¹⁵³ CX0164 at -002 (PDCO 00062511) (06/12/2014 01:06:37 PM text message) (emphasis added).

- In May 2015, Ryan turned down Dentistry Unchained, a buying group with 226 dentists: “*The best part about calling these [buying groups] is I already KNOW that Patterson and Schein have said NO.*”¹⁵⁴
- On July 13, 2015, Ryan clarified Benco’s position to a sales representative who was concerned about losing \$1 million in “current business” to a buying group: “We don’t allow [volume discount] pricing unless there is common ownership. *Neither Schein nor Patterson do either.*”¹⁵⁵

These emails constitute direct evidence of a conspiracy not to work with buying groups.¹⁵⁶ They are particularly persuasive because they reflect Respondents’ refusal to bid on buying groups based on the assurance that their competitors turned them down as well.¹⁵⁷

5. Conduct Relating to Atlantic Dental Care Group Reflects Respondents’ Conscious Commitment to a Common Scheme.

Complaint Counsel will show that the facts surrounding the group Atlantic Dental Care (“ADC”) reflect a conscious commitment to a common scheme. In February 2013, ADC, a group based on Virginia, approached Schein, Patterson, and Benco seeking to do business with the Big Three. Respondents’ sales representatives wanted to pursue the business with ADC, fearful that by not bidding on ADC, they might lose customers.¹⁵⁸ In spite of that concern, each

¹⁵⁴ CX0012 at -001 (BDS-FTC00003405) (emphasis added).

¹⁵⁵ CX0011 at -003 (BDS-FTC00014984) (emphasis added).

¹⁵⁶ *In re High Fructose Corn Syrup*, 295 F.3d at 662 (evidence that a manager stated there was an “understanding” in the industry not to undercut each other’s prices constituted evidence of an explicit agreement); *Rossi v. Standard Roofing, Inc.*, 156 F.3d 452, 466 (3d Cir. 1998) (“[W]hen the plaintiff has put forth direct evidence of conspiracy, the fact finder is not required to make inferences to establish facts, and therefore the Supreme Court’s concerns over the reasonableness of inferences in antitrust cases evaporate.”).

¹⁵⁷ *Toys “R” Us v. FTC*, 221 F.3d 928, 936 (7th Cir. 2000) (boycott among toy manufacturers who were unwilling to forego profitable sales channels unless assured that competition would do the same).

¹⁵⁸ CX0021 at -002-003 (BDS-FTC00086699); CX0093 at -001 (PDCO 00051886); *see also* CX0198 at -012-013 (Henry Schein-000164441).

Respondent initially took the same tact: believing ADC was a buying group, upper level management directed the sales team not to bid on ADC in compliance with the no-buying group agreement.¹⁵⁹

Following inter-firm communication between Schein and Benco, both decided that ADC was not a buying group, changed course, and bid on ADC. Benco won the bid. Patterson, still believing ADC was a buying group, did not bid on ADC. When Patterson later lost ADC business to Benco, Patterson confronted Benco regarding the cheating. Respondents' conduct in response to ADC is unambiguous evidence of a commitment to a common course of action.¹⁶⁰

- a) *Benco and Schein Communicated Regarding Not Bidding on ADC, Benco Informed Schein That It Would Bid on ADC, and Subsequently Schein Bid on ADC.*

On March 25, 2013, Sullivan and Cohen spoke for 8 minutes and 35 seconds.¹⁶¹

According to the calendar entry produced from Cohen's files, the subject of the call was "Buying Groups."¹⁶² { [REDACTED] }

{ [REDACTED] }¹⁶⁴ { [REDACTED] }

{ [REDACTED] }¹⁶⁵ *Sullivan testified that Cohen informed Sullivan that Benco was not planning to bid on ADC.*¹⁶⁶

¹⁵⁹ CX0198 at -004 (Henry Schein-000164441) (Schein's first reaction was to walk away because it was a buying group); CX1253 at -001 (BDS-AZ00014980) (Benco's Ryan directing his sales representatives not to bid on ADC because it was a buying group); CX0093 (PDCO 00051886) (Misiak directed sales representatives not to bid on ADC).

¹⁶⁰ Areeda & Hovenkamp ¶1410c. ("Notwithstanding the difficulties in appraising the sufficiency of circumstantial evidence, we know what we are looking for: some level of commitment to a common course of action.")

¹⁶¹ CX6027 at -027 (Communications summary exhibit).

¹⁶² CX0058 at -001 (BDS00028233).

¹⁶³ { [REDACTED] }; CX0311 (Sullivan IH Tr.) at 261:2-15.

¹⁶⁴ CX6027 at -028 (Communications summary exhibit); { [REDACTED] }

¹⁶⁵ { [REDACTED] }.

¹⁶⁶ CX0311 (Sullivan IH Tr.) at 260:25-261:17.

{ [REDACTED] }
[REDACTED]
[REDACTED] }¹⁶⁸ Shortly after making that decision, Cohen reached out to Sullivan to

inform him of Benco’s competitive position. He texted:

{ [REDACTED] }
[REDACTED] }¹⁶⁹

Following the receipt of that text message, Sullivan attempted to reach Cohen over the phone but was unable to do so.¹⁷⁰ Sullivan then connected with his regional manager, Michael Porro to discuss the ADC group.¹⁷¹ Porro later wrote in an email that he had talked to Sullivan and “[t]he thinking [was] that Benco . . . [would] put in a bid.”¹⁷² Porro identified the risk in not bidding, and the upside of obtaining new business if they won.¹⁷³

Over the next week or so, Sullivan and Cohen tried to reach each other several times.¹⁷⁴ On April 3, 2013, they finally connected and spoke for 5 minutes and 36 seconds.¹⁷⁵

{ [REDACTED] }¹⁷⁶

Sullivan’s internal emails acknowledge, “*Our first reaction to [ADC] was it was simply a buying*

¹⁶⁷ { [REDACTED] }
¹⁶⁸ { [REDACTED] }
¹⁶⁹ { [REDACTED] } (emphasis added); see also CX6027 (Communications summary exhibit) at -029.

¹⁷⁰ CX6027 at -028 (Communications summary exhibit) (March 27, 2013 telephone call).

¹⁷¹ CX4413 at -0813 (FTC-AT&T-0030895 at 0031707); CX0198 at -013 (Henry Schein-000164441).

¹⁷² CX0198 at -013 (Henry Schein-000164441).

¹⁷³ CX0198 at -014 (Henry Schein-000164441).

¹⁷⁴ CX6027 at -029 (Communications summary exhibit).

¹⁷⁵ CX6027 at -029 (Communications summary exhibit).

¹⁷⁶ { [REDACTED] }; CX2579 at -001 (Henry Schein-000056717).

regional manager “confidential[ly]” that Schein and Patterson do not participate in buying groups.¹⁸² Patterson’s refusal to bid on ADC was against its economic interest, as evidenced by the fact that the sales force was concerned that passing up on ADC would result in lost business.¹⁸³

A few months later, on May 31, 2013, Patterson discovered that Benco had become the supplier for ADC¹⁸⁴ { [REDACTED] }¹⁸⁵ When Guggenheim found out, he located his February 8, 2013 correspondence with Cohen in which the two came to a meeting of the minds regarding the anti-buying group strategy and replied.¹⁸⁶ He asked Cohen to “shed some light on [Benco’s] business agreement with Atlantic Dental Care” and to confirm that Benco’s “position on buying groups [was] still as [Cohen] articulated back in February.”¹⁸⁷

Cohen replied two dates later, setting forth a detailed explanation of why Benco’s agreement with ADC was not cheating.

As we’ve discussed, we don’t recognize buying groups. On the Atlantic Dental Care situation, here’s our understanding after several in-depth conversations...

. . . . [W]e believe this meets our criteria for a large group practice. We’ve asked to see the merger documents once they are completed, to confirm that they’ve really become a legally merged entity, and we’re going to continue monitoring the process to ensure that ADC delivers on their commitment to us. Happy to discuss in more detail, if you’d like.¹⁸⁸

Cohen’s email to Guggenheim describes the criteria that exempted ADC from the no-buying group agreement, further solidifying the meeting of the minds among the two. Following

¹⁸² CX0093 at -001 (PDCO 00051886).

¹⁸³ *RE/Max Int’l v. Realty One*, 173 F.3d 995, 1009 (6th Cir. 1999) (actions against self-interest will consistently tend to exclude the likelihood of independent conduct).

¹⁸⁴ CX0094 at -001 (PDCO 00021038).

¹⁸⁵ { [REDACTED] }

¹⁸⁶ CX3301 at -002 (Patterson 0001594).

¹⁸⁷ CX3301 at -002 (Patterson 0001594) (emphasis added).

¹⁸⁸ CX3301 at -001 (Patterson 0001594) (emphasis added).

employees to coordinate { [REDACTED] }¹⁹⁴ The next day, Schein Regional Manager (Glenn Showgren) provided a detailed report of his call with Benco's Fernandez to his supervisor:

-Benco considering suspending all activities with the TDA including pulling out of the state show.

-Chuck Cohen will be reaching out to, or has reached out to, Tim Sullivan to see if HSD would do the same thing.

-Ron wanted to know if I have a relationship with local [Patterson Regional Manager] to see if they would consider pulling out as well.

-I will be having lunch with Ron week after next to discuss concerns and share what we have found out about the program.

-I laid out ground rules that I will NOT discuss a pricing response and any action would have to be cleared by my Legal Team before communicating with the TDA.¹⁹⁵

Later, high-ranking executives at Schein and Patterson communicated about a coordinated response to TDA Perks as well. The evidence will show that in January 2014, Schein VP of Sales (Dave Steck) informed his counterpart at Patterson (Misiak) that Schein was planning to pull out of the TDA meeting.¹⁹⁶ The two spoke on the telephone on January 6, 2014 for 14 minutes.¹⁹⁷ Steck followed up with an email on January 21, 2014, under the subject matter "Texas," saying, "*I'll be calling you to let you know about our decision on the matter we recently discussed in the next couple days.*"¹⁹⁸ Misiak forwarded Steck's email to his colleague

¹⁹⁴ { [REDACTED] } (emphasis added); *see also* CX0178 at -002-003 (Henry Schein-000079098); CX1289 at -001 (BDS00809247); CX0108 at -001 (PDCO 00008903) ("As for Patterson, we have briefly discussed this TDAPerks site . . . with our dealer competitors at the local San Antonio & Houston level . . .").

¹⁹⁵ CX0178 at -002-003 (Henry Schein-000079098) (emphasis added).

¹⁹⁶ *Compare* CX6027 at -036 (Communications summary exhibit) (fourteen minute phone call on January 6, 2014 between Schein's Dave Steck and Patterson's Misiak) *with* CX0112 at -001 (PDCO 00013330) (January 21, 2014 email from Steck to Misak saying, "*I'll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days.*").

¹⁹⁷ CX6027 at -036 (Communications summary exhibit).

¹⁹⁸ CX0112 at -001 (PDCO 00013330) (emphasis added).

(Rogan) and wrote, “*He already told me they were out. Full blown!*”¹⁹⁹ Rogan responded, “That sucks. You should call him. ‘Thought I could trust you’ type of conversation.”²⁰⁰

Following these communications, Schein’s Randy Foley explained that the Big Three were on the same page regarding TDA: “*The good thing here is that PDCO, Benco and us are on the same page regarding these buying groups/consortiums. Checking to see if we should join the TDA boycott.*”²⁰¹ Schein withdrew from the TDA meeting in early April.²⁰² Benco pulled out the same day because “Schein & Patterson are as well.”²⁰³

A few weeks before TDA’s annual meeting, Cohen emailed Sullivan and Guggenheim *on the same email chain* about the TDA buying group, forwarding an article promoting the TDA Perks program.²⁰⁴ The evidence will show that Sullivan and Cohen spoke that same day by telephone, and Guggenheim and Cohen spoke on the telephone a few days later regarding the “TDA Perks letter.”²⁰⁵

Schein, Patterson, and Benco engaged in a similar pattern of inter-firm communications regarding the AzDA in July 2014; following the communications the Big Three pulled out of the state dental association meeting.²⁰⁶ The communications between Benco and Schein, and Schein

¹⁹⁹ CX0112 at -001 (PDCO 00013330) (emphasis added).

²⁰⁰ CX0112 at -001 (PDCO 00013330).

²⁰¹ CX2106 at -001 (Henry Schein-000165416) (emphasis added).

²⁰² CX2306 at -001-002 (Henry Schein-000005422).

²⁰³ CX0063 at -001 (BDS-FTC00001724).

²⁰⁴ CX1062 at -001 (BDS-FTC00001789) (April 16, 2014).

²⁰⁵ CX6027 at -041-042 (Communications summary exhibit); CX0101 at -001 (PDCO 00011057) (“Call Chuck Cohen, re TDA Perks letter”).

²⁰⁶ CX3332 at -002 (PattersonDental 00001251) (“I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in [Arizona].”); CX2757 at -001 (Henry Schein-000034707) (upon learning Benco was ready to cancel their attendance, Schein’s Cavaretta: “We will cancel too but keep in mind we cannot collaborate with them.”); *Compare* CX1378 at -001 (BDS-FTC00024725) (Benco’s Mike Wade reporting that he is communicating with Schein and Patterson regarding the Arizona Dental Association (AZDA) annual meeting and buying group) *with* CX2756 at -001 (HS-00000997) (Schein’s Kevin Upchurch describing a call from Benco’s Evans discussing AZDA) *and* CX2757 at -001 (Henry

and Patterson, combined with Respondents' withdrawal from the trade association events they otherwise regularly attend constitute additional direct evidence of the agreement.

7. Benco Invited the Number Four Distributor to Join the Conspiracy.

Further proving Respondents' conspiracy, the evidence will show that Benco invited the number four distributor, Burkhart, to join the agreement to collude. Consistent with Benco's invitations to Schein and Patterson—and its role as ringleader of this conspiracy—Benco reached out to Burkhart to discuss buying groups. In September 2013, Benco's VP of Sales Mike McElaney called his counterpart at Burkhart, Jeff Reece, to discuss buying groups. { [REDACTED]

[REDACTED]
[REDACTED] }²⁰⁷ Following that conversation, McElaney reported to his boss,

Cohen, and other executives at Benco:

*I spoke with Jeff Reece at length late Friday about buying groups.
JEFF DOES NOT GET IT!!! . . . I will be meeting Jeff at the ADA meeting
to continue the discussion.*²⁰⁸

{ [REDACTED]

[REDACTED]

[REDACTED]

Schein-000034707) (internal Schein email indicating advance knowledge of Benco's plans to pull out of the AZDA meeting); CX1331 at -001 (BDS00020270) (Benco internal email reporting that Schein, Patterson, and Benco have all exchanged assurances that they will not support the Arizona Dental Association meeting in response to AzDA's buying group program)..

²⁰⁷ { [REDACTED] }

²⁰⁸ CX0023 at -001 (BDS-FTC00009881) (emphasis added).

²⁰⁹ { [REDACTED] }

[REDACTED]
[REDACTED]}²¹⁰ Then, in October 2013, Reece, McElaney, and Cohen all attended a dental industry meeting together in Florida. There, { [REDACTED]

[REDACTED]}²¹¹

[REDACTED]ing

[REDACTED]}²¹³ Benco thus attempted to expand the conspiracy by inviting Burkhart to institute a no-buying group policy. Unlike Patterson and Schein, Burkhart did not agree to join and continued selling to buying groups. { [REDACTED]}²¹⁴

Benco’s invitation to collude provides further evidence of the overarching conspiracy not to work with buying groups and proves the invitation to collude count against Benco.

8. Respondents Complied with the Agreement.

The evidence at trial will show that following the inter-firm communications discussed previously, Respondents complied with the agreement. As discussed previously, *supra* Sections III(A)(2)(c), III(A)(3)(c), the evidence will show that Respondents instituted no-buying group

210 { [REDACTED] }

211 { [REDACTED] }

212 { [REDACTED] }

213 { [REDACTED] }

214 { [REDACTED] }; see also { [REDACTED] }

[REDACTED] }.

policies and instructed their sales force to refuse buying groups. When approached by buying groups, the evidence will show that the Big Three acted in lock step by affirmatively turning down the buying groups or failing to meaningfully respond. For example, all three Respondents turned down the Kois Buyers Group.²¹⁵ Similarly, the Big Three all failed to bid to supply Georgia Dental Association’s buying group program.²¹⁶ The evidence will show that the Big Three turned down many other groups during the conspiracy period as well.²¹⁷

Despite the substantial evidence to the contrary, Schein²¹⁸ and Patterson²¹⁹ claim to have supported certain buying groups during the conspiracy period. The evidences belies Respondents’ assertion, but even if that were true, such cheating does not negate the existence of the agreement.²²⁰

²¹⁵ CX8007 (Kois Sr. Dep. Tr.) at 37:7-14; CX0321 (Kois Jr. IH Tr.) at 76:1-77:1; CX1125 at -003 (BDS-FTC00004376); CX3086 at -001 (PDCO00021905) (“We have explored this opportunity [with Kois] . . . and decided to pass at this time due to the implications to our margins and therefore our Sales Reps.”).

²¹⁶ CX0320 (Capaldo IH Tr.) at 75:6-77:6, 97:11-98:14; CX3031 at -001 (PDCO 00050286) (“Patterson Dental has made the decision not to respond to the [GDA] RFP at this time.”); CX1037 at -001 (BDS-FTC00016551) (“Benco will respectfully decline to respond [to GDA’s RFP].”).

²¹⁷ See, e.g., CX2062 at -001 (Henry Schein-000176969) (turning down Unified Smiles); CX1144 at -001 (BDS00609252) (indicating Benco turned down Unified Smiles); CX0147 at -001 (PDCO 00021163) (informing Smile Source that Patterson is “currently not interested”); CX0004 (BDS-FTC00006383) (indicating Benco would pass on Smile Source).

²¹⁸ Schein asserts that it worked with several buying groups during the conspiracy period. The groups Schein identifies are not relevant for one or more of the following reasons: (1) they are not buying groups but corporate groups or other institutional customers; (2) they are groups Schein worked with prior to the start of the conspiracy, [REDACTED] and/or (3) they are groups Schein engaged after the conspiracy ended. See, e.g., { [REDACTED]

[REDACTED]; CX2482 at -001 (Henry Schein-000091485 (“Breakaway is a DSO/MSO combo with complete control of the check book.”).

²¹⁹ The groups Patterson points to are not buying groups. See, e.g., { [REDACTED]

[REDACTED] }.

²²⁰ *United States v. Beaver*, 515 F.3d 730, 739 (7th Cir. 2008) (Section 1 of the Sherman Act does not “outlaw only perfect conspiracies to restrain trade” and “certainly . . . a breach of contract does not mean that the parties never entered into the contract in the first place.”); *United States v. Foley*, 598 F.2d 1323, 1333 (4th Cir. 1979) (“Since the agreement itself, not its performance, is the crime of the conspiracy, the partial non-performance of [defendant]. . . does not preclude a finding that it joined the conspiracy.”).

B. The Totality of the Evidence Proves an Agreement Among Respondents.

1. Direct and Circumstantial Evidence Establish the Agreement.

The FTC may prove an unlawful restraint on trade among Respondents through either “direct or circumstantial evidence that reasonably tends to prove . . . a conscious commitment to a common scheme designed to achieve an unlawful object.”²²¹ As described above, the evidence at trial will demonstrate that Respondents conspired to refuse buying groups. Multiple written documents reflect an agreement among the Big Three, stating, for example: “Schein, Benco, and Patterson have always said no,”²²² and “Neither Schein nor Patterson do [buying groups] either.”²²³ This is precisely the type of direct evidence pointing to an explicit agreement.²²⁴

Further, the evidence will show that the leaders of the Big Three—Cohen, Sullivan, and Guggenheim—repeatedly exchanged competitive bidding information regarding buying groups,²²⁵ and confronted each other on suspicions of cheating.²²⁶ Additionally, while proof of conspiracies rarely consists of a written agreement,²²⁷ the February 2013 email exchange between Benco and Patterson is tantamount to a written agreement to refuse to discount to buying groups. Likewise, Schein and Patterson high-level executives communicated regarding organizing to refuse to attend the TDA annual meeting in furtherance of the no-buying group agreement.²²⁸ This type of direct evidence is also strong evidence of a horizontal agreement.²²⁹

²²¹ *Anderson News, LLC v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012).

²²² CX0106 at -001 (PDCO 00027980).

²²³ CX0011 at -003 (BDS-FTC00014984).

²²⁴ *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 662 (7th Cir. 2002) (evidence that a manager stated there was an “understanding” in the industry not to undercut each other’s prices constituted evidence of an explicit agreement).

²²⁵ See *supra* Sections III(A)(2)(a), III(A)(3)(a).

²²⁶ See *supra* Sections III(A)(2)(b), III(A)(5)(b). *Beaver*, 515 F.3d at 738 (7th Cir. 2008) (finding existence of agreement based in part on evidence of co-conspirators confronting each other when they believed someone was cheating).

²²⁷ *Esco Corp. v. United States*, 340 F.2d 1000, 1006-07 (9th Cir. 1965).

²²⁸ See *supra* Section III(A)(6).

Following these repeated inter-firm communications, each of the Big Three directed its sales force to stay out of buying groups and repeatedly refused to work with buying groups.²³⁰ The Fourth Circuit affirmed price-fixing convictions based on similar evidence in *United States v. Foley*.²³¹ In that case, Foley announced to a room of competitors that his real estate brokerage firm was planning to raise its commission rate from 6% to 7%, noting that “he did not care what the others did.”²³² The evidence was unclear as to whether the other defendants “expressed an intention or gave the impression” that those firms would adopt a similar change, but following Foley’s communications, each firm raised its rates to 7% for a substantial number (though not all) of listings.²³³ There was also evidence of a number of instances in which members of the conspiracy sought to hold their competitors to the agreement.²³⁴ The Fourth Circuit upheld Foley’s conviction, noting there was ample evidence from which the jury could find guilt.²³⁵

Just like in the *Foley* case, here we have direct and unambiguous evidence that Benco informed the heads of its two main rivals, Patterson and Schein, that it would refuse to bid on or discount to buying groups.²³⁶ Following receipt of that information, all three Respondents instructed their sales force and refused to discount to buying groups.²³⁷ While Schein and Patterson claim that they did business with some buying groups, perfect compliance with the

²²⁹ *Toys “R” Us, Inc. v. FTC*, 221 F.3d 928, 935-36 (7th Cir. 2001) (communications among competitors constitutes direct evidence of an agreement); *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 110 (2d Cir. 2002) (describing direct evidence of communication among conspirators as “strong evidence of a horizontal agreement.”).

²³⁰ *See supra* Sections III(A)(2)(c), III(A)(3)(c).

²³¹ 598 F.2d 1323 (4th Cir. 1979).

²³² *Id.* at 1327, 1331-32.

²³³ *Id.* at 1332.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *See supra* Section III(A)(2)(a), III(A)(3)(a).

²³⁷ *See supra* Section III(A)(2)(b)-(c), III(A)(3)(b)-(c).

scheme is not required.²³⁸ Additionally, like in *Foley*, there is evidence of members of the conspiracy holding their competitors to the agreement.²³⁹ Thus, the Court here should find an agreement based on similar evidence of inter-firm communication followed by tacit coordination.²⁴⁰

While Respondents attempt to portray the evidence as ambiguous and insufficient to support the inference of conspiracy, the evidence must be viewed as a whole.²⁴¹ Taken as a whole, the repeated inter-firm communications regarding buying groups, internal references to the competitive bidding positions of competitors, and change in behavior toward buying groups all demonstrate an agreement among the Big Three to refuse to discount to or compete for buying group customers. As described below, the additional circumstances, often referred to as “plus” factors further bolster the inference of a conspiracy.

2. **Plus Factor Evidence Further Confirms the Existence of a Conspiracy.**

Plus factors are required when a plaintiff relies solely on parallel conduct to prove an agreement. Here, direct evidence substantiates Respondents’ conspiracy, and plus-factor evidence is not necessary. Nonetheless, available plus-factor evidence further corroborates Respondents’ illegal agreement.

²³⁸ *Foley*, 598 F.2d at 1332-34 (describing various defendants as not having perfectly complied with the agreement, noting one did not comply thirty percent of the time, and stating, “the partial non-performance of [defendant] does not preclude a finding that it joined the conspiracy.”)

²³⁹ See *supra* Section III(A)(2)(b)-(c), III(A)(3)(b)-(c).

²⁴⁰ See *Esco Corp.*, 340 F.2d at 1008 (“It is not necessary to find an express agreement . . . but it is sufficient that a concert of action be contemplated and that defendants conform to the arrangement.”).

²⁴¹ “The character and effect of the conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole.” *Cont’l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962).

“The presence of plus factors tends to ensure that courts punish ‘concerted action’—an actual agreement—instead of the ‘unilateral, independent conduct of competitors.’”²⁴² “The most relevant plus factors include: (1) a motive to conspire . . . ; (2) noncompetitive behavior, i.e., evidence that the defendants acted contrary to their economic self-interest; and (3) evidence of a traditional conspiracy, such as a high level of inter-firm communications that would suggest that the defendants consciously agreed not to compete.”²⁴³ Evidence in this case satisfies each of these categories, as well as others (*e.g.*, changes in conduct and past collusive activity). Some of these categories of evidence taken alone are rich enough to support a finding of agreement. And when all of these categories of evidence are considered together, as it must be under Supreme Court precedent,²⁴⁴ there is ample support to find that Respondents agreed not to discount to or compete for buying group customers.

a) Respondents’ Common Motive to Conspire

Respondents had a common motive to enter into the conspiracy. Courts recognize motive to conspire as a crucial plus factor in finding an agreement based on parallel conduct. In *Toys “R” Us v. FTC*, the court found that the advent of low-priced warehouse stores posed a threat to Toys “R” Us, which orchestrated a boycott among toy manufacturers that were otherwise unwilling to forego a profitable sales channel unless assured that their competitor manufacturers would also boycott the warehouse stores.²⁴⁵ This motive to conspire was instructive to the court in finding an agreement, especially where absent an agreement, the manufacturers would not

²⁴² *In re Flat Glass Antitrust Litig.*, 385 F.3d 350, 360 (3d Cir. 2004).

²⁴³ *In re EPDM Antitrust Litig.*, 681 F. Supp. 2d 141, 166-67 (D. Conn. 2009).

²⁴⁴ *Cont’l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962).

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

have cooperated in the boycott for fear that their competitors would sell to warehouse stores.²⁴⁶

Buying groups in this case posed the same threat to Respondents as warehouse stores did to the Toys “R” Us defendants.

As discussed previously, *supra* Section II(A)(2), the evidence will show that each of Respondents believed buying groups were a threat²⁴⁷ to their margins.²⁴⁸ Respondents were wary that a full-service distributor partnering with a buying group would “open the floodgates” to lower prices and lower margins,²⁴⁹ much like group purchasing organizations in the medical industry.²⁵⁰ The threat was particularly acute because buying groups were growing in

²⁴⁶ *Id.* at 935-36; *see also Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222 (1939) (finding a “strong motive for concerted action” where the film distributor defendants sought to set higher minimum ticket prices for first-and second-run theaters, but needed agreement by all distributors to do so because they were otherwise in active competition with one another).

²⁴⁷ { [REDACTED] }; CX2618 at -001 (HS-0013750) (considering adding GPOs as a potential threat in Schein’s strategic plan); { [REDACTED] }; CX0015 at -001 (BDS-FTC00016083) (referring to Smile Source as “terrifying” and expressing concern that regional full-service distributors work with Smile Source); { [REDACTED] }; CX2377 at -001 (Henry Schein-000267660) (SWOT analysis lists buying groups as a threat); { [REDACTED] }.

²⁴⁸ *See, e.g.,* { [REDACTED] }; CX8003 (Foley Dep. Tr.) at 132:9-133:7 (informing direct reports that buying groups erode margins); CX8005 (Muller Dep. Tr.) at 65:3-12, 69:7-12 (noting the potential for buying groups to erode margins); CX0054 at -001 (BDS-FTC00003743) (“rise of buying groups, decline of margin, flat market share”); { [REDACTED] }.

²⁴⁹ CX0188 at -001 (Henry Schein-00048069); CX8005 (Muller Dep. Tr.) at 199:12-200:7, 201:23-202:6; CX2458 at -001 (HS-00232391); *see also* { [REDACTED] }.

²⁵⁰ CX8012 (Breslawski Dep. Tr.) at 234:14-24, 236:7-9; CX0305 (Cavaretta IH Tr.) at 132:3-19; CX0165 at -001 (Henry Schein-000004705) (“Dealing with GPOs is incredibly risky on many fronts. . . . [A]s soon as we start doing this we will turn into medical, margins will go down This is a bad deal all the way around.”); CX1156 at -001 (BDS-FTC00017053) (“GPOs are why medical works at the margins they do.”); CX0193 at -020 (HSD0067484) (“[Schein] Medical Simply must work with GPO’s to

popularity²⁵¹ and could disrupt the independent dentist²⁵² customer segment of Respondents' dental businesses.

Just as in *Toys "R" Us*, while buying groups posed a threat to the industry, they also represented a profitable customer segment for each of the Big Three to serve. Respondents' motivation to enter into an agreement not to provide discounts to or otherwise compete for buying groups was contingent on the other Respondents doing the same.²⁵³ Their shared motive to act collectively against the rise of buying groups is an important plus factor that evinces the illegal agreement.²⁵⁴

b) Respondents' Unexplained Communications with Competitors

Unexplained communications among horizontal competitors is another plus factor that strongly points towards a conspiratorial agreement.²⁵⁵ With ambiguous circumstantial evidence, courts are cautious to infer conspiracy, fearing it may deter procompetitive conduct. But

stay viable and competitive in the IDN space which is 50% of the market. . . . Dental has all the leverage today. Do not buy into the Medical Model.”); CX0070 at -002 (BDS-FTC00016730) (“Buying clubs will turn us into the medical industry.”); CX1149 at -001 (BDS00181723) (“GPOs are what [ruined] (sic) the medical supply business and why they work on single digit margins. If this door is ever opened in dental, it[]’s all over for all of us. . . . [It’s] a race to the bottom.”); CX0016 at -002 (BDS-FTC00015155) (“Once a national dealer opens this door [to buying groups], in less than 5 years, we will turn into medical and be working for 10% over cost.”).

²⁵¹ See, e.g., CX0004 at -001 (BDS-FTC00006383) (buying groups “are coming fast and furious”); [REDACTED]; CX8025 (Sullivan Dep. Tr.) at 66:21-67:15 (increase in buying groups in dental in the last five to ten years).

²⁵² CX8012 (Breslawski Dep. Tr.) at 7:7-23 (independent private practice dentists constitute two-thirds of Schein’s dental revenues); [REDACTED]

[REDACTED]; CX2113 at -001 (Henry Schein-000740470) (Schein working with buying groups risked “other competitors then following suit and huge price war breaks out.”).

²⁵⁴ See *Interstate Circuit*, 306 U.S. at 222 (“[W]ithout substantially unanimous action . . . there was a risk of substantial loss of business and goodwill . . . , but . . . with it there was the prospect of increased profits.”).

²⁵⁵ *Apex Oil Co. v. DiMauro*, 822 F.2d 246, 253-54 (2d Cir. 1987).

“permitting an inference of conspiracy from direct competitor contacts will not have significant anticompetitive effects.”²⁵⁶ In this case, there is abundant evidence of unexplained competitor communications involving competitively sensitive information. Respondents themselves have testified that their inter-firm communications made them feel “uneasy,” were “against company . . . rules,” may have been { [REDACTED] }²⁵⁷

In *Gainsville Utilities Department v. Florida Power & Light Co.*, the Fifth Circuit found that similar “facts and inferences point[ed] so strongly and overwhelmingly” towards a conspiracy between utility systems not to compete in each others’ territories.²⁵⁸

We cannot ignore the continuous exchange of letters between high executives of Florida Power and P&L prior to the events at Gainsville. . . . Indeed, if solid economic reasons existed for refusing service to these cities, there was no reason for communicating with a competitor about the refusal, and certainly not for expressing such decisions in terms of hopeful, if not expected, reciprocity. . . .²⁵⁹

Just as in *Gainsville*, the unexplained inter-firm communications at issue in this case occurred between high-level executives at Schein, Patterson, and Benco. This is not a case involving idle chatter between low-level sales employees. In many instances, the relevant communications occurred at the highest levels of Respondents’ companies.²⁶⁰ And just as in *Gainsville*, the exchanges involved sensitive business information, divulging Respondents’

²⁵⁶ *In re Coordinated Pretrial Proceedings in Petrol. Prods. Antitrust Litig.*, 906 F.2d 432, 453 (9th Cir. 1990).

²⁵⁷ { [REDACTED] }; CX0306 (Foley IH Tr.) at 178:11-18.

²⁵⁸ 573 F.2d 292, 299 (5th Cir. 1978).

²⁵⁹ *Id.* at 300-01.

²⁶⁰ *In re Polyurethane Foam Antitrust Litig.*, 152 F. Supp. 3d 968, 983 (N.D. Ohio 2015) (contrasting “low-level chatter with the ‘far different situation where upper level executives with pricing authority have secret conversations about price’—the latter can support an inference of conspiracy).

general buying group strategies, as well as discussions on specific buying group customers.²⁶¹

The uncharacteristic friendliness between the rival Respondents²⁶² similarly weighs in favor of an agreement.²⁶³

c) Respondents' Actions Against Self-Interest

Respondents' decision not to discount to or to compete for buying group customers was against each of their unilateral self-interest, and is further evidence of their conspiratorial agreement. "Ordinarily, [actions against self-interest] will consistently tend to exclude the likelihood of independent conduct."²⁶⁴ It was against Respondents' self-interest to discuss their bidding strategies and to reveal their no-buying group policies with their competitors.²⁶⁵ In *Ross v. Bank of America*, the court recognized that credit card defendants "arguably acted against their unilateral interests by attending numerous meetings with their competitors and . . . providing competitors with certain sensitive business information" about their plans to change contract

²⁶¹ See, e.g., *supra* Sections III(A)(2)(a)-(b), III(A)(3)(b), III(A)(5), III(A)(6).

²⁶² See, e.g., {

²⁶³ *In re EPDM Antitrust Litig.*, 681 F. Supp. 2d 141, 174-76 (D. Conn. 2009) (finding defendants' "frequent and friendly communications" consistent with an unlawful price-fixing agreement).

²⁶⁴ *Re/Max Int'l v. Realty One*, 173 F.3d 995, 1009 (6th Cir. 1999); see also *Ross v. Bank of America*, No. 05-7116, 2012 U.S. Dist. LEXIS 19760, at **17-18, 26 (S.D.N.Y. Feb. 8, 2012); *accord id.*, at *18, 26 (noting credit card defendants "arguably acted against their unilateral interests by attending numerous meetings with their competitors and . . . providing competitors with certain sensitive business information" about their plans to change contract arbitration clauses and finding such actions against unilateral interests as a plus factor that may support a finding of agreement).

²⁶⁵ See *Petrol. Prods. Antitrust Litig.*, 906 F.2d at 450 (disclosure of "sensitive price information might be considered contrary to a firm's self-interest," and support a finding of "common understanding" among firms sharing this information); *Ross v. Bank of Am., N. Am.*, No. 05-7116, 2012 U.S. Dist. LEXIS 19760, at *17-18 (S.D.N.Y. Feb. 8, 2012) (providing competitors with sensitive business information is against unilateral interests); *In re High Pressure Laminates Antitrust Litig.*, No. 00-MDL-1368, 2006 U.S. Dist. LEXIS 29431, at *11 (S.D.N.Y. May 15, 2006) (defendants' sharing of confidential information with competitors was against individual economic self-interest and probative of conspiracy).

arbitration clauses.²⁶⁶ The *Ross* court identified evidence of actions “against unilateral interests” as a plus factor that may support a finding of agreement. The instant case likewise presents plentiful evidence of the Distributors sharing sensitive business information with their competitors.

As discussed previously, the evidence at trial will establish many instances of Benco informing Schein and Patterson of its no-buying group policy,²⁶⁷ as well as its specific bidding plans on multiple customer accounts.²⁶⁸ Moreover, Cohen shared internal or sensitive Benco communications with his counterpart at Schein.²⁶⁹ Similar to Benco, Patterson disclosed its no-buying group policy and responses to specific buying groups to its competitors.²⁷⁰ The evidence

²⁶⁶ No. 05-7116, 2012 U.S. Dist. LEXIS 19760, at *17 (S.D.N.Y. Feb. 8, 2012); *accord id.*, at *18, 26.

²⁶⁷ *See, e.g.*, CX0018 at -001-002 (BDS-FTC00008498) (Cohen intending to send a note to Sullivan that outlines Benco’s policy on not working with GPOs, defined as “management/purchasing services with no ownership stake in the individual practices”); CX0090 at -001 (PDCO 00010912) (Cohen informing Guggenheim of Benco’s policy not to “recognize, work with, or offer discounts to buying groups,” while articulating that corporate accounts are separate from buying groups); CX0097 at -002 (PDCO00001998) (Cohen providing detailed bullets that defines the limits of what constitutes a buying groups subject to Benco’s no-buying group policy); CX0243 at -001 (Henry Schein-000170759) (Patrick Ryan tipping off Schein’s Randy Foley that Benco is “anti Buying Group”).

²⁶⁸ *See, e.g.*, { [REDACTED] }; CX1332 (BDS-00026655) (Cohen instructing his Texas Regional Manager, Ron Fernandez, to “give a heads up” to Patterson and Schein about Benco’s anticipated response to TDAPerks); CX0178 at -002-003 (Henry Schein-000079098) (recap of Fernandez conversation with his Schein counterpart).

²⁶⁹ *See, e.g.*, CX0018 at -001 (BDS-FTC00008498) (Cohen intending to forward to Sullivan an email between Benco and Smile Source). *Compare* { [REDACTED] } *with* CX0061 at -001 (BDS-FTC00009697) { [REDACTED] }.

²⁷⁰ *See, e.g.*, CX0090 at -001 (PDCO 00010912) (Guggenheim telling Cohen that Patterson feels the same way about not working with buying groups); CX1289 at -001 (BDS00809245) (Benco’s Ron Fernandez explaining that when he last spoke with Patterson’s Texas Regional Manager, he revealed that Patterson was withdrawing from the TDA annual meeting); CX2757 (Henry Schein-000034707) (Schein internal email reporting past conversations with Patterson that revealed that Patterson was planning on withdrawing from the Arizona Dental Association annual meeting because of AzDA’s buying group); CX3300 at -001 (PattersonDental 00001249) (Patterson disclosing to Benco that it will pull its sponsorship of the AzDA in response to AzDA’s new buying group program).

will also show that on multiple occasions, Schein divulged its anticipated response to specific buying groups to Benco and Patterson.²⁷¹

It is undisputed that Schein, Patterson, and Benco view each other as their biggest competitors. Case law and economic principles instruct that each of these communications sharing sensitive business information was against Respondents' self-interest. Yet, Respondents' *own admissions* demonstrate that they lacked business rationales for these exchanges, which were contrary to their business interests and against company policy.²⁷² A conspiratorial agreement is the only logical context to understand why these profit-seeking companies might engage in a pattern of sharing sensitive business information with their biggest rivals.

²⁷¹ See, e.g., CX0019 at -001 (BDS-FTC00002808) (Patrick Ryan reporting that he and Schein's Randy Foley specifically talked about Smile Source, allowing him to arrive at the ominous pronouncement: "Buh-bye"); CX0205 at -001-002 (Henry Schein-000005360) ("Guys, I have to get back to PDCO on whether or not we are attending the TDA. . . . I just wanted to be double sure before telling PDCO anything."); CX1331 at -001 (BDS00020270) (Benco internal email reporting that Schein, Patterson, and Benco have all exchanged assurances that they will not support the Arizona Dental Association meeting in response to AzDA's buying group program).

²⁷² {

}; CX0306 (Foley IH Tr.) at 178:11-18 ("Q. And why did the call from Mr. Ryan make you think about those annual trainings? A. Because immediately he was talking about a customer, a prospect, and it's against our company . . . rules for me to discuss customers and trade secrets and what we're dealing with customers. Q. You mentioned you felt uneasy; is that right? A. Yes.").

d) *Respondents' Changes in Conduct*

The evidence of Respondents' coordinated changes in conduct provides further evidence of their illegal agreement. In *Toys "R" Us*, the Seventh Circuit found the toy manufacturers' abrupt shift from dealing with warehouse clubs to boycotting warehouse clubs to be indicative of an agreement and inconsistent with independent action.²⁷³ Similarly here, the evidence will provide many instances of Respondents significantly shifting their conduct in a manner that is consistent with an agreement and inconsistent with the notion of independent action.

Schein. As discussed previously, Schein had a practice of working with buying groups, while Benco chose not to do so. After a series of communications between Cohen and Sullivan in 2011, Schein radically changed its policy on buying groups: Sullivan and his team began instructing Schein's sales force to avoid selling to buying groups; Schein began to explain to new groups that it had a policy against working with buying groups; and Schein began to terminate existing buying group customers.²⁷⁴ This drastic change in conduct make Schein's conduct analogous to the toy manufacturers in *Toys "R" Us*, and is indicative of an agreement.

Patterson: When Cohen emailed Guggenheim in February 2013, { [REDACTED] }²⁷⁵ Following Guggenheim's acceptance to join the conspiracy, Patterson instructed its sales team to turn down buying groups.²⁷⁶ For example,

²⁷³ 221 F.3d 928, 936 (7th Cir. 2000); *see also In re Domestic Drywall Antitrust Litigation*, 163 F. Supp. 3d 175, 255-56 (E.D. Pa. 2016) (defendants' decision to eliminate job quotes, which were a feature in the drywall industry for decades, was a radical and abrupt shift in behavior sufficient to qualify as "traditional conspiracy evidence" pointing towards an agreement); *United States v. Apple Inc.*, 952 F. Supp. 2d 638, 690 (S.D.N.Y. 2013) ("An abrupt shift from defendants' past behavior and near-unanimity of action by several defendants may also strengthen the inference. For instance, a 'complex and historically unprecedented change in pricing structure made at the very same time by multiple competitors, and made for no other discernible reason,' may provide sufficient evidence of an illegal conspiracy.") (internal citations omitted).

²⁷⁴ *See supra* Section III(A)(2)(c).

²⁷⁵ { [REDACTED] }

²⁷⁶ *See supra* Section III(A)(3)(c).

Patterson was negotiating with the NMDC in 2013. Dr. Mason from the NMDC believed a partnership with Patterson was imminent.²⁷⁷ After Cohen emailed Guggenheim about this buying group,²⁷⁸ Patterson did not submit a bid for the NMDC and instructed its salesforce not to pursue buying group customers.²⁷⁹ After the February 2013 exchange, Patterson regularly rejected potential buying group customers.²⁸⁰

Atlantic Dental Care: The ADC example represents multiple course changes indicative of a conspiracy. From the start, Respondents' sales teams wanted to bid on the account. The first change in conduct occurred when management stopped each sales team from submitting a bid. More telling, the second change in conduct occurred after consultation among Respondents about whether ADC fit the conspiracy target definition. After Benco and Schein consulted and determined that it was not a buying group, both companies bid on ADC.²⁸¹ Similarly, after Patterson and Benco consulted, Patterson directed its salesforce to { [REDACTED] }²⁸² These coordinated changes in conduct immediately trailing inter-firm communications are highly probative of Respondents' agreement.

Post-Conspiracy: Respondents will argue that any decision not to provide discounts to or otherwise compete for buying groups was based on each company's assessment of its business interests and made independent of its competitors. That all three Respondents began competing

²⁷⁷ CX8035 (Mason Dep. Tr.) at 86:17-88:7.

²⁷⁸ CX0056 at -001 (BDS-FTC00009442).

²⁷⁹ CX8035 (Mason Dep. Tr.) at 54:15-55:11; *see, e.g.*, CX0093 at -001 (PDCO 00051886) ("When I get these calls directly I politely say that I appreciate the opportunity, but currently we do [not] participate with group purchasing organizations. Be cautious so that reps don't mis[]communicate our position."); CX0145 at -001 (PDCO 00021095) ("[T]he GPO noise has been pretty loud from the field. We have said no at every turn . . . My guidance has been to politely say no and w[ea]ther the storm with these."); CX3128 at -001 (PDCO 00026075) ("As a rule we are trying to our best to steer clear of all buying groups.").

²⁸⁰ *See supra* Section III(A)(3)(c).

²⁸¹ *See supra* Section III(A)(5)(a).

²⁸² { [REDACTED] }

for buying groups after the conspiracy ended belies their claim. After the conspiracy, Schein returned to pursuing buying group customers. { [REDACTED]

[REDACTED]}²⁸³ Indeed, while Smile Source was blocked out from the Big Three due to the conspiracy, upon conclusion of the conspiracy, Smile Source returned to Schein. Similarly,

{ [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]}²⁸⁶

That each Respondent changed course again and found it in their interests to work with buying groups after the conspiracy calls into question whether their previous no-buying group stances were based on independent, self-interested decision-making.

Taken together, Respondents’ radical course changes throughout the conspiracy cannot be mere coincidence. Especially when placed into context with unexplained competitor communications, Respondents’ changes in conduct are more probative of agreement than they are of independent conduct.

²⁸³ See { [REDACTED] }; see also { [REDACTED] }.

²⁸⁴ { [REDACTED] }.

²⁸⁵ See, e.g., CX0147 at -001 (PDCO 00021163) (informing Smile Source that Patterson is “currently not interested”); { [REDACTED] }.

²⁸⁶ { [REDACTED] }.

3. **Respondents Are Not Immune From Liability By Asserting Unsubstantiated Independent Business Justifications In the Face of Direct Evidence of Conspiracy.**

In the face of overwhelming evidence of a conspiracy to refuse to compete for business from buying groups, Respondents each claim that they cannot be liable under Section 1 because they acted out of their own self-interest in refusing buying groups. These arguments ignore the wealth of direct evidence reflecting an agreement. Independent business justifications are irrelevant where, as here, there is direct evidence of an agreement.²⁸⁷ Further, while the Supreme Court in *Matsushita* cautioned against an inference of conspiracy from evidence that is equally consistent with independent conduct as an illegal conspiracy,²⁸⁸ a plaintiff need not “exclude or dispel the possibility that defendants acted independently.”²⁸⁹

Here, the record of unambiguous direct and circumstantial evidence of an agreement belies the assertion that Respondents’ behavior was consistent with independent business interests. In *United States v. Apple, Inc.*, the court rejected Apple’s similar claim that it acted for independent business reasons, noting there was strong evidence of a conscious commitment to a

²⁸⁷ Areeda & Hovenkamp ¶1413 (independent business justifications are irrelevant where there is direct evidence of an agreement); *Rossi v. Standard Roofing, Inc.*, 156 F.3d 452, 466 (3d Cir. 1998) (“[W]hen the plaintiff has put forth direct evidence of conspiracy, the fact finder is not required to make inferences to establish facts, and therefore the Supreme Court’s concerns over the reasonableness of inferences in antitrust cases evaporate.”).

²⁸⁸ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 596-97 (1986).

²⁸⁹ *Publ’n Paper Antitrust Litig.*, 690 F.3d at 63; *Apple*, 791 F.3d at 315-16; *see also* Areeda & Hovenkamp ¶1403(b) (“It is important not to be misled by *Matsushita*’s statement . . . that plaintiff’s evidence if it is to prevail, just tend . . . to exclude the possibility that the alleged conspirators acted independently. The Court surely did not mean that the plaintiff must disprove all nonconspiratorial explanations for the defendants’ conduct.” (internal quotations omitted)).

conspiracy.²⁹⁰ The court stated, “if solid economic reasons existed for [the parallel conduct], there [i]s no reason for communicating with a competitor about the refusal.”²⁹¹

These arguments also ignore the evidence establishing that it was against Respondents’ economic self-interest to refuse buying group business. The evidence will show that before and after the conspiracy, Respondents gained incremental sales when they worked with buying group customers.²⁹² For example, { [REDACTED]

{ [REDACTED] }²⁹³
But during the conspiracy period, testimony and documentary evidence²⁹⁴ { [REDACTED]

²⁹⁰ 791 F.3d at 316-317; *see also id.* at 317-18 (“[I]ndependent reasons can also be interdependent, and the fact that Apple’s conduct was in its own economic interest in no way undermines the inferences that it entered an agreement to raise ebook prices.”).

²⁹¹ *Gainsville Utilities Dept. v. Fla. Power & Light Co.*, 573 F.2d 292, 301 (5th Cir. 1978).

²⁹² *See, e.g.*, CX8025 (Sullivan Dep. Tr.) at 108:13-109:14, 118:19-120:7, 143:22-144:14; CX8003 (Foley Dep. Tr.) at 50:3-11, 55:8-19, 188:25-189:8; CX8033 (Cavaretta Dep. Tr.) at 65:20-68:2, 104:16-105:1; CX8005 (Muller Dep. Tr.) at 53:9-54:12, 54:17-19; CX8009 (Wingard Dep. Tr.) at 189:3-190:2, 206:11-207:1, 208:20-210:1; { [REDACTED] }; CX 2292 at -001 (Henry Schein-001610409) (incremental opportunities from buying groups in 2017; margin decreases will be offset by incremental volume); CX2602 at -002 (HS-00149698) (“We have found that [buying groups] often pull over significant business from doctors who in the past considered PDCO or Benco as their primary distributor.”); { [REDACTED] }; *see also* CX8016 (Meadows Dep. Tr.) at 29:9-20, 77:10-18 (Buying Groups provide an opportunity to expand market share and grow and retain business); CX8025 (Sullivan Dep. Tr.) at 105:7-106:13 (Buying groups can bring new customers as well as deliver a greater percentage of spend of existing customers); { [REDACTED] }; CX8003 (Foley Dep. Tr.) at 134:17-135:10 (describing how past buying groups increased gross profits over independent private accounts).

²⁹³ { [REDACTED] }

²⁹⁴ *See* { [REDACTED] }; CX8016 (Meadows Dep. Tr.) at 212:10-23; CX8005 (Muller Dep. Tr.) at 123:20-124:9; CX8001 (Foster Dep. Tr.) at 133:19-134:3; CX2845 at -002 (Henry Schein-000056722) (one Schein FSC lost \$500,000 in sales to a buying group); CX1345 at -003 (BDS-FTC00002778) (Benco facing an “epidemic” in Texas as it loses customers to the TDAPerks buying group); CX1376 at -001 (BDS-FTC00023291) (Benco losing customers who are joining Kois Buyers Group); CX3089 at -001-002 (PDCO 00021959) (Patterson losing “high quality / high producing clients” to Kois Buyers Group, “the cut is deep to us all,” this buying group creates a “precarious situation for [Patterson] as a company”); CX0164 at -001 (PDCO 00062511) (“Unfortunately [Smile Source is] growing and getting the attention of some big hitters of mine and some Birmingham accounts. And it’s

[REDACTED]

[REDACTED] } Such a decision ran counter to Respondents’ economic self-interest and makes no sense unless they had assurances that their major competitors were also abstaining from pursuing buying group customers.

C. Respondents’ Conspiracy to Refuse Buying Groups Is *Per Se* Unlawful.

Respondents’ conspiracy to exclude buying groups from the dental industry is nothing short of an agreement to maintain prices, which is a *per se* unlawful restraint on trade.

Respondents entered into an agreement to prevent a “price war.”²⁹⁶ The evidence shows that when a full-service distributor discounts to a buying group, prices drop. { [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

spreading into the Atl market too.”); CX2838 at -001 (Henry Schein-00011314) (“Kois GPO and SmileSource have already taken several offices from me”); CX2842 at -001-002 (Henry Schein-000048488) (“Address how we are going to win in a Buying Group/Corporate Dentistry world. Can not (sic.) continue business as we have in the past. Just [ac]cepting losing accounts to buying group[s] is not [ac]ceptable.”); CX2141 at -002 (Henry Schein-000030886) (“Buying Groups: Do we keep saying no? . . . Burkhart is getting in with them, is this hurting the west coast?”).

²⁹⁵ { [REDACTED] }

²⁹⁶ CX2113 at -001 (Henry Schein-000740470).

²⁹⁷ { [REDACTED] }

²⁹⁸ { [REDACTED] }

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Supreme Court has consistently held that “price-fixing agreements are unlawful per se . . . and [] no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense.”³⁰⁰ In other words,

²⁹⁹ [REDACTED]

³⁰⁰ *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940).

agreements that restrain price are unlawful *per se*.³⁰¹ Respondents' conspiracy could be viewed as either an agreement to eliminate a form of customer discounting, which has the effect of heightening prices, or an agreement to boycott a type of customer, both of which are subject to *per se* treatment.

“Price fixing includes more than the mere establishment of uniform prices.”³⁰² “Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*.”³⁰³ A conspiracy need not literally fix prices to be a *per se* illegal restraint on price.³⁰⁴

“[A]n agreement to eliminate discounts” is one such type of agreement that “falls squarely within the traditional *per se* rule against price fixing.”³⁰⁵ Respondents' conspiracy to eliminate discounts to buying groups is similar the agreement in *Catalano* to eliminate interest free credit—both the credit terms and the discount are an “inseparable part of the price.”³⁰⁶

Moreover, it is well-established that an agreement by competitors to boycott a particular customer is illegal *per se*. “[A]ny agreement by a group of competitors to boycott a particular

³⁰¹ *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980).

³⁰² *Socony-Vacuum Oil Co.*, 310 U.S. at 222.

³⁰³ *Id.* at 223.

³⁰⁴ *Id.* (agreement among competitors to stabilize gasoline prices by buying excess supply on spot market is *per se* unlawful).

³⁰⁵ *Catalano*, 446 U.S. at 648; see also *United States v. Stop & Shop Cos.*, Crim. No. B 84-51, 1984 U.S. Dist. LEXIS 22103, at *1-2 (D. Conn. Nov. 9, 1984) (“[A]s a matter of substantive law, a conspiracy to discontinue double coupons is a form of price-fixing and therefore a *per se* violation of the Sherman Act.”); *Areeda & Hovenkamp* ¶2022c (per se rule governs “agreements eliminating or restricting discounts or rebates.”).

³⁰⁶ *Catalano*, 446 U.S. at 648.

buyer or group of buyers is illegal *per se*.”³⁰⁷ “[T]he Sherman Act makes it an offense for [businessmen] to agree among themselves to stop selling to particular customers.”³⁰⁸

In *FTC v. Superior Court Trial Lawyers Association*, the Supreme Court addressed an agreement by a group of lawyers who refused to offer court-appointed legal services to indigent criminal defendants.³⁰⁹ The Court noted that “[p]rior to the boycott, [the] lawyers were in competition with one another, each deciding independently whether and how often to offer to provide services.”³¹⁰ The lawyers implemented a “concerted refusal to serve an important customer in the market for legal services.”³¹¹ The Court held that such a concerted refusal to supply was the essence of a price-fixing scheme to which the *per se* standard applied.³¹² Here, the horizontal agreement among Respondents was a similar concerted refusal to serve a particular customer in the dental market, the buying group. Absent the agreement, Respondents would have competed vigorously with each other for buying group business, as they competed for the business of independent dentists and corporate practices.³¹³ Indeed, Respondents have not offered a shred of a procompetitive benefit for their conspiracy that would warrant treating this case as anything but *per se* unlawful.³¹⁴

³⁰⁷ *FMC v. Svenska Amerika Linien*, 390 U.S. 238, 250 (1968).

³⁰⁸ *Kiefer-Stewart Co. v. Seagram & Sons*, 340 U.S. 211, 214 (1951).

³⁰⁹ 493 U.S. 411, 415-17 (1990).

³¹⁰ *Id.* at 422.

³¹¹ *Id.* at 422-23.

³¹² *Id.* at 423.

³¹³ *See, e.g.,* { [REDACTED] }

³¹⁴ *State Oil Co. v. Kahn*, 522 U.S. 3, 10 (1997) (“Some types of restraints . . . have such predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful *per se*.”); *see also In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *30 (Comm’n Op. July 24, 2003), *aff’d by Polygram Holding, Inc. v. FTC*, 416 F.3d 29 (D.C. Cir. 2005) (distinguishing *per se* restraints from those that promote attainment of efficiencies).

D. Respondents' Agreement is Unlawful Under the Rule of Reason.

As discussed above, Respondents' agreement is a price-fixing agreement that should be condemned as a *per se* Section 1 violation. If the Court does not apply *per se* liability, Respondents should still be liable under a rule of reason analysis. Where anticompetitive effect is relatively obvious and procompetitive justifications are nonexistent, horizontal conduct violates the Sherman Act under the inherently suspect or truncated rule of reason standards.³¹⁵ The inherently suspect and truncated rule of reason (or quick look rule of reason) analyses begin by examining the likely effect from the alleged restraint. Where the likely effect would obviously restrict competition or decrease output, a plaintiff has met its burden without proving actual anticompetitive effects.³¹⁶ In examining whether the conduct had an anticompetitive effect, "the essential inquiry remains the same—whether or not the challenged restraint enhances competition."³¹⁷ Here, the harm from Respondents' agreement is self-evident. An agreement to

³¹⁵ *NCAA v. Bd. of Regents*, 468 U.S. 85, 109-10 n.39 (1984) ("[T]he rule of reason can sometimes be applied in the twinkling of an eye."); *Polygram Holding, Inc. v. FTC*, 416 F.3d 29, 35-36 (D.C. Cir. 2005) ("First, the Commission must determine whether it is obvious from the nature of the challenged conduct that it will likely harm consumers. If so, then the restraint is deemed 'inherently suspect' and, unless the defendant comes forward with some plausible (and legally cognizable) competitive justification for the restraint, summarily condemned."); *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *52 (Comm'n Op. July 24, 2003) ("A plaintiff may avoid full rule of reason analysis . . . if it demonstrates that the conduct at issue is inherently suspect owing to its likely tendency to suppress competition. . . .").

³¹⁶ *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 461-62 (1986) ("A concerted and effective effort to withhold (or make more costly) information desired by consumers . . . is likely enough to disrupt the proper functioning of the price-setting mechanism of the market that it may be condemned even absent proof that it resulted in higher prices . . . than would occur in its absence."); *id.* (noting that showing higher prices resulting from the conspiracy was "not an essential step"); *Polygram Holding*, 416 F.3d at 32-33 ("[C]onduct inherently suspect as a restraint of competition—that is, conduct that appears likely, absent an efficiency justification, to restrict competition and decrease output—is presumed unreasonable."); *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *35-36 (Comm'n Op. July 24, 2003) ("Sometimes a restraint's competitive harm is evident after an abbreviated rule of reason analysis, obviating elaborate proof under the full rule of reason. '[W]hen there is an agreement not to compete in terms of price or output, no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement.'") (internal citations omitted).

³¹⁷ *NCAA*, 468 U.S. at 104.

refuse to provide discounts to buying groups is facially anticompetitive and does not enhance competition.³¹⁸

Once likely anticompetitive effect is presumed, the burden of production shifts to the defendant to provide a plausible procompetitive justification.³¹⁹ Where no justification exists, the restraint is condemned.³²⁰ Here, Respondents can advance *no* offsetting procompetitive efficiencies and cannot meet their burden. Where the anticompetitive effect of challenged conduct is well-established by the evidence, Respondents cannot escape liability by claiming no actual effect. Dr. Marshall will present at trial evidence of the harm stemming from Respondents' conduct, which corroborates the anticompetitive effect of Respondents' agreement. Under an abbreviated rule of reason standard, the Court should find Respondents liable even before reaching the harm calculated by Dr. Marshall.

1. **Respondents' Agreement Resulted in Harm.**

A "quick-look analysis carries the day when the great likelihood of anticompetitive effects can easily be ascertained."³²¹ Here, the conspiracy is based on an agreement not to provide discounts to or otherwise bid for a certain customer segment. "An observer with even a

³¹⁸ *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *63 (Comm'n Op. July 24, 2003) ("The anticompetitive nature of the agreement not to discount is obvious. [T]his is simply a form of price fixing, and is presumptively anticompetitive.").

³¹⁹ *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *52-53 (Comm'n Op. July 24, 2003) ("If the challenged restrictions are of a sort that generally pose significant competitive hazards and thus can be called inherently suspect, then the defendant can avoid summary condemnation only by advancing a legitimate justification for those practices."); *id.*, at *59 ("If the plaintiff satisfies its initial burden of showing that the practices in question are inherently suspect, then the defendant must come forward with a substantial reason why there are offsetting procompetitive benefits.").

³²⁰ *In re Mass. Bd. of Registration in Optometry*, Docket No. 9195, 1988 FTC LEXIS 159, at *124 (Comm'n Op. June 13, 1988) ("But if it is inherently suspect, we must pose a second question: Is there a plausible efficiency justification for the practice? That is, does the practice seem capable of creating or enhancing competition (e.g., by reducing the costs of producing or marketing the product, creating a new product, or improving the operation of the market)? Such an efficiency defense is plausible if it cannot be rejected without extensive factual inquiry. If it is not plausible, then the restraint can be quickly condemned.").

³²¹ *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 770 (1999).

rudimentary understanding of economics could conclude that the arrangement[] in question would have an anticompetitive effect on customers and markets.”³²² In *Polygram Holding, Inc. v. FTC*, the D.C. Circuit held that the defendants’ agreement to prohibit discounting was “inherently suspect because such restraints by their nature tend to raise prices and to reduce output.”³²³ Similarly, in *Massachusetts Board of Registration in Optometry*, the Commission found a restraint on advertising discounts “especially pernicious” because it eliminated a form of price competition.³²⁴ The alleged restraint here is no different. Indeed, Respondents’ conduct is particularly egregious because they agreed not to provide discounts to or compete for buying groups—a customer segment whose intrinsic purpose is to aggregate purchasing power to achieve discounted prices for their member dentists.³²⁵ This type of harm is precisely what is contemplated by the inherently suspect and truncated rule of reason standards.

The inquiry into Complaint Counsel’s burden should end with evidence of Respondents’ agreement not to discount to buying groups—a facially anticompetitive agreement. Nonetheless, Dr. Marshall will offer evidence corroborating the harm resulting from Respondents’ conspiracy.

{ [REDACTED]

³²² *Id.*; see also *Nat’l Soc’y of Prof’l Eng’rs v. United States*, 435 U.S. 679, 692-95 (1989) (“[N]o elaborate industry analysis is required to demonstrate the anticompetitive character of . . . an agreement [that] operates as an absolute ban on competitive bidding. [Such a ban] ‘impedes the ordinary give and take of the market place’ On its face, this agreement restraints trade within the meaning of § 1 of the Sherman Act. . . . The Sherman Act does not require competitive bidding; it prohibits unreasonable restraints on competition.”); *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *64, 110 (Comm’n Op. July 24, 2003) (“[A]n agreement between competitors not to discount is likely to result in higher prices to consumers, restriction of output, and reduced allocative efficiency. . . . Respondents’ restraints on price discounting and advertising are inherently suspect, because experience and economic learning consistently show that restraints of this sort dampen competition and harm consumers.”).

³²³ *Polygram Holding, Inc. v. FTC*, 416 F.3d 29, 33 (D.C. Cir. 2005).

³²⁴ *In re Mass. Bd. of Registration in Optometry*, Docket No. 9195, 1988 FTC LEXIS 159, at *126 (Comm’n Op. June 13, 1988).

³²⁵ See { [REDACTED] }; CX0321 (Kois, Jr. IH Tr.) at 52:21-53:14; CX8003 (Foley Dep. Tr.) at 25:14-26:21; CX8005 (Muller Dep. Tr.) at 51:11-18; CX8009 (Wingard Dep. Tr.) at 171:14-173:6; { [REDACTED] }

[REDACTED]

[REDACTED] }³²⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }³²⁹

The evidence compiled by Dr. Marshall confirms that Respondents’ agreement not to discount to or compete for buying groups had an anticompetitive effect. Dr. Marshall’s harm calculations are not necessary to find liability under an abbreviated rule of reason review, but further support the need to find a violation of Sherman Act Section 1 and FTC Act Section 5.

326 { [REDACTED] }

327 *See* { [REDACTED] }

328 { [REDACTED] }

329 { [REDACTED] }

2. There are No Procompetitive Benefits from Respondents' Conspiracy.

The second step of the quick look rule of reason analyses is to assess whether any procompetitive benefits offset the likely harm. If not, the conduct is condemned without further review. Here, Respondents offer no procompetitive justification for their agreement, as they know none exist. Tellingly, testimony from Respondents' executives reveal that instead of having a procompetitive rationale for communications that established and maintained the conspiracy, they had no business justification whatsoever, and may even have had a "counter-business reason" that may have been "improper."³³⁰ Lacking *any* justification for their agreement, Respondents cannot meet their burden.

E. **Benco's Invitation to Collude Violates Section 5.**

The evidence will establish that Benco's invitation to collude violates Section 5 of the FTC Act. The Commission has long held that an invitation to collude is the "quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5."³³¹ The Supreme Court has explained that Section 5 is not confined to the unfair methods of competition identified in the Sherman Act.³³² "[A]n unsuccessful attempt to fix prices . . . [is] pernicious conduct with a clear potential for harm and no redeeming value whatever."³³³ "Solicitation to a conspiracy is dangerous to competition even if it cannot be shown that an 'offer' has been 'accepted'."³³⁴ An invitation to collude is unlawful where a respondent explicitly or implicitly

³³⁰ See *supra* note 272.

³³¹ *In re McWane, Inc.*, Docket No. 9351, 2012 FTC LEXIS 155, at *50-51 (Comm'n Op. Sept. 14, 2012).

³³² *FTC v. Motion Picture Adver. Serv. Co.*, 344 U.S. 392, 394 (1953) (unfair methods of competition which are condemned by section 5 of the FTC act are not confined to those that were illegal at common law or that were condemned by the Sherman Act); see also *FTC v. Brown Shoe Co.*, 384 U.S. 316, 321 (1966).

³³³ *Liu v Amerco*, 677 F.3d 489, 494 (1st Cir. 2012) (explaining the policy justification behind making invitations to collude illegal).

³³⁴ *Areeda & Hovenkamp* ¶1419d.

proposes to a competitor terms of coordination that, if accepted by the competitor, would constitute a violation of the Sherman Act.³³⁵ “The invitation may appear ambiguous, such as when a competitor merely complains to its rival about the latter’s ‘low price.’ Yet, the ‘objective’ meaning of such a statement to the reasonable observer seems clear: the only business rationale for complaining is to induce a higher price.”³³⁶

In *Liu v. Amerco*, the First Circuit addressed an alleged invitation to collude under the Massachusetts unfair competition statute, which is substantially similar to Section 5 of the FTC Act.³³⁷ There, defendant allegedly contacted its competitors and encouraged them to take certain pricing actions.³³⁸ The court found that encouraging a competitor to match prices was an “*express proposal*[] to a competitor to raise prices.”³³⁹ The court explained that such a proposal is “dangerous” and “serve[s] no proper purpose.”³⁴⁰

Likewise, in this case, the evidence will show that Benco contacted its competitor, Burkhart, on three separate occasions to encourage Burkhart to stop discounting to buying groups, claiming that such discounting was counter to Burkhart’s business interests.³⁴¹ There was no procompetitive business rationale for these repeated communications.³⁴² Indeed, if

³³⁵ See *In re U-Haul Int’l Inc.*, FTC File No. 081 0157, published at 75 Fed. Reg. 35033, 35034-35 (June 21, 2010); *In re Valassis Commc’ns, Inc.*, Docket No. C-4160, 2006 FTC LEXIS 25, at *5 (Compl. Apr. 19, 2006) (alleging invitation to collude where respondent stated on earnings call that it would “quote all [competitor’s] first right of refusal customers at the floor price.”); *In re Precision Moulding Co.*, Docket No. C-3682, 1996 FTC LEXIS 386, at *3 (Compl. Sept. 3, 1996) (alleging invitation to collude where respondent told competitor that its prices were “ridiculously low” and the competitor need not “give the product away.”); *In re YKK (USA) Inc.*, Docket No. C-3445, 1993 FTC LEXIS 161, at *2-3 (Compl. July 1, 1993) (alleging invitation to collude where respondent sought to urge competitor to desist from offering free installation equipment).

³³⁶ Areeda & Hovenkamp ¶1419a.

³³⁷ 677 F.3d 489, 494 (1st Cir. 2012).

³³⁸ *Id.* at 491.

³³⁹ *Id.* at 494.

³⁴⁰ *Id.* at 494-95.

³⁴¹ See *supra* Section III(A)(7).

³⁴² See *supra* III(B)(2)(c).

Benco were to be believed, Burkhart’s business would be harmed by working with buying groups—something Benco, as a competitor, should have desired. The only conceivable business rationale for Benco’s complaining was to induce Burkhart to stop working with buying groups.³⁴³ Had Burkhart accepted the request, the agreement would have been *per se* unlawful,³⁴⁴ and thus, Benco’s invitation to collude is unlawful.

F. Remedy

The Court has “wide discretion” in its choice of remedy where there is “a reasonable relation to the unlawful practices found to exist.”³⁴⁵ Further, the Court is not limited to prohibiting the illegal practices in the precise form in which it finds they existed in the past. Instead, the Court “must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.”³⁴⁶

The evidence introduced at trial will support the Court entering an order consistent with the Notice of Contemplated Relief, issued with the Complaint, which enjoins Respondents from engaging in the conduct challenged by the Complaint. The remedies identified in the Notice of Contemplated Relief issued with the Complaint are reasonably necessary to ensure Respondents’ future compliance with the antitrust laws of the United States.

Complaint Counsel’s Notice of Contemplated Relief requests an order that requires Respondents to cease and desist from the conduct alleged in the Complaint, and to prevent recurrence of such practices. The Notice of Contemplated Relief also requests an order that prohibits Respondents from refusing to provide discounts to or compete for any customer, as

³⁴³ Areeda & Hovenkamp ¶1419a.

³⁴⁴ See *supra* III(C).

³⁴⁵ *Jacob Siegal Co. v. FTC*, 327 U.S. 608, 611-13 (1946).

³⁴⁶ *In re Polygram Holding, Inc.*, Docket No. 9298, 2003 FTC LEXIS 120, at *105 (Comm’n Op. July 24, 2003) (internal quotation omitted).

well as prohibiting Respondents from punishing or threatening any customer or any other entity that wants to do business with any customer. Given Respondents' pattern of inter-firm communications, the Notice of Contemplated Relief requests that Respondents establish an antitrust compliance program and document all communications with competitors. To ensure compliance with the Court's order, Complaint Counsel recommends the appointment of an independent monitor and a requirement that Respondents submit annual compliance reports to the Commission.

IV. CONCLUSION

For the foregoing reasons, the evidence at trial will establish that Respondents have violated Section 5 of the FTC Act as alleged in the Complaint, and will justify entry by the Court of an Order granting the relief sought by the Notice of Contemplated Relief.

Respectfully submitted,

/s/ Lin W. Kahn

Lin W. Kahn

Federal Trade Commission

Bureau of Competition – Western Region

901 Market Street, Suite 570

San Francisco, CA 94103

Telephone: (415) 848-5100

Facsimile: (415) 848-5184

Electronic Mail: lkahn@ftc.gov

CX0004

From: Chuck Cohen
Sent: Friday, September 30, 2011 7:21 PM
To: Patrick Ryan
Subject: RE: Benco

It's a GPO, no central ownership or bill paying. Please pass.

Thanks.

cfc

From: Patrick Ryan
Sent: Friday, September 30, 2011 3:09 PM
To: Chuck Cohen
Subject: FW: Benco

First of all, these kinds of things are coming fast and furious.

Smells like a GPO to me, but are they if they are in control of purchasing? Or does the fact that the individual office paying negate that?

Patrick Ryan
Director of Business Development
Benco Dental Company
295 CenterPoint Blvd
Pittston, PA 18640
570-602-6816

From: Dr. Andrew Goldsmith [<mailto:agoldsmith@smilesourc.com>]
Sent: Friday, September 30, 2011 2:54 PM
To: Patrick Ryan
Subject: RE: Benco

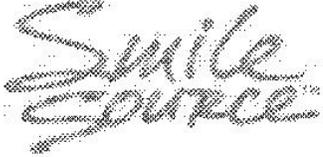
- 1- Smile takes 1% of the collections of the practices as a fee, but has no ownership
- 2- We direct the formulary and the products
- 3- The orders are still placed by the individual practices
- 4- The practices are responsible for all their bills, we simply set up the alliances and dictate what vendors to use. Our practices remain autonomous otherwise.

Thanks!

-Andy

Andrew M. Goldsmith, DDS, DICOI, FIALD

President – Smile Source



From: Patrick Ryan [<mailto:pryan@benco.com>]

Sent: Friday, September 30, 2011 1:23 PM

To: Dr. Andrew Goldsmith

Subject: RE: Benco

Hi Doctor,

Thanks for the response. I don't actually have an attachment on here. Also, I personally will not be at the ADA

May I ask a few clarifying questions about your organization?

1. Smile Source has no ownership stake in the offices, is that correct?
2. Can Smile Source control and direct the who the offices purchase from?
3. Who places the orders?
4. Who pays the bills?

Patrick Ryan

Director of Business Development

Benco Dental Company

295 CenterPoint Blvd

Pittston, PA 18640

570-602-6816

From: Dr. Andrew Goldsmith [<mailto:agoldsmith@smilesource.com>]
Sent: Friday, September 30, 2011 2:06 PM
To: Patrick Ryan
Subject: RE: Benco

Ryan-

Thanks for reaching out.

We are a network of independent dentists that have formed together to shop together, learn together and share practice management tips. We are

Based off a model from Vision Source. Vision Source has 2500 locations and 4,400 doctors in North America. We plan to be larger and have very aggressive strategies in place to reach that goal. Presently we have 40 offices and will be at 50 by the end of the year.

We need a new distributor that can give us great pricing and service that we can grow with and build a long-term relationship with. I have attached an example of the pricing we get now. Please take a look at it and give me an idea of what Benco can do for our doctors. We can discuss in detail at the ADA. Thanks and make it a great day!

Andy

Andrew M. Goldsmith, DDS, DICOI, FIALD

President – Smile Source

The logo for Smile Source, featuring the words "Smile" and "Source" in a stylized, cursive font. The "S" in "Smile" is large and loops around the "m". The "Source" is written in a similar cursive style below "Smile".

From: Patrick Ryan [<mailto:pryan@benco.com>]
Sent: Friday, September 30, 2011 12:02 PM
To: agoldsmith@smilesource.com
Subject: Benco

Hi Dr Goldsmith,

Happy to take a look at some items you use.

Would also like to understand the nature of your organization, especially the relationship to the individual offices.

Will continue to try and call too.

Patrick Ryan

Director of Business Development

Benco Dental Company

295 CenterPoint Blvd

Pittston, PA 18640

570-602-6816

CX0011

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

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

Thank you,

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



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

5% maybe

Sent from my iPhone

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

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

What's the estimated savings over Partnersharing?

Thank you,

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



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

To: Scott Jack
Subject: Re: Large Group

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

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

Sent from my iPhone

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

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

What if they form a new corporation under one umbrella?

Thank you,

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



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

I've seen Darby do occasionally.

Sent from my iPhone

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

Burkhardt is the only one that does then?

Thank you,

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



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

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

Neither Schein nor Patterson do either.

Sent from my iPhone

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

Hi Pat,

Hope all is well and you had a good weekend.

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

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

Thank you,

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

<image001.jpg>

CX0012

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

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

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

It amuses me to a certain point.

Sent from my iPhone

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

Funny!

I have 226 dentists also...

cfc

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

"Next up in The Tank"

Sent from my iPhone

Begin forwarded message:

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

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

17202460496 Dr David Bennett

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

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

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

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

To: Kevin Dillon

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

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

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

CX0015

From: Patrick Ryan
Sent: Thursday, August 14, 2014 7:09 PM
To: Mitchell Huber; Patrick Ryan
Subject: Conversation with Mitchell Huber

Patrick Ryan [9:47 AM]:

I think we need to stop talking about Amazon and start talking about Smile Source
And we need to start pressuring the vendors

Mitchell Huber [9:48 AM]:

That was exactly my thought when I watched the Youtube video this morning

Patrick Ryan [9:48 AM]:

They are terrifying

Mitchell Huber [9:48 AM]:

If Dentsply is offering their deal on the side, and they would offer the same deal to a Benco customer, then that's different. But if this is a Smile Source exclusive, then that is a real problem.

Patrick Ryan [9:49 AM]:

I don't know. Midmark has a deal with them too

Who is doing their fulfillment in MI? Nashville?

Mitchell Huber [9:49 AM]:

I don't know. I will try to find out.

Mitchell Huber [10:03 AM]:

Amy Mutch says that Burkhardt, Darby, and some internet dealers are fulfilling

Patrick Ryan [10:03 AM]:

Shit. I know Burkhardt got Nashville and Atlanta involved

If it's just Darby, I don't care as much....but when full service guys get in...

Mitchell Huber [10:05 AM]:

Yeah, the last thing we want is reliable service for these groups

Is Mac in today?

Patrick Ryan [10:05 AM]:

no. He's off till Monday

Mitchell Huber [10:06 AM]:

Great, I guess I won't get a response to my question.

Patrick Ryan [10:06 AM]:

I think maybe he and JRad are off somewhere.

Does she still work here?

Mitchell Huber [10:07 AM]:

Oh, ok. Well then you make the call. Can I share the Midwest market share data with the whole team, or should I break it down and send out slivers so that an RM can only see their own region?

Patrick Ryan [10:08 AM]:

I would say send it all. Pretty soon they may have access to SDM site anyway

Plus public shaming is often useful

Mitchell Huber [10:09 AM]:

Ok, that makes it a lot easier on me.

I've shared it before, but they seem to have been a little protective

Patrick Ryan [10:09 AM]:

We're getting the access first, then it may trickle down to them

That's the culture here. Knowledge is power

Mitchell Huber [10:09 AM]:

Mac sent a message saying it would be in Qlikview

Patrick Ryan [10:10 AM]:

That's why Brecher made a play for Kolanowski and his crew

Mitchell Huber [10:10 AM]:

ridiculous

Patrick Ryan [10:10 AM]:

It's worse...they now have a committee of Brecher, Jackson, and Barrett to "manage analylitcs"

Mitchell Huber [10:11 AM]:

Good. We need more committees

Patrick Ryan [10:11 AM]:

Brecher and Barrett both constantly attempt land grabs

Brecher also made play for Finance to set promo goals

Mitchell Huber [10:13 AM]:

Brecher wants it all. We've known that. He thinks he should be COO or maybe CEO.

Patrick Ryan [10:17 AM]:

If you simply land grab and ACT as the COO and no one stops you, you ARE the COO regardless of what your card

Mitchell Huber [10:19 AM]:

Good point

Mitchell Huber [3:03 PM]:

Do we need to book a room for ADA, or has that been handled?

Patrick Ryan [3:04 PM]:

Handled I think...but Mac has to decide if we're having an DOS meeting there

Mitchell Huber [3:04 PM]:

He told me last week that we are

Patrick Ryan [3:07 PM]:

Well, then he needs to decide what day.

Mitchell Huber [3:07 PM]:

We could use more than 1

But I agree, I would like to nail down travel dates

Patrick Ryan [3:08 PM]:

Well, he needs to understand I need to be at the DGPa some too

Mitchell Huber [3:08 PM]:

Same time and place?

Patrick Ryan [3:08 PM]:

It's the day and a half before the ADA

Mitchell Huber [3:08 PM]:

Oh that makes it tough

Patrick Ryan [3:08 PM]:

Yes. Same place

I could skip the 2nd day, which is a half day, but I kind of need to be there for the full day

Mitchell Huber [3:09 PM]:

Maybe we should meet the 9th and 10th

Patrick Ryan [3:09 PM]:

I gotta run

Mitchell Huber [3:09 PM]:

C ya

CX0016

From: Joseph Liebau
Sent: Wednesday, November 04, 2015 3:16 PM
To: Pat Ryan
Subject: RE: DirectDentalSales-Possible new Buying Club

Thanks so much for your support in this matter. As a TR, I appreciate Benco's response on this matter. I plan to retire with Benco Dental, not anytime soon.

Joseph T. Liebau
Carolinas/Territory Representative
Benco Dental
We deliver Success smile after smile

(Cell) 704-907-3059
(Fax) 704-943-0840

From: Pat Ryan
Sent: Wednesday, November 04, 2015 10:14 AM
To: Joseph Liebau <jliebau@benco.com>
Cc: Brad Bingaman <bbingaman@benco.com>
Subject: RE: DirectDentalSales-Possible new Buying Club

We don't have a document. That probably wouldn't be wise right now.

I typically just say, "Benco, as a matter of policy, does not participate in GPOs. We do not feel it is the right business strategy for us"

Patrick Ryan
Director of Sales, Special Markets
Benco Dental Company
295 CenterPoint Boulevard
Pittston, PA 18640
570-602-6816

From: Joseph Liebau
Sent: Wednesday, November 04, 2015 10:11 AM
To: Pat Ryan <pryan@benco.com>
Cc: Brad Bingaman <bbingaman@benco.com>
Subject: RE: DirectDentalSales-Possible new Buying Club

Thanks so much for your Quick response. Does Benco Dental have a standard response letter for Buying clubs declined? Can you send me this possible document to my email? I travel to Pinehurst tomorrow on my sales call run and I know this will be a topic of discussion with Dr Corcoran. Joseph

Joseph T. Liebau
Carolinas/Territory Representative
Benco Dental
We deliver Success smile after smile

(Cell) 704-907-3059

(Fax) 704-943-0840

.....
From: Pat Ryan
Sent: Wednesday, November 04, 2015 10:05 AM
To: Joseph Liebau <jliebau@benco.com>
Cc: Brad Bingaman <bbingaman@benco.com>
Subject: RE: DirectDentalSales-Possible new Buying Club

We have an absolute policy on buying clubs. Benco does not participate.

Once a national dealer opens this door, in less than 5 years, we will turn into medical and be working for 10% over cost

Why Burkhardt does this is beyond me.

Patrick Ryan
 Director of Sales, Special Markets
 Benco Dental Company
 295 CenterPoint Boulevard
 Pittston, PA 18640
 570-602-6816

.....
From: Joseph Liebau
Sent: Wednesday, November 04, 2015 10:00 AM
To: Pat Ryan <pryan@benco.com>
Cc: Brad Bingaman <bbingaman@benco.com>
Subject: DirectDentalSales-Possible new Buying Club

Pat,

Declined opportunity in 2014 with SSC and Ole' Study Club last year- Buying Club-not National Acct.

Could clarify Benco's stance on Buying groups? As of 1 year ago, I approached Brad about Priveer Sharma, DDS wanting to put together a buying group for Ole' Study Club. Ole' is a Seattle Study Club member. At that time, the answer was No. The result was they signed a contract with Burkhardt Dental. Do we know the results of that decision? Do we know volume of product of product ordered by SSC members thru Burkhardt? Orders by region of USA? I would imagine higher % in Northeast.

DirectDentalSales- Buying Club Opportunity

Last Thursday, I was approached by Jim Corcoran, an Endodontist at Pinehurst Endodontics in Pinehurst, NC about a new Buying club-DirectDentalSales. They have a website DirectDentalSales.com that is not active yet. There is a Directdental-not the same company. Dr Corcoran is listed on his card as Director of Operations. He plans for this company to be a nationwide company and also in Canada. He plans attending all the major shows with booth space. He says this website will be all encompassing covering aspects of Dentistry. He already has agreements with Bank of America, Staples and a Dental Mgmt company. Each company will have an icon to redirect the potential customer to that company. (A search engine?) He approached me about Benco being the supplier for Dental products. He has already had discussions with Darby Dental. They are offering 17% off list Internet price and a 3% kickback to Dr Corcoran's company. He says that all rebate revenue will initially be put back into Marketing of Website and company. Would Benco Dental be interested in this type of arrangement? He told me if we matched Darby's offer- he would ally with Benco.

Concerns

1. Pinehurst Endodontics is my largest account (92107878) in my territory. They switched to me about two years ago after 2 years of cold calling and then the departure of their Schein rep. I beat out new Schein Rep from Raliegh, NC. In Equipment purchases, they bought 4 Kodak sensors in 2014 and a new 3D Kodak machine in 7/2015. Concerned about the loss of this account. I currently sell them most products on a 10% discount, either in person or by Fax. They prefer to order in person instead of on Painless. Interesting
2. I would think Benco is concerned about loss of commission for 400 reps from Buying clubs compared to national acct. (Aspen, Adpi) Compared to Darby who just hurts Schein reps based on Internet Sales and possible pct ownership by Schein?

Your thoughts on buying clubs and in particular- Pinehurst Dental would be greatly appreciated. Joseph

Joseph T. Liebau
Carolinas/Territory Representative
Benco Dental
We deliver Success smile after smile

(Cell) 704-907-3059
(Fax) 704-943-0840

CX0018

From: Chuck Cohen
Sent: Wednesday, July 25, 2012 5:27 PM
To: Patrick Ryan
Subject: RE: Your email

Please resend this e-mail without your comment on top so that I can print & send to Tim with a note.

The good news is: perhaps they're looking to us because Schein told them NO. That works for me.

Thanks.

cfc

From: Patrick Ryan
Sent: Wednesday, July 25, 2012 12:53 PM
To: Chuck Cohen
Subject: FW: Your email

Better tell your buddy Tim to knock this shit off

From: Patrick Ryan
Sent: Wednesday, July 25, 2012 12:51 PM
To: 'agoldsmith@smilesource.com'
Cc: Richard Varipapa (rvaripapa@benco.com)
Subject: Your email

Hi Dr Goldsmith,

Your email below was forwarded to me in my capacity as the head of special markets here at Benco. I actually believe you and I spoke briefly last year. If I recall correctly, and please correct me if I am wrong, Smile Source, for the purposes of dental supplies and equipment, is essentially a group purchasing organization.

If this indeed how Smile Source functions (management/purchasing services with no ownership stake in the individual practices), Benco Dental doesn't recognize GPOs as a single customer.

As far as Dr Byrne's project in Maryland is concerned, we are pleased he has chosen Benco. Our team in Maryland is terrific and will do a great job for him. As far as pricing and terms go, they will be whatever is agreed between Dr Byrne and Benco's sales team there. As far as Benco is concerned, Dr Byrne is a solo practitioner like any other.

If I am mistaken about any of my information on Smile Source, please let me know and we can see if there is a basis to move forward.

From: Andy Goldsmith [<mailto:agoldsmith@smilesource.com>]
Sent: Wednesday, July 25, 2012 10:39 AM
To: Institutions
Subject: Smile Source and Benco on the East coast?

I am president of Smile Source® - We currently have 40 locations but are joining with our parent company Vision Source® with 2500 locations and we are about to expand.

One of our members in Maryland has selected you as the distributor for our east coast operations. But, before we finalize things, we need to discuss our pricing and service options.

In the past we were in Special Markets division of Henry Schein and worked directly with Tim Sullivan. We would like to explore a relationship with you instead and I want to be sure that our new location in Maryland takes-off without a hitch. (Ref#733 – Dr Denison Byrne)

Please call me or email back and we can discuss further – Thanks!

Andy

Director Of Business Development
Benco Dental Company
295 CenterPoint Blvd
Pittston, PA 18640
570-602-6816

CX0019

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

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

Sent from my iPhone

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

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

cfc

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

CX0021

From: Patrick Ryan
Sent: Tuesday, March 26, 2013 6:33 PM
To: He Zhao
Subject: Re: RFP for ADC, PLC

This is an odd one.

Sent from my iPhone

On Mar 26, 2013, at 2:17 PM, "He Zhao" <hzhao@benco.com> wrote:

Thanks Pat

Sorry for the added work. Any education you could provide me would be great so I can do a better job at these moving forward.

Thanks again

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Tuesday, March 26, 2013 2:16 PM
To: He Zhao
Cc: Kevin Dillon; He Zhao
Subject: Re: RFP for ADC, PLC

Happy to. Will need to do tomorrow.

Sent from my iPhone

On Mar 26, 2013, at 2:08 PM, "He Zhao" <hzhao@benco.com> wrote:

Pat

Sorry, I hate to keep hounding you on this. I spoke with Landy Damsey with the Atlantic Dental Care group. I informed him that we could not pursue the RFP based on what you stated in your email below.

Mr Damsey is adamant that they are not a buying group and that ADC owns all the practices involved.

Redacted Privilege

Redacted Privilege

Redacted Privilege

Can you reach out to him or perhaps we can try to schedule a joint call? His contact info is:

Atlantic Dental Care, PLC
J. Landy Damsey MBA/MHS
3196-100 Silver Sands Circle
Virginia Beach, Virginia 23451
jldamsey@cox.net 757-455-5554

Please let me know how I may be able to help. Thanks for your assistance.

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Monday, March 25, 2013 12:46 PM
To: He Zhao
Cc: Kevin Dillon
Subject: RE: RFP for ADC, PLC

Hi all,

Redacted Privilege

The fact that they created an LLC (it's not a PLC) and put \$50K in it is meaningless. The practices are still all independently owned and operated, and the LLC has no ownership whatsoever of the practices (even the hard assets)

We're out.

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

From: He Zhao
Sent: Monday, March 25, 2013 10:22 AM
To: Patrick Ryan
Cc: Kevin Dillon
Subject: FW: RFP for ADC, PLC

Pat

Attached is the opportunity I picked your brain about. They claim to not be a buying group. The bid deadline is 4/5. Please let me know if this is something I can pursue.

I have 2 local reps covering the area and suspect some of their customers may fall under this; we don't want to risk losing them. The list is not that big and we can do the bid locally if time and resources is an issue.

Thanks for your feedback.

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Eric Hosek [<mailto:atlanticdentalcareplc@gmail.com>]
Sent: Friday, March 22, 2013 10:53 PM
To: He Zhao
Subject: RFP for ADC, PLC

Dear Zhao,

We, the members of Atlantic Dental Care, PLC, are formally submitting a Request For Proposal (RFP) to you in electronic form. This is for your review, completion, and submission back to us in electronic form. Please explore the guidelines specified in the attached RFP as this will facilitate comparison between vendors. The contact information and email address you are to use are specified in the attached RFP. The second attachment is an Excel spreadsheet listing highly specific common products our members routinely use. It is important that you note columns D and E. We are asking for your "Catalog Price" in column D and the "Extended ADC Price" in column E.

Our goal is to secure a one year contract that allows our 53+ dentists members to benefit from significant savings, while all parties enjoy a solid trusting business relationship and steady predictable volume. ADC, PLC is composed of 32 select practices that display high standards, solid business management, and is currently in a controlled growth phase. A recent review found our members' supply orders were in excess of \$3.5 million.

We will be comparing the multiple vendors' responses April 5, 2013 and are hoping you will give us the privilege of adding your figures to this process.

Respectfully,

ADC, PLC Procurement Board

Atlantic Dental Care, PLC
"32 locations and growing"

CX0023

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

Maybe we should discuss with Lori as well.

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

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

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

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

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

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

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

CX0052

Redacted in Entirety

CX0054

From: Chuck Cohen
Sent: Monday, October 06, 2014 9:35 PM
To: Jim Kochalka
Subject: FW: J KOCHALKA***email address

Importance: High

Would you take just a few minutes today and give me some bullet point responses to the following questions:

- What is working well on the team? → Focus on strategy, right people on the bus, sense of urgency, embrace of change
- What is not working well? → We've changed the rhythm of the meetings, and we're still adjusting to those changes. Also, even with a focus on change, we need to move faster.
- If you could snap your fingers and immediately have the team do something mission critical very well that it has only done in a mediocre fashion what would it be? → Get the strategy groups operating at a higher level. We're only in the first inning of this new process, so this will take time.
- What help do you need from the team that you are not getting already? → leadership of the strategy groups.
- What are you most worried about with respect to Benco and where the industry is today? → Amazon's entry, rise of buying groups, decline of margin, flat market share, relevance to the market.

From: Kathy Granko
Sent: Monday, October 6, 2014 11:39 AM
To: Lynn Bachstein; Julie Radzysinski; Paul Jackson; Richard Cohen; George Rable; Larry Cohen; Michelle Waschek; Steve Brecher; Lou Mangino; Mike Mcelaney; Noel Blasso; Valerie Steinbrenner; Meredith Wall; Melanie Butler; Stacy Wardle; Chuck Cohen
Subject: J KOCHALKA***email address
Importance: High

jkochalka@aol.com

From: Kathy Granko
Sent: Monday, October 06, 2014 8:40 AM
To: Lynn Bachstein; Julie Radzysinski; Paul Jackson; Richard Cohen; George Rable; Larry Cohen; Michelle Waschek; Steve Brecher; Terry Barrett; Lou Mangino; Kathy Granko; Mike Mcelaney; Valerie Steinbrenner; Julie Grilz; Meredith Wall; 'Jim Kochalka'; Melanie Butler; Noel Blasso; Stacy Wardle; Chuck Cohen
Subject: NOTE FROM J KOCHALKA*** Five minutes of pre work for Tuesday senior team meeting
Importance: High

Hello Benco team,

It seems like forever since I have seen you. I look forward to the day. **Would you take just a few minutes today and give me some bullet point responses to the following questions:**

- What is working well on the team?
- What is not working well?
- If you could snap your fingers and immediately have the team do something mission critical very well that it has only done in a mediocre fashion what would it be?

- What help do you need from the team that you are not getting already?
- What are you most worried about with respect to Benco and where the industry is today?

You know the drill. I will use your comments to create our day on Tuesday. Just respond to me without copying your colleagues.

Thanks!

Jim

CX0055

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

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

Thanks.

cfc

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

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

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

All the Best,

Don Taylor
303 548 9475
datylor@benco.com

Begin forwarded message:

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

Sent from my iPhone

Begin forwarded message:

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

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

Sent from my iPhone

Begin forwarded message:

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

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com



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

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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

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



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

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

To All,

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

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

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

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

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

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

--

Brenton Mason DMD

.....

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<image002.png>

<image001.jpg>

<image003.jpg>

CX0056

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

Greetings, Paul...

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

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

Thanks, best for success in 2013!

cfc

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

Begin forwarded message:

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

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

All the Best,

Don Taylor
303 548 9475
datylor@benco.com

Begin forwarded message:

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

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

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

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

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com



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

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

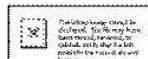
Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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

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



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

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus was are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the

corporate dentistry role over the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from every specialty participating in the co op.

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

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

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

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

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

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

--
Brenton Mason DMD

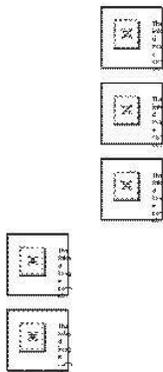
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The initial design cannot be deployed. The design team has reviewed the design and identified the following issues that need to be corrected before the design can be deployed.



The initial design cannot be deployed. The design team has reviewed the design and identified the following issues that need to be corrected before the design can be deployed.

CX0057

Redacted in Entirety

CX0058

Subject: Call Tim Sullivan re: Buying Groups
Due Date: Monday, March 25, 2013

Status: Completed
Percent Complete: 100%
Date Completed: Tuesday, March 26, 2013

Total Work: 0 hours
Actual Work: 0 hours

Owner: Chuck Cohen

CX0060

Redacted in Entirety

CX0061

From: Chuck Cohen
Sent: Tuesday, March 26, 2013 12:01 PM
To: Jamie Kasinski
Subject: Re: Buying Group

Thanks!

cfc

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

On Mar 26, 2013, at 7:50 AM, "Jamie Kasinski" <jkasinski@benco.com> wrote:

> Dental alliance. They apparently get 7% off of catalog pricing just for joining. Dr. Ben Koren is the dentist involved. A guy named Sam contacted me about a year ago and asked if Benco was interested.. Told him he was out of his tree.

>

> Thanks

>

> -----Original Message-----

> From: Chuck Cohen

> Sent: Monday, March 25, 2013 10:51 PM

> To: Jamie Kasinski

> Subject: Buying Group

>

> What's the name of the buying group in your area that works with Schein?

>

> Thanks.

>

> cfc

> -----

> Charles F. Cohen

> Managing Director, Benco Dental Company

> 295 Centerpoint Boulevard

> Pittston, PA 18640

> Phone: 570-602-6811

> Email: ccohen@benco.com

CX0063

From: Chuck Cohen
Sent: Wednesday, April 09, 2014 5:23 PM
To: Mike McElaney
Subject: Re: TDA Perks

Let's pull out, if Schein & Patterson are as well. Thanks.

cfc

Charles F. Cohen
Managing Director
Benco Dental Company
295 Centerpoint Boulevard
Pittston, PA 18640
Phone: 570-602-6811
Email: ccohen@benco.com
Assistant: Kathy Granko (kgranko@benco.com)

On Apr 9, 2014, at 1:16 PM, "Mike McElaney" <mmcelaney@benco.com> wrote:

Chuck,
Received a call from Mark Rowe today on the TDA.
PDCO and HSIC have pulled out of the convention because of Perks.
Mark, Ron Fernandez and Dunn feel we should also pull out.
John from Kavo/Kerr asked if we are pulling out then they would also.
It is Mark's belief in addition to Kavo/Kerr, Air Tech and others will follow.

If we pull out we will not get our money back but can move it forward to next year.

I feel we should pull out. Comments??????

I have to get back to Mark today.

Sincerely,

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

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

CX0066

Redacted in Entirety

CX0067

Redacted in Entirety

CX0068

Redacted in Entirety

CX0070

From: Patrick Ryan
Sent: Monday, October 31, 2011 5:51 PM
To: Richard Varipapa; Mike McElaney
Subject: RE: Missed conversation with Richard Varipapa

I have nothing to add.

Patrick Ryan
Director of Business Development
Benco Dental Company
295 CenterPoint Blvd
Pittston, PA 18640
570-602-6816

From: Richard Varipapa
Sent: Monday, October 31, 2011 1:48 PM
To: Mike McElaney
Cc: Patrick Ryan
Subject: RE: Missed conversation with Richard Varipapa

Thanks for the response.

A agree, we looked at this some time ago and realized that there is not a true measurement of new business. Typically they want more than we can do for them and is best for them to commit with our Elite BluChip arrangement... especially with these guys located all over the east coast.

Pat, if you have anything to add, I'm open. Otherwise I will let them know what the best option for them is.

Thanks again,

RV

From: Mike McElaney
Sent: Monday, October 31, 2011 1:21 PM
To: Richard Varipapa
Cc: Patrick Ryan
Subject: RE: Missed conversation with Richard Varipapa

Richard,

We do not do buying clubs. Give Pat Ryan the profiles and he may come up with something.

Buying clubs will turn us into the medical industry.

Get some info to Pat.

Thanks

Mike McElaney
Director of Sales,
Northeast
Benco Dental
295 CenterPoint Blvd.
Pittston, PA 18640

Office: 570-602-6826
Cell: 817-907-4353
mmcelaney@benco.com

From: Richard Varipapa [<mailto:rvaripapa@benco.com>]
Sent: Monday, October 31, 2011 12:57 PM
To: Richard Varipapa; Mike McElaney
Subject: Missed conversation with Richard Varipapa

Richard Varipapa [12:56 PM]:

Mac, What is your experience with a group of dentists that want to start a buying club? I have a Pedo contact looking to start one with 200 Pedodontists....

CX0082

Redacted in Entirety

CX0090

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

Chuck,

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

Best to you and the family.

Paul

Paul A. Guggenheim
President
Patterson Dental Supply

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

Greetings, Paul...

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

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

Thanks, best for success in 2013!

cfc

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

Begin forwarded message:

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

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

All the Best,

Don Taylor
303 548 9475
dataylor@benco.com

Begin forwarded message:

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

Sent from my iPhone

Begin forwarded message:

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

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

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

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

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

To: ARCHULETA, CHRIS; Bergman, Brandon

Subject: FW: New Mexico Dental Cooperative purchasing.

Is he joking?

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Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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

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

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

To All,

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

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--

Brenton Mason DMD

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image002.png



image001.jpg



image003.jpg

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CX0093

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

BCC : Guggenheim, Paul

Anthony,

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

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

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

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

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

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

Dave

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

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

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

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

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

Devon Nease
Patterson Dental

Begin forwarded message:

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

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

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

Attached file is scanned image in PDF format.

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

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

Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.

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



767.Branch@patter
sondental.com...

- 767.Branch@pattersondental.com_20130227_095445.pdf

CX0094

From: Nease, Devon
Sent: Friday, May 31, 2013 12:40 PM
To: Guggenheim, Paul
Subject: Benco

Paul,
I enjoyed the opportunity to speak with you this morning in the Q&A session.
Just a heads up on a situation in Chesapeake, VA, Benco recently responded to and won a bid proposal with a buying group called Atlantic Dental Care. They are composed of 55 local dentists being led by a consultant, most of which are good Patterson offices.

Devon Nease
Patterson Dental

CX0097

From: Guggenheim, Paul
Sent: Monday, June 10, 2013 4:49 PM
To: Anderson, Scott
Subject: Fw: New Mexico Dental Cooperative purchasing.

FYI.....

Paul A. Guggenheim
 President
 Patterson Dental Supply

----- Forwarded by Paul Guggenheim/PDCO/PDCO on 06/10/2013 01:12 PM -----

From: Paul Guggenheim/PDCO/PDCO
 To: Chuck Cohen <ccohen@benco.com>,
 Date: 06/10/2013 01:12 PM
 Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Sounds good Chuck, Just wanted to clarify where you guys stand.

Thanks for the follow up and send my love and congratulations to Larry and Sally upon their return. If someone goes overboard it would probably be Larry and he's a pretty strong swimmer!

All the best,

Paul

Paul A. Guggenheim
 President
 Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
 To: "paul.guggenheim@pattersondental.com" <paul.guggenheim@pattersondental.com>,
 Date: 06/03/2013 07:16 AM
 Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Thanks for reaching out, I was at a board meeting yesterday & couldn't respond.

As we've discussed, we don't recognize buying groups. On the Atlantic Dental Care situation, here's our understanding after several in-depth conversations...

1. There are 32 practices that have legally merged together.
2. The new company is owned by the former practice owners.
3. They are in the process of rebranding all the offices Atlantic Dental Care.
4. They have a board of directors made up of some of the stakeholders that makes the decisions.

Although they're in the early stages of the process, we believe this meets our criteria for a large group practice. We've asked to see the merger documents once they are completed, to confirm that they've really become a legally merged entity, and we're going to continue monitoring the process to ensure that ADC delivers on their commitment to us. Happy to discuss in more detail, if you'd like.

Meanwhile, glad to hear that all's well with you & the family, and that you're enjoying the summer in Minnesota. As we speak, my folks are on a cruise across the Atlantic to celebrate their 50th anniversary; hopefully, one of them won't throw the other off the side of the ship... ☺

All's good here, keep in touch, talk soon...

cfc

From: paul.guggenheim@pattersondental.com [<mailto:paul.guggenheim@pattersondental.com>]
Sent: Thursday, June 06, 2013 7:03 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

Chuck,

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

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

Best to you, Rick and Larry.

Sincerely,

Paul.

Paul A. Guggenheim
 President
 Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
 To: Paul Guggenheim <paul.guggenheim@pattersondental.com>
 Date: 02/03/2013 11:57 AM
 Subject: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

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

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

Thanks, best for success in 2013!

cfc

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

Begin forwarded message:

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

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

All the Best,

Don Taylor
 303 548 9475
datylor@benco.com

Begin forwarded message:

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

Sent from my iPhone

Begin forwarded message:

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

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

Sent from my iPhone

Begin forwarded message:

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

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

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

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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

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

From: brenton mason [<mailto:txdelphia@gmail.com>]

Sent: Monday, February 04, 2013 1:18 PM

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

Subject: New Mexico Dental Cooperative purchasing.

To All,

Frank Montoya, Jason Chapman and I are in the process of starting a dental Cooperative. Thus we are working together with our local private practice dental office owners to compete with the national large corporations in the dental field. We as small businesses are well aware of the studies showing the corporate dentistry role over

the next 10 years. Furthermore, Walmart has provided us with a case study to evaluate the survival of the independent dental offices. Thus we have partnered with Patterson Dental to provide the individual office the same opportunities as the larger corporations. We as a group of 17 offices currently are expanding on weekly basis; Furthermore, we have doctors in our group from every specialty participating in the co op.

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

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

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

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

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

--

Brenton Mason DMD

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CX0101

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

CX0106

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

Neal,

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

My two cents...

Sincerely,

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

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

I know in the past we have said no

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

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

just wondering

Hope the fishing was good

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

Have a good weekend

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

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

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

Hi Neal,

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

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

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

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

CX0108

From: Rogan, Tim
Sent: Friday, October 25, 2013 3:11 PM
To: Edens, Clint
Cc: Misiak, Dave
Subject: Re: Fw: Texas Supply Grey market and the TDA

Thanks Clint. I am glad you are being proactive. Before you pull the trigger on not going to the TDA let's make sure we aren't doing a disservice to our people. Sometimes these fights are better behind closed doors and not with the sales force knowing.

Now, that being said, use it as a threat for sure and make that public.

Let us know how we can help you.

Sincerely,

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

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

Dave & Tim,

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

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

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

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

As for Patterson, we have briefly discussed this TDAPerks site (not the source) with our dealer competitors at the local San Antonio & Houston level and unofficially with some TDA customers. I have yet to contact the TDA formally as we are still gathering information, however our payment for the TDA booths is due by the end of October/early November. I am

committed to pulling from the TDA if they do not discontinue competing with us via TDAPerks. We will not pay until this is resolved.

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

- Clint

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

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

Direct Brands

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- • [AD2](#)
- • [AHP](#)
- • [Apex Dental Materials](#)
- • [Appliance Therapy Group](#)
- • [Arnold](#)
- • [BH Dental Implants](#)
- • [BioMat Sciences](#)
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- • [Common Sense Dental](#)
- • [ContacEZ](#)
- • [DazzlePro](#)
- • [Denali Corporation](#)
- • [Dental Burs USA](#)
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- • [Dentalree](#)
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- • [E-Z Blok](#)
- • [Endo Technic](#)
- • [EXACTA Dental Direct](#)
- • [Galaxy Manufacturing](#)
- • [GlasSpan](#)
- • [High-Q Dental](#)
- • [iSmile](#)
- • [LAK Dental](#)
- • [Lares Research](#)
- • [Lester Dine](#)

- • LM
- • MDL Dental Products
- • Medco Instruments
- • Medidenta
- • MTI Dental
- • Oral32
- • Ortho Traction Pads
- • OrthoSource
- • Osung
- • Oxford Scientific
- • PHB
- • Polaroid
- • ProphyMagic
- • RGP Inc.
- • Ribbon
- • Russman DeBubblizer
- • Sabra Dental Products
- • SAFETZ Eyewear
- • Splintek Health Products
- • Sterngold Dental
- • Supersmile
- • SW Gloves
- • The Simple One
- • Tri Hawk Inc.
- • Ultra Light Optics
- • Viade Products
- • Whiten
- • Whiter Image Dental
- • Zosseo

Dealer Brands

- • A.Titan
- • Accutron
- • Ada Products
- • Advanced Sterilization (A J&J Co.)
- • Air Techniques
- • All Dental Prodx
- • AllPro
- • Alpha ProTech
- • AM-Touch
- • Amneal Pharmaceuticals
- • Angiotech
- • Ansell Healthcare Products
- • ATI
- • Axis Dental
- • Bausch
- • Baxter Healthcare
- • Becton Dickinson

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- • [Hager Worldwide](#)
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- • [Hu-Friedy](#)

- • Ivoclar Vivadent
- • J&J Instruments
- • J. Morita
- • Johnson & Johnson
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- • Jordco Inc
- • Jota Swiss
- • JP Solutions
- • JS Dental
- • Kavo
- • Kerr TotalCare
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- • Kromopan USA
- • Kuraray
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- • Lafferty's Pharmacy
- • Lang Dental
- • Maxximum Dental
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- • MCMP
- • Medicom
- • Medline Industries
- • Microbrush
- • Microcopy
- • Microflex
- • Miltex
- • Minimax
- • Mizzy
- • Molnlycke
- • Myco Medical
- • Mydent International
- • Nordent
- • Nu Radiance
- • Op-d-Op
- • Oral-B
- • OraLine
- • Pac-Dent Intl
- • Palisades Dental
- • Palmero
- • Parkell
- • Pascal
- • PDI
- • PDT
- • Pelton & Crane
- • Pentron
- • Pfizer

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

- • Xttrium Laboratories
- • Young Dental
- • Zhermack
- • Zirc

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

Guys,

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

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

Dave

Dave Misiak
 Vice President, Sales
 Patterson Dental
 Phone 651.686.1652

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

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

Dave,

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

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

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

One big recent issue if with the TDA (Texas Dental Association) - TDA Perks. Last week (October 1st) they opened a website and a line of supplies with "over 40,000 products". The promise is to "save more than 35%". They are aggressively marketing this in direct competition with all dealers. I am just finding out about it and have talked to Tim Wagstaff and will talk to John Hyden next week. Once we address the TDA, an outcome may be no longer supporting the TDA meeting:
<http://www.tda.org/displaycommon.cfm?an=1&subarticlenbr=109>

- Clint

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

CX0112

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

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

Sent from my iPhone

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

He already told me they were out. Full blown!

Sent from my iPhone

Begin forwarded message:

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

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

Hope all is well with you,

Dave

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

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CX0145

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

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

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

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

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

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

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

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

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

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

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

Thanks

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

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

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

Bill

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

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

Reply to: 458.Branch@pattersondental.com <458.Branch@pattersondental.com>

Device Name: Not Set
 Device Model: MX-4111N
 Location: Not Set

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

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[attachment "458.Branch@pattersondental.com 20130903_132921.pdf" deleted by Scott Anderson/PDCO/PDCO]

CX0146

From: Anderson, Scott
Sent: Thursday, June 23, 2011 9:48 AM
To: Misiak, David
Subject: Re: Fw: GSA and Special Markets accounts

No....love his buying group line about competing with the low prices large group practices get.

Scott P. Anderson
 President and CEO
 Patterson Companies, Inc.
 Phone: 651-686-1708
 Fax: 651-686-1656

From: David Misiak/PDCO/PDCO
To: Scott Anderson/PDCO/PDCO@PDCO
Date: 06/23/2011 09:43 AM
Subject: Fw: GSA and Special Markets accounts

Do you know this guy?

Dave

Dave Misiak
 Vice President, Sales
 Patterson Dental
 Phone 651.686.1652

----- Forwarded by David Misiak/PDCO/PDCO on 06/23/2011 09:43 AM -----

From: lennon625@netscape.net
To: dave.misiak@pattersondental.com
Date: 06/22/2011 08:22 PM
Subject: GSA and Special Markets accounts

Hello Dave,

I'm George Lennon the Executive Director of the North American Integrated Dental Society based in San Antonio. We represent a group of independent dentists who have formed a buying group to compete with the lower prices the large group practices get.

My background is in Dental Special Market Sales with Kodak and Danaher. With Kodak I was the National Government Account Manager and with Danaher I was the NW Regional Manager covering 10 states. While working for these two companies I worked 100% with Henry Schein to sell our product lines, and they sold them like crazy. I and many of us don't understand why the second largest dental dealer has decided not to get into this market that generates millions of dollars in x-ray film sales alone. Schein has established a core group of manufacturers that work together for mutual benefit, most are also Patterson manufacturers. What this has done is to put other manufacturers on the outside looking in, and they're just starting to realize it. At one time I spoke with the Patterson Institutional rep Susan Yamashita who said Patterson didn't plan on getting into the Special Markets area like Schein has.

The reason for this note is to explore if you would be interested in talking about establishing a stronger special markets groups to cover GSA, public health and Indian Health. I had a call today from a past customer at the Northern Valley Indian Health Center who isn't getting much support from Schein or Kavo and we could move them to Patterson if we had

a network to cover the area. This is a huge account that I sold 57 Diagnodents to and they are growing. The opportunity for growth in this area has no limit and I would like to help Patterson become a major dealer in this market.

Please let me know what you think,

Best regards,

George Lennon

(585)781-0180

CX0147

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

BCC : Guggenheim, Paul

Hi Andy,

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

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

Regards,

Dave

Dave Misiak
Vice President, Sales
Patterson Dental
Phone 651.686.1652

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

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

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

1849 Kingwood Dr., Ste. 102
Kingwood, Texas 77339
T: 281-359-2344
C: 719-201-0705
F: 281-312-1153

agoldsmith@smilesource.com
www.smilesource.com

Watch this video to learn about Smile Source®





Smile Source

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

Andy - -thanks for the email. I would loved to talk with you about Smile Source. I am travelling currently. I will try and reach out to you Wednesday if that's OK. Thanks

Neal McFadden
President Special Markets
1031 Mendota Heights Road
St. Paul, MN 55120
direct: 651-686-1945
cell: 864-346-7209
fax: 651-686-0288

From: Andy Goldsmith <agoldsmith@smilesource.com>
To: neal.mcfadden@pattersondental.com,
Date: 09/30/2013 02:41 PM
Subject: Smile Source

Neal-
I was referred to you by Mike Smurr.
I represent a group called Smile Source®. We have a unique business proposition whereby we have a federal franchise and offer marketing, training, education and buying power for practices but we allow them to remain autonomous. We currently work with Burkhart and have a great relationship with them. Unfortunately, they do not have a national footprint and we are growing rapidly. We have added 87 locations in the last 10 months. I would love to have some sort of conversation with you about possibilities for a partnership.

Let me know if we can schedule a time to discuss in the next few weeks – preferably before the ADA.

Thanks!

Andy

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD

Chief Dental Officer/ EVP Vendor Relations

1849 Kingwood Dr., Ste. 102
Kingwood, Texas 77339

T: 281-359-2344

C: 719-201-0705

F: 281-312-1153

agoldsmith@smilesource.com

www.smilesource.com

[Watch this video to learn about Smile Source®](#)



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CX0158

From: Desportes, Perrin
Sent: Friday, September 06, 2013 5:13 AM
To: Trexler, Matthew
Subject: Fw: Special Markets Announcement

Read the attachment and let's try to catch up at some point today. i don't think this is anything to worry about at this point.

Perrin DesPortes
 Branch Sales Manager, Charlotte NC
 Patterson Dental Company
 (P) 704.849.4520
 (F) 704.844.1097

----- Forwarded by Perrin Desportes/PDCO/PDCO on 09/06/2013 06:11 AM -----

From: Neal McFadden/PDCO/PDCO
To: Roy Fruehauf/PDCO/PDCO@PDCO, Marc Holsborg/PDCO/PDCO@PDCO, Theodore Vlamis/PDCO/PDCO@PDCO, Jeffrey I Wiseman/PDCO/PDCO@PDCO, James Weeks/PDCO/PDCO@PDCO, Shandra Martinez/PDCO/PDCO@PDCO, Dan Crawford Fruehauf/PDCO/PDCO@PDCO, Perrin Desportes/PDCO/PDCO@PDCO, Tom McGuire/PDCO/PDCO@PDCO, Stephen Bartl Nease/PDCO/PDCO@PDCO, Bob Muniz/PDCO/PDCO@PDCO, Michelle Wilson/PDCO/PDCO@PDCO, Christian Fehling/PDCO/PDCO@PDCO, Scott Belcheff/PDCO/PDCO@PDCO, Chad Bushman/PDCO/PDCO@PDCO, Dan Reinhardt/Goldman/PDCO/PDCO@PDCO, Rick Cacciatore/PDCO/PDCO@PDCO, Scott Fossen/PDCO/PDCO@PDCO, Nicholas Abruzzo/O'Donnell/PDCO/PDCO@PDCO, Rex Plamann/PDCO/PDCO@PDCO, Darlene Files/PDCO/PDCO@PDCO, Josh Goldschme Lunaas/PDCO/PDCO@PDCO, George Aube/PDCO/PDCO@PDCO, John Kusnarowis/PDCO/PDCO@PDCO, Glenn Frank/PI Stewart/PDCO/PDCO@PDCO, Ernesto Figueroa/PDCO/PDCO@PDCO, Cory Hanks/PDCO/PDCO@PDCO, Trevor Long/PDCO/PDCO@PDCO, Landon Parker/PDCO/PDCO@PDCO, John Soderberg/PDCO/PDCO@PDCO, Mindy Montoya/PDCO/PDCO@PDCO, Michael Blake/PDCO/PDCO@PDCO, Cameron Elrod/PDCO/PDCO@PDCO, Danial Redifer/PDCO/PDCO@PDCO, Pat Crowley/PDCO/PDCO@PDCO, VanAntwerp/PDCO/PDCO@PDCO, David Ferguson/PDCO/PDCO@PDCO, Dick Ruder/PDCO/PDCO@PDCO, Bob Ingersoll/Earnhart/PDCO/PDCO@PDCO, Terry Gilchrest/PDCO/PDCO@PDCO, Chris Counce/PDCO/PDCO@PDCO, Jon Fidler/PDCO/PDCO@PDCO, Ben Guinn/PDCO/PDCO@PDCO, Clint Edens/PDCO/PDCO@PDCO, Deborah Munlin/PDCO/PDCO@PDCO, Matthew Schw Lawrence/PDCO/PDCO@PDCO, Alain Carles/PDCO/PDCO@PDCO, Michael Brack/PDCO/PDCO@PDCO, Eric Hanson/PDCO/PDCO@PDCO, Joseph Blalock/PDCO/PDCO@PDCO, John Bradley/PDCO/PDCO@PDCO, Jeffrey Nordstrom BranchMgr@PDCO, James Ryan-SACTO_BM/PDCO/PDCO@PDCO, Sean Sullivan/PDCO/PDCO@PDCO, Craig Holbrook/PDCO/PDCO@PDCO
Cc: Tim Rogan/PDCO/PDCO@PDCO, John Bettencourt/PDCO/PDCO, David Misiak/PDCO/PDCO, Josh Killian/PDCO/PDCO@PDCO, Lien/PDCO/PDCO@PDCO, Shelley Beckler/PDCO/PDCO@PDCO, Brooke Hilzendager/PDCO/PDCO@PDCO, Timothy Shafiq
Date: 09/04/2013 10:18 AM
Subject: Special Markets Announcement

Please see attached an important announcement from the new Patterson Special Markets division.



Special Markets
 Definition.doc...

Thanks,

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

PATTERSON
DENTAL

Special
Markets

Memorandum

Corporate Office
1031 Mendota Heights Road
Saint Paul, Minnesota 55120
Main 651.686.1600
Fax 651.686.0286
pattersoncompanies.com

DATE: SEPTEMBER 4, 2013

TO: REGION MANAGERS, BRANCH MANAGERS

FROM: NEAL MCFADDEN, PRESIDENT, SPECIAL MARKETS; DAVE MISIAK, VICE PRESIDENT, SALES

RE: PATTERSON SPECIAL MARKETS (PSM) DEFINITION

In June we announced the formation of our new Patterson Special Markets (PSM) Division. While we are still in the process of building out the infrastructure, we wanted to give you some guiding principles around our definition of this "special market" and how it will affect current and future business.

Effective immediately, current dental corporations with 15 or more owner operated/affiliated locations and a minimum of \$600,000 in potential merchandise will qualify. Government, institutions and schools could also qualify to work with PSM. These high volume accounts are asking for a single-source contact for all of their needs, including reporting, rebates and formulary updates. It is our goal to accommodate these requests and aggressively grow our business within this space. This definition will not include group purchasing organizations (GPOs).

While all new business will flow directly through PSM, we understand that several branches have current relationships with dental entities inside this definition. It is our desire to keep that business within the branches for the foreseeable future. A deviation from this may occur if the existing customer chooses to work with PSM.

We are aware that some territory representatives have relationships within a few of these current accounts, in which case all current business will continue to flow through the branches as stated. If a current account chooses to do business with PSM for reasons indicated above, merchandise commissions to the assigned territory representative may be reduced. A new commission matrix is being developed to manage this arrangement.

PSM may request the assistance of a local equipment specialist regarding equipment and technology sales. In this case we will pay commission rates based on gross margins via commission adjustment. No commission will be paid to the territory representative on equipment or technology for new Special Markets business.

(Continued on next page)

When a service technician is requested for repairs or installs, PSM will supplement the branch service department at the gold rate per hour on new accounts only (current accounts remain the same for now). The branch must submit an invoice at the proper billing rate to the customer, then email that invoice to PSM through

Tammy.Brand@pattersondental.com with the subject line "Special Markets Invoice" to receive the rebate via journal entry. Ultimately, our intention is to automate this process.

We are excited about PSM and look forward to growing and protecting our core business within this space. The development of this new business will ultimately create growth and opportunity for the entire dental organization. Please communicate this definition at your next region and branch meeting. It's important that you lead and set expectations for these successful partnerships as we move into this space.

Communication is paramount so do not hesitate to contact us with any questions.

CX0164



Neal McFadden iMessage Report

Briggs and Morgan PA (Patterson Dental - Gov't Investigation)

Evidence Number: ES0006 - Time Zone: UTC

PRIVILEGED AND CONFIDENTIAL				
Chat	Participants	Instant Message	From	
			Body	
			Status	
			Date/Time	
49	+18643467209 Neal McFadden +13109262444 Paul Guggenheim niamcfadden@charter.net Izzy Cell	45 +18643467209 Neal McFadden	Sent	08/28/2013 03:46:49 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	1 niamcfadden@charter.net Izzy Cell	Sent	05/07/2014 08:03:12 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	2 +14782560645 Gregory Earls	Read	05/08/2014 01:58:06 PM
237	niamcfadden@charter.net Izzy Cell +14782560645 Gregory Earls	3 +14782560645 Gregory Earls	Read	05/08/2014 01:58:24 PM
77	+18643467209 Neal McFadden +16512367552 David Misiak niamcfadden@charter.net Izzy Cell	306 niamcfadden@charter.net Izzy Cell	Sent	05/08/2014 01:59:53 PM

PUBLIC

Chat	Participants	Instant Message	From	Body	Status	Date/Time
77	+18643467209 Neal McFadden +16512367552 David Misiak niamcfadden@charter.net Izzy Cell	307	+16512367552 David Misiak	Thx Neal. A lot of slippery accounts in this arena! Dave, yes I did get a place in St. Paul Minnesota. I will check with my calendar and get back with you. I just want to get some clarity. Is choice one a GPO or are you all actually acquiring practices? The reason I'm asking is we've signed an agreement that we won't work with GPO's. Just wondering thank you	Read	05/08/2014 03:00:16 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	1	niamcfadden@charter.net Izzy Cell	Congrats on the new place! I pray that it all works for you and the family! We are acquiring practices. As I had said we are at 6 with the goal to get to around 400. The COO Bill Brigham helped Kook Smiles go from 3 to about 350 or 400 offices. We are not looking to change the Docs brand just help him with the business side. The website gives a pretty good overview of what we are looking to do . Look it over and holla with any questions. Thanks so much for your willingness to let us talk with you! Hopefully you will see enough value there and our philosophy fits the Patterson wheelhouse! It would be great to be able to put my old friends and family into the mix! Look forward to hearing for you! Have a great day!	Sent	06/12/2014 01:06:37 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	2	+14046640550 David McIntosh		Read	06/12/2014 02:38:56 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	3	niamcfadden@charter.net Izzy Cell	Thanks Dave. I am traveling a ton over the next few weeks. Maybe we can shoot for mid July?	Sent	06/12/2014 02:55:15 PM
248	+18643467209 Neal McFadden +14046640550 David McIntosh niamcfadden@charter.net Izzy Cell	4	+14046640550 David McIntosh	I spoke with Bill and he said that's cool. We would certainly be open mid July say the week of the 15th. Just hit me back with some possible dates and we will confirm with you! Thanks again Neal! I look forward to catching up and discussing moving forward! Have a great rest of the week!	Read	06/12/2014 04:40:32 PM

CX0165

From: Cavaretta, Joe
Sent: Tuesday, February 01, 2011 6:30 PM
To: MCCARROLL, BRET
Subject: Re: Business Intelligence Group

Thanks Bret:)

From: MCCARROLL, BRET
Sent: Tuesday, February 01, 2011 07:10 PM
To: Cavaretta, Joe; Titus, Kathleen; McCulloch, Tom
Subject: Re: Business Intelligence Group

Hi Joe,

Thank you for following up. I will let them know that we only deal with dental practices directly.

Thank you, Bret McCarroll Sent from my Verizon Wireless BlackBerry

From: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Date: Tue, 1 Feb 2011 14:31:17 -0500
To: Titus, Kathleen<kathleen.titus@henryschein.com>; MCCARROLL, BRET<BRET.MCCARROLL@henryschein.com>;
McCulloch, Tom<Tom.McCulloch@henryschein.com>
Subject: RE: Business Intelligence Group

Hey Bret,

Dealing with GPOs is incredibly risky on many fronts. We can discuss live but as soon as we start doing this we will turn into medical, margins will go down and commissions of course will follow. This is a bad deal all the way around. This is the very abbreviated version and if you would like to talk live please let me know. Thanks.

Joe

From: Titus, Kathleen
Sent: Tuesday, February 01, 2011 1:00 PM
To: MCCARROLL, BRET; McCulloch, Tom

Cc: Cavaretta, Joe
Subject: RE: Business Intelligence Group

Hey Bret,

Wow... the world is changing isn't it?

I can tell you that with authority that is not something SM would be interested in. The participants are Private Practice customers which rules SM out. Food for thought though... their targets are invariably going to be existing HSD customers. I think we have to stick with our core competencies and this is not one of them.

I'm copying Joe Cav... perhaps he will have a different take, but SM declines.

Many Thanks!

Kathleen Titus

Western Zone Manager

Henry Schein Corporate Accounts Group

Email: kathleen.titus@henryschein.com

Office: 916 772-0424

Cell: 916 765-2778

From: MCCARROLL, BRET
Sent: Tuesday, February 01, 2011 8:36 AM
To: Titus, Kathleen; McCulloch, Tom
Subject: Business Intelligence Group

Good morning Kathleen and Tom,

I have a marketing and consulting group called Business Intelligence Group that is interested in forming a buying group for dentists. They

have over 150 Dental clients and run different marketing campaigns for these clients. For example, if they want to run a whitening campaign for \$49.00 through Groupon or another Social Media Platform they may get 20 new patients in each of their clients practices. (These are probably conservative numbers considering I have a client that ran a Groupon ad 6 months ago and got 150 patients in 2 days.) Each of the dental practices will need to get their supplies from somewhere. Their goal is to supply the whitening product to the dentists and/or any other product for any campaign they run.

Do we have any interest in opening an account for a group like this? As I mentioned they have 150 clients and they plan on growing to 500 clients by year end. I met with their founder and CEO last week and he is very interested in setting up a meeting with us to discuss his ideas. Please let me know if we would like to pursue something with this company.

Thank you,

Bret McCarroll

Henry Schein Dental

Cell: 949-929-7553

Fax: 949-548-9673

CX0166

From: Cavaretta, Joe
Sent: Thursday, August 25, 2011 3:10 PM
To: Gadd, Thomas
Subject: RE: Nov. AGD meeting in Vegas

LOL..I will keep you in mind.

From: Gadd, Thomas
Sent: Thursday, August 25, 2011 3:10 PM
To: Cavaretta, Joe
Subject: RE: Nov. AGD meeting in Vegas

Joe,

I'm glad you found the humor I intended. It's even better that the buying group wont happen.

If you need an assist in Vegas, you know someone to carry your bag, point you to the hot table.... I'm your guy!

Tom

From: Cavaretta, Joe
Sent: Thursday, August 25, 2011 4:05 PM
To: Gadd, Thomas
Cc: Gurskey, Joe
Subject: RE: Nov. AGD meeting in Vegas

Hey Tom,

Of course this email is written in a way that only you can write it.

I will talk to Michele Penrose who is organizing this event for us about having Dentrix there for 2 days. If they are unable to send someone we will have our local DTS on sight.

As for the AGD buying group....I haven't heard anything about this but I doubt this will happen. Once the buying groups entire our market the dental model as we know it will change. I will ask John or Dave about our progress but I would assume at this point that nothing is going to happen.

I'm going back to ignoring you now so leave me alone!

Joe

From: Gadd, Thomas
Sent: Thursday, August 25, 2011 2:57 PM
To: Cavaretta, Joe
Cc: Gurskey, Joe
Subject: Nov. AGD meeting in Vegas

Joe,

I hope you're doing well. I left a message for you earlier today which you can now continue to ignore.

A doctor I call on in Charleston WV is the chair for the practice management meeting you will be attending in November. He called me last night to ask if Henry Schein would also provide a Dentrax Demo out side the meeting rooms during the entire two days of meetings. His thoughts are during breaks or when doctors step out of the panel discussions to have someone there to show the doctors what they just heard discussed. He is also inviting eagleshit and crapdent to display as well. He is a Dentrax customer personally but feels those other two lack luster vendors need to be there to be fair and seem unbiased.

He asked for you to call him on his cell if you have any questions or to discuss this in more detail. Dr. Steven Ghareeb 304-610-9973 his email is sstevenamos@aol.com

On another note: This doctor is a part of a group practice with 4 offices currently and do very well. They are obviously big into the AGD and will not switch their business to Schein because the AGD is trying to negotiate a deal for members of the AGD to get discounts (a buying group in other words) I know they have approached Schein. Is this going to happen? If so what are the discounts? Joe Gurskey and I approached them with Special Markets pricing and they're still holding out pending an AGD deal. Any insight there would be greatly appreciated. This group is worth a couple hundred thousand a year.

Best regards,

Tom Gadd – KY44

859-312-8600

CX0169

From: BINGHAM, MELANIE
Sent: Monday, September 24, 2012 7:43 PM
To: Cavaretta, Joe
Subject: Re: Intermountain Dental Associates RFP

I think the Rich she was talking about is a Henry Schein person. Richard Erwin that you've spoken to before is the one you've spoken to.

On Sep 24, 2012, at 6:11 PM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

The Co-op is exactly what we are trying to avoid. Is this the same Rich that was trying to extend the IDA pricing to other doctors not part of the IDA?

From: BINGHAM, MELANIE
Sent: Monday, September 24, 2012 06:20 PM
To: Harmon, Jeff (RM); Cavaretta, Joe
Subject: Fwd: Intermountain Dental Associates RFP

Everyone keeps saying we don't do GPO's. so what is the dental co-op of Utah?

Begin forwarded message:

From: "Hight, Andrea" <Andrea.Hight@henryschein.com>
Date: September 24, 2012, 4:07:14 PM MDT
To: "BINGHAM, MELANIE"
<MELANIE.BINGHAM@henryschein.com>, "Kofron, Randall"
<Randall.Kofron@henryschein.com>, "Boras, Richard"
<Richard.Boras@henryschein.com>, "Vega, Caroline"
<Caroline.Vega@henryschein.com>
Cc: "Page, Lisa" <Lisa.Page@henryschein.com>
Subject: Intermountain Dental Associates RFP

Hi,

I took a stab at the written response for IDA today.
Here it is along with the RFP for your reference. We are definitely competing against Benco. I don't know what they will do though. I therefore asked Rich (with the help of Lisa Page) to price out the 56 items on the pricing file aggressively as

CX0169-001

these will be compared to Benco's pricing. The fact is a lot of the items on the RFP are low volume so if pricing is a little lower it will not hurt us. Farish gave me the service rates so those are good.

Note: I also defined what qualifies for IDA as a member.

We need to make sure they are clear we don't do GPOs as that subject keeps coming up. Especially note what was said in the second paragraph of the RFP about who they want to include.

Action Items:

1. Rich is going to price a file I sent to him today to show IDA what they pay for what they buy. He will include the items on the rfp at the rfp prices we established.
2. Randy K. please do your equipment pricing and then in areas labeled for equipment on the draft document, add your piece.
3. Please everyone review what I had to say and please, please make any recommendations. I want this response to be very strong.
4. Especially please think of any value adds that make sense.

Thanks,

A

Andrea Hight

Regional Mgr/Community Health Liaison

Special Markets

Ph: 801-829-3146 Cell: 801-317-7148

Fax: 800-664-4832

Join the conversation & share ideas

www.facebook.com/dsoexchange

www.twitter.com/henryscheinsm

<<http://bit.ly/SMTelesalesFB>>

<<http://bit.ly/SMTelesales>>

<<http://bit.ly/SMTelesalesFB>>

CX0170

From: Meadows, Jake
Sent: Tuesday, July 17, 2012 10:19 AM
To: Delikat, Patty
Subject: RE: Few questions! AND AN APOLOGY!

Patty,

We can talk about this. I have to tell you Ron and Dan made a decision that is against what Tim Sullivan has directed us to do in regards to supporting Buying groups. We do not want our customers organizing and creating what are known as GPOs it takes the value away from the distributor. Let's talk.

Jake

Jake Meadows | Northwest Zone General Manager | Henry Schein Dental
10920 West Lincoln Ave West Allis, WI 53227 | 414.290.2591 Our Mission: To improve the lives of those we touch by focusing on practice care, so dental professionals can focus on patient care.

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

From: Delikat, Patty
Sent: Monday, July 16, 2012 4:01 PM
To: Meadows, Jake
Subject: Re: Few questions! AND AN APOLOGY!

Hi Jake!

drs Minou Karbaksch and debi Enneking are the leaders. We are looking at approx 25 to 30 offices. This program has been presented to the leaders. The discounts were approved by Ron Brown and Dan Stalford. Our goal is at least 20k.

Let me know!

Sent from my iPad
Patty Delikat
Henry Schein Dental

On Jul 16, 2012, at 6:14 AM, "Meadows, Jake" <JAKE.MEADOWS@henryschein.com> wrote:

> Patty,
>
> Couple of questions.
>
> Whois the leader here with his group? How many offices is this? Has it been presented? Were the service discounts approved, by who? How much will each office buy?
>
> Jake Meadows
> Zone General Manager
> Henry Schein Dental

> 414-290-2591

>

> On Jul 9, 2012, at 10:24 PM, "Delikat, Patty" <Patty.Delikat@henryschein.com> wrote:

>

>> Good evening Jake!

>>

>> I hope you had a wonderful 4th of July with your family!

>>

>> First, let me apologize for missing the 3M conference call at 5pm. I had an opportunity to meet with a new doctor who just relocated from Texas, Dr Brian Womack.

>> I did contact my 3m Rep, Dan, and he and I are meeting at 7am tomorrow morning to go over what I missed.

>>

>> Ron and I have been working on putting a buying group together since March. I have attached the information and ask that you review it and give me the BIG YEAH OR NEY.

>>

>> I just want to run it by you to make sure this will be do~able! The baseline is \$500k for the group. I have the names of the "group" that have expressed interest.. I ask Colleen to see who they are assigned to as most are assigned to other reps. If you approve of the buying group, I will then reach out to the other reps and ask them if they would like to grow their business as they are getting very little from these drs at this point.

>>

>> Let me know you thoughts!

>>

>> Have a SUPER evening!

>>

>> Patty Delikat

>> Henry Schein Dental

>> (253) 208-3736

>>

>> "the best way to protect your future, is to create it"

>> ~unknown

>>

>> <GROUP INSTRUCTIONS LETTER 1 OF 4.jpg> <GROUP PAGE 2 OF 4.jpg> <GROUP

>> 3 OF 4.jpg> <GROUP 4 OF 4.jpg>

CX0174

From: Upchurch, Kevin
Sent: Friday, July 18, 2014 10:22 AM
To: Cavaretta, Joe
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: RE: Co-Op summary of conference call

Jeff will present to Andy face to face, letting him know that although we have had a long relationship with each other with their newest decision to add partnerships with companies like P&G and Komet and their desire to develop competitive relationships to HSD that at this time it looks as if we are going down two different paths. " I'm hoping that we will learn that our dentists will continue to change their buying habits as currently demonstrated with our short term agreements with Komet and P&G." (KT asked Andy if they were willing to sign an exclusive with HSD and the answer was a definitive No, they have full expectation to seek competitive companies to HSD to bring to their group.)

They are probably going to align with a Darby over a PDCO but Benco might also jump at the opportunity. The Co-Op is turning into a GPO (even if they don't think they are one now), from what KT has observed in Texas, NM and from Tim S, HSD does not want to enter the GPO world.

Wm. Kevin Upchurch

Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 7:24 AM
To: Upchurch, Kevin
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: RE: Co-Op summary of conference call

OK...the team will not to act with urgency on this. How are we presenting to Andy?

The formal arrangement will end and seems like we are lining up to compete against each other? After 8 years of working together I'm not sure how healthy it is for either party to talk poorly about this other.

Will they go to Darby or is this something PDCO or Benco will jump on?

From: Upchurch, Kevin
Sent: Thursday, July 17, 2014 1:11 PM
To: Cavaretta, Joe
Cc: Titus, Kathleen; Harmon, Jeff (RM)
Subject: Co-Op summary of conference call

Joe

We had a good call today with Jeff and KT about the Utah (soon to be multi state) Co-Op and here are the bullet points:

- We will no longer be a part of the Utah Co-Op (KT will send Andy from the Co-Op a note letting him know that we are discussing the proposal at an executive level, this should buy us a few days to get our ducks in a row)
- Jeff will work on a separation letter (KT provided one that we used to separate from the Texas Co-Op last month), he will send it to KT and I to review once he has completed it.
- We are going to Grandfather the existing Co-Op accounts on the VPA they are currently on which gives them a 8%/9%/10% rebate back each quarter depending on supply purchase volume.
- Before Jeff has a face to face with Andy letting him know of our decision not to be aligned with the Co-Op we will have a plan and information ready for each FSC to take into their accounts.

It was a good call, KT is awesome to have on our team.

KT or Jeff please add on if you feel I missed anything.

Wm. Kevin Upchurch

Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

CX0175

Redacted in Entirety

CX0176

From: Meadows, Jake
Sent: Tuesday, November 03, 2015 5:14 PM
To: Cavaretta, Joe
Subject: Re: Klear Impact Buying Group?

I had to sorry. He was going off about how we do not have any buying group agreements and that we will not do them. Soap boxing about HSD and buying groups.

Jake Meadows
Vice President Sales-East
Henry Schein Dental
10920 West Lincoln Ave <x-apple-data-detectors://0/1> West Allis, WI <x-apple-data-detectors://0/1> 53227
414.290.2591

On Nov 3, 2015, at 5:11 PM, Cavaretta, Joe <Joe.Cavaretta@henryschein.com> wrote:

Did you slide the note to Tim on this?

From: Meadows, Jake
Sent: Tuesday, November 03, 2015 5:08 PM
To: Sullivan, Tim
Cc: Steck, Dave; Cavaretta, Joe
Subject: Re: Klear Impact Buying Group?

Adding Joe since this group is west he can explain in detail.

Jake

Jake Meadows

Vice President Sales-East

Henry Schein Dental
10920 West Lincoln Ave <x-apple-data-detectors://0/1>

West Allis, WI <x-apple-data-detectors://0/1> 53227

414.290.2591

On Nov 3, 2015, at 5:06 PM, Sullivan, Tim <Tim.Sullivan@henryschein.com> wrote:

Jake,

You slid me a note about this group during the SM Budget Meeting. I had just informed Hal (and team) that we do not have plans to open up new Buying Groups, but have a plan ready to roll if needed. Did we just recently add Klear Impact? Who are they, where, etc?

Tim

CX0178

From: Sullivan, Tim
Sent: Wednesday, October 16, 2013 6:50 AM
To: Cavaretta, Joe
Cc: Steck, Dave
Subject: Re: Ron Fernandez Call

True, but they also represent our customers. Their membership is made up of customers. They vote with their dollars too.

On Oct 16, 2013, at 7:01 AM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

I will send again. We are not at the "debt ceiling timeline"
but it is a good idea that we discuss our reaction to the TDA positioning themselves as a competitor.

They need our money from these shows and it is our biggest leverage opportunity.

Sent from my iPhone

On Oct 16, 2013, at 5:57 AM, "Sullivan, Tim"
<Tim.Sullivan@henryschein.com> wrote:

I know you sent message and compared to what CDA is
doing. I don't recall seeing any physical pieces of promotional
activity. Is there such? Has anyone addressed directly with them?
Pulling from show is a major move which I'm not opposed to but want to be sure we've exhausted all other options.

On Oct 16, 2013, at 6:40 AM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

I can send again but they are marketing to their association members what is essentially a GPO
comparing TDA pricing to all dealers including Schein (as the most expensive) in their price comparison.

They are going after the consumable business as a way to generate revenue for the association.

Sent from my iPhone

On Oct 16, 2013, at 5:31 AM, "Sullivan, Tim"
<Tim.Sullivan@henryschein.com> wrote:

Agree that we should NOT be having these discussions w Benco. Chuck has not contacted me nor would he on such a topic.

We need to discuss internally, but think that pulling from show completely would be a mistake short term.

What exactly is TDA doing?

On Oct 16, 2013, at 6:26 AM, "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com> wrote:

Hey Tim,

I'm not sure if Chuck contacted you about the TDA yet. I do believe we need to have some serious conversations with them about their strategy. We can start the conversations from the local level but I'm on board with pulling out of shows if this is the direction dental associations want to take things.

We can use the money to help operating income or fund a discount program.

Joe

Sent from my iPhone

Begin forwarded message:

From: "Showgren, Glenn"
<Glenn.Showgren@henryschein.com>
Date: October 15, 2013 at 1:21:59 PM CDT
To: "Kyle, Dean"
<Dean.Kyle@henryschein.com>, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com>
Subject: Ron Fernandez Call

Call was mostly about the TDA Merch Program. The bullet points for Joe are below:

- Benco considering suspending all activities with the TDA including pulling out of the state show.
- Chuck Cohen will be reaching

out to, or has reached out to, Tim Sullivan to see if HSD would do the same thing.

- Ron wanted to know if I have a relationship with local PDCO RM to see if they would consider pulling out as well.

- I will be having lunch with Ron week after next to discuss concerns and share what we have found about the program

- I laid out ground rules that I will NOT discuss a pricing response and any action would have to be cleared by my Legal Team before communicating with the TDA.

On a side note, he did mention that he is now the manager over Houston as well as South Texas and they intend to keep operations "streamlined" with just one larger region.

Glenn Showgren

Regional Manager

South Texas

Office: 210-545-3147

Fax: 210-545-3525

Glenn.showgren@henryschein.com

<image001.jpg>

CX0186

From: Sullivan, Tim <tim.sullivan@henryschein.com>
Sent: Wednesday, October 29, 2014 11:44 AM
To: Breslawski, Jim; Muller, Hal; Miranda, Rich; Stanley, Graham; Stamer, Murray
Subject: Dental Gator
Attachments: image001.jpg; image007.png; image004.jpg; image006.jpg; image001.jpg;
image004.jpg; image006.jpg; image007.png

Flag Status: Flagged

Another challenge in the field and this one in particular is coming up more and more often. How do we budget for this internal conflict?

Begin forwarded message:

From: "Meadows, Jake" <JAKE.MEADOWS@henryschein.com>
Date: October 29, 2014 at 11:33:08 AM CDT
To: "Sullivan, Tim" <Tim.Sullivan@henryschein.com>, "Steck, Dave" <Dave.Steck@henryschein.com>, "Gantos, Kam" <KAM.GANTOS@henryschein.com>, "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Subject: Fwd: Dental Gator

Daniel's response.

Sent from my iPad

Begin forwarded message:

From: "Hobson, Daniel" <Daniel.Hobson@henryschein.com>
Date: October 29, 2014 at 10:52:51 AM CDT
To: "McLemore, Randall" <Randall.McLemore@henryschein.com>, "Porro, Michael" <Michael.Porro@henryschein.com>, "Krause, Jason" <Jason.Krause@henryschein.com>, "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>, "Meadows, Jake" <JAKE.MEADOWS@henryschein.com>
Subject: Re: Dental Gator

Dental Gator is owned by our EDSO, MB2 Dental. MB2 is a \$2M plus merchandise customer and recently became Dentrax Enterprise's largest software purchase. Similar to Heartland Dental, MB2 goes after offices by setting them up as "consultant practices" to win them eventually as MB2 owned offices. In the last few months, 10 practices have joined Dental Gator and 3 of them have converted to full MB2 ownership. Thus their model is working.

In our prime vendor agreement we spelled out specific terms and restrictions about these consulting offices to prevent Dental Gator from being a typical GPO. They hired Patrick Gill to help them find offices and to teach them best practices, formulary compliance, software options, financing options (HSFS), etc. .

Yes, with reduced pricing being a big lead in this will cause some issues. We do our best to review each situation, and no, we do not promote Dental Gator.

Hope this makes sense.

Daniel

Daniel Hobson

Strategic Account Manager

Henry Schein Special Markets

(949) 378-4548

From: <McLemore>, Randall McLemore
<Randall.McLemore@henryschein.com>
Date: Wednesday, October 29, 2014 at 5:52 AM
To: "Porro, Michael" <Michael.Porro@henryschein.com>, "Krause, Jason"
<Jason.Krause@henryschein.com>, Joe Cavaretta <Joe.Cavaretta@henryschein.com>, Jake Meadows
<jake.meadows@henryschein.com>, Daniel Hobson <daniel.hobson@henryschein.com>
Subject: RE: Dental Gator

Patrick is involved, they are linked to MB2.

Daniel Hobson is managing the group.

Gator? Daniel, check out the link below. Can you let Michael know the status of our relationship with Dental

Randall McLemore

Regional Manager

Dallas / Ft. Worth Center

Ph: (214) 966-7632

Fx: (817) 251-8116

randall.mclmore@henryschein.com

<<mailto:randall.mclmore@henryschein.com>>

[cid:image001.jpg@01C89327.97AF12E0](#)

Follow this link to our Business Solutions <[http://www.henryschein.com/us-en/sites/wedothat/index.html/txgp208t/Randall.Mclmore\\$/11Toshiba%20Desktop](http://www.henryschein.com/us-en/sites/wedothat/index.html/txgp208t/Randall.Mclmore$/11Toshiba%20Desktop)>

From: Porro, Michael
Sent: Wednesday, October 29, 2014 6:48 AM
To: Krause, Jason; McLemore, Randall; Cavaretta, Joe; Meadows, Jake
Subject: Dental Gator

Hey Team –

What do we know about Dental Gator?

Its come up a few times in the past week or so then I saw this.....

I think Patrick Gill (former HSD) is involved. I have also heard about MB2 Dental.....is that linked to it?

Is it a buying group? How are we linked into this?

Just wanted to get a better understanding and I figured this group would know

Thank you

<http://www.linkedin.com/in/cynthiagoranson>

Michael Porro

Henry Schein Dental

Atlantic Coast Zone General Manager

Charlotte Office / 704-234-0400

Cell / 978-761-3064

<http://companies-history.com/wp-content/uploads/2013/07/Henry-Schein.jpg>

Henry Schein Cares

Foundation<http://www.monsanto.com/sitecollectionimages/fortune-most-administrator-2014.jpg>

CX0188

From: Muller, Hal
Sent: Wednesday, January 28, 2015 6:53 AM
To: Breslawski, Jim; Sullivan, Tim
Subject: Re: Dental Gator

Please remember this is a \$2M+ customer using this as a way to look under the covers- it is not just a pay \$699/month type group— BUT I AGREE- We have looked at the true buying groups and have a spread sheet I will forward on by the end of the week- Darby is the lead supplier —

Hal

HENRY SCHEIN SPECIAL MARKETS
Hal S. Muller
President

631-390-8150

On 1/28/15, 7:49 AM, "Breslawski, Jim" <Jim.Breslawski@henryschein.com> wrote:

>Thanks. It is important that while accommodating for unique reasons
>here, we don't help open the floodgates on buying groups!

>
>jb
>

>-----Original Message-----

>From: Muller, Hal
>Sent: Wednesday, January 28, 2015 7:36 AM
>To: Breslawski, Jim; Sullivan, Tim
>Subject: Re: Dental Gator

>
>We haven't as of yet-
> Here is where we are- our SAM is there today, he is going to tell
>them we need to do something differently with them. He is also going to
>let them know that if they sell their main business (it is for sale)
>that we will not support Gator on its own.
> This is not a pure buying group- they have 12 services they offer- as
>an example recently offices have joined Dental Gator and stayed with
>their current supplier and did not use the product savings plan-
>HOWEVER, I do agree they can not offer their DSO pricing to the 20
>offices under Dental Gator (that is an average 2 offices per month they
>have brought on, to basically see if they want to buy them).
>

CX0188-001

>
>Hal
>
>HENRY SCHEIN SPECIAL MARKETS
>Hal S. Muller
>President
>
>631-390-8150
>
>
>
>
>
>On 1/28/15, 7:12 AM, "Breslawski, Jim" <Jim.Breslawski@henryschein.com>
>wrote:
>
>>Hi Tim and Hal. Hope you guys had time to talk. Let me know where you
>>ended up with this.
>>
>>Thanks
>>jb
>>
>>-----Original Message-----
>>From: Sullivan, Tim
>>Sent: Monday, January 26, 2015 11:32 PM
>>To: Muller, Hal
>>Cc: Breslawski, Jim
>>Subject: Re: Dental Gator
>>
>>Let's chat live.
>>
>>
>>> On Jan 26, 2015, at 5:18 PM, Muller, Hal
>>><Hal.Muller@henryschein.com>
>>>wrote:
>>>
>>> Right this is the weakest MM plan and one used by HSD in the past.
>>>This is not the PG plan.
>>> The discount will be the G-10 so 10% off. Most of these accounts are
>>>well north of \$25k many +|- \$50k.
>>> Do you know what plan is being offered to to offices the big buying
>>>group that was in HSD is using to try to keep those customers? We
>>>would be glad to use that so there is consistency?
>>>
>>> Tim I am trying here. MB2 is open to this as they are offering much
>>>more than pricing.
>>>
>>>
>>>
>>>> On Jan 26, 2015, at 4:16 PM, Sullivan, Tim
>>>><Tim.Sullivan@henryschein.com> wrote:
>>>>
>>>> So customers doing \$15k in Merch can buy at same pricing as our MM

>>>>customers by joining this buying group? I really don't want to be
>>>>difficult Hal, but this isn't any different then current scenario
>>>>really, right?

>>>>

>>>>

>>>>> On Jan 26, 2015, at 12:22 PM, Muller, Hal

>>>>><Hal.Muller@henryschein.com> wrote:

>>>>>

>>>>> Tim-

>>>>> Here is what we would like to do with Dental Gator- They currently
>>>>> have 20 offices. The DG offices are purchasing under the pricing
>>>>> for the Elite Customer ³ MB2²

>>>>>

>>>>> We do not want to stop helping our customer - however we
>>>>>understand the issue- We would like to continue to support DG
>>>>>allowing them to use the G plan pricing going forward- the same
>>>>>pricing HSD can offer groups of offices.

>>>>> The customers stay at full commission as they will be under the G
>>>>>plan.

>>>>>

>>>>> The current 20 offices would be allowed their current pricing
>>>>>through June 30th.

>>>>> There will be no chargebacks so that the suppliers can not say
>>>>> anything-

>>>>>

>>>>> Seeing as the comments from the FSCs range from being upset to
>>>>> neutral to ³I could never would have gotten this account without
>>>>> this² - I feel we should be OK. we are still keeping the lid on
>>>>> advertising our name- (the issue last week was a technology
>>>>> company showing their video capabilities and the clip said noting
>>>>> about
>>>>> Schein²)

>>>>>

>>>>> Can we live with this?

>>>>>

>>>>>

>>>>> Hal

>>>>>

>>>>> HENRY SCHEIN SPECIAL MARKETS

>>>>> Hal S. Muller

>>>>> President

>>>>>

>>>>> 631-390-8150

>

CX0193

Sender: Hoff, Theresa </O=HSI/OU=NYME/CN=RECIPIENTS/CN=THERESA.HOFF>
Sent: Tuesday, September 17, 2013 5:59:09 PM
Recipient: Barr, Bill <William.Barr@henryschein.com>;Hinsch, Paul
 <Paul.Hinsch@henryschein.com>;McKinley, Dave
 <Dave.McKinley@henryschein.com>;Miranda, Rich
 <Rich.Miranda@henryschein.com>;Stanley, Graham
 <Graham.Stanley@henryschein.com>;Berkey, Paul
 <Paul.Berkey@henryschein.com>;Foley, Randy
 <KeithRandy.Foley@henryschein.com>;Steck, Dave
 <Dave.Steck@henryschein.com>;Muller, Hal <Hal.Muller@henryschein.com>
Cc: Connett, Brad <Brad.Connett@henryschein.com>;Sullivan, Tim
 <Tim.Sullivan@henryschein.com>
Subject: Medical-Dental GPO Presentation
Attachments: Medical-Dental GPO 9-18-13.pptx

Hi there,

Attached please find the presentation that Brad and Bill will be starting tomorrow's GPO discussion with. For Melville participants hard copies will be provided.

Dave / Hal – team is aware you are unable to attend but sending attachment to you as an fyi...

Thanks

T

From: Connett, Brad
Sent: Tuesday, September 17, 2013 6:45 PM
To: Hoff, Theresa
Cc: Barr, Bill; Connett, Brad
Subject: tomorrow

Hi Theresa,

Here is the PP we will be started the meeting with. It will be the foundation/starting point for our discussion.

We can do on a screen if that is preferred, or handouts.

Whatever you think Jimmy would prefer?

Thanks,
Brad

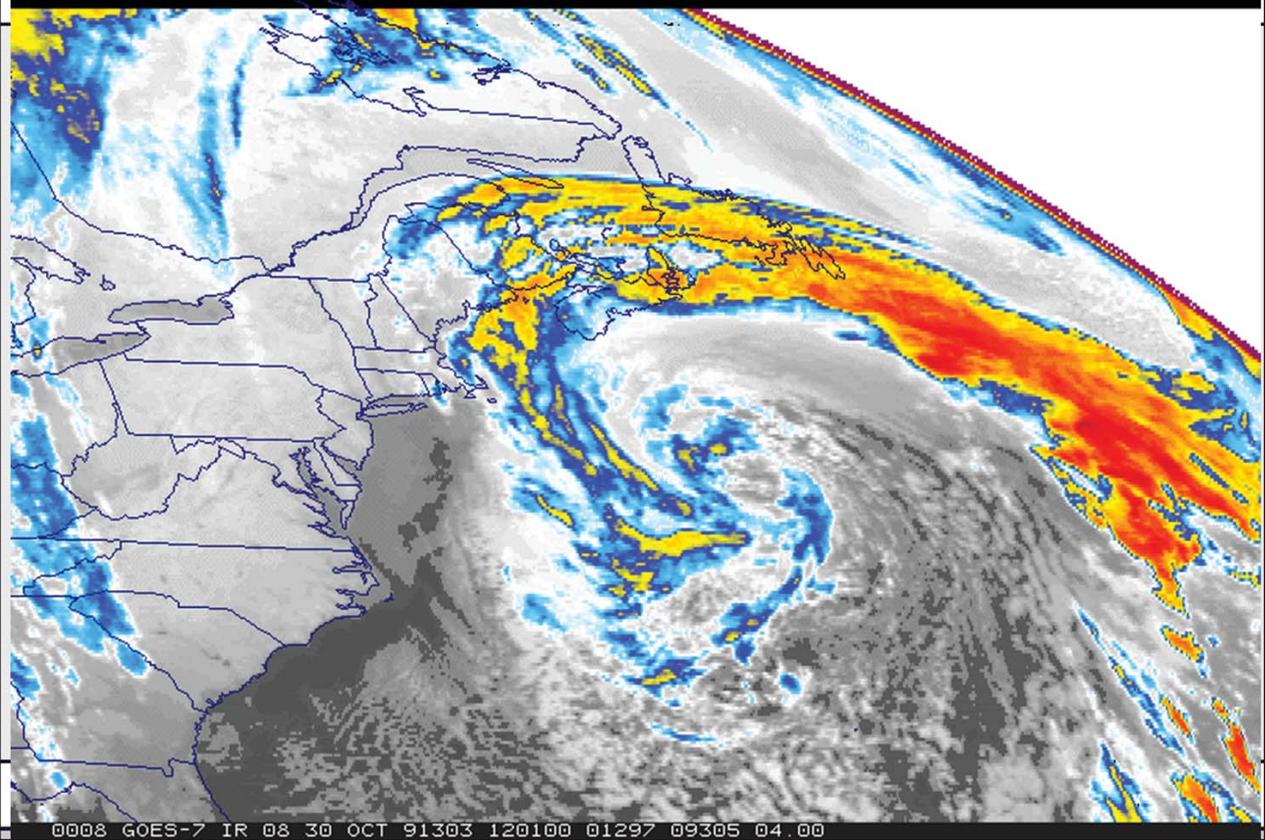


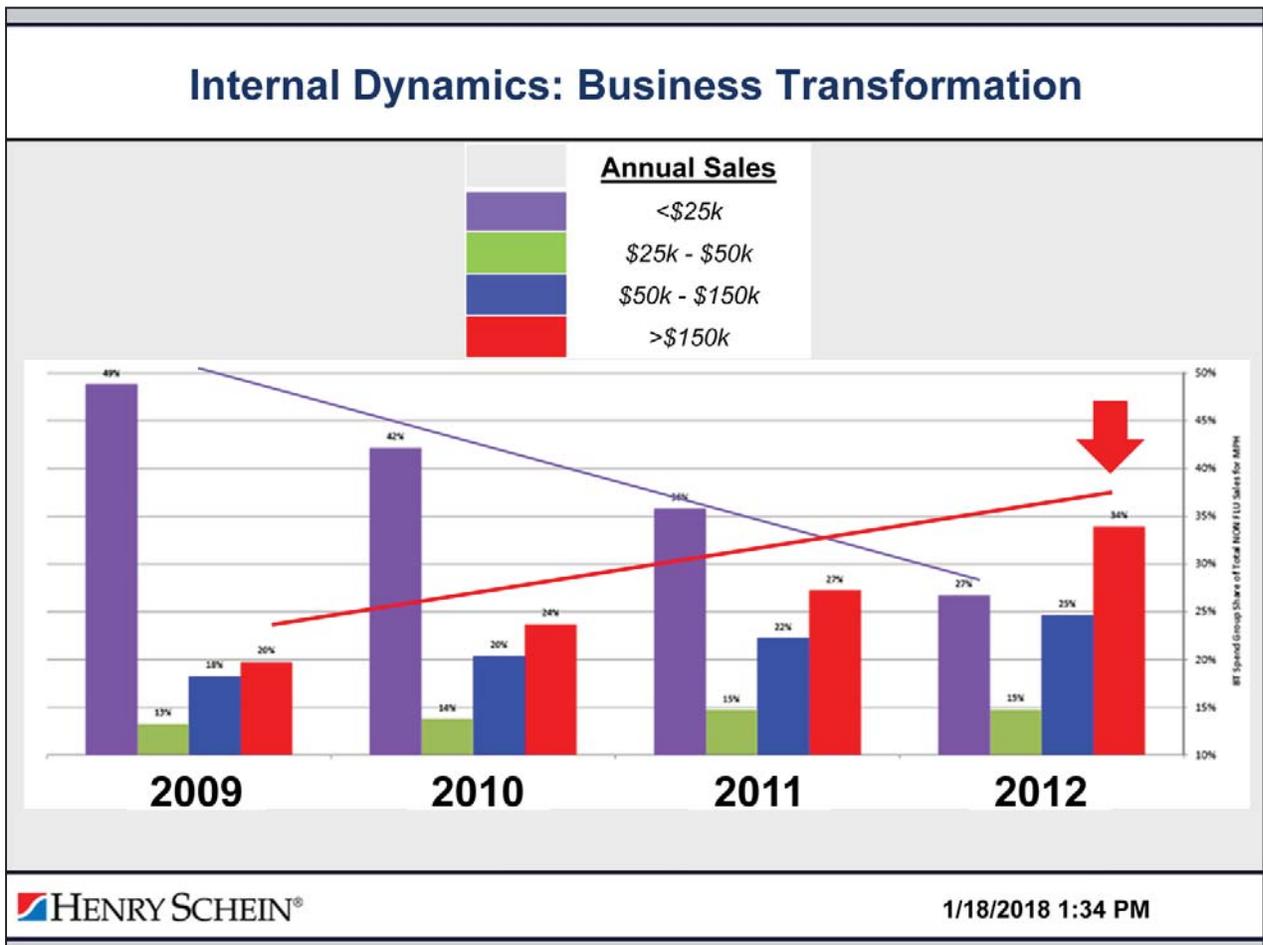
Henry Schein Medical and Dental
September 18, 2013

1/18/2018 1:34 PM

1

THE PERFECT STORM





“A” Value customers spending +\$21k per Bill-To.
 Higher penetration of A/B accounts

Why the Discussion

“The world is changing all around us. To continue to thrive as a business over the next ten years and beyond, we must look ahead, understand the trends and forces that will shape our business in the future and move swiftly to prepare for what's to come. We must get ready today for tomorrow.”

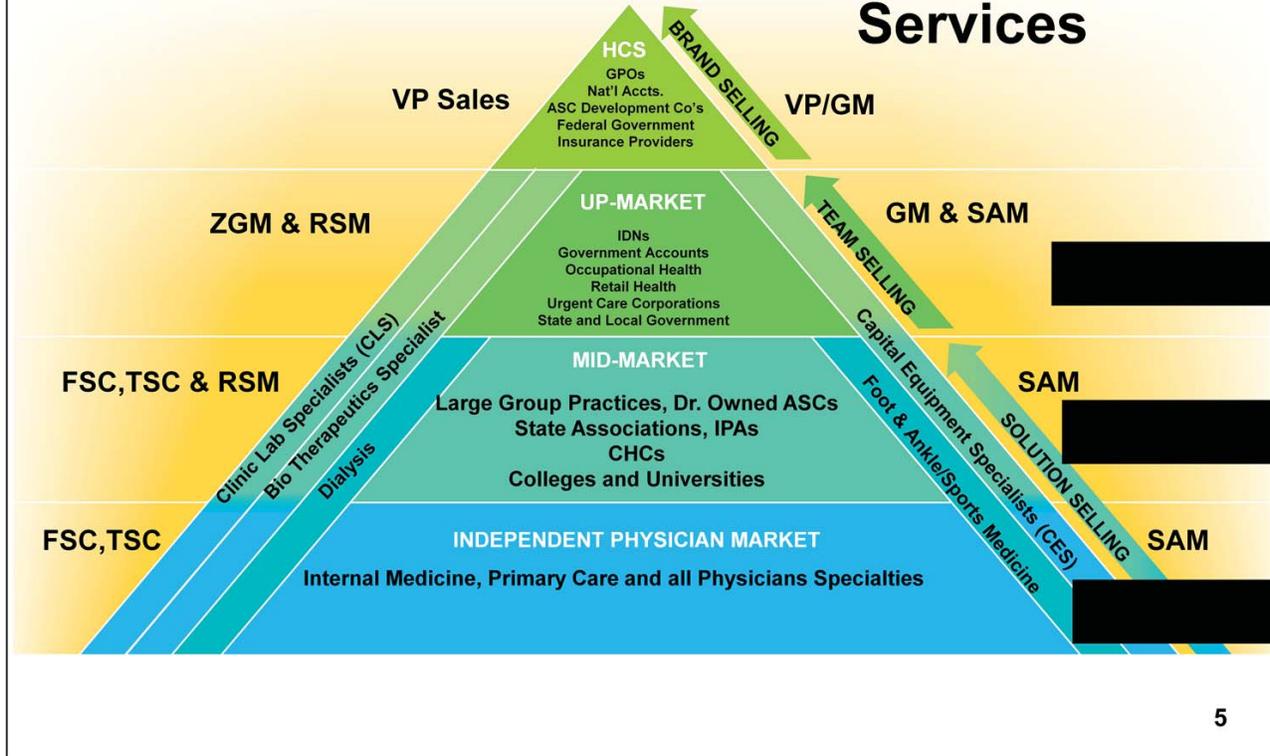
The Coca-Cola Company

Today's Foundation



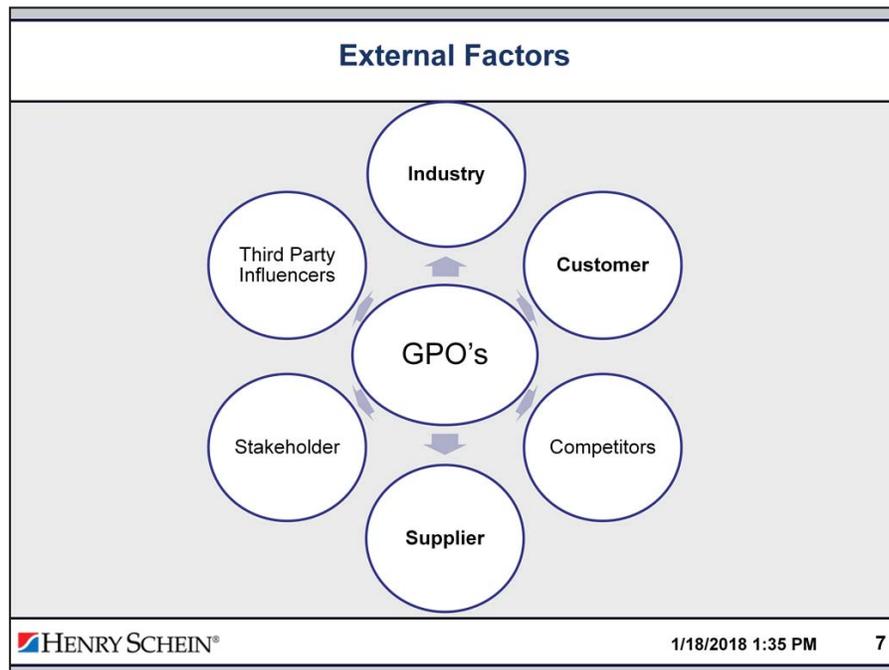
Sales

Healthcare Services



Internal Factors





What do we know about GPO's

- **They are here to stay.**
 - *passing the legislative scrutiny*
 - *IDN spin offs*
 - *Avamed and Medtronic withdrawal.*
- **They continue to get larger annually.**
- **They continue to structure through layers of affiliates.**
- **They continue to search for Growth Markets including Hospitality, Dental, Animal Health, and Major League Sports.**
- **We know they are well run, funded and advocated for. (HSCA)**
- **We know they are masters of analytics and data points.**
- **We know they want to be more than just contract negotiators.**
- **We know they have contacted Dental competition.**
- **We know that opening the door for them on their terms is not a favorable approach.**

5 Major GPO's



North Shore LIJ

ME MedExpress

CHS

INDIANA UNIVERSITY HEALTH

CookChildren's

PROHEALTH CARE ASSOCIATES

Texas Health Resources

NYU Langone MEDICAL CENTER

Adventist Health

CHS

WINTHROP University Hospital
Your Health Means Everything.

NYU Langone MEDICAL CENTER

MedAssets

PROVIDENCE Health & Services

FLORIDA CANCER SPECIALISTS & Research Institute

Mount Sinai Hospital

PREMIER

IASIS HEALTHCARE

Amerinet

HEALTHTRUST

take care health systemsSM
a *Walgreens* Health and Wellness Company

1/18/2018 1:35 PM

Strong Industry Relationships

Professional Affiliations



Affinity Relationships



GPO Purchase Volumes 2012

Programs	Schein 2012 Sales	Schein YTD July 2013 Sales	Total GPO Purchase Volume 2011	Total GPO Volume 2012	No of Alternate Site Members 2011	No of Alternate Site Members 2012	Health Systems / IDNs 2011	Health Systems / IDNs 2012	Hospitals 2011	Hospitals 2012	Non Acute Program Trade Name	Private Brand
MedAssets & Affiliates	\$422.9 Million	\$265.4 Million	\$45.0 Billion	\$48.0 Billion	90,000 (2,200 ASC)	90,000	180	180	4000	4000		
Premier, GNYHA & Sponsors	\$52.9 Million	38.1 Million	\$43.0 Billion	\$43.0 Billion	85,000	100,000	200	185	2700	2900	Continuum of Care Provider Select (McKesson)	PremierPro
Novation & Channel Partners	\$116.5 Million	\$129.0 Million	\$40.0 Billion	\$43.0 Billion	72,000	65,000	NA	NA	VHA 250	1400		
HealthTrust PG	\$24.1 Million	\$18.8 Million	\$20.0 Billion	\$21.2 Billion	10,600	NA	NA	NA	UHC	1400	Provista	NovaPlus
Amerinet & Affiliates/ Alliances/HRS	\$64.9 Million	\$39.4 Million	\$7.7 Billion	\$8.0 Billion	53,280 (21,812 Clinics / 2,539 ASC)	67,000 Acute & Non Acute	134	NA	2918	NA		CHOICE
ROI	\$	-	\$0.8 Billion	\$0.8 Billion								
Total	\$681.3 Million	\$490.7 Million	\$155.7 Billion	\$163.2 Billion					11018			

What do we not know about GPO's

- Will they be successful in baiting a Dental company into working with them?
- Will the Supplier industry support contracts in the Dental market?
- How many Dental products and suppliers currently work with GPO's?
- What's the overall contract penetration?
- What discussions are currently in play?
- Is the distributor relationship the “chicken or egg”?
- What is our own dental history in speaking with GPO's?
- Is there a leverage opportunity that creates a “One Schein”?
- How will they approach contracting ie:
 - *Broadlane Model*
 - *Amerinet Model*
 - *Somewhere in between*

What do they Want and Need?

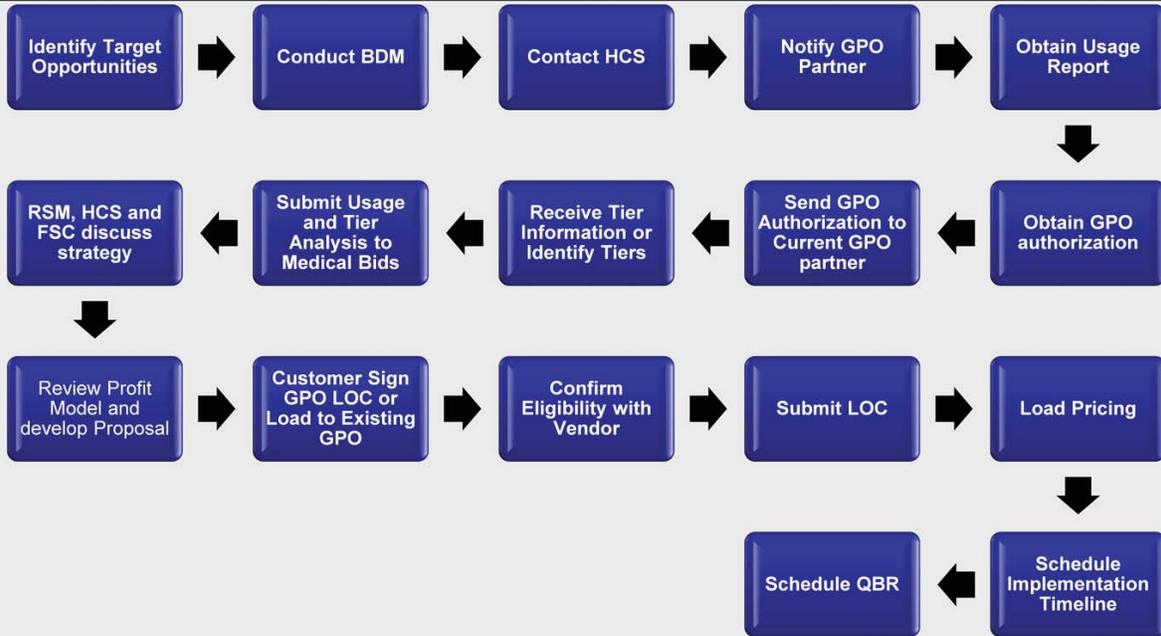
- **Growth**
 - Adding more non-acute products on contract (added margin pressure)
 - Adding services: Web Based tools and Purchasing Programs, Capital Equipment Development and Planning
 - Positioning for Non-Acute expertise
 - Expanding into non-medical verticals
 - Becoming more than “GPO”
- **Consultative Lead** – customers view GPO as ‘strategic partner’ (Acute)
 - Health systems as ‘shareholders’
- **Data Analytics** and ownership
- **Drive Competition**
- **Cover all their bases’ with services and providers.**
- **Admin Fees**
- **Transparency-Reporting**
- **Business Commitments**
- **Layers**
- **Intel**
- **Relationships**

Over \$7M in admin fees paid to 29 GPOs/Affinity Groups (2012)

What Do We Need?

- **Lower Cost to Products:**
 - *Base Contracts*
 - *Committed Contracts based on:*
 - ❖ *Volume*
 - ❖ *Commitment*
- **Lead Generation where they own “consultative lead”.**
- **Pre Win support in Contract access.**
- **Post Win support in Contract Implementation.**
- **Quick Rostering Abilities.**
- **Not to interfere with existing business.**
- **Not to interfere with supplier relations.**
- **Not to share our models and data with third party influencers.**
- **Be a good Partner!**

What do we get?



In some cases we gain access to Private Label Products

- blood pressure cuffs
- chart paper
- crutches
- elastic bandages
- electrosurgical pencils
- equipment covers
- exam gloves
- grounding pads
- healthcare textiles
- hot and cold packs
- ice bags
- infusion therapy kits
- medical paper products
- minor procedure trays
- monitoring electrodes
- non-sterile kits
- O.B. specialty products
- O.R. accessories
- Omnipaque, Omniscan, Vispaque
- patient care plastics
- patient footwear
- patient id bands
- pencil thermometers
- personal protective apparel
- room turnover kits
- scalpels
- sharps containers
- specialty bags
- sponges & towels
- standard or procedure trays
- suction canisters
- thermometry
- urinary catheters
- witch hazel pads
- 107 Pharmaceuticals
- Respiratory
- Anesthesia supplies



4724 Total Items

Tubing Insufflation Novaplus Strl 10' w/ .1um Filter 20/Ca (4657399)
Deroyal Industries Inc (28-0207)
Removal Skin Novaplus Suture Tray 50/Ca (6025871)
Medical Action Industries (56744)
Collector Specimen Novaplus Commode Ea, 100 EA/CA (6020024)
Medical Action Industries (7807V)
Novaplus Depo-Medrol Inj SDV 40mg/ml 1ml 25/Bx (9080020)
Pfizer Injectables (00009307323)
Novaplus Depo-Medrol Inj SDV 40mg/ml 1ml/VI (9080018)
Pfizer Injectables (00009307322)
Novaplus Depo-Medrol Inj SDV 80mg/ml 1ml 25/Bx (9080022)
Pfizer Injectables (00009347523)
Novaplus Depo-Medrol Inj SDV 80mg/ml 1ml/VI (9080021)
Pfizer Injectables (00009347522)
Novaplus Isoflurane Liquid Inhalation 99.9% 100mL/Bt (1182000)
Piramal Critical Care(RxElite) (66794001910)
Novaplus Isoflurane Liquid Inhalation 99.9% 250mL/Bt (1182001)
Piramal Critical Care(RxElite) (66794001925)
Novaplus Ketorolac Inj SDV 2ml 60mg/2ml 25/Bx (2580132)
Hospira Worldwide, Inc (03796-49)
Novaplus Ketorolac SDV 1ml 30mg/ml 25/Bx (2580131)
Hospira Worldwide, Inc (03795-49)
Novaplus Midazolam MDV 1mg/ml 10ml 10/Bx (2580134)
Hospira Worldwide, Inc (02587-53)
Novaplus Midazolam SDV 1mg/ml 2ml 25/Bx (2580135)
Hospira Worldwide, Inc (02305-21)
Novaplus Midazolam SDV 1mg/ml 5ml 10/Bx (2580133)
Generic Product (02305-50)
Novaplus Naropin Inj SDV 5mg/ml 30ml/VI (1500123)
App Pharmaceuticals(Branded) (63323028637)
Novaplus Propofol Inj SDV 10mg/ml 100ml 10/Bx (1181422)
APP Pharmaceuticals Inc (63323027067)
Novaplus Propofol Inj SDV 10mg/ml 50ml 20/Bx (1181423)
APP Pharmaceuticals Inc (63323027057)
Novaplus Propofol SDV 10mg/ml 20ml 10/Bx (1181679)
APP Pharmaceuticals Inc (63323027026)
Novaplus Suprane Liquid Inhalation 99% 240mL 6/Ca (2090008)
Baxter Anesthetic & Crit Care (10019064424)
Novaplus Ultane Liquid Inhalation 100% 250mL 1/Bt (2580128)
Abbott Laboratories (00074445651)
Urinal Novaplus w/ Lid Disposable Ea, 50 EA/CA (6020025)
Medical Action Industries (7801V)

Windows Internet Explorer

The NovaPlus line of injectables is only available to members of Novation who are enrolled in the Novation pharmacy program. For more information, call the DuRx Solutions hotline at 877-523-7468 or contact your Henry Schen sales consultant.

This product is a prescription drug. If your State License number is on file we can ship this item to you. Otherwise, please include your State License number in the comments section of the order.

OK

1/18/2018 1:35 PM

We also get the “Third Party Influences”

- **Consultants**
- **Management Companies**
- **Insurance Companies**
- **Private Equity Firms**
- **Fly by night Expense Reduction Analyst**

All of the above wanting to be a GPO or partner with one.
Additionally under the GPO’s you end up with:

- **GPO’s**
 - *Regional Purchasing Coalitions (RPC’s)*
 - *Faith Based contracting Groups.*
 - *Aggregators*

What is the criteria for working with these partners?

Influence in the market -

What do we Do?

- Medical Simply must work with GPO's to stay viable and competitive in the IDN space which is 50% of the market. The traditional customer segment is also GPO occupied due to distribution needs and increased coverage.
- Draw some lines, we cant work with everyone, certainly cannot keep everyone happy and the operations, legal and marketing work is unsustainable.
- Shape your decision to meet your needs, Dental has all the leverage today.
- Do not buy into the Medical Model. Build a new one.
- Vet out GPO's with an RFI of our own.
- Meet with the top dental suppliers and fully understand their strategy and assigned teams. Get them on record.
- Limit your partners and drive exclusives at the GPO level.
- Understand the short and long term goals and gains.
- If you elect to enter market, Work with HCS Medical as a "One Schein" solution, we can define and sell it in a manner that works for us all.

Discussion

• Hal's Questions:

1. Can we save on Cost of Goods?
2. In CHC's and Hospitals where Dental is the ship agent will their be a benefit?
3. Do the manufacturers want to do this? Is their a way to find out?
4. Does our own GPO make any difference?
5. Will we pay on Non contract items?
6. Pay on CHC's? DSO's, institutional, federal, dental schools?
7. How do we handle internal process? Headcount?
8. What is the additional Headcount cost?
9. What is the process of acceptance from the manufacture?
10. Would this be labor intensive, how long does it take to know if ship to is acceptable and what the cost basis will be?
11. Does every location need to be approved?
12. What GPO should we work with....our own?
13. Is Private Brand pricing usually beat out by GPO contracted items?

CX0196

Redacted in Entirety

CX0198

From: Foley, Randy
Sent: Friday, April 05, 2013 7:34 AM
To: Muller, Hal
Subject: RE: Atlantic Dental Care - HOT
Attachments: RE_ Atlantic Dental Care - HOT.msg; RE_ Atlantic Dental Care - HOT.msg

Do you think Abramovich knows anything about this group?

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <mailto:randy.foley@henryschein.com>

From: Muller, Hal
Sent: Friday, April 05, 2013 7:59 AM
To: Porro, Michael; Sullivan, Tim
Cc: Steck, Dave; Foley, Randy; Rogers, Colan
Subject: Re: Atlantic Dental Care - HOT

Family time important!!

Quick question— do you think they have the power to move business?

Has anyone evaluated the profitability if we offer all the stuff on the list of things we are about to offer?’

Thanks— would rather discuss with someone who is not off today!

Hal

CX0198-001

HENRY SCHEIN SPECIAL MARKETS

Hal S Muller

President

(631) 390-8150

From: <Porro>, Michael <Michael.Porro@henryschein.com>
Date: Friday, April 5, 2013 7:55 AM
To: HAL MULLER <hal.muller@henryschein.com>, Tim Sullivan <Tim.Sullivan@henryschein.com>
Cc: "Steck, Dave" <Dave.Steck@henryschein.com>, "Foley, Randy" <KeithRandy.Foley@henryschein.com>, Colan Rogers <Colan.Rogers@henryschein.com>
Subject: RE: Atlantic Dental Care - HOT

Day off for me and I will be out with family but will have time to discuss – most the day is open except for the next 2 hours

Michael Porro

Henry Schein Dental

Atlantic Coast Zone General Manager

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Cell Phone 978.761.3064

michael.porro@henryschein.com <mailto:michael.porro@henryschein.com>

Description: DNSM 2012 logo

CX0198-002

From: Muller, Hal
Sent: Friday, April 05, 2013 6:47 AM
To: Sullivan, Tim
Cc: Porro, Michael; Steck, Dave; Foley, Randy; Rogers, Colan
Subject: Re: Atlantic Dental Care - HOT

Im free rom now till you 8:15 slot and and the later slot--

Hal

HENRY SCHEIN SPECIAL MARKETS

Hal S Muller

President

(631) 390-8150

From: <Sullivan>, Tim Sullivan <Tim.Sullivan@henryschein.com>
Date: Friday, April 5, 2013 7:43 AM
To: HAL MULLER <hal.muller@henryschein.com>
Cc: "Porro, Michael" <Michael.Porro@henryschein.com>, "Steck, Dave" <Dave.Steck@henryschein.com>, "Foley, Randy" <KeithRandy.Foley@henryschein.com>, Colan Rogers <Colan.Rogers@henryschein.com>
Subject: Re: Atlantic Dental Care - HOT

Can we get on a quick call this morning? I'm on 8:15 train, but open to talk prior or again between 2:30 and 3:00 central.

On Apr 4, 2013, at 10:20 PM, "Muller, Hal" <Hal.Muller@henryschein.com> wrote:

Mike, as you probably know the big issue is compliance!! That question should be answered before we know how to quote.

CX0198-003

On Apr 4, 2013, at 10:55 PM, "Porro, Michael" <Michael.Porro@henryschein.com> wrote:

There is still a bit of gray on this group and how tied together they are.....we can go this route or just go right to the formulary....but that is deep

Michael Porro

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michael.porro@henryschein.com <mailto:michael.porro@henryschein.com>

<image001.jpg>

From: Sullivan, Tim

Sent: Thursday, April 04, 2013 8:40 PM

To: Steck, Dave; Muller, Hal; Foley, Randy; Rogers, Colan; Porro, Michael

Subject: Fwd: Atlantic Dental Care - HOT

We should have brought SM team into this much sooner, although this has snuck up on us rather quickly. Our first reaction to this was it was simply a buying group and we were going to walk away. However, the more MP dug onto this the more of a Comfort Dental group this seems to be. Seeing as this then qualifies as potential Elite DSO just as Comfort is, we probably need Randy involved. I'm not sure, however, there is time right now. This is due Monday.

Thoughts?

Begin forwarded message:

From: "Porro, Michael" <Michael.Porro@henryschein.com>
 Date: April 4, 2013, 8:34:19 PM CDT
 To: "Sullivan, Tim" <Tim.Sullivan@henryschein.com>, "Anderson III, Robert (Reg Mgr.)" <Robert.AndersonIII@henryschein.com>
 Cc: "Steck, Dave" <Dave.Steck@henryschein.com>, "Chatham, John" <John.Chatham@henryschein.com>
 Subject: RE: Atlantic Dental Care - HOT

All –

Here is what we plan to offer the group on Monday. We are trying to offer a better rounded program as we could be up against a bid (Benco probably) that just goes way low on price.

- ? CAP program fundamentals
- ? Privileges enrollment
- ? VPA PB03 – I have the formulary he sent me – I added our catalog price and the 9% price if branded, and 18% price if HS brand
- ? 5% Service Certs
- ? \$500/\$1000 Equipment & Tech Coupon
- ? (no Early rewards iPad)

Other Value Adds

- ? Played up the HSPA – noted it would be free if we can not find \$30k min in revenue opportunity
- ? Offered local OSHA seminar at n/c for members
- ? Offered 2 Dentrix study club program for members at n/c

What will be sent over to the group Monday mid-day

1. Cover letter

2. Program overview (CAP program doc modified) – I also will be noting the local team, number of techs, our showrooms, key exclusives etc....

3. Program Discount overview

4. The ADC formula with our price

5. We Do That / HSPA PDF (we have a new one?)

See below – We also talked about a rebate, John mentioned it and Dave and I talked about it. See the particulars about this group and some logic behind the opportunity.

I put out there an idea on a rebate – do we like this? Like it and the rebate percents too much? If we go too low it doesn't look too impactful.

THOUGHTS the above and below direction?

Number of Offices

53

Average Merchandise p/office

\$45,000

~ Total Opportunity

\$2,385,000

Current Sales for group

\$630,000

HSD Sales share of group

26%

Number of offices with \$20k+ in 2012

14

Potential Incremental Business Win

\$1,125,000

(In addition to the 14 that buy now, 25 more offices in the group purchase \$45k each with winning bid)

Rebate Goal

\$ 1,500,000

1.00%

\$ 15,000

Rebate Goal

\$ 2,000,000

1.50%

\$ 30,000

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CX0198-007

michael.porro@henryschein.com

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

From: Sullivan, Tim
Sent: Wednesday, April 03, 2013 9:11 AM
To: Anderson III, Robert (Reg Mgr.)
Cc: Porro, Michael; Steck, Dave; Chatham, John
Subject: RE: Atlantic Dental Care - HOT

Got it . . thanks Bobby.

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

From: Anderson III, Robert (Reg Mgr.)
Sent: Wednesday, April 03, 2013 8:56 AM
To: Sullivan, Tim
Subject: RE: Atlantic Dental Care - HOT

Hello Tim

Two different message's

I believe what Michael has suggested is a good plan. We just need to get in front of the people making the decision so they understand the total value of what we are offering. Not just a price. Not sure what Benco they will offer to this group.

CX0198-008

Second part was for Michael, equipment gp is getting low.

Benco is being very aggressive in the VA market with 15% discount telling doctors that we have overcharged for years. Low balling equipment quotes to get merchandise account.

Thanks

Bobby

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

From: Sullivan, Tim

Sent: Wednesday, April 03, 2013 9:36 AM

To: Anderson III, Robert (Reg Mgr.); Porro, Michael; Chatham, John

Cc: Steck, Dave

Subject: RE: Atlantic Dental Care - HOT

Thanks team. so, Bobby, I'm a little confused with your message. What is your specific recommendation? Your message states that Benco will be price focus only AND that other customers in the area will be watching how we quote this. Two valid points .. so what's the suggestion?

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

From: Anderson III, Robert (Reg Mgr.)

Sent: Wednesday, April 03, 2013 7:49 AM

To: Porro, Michael; Chatham, John; Sullivan, Tim

Cc: Steck, Dave

Subject: RE: Atlantic Dental Care - HOT

Hello Michael

Sounds like a good start. If you talk to Landy, I would like to present to him vs just an email. I don't think he will understand the value of a dpat if we don't explain & go over one in person. At that meeting we could also go over Osha & Hipaa training that we offer.

Just so you know in this market Benco is currently going in with a 15% discount to all of our customers. Has created some problems in accounts that have dealt with HS for years. Doctor's are starting question why Schein has over charged for all these years. Dealing with this issue now in NV with one of Chris Gentry's accounts. Has switched his business to Benco \$50,000 a year. Chris just took the account over, past FSC wasn't actively calling on account. Opened the door to price, Chris is going in today to try to set up a meeting. Chris & Bob(ESS) met with him the week of the Hinman meeting to discuss equipment. We are losing that as well.

So yes we need to be aggressive with ADC, Benco is selling totally on price.

Michael when this is completed, I will need to address several accounts in the VA Beach area. We have been informed that they are watching to see what happens with this deal. I have a meeting with DR. Konikoff's CFO tomorrow morning. They buy over \$1,000,000 a year in merchandise and several hundred thousand a year in equipment. We currently discount 18% in this account. Equip gp generally 28 to 30gp. They were asked to join the group but declined.

Thanks

Bobby

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

From: Porro, Michael

Sent: Wednesday, April 03, 2013 6:40 AM

To: Chatham, John; Sullivan, Tim

Cc: Steck, Dave; Anderson III, Robert (Reg Mgr.)

Subject: RE: Atlantic Dental Care - HOT

CX0198-010

I will work on something this afternoon. I talked to Dave as well.

The plan will be to put together an outline of a program for us to review.

Some of the same elements of the CAP will be in the program - we want to offer a well rounded program that hits more than just supplies. (service certs a nice piece of this) Thinking we have the PB3 as the VPA for the program. We can also include the E& Tech cert - they will be buying equip.

We add in a rebate if sales hit a certain threshold - we get \$630k now, if most all members jump on and order from winner we should expect close to \$2m - maybe we put in a rebate % if they hit \$1.5m and another rebate if they hit \$2m? Rebate would go back to the Atlantic Dental Care group.

My guess is Benco will come hard with just a low price.

Sound okay?

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

From: Chatham, John

Sent: Monday, April 01, 2013 8:37 AM

To: Sullivan, Tim; Porro, Michael

Cc: Steck, Dave; Rogers, Colan; Anderson III, Robert (Reg Mgr.)

Subject: RE: Atlantic Dental Care - HOT

My experience with this is it's all price. In my opinion if they can guarantee a minimum amount that is a significant increase in business then maybe we bid. If not I have never seen a small group let along 53 dentists agree to buy from one source. My vote, no minimum no bid. If we do bid it should be on a rebate basis.

JC

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

From: Sullivan, Tim

Sent: Monday, April 01, 2013 8:29 AM

To: Porro, Michael; Chatham, John

Cc: Steck, Dave; Rogers, Colan; Anderson III, Robert (Reg Mgr.)

Subject: Re: Atlantic Dental Care - HOT

Thanks for message MP. I've added John Chatham as well. I think we should take a shot at this, but also believe we should include full value and not just bid price. We've been talking a lot more lately about approaching large groups with a more value prop including DPAT and/or Consulting Services process. Do we combine a "goal" of \$20k per office increased production or profitability if they commit to the process? That's a \$1 million goal. That should grab groups attention!!

CX0198-012

Happy to participate in call, however don't delay waiting for my schedule today or tomorrow.

Tim

On Mar 31, 2013, at 6:26 PM, "Porro, Michael" <Michael.Porro@henryschein.com
<mailto:Michael.Porro@henryschein.com> > wrote:

> Tim

>

> (Dave you were out, this is the first you are seeing of this)

>

> Following up on the chat we had about the Atlantic Dental Care group in Virginia.

>

> Bobby let me know we were invited to bid on the business of this group. See attached. They gave us a list of products they want us to bid on. At first this looked like just a buying group which led me to initially believe we could do more harm if we bid vs. not submitting a bid. There are 53 members in the group – there is over HSD \$630k merch business tied to the members of this group

> I talked to Joe and Jake – and we talked as well Tim. The thinking is that Benco, a decent player in the market and always hungry, will put in a bid. I decided to call the lead contact of this group, Landy Damsey and open up some dialog to learn more....below are some notes –

>

>

> · I asked about him and the ADC group

>

> o He comes from 20 years in medical, practice management and working to merge practices into supergroups

>

> o 53 Dentists in the group in 32 separate practices

>

> o Jan 1 all combined legally

- >
- > o “we are not a co-op or a buying group...1 corporate structure...unified group of mature practices”
- >
- > · I asked about the bid process and criteria
- >
- > o He did mention the merch spent for the group was probably \$2.5m not the \$3.5 on the letter (that was real high for 53 offices)
- >
- > o Price or value most important – I asked if they consider the total package a company can offer for the bid...he wasn't sure what I meant...I talked about all the things we do, service, CD concepts/big picture helping clients etc....he said that's nice, but came back to price (no surprise)
- >
- > o Re Equip and Tech – he wasn't too sure but he mentioned there is a procurement committee of select dentists in the group to assess tech needs and purchases – that they would be doing site surveys of each office....then they would look to pool some purchases for a better pricemeaning looking at ordering 4 pans at a time etc...
- >
- > o Question I asked “will all the offices in the group have to buy from the winning bidder?”.....”that is the intention of this group...to band together and act as one” ... he wavered a bit saying it was absolute but it seems like it's the goal.
- >
- > He seemed pleasant, he was a bit fuzzy at times but gave me decent information. I could call him again if we need more information. It does appear that this is more than a buying group. The 53 offices are financially tied together in some fashion. Passing on a bid now has more risk. There is also risk if we bid and lose....or win and take a huge hit on margins. If Benco is in, how low will they go? If we win the upside is the other business we don't currently get. Bobby mentioned there is a buzz in the community about this in VA. We should talk for sure – I will catch you in Charlotte Dave. The bid is due Friday but I think we could have a bit more time if we asked.
- >
- > Do we get a call with Bobby and Colan on the phone in addition to the 3 of us?
- >
- >
- >

> Michael Porro

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> <image001.jpg>

CX0199

From: Foley, Randy
Sent: Friday, February 03, 2012 9:26 AM
To: Sullivan, Tim; Burniston, Kevin
Cc: Chatham, John; Peterson, Chris; Steck, Dave; McCloskey, John; Mackay, Jack; Rozin, Rodi
Subject: RE: Smile Source customer list
Attachments: Smile_Source_2010.xls

Not sure how current this list is. I may have another one. Hopefully this will help.

Randy Foley

Director of Sales-Special Markets

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From: Sullivan, Tim
Sent: Thursday, February 02, 2012 9:17 AM
To: Burniston, Kevin
Cc: Chatham, John; Peterson, Chris; Steck, Dave; McCloskey, John; Mackay, Jack; Rozin, Rodi; Foley, Randy
Subject: Re: Smile Source customer list

Copying others for assistance. Not sure best way to track down complete list. I am really interested to see how and what we can do to retain these customers and judge how effective their buying group model is. Let's really take this serious and get after it. I'm really less concerned about the actual revenues, although very important too, rather more about what we can do to KILL the buying group model!!

Thanks,

Tim

On Feb 2, 2012, at 7:41 AM, "Burniston, Kevin" <Kevin.Burniston@henryschein.com> wrote:

Tim,

Here is the list Karoline sent me yesterday. These are all of the accounts that are coded for smile source but I don't believe these are all of the accounts. Some accounts were coded differently because we just recently created the new code for this group. Is there someone in special markets that might have a more complete list? Yes I would like help if possible. I will be presenting all day today and the first half of Friday. If I could get help generating a letter to the doctors and to the regional managers informing them of the changes. I've attached John McCloskey and I'd like to ask his help in creating a report to track sales of these accounts going forward.

Thanks,

Kevin Burniston

Director, U.S. Career Development

Henry Schein Dental

Phone 414-290-2563

Fax 414-321-5163

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<<http://youtube.com/henryscheininc>>

From: Sullivan, Tim
Sent: Wednesday, February 01, 2012 11:05 AM
To: Burniston, Kevin; Chatham, John
Cc: Peterson, Chris; Steck, Dave
Subject: RE: Smile Source customer list

I'm sure Rodi or Jack could help gather pretty quickly for you. need help?

From: Burniston, Kevin
Sent: Wednesday, February 01, 2012 9:46 AM

To: Sullivan, Tim; Chatham, John
Cc: Peterson, Chris; Steck, Dave
Subject: RE: Smile Source customer list

Yes the problem is collecting all the Smile Source accounts. We were using multiple codes in our system so I'm having a hard time figuring out what accounts were signed up with Smile Source. I will have a completed list today.

Kevin Burniston

Director, U.S. Career Development

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Fax 414-321-5163

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<<http://youtube.com/henryscheininc>>

From: Sullivan, Tim
Sent: Wednesday, February 01, 2012 9:44 AM
To: Burniston, Kevin; Chatham, John
Cc: Peterson, Chris; Steck, Dave; McCloskey, John
Subject: RE: Smile Source customer list

Didn't they fire us three weeks ago?

From: Burniston, Kevin
Sent: Wednesday, February 01, 2012 9:41 AM
To: Sullivan, Tim; Chatham, John
Cc: Peterson, Chris; Steck, Dave; McCloskey, John
Subject: RE: Smile Source customer list

1. I am creating a list of Smile Source Customers
2. I will send a letter to the regional managers who have Smile Source accounts
3. I will work with John McCloskey to track retention on accounts.

Kevin Burniston

Director, U.S. Career Development

Henry Schein Dental

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Fax 414-321-5163

Facebook <<http://www.facebook.com/profile.php?id=100002136985788&v=info>> We Do That
<<http://www.henryschein.com/us-en/sites/wedothat/index.html>>

<image001.jpg> <<http://www.henryschein.com/careers>>

Facebook <<http://facebook.com/henryscheindental>> | Twitter <<http://twitter.com/hscheindental>> | YouTube
<<http://youtube.com/henryscheininc>>

From: Sullivan, Tim
Sent: Tuesday, January 31, 2012 3:17 PM
To: Burniston, Kevin; Chatham, John
Cc: Peterson, Chris; Steck, Dave
Subject: Smile Source customer list

How are we doing with them? what tracking mechanism do we have in place to track performance going forward?

<SMILE SOURCE VPA active Feb 2012.xlsx>

						Jan-10
Sales		Customer				Net
Division	Current Sales Plan	Number	Practice Name	City	State	Sales
DSM	SSCRC	321850	Miller, William Douglas	Burbank	CA	1,299
DSM	SSCRC	516164	Goldsmith, Andrew	Colorado Springs	CO	24,814
DSM	SSCRC	105197	McKenna, David L	Palo Alto	CA	6,442
DSM	SSCRC	219486	Graham, Emily	Spring	TX	18,481
DSM	SSCRC	269641	Charity, Ronald	Colorado Springs	CO	689
DSM	SSCRC	1190576	Smile Source	Payson	AZ	439
DSM	SSCRC	1329513	Shah, Raoul	Fremont	CA	3,726
DSM	SSCRC	1627553	Southern Square Dentistry	Mesa	AZ	2,922
DSM	SSCRC	1627584	S S Greg Dumitru	Mesquite	NV	10,556
DSM	SSCRC	1698526	Monroe, Kelly R	Denver	CO	0
DSM	SSCRC	1713138	Jared Williams	Mesa	AZ	0
DSM	SSCRC	1725469	SS- William Blackmore	Payson	AZ	3,198
DSM	SSCRC	1814638	SS-Jason Barton	Salt Lake City	UT	1,661
DSM	SSCRC	1814647	SS-Jason Barton	Kaysville	UT	1,548
DSM	SSCRC	1817393	SS-Patrick Bondad	Saint George	UT	0
DSM	SSCRC	1828594	Olsen, Kelly	Saint George	UT	3,608
DSM	SSCRC	2232996	Bittner Jr, Gerald	San Jose	CA	14,460
DSM	SSCRC	2233666	SS-Mark J Escoto	Las Vegas	NV	2,795
DSM	SSCRC	2245380	SS-James J Choy	Kailua	HI	809
DSM	SSCRC	2247505	SS-James J Choy	Haleiwa	HI	968
DSM	SSCRC	2255231	Smile Source	Chula Vista	CA	732
DSM	SSCRC	2456257	Exceptional Dentistry	Colorado Springs	CO	0

Totals				99,147
Net Sales	GP\$ w/Chargeback	Line Count	Net Freight	
625,205	195,616	8,971	3,616	

<i>Jan-10</i>			<i>Feb-10</i>			<i>Mar-10</i>				
GP\$	Line	Net	Net	GP\$	Line	Net	Net	GP\$	Line	Net
w/Chargeback	Count	Freight	Sales	w/Chargeback	Count	Freight	Sales	w/Chargeback	Count	Freight
396	22	0	2,706	744	28	33	1,329	458	31	2
9,707	241	121	11,508	3,354	155	32	8,128	2,446	104	11
1,734	78	23	7,608	2,370	84	18	7,444	2,191	92	48
6,724	163	71	13,888	4,479	77	13	8,457	3,097	96	25
331	16	9	1,806	745	37	19	1,633	694	34	19
109	7	25	0	0	0	0	0	0	0	0
1,128	81	30	2,476	904	49	23	1,822	578	37	18
859	37	9	3,080	853	38	30	2,196	496	24	7
3,602	167	19	3,734	1,221	55	2	6,814	1,933	91	23
0	0	0	76	26	3	9	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0
1,048	77	19	3,890	1,341	65	23	2,465	850	60	9
570	33	7	1,653	489	27	5	1,908	657	34	7
600	38	18	1,853	790	33	7	1,627	497	23	7
0	0	0	100	26	4	5	689	177	14	5
1,277	50	14	678	279	14	4	3,992	1,106	45	41
3,966	130	36	7,694	2,331	101	30	12,562	3,782	102	50
832	61	16	803	326	19	5	2,451	620	30	11
265	18	5	446	110	9	2	666	272	12	5
423	32	8	478	146	12	2	560	146	14	2
249	18	9	1,015	265	27	61	1,111	301	27	29
0	0	0	0	0	0	0	0	0	0	0
33,820	1,269	439	65,492	20,799	837	321	65,854	20,301	870	320

<i>Apr-10</i>				<i>May-10</i>				<i>Jun-10</i>		
Net Sales	GP\$ w/Chargeback	Line Count	Net Freight	Net Sales	GP\$ w/Chargeback	Line Count	Net Freight	Net Sales	GP\$ w/Chargeback	Line Count
443	132	14	0	2,995	772	33	5	2,436	838	49
10,019	2,863	125	11	11,325	3,123	134	99	9,788	2,698	117
3,242	948	56	9	10,575	3,640	94	35	2,508	895	29
3,666	1,460	59	14	10,076	3,504	152	55	3,592	1,456	68
2,766	1,124	55	9	-1,780	-2,957	34	27	1,884	640	47
0	0	0	0	0	0	0	0	0	0	0
2,417	823	38	5	3,148	1,064	64	23	2,455	793	43
2,243	696	24	5	827	257	13	25	2,481	701	31
5,734	2,034	92	7	7,653	2,504	119	51	5,841	2,024	74
96	37	1	2	84	25	1	29	42	7	1
430	110	4	2	0	0	0	0	0	0	0
2,672	804	56	11	3,297	1,024	73	26	2,809	957	58
1,674	526	33	5	2,122	724	45	11	2,128	809	46
1,614	566	23	9	2,028	788	38	9	1,814	645	38
852	136	7	2	33	10	1	0	0	0	0
2,764	1,213	37	11	2,312	577	22	44	2,331	934	30
13,093	4,414	109	70	8,906	2,626	116	70	7,118	1,986	65
1,241	343	18	5	2,432	736	39	9	1,097	316	21
199	24	7	2	950	323	27	5	545	187	16
401	132	14	2	579	250	20	5	750	181	8
616	221	21	14	2,132	494	33	43	917	228	14
0	0	0	0	0	0	0	0	0	0	0

56,182 18,606 793 196 69,694 19,484 1,058 570 50,536 16,295 755

i-10	Jul-10				Aug-10				Sep-10		
	Net Freight	Net Sales	GP\$ w/Chargeback	Line Count	Net Freight	Net Sales	GP\$ w/Chargeback	Line Count	Net Freight	Net Sales	GP\$ w/Chargeback
	2	3,086	923	41	2	1,910	274	26	2	1,125	355
	30	9,483	2,753	100	63	11,162	3,323	136	18	5,038	1,568
	21	7,534	2,027	64	51	3,238	1,024	54	17	4,525	1,223
	23	9,649	2,705	118	37	6,681	1,959	116	32	6,817	2,124
	5	1,420	503	49	7	244	104	11	2	0	0
	0	0	0	0	0	0	0	0	0	0	0
	5	2,236	725	37	16	1,978	654	31	15	3,124	992
	7	3,383	752	39	20	1,581	552	34	5	1,766	670
	11	6,997	2,024	85	16	2,513	887	44	5	3,581	1,047
	10	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	26	3,431	1,109	79	27	2,207	655	45	11	3,785	1,297
	5	3,146	1,037	59	9	5,371	1,677	58	14	2,255	699
	9	1,892	555	36	9	1,888	661	46	18	1,518	463
	0	528	200	1	2	0	0	0	0	0	0
	25	2,044	790	29	25	737	469	12	11	1,691	776
	27	5,927	1,501	99	76	5,527	1,484	96	50	3,610	1,076
	7	2,376	681	31	20	1,592	503	29	7	2,246	553
	5	688	231	18	5	1,343	432	34	7	1,457	811
	2	1,309	426	22	5	776	297	23	2	844	338
	23	954	227	29	20	872	225	19	37	706	150
	0	0	0	0	0	901	300	14	2	1,727	492
		24366,083	19,169	936	411	50,521	15,480	828		25645,815	14,634

Sep-10		Oct-10			
Line Count	Net Freight	Net Sales	GP\$ w/Chargeback	Line Count	Net Freight
17	2	647	150	6	0
76	11	7,153	2,082	87	25
55	27	6,049	2,026	49	35
103	45	9,967	3,150	156	46
0	0	0	0	0	0
0	0	0	0	0	0
45	35	2,604	791	39	7
29	7	2,913	894	39	29
39	7	5,148	1,710	81	11
0	0	84	25	1	10
0	0	0	0	0	0
69	11	2,887	916	69	34
42	5	2,148	781	43	7
43	27	2,079	692	48	106
0	0	0	0	0	0
22	16	3,351	1,012	46	98
65	25	5,952	1,481	98	55
29	18	2,197	728	38	11
23	9	-61	-260	17	10
21	5	760	262	17	2
16	14	1,391	418	37	54
38	29	612	170	22	25
732	294	55,881	17,028	893	567

CX0205

From: Cavaretta, Joe
Sent: Tuesday, January 21, 2014 3:48 PM
To: Steck, Dave
Subject: RE: TDA Info

It will be at the TDA most likely the day before or the first day. It is going to happen and it will be direct. If they don't stop this will be our last year attending the TDA.

From: Steck, Dave
Sent: Tuesday, January 21, 2014 3:46 PM
To: Cavaretta, Joe; Steck, Dave
Subject: Re: TDA Info

We did....I just wanted to be double sure before telling PDCO anything.
Any idea when our meeting with them will be?

David A Steck

Vice President & General Manager

Henry Schein Dental

10920 West Lincoln Ave

West Allis, WI 53227

414.290.2568

From: <Cavaretta>, Joe Cavaretta <Joe.Cavaretta@henryschein.com>
Date: Tuesday, January 21, 2014 at 3:41 PM
To: Steck Home <Dave.Steck@henryschein.com>
Subject: RE: TDA Info

Sorry Dave I thought we had a phone conversation about this prior to the FMM confirming our direction.

From: Steck, Dave
Sent: Tuesday, January 21, 2014 3:29 PM
To: Kyle, Dean; Steck, Kyle
Cc: Cavaretta, Joe
Subject: TDA Info

Guys, I have to get back to PDCO on whether or not we are attending the TDA. My understanding is that we are, but having a meeting with them and telling them that if their partnership continues with their supply relationship (link below?) we will no longer display at future meetings.
Is this correct and is the link below what we are objecting to?

<http://www.tdaperks.com/ProgramsbyCompany/T/TDAPerksSupplies.aspx>

Thanks,

Dave

David A Steck

Vice President & General Manager

Henry Schein Dental

10920 West Lincoln Ave

West Allis, WI 53227

414.290.2568

CX0243

From: Foley, Randy
Sent: Wednesday, October 09, 2013 8:45 AM
To: Muller, Hal
Subject: RE: addition to Smile Source Group

Next time we talk remind me to tell you about my conversation with Pat Ryan at SM Benco. They're anti Buying Group and Smile Source recently reached out to them. I'm being careful not to cross any boundaries, like collusion.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Muller, Hal
Sent: Wednesday, October 09, 2013 12:17 AM
To: Foley, Randy
Subject: Re: addition to Smile Source Group

I have been hearing this — their target is 180 by early next year— they have funding and they are growing--

Hal

HENRY SCHEIN SPECIAL MARKETS

Hal S. Muller

President

From: <Foley>, Randy <KeithRandy.Foley@henryschein.com>
Date: Tuesday, October 8, 2013 4:00 PM

CX0243-001

To: HAL MULLER <hal.muller@henryschein.com>
Subject: FW: addition to Smile Source Group

115 offices??!!!! Can't wait to see this list

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com

From: Arroyo, Joseph [<mailto:jarroyo@orapharma.com>]

Sent: Tuesday, October 08, 2013 5:34 PM

To: Goodman, Lindy

Cc: Cavaretta, Joe; Paviglianiti, Cathy; McGarry, Janet; Flood, Linn; Foley, Randy; Foley, Randy; Lee, George; Carey, Kathleen; Corkwell, Constance; Fleming, Sherina

Subject: addition to Smile Source Group

Hi Lindy:

I received an updated list of offices that Smile Source has added to its growing family. I am working on it and will send it to you as soon as possible for updating in your system. There are now 115 offices that are part of Smile Source...

Thanks,

Joseph Arroyo

CX0243-002

Customer Service Team Lead

Description: Description: Description: Description: Description: Description:

XserveDATA:ClientFiles:OraPharma_Arestin:Active_Jobs:ORA_P330_01_ORA_Logo:Art:ORA_LOGO_RGB.jpg

700 Route 202/206 N | Bridgewater, NJ 08807 | DIRECT: 908-927-1818 | FAX: 888-553-6507 |

EMAIL:jarroyo@orapharma.com

*please note this is a new phone number and address

CX0246

From: Cavaretta, Joe
Sent: Wednesday, July 01, 2015 1:04 PM
To: Sullivan, Tim; Meadows, Jake; Steck, Dave; Chatham, John; Rozin, Rodi
Subject: RE: FYI

Hey Tim,

I wouldn't say DG is a friend. It was our way of controlling a buying group situation with HSD tools we already had in the bag. This combined with Hal telling them they can't promote the MB2 pricing plan any longer has significantly reduced the noise and DGs impact. I used to hear about DG on a weekly basis now I don't hear about them at all.

Jake can also add his comments from the East.

Breakaway – Looking for August dates now as that was the first available in your calendar. We really want to go see them first so you can get have a clear understanding of just how well run some of these companies are today. After our meeting we can bring them to West Allis.

Joe

From: Sullivan, Tim
Sent: Wednesday, July 01, 2015 9:44 AM
To: Cavaretta, Joe; Meadows, Jake; Steck, Dave; Chatham, John; Rozin, Rodi
Subject: RE: FYI

Thanks Joe . . good info. So Dental Gator is now a friend? The Dec "offsite" last year I left with a goal to see if we could get Hal to shut it down, but knew that could be a challenge due to the parent company being a EDSO of ours in SM. Are we keeping them in DSL because it's good for the customer or it's good for HSD?

On Breakaway, any dates lining up for the visit? Should they come here and meet the expanded team and our entire offering?

Other BGs . . . we need to get our package together asap and decide when/how to go to market with it.

From: Cavaretta, Joe

Sent: Wednesday, July 01, 2015 9:35 AM

To: Sullivan, Tim; Meadows, Jake; Steck, Dave; Chatham, John; Rozin, Rodi

Subject: RE: FYI

Hey Tim,

May need a discussion but here are my thoughts;

1) Dental Gator

- a. We went to the PG plan so we could keep in DSL as all DG accounts were being moved from DSL to DSM and set up on a P Plan
- b. This move reduced the confusion around DG and also eliminated a buying group from getting the same pricing as a DSO
- c. This was cleaned up about 5 months ago
- d. The project Pyramid team agreed to this approach

2) Breakaway

- a. This was a group that Randy Foley, KT and I talked about where Randy said he would like to keep this group in the MM space
- b. We did discuss shutting it down but once KT visited their facility it was not a small buying group at all...more of a MSO
- c. They have a monster corporate office and a strategy that is evolving the group practice space
- d. This was the group that I'm trying to arrange a visit with you so you can see how the space is rapidly changing

3) Other buying groups

- a. Are popping up quickly...some we should engage with if they offer something unique to HSD
- b. Their main interest is to keep up with corp dentistry and they want

i.
Pricing (formulary pricing – G Plan)

ii.
Business Solutions

iii. CE

On a side note we just signed Breakaway on to Clixon and they shared with us they were investing money into creating their own inventory control system so the timing of our offer was very good. We also just signed a second group up using Clixon early this week. These groups want the ability to control their inventory and review the analytics via software.

Please let me know if these thoughts help. Thanks.

Joe

From: Sullivan, Tim
Sent: Wednesday, July 01, 2015 8:35 AM
To: Cavaretta, Joe; Meadows, Jake; Steck, Dave; Chatham, John; Rozin, Rodi
Subject: FW: FYI

Good questions . . . thoughts?

From: Muller, Hal
Sent: Wednesday, July 01, 2015 8:26 AM
To: Sullivan, Tim
Subject: FYI

Buying Groups-

Tim, I don't want you to get caught in saying one thing and the team doing something else:

Earlier in the year you asked about Dental Gator and Breakaway dental.
I am not sure what the conversations were but new Dental Gator accounts are now being set up under the PG-plan and assigned to HSD-MM, I think this must have been done so that FSCs do not lose the customer and the prices are still with the higher GP and do not count toward growth rebates.

Breakaway- we thought this was heading to being closed down by the MM sales team, after Kt had a meeting with them it now appears that customer is part of MM and has multi-million dollar potential with new locations co-owned— as this is not a DSO, we will not have in in SM, but we need to evaluate what they really are and if they are a BG and if we should be selling them and/or in right place at some point. It is not under SM control anymore-

Again this was a heads up- after hearing the Buying Group discussion in W.A., it is getting confusing on BG's are we opening them or setting up our own?

Have fun

Hal

HENRY SCHEIN SPECIAL MARKETS

Hal S. Muller

President

631-390-8150

CX0297

From: Misiak, David
Sent: Monday, December 30, 2013 4:13 PM
To: Guggenheim, Paul; Killian, Josh
Subject: Fwd: Monday
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.png

Put this on the list for Friday.

Sent from my iPhone

Begin forwarded message:

From: "Trevor Maurer" <tmaurer@smilesorce.com>
Date: December 30, 2013 at 3:50:44 PM CST
To: david.misiak@pattersondental.com
Cc: neal.mcfadden@pattersondental.com
Subject: RE: Monday

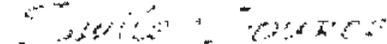
Dave,

I never heard back from you and I find that odd. We purchase over \$14MM annually in supplies, and that number continues to double every year. Dr. Goldsmith advised me that you are not interested in working with us.

All the best.

TREVOR C MAURER

President



C: 678-472-4001

www.smilesorce.com



[Watch this video to learn about Smile Source®](#)

From: Trevor Maurer [<mailto:tmaurer@smilesorce.com>]

Sent: Thursday, October 10, 2013 7:09 PM

To: Andy Goldsmith

Cc: david.misiak@pattersondental.com

Subject: Re: Monday

Andy is too kind!

David, I heard about your meeting and am interested in learning more. I'm visiting my parents in Calgary (I'm Canadian) hence the connection through MPLS Monday. Let me know if it works. I'm looking forward to meeting you.

Trevor Maurer
Vice President
tmaurer@smilesource.com
678-472-4001

Sent from my iPhone so please excuse my brevity and typos. Either my thumbs are typing feverishly or I am using the cool new SIRI Voice recognition but in either case, it isn't perfect!!!

On Oct 10, 2013, at 3:33 PM, Andy Goldsmith <agoldsmith@smilesource.com> wrote:

David-

After briefing our executive team about our meeting, our VP of Business Development, Trevor Maurer, mentioned that he would be in Minneapolis next Monday. Any chance for a meeting on that day with Trevor?

Trevor offers a unique perspective having worked at the executive level for Novartis and also with Vision Source®, he is also the star of our organization and responsible for our amazing growth.

Thanks!

Andy

ANDREW M. GOLDSMITH, DDS, DICOI, FIALD

Chief Dental Officer/ VP Vendor Relations

<image002.jpg>

1849 Kingwood Dr., Ste. 102

Kingwood, Texas 77339

T: 281-359-2344

C: 719-201-0706

F: 281-312-1153

agoldsmith@smilesource.com

www.smilesource.com

[Watch this video to learn about Smile Source®](#)

<image003.jpg> <image004.jpg> <image005.jpg> <image006.png>

CX0301

Redacted in Entirety

CX0303

Redacted in Entirety

CX0304

Redacted in Entirety

CX0305

In the Matter of:
Henry Schein, Inc., et al.

May 23, 2017

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

1

1 FEDERAL TRADE COMMISSION

2

3 HENRY SCHEIN, INC., PATTERSON)

4 COMPANIES, INC., AND BENCO) Matter No.

5 DENTAL SUPPLY COMPANY,) 1510190

6 _____)

7

8

9 INVESTIGATIONAL HEARING OF JOE CAVARETTA

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12 Chicago, Illinois

13 Tuesday, May 23, 2017

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3

1 APPEARANCES:

2 FOR THE FEDERAL TRADE COMMISSION:

3 FEDERAL TRADE COMMISSION, by

4 KAREN V. GOFF, ESQUIRE

5 LIN W. KAHN, ESQUIRE

6 901 Market Street

7 Suite 570

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9 Phone: (415) 848-5115

10 E-Mail: lkahn@ftc.gov

11

12 FOR HENRY SCHEIN:

13 LOCKE LORD, LLP, by

14 JOHN P. McDONALD

15 2200 Ross Avenue

16 Suite 2800

17 Dallas, Texas 75201

18 Phone: (214) 740-8758

19 E-Mail: jpmcdonald@lockelord.com

20 -and-

21 PROSKAUER ROSE, LLP

22 COLIN R. KASS, ESQUIRE

23 1001 Pennsylvania Avenue, NW

24 Suite 400 South

25 Washington, DC 20004-2533

Phone: (202) 416-6890

E-Mail: ckass@proskauer.com

* * * * *

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6 Investigational Hearing of JOE CAVARETTA taken

7 at 55 West Monroe Street, Suite 1825, Chicago, Illinois,

8 commencing at 9:01 a.m. on May 23, 2017, before

9 Jennifer L. Bernier, Certified Shorthand Reporter

10 No. 82-004190, Registered Professional Reporter,

11 Certified Realtime Reporter, and Notary Public, pursuant

12 to subpoena.

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1 TRANSCRIPT INDEX

2 EXAMINATION OF JOE CAVARETTA PAGE

3 By Ms. Goff..... 5

4

5 INDEX OF EXHIBITS

6 (Exhibits Retained by Court Reporter.)

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7 Exhibit 189	Subpoena.....	5
8 Exhibit 190	2/1/11 E-mail Re: Business Intelligence Group	126
9 Exhibit 191	8/25/11 E-mail Re: Nov. AGD meeting in Vegas	138
10 Exhibit 192	1/15/12 Re: Business Growth: Intermountain Dental Associates	142
11 Exhibit 193	1/26/12 E-mail Re: IDA.....	146
12 Exhibit 194	9/24/12 E-mail Re: Intermountain Dental Associates RFP	153
13 Exhibit 195	7/17/12 Meadows E-Mail to Delikat	161
14 Exhibit 196	3/25/15 E-mail Re: FW Support..	166
15 Exhibit 197	7/15/14 e-mail Re: Our meeting today - PGMS agreement	170
16 Exhibit 198	7/15/2014 E-mail Re: '7 to '7 Dental in San Antonio	175
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19 Exhibit 201	11/3/15 E-mail Re: KlearImpakt Buying Group	195
20 Exhibit 202	9/30/2013 E-mail Re: TDA Perks Problem	206
21 Exhibit 203	10/16/2013 E-mail Re: Ron Fernandez call	208
22 Exhibit 204	12/16/13 E-mail RE: TDA Perks-Equipment	221
23 Exhibit 205	Cavaretta E-mail to Alguire	229
24 Exhibit 206	4/9/2014 E-mail Re: Belmont/TDA	237
25 Exhibit 207	4/10/2014 E-mail Re: Texas	239

5	7
<p>1 (Witness sworn.)</p> <p>2 WHEREUPON:</p> <p>3 JOE CAVARETTA,</p> <p>4 called as a witness herein, having been first duly</p> <p>5 sworn, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MS. GOFF:</p> <p>8 Q. Good morning, Mr. Cavaretta. We met offline.</p> <p>9 But my name is Karen Goff, and I'm an attorney with the</p> <p>10 Federal Trade Commission. And with me is Lin Kahn, who</p> <p>11 is also an attorney with the Federal Trade Commission.</p> <p>12 Today's investigational hearing is being</p> <p>13 conducted as part of the Commission's investigation of</p> <p>14 Henry Schein in Matter No. 1510190.</p> <p>15 MS. GOFF: For the record, could counsel please</p> <p>16 state their appearance.</p> <p>17 MR. McDONALD: Sure. John McDonald.</p> <p>18 MR. KASS: Colin Kass.</p> <p>19 MS. GOFF: Would you please mark this?</p> <p>20 MS. KAHN: Can we go off the record?</p> <p>21 (Discussion off the record.)</p> <p>22 (Exhibit 189, Subpoena, was marked</p> <p>23 for purposes of identification.)</p> <p>24 Q. I'm handing you what's been marked as</p> <p>25 Exhibit 189.</p>	<p>1 Q. So when you said the second one was a</p> <p>2 follow-up to the TDA case, it was also related to TDA;</p> <p>3 is that correct?</p> <p>4 A. It was the SourceOne case.</p> <p>5 Q. Okay. And the third, the third --</p> <p>6 A. Was a competitive sit- -- we recruited a rep</p> <p>7 from a company, and we were deposed on that.</p> <p>8 Q. Okay. So I'm going to go over just a couple</p> <p>9 of ground rules. But I understand you've had your</p> <p>10 deposition taken before, so hopefully this will be a</p> <p>11 review.</p> <p>12 A. Sure.</p> <p>13 Q. First, I'm going to be asking you a series of</p> <p>14 questions and you're going to be providing me with</p> <p>15 answers, and the court reporter is recording all that is</p> <p>16 said here. Because she can only record all words,</p> <p>17 please be sure to answer each question with a verbal</p> <p>18 answer, as you've been doing so far. Please don't nod</p> <p>19 your head or shake your head. Do you understand?</p> <p>20 A. I do understand.</p> <p>21 Q. And, please, it is helpful if you'd allow me</p> <p>22 to finish my question before you answer, and I will also</p> <p>23 try not to interrupt you since the court reporter cannot</p> <p>24 take both of us down if we're talking at the same time.</p> <p>25 Do you understand?</p>
6	8
<p>1 Mr. Cavaretta, do you understand that you're</p> <p>2 here to testify pursuant to the subpoena that I've</p> <p>3 placed in front of you that's been marked as</p> <p>4 Exhibit 189?</p> <p>5 A. I do.</p> <p>6 Q. And have you had a chance to review the</p> <p>7 subpoena with your counsel?</p> <p>8 A. I don't believe we've reviewed the specifics</p> <p>9 of the subpoena.</p> <p>10 Q. Okay. Did you want to take a minute just to</p> <p>11 review the subpoena?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. You've had a chance to review the</p> <p>14 subpoena?</p> <p>15 A. I've read the subpoena, yes.</p> <p>16 Q. And, Mr. Cavaretta, you've given sworn</p> <p>17 testimony before, correct?</p> <p>18 A. I have.</p> <p>19 Q. How many times?</p> <p>20 A. Three, three times.</p> <p>21 Q. And, briefly, what were the nature of the</p> <p>22 cases that you gave testimony in?</p> <p>23 A. The first one was regarding the TDA case, the</p> <p>24 second one was a follow-up to that, and the third one</p> <p>25 was a competitive recruiting situation.</p>	<p>1 A. I understand.</p> <p>2 Q. If at any time you don't understand my</p> <p>3 question, you can ask me to rephrase my question, and I</p> <p>4 will try my best to do so. Do you understand?</p> <p>5 A. I understand.</p> <p>6 Q. If you need a break at any time, please let me</p> <p>7 know; and as long as there is not a question pending, we</p> <p>8 can accommodate you. Do you understand?</p> <p>9 A. I do.</p> <p>10 Q. Are Mr. McDonald and Mr. Kass representing you</p> <p>11 personally today in these proceedings?</p> <p>12 MR. McDONALD: Yes, we are.</p> <p>13 Q. Okay. Your counsel has answered for you,</p> <p>14 which is fine.</p> <p>15 So the purpose of today's hearing is for me to</p> <p>16 get your side of the story and have you help us</p> <p>17 understand the facts so that the FTC can determine how</p> <p>18 to move forward with this case. Do you understand that?</p> <p>19 A. I do.</p> <p>20 Q. Okay. So could you please just state your</p> <p>21 name for the record.</p> <p>22 A. My name is Joseph Cavaretta.</p> <p>23 Q. And do you currently work at Henry Schein?</p> <p>24 A. I do.</p> <p>25 Q. How long have you worked for Henry Schein?</p>

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1 A. About 16, 16-and-a-half years.
 2 **Q. Okay. What is your current title?**
 3 A. My current title is vice president of sales
 4 for the Western area.
 5 **Q. How long have you been in that position?**
 6 A. I've been in that position for a little over
 7 two years.
 8 **Q. Did you start in that position in around**
 9 **February of 2015?**
 10 A. That is correct.
 11 **Q. Okay. And what does the Western area consist**
 12 **of?**
 13 A. The Western area consists of, if you could
 14 look at a map, Wisconsin and you went down to Louisiana,
 15 Mississippi, over to Hawaii. So it's, roughly,
 16 two-thirds of the geography of the country.
 17 MR. McDONALD: Just so we have a clear record, I
 18 should have objected. Vague. If you're asking today,
 19 "What does the Western area look like," I think that's
 20 the answer to your question.
 21 MS. GOFF: Okay. Thank you. In the future, would
 22 you object, state your objection for the record, and
 23 that's it.
 24 MR. McDONALD: Well, I'll do what I think I need to
 25 do to protect the record. And I'm sure we're all just

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1 trying to get the truth. I'm not trying to be
 2 obstructive or anything. So he answered it as of today,
 3 and I think you'd want to know that.
 4 MS. GOFF: Sure. That's fine, and I understand. I
 5 just want to be sure that this is not a pattern we're
 6 going to be going down with you clarifying your
 7 witness's answers.
 8 MR. McDONALD: You know what? I'll do what I think
 9 I need to do, and I'm sure you'll do what you need to
 10 do. So let's just ask the next question. Okay?
 11 MS. GOFF: Okay.
 12 **Q. So, Mr. Cavaretta, in your current position as**
 13 **vice president of sales for the Western area, did you**
 14 **just describe to me what the Western area consists of?**
 15 A. Since 2015, I've described what the Western
 16 area consists of.
 17 **Q. Okay. Thank you. And what are your duties**
 18 **and responsibilities as VP of sales for the Western**
 19 **area?**
 20 A. Currently, I'm responsible for the sales that
 21 happen in the Western area, including operations and
 22 talent management, the hiring and firing.
 23 **Q. What's the distinction between sales and**
 24 **operations?**
 25 A. We have sales representatives specifically

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1 calling on customers and selling to them face-to-face,
 2 and then we have an operations group with service
 3 technicians and operations managers. That's a pretty
 4 big part of our business that also reports in through
 5 the Western area.
 6 **Q. Okay. Thank you. Who do you report to?**
 7 A. I report to Dave Steck.
 8 **Q. What is his title?**
 9 A. Dave Steck is the vice president and general
 10 manager of Henry Schein Dental.
 11 **Q. What are Mr. Steck's duties, generally, as you**
 12 **understand them?**
 13 A. Both the Western and Eastern area vice
 14 presidents report in to Dave, and he also oversees the
 15 equipment and technology business for Henry Schein
 16 Dental.
 17 **Q. Okay. So is there also a vice president of**
 18 **sales for the Eastern area?**
 19 A. There is.
 20 **Q. And who is that?**
 21 A. That is Jake Meadows.
 22 **Q. Okay. And who does Mr. Steck report to?**
 23 A. Mr. Steck reports to Tim Sullivan.
 24 **Q. How are you compensated as the VP of sales for**
 25 **the Western area?**

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1 A. I have a salary, and I also have a bonus, in
 2 addition to restricted stock opportunities.
 3 **Q. What is your -- the bonus based on, in your**
 4 **understanding?**
 5 A. The bonus base is based on several things.
 6 One is the performance of the Western area,
 7 specifically; the second is the functional financial
 8 goals of the company; and the third is on our -- an
 9 overall performance of the company as Henry Schein, Inc.
 10 And that's the majority of it.
 11 **Q. When you say "the company," what did you mean**
 12 **by that?**
 13 A. So the functional financial goals has to do
 14 with Henry Schein Dental, specifically.
 15 **Q. Okay. Thank you. And are you employed by**
 16 **Henry Schein Dental or Henry Schein, Inc., or something**
 17 **else?**
 18 A. Well, I'm employed by Henry Schein, Inc., but
 19 I work in Henry Schein Dental.
 20 **Q. Okay. So you said that your bonus is based,**
 21 **in part, on the performance of the Western area?**
 22 A. That is correct.
 23 **Q. And what did you mean by that?**
 24 A. There's certain targets that are set each year
 25 based on sales that the Western area is measured on.

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1 **Q. What were the targets for 2016?**
 2 A. I don't recall, off the top of my head, the
 3 specific targets in 2016.
 4 **Q. Do you have a sense for generally what the**
 5 **targets were?**
 6 A. Sure. It was -- it would have included growth
 7 on merchandise, equipment, and technology. I don't
 8 remember the specific targets though.
 9 **Q. So the targets are not a specific number?**
 10 A. In the way I'm compensated now with the bonus,
 11 which is -- which is a PIP, it's really taking into
 12 consideration all of those components. So the specific
 13 number that I would be targeting, I just don't recall it
 14 off the top of my head.
 15 **Q. Okay. So you said that your bonus is based on**
 16 **the performance of the Western area specifically. And**
 17 **by "performance," do you mean sales performance?**
 18 A. Yes.
 19 **Q. And is there a specific sales target that**
 20 **you're required to meet?**
 21 A. So each year there is a budget that is put
 22 together that I'm responsible for that there is an
 23 expectation on growth in the Western area. I just don't
 24 remember what the growth number was for 2016, off the
 25 top of my head.

1 A. 219,000.
 2 **Q. Do you have any direct reports?**
 3 A. I do.
 4 **Q. How many, approximately?**
 5 A. For 2017?
 6 **Q. Yes, currently.**
 7 A. Okay. Seven.
 8 **Q. Can you please tell me who those direct**
 9 **reports are?**
 10 A. Sure. George Khoury -- I can spell his last
 11 name for you, K-h-o-u-r-y -- Glenn Showgren -- and Glenn
 12 is spelled with two Ns, G-l-e-n-n -- Randall McLemore,
 13 Kevin Upchurch, Darci Wingard, Kathleen Titus, and Betty
 14 Unger.
 15 **Q. Okay. What is Darci Wingard's role?**
 16 A. Darci Wingard is responsible for our new
 17 segment of our business, which is alternative purchasing
 18 channels.
 19 **Q. What does alternative purchasing channels**
 20 **mean?**
 21 A. It's the business that doesn't fall into a
 22 clear-cut box.
 23 **Q. What do you mean by "a clear-cut box"?**
 24 A. Okay. So the industry has changed so quickly,
 25 and there is a lot of overlapping with different

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1 **Q. And can you give me an approximation?**
 2 MR. McDONALD: Object to the form. Vague. You can
 3 answer, if you understand.
 4 A. In merchandise, it would have been, roughly,
 5 2 percent; equipment technology, closer to 9 percent.
 6 **Q. Okay. So the percentage, is that a percentage**
 7 **of growth as compared to the years prior?**
 8 A. That's correct.
 9 **Q. You said that the second thing that your bonus**
 10 **was based on is the functional goals of Henry Schein**
 11 **Dental, correct?**
 12 A. That is correct.
 13 **Q. And what did you mean by the functional**
 14 **financial goals of Henry Schein Dental?**
 15 A. That's part of the bonus process. And each
 16 year there is an expectation of the entire Henry Schein
 17 Dental business to hit certain targets that they set for
 18 us.
 19 **Q. And what types of targets?**
 20 A. They would be around, once again, sales and,
 21 also, profitability.
 22 **Q. And how much of a bonus did you receive in**
 23 **2016?**
 24 A. Roughly, 60,000.
 25 **Q. And then what was your salary for 2016?**

1 businesses, customer businesses. Where before you could
 2 put groups of customers into a DSO or a private practice
 3 and you could segment them out, over the last three or
 4 four years, and definitely over the last couple of
 5 years, those lines have grayed, and it was becoming very
 6 complex to understand and manage that business. So she
 7 is there to help run that business, customer
 8 interaction.
 9 **Q. So is it -- is Ms. Wingard responsible for**
 10 **clients that are neither private practice clients nor**
 11 **DSO clients?**
 12 A. So she's responsible for a group that could be
 13 a combination of both.
 14 **Q. Okay. What kind of group would that be?**
 15 A. So that's where the -- that's where the APC
 16 component comes in. You may have some that are DSO and
 17 some that are private practice. And that's really where
 18 the lines are graying where we couldn't put them into
 19 one segment.
 20 **Q. Does APC, does that refer to alternative**
 21 **purchasing channel?**
 22 A. That is correct.
 23 **Q. Can you give me some examples of what types of**
 24 **clients would fit into the APC channel?**
 25 A. Sure. We have Smile Source, Breakaway,

4 (Pages 13 to 16)

17	<p>1 KlearImpakt. There is a group called Tralongo. And I'm 2 thinking of the things that she's working on right now, 3 and those would be the major ones at the moment. 4 Q. Okay. And what types of organizations are the 5 Smile Source, Breakaway, KlearImpakt, and Tralongo? 6 A. Well, Smile Source is a -- they call 7 themselves a franchise DSO. Breakaway would be a 8 combination of a DSO, MSO, and private practice. 9 KlearImpakt is a buying group. Tralongo I'm not as 10 familiar with, because it's on the East Coast. But they 11 would fall in line with a buying group, also, with an 12 MSO component to it. 13 Q. Okay. So let's define some of these terms. 14 What's a franchise DSO, in your understanding? 15 A. It's a group of individual private practice 16 dentists that are working together to improve their 17 education, improve their profitability, yet Smile Source 18 corporate has no control over the offices or no 19 ownership over the offices. 20 Q. Okay. What about Breakaway; that, you say, is 21 a DSO plus MSO plus private practice? First, what does 22 DSO stand for? 23 A. Dental services organization. 24 Q. And MSO? 25 A. Management services organization.</p>	19	<p>1 ownership? 2 A. They have all three. 3 Q. What do you mean by that? 4 A. They have a DSO component where they have 5 ownership of offices, they have an MSO component where 6 they have some equity, but they -- or they're 7 contracted, on a consulting basis, and they have private 8 practices that are being recruited to potentially be 9 part of Breakaway. 10 Q. Okay. And then you said KlearImpakt is a 11 buying group. What's your understanding of what a 12 buying group is? 13 A. So the buying group is a group of a customer 14 that brings a specific value to the doctors that they're 15 working with, whether it's education or helping them 16 grow their practice. But there is no ownership, and 17 they call themselves a buying group. 18 Q. So a buying group does not have a centralized 19 ownership? 20 A. That is correct. 21 Q. Do they have centralized purchasing? 22 A. So in the two groups I mentioned, Breakaway is 23 the only one that has some centralized purchasing on the 24 offices that they own. 25 Q. Okay. So you said that you supervise Darby</p>
18	<p>1 Q. Okay. So what is a DSO? 2 A. So a DSO, historically, that term has been 3 used to explain that there is one owner of several 4 practices. 5 Q. Is that what the -- what your understanding 6 is -- strike that. 7 Is that your understanding of the meaning 8 today? 9 A. That is my understanding of the meaning today. 10 Q. Okay. What about an MSO? 11 A. An MSO is a manager services organization 12 where they may have equity ownership in some practices, 13 they may not, but they provide services to the practices 14 that sign up to join the MSO group. 15 Q. What's the distinction between the franchise 16 DSO and an MSO? 17 A. There is no equity ownership. So Smile Source 18 does not have any equity ownership in the practices that 19 sign up to work with Smile Source, where some of the 20 MSOs have equity ownership as practices. 21 Q. So MSOs, in some cases, may have centralized 22 ownership, and, in some cases, they may not? 23 A. That's correct. 24 Q. And what about for Breakaway; what's your 25 understanding of whether they have centralized</p>	20	<p>1 {sic} Wingard? 2 A. Darci, yes. 3 Q. Darci Wingard. Thank you. 4 Does she report solely to you, or does she 5 report to anyone else? 6 A. She reports solely to me, but she does 7 collaborate with others within the organization. 8 Q. Okay. The reason why I'm asking is because 9 you mentioned that one of her clients, Tralongo, is 10 mostly on the East Coast, but you are the director, the 11 VP of sales, for the Western area. So I was curious how 12 it came about that Darci would be in charge of that 13 particular entity, Tralongo, when it's on the East 14 Coast? 15 A. In 2016, she reported to Brian Brady, and she 16 was responsible for the entire country. In 2017 is when 17 the change in reporting was made, and she's currently 18 transitioning the Eastern area relationships to someone 19 named Matt Woodend. 20 Q. So once that transition is complete, Tralongo 21 will be within Matt Woodend's sort of area? 22 A. That's the plan. 23 Q. Can you spell Mr. Woodend's last name? 24 A. Yes. W-o-o-d-e-n-d. 25 Q. Thank you. When was Ms. Wingard hired?</p>

21	<p>1 A. I don't remember the exact month, but it was 2 prior to 2016. So it would have been -- oh, you know 3 what? It would have been, I believe, May of 2015.</p> <p>4 Q. And was she hired specifically to handle 5 clients that are the alternative purchasing -- in the 6 alternative purchasing channels?</p> <p>7 A. Well, we didn't have that name yet. We just 8 knew that, as I was explaining everything to you, things 9 were getting complicated and complex, and we needed help 10 in understanding where the industry was going. So we 11 hired her, one, because she was a talented individual, 12 and, two, we knew we needed help there. So it has been 13 cultivated over time, her position.</p> <p>14 Q. Where did Ms. Wingard work before she came to 15 Schein?</p> <p>16 A. She worked for a company called Demandforce 17 that was then purchased by Intuit.</p> <p>18 Q. And what does Demandforce do?</p> <p>19 A. They're an electronic recall system. So if 20 you go to your dentist and get a text message, if they 21 were confirming your appointment, hit one, that would be 22 the easiest way to explain, hit one to confirm your 23 appointment.</p> <p>24 Q. Did Ms. Wingard have any experience in the 25 dental industry before coming to Schein?</p>	23	<p>1 Q. Okay. So what experience did Ms. Wingard have 2 in working with group practices?</p> <p>3 A. I don't know exactly what she did, on a 4 day-to-day basis, at Demandforce. She was our corporate 5 contact to Demandforce.</p> <p>6 Q. And so tell me a little bit more about what 7 she did at Demandforce.</p> <p>8 A. She was responsible for the sales team at 9 Demandforce. They're located in the Bay Area. So my 10 interaction with her was meetings, shows.</p> <p>11 Q. Did you hire her?</p> <p>12 A. I was part of the hiring process. I don't 13 know if -- I don't believe I was the one who hired her 14 directly.</p> <p>15 Q. Who was the person that you would say hired 16 her?</p> <p>17 A. Well, she reported to Brian, so Brian would 18 have been, I believe, the person ultimately who hired 19 her.</p> <p>20 Q. We'll come back to Mr. Brady later. But I 21 just wanted to go back to your direct reports and just 22 get their titles.</p> <p>23 A. Sure.</p> <p>24 Q. So you said Mr. Glenn Showgren. Is he the 25 California zone manager?</p>
22	<p>1 A. Yes, she did.</p> <p>2 Q. What was her experience?</p> <p>3 A. As far as how many years had she worked for 4 Demandforce, Demandforce/Intuit.</p> <p>5 Q. So you consider Demandforce to be a 6 dental-type company?</p> <p>7 A. They have several different verticals, but 8 Darci was responsible for -- was the person we were 9 working with on the Demandforce Dental end of things.</p> <p>10 Q. Did Ms. Wingard have any experience with these 11 alternative-purchasing-channels-type companies prior to 12 coming into Schein?</p> <p>13 A. Yes. She knew who Smile Source was. And the 14 other groups that I mentioned, I don't believe she knew 15 who they were.</p> <p>16 Q. Other than knowing who Smile Source was, did 17 she have any specific work experience dealing with 18 alternative-purchasing-channels-type companies?</p> <p>19 A. So we defined alternative purchasing channels, 20 so, at the time, she did work with group practices. So, 21 yes. But that term did not exist until recently, the 22 APCs.</p> <p>23 Q. So before that, did you just refer to those 24 types of companies as group practices?</p> <p>25 A. Yes.</p>	24	<p>1 A. He is.</p> <p>2 Q. Okay. Mr. Kevin Upchurch, is he the Western 3 Pacific zone manager?</p> <p>4 A. He is.</p> <p>5 Q. Randall McLemore, is he the Southern zone 6 manager?</p> <p>7 A. He is.</p> <p>8 Q. And George Khoury, is he the North Central 9 zone manager?</p> <p>10 A. He is.</p> <p>11 Q. Okay. And what's Kathleen Titus' title?</p> <p>12 A. She is the director of group practices.</p> <p>13 Q. Is she the director of group practices for the 14 entire Western area?</p> <p>15 A. She is now, currently, yes.</p> <p>16 Q. Okay. Did you used to supervise someone named 17 Andrea Hight?</p> <p>18 A. I did.</p> <p>19 Q. And what happened to Ms. Hight?</p> <p>20 A. Ms. Hight went to our community health center 21 space, and she took on a national role. And she now 22 reports to Brian.</p> <p>23 Q. And is Ms. Unger, Betty Unger, your assistant?</p> <p>24 A. She is.</p> <p>25 Q. Let's talk about the general job duties for</p>

25	<p>1 the zone managers. Just generally, what do zone</p> <p>2 managers do?</p> <p>3 A. Zone managers, in their area of</p> <p>4 responsibility, are responsible for the sales, the</p> <p>5 operations. There is a profitability P&L component.</p> <p>6 Q. And do zone managers work solely with private</p> <p>7 practices?</p> <p>8 A. No. No. There is -- there is a lot of</p> <p>9 crossover. So they work with private practice.</p> <p>10 Q. And what else?</p> <p>11 A. Group practice space.</p> <p>12 Q. Okay. What about the director of group</p> <p>13 practice, Ms. Titus, what are her general job duties?</p> <p>14 A. So Kathleen has regional account managers</p> <p>15 reporting to her, so she manages the sales team and she</p> <p>16 is responsible for growing our midmarket space.</p> <p>17 Q. That's her current position, her current</p> <p>18 responsibilities?</p> <p>19 A. Her current responsibilities.</p> <p>20 Q. And what's the midmarket space?</p> <p>21 A. The midmarket space, we defined that a few</p> <p>22 years ago. It's offices that have multiple offices,</p> <p>23 whether it's defined as two or three, on the low end, to</p> <p>24 ten to 25 on the high end.</p> <p>25 Q. So somewhere in between a private practice and</p>	27	<p>1 A. Sure. So "group practice" is historically</p> <p>2 multiple practices. And a few years ago we had to</p> <p>3 define the different levels of group practice because we</p> <p>4 had the elite group, the corporate group practices, and</p> <p>5 then we had a middle tier group, which we called</p> <p>6 midmarket, which they still wanted reps calling on their</p> <p>7 accounts. They wanted to be private practice in some</p> <p>8 way. And it was --</p> <p>9 (Reporter coughing.)</p> <p>10 THE REPORTER: I'm sorry. I'm sorry.</p> <p>11 MR. McDONALD: Just stop a minute.</p> <p>12 (Brief pause.)</p> <p>13 A. So we had a group of middle group practices</p> <p>14 that were starting up and being created, and it was a</p> <p>15 growing trend in the industry. And we realized that the</p> <p>16 offering we were doing in elite and the offering we were</p> <p>17 offering in the private practice space was not jiving</p> <p>18 with the segment of customers. And, of course, they</p> <p>19 were going across regional lines, so we had to figure</p> <p>20 something out to take care of this customer base, and,</p> <p>21 hence, we created the midmarket.</p> <p>22 Q. What's the distinction between Ms. Titus' job</p> <p>23 and Ms. Wingard's job? And, specifically, what's the</p> <p>24 distinction between the clientele that each of them</p> <p>25 serve?</p>
26	<p>1 a DSO?</p> <p>2 A. An elite DSO, correct.</p> <p>3 Q. What's an elite DSO?</p> <p>4 A. So an elite DSO is when they get to 50 offices</p> <p>5 or more.</p> <p>6 Q. Okay.</p> <p>7 A. It becomes a corporate relationship.</p> <p>8 Q. And is "elite DSO" a term that's specific to</p> <p>9 Henry Schein, or is that just a common term in the</p> <p>10 dental industry, in general?</p> <p>11 A. It's a term that Henry Schein created. And</p> <p>12 depending -- I don't know exactly who uses it. I know</p> <p>13 our manufacturers, when they're talking to us, use our</p> <p>14 language.</p> <p>15 Q. Okay. Does Ms. Titus, is she responsible for</p> <p>16 any group practice accounts?</p> <p>17 A. Specifically, directly?</p> <p>18 Q. Yes.</p> <p>19 A. So the midmarket reports up through her, so</p> <p>20 the regional account manager and the sales</p> <p>21 representatives that work those accounts with their team</p> <p>22 in the field.</p> <p>23 Q. So let's define what "group practice" means.</p> <p>24 Can you explain how you've been using the term "group</p> <p>25 practice"?</p>	28	<p>1 A. So in the midmarket space, the practices are</p> <p>2 owned wholly by one person, a group of persons, or PE</p> <p>3 money. There is definitely an owner and an operator of</p> <p>4 the groups. In the APC world, there is either not an</p> <p>5 owner or there is multiple layers to the group that we</p> <p>6 can't cover with the elite team, the midmarket team, or</p> <p>7 the private practice team alone -- that's what I was</p> <p>8 talking about in a box -- and so, hence, we needed</p> <p>9 someone to be the key account manager on those accounts</p> <p>10 and help us work with that, the business.</p> <p>11 Q. Okay. Has Ms. Titus' job duties and the</p> <p>12 clients that she works with as director of group</p> <p>13 practices, has that changed throughout the years?</p> <p>14 A. Can you define "period of time"?</p> <p>15 Q. How long has Ms. Titus worked for you?</p> <p>16 A. She has worked for me for, roughly, four</p> <p>17 years.</p> <p>18 Q. And I know you had a different job before you</p> <p>19 were the VP of the Western area. We'll get to that</p> <p>20 later.</p> <p>21 But during the time that Ms. Titus worked for</p> <p>22 you, has the clients that she has serviced changed at</p> <p>23 all?</p> <p>24 A. She's always been responsible for the</p> <p>25 midmarket space, and the only thing I would say is the</p>

1 industry was changing more so than her responsibility
 2 was changing.
 3 **Q. So, at some point, was she -- before**
 4 **Ms. Wingard was hired, was Ms. Titus responsible for the**
 5 **APC-type clients?**
 6 A. She wasn't actually responsible for them. She
 7 was helping -- we didn't have anybody responsible for
 8 them. And she was helping me talk to the customers, ask
 9 the proper questions of the customers, learn more about
 10 the customers. So that's -- she was doing it in
 11 addition to her actual responsibilities.
 12 **Q. Okay. So prior to when Ms. Wingard was hired**
 13 **in May of 2015, you did not have anyone working for you**
 14 **that was dedicated to the APC-type customers?**
 15 A. That is correct.
 16 **Q. In your current position as VP of sales for**
 17 **the Western area, how frequently do you travel?**
 18 A. Several times a month.
 19 **Q. What do you typically travel for?**
 20 A. We have major shows. We have a national sales
 21 meeting. I will travel to see certain customers. And
 22 then I'll -- the majority of when I go in the field is
 23 to meet with our local teams.
 24 **Q. And where do you currently reside? What city**
 25 **and state?**

1 **Western area, was there someone else in that position?**
 2 MR. McDONALD: Object to the form.
 3 A. No. That position did not exist.
 4 **Q. Thank you. So other than having one less zone**
 5 **as the area director, one less zone than you currently**
 6 **have as VP of sales, were there any other duties that**
 7 **differed in your current position as the -- sorry.**
 8 **Were there any other duties that differed in**
 9 **your current position as the VP of sales for the Western**
 10 **area from your duties as area director?**
 11 A. Other than a percentage of time spending in
 12 certain areas and visibility, it's pretty much very
 13 similar.
 14 **Q. I know you said that, as area director, you**
 15 **were not responsible for George Khoury. Did you have**
 16 **any other -- any additional direct reports that you were**
 17 **responsible for as area director?**
 18 A. Yes.
 19 **Q. Who were they?**
 20 A. So the periods of time differ because some
 21 people reported to me at certain times and others
 22 didn't. So Steve Arend would have reported to me, Jedd
 23 Carter, Maritza Alford. Part of the time -- a part of
 24 the time Rob Hewlett. We mentioned Andrea Hight. I
 25 believe that's it.

1 A. Oconomowoc, Wisconsin.
 2 **Q. Where is your office?**
 3 A. West Allis, Wisconsin.
 4 **Q. Okay. So prior to your role as VP of sales**
 5 **for the Western area, were you the area director for the**
 6 **Western area?**
 7 A. I was.
 8 **Q. And when were you in that position?**
 9 A. 2013 to 20-- February of 2015.
 10 **Q. Do you know when in 2013 you started?**
 11 A. I don't know. I don't recall the exact month.
 12 **Q. Was it in early 2015 -- I mean, early 2013?**
 13 A. Yes.
 14 **Q. Yes?**
 15 A. Yes.
 16 **Q. And what were your duties and responsibilities**
 17 **as the area director?**
 18 A. Similar to what I do now, except I had one
 19 less zone. I was not responsible for George Khoury's
 20 zone, the North Central zone.
 21 **Q. Okay. Did you consider your position, as the**
 22 **VP of sales for the Western area, to be a promotion from**
 23 **when you were the area director?**
 24 A. That was a promotion.
 25 **Q. Prior to you becoming the VP of sales for the**

1 **Q. Okay.**
 2 MR. McDONALD: Well, and, Karen, are you asking
 3 him -- he previously told you about managers. There are
 4 some that changed during the time period. Are you
 5 asking that, too, just so he's clear?
 6 MS. GOFF: Yeah. I'll follow up.
 7 **Q. So when you were the area director from 2013**
 8 **to 2015, have we discussed all of your direct reports?**
 9 **Have you named all of your direct reports?**
 10 MR. McDONALD: Object to the form.
 11 THE REPORTER: I'm sorry. I didn't hear you.
 12 MR. McDONALD: Objection to the form. Go ahead.
 13 **Q. Let me retract that.**
 14 **Okay. So as area director, I'm going to**
 15 **attempt to name the direct reports we've discussed so**
 16 **far. And if there are additional direct reports, please**
 17 **let me know.**
 18 A. Okay.
 19 **Q. Glenn Showgren, Kevin Upchurch, Randall**
 20 **McLemore, Kathleen Titus, Steve Arend, Jedd Carter,**
 21 **Maritza Alford, Rod Hewlett --**
 22 A. Hewlett.
 23 **Q. -- Andrea Hight?**
 24 A. So at the time I was area director, Dean Kyle
 25 was the Southern zone manager; and for a short period of

33

1 time, Jake Meadows was the Northwest zone manager.

2 **Q. Okay. So Mr. Kyle and Mr. Meadows, at some**
3 **period of time when you were area director, reported to**
4 **you?**

5 A. That's correct.

6 **Q. Okay. When did Mr. Dean Kyle leave the**
7 **position of Southern zone manager; do you know,**
8 **approximately?**

9 A. That would have been the end of '14.

10 **Q. Okay. And then Mr. Randall McLemore took his**
11 **place?**

12 A. That's correct.

13 **Q. Briefly, what were Mr. Steve Arend's -- what**
14 **was his job title?**

15 A. So Rod Hewlett and Steve Arend did the same
16 job, just to help out with the questions. They were the
17 director of equipment sales. And they were doing --
18 they each had two zones, and they were helping with
19 getting the marketing pieces out on equipment, help
20 onboard new sales reps, and then help execute new
21 equipment programs in the field.

22 **Q. What about Jedd Carter; what was his job**
23 **title?**

24 A. Jedd and Maritza would have been the same, and
25 they were directors of CAD/CAM, at that time, and they

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1 were responsible for digital impressing CAD/CAM
2 systems.

3 **Q. How were you compensated as area director?**

4 A. Similar; a salary and a bonus, which is called
5 the PIP, and then restricted stock.

6 **Q. What is the bonus called?**

7 A. Our -- when you are promoted to -- like our
8 zone managers, also, it turns from an MBO to a PIP. So
9 it's performance incentive program.

10 **Q. And what's MBO?**

11 A. An MBO is manager by objective.

12 **Q. Okay. Prior to your role as area director,**
13 **were you the Western zone manager?**

14 A. I was.

15 **Q. Was that from around 2009 to 2013?**

16 A. Yes, it was.

17 **Q. What did the Western zone consist of?**

18 A. The Western zone consisted of LA, Orange
19 County, San Diego, Hawaii, Arizona, Las Vegas, Utah,
20 and, at the very end, Idaho.

21 **Q. And what were your duties and**
22 **responsibilities, generally, in that position?**

23 A. Similar to zone manager today; sales,
24 operations, hiring team members, customer interaction.

25 **Q. Where did you live when you were the Western**

35

1 **zone manager?**

2 A. In Wisconsin.

3 **Q. And did you have direct reports as the Western**
4 **zone manager?**

5 A. I did.

6 **Q. I don't need you to name all of them; but what**
7 **were their general job duties, the direct reports?**

8 A. They were called regional managers. And they
9 were very close to the field working with the sales
10 representatives on a daily basis, calling on customers,
11 managing the equipment business.

12 **Q. Thank you. And was your compensation, as the**
13 **Western zone manager, similarly a salary plus bonus?**

14 A. It was.

15 **Q. Have you held any other positions at Henry**
16 **Schein?**

17 A. I have.

18 **Q. Can you briefly go through them for me?**

19 A. Would you like me to start from the time I
20 started with Henry Schein, or --

21 **Q. Yes, please. And then going up through to**
22 **Western zone manager?**

23 A. Sure. So 2001 to 2004, I was the regional
24 manager for Arizona and Las Vegas; in 2004 to 2006, I
25 was the regional manager for Long Island, New York; and

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1 then 2006 to 2009, I was the director of sales for Henry
2 Schein Dental.

3 **Q. What were your job duties as director of sales**
4 **for Henry Schein Dental?**

5 A. It was a new position, so it was
6 understanding, creating a position. What it's turned
7 into was manufacture relations, launching sales
8 programs, educating our leadership team, putting
9 programs together to help grow the business.

10 **Q. And that was you were the director of sales**
11 **for all of Henry Schein Dental?**

12 A. That's correct.

13 **Q. Did you consider your job following that, the**
14 **Western zone manager, to be a promotion?**

15 A. I did.

16 **Q. Okay. Any other positions at Henry Schein**
17 **that we haven't discussed?**

18 A. No.

19 **Q. Prior to working at Henry Schein, did you work**
20 **at Patterson Dental?**

21 A. I did.

22 **Q. From around 1997 to 2001?**

23 A. That's correct.

24 **Q. And what was your position at Patterson**
25 **Dental?**

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1 A. I started out there in customer service and
2 then operations. I was the operations manager, and then
3 I went into equipment sales.

4 **Q. Okay. Do you keep in touch with anyone at
5 Patterson Dental?**

6 A. Every once in a while, I'll see them at a
7 state show. And there is a gentleman named John Girkin
8 who, maybe once a year, will send me a Merry Christmas
9 message.

10 **Q. What does Mr. Girkin do at Patterson Dental?**

11 A. He's a field sales rep.

12 **Q. And you worked with Mr. Girkin when you were
13 at Patterson Dental?**

14 A. I did.

15 **Q. Okay. Did you attend college?**

16 A. I did.

17 **Q. Where did you go?**

18 A. Cortland State University.

19 **Q. And did you obtain a degree?**

20 A. I did.

21 **Q. In what?**

22 A. Business administration and communication.

23 **Q. When did you graduate?**

24 A. In '95.

25 **Q. What did you do after college and before you**

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1 **went to Patterson Dental?**

2 A. I was the -- I was responsible for Children's
3 Hospital of Buffalo Dental Clinic.

4 **Q. So going back to your current position as VP
5 of sales for the Western area, how frequently do you
6 interact with Mr. Tim Sullivan?**

7 MR. McDONALD: Object to the form.

8 A. There is not a routine pattern. There's weeks
9 I may see him once or twice, and then there's weeks I
10 don't see him at all.

11 **Q. Do you and Mr. Sullivan work in the same
12 office building?**

13 A. We do.

14 **Q. And I don't think I asked you this earlier,
15 but what is Mr. Sullivan's title?**

16 A. He's president of North America for Henry
17 Schein Dental.

18 **Q. So how frequently do you e-mail Mr. Sullivan?**

19 MR. McDONALD: Object to the form.

20 A. It varies.

21 **Q. Are there particular subjects on which you
22 e-mail Mr. Sullivan more frequently?**

23 MR. McDONALD: Object to the form.

24 A. If there is something impacting a current team
25 Schein member, I'll make sure he knows. If we are

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1 working on a deal, I -- most of the time it's -- many
2 times it's FYIs so he's aware. There's times where it's
3 an update on how the business in the Western area is
4 going.

5 **Q. You said that if you're working on a deal,
6 sometimes you'll make sure that Mr. Sullivan is aware.
7 What did you mean by "working on a deal"?**

8 A. Well, the industry dynamic is changing and us
9 talking to certain customers using the explanation that
10 I went through with you earlier on DSOs, MSOs,
11 complexity of the business. It was --

12 (Reporter coughing.)

13 THE REPORTER: I'm sorry. It was?

14 A. The complexities of the business, it just --
15 if we were talking to a customer, using a customer as an
16 example, I would make him aware of that.

17 **Q. So, specifically, in the APC area, you would
18 make Mr. Sullivan aware?**

19 A. I did make Mr. Sullivan aware of Smile Source,
20 specifically.

21 **Q. Understood. But, generally, are you more
22 likely to make Mr. Sullivan aware of things that are
23 going on in the APC space as opposed to in the private
24 practice space?**

25 MR. McDONALD: Object to form.

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1 A. In my communication with him, I can't say
2 there is a trend of communicating with him more on that
3 side of the business than other parts of the business.

4 **Q. Okay. As VP of sales for the Western region,
5 is it fair to say that you have authority to make
6 certain decisions?**

7 A. Yes.

8 **Q. And are there other decisions that you need to
9 escalate to Mr. Steck or Mr. Sullivan?**

10 A. Correct.

11 **Q. What types of decisions would you need to
12 escalate?**

13 A. It's not specifically in writing. But if
14 there is a decision that's maybe made that's going to
15 impact the company from coast to coast or if they were
16 sitting in front of their direct report, or the people
17 they report to directly, I would make sure they're aware
18 of what's going on and ask for guidance or let them know
19 what decision I'm leaning towards.

20 **Q. What about in the APC space? Do you need to
21 escalate a decision with whether to work with a new APC
22 client to either Mr. Sullivan or Mr. Steck?**

23 A. I don't necessarily have to. But when we are
24 bringing on a group that's national, I do want to make
25 sure there is -- we're collaborating with several people

10 (Pages 37 to 40)

41	<p>1 so they understand what's going on.</p> <p>2 Q. So do you generally escalate decisions about</p> <p>3 whether to work with a new APC client to Mr. Sullivan?</p> <p>4 A. I'm just thinking of a new APC customer that</p> <p>5 we'd be working on right now that -- I wouldn't let him</p> <p>6 know where we're heading unless there is an objection, a</p> <p>7 concern, a flag thrown, then we'd slow down and stop.</p> <p>8 Q. Okay. Do you prepare any reports for</p> <p>9 Mr. Sullivan, any regular reports for him?</p> <p>10 A. I don't.</p> <p>11 Q. Do you have any regularly scheduled meetings</p> <p>12 with Mr. Sullivan?</p> <p>13 A. We've recently started just going around the</p> <p>14 Western area and giving an update. It's historically</p> <p>15 been verbal.</p> <p>16 Q. And that's an update to Mr. Sullivan?</p> <p>17 A. And Mr. Steck.</p> <p>18 Q. Okay. And how frequently do you give those</p> <p>19 updates?</p> <p>20 A. Once a quarter.</p> <p>21 Q. And what type of information do you provide to</p> <p>22 Mr. Steck and Mr. Sullivan in those updates?</p> <p>23 A. Trends happening in the Western area, how</p> <p>24 certain teams are performing in the area, any hot topics</p> <p>25 they should be aware of, and I'll give compliments to</p>	43	<p>1 A. Dave has a senior sales meeting once a month.</p> <p>2 Q. What happens at the senior sales meeting?</p> <p>3 A. It's the -- his direct reports go around the</p> <p>4 room for an hour-and-a-half, and we just update the team</p> <p>5 on what's going on in the business, just with respect to</p> <p>6 all business.</p> <p>7 Q. Are there any agendas prepared for that</p> <p>8 meeting?</p> <p>9 A. Yes.</p> <p>10 Q. Who prepares them?</p> <p>11 A. Dave's admin, Tay.</p> <p>12 Q. And how long has Mr. Steck been holding the</p> <p>13 senior sales meetings once a month?</p> <p>14 A. Roughly, two years.</p> <p>15 Q. So about as long as you've been in the</p> <p>16 position of VP of sales for the Western region?</p> <p>17 A. I would say that's accurate.</p> <p>18 Q. And are any notes taken during those meetings?</p> <p>19 A. There is not a designated person to take</p> <p>20 notes.</p> <p>21 Q. Do you take notes during those meetings?</p> <p>22 A. I do not.</p> <p>23 Q. And then -- strike that.</p> <p>24 MS. GOFF: I think now is a good place to stop. If</p> <p>25 you'd like, I can keep going.</p>
42	<p>1 certain individuals that they need to be aware of.</p> <p>2 Q. And you said that those updates are typically</p> <p>3 oral?</p> <p>4 A. That's correct.</p> <p>5 Q. Are there any notes taken or agendas prepared?</p> <p>6 A. I don't prepare an agenda or personally take</p> <p>7 notes on it.</p> <p>8 Q. Is there anyone in the meetings that is</p> <p>9 designated to take notes?</p> <p>10 A. No. Can I also add a 6X6? We do a 6X6 with</p> <p>11 Tim.</p> <p>12 Q. Okay. What is a 6X6?</p> <p>13 A. It's we give him an update on the six things</p> <p>14 we're working on in the upcoming six weeks.</p> <p>15 Q. Okay. And with regard to Mr. Steck, how</p> <p>16 frequently do you interact with Mr. Steck?</p> <p>17 MR. McDONALD: Object to the form.</p> <p>18 A. Once again, it depends on the week. It</p> <p>19 depends on the month. I would say, on average, once or</p> <p>20 twice a week.</p> <p>21 Q. So more frequently than with Mr. Sullivan?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you have regular meetings with</p> <p>24 Mr. Steck aside from the ones that we've already</p> <p>25 discussed where it's with Mr. Sullivan and Mr. Steck?</p>	44	<p>1 MR. McDONALD: It's up to you, Joe.</p> <p>2 THE WITNESS: I'm good.</p> <p>3 MS. GOFF: Okay. We'll keep going.</p> <p>4 Q. Can you describe Henry Schein's business, just</p> <p>5 generally? I'm specifically speaking on the dental</p> <p>6 side.</p> <p>7 A. We sell merchandise, equipment, technology,</p> <p>8 software, business solutions. It's what we refer to as</p> <p>9 the wheel.</p> <p>10 Q. And when you say "merchandise," do you mean</p> <p>11 dental supplies?</p> <p>12 A. I do.</p> <p>13 Q. And "equipment" is just dental equipment?</p> <p>14 A. Chairs, stools, lights.</p> <p>15 Q. Does Henry Schein manufacture any of the</p> <p>16 dental supplies or equipment that it sells?</p> <p>17 MR. McDONALD: Object to the form.</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Does it have what's called a private label</p> <p>20 product?</p> <p>21 A. We do.</p> <p>22 Q. And what is that?</p> <p>23 A. A private label product is on dental supplies</p> <p>24 where, when it's shipped to a customer, it's the Henry</p> <p>25 Schein brand on the box and then whoever is</p>

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1 manufacturing it for us.
 2 **Q. But someone else manufacturers it?**
 3 A. As far as --
 4 MR. McDONALD: Hang on. Object to the form.
 5 A. As far as I know.
 6 **Q. And other than private label products, Schein**
 7 **also distributes products under the name of the**
 8 **manufacturer?**
 9 A. Yes.
 10 **Q. Do you know what percentage of Schein's annual**
 11 **sales are attributable to the private label products as**
 12 **opposed to the manufacture of products?**
 13 MR. McDONALD: Object to form. Foundation.
 14 A. I don't specifically know the percentage.
 15 MR. McDONALD: Can we agree when you say "Schein,"
 16 you mean Henry Schein Dental?
 17 MS. GOFF: Sure.
 18 **Q. You don't know the percentage?**
 19 A. I don't know the specific percentage, no.
 20 **Q. Okay. Which manufacturers does Schein work**
 21 **with the most?**
 22 MR. McDONALD: Object to the form.
 23 **Q. If you know.**
 24 A. I would say that we work with -- we work with
 25 them all. Are you looking for --

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1 **Q. I don't know. Can you give me the top five?**
 2 A. 3M, Dentsply -- this is dental supplies?
 3 **Q. Correct.**
 4 A. 3M, Dentsply, Kerr.
 5 **Q. And do those manufacturers typically also sell**
 6 **to other companies like Henry Schein?**
 7 A. Yes.
 8 **Q. Okay. Do you consider Henry Schein to be a**
 9 **dental distributor?**
 10 A. Henry Schein Dental, yes, is a dental
 11 distributor.
 12 **Q. Okay. Are you familiar with the term "full**
 13 **service distributor" as it's used in the dental**
 14 **industry?**
 15 A. I've heard that term, yes.
 16 **Q. What does it mean to you?**
 17 A. Full service is, when you look at the wheel of
 18 Henry Schein, you're able to offer all of the different
 19 segments of the business to a customer, which includes
 20 integrating technology, business solutions, servicing
 21 equipment, which is a huge piece of it, dental supplies,
 22 equipment, design, designing offices, consulting.
 23 **Q. And so would you consider Henry Schein Dental**
 24 **to be a full-service dental distributor?**
 25 A. Yes.

47

1 **Q. Okay. Do you consider Patterson Dental to be**
 2 **a full-service dental distributor?**
 3 A. They don't have all of the components we do,
 4 but I would consider them full service.
 5 **Q. Okay. What about Benco?**
 6 A. I would -- once again, they don't have
 7 everything we have, but I would say they are full
 8 service.
 9 **Q. Okay. And are you familiar with the term**
 10 **"national distributor" as it's used in the dental**
 11 **industry?**
 12 A. I've heard of the term "national distributor."
 13 **Q. And what does it mean to you?**
 14 A. A national distributor would have a presence
 15 from coast to coast.
 16 **Q. And Schein Dental is a national distributor?**
 17 A. Yes, we are.
 18 **Q. What about Patterson?**
 19 A. Yes, they are.
 20 **Q. And Benco?**
 21 A. I believe they are, yes.
 22 **Q. Would you consider Darby to be a national**
 23 **distributor?**
 24 A. They would be -- they would be a national
 25 telesales company.

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1 **Q. And what about Burkhardt; would you consider**
 2 **them to be a national distributor?**
 3 A. No. They are regional.
 4 **Q. What about Burkhardt in terms of a full-service**
 5 **director?**
 6 A. In their regional area of responsibility, they
 7 don't have, again, all components; but they would have
 8 full service because they have a service team.
 9 **Q. So would you consider Burkhardt to be a**
 10 **full-service distributor?**
 11 MR. McDONALD: Object to the form.
 12 A. I would consider Burkhardt to be full service,
 13 regional.
 14 **Q. Okay. And what about Darby; would you**
 15 **consider them to be full service?**
 16 A. No.
 17 **Q. Why not?**
 18 A. Because they just do telesales. They don't
 19 offer services, technology, business solutions.
 20 THE REPORTER: I'm sorry. Technology?
 21 A. And business solutions.
 22 **Q. Okay. Let's talk a little bit about the**
 23 **organizational structure at -- I'd actually like to talk**
 24 **about the organizational structure at Henry Schein, so**
 25 **not specific to Henry Schein Dental.**

49	<p>1 Can you tell me how the sales department is</p> <p>2 organized at Henry Schein?</p> <p>3 MR. McDONALD: Object to the form. No foundation.</p> <p>4 A. The sales department for Henry Schein, Inc.,</p> <p>5 is what you're asking?</p> <p>6 Q. Let's start with that.</p> <p>7 MR. McDONALD: Same objection.</p> <p>8 Q. If you know.</p> <p>9 A. I know Henry Schein Dental.</p> <p>10 Q. Okay. So tell me about the sales structure at</p> <p>11 Henry Schein Dental.</p> <p>12 A. Okay. So the reporting structure of how it</p> <p>13 reports through it?</p> <p>14 Q. Yes.</p> <p>15 A. So we have sales reps, which we call FSCs.</p> <p>16 They sell dental supplies, and they're the generalist.</p> <p>17 We have equipment specialists that we call ESSs. We</p> <p>18 have technology specialists, which we call DTSSs. We</p> <p>19 have an operations team. And with our service techs, we</p> <p>20 call them ETSSs.</p> <p>21 We have various different specialized groups.</p> <p>22 We have the RAMs, which I was talking about in the group</p> <p>23 practice space, the midmarket space. All of these</p> <p>24 individuals report to the regional managers, who then</p> <p>25 report to zone managers, who then report to the vice</p>	51	<p>1 crossover. It requires collaboration with customer</p> <p>2 segmentation; but the special markets division does not</p> <p>3 report through Henry Schein Dental.</p> <p>4 Q. So is the special markets division -- would</p> <p>5 you consider them to be in the Henry Schein, Inc.</p> <p>6 company, part of that company?</p> <p>7 A. Yes.</p> <p>8 Q. Henry Schein Dental is also part of Henry</p> <p>9 Schein, Inc., correct?</p> <p>10 A. Correct.</p> <p>11 Q. And the special markets division, what do they</p> <p>12 do?</p> <p>13 MR. McDONALD: Object to form. Go ahead.</p> <p>14 A. The special markets division, they call on the</p> <p>15 majority of the elite corporate group accounts, and</p> <p>16 those were the ones we were referring to. Historically,</p> <p>17 there are 50-plus more practices. And their sales</p> <p>18 representatives are called SAMs. It's strategic account</p> <p>19 managers is what a SAM is. And they historically meet</p> <p>20 with the C-suite of the groups; the CEO, the CFO.</p> <p>21 Q. Okay. Thank you. I'd like to talk a little</p> <p>22 bit about price for dental supplies and equipment. Are</p> <p>23 you knowledgeable about how Henry Schein Dental sets the</p> <p>24 prices for its supplies and equipment, generally?</p> <p>25 A. I'm not responsible for that, and I couldn't</p>
50	<p>1 president, report to Dave and to Tim.</p> <p>2 Q. Okay. Thank you. What are the RAMs?</p> <p>3 A. Those are the regional account managers. And</p> <p>4 they actually, in the west, report to Kathleen and, in</p> <p>5 the east, report to Marcy Roy.</p> <p>6 Q. Thank you. So have you heard of the special</p> <p>7 markets division?</p> <p>8 A. Yes, I have.</p> <p>9 Q. And where does the special markets division</p> <p>10 fit in?</p> <p>11 A. They're --</p> <p>12 Q. Go ahead.</p> <p>13 A. Okay.</p> <p>14 Q. I'll take back that question. I'll ask you a</p> <p>15 different one.</p> <p>16 A. Okay.</p> <p>17 Q. Is the special markets division part of Henry</p> <p>18 Schein Dental?</p> <p>19 A. No.</p> <p>20 Q. So where does the special markets team fit in?</p> <p>21 A. The special markets team reports up through a</p> <p>22 gentleman named Hal Muller, who is the president of</p> <p>23 special markets. They have their own sales division.</p> <p>24 And, as I mentioned before, the complexity of</p> <p>25 the industry right now is, we can potentially have</p>	52	<p>1 tell you the actual formula that we use to set pricing.</p> <p>2 Q. Okay. I will ask you a couple of general</p> <p>3 questions. And if you don't know the answer, that's</p> <p>4 fine. You can tell me you don't know.</p> <p>5 Does Henry Schein publish a catalog of</p> <p>6 products that it sells along with prices for those</p> <p>7 products?</p> <p>8 A. Yes, we do.</p> <p>9 Q. And do you know how those prices are set?</p> <p>10 A. I do not know specifically.</p> <p>11 Q. Who would know?</p> <p>12 MR. McDONALD: Object to form.</p> <p>13 A. If I had a question about pricing, I would</p> <p>14 talk to Paul Hinsch.</p> <p>15 Q. For private practice clients within Henry</p> <p>16 Schein Dental, how is the price charged to the</p> <p>17 consumer -- or to the customer, rather? How is that</p> <p>18 determined?</p> <p>19 MR. McDONALD: Object to form.</p> <p>20 A. So based off the catalog, we have several what</p> <p>21 we call VPAs, volume purchase agreements, that our team</p> <p>22 has used to win business in the field, so, oftentimes,</p> <p>23 based on the VPA or price that was negotiated in the</p> <p>24 field by our field sales reps. In addition, now with</p> <p>25 the group practice space, we have something called</p>

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1 formularies that we negotiate with the group, and the
2 offices within that group purchase off of the formulary.

3 **Q. Okay. So what is a formulary.**

4 A. It's just an agreed-upon set of items that a
5 specific customer would like to purchase from us and at
6 an agreed-upon price with the customer.

7 **Q. Okay. And so you use formularies within the
8 group practice space?**

9 A. We do now. Historically, that's something
10 that we had to cultivate. So, yes, to answer your
11 question.

12 **Q. Currently?**

13 A. Currently.

14 **Q. But you don't use formularies for private
15 practice clients?**

16 A. So we recently started formularies with
17 private practices under the Henry Schein Connection
18 Program.

19 **Q. When did you start using formularies for
20 private practice clients?**

21 A. Roughly, a year-and-a-half ago. Not every
22 customer is on that.

23 **Q. How --**

24 A. It's an option.

25 **Q. How does a customer get on the formulary plan?**

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1 A. So when a field rep will -- is talking to a
2 customer, they will present the Henry Schein Connection
3 Program. And if the customer likes the program and
4 chooses to be on it, that's how they get on it.

5 **Q. What is the Henry Schein Connection Program?**

6 A. It's just packaged -- it's a packaged program
7 with a prepared combination of marketing and also a
8 formulary that we have.

9 **Q. And so why did -- why did Henry Schein Dental
10 start using formularies for private practice clients?**

11 MR. McDONALD: Object to the form.

12 A. We had something called a custom quote, and
13 the custom quote was pricing was being negotiated in the
14 field and there wasn't a lot of structure to it. So we
15 also noticed that the same products showing up on the
16 custom quotes were the products that customers wanted.
17 So in order to make it easier for our sales team and,
18 also, for the customer, we put together the formulary
19 and took the average pricing in the market. That's how
20 we came up with it.

21 **Q. Can individual private practice clients get
22 discounts above and beyond what's on the formulary?**

23 A. Yes, they can.

24 **Q. And prior to having the formulary, it was just
25 the prices were negotiated with the private practice**

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1 **clients; is that right?**

2 A. In some cases. It wasn't -- it wasn't every
3 case.

4 **Q. Okay. And in cases where it wasn't
5 negotiated, then the price would be based on the catalog
6 price?**

7 MR. McDONALD: Object to the form.

8 A. It would be based on the VPA the customer
9 signed up on, which was historically a percent discount
10 offer of the catalog or a percent rebate off -- back to
11 the customer off of the catalog.

12 **Q. Okay. So each private practice would have its
13 own VPA; is that right?**

14 A. Correct.

15 **Q. And the VPA would specify the discount off the
16 catalog price?**

17 A. Correct.

18 **Q. And, now, currently, for private practices
19 that sign up for Henry Schein Connection, is there some
20 kind of volume purchase agreement or something similar?**

21 A. They commit to certain levels of business.
22 It's 15,000, 35,000, or 70,000.

23 **Q. So there are different tiers?**

24 A. Correct.

25 **Q. And then are there different discounts based**

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1 **on the tiers?**

2 A. In the Connection program, there is not. The
3 tier is based on -- we tied something called privileges
4 to the Connection program. And our privileges are a
5 Customer Rewards Program, and the tiers allow you to get
6 bigger discounts on service or service response time.

7 **Q. Okay. So the 15K, 35K, or 70K, is that volume
8 of business?**

9 A. That is correct.

10 **Q. Okay. And so --**

11 A. Merchandise business. Sorry.

12 **Q. Thank you. That's an excellent clarification.**

13 **So it's \$15,000 of merchandise purchased by
14 that private practice?**

15 A. Correct.

16 **Q. Okay. And did I understand correctly that the
17 discount that's offered is the same across each of those
18 tiers, so the 15K, the 35K, and the 75K would all get
19 the same discount on the merchandise?**

20 A. Right. Now, on the Connections program, the
21 products and the pricing are the same.

22 **Q. But a customer that purchases more volume
23 would get higher rewards under the Customer Rewards
24 Program?**

25 A. They would get an additional discount. I'll

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1 use service as an example. So the \$15,000-a-year
2 customer would get a 10 percent discount; the 35,000, a
3 15 percent discount; and the 70,000 would get a
4 20 percent discount.

5 **Q. Are there discounts on merchandise that are**
6 **offered, or is it just service?**

7 A. Outside of the formulary?

8 **Q. No. Sorry. For the Customer Rewards Program,**
9 **the rewards that the customer can get back, you said**
10 **that there are discounts. Is it just on service, or are**
11 **there discounts on merchandise as well?**

12 A. The discount for merchandise is coming from
13 the formulary. It's a discounted price on the
14 formulary.

15 **Q. So is there a different formulary for the 15K,**
16 **the 35K, and the 75K?**

17 A. No. It's the same formulary.

18 **Q. Okay. So the same prices are offered on the**
19 **formulary for the merchandise for the 15K, the 35K, and**
20 **the 75K?**

21 A. That's correct.

22 **Q. But the 70- -- sorry. Is it 75 or 70K?**

23 A. I believe it's 75 right now.

24 **Q. So the 75K, they get larger discounts through**
25 **the Customer Rewards Program?**

1 the top competitors.

2 **Q. Does Schein compete against Patterson and**
3 **Benco in the private practice dental space?**

4 A. Yes, we do.

5 **Q. And then what about in the group practice**
6 **dental space?**

7 MR. McDONALD: Object to form.

8 A. I would say, yes, we do.

9 **Q. And then does Schein compete against Patterson**
10 **and Benco on price?**

11 A. When we're in front of a customer, there are
12 times we're competing on price.

13 **Q. And does Schein also compete against Patterson**
14 **and Benco on the types of products offered, the product**
15 **offerings?**

16 MR. McDONALD: Object to the form.

17 A. Does that mean the different products we sell?

18 **Q. Yeah. Yes.**

19 A. So whatever products that we each distribute
20 that are similar, yes, we would compete.

21 **Q. And does Schein compete against Patterson and**
22 **Benco on the quality of service that it offers?**

23 A. Customer service, I'm sure it's part of the
24 equation.

25 **Q. Okay. Are there any other sort of metrics**

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1 A. Correct.

2 **Q. And those discounts are offered on equipment**
3 **servicing?**

4 A. Correct. The service technicians that go into
5 the office would be an example.

6 **Q. Are there any other examples?**

7 A. They would get points, but it doesn't matter
8 what level you're in. You receive points for ordering
9 online.

10 **Q. And what can a customer do with the points?**

11 A. They can redeem them for products and services
12 from Henry Schein.

13 **Q. Okay. Thank you.**

14 THE WITNESS: Is it okay if we break now?

15 MR. McDONALD: Sure.

16 MS. GOFF: Okay. Off the record.

17 (A short recess was had.)

18 **Q. Mr. Cavaretta, who are Schein's major**
19 **competitors within the Henry Schein Dental division?**

20 A. Full-service competitors would be Patterson
21 Dental, Benco, Burkhart, Nashville, Atlanta.

22 **Q. And would you agree that Patterson and Benco**
23 **are the top competitors?**

24 MR. McDONALD: Object to the form.

25 A. On a national basis, full service, it would be

1 **that are part of the equation that you compete against**
2 **Patterson and Benco on?**

3 MR. McDONALD: Object to the form.

4 A. Not that I'm aware of.

5 **Q. And what is the most effective way for Schein,**
6 **in your experience, to win over an independent dental**
7 **practice from Patterson or Benco?**

8 MR. McDONALD: Object to the form.

9 A. There is no one way to win a customer, because
10 they're -- behaviorally, they're all different. Their
11 needs are all different. And I believe, when we tell
12 our story about the wheel and everything we have to
13 offer, that's our best way to win business.

14 **Q. What's the wheel?**

15 A. The wheel is packaging all of the different
16 solutions and products that we have to offer the dental
17 customer.

18 **Q. Is price one way to win over a customer from**
19 **Patterson and Benco; in other words, offering a lower**
20 **price than Patterson or Benco?**

21 A. We've won business before on price, yes.

22 **Q. And then what about for the group practice**
23 **space? In your experience, what is the most effective**
24 **way to win over a group practice from Patterson or**
25 **Benco?**

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1 A. Well, we usually cultivate the relationship,
2 and their market share is usually our relationship. But
3 a group practice is looking for a dealer that
4 understands the group practice market, can help them
5 grow, has all of the services, including technology and
6 integration of technology and service technicians. So
7 you have to have the entire package in order to
8 successfully work with group practices.

9 **Q. And is price one way that Schein can win over
10 a group practice from Patterson to Benco?**

11 A. Price is always a component in the
12 negotiations. I can't say that we've ever won a
13 customer solely on price.

14 **Q. And when you said "a customer," do you mean in
15 the group practice space or any customer?**

16 A. In the group practice space.

17 **Q. Okay. Do you have a view on whether price is
18 more or less important to group practices than to
19 private practices?**

20 MR. McDONALD: Object to the form.

21 A. I think price is important to everybody.

22 **Q. So price is important to all of Henry Schein
23 Dental's customers?**

24 A. Yes.

25 **Q. To compete against Schein, I mean -- strike**

1 **Q. If any.**

2 MR. McDONALD: Object to the form.

3 A. There used to be a report published by SDM on
4 market share that doesn't really exist anymore. So it's
5 usually a feel in the marketplace by a regional manager
6 on who has the majority of market share. And then, of
7 course, when we're calling on customers, our reps know
8 what the office is and who they're using to purchase
9 products from.

10 **Q. So are those the ways that Schein gathers
11 market intelligence? Is that what you were just telling
12 me?**

13 MR. McDONALD: Object to the form. Go ahead.

14 A. It's part of it. You have marketing pieces
15 that are published. That's pretty much the marketing
16 pieces that are sent out. It's you have a good
17 understanding of the direction the company is heading.

18 **Q. Okay. So marketing pieces that are sent out
19 by whom?**

20 A. The competitors.

21 **Q. And then do you obtain information from
22 talking to dentists? Is that another way that you
23 gather market intelligence?**

24 A. Sure. A dental office will tell us various
25 pieces of information. I can't tell you specifically.

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1 that.

2 **To compete against Patterson and Benco, does
3 Schein try to gather information on what those two
4 companies are doing?**

5 A. With a particular customer?

6 **Q. Sure. Or just any market intelligence, does
7 Schein attempt to gather market intelligence about
8 Patterson and Benco in order to compete with them?**

9 A. Usually, when we're talking to a group, you
10 can get a good sense from the group of what Patterson,
11 or Benco, or whoever is offering them.

12 **Q. And is that important to -- is that
13 information important to Schein?**

14 MR. McDONALD: Object to the form.

15 A. It's part of -- it's part of winning a
16 customer, but we really focus on our offering and what
17 Henry Schein can do.

18 **Q. Other than speaking -- well, earlier you
19 said -- strike that.**

20 **How does Schein go about gathering market
21 intelligence about Patterson or Benco?**

22 A. Specifically, what market intelligence, or --

23 **Q. What market intelligence does Schein want to
24 know about Patterson or Benco?**

25 MR. McDONALD: Object to the form.

1 It depends on the office. It depends on the product,
2 the day.

3 **Q. Okay. And what type of information is useful
4 to Schein?**

5 MR. McDONALD: Object to the form.

6 A. If a customer is happy or not with the current
7 offering that they're getting from their current dealer,
8 what they're not happy about, what we could do to win
9 that business and make them a happy customer.

10 **Q. Okay. So is price a bit of market
11 intelligence that is important, like the prices being
12 charged by your competitors?**

13 MR. McDONALD: Object to the form.

14 A. That's a component to it.

15 **Q. The discounts that are being offered by the
16 competitors?**

17 MR. McDONALD: Object to the form.

18 A. That could be a component of it.

19 **Q. Okay. Any other components that you can think
20 of?**

21 A. Just a customer not being happy with the level
22 of service, the other solutions that are provided.

23 **Q. And do you personally -- in the course of your
24 duties, in your current position as VP of sales, do you
25 personally seek out market intelligence about what your**

<p style="text-align: right;">65</p> <p>1 competitors are doing? 2 A. The only time I ever will hear anything is 3 from my team in the field on what they're hearing in the 4 field. 5 Q. And is that information useful to you? 6 A. It's -- it is information, but I don't -- I'm 7 just trying to describe the usefulness. I don't recall 8 ever changing a course of direction based on the 9 information I've received, so I guess it's nice to have. 10 Q. Okay. So you don't recall ever changing a 11 course of direction based on market intelligence that 12 you've received from -- about a competitor? 13 A. Off the top of my head, no. Could it have 14 happened? It's possible. 15 Q. Do you ever talk to competitors to gather 16 market intelligence? 17 A. No. 18 Q. Why not? 19 A. I don't see a need to talk to the competitors. 20 That's why I don't. 21 Q. That's the reason why you don't talk to them? 22 A. Yeah. There is no reason to talk to a 23 competitor about, for me, anything, unless it's a, "Hi." 24 Q. Sorry. Were you done? 25 A. I am now.</p>	<p style="text-align: right;">67</p> <p>1 fierce. 2 Q. Okay. Would you agree that Patterson's loss 3 could be Schein's gain? 4 A. In order for us to take market share, it's 5 good value to take it from Patterson. 6 Q. Or the same with Benco; Benco's loss could be 7 Schein's gain? 8 A. Oh, yeah. 9 Q. Okay. And how would you describe the 10 competition between Benco and Schein? 11 A. Similar. It's they're a little smaller, and 12 their go-to-market strategy, the way to go to market, is 13 a little bit different. But we want to beat them all 14 day long. 15 Q. So can you think of any incentive that Schein 16 would have to help Patterson or Benco maintain their 17 market share? 18 A. No. 19 Q. Is there any incentive that Schein would have 20 to help Patterson or Benco increase their profit 21 margins? 22 A. No. 23 Q. Would you agree that Schein has a larger 24 market share than Patterson? 25 MR. McDONALD: Object to the form. Vague.</p>
<p style="text-align: right;">66</p> <p>1 Q. And then you said, "Unless it's a, Hi"? 2 A. So you're saying, "Hi." You're cordial. But 3 I don't talk to a competitor about what their current 4 strategy is, what their business plan is, in a way. 5 Q. And is it your policy not to talk to 6 competitors? 7 A. So my team knows that they're not to talk to 8 competitors; and through the course of these 9 investigations, they definitely understood that even 10 further. But right now my team knows they should not be 11 talking with competitors about really anything. 12 Q. So did you tell your team, did you instruct 13 your team not to talk to competitors about anything? 14 A. I have. 15 Q. And when have you done that? 16 A. The time frame would be pretty much over the 17 last 18 months to two years where I was specific with 18 it. 19 Q. Okay. And prior to that, was there any 20 instruction to your team not to talk to competitors? 21 A. It was an assumption not to, but it wasn't 22 specific. 23 Q. Okay. How would you describe the competition 24 between Patterson and Schein? 25 A. Aggressive, at times hatred. It's pretty</p>	<p style="text-align: right;">68</p> <p>1 A. From my opinion, I would say that we have a 2 slightly larger market share than Patterson. 3 Q. Okay. And is that nationally? 4 A. So what I just explained to you would be 5 nationally, and then the regions, of course, it varies. 6 Q. And does Schein have a larger market share 7 nationally than Benco? 8 A. Yes, we do. 9 Q. Have you ever, in your career at Schein, had 10 communications with anyone that works for one of 11 Schein's competitors to gain market intelligence? 12 A. Can you repeat that question? 13 Q. Sure. Have you ever -- since working at 14 Schein, have you ever had communications with anyone 15 that works for Patterson or Benco to gain market 16 intelligence? 17 A. We've recruited sales representatives from 18 Patterson and Benco; and when you recruit a sales 19 representative, you can obtain information. But that's 20 the extent of it. 21 Q. So other than the circumstance where you've 22 recruited a sales representative from Patterson or 23 Benco, have you ever had communications with anyone who 24 works at Patterson or Benco for the purpose of gaining 25 market intelligence?</p>

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1 A. No.

2 **Q. So is there a policy at Schein regarding**

3 **communications with competitors and whether or not**

4 **that's permissible?**

5 A. We take different courses now -- what's called

6 Core Pedia -- on interaction with our code of ethics.

7 Let's just call it that. So it is well-known that we

8 should not be communicating with the competition. Have

9 I seen a policy on paper? I have not seen a policy on

10 paper.

11 **Q. And what are the courses that you're required**

12 **to take?**

13 A. The courses are on, you know, the ethical

14 standards at Henry Schein on anti-kickback, sunshine,

15 pretty much regulatory stuff that has now pretty much

16 entered our industry to educate our team on what is

17 going on.

18 **Q. And are those courses also related to**

19 **communications with competitors?**

20 A. There is not a specific course on that; but

21 during the courses, you can understand that that's not

22 something that we should be doing.

23 **Q. Is it explicit?**

24 A. I can't recall exactly the slides and the

25 pieces of it.

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1 **Q. Have you ever had any antitrust training at**

2 **Schein?**

3 A. Yes, we have.

4 **Q. And how frequently do you have that training?**

5 A. We have to take that once a year, and it's

6 through the same Core Pedia training.

7 **Q. How long has it been a requirement to take the**

8 **antitrust training once a year?**

9 A. Over -- definitely over four years. I

10 couldn't tell you how long, specifically, though.

11 **Q. And the ethics courses that you were**

12 **discussing earlier, when did -- when was it first**

13 **implemented at Schein that those were required to be**

14 **taken?**

15 A. So when I said that, it was generalizing the

16 different courses we were taking, so I would say within

17 the same time frame, four-plus years.

18 **Q. Okay. And who was required to take the ethics**

19 **and antitrust courses?**

20 MR. McDONALD: Object to the form.

21 A. All -- from my understanding, all Team Schein

22 members.

23 **Q. Is that all members that work for Henry Schein**

24 **Dental?**

25 MR. McDONALD: Object to the form.

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1 A. Correct.

2 **Q. What does "Team Schein" mean?**

3 A. Yes. So it would include anyone from a

4 leadership position, a sales position, and a service

5 position.

6 **Q. Okay. So going back to whether there is a**

7 **policy at Schein regarding communications with**

8 **competitors, there is not any written policy, to your**

9 **understanding, regarding communications with**

10 **competitors?**

11 A. I haven't seen a written policy, but I know

12 through, once again, the training that we receive, it's

13 understood not to do that.

14 **Q. Other than from the trainings, have you**

15 **received any other direction from your bosses regarding**

16 **communications with competitors?**

17 A. Yes.

18 **Q. Tell me about that.**

19 A. We've had trainings, over the last two years,

20 for sure, maybe a little longer, on interaction with

21 competition and what we could -- can and cannot do. For

22 the most part, it's just don't talk to them if you're

23 not sure.

24 **Q. And what are those trainings?**

25 A. So we have different -- whether it's our

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1 national sales meeting or field managers meeting, we

2 will be able to have -- whether it's HR or legal counsel

3 get up and just talk about --

4 MR. McDONALD: Hang on. Sorry. To the extent it's

5 legal counsel, I don't want you to reveal the substance

6 of communications --

7 THE WITNESS: Okay.

8 MR. McDONALD: -- unless you and I step out in the

9 hall and talk about it.

10 A. Okay. It's an awareness of the importance

11 that we abide by the antitrust and the training that

12 we're receiving.

13 **Q. And who implemented these trainings?**

14 A. The requests would come from -- to Dave Steck.

15 **Q. So Dave Steck sends out the meeting requests?**

16 A. It would be on -- it would be on the agenda

17 where our leadership team was there, and they just --

18 they would talk about lessons learned and this is how we

19 are expected to interact.

20 **Q. And so is this a formal training?**

21 A. Can you define "formal"?

22 **Q. You said that you've had trainings over the**

23 **last two years for sure, and maybe a little longer, on**

24 **interaction with competition and what we can and cannot**

25 **do.**

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- 1 **Can you please describe for me the nature of**
2 **these trainings?**
3 MR. McDONALD: Object to the form.
4 A. It's just talking about what we should and
5 should not be doing as Henry Schein. It wasn't ours.
6 It was an update. And it wasn't just on the
7 competition. It was also conduct on how we're working
8 with customers and also how we are performance managing
9 team members.
10 **Q. How often do the trainings take place?**
11 A. They're not -- they're not formalized
12 trainings. It's you hear something, you learn
13 something. It's, "Hey, look. We need to give the team
14 an update on why this is important."
15 **Q. Okay. And what do you mean by "they're not**
16 **formalized trainings"?**
17 A. It's not a regular training where we have it
18 scheduled, on a quarterly basis, where someone gets in
19 front of us and does continuing education on it.
20 **Q. Is this just essentially updates at meetings?**
21 A. When it happened, it would be an update at a
22 meeting.
23 **Q. Okay. And the meeting's purpose was not**
24 **necessarily specifically for training?**
25 A. That's correct.

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- 1 **Q. And what types of meetings do these**
2 **instructions come in? When -- so you refer to them as**
3 **trainings, but they're just informal trainings at**
4 **meetings; is that right?**
5 A. That's correct.
6 **Q. Is it a specific type of meeting?**
7 A. The meetings we had -- I had -- I remember one
8 at a national sales meeting that we had our leadership
9 team there and one at a field managers meeting that we
10 had our leadership team at.
11 **Q. Okay. So let's talk about the one at the**
12 **national meeting. Who got up and spoke at the national**
13 **meeting and gave the training?**
14 A. I'm trying to remember who stood up, because
15 it was about five minutes. At the national meeting, I
16 don't recall exactly who stood up.
17 **Q. Okay. How long does the national meeting**
18 **last?**
19 A. Typically, four days.
20 **Q. Okay. So the training was about five minutes**
21 **during the four-day period?**
22 A. Yeah. It was an update, yes.
23 **Q. Was the update given by someone from Henry**
24 **Schein Dental?**
25 A. Yes.

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- 1 **Q. But you don't recall who?**
2 A. I don't remember exactly who it was.
3 **Q. That's okay. What about at the national**
4 **leadership meeting? Do you remember who gave that**
5 **training?**
6 A. Yeah. Marjorie Han spoke up at that meeting.
7 **Q. Who is Marjorie Han?**
8 A. She is one of the Henry Schein legal counsel
9 members.
10 **Q. Okay. How long did she speak, approximately?**
11 A. 20 minutes.
12 **Q. And when, approximately, was that training at**
13 **the national leadership team meeting by Marjorie Han?**
14 A. In 2016, January.
15 **Q. Thank you. What about the one at the national**
16 **meeting; when was that?**
17 A. In 2015.
18 **Q. Okay. Have you ever received any direction**
19 **from Tim Sullivan regarding whether or not to**
20 **communicate with competitors?**
21 A. Yes.
22 **Q. When was that?**
23 A. During the course of the last couple of years,
24 I've seen and read e-mails, and he's sent e-mails.
25 **Q. And what did those e-mails say?**

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- 1 A. It was just -- I don't remember specifically
2 what they say, but it was clear the subject matter was,
3 you know, we're not to talk to competition.
4 **Q. Were you instructed not to talk to the**
5 **competition about anything specifically, or just,**
6 **generally, don't talk to the competition?**
7 A. I think it was more of a general statement and
8 more of a reminder of we're not -- we're not to be
9 talking to the competition about business.
10 **Q. Okay. And the direction from Tim Sullivan,**
11 **that came in an e-mail, is that what you said?**
12 A. The communication that I recall would have
13 been in an e-mail.
14 **Q. Are you thinking of something in particular?**
15 A. Just through the course of litigation of
16 seeing the information on the TDA was Tim sending a
17 reminder of not to talk to the competition.
18 **Q. Okay. And you said you have not seen a formal**
19 **policy from Schein regarding talking to competition?**
20 A. I have not seen a formal written policy put in
21 front of me that says don't talk to the competition.
22 **Q. Okay. Have you heard of the term "group**
23 **purchasing organization"?**
24 A. I have.
25 **Q. And is it sometimes called a GPO?**

19 (Pages 73 to 76)

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1 A. It is.
 2 **Q. And what does that term mean to you?**
 3 A. "Group purchasing organization"? It means
 4 there's a customer that is made up of groups of
 5 practices that negotiate pricing directly with
 6 manufacturers, and they would use a dealer to pass
 7 through the products from the manufacturer.
 8 **Q. What do you mean by "dealer"?**
 9 A. Well, manufacturers historically don't
 10 distribute products. They don't make the products. But
 11 in a dealer relationship, the dealer is responsible for
 12 the distribution.
 13 **Q. Is Henry Schein a dealer?**
 14 A. We are.
 15 **Q. So it's your understanding that a GPO refers**
 16 **to a customer that negotiates prices directly with the**
 17 **manufacturer?**
 18 A. That's correct.
 19 **Q. How long have you had that understanding of**
 20 **the definition of a GPO?**
 21 A. Probably, about a year-and-a-half now.
 22 **Q. And how did you come to have that**
 23 **understanding?**
 24 A. Well, GPO is a term that was used. It was a
 25 very general term, and it wasn't being used in the

1 **Q. So as far as you can recall sitting here**
 2 **today, prior to a year-and-a-half ago, you used the**
 3 **terms "GPO" and "buying group" synonymously?**
 4 A. GPO is used more frequently than anything,
 5 yes.
 6 **Q. But as far as you can recall, sitting here**
 7 **today, prior to a year-and-a-half ago, you used the**
 8 **terms "GPO" and "buying group" synonymously, right?**
 9 MR. McDONALD: Object to the form.
 10 A. I would have to say I believe so.
 11 **Q. So your understanding of the definition of the**
 12 **term "GPO" changed about a year-and-a-half ago, you**
 13 **said?**
 14 A. Roughly, a year-and-a-half ago.
 15 **Q. When you met with someone from medical, from**
 16 **the Henry Schein medical division?**
 17 A. The information was shared with us from the
 18 medical division. I didn't personally meet with them;
 19 but, yeah, that's where it came from.
 20 **Q. Okay. Do you know who, in the medical**
 21 **division, shared that with you?**
 22 A. I don't.
 23 **Q. And do you know -- can we narrow down the time**
 24 **frame more? You said "about a year-and-a-half ago." Do**
 25 **you know about what month or year?**

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1 proper way. So any group that wasn't owned by somebody
 2 was often referred to as a GPO.
 3 So as we were using that term, it was brought
 4 to our attention -- I think it was from our counterparts
 5 on the medical side -- that what we're talking about is
 6 actually not a GPO. It's they're talking about
 7 individual groups of doctors. It's more of a buying
 8 group.
 9 So it was an education from the medical team,
 10 because it wasn't the same, and that's how we learned
 11 what we were saying wasn't really accurate.
 12 **Q. So prior to a year-and-a-half ago, what was**
 13 **your understanding of what a GPO was?**
 14 MR. McDONALD: Object to the form.
 15 A. The GPO term was being used as generalizing,
 16 once again, groups that were not owned by an entity.
 17 And the best example would be either a buying group or a
 18 loosely formed group of doctors.
 19 **Q. So prior to a year-and-a-half ago, did you**
 20 **understand that a buying group and a GPO were**
 21 **essentially synonymous?**
 22 MR. McDONALD: Object to the form.
 23 A. I don't believe we knew the difference, so,
 24 yes, because we didn't know the difference between a GPO
 25 and a buying group and why the terms were different.

1 A. Not specifically, no.
 2 **Q. And how did you receive the information from**
 3 **the medical team?**
 4 A. It was in a Henry Schein Dental meeting, which
 5 I don't believe had someone from the medical team there.
 6 And as we were talking about strategy and how the
 7 marketplace was changing, and so on and so forth, the
 8 term "GPO" was used and someone was corrected that
 9 actually it's different.
 10 **Q. So under this definition of the term "GPO"**
 11 **that you gave me today, that it's made up of groups of**
 12 **practices that negotiate prices directly with the**
 13 **manufacturer, does Henry Schein Dental work with any**
 14 **GPOs?**
 15 A. I'm not aware of any GPOs that exist.
 16 **Q. On the dental side?**
 17 A. On the dental side of it.
 18 **Q. Okay. Is it fair to say that GPOs aggregate**
 19 **the purchase volume of separate practices in order to**
 20 **leverage buying power?**
 21 MR. McDONALD: Objection to the form.
 22 A. So they -- I know groups do gather several
 23 practices together to improve their purchasing power.
 24 **Q. And to negotiate better prices?**
 25 MR. McDONALD: Object to the form.

20 (Pages 77 to 80)

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<p>1 A. That's part of the strategy that they have, 2 yes.</p> <p>3 Q. So let's talk about a buying group.</p> <p>4 A. Okay.</p> <p>5 Q. What is your understanding of the definition 6 of a "buying group"?</p> <p>7 A. So a buying group is, there is a leader 8 putting together several private practices with the 9 understanding that they're going to bring some form of 10 value to the private practices. And what the private 11 practice will tell you is, they want to compete with the 12 corporate account business. And then what ends up 13 happening is, they will start talking to dealers about 14 what programs they can negotiate with us.</p> <p>15 Q. So a buying group negotiates directly with a 16 dealer?</p> <p>17 A. That is correct.</p> <p>18 Q. And is it fair to say that buying groups 19 aggregate the purchase volume of separate practices in 20 order to leverage buying power and negotiate better 21 prices?</p> <p>22 A. So a buying group will talk about they have 23 "X" amount of practices doing "X" amount of business 24 when they're talking to us.</p> <p>25 Q. But just in your understanding of the term</p>	<p>1 A. Once again, a buying group would have -- 2 wouldn't have ownership in the practices that they're 3 working with, and a DSO historically has had all 4 ownership, 100 percent ownership, of the practice or the 5 majority ownership of the practice.</p> <p>6 Q. Are there any other differences that you're 7 aware of?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 A. The major difference with DSOs is that they 10 have the solutions and services in-house compared to a 11 buying group that cannot. It's not a structure.</p> <p>12 THE REPORTER: I'm sorry. I didn't hear what you 13 said.</p> <p>14 A. It's not a structure.</p> <p>15 Q. What do you mean by the "solutions and 16 services"?</p> <p>17 A. Insurance reimbursement, HR, legal. It would 18 be running the business, reporting production, 19 incorporating technology. It's every one is a 20 cookie-cutter program, and they have a plan for each 21 office, and it's one decision-maker on a DSO. That's 22 not how it is in a buying group.</p> <p>23 Q. Okay. Do buying groups sometimes also offer 24 insurance reimbursement and HR and legal?</p> <p>25 MR. McDONALD: Object to the form.</p>
<p>82</p> <p>1 "buying group," is the purpose of it to aggregate the 2 purchase volume of those separate practices to negotiate 3 better prices?</p> <p>4 A. That's one of -- that's one of the purposes of 5 a buying group.</p> <p>6 Q. Okay. So the definition of a buying group 7 that you gave me, what is your understanding of that 8 definition based on?</p> <p>9 A. Experience, industry language.</p> <p>10 Q. What about a buying co-op? Are you familiar 11 with that term?</p> <p>12 A. A co-op, yes, I am.</p> <p>13 Q. And what is a co-op?</p> <p>14 A. To me, a co-op is very similar to a buying 15 group. They don't -- they don't own the practices. 16 They offer some form of service touting that we will 17 help private practice compete with corporate account 18 business.</p> <p>19 Q. So you understand that buying groups don't 20 have a centralized ownership; is that correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And that's true for co-ops as well?</p> <p>23 A. Everything I have seen, that's correct.</p> <p>24 Q. Okay. What is your understanding of the 25 difference between a buying group and a DSO?</p>	<p>84</p> <p>1 A. I'm aware of one buying group that I believe 2 offers the insurance service, and then I also know 3 Breakaway, which is not just a buying group. It spans 4 all of the buckets and offers other services to their 5 customers and their doctors.</p> <p>6 Q. Other than those two examples, are you aware 7 of any other buying groups that offer the solutions and 8 services in-house?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. I think you mentioned earlier community health 11 center -- health centers?</p> <p>12 A. I did.</p> <p>13 Q. What are those?</p> <p>14 A. Community health centers are publicly funded 15 clinics that help provide dental service oftentimes to 16 the underserved population. The clinics are usually 17 dental and medical facilities.</p> <p>18 Q. Do you consider -- do you call community 19 health centers CHCs?</p> <p>20 A. We do.</p> <p>21 Q. Do you consider CHCs distinct from buying 22 groups?</p> <p>23 A. I personally don't call CHCs buying groups, 24 but I do know that there's VPAs or programs, purchasing 25 programs, that they have that is several CHCs, not run</p>

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<p>1 by the same person, purchasing off of that program.</p> <p>2 Q. And so why do you not call CHCs buying groups?</p> <p>3 A. It's a different market, because it's publicly</p> <p>4 funded. It's we don't -- we don't work within the same</p> <p>5 way we do with the private practice or the traditional</p> <p>6 group practice space. So, for me, that's the reason</p> <p>7 why.</p> <p>8 Q. And what do you mean you don't work with them</p> <p>9 the same way?</p> <p>10 A. Their needs -- their needs -- there's similar</p> <p>11 needs, but there's also different needs that they have.</p> <p>12 And they also -- there is a set number of programs that</p> <p>13 the CHCs use and, you know, community outreach. It's</p> <p>14 just different. I'm not verbalizing it properly, but</p> <p>15 it's just a different way the business is run because</p> <p>16 it's a publicly funded clinic.</p> <p>17 Q. Okay. And it's handled by a separate group</p> <p>18 within Henry Schein Dental from the APC group, correct?</p> <p>19 A. Correct. So the CHCs would report through</p> <p>20 Kathleen Titus. The RAMs, who report to Kathleen, would</p> <p>21 identify the CHCs and know who they are and see if we</p> <p>22 had the business or we don't. And they work with the</p> <p>23 local field reps to win that business.</p> <p>24 Q. I see. What are the RAMs again?</p> <p>25 A. Regional account managers.</p>	<p>1 We had to quickly understand the different needs of this</p> <p>2 customer segment. We had to put solutions together for</p> <p>3 this segment. It was quite a lot. It had quite a lot.</p> <p>4 Q. And the segment that you're referring to is</p> <p>5 the midmarket segment?</p> <p>6 A. I am.</p> <p>7 Q. And so what is included in the midmarket</p> <p>8 segment?</p> <p>9 A. The majority of the business, in the midmarket</p> <p>10 segment, is CHC business and what we call our select</p> <p>11 customers. And a select customer is a group practice</p> <p>12 which could have two offices to 20, 25 offices.</p> <p>13 Q. Okay. I believe you testified earlier that</p> <p>14 Andrea Hight currently works with CHCs; is that right?</p> <p>15 A. I did.</p> <p>16 Q. So who does she report to now?</p> <p>17 A. She reports to Brian Brady now.</p> <p>18 Q. What's Mr. Brady's position?</p> <p>19 A. I can't recall his exact title; but he is</p> <p>20 responsible for the midmarket space, director of</p> <p>21 midmarkets.</p> <p>22 Q. And is that for the entire U.S.?</p> <p>23 A. It is.</p> <p>24 Q. Ms. Titus reports to you?</p> <p>25 A. She does.</p>
<p>1 Q. Do all RAMs report -- in the Western area,</p> <p>2 report to Kathleen Titus?</p> <p>3 A. They do.</p> <p>4 Q. Okay. So the CHC space is handled by -- in</p> <p>5 the Western area, is handled by Kathleen Titus?</p> <p>6 A. That is correct.</p> <p>7 Q. Has that always been the case?</p> <p>8 A. Well, they're responsible for winning the</p> <p>9 business in the CHC space. It has not always been the</p> <p>10 case when -- as the dental industry was transitioning</p> <p>11 quickly, Henry Schein internally was also making moves</p> <p>12 to transition with the industry. So CHCs did report to</p> <p>13 special markets for a long time. And when we made the</p> <p>14 change to a midmarket space, CHCs went to the midmarket</p> <p>15 space because the clinic still wanted local reps calling</p> <p>16 on them.</p> <p>17 Q. When did Henry Schein make the change to a</p> <p>18 midmarket space?</p> <p>19 A. I would say the beginning of 2014.</p> <p>20 Q. And what was -- was that just the creation of</p> <p>21 a midmarket team, or what were the changes that were</p> <p>22 happening at the beginning of 2014?</p> <p>23 A. It was quite a bit of change. We identified</p> <p>24 individuals who understood the space. We changed</p> <p>25 reporting from special markets to Henry Schein Dental.</p>	<p>1 Q. Why doesn't she report to Mr. Brady, if you</p> <p>2 know?</p> <p>3 A. I do know. Because Kathleen's primary</p> <p>4 responsibility is sales and growing the sales. Brian's</p> <p>5 primary responsibility is the overall segment, but also</p> <p>6 putting structure to the midmarket space.</p> <p>7 Operationally, there is a lot of internal stuff that</p> <p>8 needs to happen, so that's why she reports to me.</p> <p>9 Q. Okay. Going back to CHCs, are there -- have</p> <p>10 you ever heard of the term "CHC GPO"?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. Have you ever, ever considered a CHC to</p> <p>13 be a GPO?</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 A. Not that I recall.</p> <p>16 Q. When did you first start noticing buying</p> <p>17 groups in the dental industry?</p> <p>18 A. Well, the first interaction with buying groups</p> <p>19 happened back -- were you going to say something?</p> <p>20 Q. No. I'm sorry. Go ahead.</p> <p>21 A. Okay. All right. I noticed, back even in my</p> <p>22 days in the late '90s, but I think in 2004, when I was a</p> <p>23 regional manager in Long Island, was my first experience</p> <p>24 with a buying group. And then I was aware of Smile</p> <p>25 Source when it first was working with Henry Schein. I</p>

89	<p>1 don't remember the exact years, maybe '08.</p> <p>2 And then, over the years, there has been</p> <p>3 groups that have loosely said, "Hey, I've got ten</p> <p>4 doctors I'm going to put together. What price can you</p> <p>5 give me?" And it doesn't work that way. There is a lot</p> <p>6 that goes into it. So I'm not unfamiliar with the term.</p> <p>7 Q. What do you mean by "it doesn't work that</p> <p>8 way"?</p> <p>9 A. Well, when you talk to a buying group, a</p> <p>10 buying group has to bring a benefit to the individual</p> <p>11 doctors that they are working with as a group, one; and</p> <p>12 two, there has to be -- or should be a mutual</p> <p>13 understanding that we're working together to help each</p> <p>14 other. And, oftentimes, what a buying group may say is,</p> <p>15 "Hey, look. We want you to offer a certain pricing, but</p> <p>16 we're going to work with other people, too."</p> <p>17 So there is not really a commitment compared</p> <p>18 to, like, the DSO space where there is a commitment to</p> <p>19 do business together. So, oftentimes, we haven't really</p> <p>20 engaged with buying groups because there just really</p> <p>21 wasn't a mutual commitment.</p> <p>22 Q. So, oftentimes, Henry Schein Dental did not</p> <p>23 engage with buying groups; is that what you meant?</p> <p>24 MR. McDONALD: Object to the form.</p> <p>25 A. Oftentimes, we would hear what they were</p>	91	<p>1 A. Yes.</p> <p>2 Q. -- the buying group space really wasn't in the</p> <p>3 private practice world. What transition were you</p> <p>4 referring to?</p> <p>5 A. The transition where I was referring to the</p> <p>6 midmarket space.</p> <p>7 Q. So that was the beginning of 2014?</p> <p>8 A. Yeah, roughly.</p> <p>9 Q. That was when Schein was creating a midmarket</p> <p>10 group?</p> <p>11 A. Correct. Correct.</p> <p>12 Q. Was there a practice, within Henry Schein</p> <p>13 Dental, of not working with buying groups?</p> <p>14 A. So when we were doing -- that's what I was</p> <p>15 saying. When we were going through the transition,</p> <p>16 historically, that wasn't what we did in the private</p> <p>17 practice, because the value proposition that Henry</p> <p>18 Schein had with the services and the technicians and the</p> <p>19 pricing, we had everything that private practices</p> <p>20 wanted. So the buying group piece of it didn't make</p> <p>21 sense for us, from a business standpoint, to</p> <p>22 aggressively go after.</p> <p>23 Q. So if a buying group approached Henry Schein</p> <p>24 Dental about starting a business relationship, was there</p> <p>25 a practice of saying, "No, we don't want to work with</p>
90	<p>1 saying, so, to me, we would engage with them having a</p> <p>2 conversation. But after understanding more about them,</p> <p>3 oftentimes we would say, "Good luck, but, you know,</p> <p>4 we're just not interested right now."</p> <p>5 Q. Okay. Was there a specific policy, at any</p> <p>6 point at Henry Schein Dental, not to work with buying</p> <p>7 groups?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 A. I don't remember ever seeing a policy against</p> <p>10 buying groups.</p> <p>11 Q. What about just a practice? Was there a</p> <p>12 practice of not engaging with buying groups?</p> <p>13 MR. McDONALD: Object to the form.</p> <p>14 A. So during the transition I mentioned, the</p> <p>15 buying group space really wasn't in the private practice</p> <p>16 world. So we were aware of them, but we really didn't</p> <p>17 have much interaction in that time frame. So -- did you</p> <p>18 want to say something? I'm sorry.</p> <p>19 Q. No. Go ahead. Finish your question.</p> <p>20 MR. McDONALD: Your answer.</p> <p>21 Q. Your answer.</p> <p>22 A. So because of that, it was we weren't</p> <p>23 familiar. And I lost my train of thought. I'm sorry.</p> <p>24 Q. That's okay. So you said "during the</p> <p>25 transition" --</p>	92	<p>1 you"?</p> <p>2 MR. McDONALD: Object to form.</p> <p>3 A. I don't recall us ever just flat-out saying,</p> <p>4 "No, we're not going to do it." We are a company built</p> <p>5 on partnerships, so we would have conversations. But,</p> <p>6 like I said before, if it didn't match a mutual benefit,</p> <p>7 then oftentimes we walked.</p> <p>8 Q. What do you mean by a "mutual benefit"?</p> <p>9 A. What I mean by that is that if -- I'm using,</p> <p>10 again, the DSO as an example. If you were negotiating</p> <p>11 with someone who is saying, "I have ten offices and</p> <p>12 let's negotiate so we can figure a deal out, and then</p> <p>13 all of my ten offices will be purchasing from you," that</p> <p>14 is a mutual benefit, because you're also gaining</p> <p>15 business and everyone is on the same page.</p> <p>16 Oftentimes, when you're negotiating with</p> <p>17 buying groups, they would say, "Give us your best</p> <p>18 price," or, "What pricing can you give us," and, "Good</p> <p>19 luck to you."</p> <p>20 Q. What do you mean by, "Good luck to you"? Is</p> <p>21 that what Henry Schein would say?</p> <p>22 A. No. No. There was no commitment of, "Hey,</p> <p>23 these doctors will do business with you. We love the</p> <p>24 solutions. We love the services. This is exactly what</p> <p>25 we want. We want to grow with you." The buying groups</p>

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1 couldn't make a commitment like that.

2 **Q. Okay. So during the period when you were**
3 **Western zone manager and then Western area director --**

4 A. Okay.

5 **Q. -- prior to becoming the VP of sales, so I**
6 **think that's around the 2009 to 2015 period, early 2015?**

7 A. Yeah.

8 **Q. Did you have a practice of not working with**
9 **buying groups?**

10 MR. McDONALD: Object to the form.

11 A. I would answer it the same way, that if
12 someone -- if there was an opportunity, we would have a
13 conversation. We wouldn't walk away from anybody. But,
14 at the same time, it wasn't fitting the strategic
15 business model we had in the private practice.

16 **Q. So if the buying group could not make a**
17 **commitment that the practices within the buying group**
18 **would buy from Henry Schein, then you would not work**
19 **with them?**

20 MR. McDONALD: Object to the form.

21 A. That would be -- that would be one factor,
22 yeah.

23 **Q. What are the other factors?**

24 A. There were times where it was people were
25 negotiating and saying they had a buying group and they

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1 didn't even have a buying group. So you have to have a
2 conversation with a doctor to understand what they are
3 bringing to the table. And, historically, the majority
4 of it, it was walking away because of the mutual
5 commitment, but there was other reasons.

6 **Q. So you're saying the majority of the times**
7 **Henry Schein would walk away from a buying group because**
8 **of the lack of a mutual commitment?**

9 MR. McDONALD: Object to the form.

10 A. In that time frame, I don't recall a
11 tremendous amount of inquiries or people wanting to
12 start a buying group. It was few and far between. The
13 times where there would have been a conversation and we
14 would walk away, it was because there wasn't a mutual
15 commitment in business.

16 **Q. Okay. And the time frame we're talking about**
17 **was 2009 to the early 2015 period?**

18 A. Correct.

19 **Q. So during that same time period, 2009 to 2015,**
20 **you said that you don't recall very many -- I think you**
21 **testified that you don't recall a tremendous amount of**
22 **inquiries; is that right?**

23 A. That's correct.

24 **Q. Inquiries from buying groups?**

25 A. That's correct.

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1 **Q. Do you recall any specific buying groups**
2 **approaching you in the Western area during that time?**

3 A. I remember a buying group that was a co-op
4 that was already in existence before I got to the west.
5 Outside of that, there may have been less than a
6 handful.

7 **Q. What buying group are you thinking of that was**
8 **a co-op that was already in existence before you got to**
9 **the west?**

10 A. The dental co-op that was in Utah.

11 **Q. So was Henry Schein doing business with the**
12 **dental co-op in Utah before you arrived in the west?**

13 A. They were.

14 **Q. Okay. So before you became the Western zone**
15 **manager?**

16 A. Correct.

17 **Q. So other than that buying group, can you think**
18 **of any other buying groups that you -- that Henry Schein**
19 **Dental did business with, in the Western area, during**
20 **the 2009 to early 2015 period?**

21 A. Not that I'm specifically aware of, but -- so
22 not that I recall.

23 **Q. Okay. If a buying group did approach you**
24 **during that 2009 to early 2015 period, did you have the**
25 **authority to determine whether or not to sell to that**

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1 **buying group?**

2 A. I definitely had influence and input, but it
3 would be something that I would want Dave involved with
4 and potentially even asking or talking to our special
5 markets team, because, again, buying groups really
6 weren't a huge part of what we were doing.

7 **Q. And when you said "Dave," you mean Dave Steck?**

8 A. That's correct.

9 **Q. Okay. Would you want input from Mr. Sullivan?**

10 A. At that time, I don't recall asking Tim for
11 input on a buying group opportunity.

12 **Q. Okay. During the 2009 to 2015 period?**

13 A. Yeah.

14 **Q. And why would you seek input from Mr. Steck?**

15 A. Well, it was new to or uncommon to the current
16 business model that we -- and what we were doing. So
17 something like that I would want to discuss with Dave
18 and talk it over.

19 **Q. Did you give direction to the sales**
20 **representatives that reported through to you that they**
21 **needed to let you know if a buying group approached**
22 **them?**

23 A. So the leadership team that reported to me, or
24 all of the sales reps?

25 **Q. Well, I guess we'll start with the leadership**

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1 **team that reported to you.**

2 A. I don't recall any type of formal
3 announcement, from me to the team, saying, "If you run
4 into a buying group opportunity" -- during that period
5 of time?

6 **Q. Yeah.**

7 A. "If you run into a buying group opportunity,
8 send my way." I believe they would have because they,
9 themselves, were not sure even how to interact or how to
10 make it happen. As far as sales reps go, I would say
11 the same thing. They would let their regional manager
12 know more than they would let myself know, and then the
13 regional manager would have brought it to my attention.

14 **Q. Okay. So there was no specific direction from**
15 **you to the regional managers that if a buying group**
16 **approached, you know, any of the sales reps, that you**
17 **wanted to hear about it, but your expectation is that**
18 **you would have?**

19 A. In that time frame, there was no process,
20 formal process, in place of how to deal with those or
21 discuss those inquiries; but, yes, I would want to know.

22 **Q. And your expectation is that you would have**
23 **known?**

24 A. I would want to have known.

25 **Q. And is it your expectation that you would have**

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1 **known, that you would have been informed by your**
2 **regional managers about buying group opportunities?**

3 A. It's possible that there was opportunities
4 that they were made aware of that I did not know about.
5 It's definitely possible.

6 **Q. Okay. But, at any point, did you instruct any**
7 **of your zone managers to let you know about buying group**
8 **opportunities, whether informally or formally?**

9 A. During that time frame, not that I recall.

10 **Q. Was there ever an instruction, from anyone at**
11 **Schein, about whether or not to sell to buying groups?**

12 A. Was there instruction whether or not to sell
13 to buying groups?

14 **Q. Yes.**

15 MR. McDONALD: Object to the form.

16 A. I don't recall an objection, but I know there
17 were discussions about, "Are we moving in a direction
18 where we would start actively engaging them?"

19 **Q. And when were those discussions?**

20 A. It started, roughly, the end of '14 and going
21 into '15.

22 **Q. Around the time that you became the VP of**
23 **sales for the Western area?**

24 A. It was around that time, but also during the
25 transition of midmarket. It was a big transition.

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1 **Q. Okay. So prior to that, was there any**
2 **guidance given from anyone at Schein not to sell to**
3 **buying groups?**

4 A. Not that I recall.

5 **Q. Was there any strategy about not selling to**
6 **buying groups?**

7 MR. McDONALD: Object to the form.

8 THE WITNESS: A strategy not to?

9 MR. McDONALD: Object to the form.

10 A. When we put together a strat plan, buying
11 groups were not a priority for the private practice.

12 **Q. A "strat plan," is that what you said?**

13 A. (No verbal response.)

14 **Q. When was that?**

15 A. Well, when you're having a strategic session
16 about sales and where we're going to grow and what's
17 going on, the buying group component of it really wasn't
18 even on the radar.

19 **Q. And how frequently do you have strategic**
20 **sessions about sales?**

21 A. It's defined loosely, but I would say that it
22 would be, at the senior sales meeting, you could have
23 discussions about sales. At the 6X6, you could have
24 discussions about sales. There wasn't a meeting where
25 we sat down and said, "We're going to have strategic

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1 discussion about sales," though. It wasn't a named
2 meeting.

3 **Q. Okay. So prior to late 2014, early '15,**
4 **buying groups was not something that -- strike that.**

5 **Prior to the late 2014, early 2015 period,**
6 **buying groups were not a priority for Henry Schein**
7 **Dental; is that correct?**

8 A. Where we were going to get our growth from, it
9 wasn't a priority in discussions.

10 **Q. And when you said "strat plan" earlier, you**
11 **meant strategy plan?**

12 A. Yeah, strategic.

13 **Q. And then did it, at some point, become a**
14 **priority?**

15 A. It became -- when the transition with
16 midmarket space came, the industry was also changing
17 considerably in the fact that there weren't just DSOs
18 anymore. There wasn't just MSOs anymore. It was going
19 across many different customer segments. And that's
20 when the inquiry started coming, because there was a
21 massive fear, in the private practice space, that they
22 were going to be overrun by corporate dentistry. And
23 some people started getting groups together to compete
24 or to stay alive in the corporate dentistry world.

25 That also coincided with insurance

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1 reimbursement because private practice dentists weren't
2 making as much because insurance reimbursement went
3 down. So now you have private dentists who are making
4 less money, they don't have the resources that corporate
5 accounts have, and they believe that what's going to
6 save them is price. And then you have a group coming
7 over saying, "Well, let's get together and band together
8 and keep us whole, and we can negotiate a better price."

9 So that, all of those factors, were happening
10 at once. At the same time, internally, we're
11 transitioning from a private practice group or a
12 corporate accounts group, an elite. And there is this
13 whole middle group, which is select CHCs, but the select
14 space is forming, and then you have buying groups coming
15 in. And you're like, "Okay. This is different. This
16 is a change. And we have to figure out how we are going
17 to work with these customer segments." So that's why it
18 started really improving or really escalating in '15 to
19 '16.

20 **Q. Okay. So in '15 and '16, what was -- what**
21 **is -- what was Henry Schein Dental's strategy with**
22 **regard to buying groups?**

23 MR. McDONALD: Object to the form.

24 A. So what was happening is, as we were building
25 the midmarket space and trying to figure that out, when

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1 an opportunity would come, it was usually a Kathleen
2 Titus or myself talking to a group and trying to
3 understand what the group had to offer their customers
4 or their doctors. And, at the same time, were we
5 aligned, is there a mutual benefit to do business?

6 And so there was, you know, several questions
7 that we just vet out the opportunity. And some
8 discussions would take a long time, and others we would
9 say, "Good luck. You've got to cultivate what you're
10 trying to do a little bit more."

11 **Q. Okay. In the 2015-2016 period, was there any**
12 **specific strategy, with regard to buying groups, at**
13 **Henry Schein Dental?**

14 MR. McDONALD: Object to the form.

15 A. We, in that time frame -- and it may be that
16 time frame, so I believe it is -- we were putting
17 together a Henry Schein -- I think it was called Henry
18 Schein Select, which was -- it was before Henry Schein
19 Connections, which was a program that we would -- we
20 knee all of the doctor's fears and concerns and
21 challenges and goals. And we were putting together a
22 program that would address those fears, meet those
23 needs, and then also add an educational component to
24 what we were doing for those customers.

25 So we were trying to figure out how to put

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1 together our own buying group, and what it turned into
2 was the Henry Schein Connection Program.

3 **Q. Okay. And so, at some point, Henry Schein was**
4 **trying to create its own buying group?**

5 A. Yeah. It was the own offering of our wheel of
6 saying, "Join the Henry Schein club," I think it was,
7 "and get everything that you're looking for."

8 **Q. And would you offer -- did this buying group,**
9 **within Henry Schein, did that ever come to fruition?**

10 A. No.

11 **Q. Okay. Was the idea behind the potential**
12 **buying group and Henry Schein to offer discounts to**
13 **members on supplies?**

14 A. That was -- that would be a component of it,
15 yes.

16 **Q. Okay. Other than Henry Schein's own internal**
17 **buying group, was there a strategy, in the 2015-2016**
18 **period, with regard to buying groups that approached**
19 **Henry Schein and wanted to work with Henry Schein?**

20 MR. McDONALD: Object to the form.

21 A. Other than what I -- other than what I've
22 expressed to you already, no.

23 **Q. So was the strategy -- I think what you've**
24 **expressed to me -- correct me if I'm wrong -- the**
25 **strategy was to meet with them. And then if they did**

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1 **not offer a commitment for their -- the member practices**
2 **to buy from Henry Schein, then Henry Schein would say,**
3 **"I don't want to work with this company"?"**

4 MR. McDONALD: Object to form. Misstates the
5 testimony.

6 A. Not exactly, no.

7 **Q. So correct me.**

8 A. So when we would meet with them, we'd find out
9 what they were, the value they were going to bring to
10 the members that would join their buying group, because
11 that is very important. The second component was, were
12 they aligned with Henry Schein and the way they practice
13 business, the way they do things? The third component
14 was the fact of the mutual benefit of us helping them
15 grow their business and then them helping us grow ours.

16 So those were really -- and then there was an
17 expectation of exclusivity or a majority of their
18 business being purchased through Henry Schein.

19 **Q. Okay. Let's go through those. So, first, you**
20 **said you would want to find out the value the buying**
21 **group is going to bring to the members that would join**
22 **their buying group. What did you mean by that?**

23 A. There is buying groups that are out there that
24 take time and effort in educating their doctors on
25 whether it's growing their practice, how to be better

105	<p>1 dentists through techniques, integrating technology, 2 back office, front office. So they were doing more than 3 just potentially throwing a vague price out there. 4 There is other buying groups that look at it 5 as a marketplace that they don't bring any additional 6 value to the offices, and they just want to offer the 7 lowest prices possible to their customers, which they 8 have every right to do that. 9 Q. Why was that important to Henry Schein? 10 A. Which part? 11 Q. Why was the value that a buying group was 12 going to offer the members important to Henry Schein? 13 A. We're a full-service dealer that, once again, 14 brings every aspect of that wheel to our customer. So 15 our desire was not to become a fulfillment company. 16 That's not who we are. That's not what we do. 17 Q. You didn't want to be replaced by the buying 18 group, essentially? 19 MR. McDONALD: Object to the form. 20 A. I don't think we would -- we wouldn't have 21 been replaced by a buying group, because they don't make 22 anything. They don't ship anything. So they can't 23 replace us. 24 Q. Okay. I mean, on the service component, you 25 didn't want to be replaced?</p>	107	<p>1 the buying group was offering additional services. 2 Q. Okay. So then what is the buying group value 3 that you were concerned with? 4 A. Okay. So if a buying group needed to have 5 their own value to those customers, and, if I am a 6 customer or a doctor and I am going to join a buying 7 group, I want to join it because you are going to 8 educate me on something, or you are going to help me 9 grow my practice, or you, as the buying group, are going 10 to do something for me that I value, and, therefore, I 11 am going to join you. 12 If a buying group did not have that type of 13 value or bringing it to the table, which was important, 14 then that would be one of the questions that we would 15 ask them and talk to them about. And if they didn't 16 have that, then, once again, we weren't really aligned. 17 Q. Okay. Then the second component is, were they 18 aligned with Henry Schein and the way they practiced 19 business. What did you mean by that? 20 A. Well, there is a component to -- an ethical 21 component to how people put groups together, and we 22 wanted to make sure that the culture of a buying group 23 or the ethics of a buying group were there. 24 Q. Was there a specific ethical concern that you 25 had with certain buying groups?</p>
106	<p>1 MR. McDONALD: Object to the form. 2 A. Well, a lot of buying groups didn't have 3 services. They were coming to us for the services. 4 Q. You said, "We are a full-service dealer that 5 once again brings every aspect of that wheel to our 6 customers, so our desire was not to become a fulfillment 7 company. That's not who we are. That's not what we 8 do." 9 What did you mean by "our desire was not to 10 become a fulfillment company"? 11 A. Because our -- the way we run our business is 12 not just to pick merchandise products and ship it out. 13 We offer equipment, technology, integration technology, 14 software, service technicians, business solutions. So 15 our desire was to bring all of those components to the 16 customer. 17 And if the customer wasn't interested in 18 those, that's okay. Then that would be a reason why we 19 would say, "Well, we're not mutually aligned, so, once 20 again, it's just not going to work right now. Good 21 luck. If things change, let's talk." 22 Q. Okay. Because the buying group might offer 23 some of those services? 24 MR. McDONALD: Object to the form. 25 A. In the example I was using, I don't believe</p>	108	<p>1 A. Not that I can recall, but I know there was 2 groups out there that may not have the best interest of 3 the buying group in mind, and it just didn't make sense 4 for us to be involved with those individuals. 5 Q. The third component was the fact of a mutual 6 benefit of us helping them grow their business and them 7 helping us grow ours. 8 A. Correct. 9 Q. What did you mean by that? 10 A. So if you're going to put a business 11 relationship together, there has to be a mutual benefit, 12 and then we would talk to them about everything that we 13 have to offer from Henry Schein, all components of the 14 wheel. We would want to understand their growth. We 15 would also want to understand what their customer base 16 was. We would want to understand how big or where they 17 want to grow. And if there is a match between the two 18 companies where we can mutual grow our business and help 19 each other, then it's a good thing. 20 Q. And how did you gather all of this information 21 about the buying groups that you would want to assess to 22 determine whether to do business with a buying group? 23 A. It's a lot of time, so several, mostly, phone 24 conversations. Whether it was -- in the west, I would 25 speak specifically for the west. It was Kathleen Titus</p>

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<p>1 or myself, at times Andrea Hight, having discussions 2 with the individuals that were interested in either 3 creating a buying group or had a buying group already 4 that they were seeing if Henry Schein had any interest 5 in working with them. 6 Q. Okay. So you would gather the information by 7 talking to the buying group, itself; is that right? 8 A. We'd do discovery. 9 Q. Discovery from the buying group itself? 10 A. Mm-hmm. Correct. 11 Q. Did you obtain discovery from any other 12 sources? 13 A. We would look on the Internet to see what 14 their Web page looked like. Other than that, not that 15 I -- not that I recall. 16 Q. Okay. Can you think of any reason why you 17 would need to talk to a competitor to obtain information 18 about a buying group? 19 A. No. 20 Q. Can you think of any reason why you would want 21 to talk to a competitor to determine whether Schein 22 should do business with a buying group? 23 A. No. 24 Q. Going back to the mutual benefit that you 25 discussed earlier, how could a buying group help -- be</p>	<p>1 Q. Purchasing from Henry Schein? 2 A. That's correct. 3 Q. And how could you get that assurance that the 4 individual members would purchase from Henry Schein? 5 A. And there, that was the hard part, and that's 6 why a lot of times it was tough to strike a deal or an 7 agreement with a buying group, because they couldn't. 8 Q. And if you weren't given that assurance, that 9 the individual members would purchase from Henry Schein, 10 did you decide not to do business with the particular 11 buying group? 12 A. Yeah. That was one that would come into 13 consideration when we were making a decision, yes. 14 Q. Can you think of any cases where Henry Schein 15 ended up working with a buying group that could not give 16 an assurance that the individual members would buy from 17 Schein? 18 A. Ask that question again. I'm sorry. 19 Q. Can you think of any examples of where Henry 20 Schein worked with a buying group or sold to a buying 21 group that could not give an assurance that the 22 individual members would buy from Schein? 23 MR. McDONALD: Object to the form. 24 A. So most buying groups could not give that 25 assurance until -- and the few buying groups, at this</p>
<p>110</p> <p>1 helpful to Schein? 2 A. Well, when we were going through discovery -- 3 and this is why Kathleen was a part of it -- what we 4 were used to was discovery with DSOs and MSOs who had 5 control over the purchasing and had the ability to move 6 or change purchasing behavior. So a lot of the 7 questions that we would start -- we would ask buying 8 groups about really derived from that discovery process 9 through the DSO space. 10 What the buying groups could do is how -- the 11 mission of the buying group, were the doctors really 12 buying into the mission of the buying group? And if 13 that were the case, then whatever the buying group's 14 direction they decided to go, the expectation was 15 everyone would follow that mission. 16 Now, the head of the buying group, they can't 17 force someone to buy from Henry Schein or any dealer. 18 So if people weren't committed to the mission, it was a 19 problem. So what we would have to understand is that 20 that business would go, because that way it would 21 mutually benefit Henry Schein from the business coming 22 over. 23 Q. Got it. The individual practices or the 24 individual members? 25 A. Correct.</p>	<p>112</p> <p>1 point, that I know, off the top of my head, that we do 2 business with, recently we made an agreement with the 3 buying group that it's not an exclusive agreement. And 4 that's the only one that I can tell you that I know for 5 sure. 6 Q. And what buying group is that? 7 A. Smile Source. 8 Q. So earlier you said that Smile Source was a 9 DSO? 10 A. A franchise. 11 Q. Or a franchise? 12 A. A franchise DSO. 13 Q. Thank you. Which I think you testified was 14 distinct from a buying group? 15 A. What I believe I testified is that that's what 16 they preferred to be called. They prefer to be called a 17 franchise DSO. But because they can't dictate where 18 each of the individual offices will purchase from or 19 they don't have ownership, there is a buying group 20 component to Smile Source. 21 Q. Okay. But do you consider Smile Source to be 22 a buying group? 23 A. I believe they have components of a buying 24 group for sure. 25 Q. And what are those components?</p>

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1 A. They don't have ownership. They can't move
2 all 470 offices into purchasing from one person. They
3 don't have the centralized purchasing. So those would
4 be, really, the main ones.

5 **Q. And do they have any components of a DSO in
6 your mind?**

7 A. A DSO? I don't -- they don't have equity
8 ownership. And, in their mind, I believe their
9 definition of a DSO is offering certain services, like
10 an insurance reimbursement. And that's what -- that's
11 where, I think, the franchise DSO tag comes from.

12 **Q. But in your view, under your understanding of
13 the definition of a DSO, does Smile Source have any DSO
14 components?**

15 A. They have some minor MSO, the service
16 components to it where they do the insurance
17 reimbursement. Not all buying groups have that, and I'm
18 not trying to be evasive. Not all buying groups offer
19 insurance reimbursement or marketing. They prefer to be
20 called, as our customer, a customer of ours, franchise
21 DSO.

22 **Q. I understand that. I'm trying to get your
23 understanding of what they are.**

24 A. They would be a mix of a buying group and
25 having an MSO.

1 A. So Smile Source was in the special markets
2 world. And then it moved into the HSD world, and it
3 just wasn't fitting anywhere, and there was really not a
4 spot for it. So they went to a competitor of ours.
5 They moved their business to a competitor of ours. We
6 did talk to them one more time, I want to say, maybe,
7 2012, and they did not like what we were talking to them
8 about or what we had to offer, so they decided not to do
9 business with Henry Schein, and that's the history.

10 **Q. Okay. Thank you. That's very helpful.**

11 **So in this recent February of 2017, do you --
12 does Henry Schein have an agreement with Smile Source?**

13 A. We do.

14 **Q. It's a written agreement?**

15 A. It is.

16 **Q. Is it a VPA?**

17 A. It's called a PVA, a prime vendor agreement.

18 **Q. What's a prime vendor?**

19 A. It's a document that we've historically used,
20 in the other scenarios that I've already mentioned,
21 where a group is signing up with Henry Schein that we
22 are their prime vendor; meaning, 80 percent of their
23 business they're going to commit to us.

24 **Q. Does the agreement specifically state that
25 they will commit to 80 percent of their business?**

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1 **Q. Okay. Thanks. When did Henry Schein start
2 selling to Smile Source?**

3 MR. McDONALD: Object to the form.

4 **Q. Is it correct that -- I'll retract that
5 question.**

6 **Is it correct that Henry Schein Dental
7 recently entered into an agreement to sell to Smile
8 Source?**

9 A. We did.

10 **Q. When was that?**

11 A. February of 2017.

12 **Q. And is it true that Henry Schein had an
13 agreement with Smile Source previously, many years ago,
14 that I think you testified about earlier?**

15 A. Yes. I don't -- I don't know if it was an
16 agreement, but I know we did business with them.

17 **Q. Okay. And, approximately, when was that, if
18 you know?**

19 A. '07/'08.

20 **Q. Okay. And do you know when that agreement or
21 that relationship ended?**

22 A. I don't know exactly. I would be guessing.

23 **Q. Okay. But at some point, Henry Schein was
24 selling to Smile Source. And then they stopped. And
25 then, in February of 2017, they started again?**

1 A. It does not.

2 **Q. And does the agreement have any kind of
3 commitment stated?**

4 A. The commitment levels -- I would be assuming,
5 at this point, what's actually in the contract. I know
6 we have targets that they should hit in purchases, but
7 there is no penalty if they don't.

8 **Q. Okay. And that's based on your understanding
9 of what's in prime vendor agreements generally?**

10 A. Yeah. Yeah. Whether it's -- it's what we are
11 going to provide to them and what they are committing to
12 us.

13 **Q. Now, did you negotiate the agreement between
14 Henry Schein and Smile Source?**

15 A. I did.

16 **Q. And why did Henry Schein decide to sell to
17 Smile Source in February of 2017?**

18 MR. McDONALD: Object to the form.

19 A. We had been talking to them for, roughly, 18
20 months, and it was on again, off again. And what we
21 ended up deciding is that it seemed like the right time
22 for both of us. We had to change our thinking a little
23 bit, which is not necessarily a bad thing at all. And
24 they had to have a willingness to sign with a dealer
25 that had a national footprint, and it just made sense.

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1 **Q. In what way did you change your thinking?**
 2 A. Well, historically, the prime vendor
 3 agreement, it would be more of a sole source where
 4 you're doing an agreement with Henry Schein. And Smile
 5 Source decided that they didn't want to talk to the
 6 other dealers that they had been doing business with and
 7 saying, "We have a sole relationship with Henry Schein,"
 8 so we changed it to a shared source deal.
 9 **Q. Is this the first shared source deal that**
 10 **Henry Schein has ever done?**
 11 A. It's the first shared source that we know.
 12 But even with our DSOs, MSOs, they get 20 percent of
 13 their products -- some less, some more -- from other
 14 sources.
 15 **Q. And how do you know that?**
 16 A. Outside of just knowing their purchases, what
 17 they're purchasing from Henry Schein.
 18 **Q. Yeah. How do you know --**
 19 A. Categories. You can tell by categories, or
 20 you can -- they will tell you, because we know. We have
 21 their purchasing analytics of what they're purchasing
 22 from Henry Schein and, you know, what they're not
 23 purchasing from you. So they've got to be purchasing it
 24 from somewhere.
 25 **Q. Like there's certain products that any dentist**

1 **its thinking about the commitment?**
 2 MR. McDONALD: Object to the form.
 3 A. It would have been the time frame between
 4 December -- the end of December of '16, the beginning of
 5 December '17 or January '17.
 6 MS. GOFF: Okay. Shall we take lunch?
 7 THE WITNESS: Great. Thank you.
 8 (Lunch break.)
 9 **Q. Mr. Cavaretta, do you view buying groups as**
 10 **customers or competitors of Schein?**
 11 A. A buying group would be --
 12 THE REPORTER: I'm sorry. I can't hear.
 13 A. Would be a customer of Henry Schein.
 14 **Q. And why is that?**
 15 A. Well, buying groups are made up of private
 16 practices. And we're a distributor, and that's how --
 17 that's our business.
 18 **Q. So could you think of a scenario in which a**
 19 **buying group could become a competitor of Schein?**
 20 MR. McDONALD: Object to the form.
 21 A. If a buying group were to have an agreement
 22 with a different dealer than Henry Schein, it's doing
 23 business with that dealer. So the buying group really
 24 isn't a competitor. It's not a competitor. It's that
 25 they're doing business with somebody else.

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1 **needs, and these practices are not purchasing these**
 2 **products from Henry Schein?**
 3 A. So every dentist uses cement to fix teeth.
 4 And if we ran a purchase analytic report of purchased
 5 through Henry Schein, if cements weren't on here, we
 6 know they're purchasing cements. Where are they getting
 7 it from?
 8 **Q. Okay. Thank you.**
 9 MR. McDONALD: We've been going a long while.
 10 MS. GOFF: Have we? Sorry.
 11 MR. McDONALD: Do you want to take a break? I
 12 don't want to get you midquestion or something. We
 13 should take a lunch break.
 14 MS. GOFF: Sounds good.
 15 **Q. When did Henry Schein change its thinking**
 16 **about whether to do business with Smile Source?**
 17 A. It wasn't an exact date. I would say, once
 18 again, we talked to them previously, and it didn't work
 19 out. I think it was in 2015 where Tim and I went to
 20 visit Smile Source in Houston just to reacquaint
 21 ourselves with them, get to know them. They had some
 22 changes in leadership. And that's when we just started
 23 warming to the idea, getting to know them, understanding
 24 them better.
 25 **Q. And then at what point did Henry Schein change**

1 **Q. Did you ever view buying groups as a threat to**
 2 **Schein's business?**
 3 MR. McDONALD: Object to the form.
 4 A. When we were going through the transition and
 5 just the transition in the industry, I think it was an
 6 unknown, and I think, to the value proposition, there
 7 could be components of limiting the full-service
 8 component of Henry Schein, but I don't recall saying it
 9 was a threat.
 10 **Q. What do you mean there could be components of**
 11 **limiting the full-service component of Schein?**
 12 A. When we spoke earlier, it was the fulfillment
 13 piece of it, that we would be viewed as a fulfillment of
 14 products.
 15 **Q. And so how would the buying group limit the**
 16 **full-service component of Schein in that case?**
 17 A. If we were working with a buying group and we
 18 were talking about the services with Henry Schein, we
 19 would have to make sure that the buying group was
 20 aligned with the services that we were providing. So if
 21 a buying group was not and they didn't think that it was
 22 beneficial, then they would relegate us to a fulfillment
 23 company.
 24 **Q. If a buying group was not what?**
 25 MR. McDONALD: Object to the form.

30 (Pages 117 to 120)

121	123
<p>1 A. If a buying group was not interested in the 2 services and the full wheel that Henry Schein provides. 3 Q. If a buying group was not interested in 4 utilizing the Henry Schein services, then Henry Schein 5 would not want to do business with that buying group? 6 A. No. We were going through the questions and 7 the discovery process of the buying groups. So that 8 would be one component from an alignment standpoint. So 9 we would want to have the ability to talk about our 10 solution and services with a buying group. 11 Q. Okay. If a buying group -- do some buying 12 groups offer the types of services that Henry Schein 13 offers to its customers? 14 A. The ones I'm aware of, they have a couple of 15 the services, yes. 16 Q. Okay. And what are those services? 17 A. The ones that I'm aware of would be a 18 marketing service and a component of an insurance 19 negotiation service. 20 Q. And if -- for those buying groups that offer 21 the marketing and insurance services, would Henry Schein 22 be interested in doing business with those types of 23 buying groups? 24 A. Yes. 25 Q. Why?</p>	<p>1 A. No. 2 Q. Okay. So for Smile Source, you said that, 3 currently, it's a new agreement with Smile Source, and 4 all of that is still being vetted out. What did you 5 mean by "all of that is still being vetted out"? 6 A. So we are aware that they are offering certain 7 services. As I mentioned, the one I'm aware of or the 8 two I'm aware of are marketing and insurance 9 reimbursement. We didn't come to any type of agreement 10 on how we were going to offer those to their customers, 11 and we know we have to work that out. 12 Q. Okay. How do you anticipate working it out 13 with Smile Source? 14 A. Having the conversation with them. 15 Q. And what would you seek to have happen? 16 A. Well, I would want to understand the exact 17 services that they are providing. I would want to 18 understand if there was an opportunity for us to either 19 put those exact services in or -- in our offering to 20 private practices, or do we not talk about those 21 services and talk about other services that we offer. 22 It's just trying to figure out what they're comfortable 23 with. 24 Q. So, at this point, under the current 25 agreement, is Schein still offering services to the</p>
122	124
<p>1 A. Well, the rest of the discovery and the rest 2 of what the buying group has to offer, we could come to 3 an agreement that the insurance services or the 4 marketing services, either we both could talk to the 5 private practice about it or that would be a service 6 that we wouldn't talk to the private practice about and 7 allow the buying group to use whatever service they're 8 currently using. 9 Q. Okay. And are there any examples of where 10 Henry Schein has done business with the buying group 11 that offers marketing and insurance services? 12 A. Currently, right now, it's the new agreement 13 with Smile Source, and all of that is still being vetted 14 out. 15 Q. Is that the only example you can think of 16 right now? 17 A. Breakaway Dental has components of their 18 business that they would offer services. They're 19 somewhat similar, but there is crossover. It's not a 20 huge point of discussion at this point, but I know they 21 have services that they offer to their -- plus they have 22 a DSO piece of it, a MSO piece of it. 23 Q. Other than Smile Source and Breakaway, can you 24 think of any other buying groups that Schein does 25 business with that offers services?</p>	<p>1 members of Smile Source? 2 A. They have the ability to use our services. We 3 haven't been outwardly promoting them to the private 4 practices yet. 5 Q. Okay. Now, before the break, you testified 6 about how Schein's thinking, with regard to Smile 7 Source's ability to make a commitment, had changed 8 recently; do you recall that? 9 A. I do. 10 Q. And why did it change recently? 11 A. Well, when the industry was changing, the 12 needs were changing. The opportunity with Smile Source 13 was what they were willing to agree to and what we were 14 asking. Just the business opportunity was there, so we 15 haven't -- we hadn't done a shared source agreement that 16 I was aware of, so the thought process was, "Let's see 17 how this works." 18 Q. How has it been working so far? 19 A. The relationship is very good; but having a 20 shared source deal does create some confusion in the 21 field. 22 Q. Confusion from dentists? 23 A. From dentists, yes. 24 Q. What are they confused about? 25 MR. McDONALD: Objection. Form.</p>

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1 A. They are -- there is confusion on where to buy
2 their stuff from, where Henry Schein fits in, what about
3 their other dealer, can I still order from the other
4 dealer, pricing? I mean, it's not a very clear message
5 at this point.

6 **Q. So this was the first -- the Smile Source deal
7 was the first shared source deal that you've ever done?**

8 A. That I'm aware of, yes.

9 **Q. And what prompted Schein to do this deal?**

10 A. The deal overall with Smile Source?

11 **Q. Yes.**

12 A. Well, the industry is changing, and there was
13 an opportunity there for -- Smile Source has 470
14 offices, or at the time had, roughly, 470 offices. We
15 had developed a relationship with them, so it was a good
16 relationship.

17 **Q. So --**

18 A. It was a good time.

19 **Q. Did you view the 470 offices as an opportunity
20 for Schein to gain business?**

21 A. Yes.

22 **Q. And whose decision was it to enter into the
23 agreement with Smile Source?**

24 A. It was a collaborative decision. Ultimately,
25 I believe Tim would have to say, "Yes, we're doing it."

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1 But my advice to him was, "This is something we should
2 do."

3 **Q. And so did Tim, at some point, say, "Yes,
4 we're doing it"?**

5 A. Yes.

6 **Q. And when was that, approximately?**

7 A. Tim was comfortable with us putting a deal
8 together with Smile Source going back to December of
9 2016. So negotiating with the understanding that we
10 would like to work something out, and then finalizing
11 the deal and the terms, he had to be aware of them. And
12 he was or is.

13 **Q. Okay. Would you mind marking this?
14 (Exhibit 190, 2/1/11 E-mail Re:
15 Business Intelligence Group, was
16 marked for purposes of
17 identification.)**

18 **Q. Are you aware of GPOs in the medical industry?**

19 A. I'm aware they exist in the medical industry.

20 **Q. Are you aware they are common in the medical
21 industry?**

22 MR. McDONALD: Object to the form.

23 A. I don't know the percentage of business they
24 represent in the medical industry.

25 **Q. Okay. But that's not exactly what I asked.**

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1 **Are you aware of whether they're common in the medical
2 industry?**

3 MR. McDONALD: Object to the form. Vague. You
4 could answer. I'm not telling you not to answer.

5 A. "Common"? Can you define what's -- it's a
6 common term in the medical space.

7 **Q. Okay. I'm handing you what's been marked as
8 Exhibit 190, which is a -- well, the top e-mail is an
9 e-mail dated February 1st, 2011. It's from you to a
10 Bret McCarroll regarding "Business Intelligence Group"?**

11 A. Okay.

12 **Q. Take a couple of minutes and look over it, and
13 then I'll have a few questions.**

14 A. Sure.

15 **Q. Have you had a chance to review the document?**

16 A. I'm still reading it.

17 **Q. Okay.**

18 A. Okay.

19 **Q. Okay. First, who is Bret McCarroll?**

20 A. He is a former FSC, field rep of Henry Schein.

21 **Q. And as of the date of this e-mail,
22 February 1st, 2011, were you -- what was your job title?**

23 A. Zone manager.

24 **Q. Okay. So it appears that Mr. McCarroll, in
25 this e-mail, approached Ms. Kathleen Titus about the**

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1 **possibility of doing business with Business Intelligence
2 Group; is that right?**

3 A. That's what it reads, correct.

4 **Q. Okay. And who supervised Bret McCarroll, at
5 this time?**

6 A. Tom McCulloch.

7 **Q. Okay. And what was Tom McCulloch's position?**

8 A. Regional manager.

9 **Q. And did you supervise Mr. McCulloch?**

10 A. I did.

11 **Q. Okay. And so then in the -- so on the page
12 that's Bates-stamped Henry Schein-0004706 --**

13 A. Okay.

14 **Q. -- there is an e-mail from Kathleen Titus to
15 Bret McCarroll, Tom McCulloch, and a CC to you. Do you
16 see that?**

17 A. I do.

18 **Q. Okay. And Ms. Titus writes, "I can tell you
19 that with authority that is not nothing SM would be
20 interested in. The participants are private practice
21 customers which rules SM out. Food for thought, though,
22 their targets are invariably going to be existing HSD
23 customers. I think we have to stick with our core
24 competencies, and this is not one of them."**

25 **Do you see that?**

129	<p>1 A. I do.</p> <p>2 Q. Did I read it correctly?</p> <p>3 A. You did.</p> <p>4 Q. Okay. And so Ms. Titus states that this is</p> <p>5 not something that SM would be interested in. Do you</p> <p>6 see that?</p> <p>7 A. I do.</p> <p>8 Q. Does "SM" refer to special markets, in your</p> <p>9 understanding?</p> <p>10 A. It does.</p> <p>11 Q. Okay. And what is your understanding of why</p> <p>12 special markets wouldn't be interested in Business</p> <p>13 Intelligence Group?</p> <p>14 A. At that time of the e-mail?</p> <p>15 Q. Yep.</p> <p>16 A. Based on what Kathleen is saying is that it's</p> <p>17 that's not in the core competencies of special markets</p> <p>18 and because it's private practices.</p> <p>19 Q. The Business Intelligence Group is a private</p> <p>20 practice group, is that your understanding?</p> <p>21 A. It says --</p> <p>22 MR. McDONALD: Hang on. Object to the form. Go</p> <p>23 ahead.</p> <p>24 A. It says the participants are private practice</p> <p>25 customers, which rules SM out.</p>	131	<p>1 risky on many fronts." Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. What did you mean by that?</p> <p>4 A. Well, with the language, clearly, I didn't</p> <p>5 even know what a GPO was. And it wasn't something that</p> <p>6 was in our core competencies and what we were doing</p> <p>7 business with, so we didn't normally deal -- do business</p> <p>8 with buying groups.</p> <p>9 Q. So as of the date of this e-mail, did you</p> <p>10 understand that a GPO and the buying group were</p> <p>11 synonymous?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 A. I wouldn't have known the difference in the</p> <p>14 language.</p> <p>15 Q. Were you referring to buying groups when you</p> <p>16 said that they are incredibly risky on many fronts?</p> <p>17 A. If I were e-mailing today, I would have put</p> <p>18 "buying group," instead of "GPOs."</p> <p>19 Q. Okay. And then you wrote, "We can discuss</p> <p>20 live; but as soon as we start doing this, we will turn</p> <p>21 into medical. Margins will go down and commissions, of</p> <p>22 course, will follow. This is a bad deal all around."</p> <p>23 So you felt that dealing with buying groups</p> <p>24 would cause margins to go down; is that right?</p> <p>25 A. Potentially of what I understood of what</p>
130	<p>1 Q. Okay. The participants in the Business</p> <p>2 Intelligence Group?</p> <p>3 MR. McDONALD: Object to the form.</p> <p>4 A. I believe that's what she is referring to.</p> <p>5 Q. Is the Business Intelligence Group a buying</p> <p>6 group?</p> <p>7 A. I don't know.</p> <p>8 MR. McDONALD: Object to form.</p> <p>9 Q. Do you see the bottom e-mail where it says</p> <p>10 it's from Bret McCarroll, Kathleen Titus, and Tom</p> <p>11 McCulloch. Mr. Carroll says, "I have a marketing and</p> <p>12 consulting group called Business Intelligence Group that</p> <p>13 is interested in forming a buying group for dentists."</p> <p>14 Do you that?</p> <p>15 A. I do.</p> <p>16 Q. So Mr. McCarroll, at the time he wrote this</p> <p>17 e-mail, thought that Business Intelligence Group is</p> <p>18 forming a buying group; is that right?</p> <p>19 A. Bret is stating that in his e-mail, yes.</p> <p>20 Q. Okay. And then turning to -- so then</p> <p>21 Ms. Titus responded to Mr. McCarroll's e-mail. She CC'd</p> <p>22 you. And then you responded on February 1st, 2011. Do</p> <p>23 you see your e-mail?</p> <p>24 A. I do.</p> <p>25 Q. You wrote, "Dealing with GPOs is incredibly</p>	132	<p>1 happens in medical, that's what I was basing my comments</p> <p>2 on.</p> <p>3 Q. And what do you understand happens in medical?</p> <p>4 A. That they operate off of a lower margin.</p> <p>5 Q. Okay. So the medical industry operates on a</p> <p>6 lower margin than the dental industry?</p> <p>7 A. Yes.</p> <p>8 Q. And your understanding is that that's because</p> <p>9 of the prevalence of buying groups or GPOs in the</p> <p>10 medical industry?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 A. From my understanding, one of the components</p> <p>13 would be medical, specifically GPOs.</p> <p>14 Q. One of the components of why in medical the</p> <p>15 margins are lower?</p> <p>16 A. Yeah. The business model is different between</p> <p>17 medical and dental. So I'm not saying that GPOs are the</p> <p>18 reason. What I'm saying is, based on the business</p> <p>19 model, it's one of the reasons margins are lower.</p> <p>20 Q. Okay. And then returning to your e-mail, you</p> <p>21 also wrote, "And commissions, of course, will follow."</p> <p>22 Were you expressing the concern that</p> <p>23 commissions would also decrease if Schein started</p> <p>24 dealing with GPOs?</p> <p>25 A. It was a way to explain to a sales rep, who is</p>

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1 on commission, that there is a potential consequence to
2 them, also.

3 **Q. In other words, the individual sales rep might**
4 **decrease?**

5 A. The commissions, correct.

6 **Q. Yes. Thank you.**

7 **And then, in the first sentence, you wrote,**
8 **"Dealing with GPOs is incredibly risky on many fronts."**
9 **What did you mean by "risky"?**

10 A. Well, again, it was unknown. We were still --
11 we didn't even know where they belonged. You can see
12 that by the e-mail exchanges. And if we start -- at the
13 time, if we started to offer Henry Schein as a
14 fulfillment company and change the model that we had,
15 then that changes -- that changes us.

16 **Q. What do you mean by "started to offer Henry**
17 **Schein as a fulfillment company"?**

18 A. Well, as we've discussed, when the buying
19 group is -- was coming to you, they were asking for or
20 was focused on merchandise in many cases. So the
21 services and everything else that we have to offer,
22 historically, were not of importance to them.

23 **Q. And why was that risky to Henry Schein?**

24 A. Because of our business model, based on
25 services and support and equipment and technology. We

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1 just are not a fulfillment company of merchandise.

2 **Q. So there might not be any value in Henry**
3 **Schein's services and support and equipment and**
4 **technology?**

5 A. There would be a definite potential for the
6 value of the Henry Schein services and support, and
7 whatnot, to go down.

8 **Q. Okay. So is it fair to state that, as of the**
9 **date that you wrote this e-mail, on February 1st, 2011,**
10 **that you felt that Henry Schein should not partner with**
11 **buying groups?**

12 MR. McDONALD: Object to the form.

13 A. It was not part of, in my mind, what we were
14 going after and the market that we are targeting.

15 **Q. Is that because it was risky to Henry Schein's**
16 **business model?**

17 MR. McDONALD: Object to the form.

18 A. It didn't fit or make sense to the business
19 model, in my mind, in 2011.

20 **Q. Because it would cause decreased margins in**
21 **commissions?**

22 A. Potentially, it could cause a decrease in
23 margins, yes.

24 **Q. Okay. And did you intend, in your e-mail, to**
25 **convey to Mr. McCarroll that he could not or should not**

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1 **open an account with a buying group, or with this**
2 **particular buying group?**

3 A. In my e-mail, we were saying we're not going
4 to -- we were not going to open an account for them as a
5 buying group.

6 **Q. Okay. And then the last sentence -- well, in**
7 **the second-to-last sentence of your e-mail, you wrote,**
8 **"This is the very abbreviated version. And if you would**
9 **like to talk live, please let me know."**

10 **Did you end up speaking with Mr. McCarroll**
11 **live on this topic; do you recall?**

12 A. Not that I recall.

13 **Q. And if you had, was there anything else that**
14 **you would have wanted to tell him?**

15 MR. McDONALD: Object to the form.

16 A. No.

17 **Q. Why did you want to talk live to Mr. McCarroll**
18 **about this topic?**

19 A. For me, oftentimes, if I'm talking to somebody
20 and they may not understand a topic or a decision, I
21 offer to talk live to them. So it's not unusual for me
22 to put that.

23 **Q. Okay. Did your opinion of buying groups**
24 **change, at any point, following this e-mail?**

25 A. Following this specific e-mail, clearly,

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1 eventually, down the road, it did.

2 **Q. Around when did it change?**

3 MR. McDONALD: Object to the form.

4 A. I would have to say as we were transitioning,
5 again, in the market space, understanding the industry,
6 seeing where groups were going. I can't pinpoint
7 exactly when.

8 **Q. Okay. But around the time that you were being**
9 **promoted to the VP of sales for the Western area?**

10 MR. McDONALD: Object to the form.

11 A. I would have to say between area director and
12 VP.

13 **Q. Like late 2014?**

14 MR. McDONALD: Object to the form.

15 A. I don't know.

16 **Q. And what prompted you to change your view on**
17 **whether buying groups -- of whether Schein should do**
18 **business with buying groups?**

19 A. Well, being in the West Coast, that's even
20 where DSOs started, and the industry was changing. And
21 it moves from west to east. So I think being exposed to
22 certain customer business models and the industry
23 changing faster in the west, I think you just learn more
24 about the industry. And my exposure was greater and the
25 industry is changing and you're learning every day. So

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1 I'm always willing to partner, and I'm always willing to
2 listen.

3 **Q. When did buying groups become -- when did the**
4 **industry start changing with regard to buying groups, in**
5 **your understanding?**

6 A. A year.

7 **Q. Just a year ago?**

8 A. No. No. No. Are you looking for a year?

9 **Q. Oh, yes.**

10 A. I would say buying groups have always existed
11 in some shape or form, but I think they started really
12 becoming a little bit more prevalent over the last four
13 years, I would say.

14 **Q. Did Kathleen Titus report to you at the time**
15 **of this e-mail?**

16 A. No.

17 **Q. Who did she report to?**

18 A. I'm not sure if it was Randy Foley or Hal
19 Muller.

20 **Q. So you're not sure whether she was in Henry**
21 **Schein Dental or in special markets?**

22 A. She was in special markets.

23 **Q. Oh, okay.**

24 A. Yeah.

25 **Q. I see. Okay. You can put that one away.**

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1 **Thank you.**

2 **(Exhibit 191, 8/25/11 E-mail Re:**
3 **Nov. AGD meeting in Vegas, was**
4 **marked for purposes of**
5 **identification.)**

6 **Q. Mr. Cavaretta, the court reporter handed you**
7 **what's been marked as Exhibit 191. The top e-mail is an**
8 **e-mail from you to Thomas Gadd dated August 25th, 2011,**
9 **"Re: Nov. AGD meeting in Vegas." Do you see that?**

10 A. I do.

11 **Q. Take a few seconds -- a few minutes to look**
12 **over that, and let me know when you're done.**
13 **Have you had a chance to review the document?**

14 A. Almost. Okay.

15 **Q. Who is Thomas Gadd?**

16 A. He was an FSC in Kentucky, I believe.

17 **Q. And who is his supervisor?**

18 A. Joe Gurskey was his regional manager.

19 **Q. And did Mr. Gurskey report to you?**

20 A. No.

21 **Q. So the bottom e-mail, on Bates-stamped Henry**
22 **Schein-ending Bates 4797, from Mr. Gadd to you, and**
23 **there is an e-mail there.**
24 **What is your understanding of why Mr. Gadd was**
25 **sending you an e-mail here?**

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1 MR. McDONALD: Object to the form.

2 A. I can only assume it's because there was a
3 meeting in Vegas in November.

4 **Q. I see. Okay. And you responded to Mr. Gadd.**
5 **And you wrote, "As for the AGD buying group"?**

6 A. Mm-hmm.

7 **Q. Do you see that part?**

8 A. I do.

9 **Q. What was "AGD," do you know?**

10 A. I believe he's referring to the Academy Of
11 General Dentistry.

12 **Q. And what is the Academy Of General Dentistry?**

13 A. It's a group that educates -- it's an
14 organized group that educates the dental professional,
15 and they have a good reputation.

16 **Q. And so Mr. Gadd was telling you that AGD was**
17 **trying to negotiate a deal for members of the AGD to get**
18 **discounts, and then he wrote, in parentheses, "buying**
19 **group, in other words." Do you see that?**

20 A. I see him mentioning that he's hearing the
21 AGD. I'm just rereading it. He's informing me that he
22 believes that AGD approached Henry Schein.

23 **Q. Okay. And that AGD was trying to form a**
24 **buying group?**

25 A. That's in his e-mail, yes.

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1 **Q. And you wrote, "I haven't heard anything about**
2 **this, but I doubt this will happen." Do you see that?**

3 A. I do.

4 **Q. And you wrote, "Once the buying groups enter**
5 **our market, the dental model as we know it will change."**
6 **Do you see that?**

7 A. I do.

8 **Q. And what did you mean by that?**

9 A. Once again, the full-service model, that we go
10 directly to private practice dentists with -- it,
11 really, at that time, didn't make any sense for us to
12 partner with a group when we have all of the services
13 that a private practitioner needs.

14 **Q. Was it fair to say that, as of the date you**
15 **wrote this e-mail, you believed buying groups would harm**
16 **Schein's current dental model?**

17 MR. McDONALD: Object to the form.

18 A. I think it would be fair to say that I didn't
19 understand the value of partnering with buying groups
20 and how that would help us.

21 **Q. Sitting here today, what's your understanding**
22 **of what the basis was for you saying that, once buying**
23 **groups entered the dental market, it will change, the**
24 **market will change?**

25 MR. McDONALD: Object to the form.

35 (Pages 137 to 140)

141	<p>1 A. The basis would be that there would be, now, a 2 third party selling the services of Henry Schein that we 3 already are selling, ourselves, to private 4 practitioners. 5 Q. You went on to write, "I will ask John or Dave 6 about our progress, but I would assume, at this point, 7 that nothing is going to happen." Do you see that? 8 A. I do. 9 Q. Were you saying that you doubted that Schein 10 would end up selling to AGD? 11 A. I'm saying that I doubt there is an AGD buying 12 group happening. 13 Q. Who is the John that you're referring to in 14 this e-mail, if you know? 15 A. That would be John Chatham. 16 Q. Who is that? 17 A. John Chatham was the vice president of global 18 development. I don't remember his exact title. So he 19 was responsible for training our team, but was also 20 helping with sales, overall sales. 21 Q. And what about Dave; is that a reference to 22 Dave Steck? 23 A. It is. 24 Q. Okay. When you were the zone manager, the 25 Western zone manager, who did you report to?</p>	143	<p>1 manager/community health liaison. Does that seem right? 2 Does that seem correct to you? 3 A. She was special markets. I'm not sure of the 4 title. 5 Q. She was within the special markets? 6 A. She was. 7 Q. So she wrote to you, in the second paragraph, 8 "We have a customer in Utah, a DSO called IDA." And 9 then the next paragraph, "Their most recent proposal to 10 bring offices to them was not to buy into ownership, but 11 really crossed the line into GPO, so we, in special 12 markets, cannot go that route." Do you see that? 13 A. I do. 14 Q. Do you have any understanding why special 15 markets could not go that route? 16 MR. McDONALD: Object to the form. 17 A. No. But based off of the last e-mail sent to 18 Kathleen, it probably had to do with private practices. 19 Q. What do you mean by that? 20 A. What do I mean by what? 21 Q. How did it have to do with private practices? 22 How does that relate to whether special markets can go 23 this route? 24 A. Special markets would handle the group 25 practices, and I'm reading this as they are looking to</p>
142	<p>1 A. Dave Steck. 2 Q. And what was his job title, at that time; do 3 you know? 4 A. The same, vice president, general manager. 5 Q. You can put that away. 6 A. Okay. 7 (Exhibit 192, 1/15/12 Re: Business 8 Growth: Intermountain Dental 9 Associates, was marked for purposes 10 of identification.) 11 Q. The court reporter has handed you what has 12 been marked as Exhibit 192. It is an e-mail from you to 13 Andrea Hight dated January 15th, 2012, "Re: Business 14 Growth: Intermountain Dental Associates, in 15 parenthesis, IDA, Utah." Do you see that? 16 A. I do. 17 Q. Take a couple of minutes to read it and let me 18 know when you're ready. 19 A. Okay. 20 Q. Okay. So looking at the bottom e-mail -- 21 A. Mm-hmm. 22 Q. -- that's on the back page, the Bates stamp 23 ends in 4841. It's an e-mail from Ms. Hight to you. 24 And at the time of this e-mail, it looks like, in 25 Ms. Hight's signature block, she was regional</p>	144	<p>1 recruit private practices not part of the DSO. So 2 that's -- that's what I'm reading in the e-mail. 3 Q. Okay. And special markets does not handle 4 private practices? 5 A. Correct. 6 Q. And what about GPOs? 7 MR. McDONALD: Object to the form. 8 A. I would say that the GPO piece was, again, not 9 using the matter -- used in the right manner. And if we 10 were replacing it as buying groups, I would highlight we 11 really didn't know what to do with buying groups at this 12 time. 13 Q. Okay. Was there any policy that special 14 markets could not sell to buying groups at this time? 15 A. Not that I'm aware of. 16 Q. Okay. And then she wrote, "However, I believe 17 there would be an opportunity for to you meet with them 18 to look at what could be done on the HSD side of 19 things." 20 So what is your understanding of why you might 21 be able to do something for IDA on the HSD side of 22 things? 23 A. I don't know. Andrea and Kathleen like to 24 connect people. And I just think she didn't know what 25 to do with them, so she was passing it to me and</p>

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1 hopefully getting an intro with IDA.
 2 **Q. Okay. And do you recall whether you ever had**
 3 **a meeting with IDA?**
 4 A. I met with IDA on a co-travel with Melanie,
 5 but I don't remember discussing this.
 6 **Q. Okay. Who is Melanie?**
 7 A. So where she says, "Mel Bingham," is actually
 8 a female named Melanie. Everyone calls her Mel. It's
 9 on the first paragraph, third, fourth sentence.
 10 **Q. Okay. What is Ms. Bingham's job duties, at**
 11 **this time, or what is her job title at this time?**
 12 A. At the time of the e-mail?
 13 **Q. Yes.**
 14 A. FSC.
 15 **Q. And then on the next -- on the first page, the**
 16 **Bates stamp ends in 4840. Just a quick question about**
 17 **your e-mail, January 16th, 2012, at 10:56 a.m. You**
 18 **reference an FMM meeting?**
 19 A. Yeah.
 20 **Q. What is that?**
 21 A. Field managers meeting.
 22 **Q. And who would attend a field managers meeting?**
 23 A. The entire leadership team.
 24 **Q. And what does that include?**
 25 A. It includes pretty much all of the leaders,

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1 from Tim down to the regional managers.
 2 **Q. How frequently are FMM meetings held.**
 3 A. Once a year.
 4 **Q. Around when are they usually held?**
 5 A. January, in Wisconsin.
 6 **Q. Are there usually agendas for those meetings?**
 7 A. Yes.
 8 **Q. Are there usually summaries of the meetings**
 9 **that are sent around after the meeting?**
 10 MR. McDONALD: Object to the form.
 11 A. No.
 12 **Q. Are there notes taken at the meetings?**
 13 MR. McDONALD: Object to the form.
 14 A. Potentially people can take notes, but there
 15 is not someone there to take notes at the meeting.
 16 **Q. Okay.**
 17 (Exhibit 193, 1/26/12 E-mail Re:
 18 IDA, was marked for purposes of
 19 identification.)
 20 **Q. So the court reporter handed you what has been**
 21 **marked as Exhibit 193. The top e-mail is from Andrea**
 22 **Hight to you and Melanie Bingham, dated January 26,**
 23 **2012, "Re: IDA." Let me know when you've had a chance**
 24 **to review it?**
 25 A. Okay. Okay.

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1 **Q. So does this e-mail refresh your recollection**
 2 **about whether you spoke with IDA about the buying group**
 3 **approach?**
 4 A. I still don't remember the conversation, but I
 5 do read the e-mail.
 6 **Q. So looking at your e-mail of January 25th,**
 7 **2012, at 5:51 p.m., you wrote, "Made some nice progress**
 8 **with Richard today. Moved him off his pricing, quote**
 9 **demand, unquote, and moved more to the value**
 10 **proposition. We will see how it works."**
 11 **Do you see that?**
 12 A. I do.
 13 **Q. Do you have an understanding of what you meant**
 14 **by that?**
 15 A. I'm assuming.
 16 MR. McDONALD: Don't guess.
 17 A. Okay. No.
 18 MR. McDONALD: If you know, tell her.
 19 A. I don't.
 20 MR. McDONALD: You're not here to guess.
 21 **Q. Okay. So you wrote this e-mail, obviously, on**
 22 **January of 2012, right?**
 23 A. I did.
 24 **Q. So what is your understanding of what you**
 25 **meant by "pricing demand"?**

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1 MR. McDONALD: Object to the form. Again, if you
 2 know, tell her, but don't guess.
 3 A. I don't remember.
 4 **Q. I'm asking you for your understanding, sitting**
 5 **here today, as the person who wrote the e-mail. Are you**
 6 **telling me that you don't have any understanding of what**
 7 **you meant by this sentence?**
 8 MR. McDONALD: Same objection.
 9 A. At the time that I wrote the e-mail -- I don't
 10 know what I was thinking when I was writing the e-mail
 11 about when I put "pricing demanding."
 12 **Q. And you don't have an understanding, sitting**
 13 **here today, of what that means?**
 14 A. Other than assuming, but that's --
 15 **Q. What would your assumption be based on --**
 16 MR. McDONALD: Hang on a second. Are you okay?
 17 THE REPORTER: I'm okay.
 18 **Q. Sitting here today, what would your assumption**
 19 **be based on?**
 20 A. In situations that, when people ask about
 21 pricing, they're looking for pricing that would be in
 22 line with the DSO.
 23 **Q. Okay. So when buying groups approached Schein**
 24 **looking for pricing, that would be what they're looking**
 25 **for in the DSO-type pricing?**

37 (Pages 145 to 148)

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1 MR. McDONALD: Object to the form.
 2 A. So buying groups have asked about having
 3 formulary pricing similar to DSOs.
 4 **Q. Okay. And, in your experience, is that**
 5 **generally what buying groups ask for?**
 6 A. Yeah. They don't really know what they're
 7 asking for when they first start having the
 8 conversations. They just know that there is a formulary
 9 that DSOs buy off of. They don't even know what it
 10 means.
 11 **Q. And the formulary that DSOs buy off of offer**
 12 **discounts, discounted prices for those DSOs?**
 13 A. Yes.
 14 **Q. So your understanding of the e-mail is that**
 15 **the pricing demand that is referenced, in your e-mail,**
 16 **relates to a demand for DSO-type pricing?**
 17 A. I don't remember exactly what the conversation
 18 was or the intent of the e-mail, but I'm going based off
 19 of frequent requests from buying groups. That's where
 20 my answer came from.
 21 **Q. Okay. And then Melanie Bingham responds to**
 22 **you and wrote, "Would that make a GPO"? And then you**
 23 **responded and wrote, "It is dangerously close, but I**
 24 **told him that we would not do business with a GPO." Do**
 25 **you see that?**

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1 A. I do.
 2 **Q. Why would you tell Ms. -- why would you tell**
 3 **IDA that you would not do business with a GPO?**
 4 A. Well, I believe that, based on the e-mail
 5 chains, that they were talking about having private
 6 practices be part of IDA without IDA owning them,
 7 which -- and then getting the pricing that IDA was
 8 getting, that they were private practices, and we didn't
 9 do that.
 10 **Q. Okay. So was it a policy, at the time, not to**
 11 **do that?**
 12 MR. McDONALD: Object to the form.
 13 A. It was a business practice.
 14 **Q. So the business practice, at the time, was**
 15 **to -- was -- strike that.**
 16 **The business practice, at the time, was not to**
 17 **give discounts on pricing to groups that did not have**
 18 **central ownership?**
 19 MR. McDONALD: Object to the form.
 20 A. No.
 21 **Q. So what was the policy or the practice?**
 22 A. So the practice that I'm referring to here is
 23 specifically that the private practices, they wanted to
 24 give the pricing that IDA was getting to private
 25 practices. It doesn't mean we didn't give discounts to

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1 practices or discounts to groups. It's just that we
 2 were not -- we were not going to give DSO pricing to
 3 private practice.
 4 **Q. IDA was a DSO?**
 5 A. Yes.
 6 **Q. I see. So the policy was that you were not**
 7 **going to give DSO pricing to private practices that**
 8 **wanted to form a buying group?**
 9 MR. McDONALD: Object to the form.
 10 A. The business practice, I don't recall seeing a
 11 policy on this. So it was just the business practice
 12 that wouldn't give the DSO pricing to private practices.
 13 **Q. Okay. And why not?**
 14 A. Well, volume of business is one. The second
 15 thing is that we had a large market share in the DSO
 16 space at this time; and if we were to do this with one
 17 group, we'd have to do it and allow it with all of them.
 18 **Q. And why would that be a concern?**
 19 A. Well, they don't -- they don't actually own
 20 the private practices. They don't have any type of, in
 21 many cases, influence over it. And it just wasn't what
 22 we did because of the value of Henry Schein and the
 23 value of the practice was strong. And the DSO pricing,
 24 based on the volume of business, was DSO pricing for
 25 those specific customers. So we have to --

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1 THE REPORTER: I'm sorry.
 2 A. From a business standpoint, we didn't allow it
 3 to go to private practice.
 4 THE REPORTER: Give me one second, please.
 5 (Brief pause.)
 6 **Q. DSO pricing is a more significant discount**
 7 **than is offered to private practices; is that right?**
 8 A. Based on volume, the formulary was at a deeper
 9 discount than what we would offer private practice.
 10 **Q. And you said that the concern was that if you**
 11 **offered one buying group a DSO discount, then you would**
 12 **have to offer to all of them?**
 13 A. No. If we allowed a DSO to take the pricing
 14 that we were giving them as Henry Schein and just go to
 15 private practice, the dentist, to give them that
 16 pricing, it's not their pricing to give. It's Henry
 17 Schein's. So if we allowed a group to do that, then
 18 there is no control.
 19 **Q. So your concern was with IDA taking their**
 20 **pricing and giving it to private practices?**
 21 A. That's what they were asking for, and that's
 22 what we -- I'm assuming that's what we were saying no
 23 to.
 24 **Q. Okay. Do you recall eventually saying no to**
 25 **that?**

38 (Pages 149 to 152)

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1 A. No. I don't recall off the top of my head.
 2 **Q. So you don't recall whether Henry Schein**
 3 **Dental ended up doing business with IDA or not?**
 4 A. Well, special markets Henry Schein was doing
 5 business with IDA.
 6 **Q. Understand.**
 7 A. Right.
 8 **Q. Understood. Specific to Henry Schein Dental,**
 9 **did Henry Schein Dental ever end up doing business with**
 10 **IDA, if you recall?**
 11 A. We couldn't. They were doing business with
 12 special markets. So it was a special markets customer
 13 IDA.
 14 **Q. Okay. Did Henry Schein Dental end up doing**
 15 **business with the buying group component of IDA that's**
 16 **being proposed in these e-mails?**
 17 A. I don't believe so.
 18 (Exhibit 194, 9/24/12 E-mail Re:
 19 Intermountain Dental Associates RFP,
 20 was marked for purposes of
 21 identification.)
 22 **Q. So the court reporter handed you what's been**
 23 **marked as Exhibit 194, which is an e-mail from Melanie**
 24 **Bingham to you dated September 24th, 2012, again, "Re:**
 25 **Intermountain Dental Associates RFP," and then there's**

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1 **some e-mail chains following that.**
 2 **Let me know when you've had a chance to look**
 3 **at the document.**
 4 A. Okay. Okay.
 5 **Q. Okay. So directing your attention to -- it's**
 6 **the third e-mail from the top. It's from Melanie**
 7 **Bingham, on September 24th, 2012, at 6:20 p.m. to you**
 8 **and Jeff Harmon. Do you see that?**
 9 A. I do.
 10 **Q. And she writes, "Everyone keeps saying we**
 11 **don't do GPOs. So what is the Dental Co-Op of Utah?"**
 12 **Do you see that?**
 13 A. I do.
 14 **Q. Do you recall everyone saying that we don't do**
 15 **GPOs at this time?**
 16 MR. McDONALD: Object to the form.
 17 A. I don't remember a blast e-mail or edict, on
 18 behalf of the company, to the team saying we don't do
 19 business with, at this time, referring to GPOs.
 20 **Q. Do you recall people talking about whether**
 21 **Schein does business with GPOs at this time?**
 22 A. We weren't actively looking to cultivate
 23 relationships with buying groups or GPOs. It wasn't
 24 part of the strategy, as I mentioned earlier.
 25 **Q. Okay. And then she asks, "So what is the**

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1 **Dental Co-Op of Utah? And you respond, "The co-op is**
 2 **exactly what we were trying to avoid."**
 3 **Do you see that?**
 4 A. I do.
 5 **Q. What co-op are you referring to here; do you**
 6 **know?**
 7 A. The dental co-op in Utah.
 8 **Q. Is that the one that you mentioned earlier?**
 9 A. Yes.
 10 **Q. So this is the one that Schein was doing**
 11 **business with before you became the Western zone**
 12 **manager; is that right?**
 13 A. Correct.
 14 **Q. So you sort of inherited it?**
 15 A. Correct.
 16 **Q. And why did you write that the co-op is**
 17 **exactly what we are trying to avoid?**
 18 A. So I don't know the timing of the e-mails here
 19 with what ultimately happened with the co-op, but it was
 20 becoming a challenging relationship with the co-op. And
 21 we were not becoming -- we were growing further apart,
 22 and the alignment wasn't there, and the conversations
 23 were becoming more difficult. And the co-op, they had
 24 plans for the co-op, which is good for them. It's their
 25 business. But it wasn't what we had been moving towards

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1 or agreed to. So you have to have business discussions
 2 about that.
 3 **Q. And what was the issue when you said that the**
 4 **co-op had -- they were becoming -- you two were growing**
 5 **further apart, it was becoming more difficult?**
 6 A. Yeah.
 7 **Q. What did you mean by that?**
 8 A. A couple of things. They were trying to
 9 get -- they were trying to go into other markets and use
 10 my name and other people's names and saying, "Hey, it's
 11 okay. We're going to do the co-op here," which is not
 12 something that we agreed to outside of Las Vegas.
 13 And then they started to bring in other
 14 manufacturers that Henry Schein did not do business
 15 with. And from an alignment standpoint, they were
 16 ending relationships with people that we were mutually
 17 doing business with and creating them with others. So,
 18 once again, they can do that, but we weren't in
 19 alignment anymore.
 20 **Q. So they were bringing in manufacturers that**
 21 **Henry Schein did not do business with?**
 22 A. Yeah.
 23 **Q. And were they trying to buy directly from**
 24 **those manufacturers, or still through Henry Schein?**
 25 A. I don't know if they were buying directly from

39 (Pages 153 to 156)

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1 them. But, in many cases, they were -- in a couple of
2 cases, they were direct to the customer, so direct
3 manufacturers we would call it.

4 **Q. And why was that a problem for Henry Schein?**

5 A. Well, it's not what we had agreed to when we
6 originally had started doing business with them. We had
7 Colgate in there, we had Henry Schein companies and
8 relationships in there. And when it was first started,
9 it was, "Yep. This is what we're going to do. We love
10 it, Henry Schein," and then it started changing.

11 **Q. So what was the agreement that Schein
12 originally had with the dental co-op with Utah?**

13 A. I don't know -- remember the exact agreement,
14 but it was a PDA we had with them. And what I do
15 remember is there was a rebate back to customers for
16 their purchases and a rebate back to the co-op for their
17 overall purchases.

18 **Q. Was the co-op required to purchase from Henry
19 Schein?**

20 A. Well, the prime vendor agreement, we can't
21 force anybody to. To this day, I don't believe it's a
22 legally binding document. But that was the
23 understanding and the agreement when you sign that
24 document. That's the commitment to each other.

25 **Q. Okay. And was it a 100 percent commitment?**

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1 A. No. I mean, if they -- if they were buying
2 certain categories, that could happen and we'd
3 understand. But it wasn't -- they didn't have control
4 over the private practices. What the co-op was doing
5 was bringing relationships in and introducing the
6 relationships when that wasn't -- that wasn't what we
7 had agreed to.

8 **Q. What do you mean "the co-op was bringing in
9 relationships"?**

10 A. So the co-op doesn't have ownership of the
11 offices, so the offices could buy from whoever they
12 wanted to. But there is manufacturers that we didn't do
13 business with that the co-op, now, we were going in and
14 promoting the co-op. And so the co-op then was kind of
15 moving a little bit away from Henry Schein and then
16 introducing products for manufacturers that we didn't
17 sell. So it was creating conflict in the field, which
18 is not good.

19 **Q. Do you know why Henry Schein did business with
20 the Dental Co-Op of Utah?**

21 A. I wasn't part of the original discussions, so,
22 no.

23 **Q. Did you disagree with the notion of doing
24 business with the Dental Co-Op of Utah?**

25 MR. McDONALD: Object to the form.

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1 A. I was surprised that we had an agreement with
2 them.

3 **Q. And, at some point, did Schein's relationship
4 with the Dental Co-Op of Utah end?**

5 A. It did.

6 **Q. And what were the circumstances of that?**

7 A. How did it come about?

8 **Q. Yes.**

9 A. When we were transitioning to the midmarket
10 space -- in September? Kathleen now is reporting to me,
11 and we're learning more about the co-op and a lot more
12 noise was happening in the field about things were
13 changing with the original agreement.

14 So we had several discussions with them, Jeff
15 and Kathleen specifically, and expressed our concerns.
16 And they weren't going to change the direction they were
17 heading, which is fine. So we professionally said we're
18 going to have to end the relationship.

19 **Q. Okay. And were there certain things that you
20 asked the Dental Co-Op of Utah to do so that you could
21 continue to maintain the relationship?**

22 A. I don't remember specifically what those asks
23 were.

24 **Q. So you mentioned that the Dental Co-Op of Utah
25 was starting to expand to other areas; is that right?**

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1 A. Yes, I did.

2 **Q. And what other areas were they expanding into?**

3 A. They wanted to -- or they did expand into
4 Idaho. They did expand into Las Vegas, I think, with
5 one doctor, and then they did expand into or attempt to
6 expand into Mexico. Beyond that, I don't know.

7 **Q. And was that problematic for Henry Schein, the
8 expansions?**

9 MR. McDONALD: Object to the form.

10 A. It wasn't -- it was done in a way that it
11 wasn't in partnership. And how I believe we found out
12 about New Mexico was at a state show where they had a
13 manufacturer that we didn't sell their products. So
14 they were talking about joining Henry Schein as a
15 manufacturer, that if we don't sell their products,
16 we're going to move. So then the e-mail and questions
17 come and confusion comes in.

18 So I don't believe it was a problem where we
19 were concerned. It just wasn't the way we agreed to do
20 it.

21 **Q. And so was -- did the expansion into new
22 states, did that prompt you to reassess the relationship
23 with the Dental Co-Op of Utah?**

24 MR. McDONALD: Object to the form.

25 A. I would say that was one component of saying,

161	<p>1 "Hey, we've got to get together and talk, because this 2 is not -- one, we don't know what you're doing. You're 3 putting us in a bad spot with our team, because they're 4 asking us questions and we don't even know what's going 5 on," and then, of course, the other things I mentioned 6 earlier. There were just things going on that we had to 7 discuss. 8 MS. GOFF: Okay. Do you want to take a break? 9 MR. McDONALD: Yes. Yes. 10 (A short recess was had.) 11 (Exhibit 195, 7/17/12 Meadows E-Mail 12 to Delikat, was marked for purposes 13 of identification.) 14 Q. Mr. Cavaretta, the court reporter has just 15 handed you what has been marked as Exhibit 195, which is 16 an e-mail from Jake Meadows to Patty Delikat -- 17 A. Mm-hmm. 18 Q. -- dated July 17th, 2012. And then there's 19 some other e-mails as well. 20 You're not on any of these e-mails, but I'd 21 like to ask you some questions about the document 22 anyway. So please take a moment to read it and let me 23 know when you're ready. 24 A. Okay. Okay. 25 Q. Jake Meadows, what was his position in July of</p>	163	<p>1 regards to supporting buying groups. We do not want our 2 customers organizing and creating what are known as 3 GPOs. It takes away the value away from the 4 distributor." Do you see that? 5 A. I do. 6 Q. Do you recall a direction from Tim Sullivan 7 regarding buying groups? 8 A. I don't recall Tim saying we absolutely don't 9 do buying groups, no. 10 Q. Okay. What do you recall Tim saying regarding 11 buying groups? 12 A. So I don't remember the exact words, but the 13 direction is, not understanding the -- not understanding 14 the value of buying groups. 15 Q. So Tim Sullivan said that he did not 16 understand the value of buying groups? 17 A. That's not a direct quote, but that was the 18 context of the meeting or the conversation of just not 19 understanding how buying groups would be in our strategy 20 in 2012. 21 Q. Okay. And when you said "the value of buying 22 groups," do you mean the value of buying groups to 23 Schein, the value to Schein? 24 A. The value of a buying group to an end 25 customer, and what value would they bring to a private</p>
162	<p>1 2012, if you know? 2 A. Zone manager. 3 Q. For? 4 A. The northwest zone. 5 Q. Was this the time that he reported to you? 6 A. He reported to me for a short period of time, 7 so it was through Dave or myself. I don't really know. 8 Q. Dave Steck? 9 A. Yes. 10 Q. So when you were -- 11 A. Probably, Dave. 12 Q. When you were the Western zone manager, was 13 the Northwestern zone one of your responsibilities? 14 A. No, but there were times where he had dual 15 roles. But, at this time, I don't believe these 16 dates -- I don't believe Jake reported to him during 17 these dates. 18 Q. Okay. Who is Patty Delikat, if you know? 19 A. FSC. 20 Q. So that's like a sales rep? 21 A. Yes. Sorry. 22 Q. Okay. So in the top e-mail, the most recent 23 e-mail, Jake writes, "Patty, we can talk about this. I 24 have to tell you, Ron and Dan made a decision that is 25 against what Tim Sullivan has directed us to do in</p>	164	<p>1 practice dentist. 2 Q. And so when did Mr. Sullivan provide that 3 strategy? 4 MR. McDONALD: Object to the form. 5 A. I couldn't tell you a date, a time. 6 Q. But around in this 2012 time period, you 7 recall that that was the strategy from Tim Sullivan? 8 MR. McDONALD: Object to the form. 9 A. I don't recall. But reading this e-mail, that 10 is what I'm seeing in front of me from what Jake is 11 saying. 12 Q. Do you have any reason to doubt what Jake 13 Meadows is saying? 14 A. You'd have to ask Jake. I don't know. 15 Q. I'm asking you. Do you have any reason to 16 doubt the Mr. -- strike that. 17 Do you have any reason to doubt what 18 Mr. Meadows wrote in his e-mail? 19 A. I don't doubt Jake. 20 Q. Do you consider Jake to be a truthful 21 individual? 22 A. Jake is a truthful individual, yes. 23 Q. And do you believe that what Jake writes, in 24 his e-mails, is generally accurate? 25 A. It's Jake's interpretation of what he heard in</p>

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1 the meeting, I'm assuming.

2 **Q. Okay. So is there a specific meeting that**
3 **you're referring to?**

4 A. No.

5 **Q. Do you recall a meeting where Tim Sullivan**
6 **discussed buying groups in this 2012 time period?**

7 A. In 2012, I do not remember a meeting.

8 **Q. Okay. Do you recall Jake ever telling you**
9 **that he received any direction from Tim Sullivan**
10 **regarding buying groups?**

11 A. Not that I recall.

12 **Q. Okay. But you recall, generally, that**
13 **Mr. Sullivan did not understand the value in buying**
14 **groups?**

15 MR. McDONALD: Object to the form.

16 A. I remember having it being a part of a
17 discussion of buying groups, in general, and Tim asking
18 that question.

19 **Q. Do you recall whether there was a practice at**
20 **Henry Schein Dental not to support buying groups during**
21 **this time?**

22 A. I don't recall any type of memo, policy,
23 anything saying, "Do not do business with buying
24 groups."

25 **Q. Right. The practice I'm referring to. Was**

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1 **there a practice about not supporting buying groups?**

2 A. It wasn't -- it wasn't part of our normal
3 business model, so it wasn't something that we were
4 aggressively pursuing.

5 **Q. So, at this time, there was a practice at**
6 **Henry Schein Dental not supporting buying groups?**

7 MR. McDONALD: Object to form.

8 A. No. That's not what I said.

9 **Q. Okay. So what did you say?**

10 A. That, at the time, buying groups were not our
11 priority as part of the business strategy.

12 **Q. Whose decision was it that buying groups were**
13 **not a part of your business strategy?**

14 MR. McDONALD: Object to the form.

15 A. I would say that, if we were going to do
16 business with a buying group, we would have to talk to
17 either Dave or Tim to see if this was a direction that
18 we wanted to go or a group that we wanted to do business
19 with at that time.

20 (Exhibit 196, 3/25/15 E-mail Re: FW
21 Support, was marked for purposes of
22 identification.)

23 A. Okay.

24 **Q. So the court reporter has handed you what has**
25 **been marked as 196. And the top e-mail is an e-mail**

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1 **from Kathleen Titus to you and Randall McLemore dated**
2 **March 25, 2015. The subject is FW Support - Buying**
3 **Group Steadfast Dental, do we shut this down? Do you**
4 **see that?**

5 A. Yes, I do.

6 **Q. Have you had a chance to review it?**

7 A. I have.

8 **Q. So the bottom e-mail, which is on Henry**
9 **Schein-0003342 is an e-mail from Emily Kerr to K.**
10 **Vaughn, V-a-u-g-h-n@steadfast.com. Do you see that?**

11 A. I do.

12 **Q. Emily Kerr, was she in the special markets**
13 **division?**

14 A. I assume so based on --

15 **Q. Do you know her?**

16 A. I don't.

17 **Q. You don't recognize the name?**

18 A. Vaguely. I mean, I don't know her.

19 **Q. Okay. She wrote, "There have recently been**
20 **some changes within our special markets division of**
21 **Henry Schein and we now have a new special markets**
22 **manager in our area of Texas."**

23 **Do you know -- happen to know what the changes**
24 **she's referring to are?**

25 A. In 2014 I believe is when the midmarket space

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1 had been created, and there was transition internally of
2 accounts that were going from special markets to
3 midmarket and vice versa.

4 **Q. Okay. Thanks. And then eventually this**
5 **e-mail gets forwarded on up to you and Mr. McLemore by**
6 **Kathleen Titus?**

7 A. Yes.

8 **Q. And the title is, "Buying Group - Steadfast**
9 **Dental, do we shut this down?" Do you have an**
10 **understanding of what Ms. Titus meant when she said "do**
11 **we shut this down"?**

12 A. She was asking if we still continue to do
13 business with Steadfast Dental.

14 **Q. Okay. And do you recall whether you responded**
15 **to Ms. Titus?**

16 A. I know there was an exchange regarding this
17 account. What specifically the exchange was, I don't
18 know. I don't remember the e-mails.

19 **Q. Do you know what Steadfast Dental is?**

20 A. From my recollection, they were a buying group
21 that was dealing with oral surgeons.

22 **Q. And did Henry Schein ever do business with**
23 **Steadfast Dental?**

24 A. It was a special markets account. It was
25 created there; and then when the midmarket happened or

42 (Pages 165 to 168)

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1 was created, we inherited it. So there could have been
2 a time, during that transition, where it was a part of
3 HSD that they did purchase from us, but I can't say that
4 specifically.

5 **Q. And then what happened to it after it switched**
6 **over to HSD? Did you continue to do business with**
7 **Steadfast Dental?**

8 A. From what I recall, Kathleen was trying to
9 understand what Stead -- who Steadfast was and doing
10 discovery on Steadfast. I do know eventually we did
11 walk away from doing business with them. But I can't
12 tell you how long or how many purchases they made with
13 us when they were a part of midmarket.

14 **Q. And why did Schein eventually walk away from**
15 **doing business with them?**

16 MR. McDONALD: Object to the form.

17 A. Kathleen was doing the discovery on that, so I
18 don't remember all of -- or I don't remember the
19 specifics of Steadfast. But based on the information
20 that she collected, I do know that we walked away from
21 doing business with Steadfast.

22 **Q. Okay. You consider Steadfast to be a buying**
23 **group, right?**

24 A. Every --

25 MR. McDONALD: Objection to the form.

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1 A. In the e-mail here, it said, "Pacific Group
2 Management Services."

3 **Q. Do you recall that entity?**

4 A. I don't remember them specifically.

5 **Q. Okay. Do you know whether they were a buying**
6 **group based in California?**

7 A. Based on the content of the e-mail and who is
8 on the e-mail, it's definitely based in California.

9 **Q. Okay. Do you have an understanding of whether**
10 **it was a buying group?**

11 A. It looks like they're inquiring about starting
12 a group. I don't know if they were actually a group.

13 **Q. Okay. So let's go to the e-mail of July 14th,**
14 **2014, at 11:06 a.m., from Brian Brady to Kathleen Titus,**
15 **and you and Glenn Showgren are CC'd?**

16 A. Okay.

17 **Q. So Brian Brady, do you know what his position**
18 **was, at this time, in July of 2014?**

19 A. Regional manager for the Bay Area.

20 **Q. Thanks. And he's writing about this PGMS. In**
21 **his second bullet point, he writes: "Let's say, for**
22 **example, they have 50 GPs who become referring doctors**
23 **to this group," and then it goes on a little bit later,**
24 **and half of those are buying customers from HSD, in**
25 **parentheses, Our Bay Area market share is 55 percent for**

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1 A. The information that was presented to us, it
2 looked like a buying group.

3 **Q. What was Mr. Randall McLemore's role, at this**
4 **time, in March of 2014?**

5 A. I think he had just become his own manager for
6 the Southern zone.

7 **Q. So Ms. Titus writes, in the last sentence of**
8 **her e-mail, "At least I would like Randall to be a part**
9 **of that call."**

10 **Do you have an understanding why she would**
11 **want Randall to be involved?**

12 A. No, I don't.

13 **Q. Okay.**

14 (Exhibit 197, 7/15/14 e-mail Re: Our
15 meeting today - PGMS agreement, was
16 marked for purposes of
17 identification.)

18 A. Okay.

19 **Q. Okay. So the court reporter has handed you**
20 **what's been marked as Exhibit 197. The top e-mail is an**
21 **e-mail from you to Ms. Titus dated July 15th, 2014, "Re:**
22 **Our meeting today - PGMS agreement for your review." Do**
23 **you see that?**

24 A. I do.

25 **Q. Do you know what "PGMS" is?**

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1 **merch, so this is realistic on VPAs with an average**
2 **discount of 5 to 10 percent. Will all of those doctors'**
3 **respective VPAs change to P20s, in parentheses, to 20**
4 **percent off, and, in addition, would we then change**
5 **those doctors from HSD to special markets?"**

6 **What's the concern that Mr. Brady is**
7 **expressing here?**

8 A. It seems like confusion on how this would
9 work.

10 **Q. He wrote, "50 GPs." What does "GP" mean?**

11 A. General practitioners.

12 **Q. Okay. And was the concern that there are**
13 **doctors who were already purchasing from Schein at a 5**
14 **to 10 percent discount rate who would now get a 20**
15 **percent discount rate by virtue of joining a buying**
16 **group?**

17 A. I believe that's the question that Brian
18 poses, yes.

19 **Q. Okay. Now, was he also expressing concern, in**
20 **your understanding, that the customers would now be in**
21 **the special markets silo, rather than the HSD silo?**

22 A. He's asking that question to Kathleen, yes.

23 **Q. Kathleen then responds with an e-mail, and she**
24 **writes in the -- let's see -- I guess it's the second**
25 **paragraph, "Let's jump on a call B/C I have already**

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1 asked Joe to send this up the line for approval." Do
 2 you see that?
 3 A. I do.
 4 Q. Okay. And do you recall Ms. Titus asking you
 5 to send up anything with regard to PGMS up the line for
 6 approval?
 7 A. I don't recall this specific one, no.
 8 Q. And what do you understand her to mean when
 9 she writes, "Send this up for approval"?
 10 A. Meaning that this was a different type of
 11 deal, and that this would be something I would want
 12 other people to know about.
 13 Q. Like Mr. Steck or Mr. Sullivan?
 14 A. Sure. Yes.
 15 Q. Okay. You responded, "They have the same
 16 concerns that we discussed. The deal breaker will be,
 17 in parentheses, if Tim approves, that they will need to
 18 agree that all of their members will need to do business
 19 with HSD."
 20 So did you end up speaking with Mr. Sullivan
 21 about this deal?
 22 A. I don't recall having a conversation with him
 23 about this deal.
 24 Q. Okay. Based on your e-mail, is that your
 25 understanding when you write "they have the same

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1 concerns that we've discussed"?
 2 A. Clearly, I spoke to somebody. I don't know if
 3 it was specifically Tim or not.
 4 Q. Okay. And Ms. Titus then writes, "If Tim
 5 rejects this, then I think we have our new policy." And
 6 you responded, "Yes, ma'am." Do you see that?
 7 A. Yes, I do.
 8 Q. What did you understand her to mean when she
 9 said "new policy"?
 10 MR. McDONALD: Object to the form.
 11 A. At the time, I don't know. I think she was
 12 just putting that into her own words, because there was
 13 no old policy.
 14 Q. Do you think she meant, if Tim rejects this,
 15 then there would be a policy regarding buying groups?
 16 A. No.
 17 Q. Okay. Well, you agreed with her, right? You
 18 wrote, "Yes, ma'am." So what were you agreeing to?
 19 A. I think it was a response to her -- to her
 20 e-mail. I can't tell you specifically what I was
 21 agreeing with, what they asked me on.
 22 Q. Okay. So do you have any understanding of
 23 what policy she might have been referring to here?
 24 A. The policy in her own mind.
 25 Q. Policy with regard to?

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1 A. It was still trying to figure how to
 2 understand the landscape. This is during heavy change
 3 and a lot of transitioning, so we were trying to
 4 understand what different groups were trying to do and
 5 how we would interact and operate with them. So there
 6 was no policy. That's what I'm saying is that I don't
 7 remember seeing a policy. I don't recall a policy, but
 8 we were all learning together.
 9 Q. Okay. You can put it aside for now. Thank
 10 you.
 11 (Exhibit 198, 7/15/2014 E-mail Re:
 12 '7 to '7 Dental in San Antonio, was
 13 marked for purposes of
 14 identification.)
 15 A. Okay.
 16 Q. Okay. So the court reporter handed you what
 17 has been marked as Exhibit 198, which is an e-mail. The
 18 top e-mail is from you to Mr. Sullivan dated July 15,
 19 2014. It's a forward, "'7 to '7 Dental in San Antonio -
 20 UnifiedSmiles GPO." Do you see that?
 21 A. I do.
 22 Q. Okay. And you wrote to Mr. Sullivan, "I know
 23 we are meeting later today to discuss potential GPO
 24 affiliation in California." Do you see that?
 25 A. I do.

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1 Q. Do you have any understanding of what GPO
 2 affiliation you were referring to in this sentence?
 3 A. The CDA. It was buying -- again, it was using
 4 GPO, but it should have been buying group.
 5 MR. McDONALD: CDA.
 6 Q. Yes. Thank you.
 7 And is that the California Dental Association?
 8 A. Yes.
 9 Q. And how do you know that you were referring to
 10 the CDA in this e-mail?
 11 A. Because it was in California, and I'm not
 12 aware of any other buying group that we were talking to
 13 in California.
 14 Q. What about the PGMS one that we just looked at
 15 and discussed?
 16 A. I guess it's a possibility.
 17 Q. Okay. But you would -- your understanding is
 18 that this e-mail is referring to CDA; sitting here
 19 today, that would be your understanding?
 20 A. That's how I'm reading it, yes.
 21 Q. Okay. And then you go on and you write, "The
 22 only reason we are even discussing is because of
 23 examples like below are happening daily. The GPO
 24 monster gaining steam like I've never seen before." Do
 25 you see that?

44 (Pages 173 to 176)

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1 A. I do.
 2 **Q. What did you mean by the "GPO steam like I've**
 3 **never seen it before"?**
 4 A. The momentum of buying groups and inquiries
 5 about it and the amounts that were heading my direction,
 6 I've never seen that before.
 7 **Q. So in July of 2014, you were getting a lot of**
 8 **inquiries from buying groups?**
 9 A. I don't remember specifically, in 2014, how
 10 many. But based on my e-mail, I'm assuming that the
 11 amount of inquiries about buying groups had increased
 12 dramatically.
 13 **Q. And why did you say -- call it a "GPO**
 14 **monster"?**
 15 A. I don't recall why I used that language.
 16 **Q. Did you consider GPOs to be a threat to**
 17 **Schein's business?**
 18 A. I considered it a potential change where we'd
 19 have to adapt to the buying group, the buying group's
 20 that are becoming more prevalent in the industry.
 21 **Q. And for about how long had you been seeing a**
 22 **rise or an increase in inquiries about GPOs or buying**
 23 **groups as of the date of this e-mail, July of 2014?**
 24 A. The time frame that I remember was really as
 25 the transition was going, again, with the midmarket

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1 space. It could have been a little before that, but
 2 that's when I remember seeing a rise.
 3 **Q. Okay. And the transition with the midmarket**
 4 **space, that happened towards the end of 2014, right?**
 5 A. I think it happened -- I think it started
 6 happening in 20- -- midmarket was loosely being put
 7 together in '14.
 8 **Q. Do you know about what month?**
 9 A. I don't know off the top of my head.
 10 **Q. And when was the transition finalized?**
 11 A. I would say near the end of '14, beginning of
 12 '15.
 13 **Q. Okay. And do you know whether or not you**
 14 **ended up affiliating with the GPO that you were**
 15 **referencing in this e-mail? Let's assume that it was**
 16 **the CDA. Did you end up affiliating with the CDA?**
 17 A. We had a lot of discussions with them, but at
 18 the end we decided not to participate.
 19 **Q. How come? Why not?**
 20 A. With the CDA, because we have a market share
 21 of over 50 percent. And when they put out their RFP,
 22 which we participated in, we won specific categories.
 23 And the agreement with the CDA, if we were going to
 24 participate, is that the categories that we did not win,
 25 we could not sell to members who were joining the CDA

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1 buying group, which didn't make any sense for us to
 2 participate in then. So we said, "Thank you. Good
 3 luck. We still want to have a relationship with you,
 4 but we can't participate under those terms."
 5 **Q. Okay. So you said you have a market share of**
 6 **50 percent; is that in California?**
 7 A. In the California zone, it's over 50 percent,
 8 yes.
 9 **Q. Okay. And then you said that you participated**
 10 **in the CDA RFP?**
 11 A. Yes.
 12 **Q. Does that mean you put in a proposal?**
 13 A. Yes. When they sent out their request for a
 14 proposal, we did send pricing back to them.
 15 **Q. And who was in charge of that process at**
 16 **Schein?**
 17 A. There were several people who were helping put
 18 it together; but Glenn Showgren was taking the lead on
 19 getting the information back to the CDA.
 20 **Q. Okay. And so then Schein won for specific**
 21 **categories of products, but not others?**
 22 A. That's correct.
 23 **Q. Okay. And so for the products that Schein**
 24 **didn't win, Schein would not be able to sell those**
 25 **products to any customers that were participating in the**

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1 **CDA?**
 2 A. That's correct.
 3 **Q. Okay. And that was problematic for Schein**
 4 **why?**
 5 A. Well, because we're a distributor of all of
 6 the products and with the high market share and we were
 7 going to be blocked out of selling those categories to
 8 those doctors, it didn't make sense.
 9 **Q. Okay. Did you -- would you have lost market**
 10 **share in California as a result of the CDA's RFP?**
 11 MR. McDONALD: Object to the form.
 12 A. It's possible we would have lost categories
 13 that we were no longer able to sell.
 14 **Q. And then you said that you still wanted to**
 15 **have a relationship with CDA, but you didn't want to**
 16 **participate in, I guess, the CDA, like their program, I**
 17 **suppose.**
 18 **What did you mean by you still wanted to have**
 19 **a relationship?**
 20 A. Well, they're still the California Dental
 21 Association, and all kinds of doctors are a part of the
 22 California Dental Association. So we wanted to make
 23 sure that we continued to work with them and had a good
 24 relationship with them.
 25 **Q. Okay. Going back to this e-mail, you e-mailed**

45 (Pages 177 to 180)

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1 **Mr. Sullivan directly I noticed. Why did you e-mail**
 2 **Mr. Sullivan directly?**
 3 A. I don't recall the reason.
 4 **Q. So Mr. Steck was your boss at the time that**
 5 **you sent this e-mail, right?**
 6 A. That's correct.
 7 **Q. And you did not include him on the e-mail**
 8 **chain?**
 9 A. That's correct.
 10 **Q. Why not?**
 11 A. At the time, I don't remember, but we do have
 12 an open-door policy at Henry Schein. So e-mailing Tim
 13 directly is not unheard of.
 14 **Q. Did you understand that Mr. Sullivan was the**
 15 **person that you were supposed to talk to about buying**
 16 **group or GPO affiliations?**
 17 A. He wasn't -- I don't remember/recall someone
 18 designating that everything had to go through Tim.
 19 **Q. But was it your practice at the time to**
 20 **discuss GPO or buying group opportunities with**
 21 **Mr. Sullivan?**
 22 A. I would discuss it with both Tim and Dave.
 23 **Q. Okay. Was Mr. Sullivan generally looped into**
 24 **any conversations regarding GPO or buying group**
 25 **opportunities?**

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1 MR. McDONALD: Object to the form.
 2 A. He was part of conversations regarding buying
 3 groups.
 4 **Q. Did Mr. Steck ever make any decisions about**
 5 **buying groups or GPOs without consulting Mr. Sullivan?**
 6 MR. McDONALD: Objection to form.
 7 A. I don't know.
 8 **Q. Did you ever make any decisions about whether**
 9 **to do business with a GPO or a buying group without**
 10 **consulting Mr. Sullivan?**
 11 A. Not that I recall.
 12 **Q. One more quick question about this document.**
 13 **Just the bottom e-mail is from Mr. Steck. What was**
 14 **Mr. Steck's role at this time?**
 15 A. Kyle?
 16 **Q. Yeah.**
 17 A. He was the regional manager in San Antonio.
 18 **Q. Yes. Thank you for clarifying. Kyle Steck,**
 19 **the regional manager in San Antonio?**
 20 A. Correct.
 21 **Q. Did he report to you?**
 22 A. No. He reported to Dean.
 23 **Q. Dean Kyle?**
 24 A. That's correct.
 25 **Q. Okay. Thank you.**

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1 A. Okay.
 2 (Exhibit 199, 7/18/2014 E-mail Re:
 3 Co-Op Summary of Conference Call,
 4 was marked for purposes of
 5 identification.)
 6 **Q. So the court reporter has handed you what's**
 7 **been marked as Exhibit 199, which is an e-mail from**
 8 **Kevin Upchurch to you with a CC to Kathleen Titus and**
 9 **Jeff Harmon, dated July 18th, 2014, "Re: Co-Op Summary**
 10 **of Conference Call." Do you see that?**
 11 A. I do.
 12 **Q. Okay. So Mr. Upchurch writes to you about a**
 13 **co-op. In the last sentence of his e-mail he writes,**
 14 **"The co-op is turning into a GPO, in parentheses, even**
 15 **if they don't think they are now. From what KT has**
 16 **observed in Texas, NM, and from Tim S., HSD does not**
 17 **want to enter the GPO world."**
 18 **Do you see that?**
 19 A. I do.
 20 **Q. Do you have an understanding of whether this**
 21 **document or this e-mail is discussing the co-op of Utah**
 22 **that we were referring to earlier?**
 23 A. It is.
 24 **Q. Okay. And do you see that Mr. Upchurch writes**
 25 **that, "From Tim S., HSD does not want to enter the GPO**

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1 **world"?**
 2 A. I do see that.
 3 **Q. And did Mr. Tim S. inform you that HSD did not**
 4 **want to enter the GPO world?**
 5 A. Again, I don't recall us saying don't do
 6 business with buying groups. It just wasn't part of the
 7 model, at that time, even though we had a relationship
 8 with the co-op.
 9 **Q. Do you understand Tim S. to be Tim Sullivan?**
 10 MR. McDONALD: Object to the form.
 11 A. I believe that's who Kevin is referring to.
 12 **Q. Are there any other Tim S's that you're aware**
 13 **of at Schein?**
 14 A. Not that I'm aware of.
 15 **Q. Okay. And do you have any reason to doubt**
 16 **that Mr. Upchurch believed that, as of the date of this**
 17 **e-mail, that Mr. Sullivan did not want HSD to enter the**
 18 **GPO world?**
 19 MR. McDONALD: Object to the form.
 20 A. Based on his e-mail, it looks like that was
 21 his belief.
 22 **Q. Do you have any idea where Mr. Upchurch would**
 23 **have gotten that belief?**
 24 A. You would have to ask Kevin.
 25 **Q. Did Mr. Sullivan regularly interact with zone**

46 (Pages 181 to 184)

<p style="text-align: right;">185</p> <p>1 managers?</p> <p>2 A. No.</p> <p>3 Q. Do you know whether zone managers ever</p> <p>4 attended meetings that Mr. Sullivan also attended?</p> <p>5 A. Field managers meetings.</p> <p>6 Q. That was the one held once a year in January?</p> <p>7 A. That's correct, and national sales meetings.</p> <p>8 Q. How frequently are the national sales</p> <p>9 meetings?</p> <p>10 A. Once a year, in June.</p> <p>11 Q. Do you recall Mr. Sullivan talking about</p> <p>12 buying groups or GPOs at one of the FMM meetings or</p> <p>13 national sales meetings?</p> <p>14 A. At that particular time, no.</p> <p>15 Q. What about at any point in time?</p> <p>16 A. Later on, so the last year has been a part of</p> <p>17 discussions, and we talked to our leadership team about</p> <p>18 it and gave it more structure.</p> <p>19 Q. That was the past year or so?</p> <p>20 A. Yeah. I would say the last year, the last</p> <p>21 year for sure, we understood it better, and we put a</p> <p>22 process in place on how to work with buying groups.</p> <p>23 Q. Okay. Was that a formalized process?</p> <p>24 A. It was we educated the regional managers on,</p> <p>25 if opportunities were presented to them, this is where</p>	<p style="text-align: right;">187</p> <p>1 then if there's opportunities, we need to discuss them.</p> <p>2 So there was an openness, but still it wasn't a big</p> <p>3 priority to Henry Schein, as far as us growing our</p> <p>4 business.</p> <p>5 Q. That was the direction you got from</p> <p>6 Mr. Sullivan?</p> <p>7 A. That's my interpretation.</p> <p>8 MS. GOFF: Is it time for a break, or should I keep</p> <p>9 going? I can do one more document.</p> <p>10 MR. McDONALD: You can keep going.</p> <p>11 (Exhibit 200, 7/30/2014 E-mail Re:</p> <p>12 MB2 Counterproposal, was marked for</p> <p>13 purposes of identification.)</p> <p>14 A. Okay.</p> <p>15 Q. So the court reporter has handed you what has</p> <p>16 been marked as Exhibit 200.</p> <p>17 A. Yes.</p> <p>18 Q. The top e-mail is from you to Dean Kyle dated</p> <p>19 July 30th, 2014, "Re: MB2 Counterproposal to Henry</p> <p>20 Schein." Do you see that?</p> <p>21 A. (No verbal response.)</p> <p>22 Q. So this e-mail chain discusses a company</p> <p>23 called Dental Gator. Do you know, do you recall that</p> <p>24 company?</p> <p>25 A. I do.</p>
<p style="text-align: right;">186</p> <p>1 you send those opportunities, so...</p> <p>2 Q. And so where are regional managers supposed to</p> <p>3 present opportunities about buying groups?</p> <p>4 A. So if the regional manager receives an</p> <p>5 opportunity, they would talk to their zone manager. And</p> <p>6 the zone manager would either make myself or Jake aware</p> <p>7 of it. And now that we have the APC team, we would then</p> <p>8 have Darci and/or Matt engage in discussions, just do</p> <p>9 discovery, understand more about the buying group.</p> <p>10 Q. Okay. So prior to the last year or so, you</p> <p>11 don't recall any direction from Tim Sullivan about</p> <p>12 buying groups?</p> <p>13 A. I don't recall Tim giving any direction at the</p> <p>14 FMSN to the leadership about buying groups.</p> <p>15 Q. What about outside of those meetings? I'm</p> <p>16 asking you generally. My question was, prior to the</p> <p>17 last year or so, do you recall any direction from Tim</p> <p>18 Sullivan about the buying groups?</p> <p>19 A. Outside of that it wasn't part of our normal</p> <p>20 business model at the time? I mean, that was really the</p> <p>21 only discussions that we had.</p> <p>22 Q. Okay. So was there any direction from</p> <p>23 Mr. Sullivan about business models, about the buying</p> <p>24 group business model?</p> <p>25 A. It was -- it was, again, understanding it; and</p>	<p style="text-align: right;">188</p> <p>1 Q. What is Dental Gator?</p> <p>2 A. Dental Gator was a relationship that was out</p> <p>3 there that an elite DSO named MB2, called MB2, had</p> <p>4 created to, as the e-mail says, essentially be an MSO,</p> <p>5 but what it turned into was just offering their DSO</p> <p>6 pricing to private practices.</p> <p>7 Q. Okay. And was that problematic for Schein?</p> <p>8 A. Yeah, because the problem was that, one, it</p> <p>9 was not in the agreement to do that, but, two, those</p> <p>10 doctors, those offices, weren't part of a DSO.</p> <p>11 Q. So MB2 was offering DSO prices to private</p> <p>12 practices that were not a member of the DSO, or were</p> <p>13 not --</p> <p>14 A. Were not -- were not -- yeah. Were not a part</p> <p>15 of the DSO.</p> <p>16 Q. Okay. And why did that cause concern for</p> <p>17 Schein?</p> <p>18 A. Well, one is that they weren't supposed to do</p> <p>19 that per agreement, but, two, is that would set a</p> <p>20 precedent for any DSO to take our pricing and our</p> <p>21 services and put those private practice customers under</p> <p>22 their umbrella, which is not what the agreement is with</p> <p>23 DSOs and not what we agreed to do with them.</p> <p>24 Q. So what this DSO was trying to do was create a</p> <p>25 buying group separate from -- I mean, separate from the</p>

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1 **DSO and offer the same prices to the buying group as**
 2 **they were receiving from the DSO?**
 3 MR. McDONALD: Object to form.
 4 A. Dental Gator ended up turning into some loose
 5 from of a buying group.
 6 **Q. Okay. And it was a subsidiary or something of**
 7 **MB2?**
 8 A. I don't know exactly how it was, how it would
 9 be classified by MB2, but...
 10 **Q. Dental Gator had some sort of relationship**
 11 **with MB2?**
 12 A. Yeah. It was MB2's program.
 13 **Q. Okay. So let's look at the July 28th, 2014**
 14 **e-mail from Andrea Hight at 10:37 a.m. And it starts on**
 15 **Bates-stamped 90502.**
 16 A. Okay.
 17 **Q. Okay. And she writes in No. -- or Letter A,**
 18 **"The PVA includes MB2 with Dental Gator as a subsidiary.**
 19 **MB2 and Dental Gator have been included together from**
 20 **the start and at the request of MB2 owners, in**
 21 **parentheses, who own DG." And then B says, "The**
 22 **language specifically states the PBA terms cannot be**
 23 **used for any GPO purposes."**
 24 **So is that the language that the PBA states,**
 25 **that it cannot be used for any GPO purposes; is that**

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1 **what you understand that to mean?**
 2 A. After -- according to Andrea and reading the
 3 e-mail, yes.
 4 **Q. Have you ever seen a PBA that prevents a**
 5 **company from forming a GPO?**
 6 MR. McDONALD: Object to the form.
 7 A. The language is not in it like that, but the
 8 DSO -- the pricing agreement is with the DSO. It's to
 9 be used for the DSO group.
 10 **Q. So what's your understanding of what it means**
 11 **when it says "for GPO purposes"?**
 12 A. When they were using the terminology
 13 incorrectly, but that would be buying group, when they
 14 were offering the pricing that they were getting from a
 15 DSO to private practice dentists.
 16 **Q. And so those PBAs specifically prohibited MB2**
 17 **from doing that?**
 18 A. According to B, that's what it states.
 19 **Q. Okay. Do you know -- strike that.**
 20 **Turning to Dean Kyle's e-mail of July 29th,**
 21 **2014, it's on the page Bates-stamped 90501.**
 22 A. Yes.
 23 **Q. He writes, "Seriously, dot, dot, dot, 25**
 24 **percent less 10 percent MB2 rebate less Dentrax ROI of 8**
 25 **percent," and then, in parentheses, "2K/25K, leaving HSD**

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1 **to gross 7 percent. Stop the madness."**
 2 **Are you able to understand the math that**
 3 **Mr. Dean Kyle is doing here?**
 4 A. Not completely, but...
 5 **Q. So the 25 percent, what is -- do you have an**
 6 **understanding of what that is a reference to?**
 7 A. I have to go back and read the document to see
 8 where he's getting 25 percent from.
 9 **Q. Well --**
 10 A. I'm not seeing -- I'm not seeing where he's
 11 getting 25 percent.
 12 **Q. Okay. But do you understand that it means**
 13 **that he has calculated, whether it's right or wrong,**
 14 **that if HSD sells to Dental Gator, that it will only**
 15 **gross 7 percent?**
 16 A. That those are Dean's comments.
 17 **Q. Is that how you read this?**
 18 A. I read his comments that way, yes.
 19 **Q. Okay. And is gross, is that a reference to**
 20 **gross margin?**
 21 MR. McDONALD: Object to the form.
 22 A. If I'm following his thought process, it looks
 23 like that's what he's referring to.
 24 **Q. Okay. And is that less than Henry Schein**
 25 **Dental's typical gross margins?**

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1 A. Yes.
 2 **Q. What are Henry Schein Dental's typical gross**
 3 **margins?**
 4 A. On merchandise, it can be anywhere from -- it
 5 definitely varies, but it can be anywhere from 23 to 35.
 6 **Q. Okay. Thanks. So then, turning to your**
 7 **e-mail, which is on the page Bates-stamped 90500, it's**
 8 **the July 29th, 2014 e-mail, from you to Dean Kyle. You**
 9 **wrote, "I just sent a message to Tim and Dave that they**
 10 **need to reign in our corp team with the GPOs that are**
 11 **out there." What did you mean by that?**
 12 A. Again, this was going and starting a
 13 transition, and we were uncovering these relationships
 14 and agreements that we had no idea existed and didn't
 15 understand. So the ask was for them to go to the
 16 special markets team and say, "We've got to get on the
 17 same page, because we don't -- we've never seen this
 18 before and we need help."
 19 **Q. In your e-mail, when you wrote "corp team," is**
 20 **that a reference to special markets?**
 21 A. Yeah, corporate accounts team.
 22 **Q. Okay. Do you sometimes refer to DSOs as**
 23 **corporate accounts?**
 24 A. So the special markets name has changed from
 25 corporate accounts to special markets back to special

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1 markets to corporate accounts several times. So you may
 2 see that. It means the same thing.

3 **Q. Thank you. Are you referring to Tim Sullivan**
 4 **and Dave Steck in this e-mail?**

5 A. I am.

6 **Q. So did you -- were you asking Tim and Dave to**
 7 **prevent the corporate team or the corporate account team**
 8 **from dealing with GPOs?**

9 MR. McDONALD: Object to the form.

10 A. The ask was for structure, education,
 11 understanding, and what was going on, and what
 12 agreements were out there.

13 **Q. So you were just asking for Mr. Steck and**
 14 **Mr. Sullivan to -- what were you asking them to do?**

15 A. To communicate with our special markets teams
 16 to ask what deals are going on, what's happening out
 17 there, because it was impacting all aspects of the
 18 business and it was very confusing, what was happening.

19 **Q. Okay. Earlier you testified that, around the**
 20 **time of the transition, you said "We were uncovering**
 21 **relationships that we had no idea existed." Who was the**
 22 **"we" that you were referring to?**

23 A. Pretty much the team from Henry Schein Dental,
 24 the leadership team.

25 **Q. Okay. And so you were uncovering**

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1 **relationships that the corporate accounts team had**
 2 **fostered?**

3 A. Dental Gator would be an example.

4 **Q. And then the following e-mail, from Dean Kyle**
 5 **to you, he wrote, "We really need to shut the Dental**
 6 **Gator down," and then he continued. And you responded,**
 7 **"I agree, as this is the second big GPO we will be**
 8 **shutting down. Co-op is the other."**

9 **What did you mean by the "this is the second**
 10 **big GPO we will be shutting down"?**

11 A. As we discussed earlier with the Utah co-op,
 12 we weren't in alignment anymore. It didn't make sense
 13 for us to do business, so we walked away from that
 14 relationship. That was one, and Dental Gator would be
 15 the second one.

16 **Q. Okay. So what did you mean by "shut down"?**

17 A. Well, walking away from doing business. The
 18 co-op and Dental Gator were different -- were different
 19 situations, but they were both equally confusing. So,
 20 once again, we had a discussion with the right people
 21 from the customer's standpoint, and we shut down the
 22 co-op. And I don't believe -- I don't know what Dental
 23 Gator is right now, today. I don't know if they still
 24 exist or not.

25 **Q. Do you know whether HSD has a relationship**

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1 **with Dental Gator?**

2 A. No. I know special markets has relationships
 3 with MB2, but Dental Gator has not been on my radar for
 4 a while.

5 MS. GOFF: Okay. Let's take a break.
 6 (A short recess was had.)
 7 (Exhibit 201, 11/3/15 E-mail Re:
 8 KlearImpakt Buying Group, was marked
 9 for purposes of identification.)

10 **Q. The court reporter handed you what has been**
 11 **marked as Exhibit 201, which is an e-mail from Jake**
 12 **Meadows to you, dated November 3rd, 2015, "Re:**
 13 **KlearImpakt Buying Group"?**

14 A. I see it.

15 **Q. Have you had a chance to review it?**

16 A. (No verbal response.)

17 **Q. Then let me know when you have.**

18 A. I have read it.

19 **Q. So the bottom e-mail, which starts at the**
 20 **bottom of the Bates-stamped 4474 and continues to 4475,**
 21 **is an e-mail from Tim Sullivan. And it says, "Jake, you**
 22 **slid me a note about this group during the SM budget**
 23 **meeting. I had just informed Hal, in parentheses, and**
 24 **team that we do not have plans to open up new buying**
 25 **groups but have a plan ready to roll, if needed. Did we**

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1 **just recently add KlearImpakt? Who are they? Where,**
 2 **etc.?" Do you see that?**

3 A. I do.

4 **Q. Do you recall the SM budget meeting Mr.**
 5 **Sullivan is referencing here?**

6 A. I was not in that meeting.

7 **Q. Do you know whether Mr. Meadows was in that**
 8 **meeting?**

9 A. Based on the e-mail exchange, it sounds like
 10 he was in that meeting.

11 **Q. Okay. Any idea or any sense of why**
 12 **Mr. Meadows was at the meeting, but you were not?**

13 A. Could have been travel, could have been
 14 schedules.

15 **Q. Okay. Do you know, does "SM" refer to special**
 16 **markets here?**

17 A. It does.

18 **Q. All right. So the e-mail eventually gets**
 19 **forwarded to you. And you said -- or Jake Meadows, I**
 20 **guess, added you, and said, "Adding Joe since this group**
 21 **is west. He can explain in detail."**

22 **So what was the KlearImpakt buying group?**

23 A. They were based out of Reno, Nevada. They are
 24 a value proposition to private practice dentists and
 25 that they had been consultants, working with a different

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197	<p>1 group for a while, that had garnered a following. And</p> <p>2 they were putting together their own educational program</p> <p>3 for the dentists that followed Sallis Brothers. So it</p> <p>4 was a long process of discovery and talking to them and</p> <p>5 vetting it out, but they're a buying group in Reno,</p> <p>6 Nevada.</p> <p>7 Q. And did Schein start selling to that buying</p> <p>8 group?</p> <p>9 A. We did.</p> <p>10 Q. And when did Schein start selling to the</p> <p>11 buying group?</p> <p>12 A. I don't recall the exact date; but based on</p> <p>13 the e-mails, it would have to be in 2016.</p> <p>14 Q. What makes you say that?</p> <p>15 A. Because November of 2015 on these e-mails, and</p> <p>16 I don't recall us having the agreement in place with</p> <p>17 KlearImpakt at that time.</p> <p>18 Q. So Mr. Sullivan asked Mr. Meadows, "Did he</p> <p>19 just recently add KlearImpakt?" And so was it your</p> <p>20 understanding that, as of the date of this e-mail,</p> <p>21 November of 2015, you had not had a formal agreement to</p> <p>22 work with KlearImpakt?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 A. Yeah. At this point, I don't believe we had</p> <p>25 an agreement with KlearImpakt.</p>	199	<p>1 business standpoint. So both parties need to bring a</p> <p>2 value proposition to the table, and their value</p> <p>3 proposition was educating the private practice dentists.</p> <p>4 Q. So why doesn't it make sense, from a business</p> <p>5 standpoint, for Henry Schein to do business with a</p> <p>6 buying group that just wants to pass on the Henry Schein</p> <p>7 value?</p> <p>8 A. Well, oftentimes, a buying group will ask for</p> <p>9 a rebate back to the corporate entity; and if we are</p> <p>10 going to do business with buying groups and all they're</p> <p>11 using is Henry Schein's pricing and the value that Henry</p> <p>12 Schein brings to the table, it really doesn't make sense</p> <p>13 for us to engage with that because we could do that on</p> <p>14 our own.</p> <p>15 Q. Henry Schein can engage with the customers,</p> <p>16 the end users, the dentists on their own?</p> <p>17 A. Yeah. We consider them our customers still.</p> <p>18 We do.</p> <p>19 Q. Okay. So one more question about</p> <p>20 Mr. Sullivan's e-mail to Jake. He wrote, "I had just</p> <p>21 informed Hal and team." Who is Hal, if you have an</p> <p>22 understanding of who Hal is?</p> <p>23 A. I do. Hall is the president of special</p> <p>24 markets.</p> <p>25 Q. What's his last name?</p>
198	<p>1 Q. Were you involved in the negotiation with</p> <p>2 KlearImpakt?</p> <p>3 A. I was.</p> <p>4 Q. And you testified KlearImpakt is a buying</p> <p>5 group; is that right?</p> <p>6 A. I did.</p> <p>7 Q. And what made you decide to enter into an</p> <p>8 agreement with KlearImpakt?</p> <p>9 A. Well, it's the end of 2015 now, so there was a</p> <p>10 lot of things that we've learned. The industry has</p> <p>11 changed. And the story of KlearImpakt, with the</p> <p>12 educational component, they had built the facility.</p> <p>13 They were bringing real value to members of their -- of</p> <p>14 their group from an educational standpoint. And they</p> <p>15 have a following that they could influence.</p> <p>16 So when we met with them -- and I didn't meet</p> <p>17 with them every single time, by any means -- they were</p> <p>18 just aligned with us, they had a good business</p> <p>19 proposition, and it seemed like a sound business</p> <p>20 decision to work with KlearImpakt.</p> <p>21 Q. Okay. And why was it important to you that</p> <p>22 KlearImpakt was bringing real value to their members?</p> <p>23 A. Because a buying group that just wants to pass</p> <p>24 the Henry Schein value on as their own, without putting</p> <p>25 their own value to it, does not make sense for us from a</p>	200	<p>1 A. Muller.</p> <p>2 Q. Thank you. And did you understand that Henry</p> <p>3 Schein Dental did not have plans to open up new buying</p> <p>4 groups as of the date of this e-mail?</p> <p>5 A. The key there is plans to open up and then</p> <p>6 have a plan ready to roll if needed. We had had deeper</p> <p>7 discussions and thought processes were changing and</p> <p>8 there was definitely openness to vetting out buying</p> <p>9 groups.</p> <p>10 Q. And what was the plan that was ready to roll,</p> <p>11 if needed?</p> <p>12 A. I don't know specifically what he's referring</p> <p>13 to there.</p> <p>14 Q. Okay. Do you know, separate from this e-mail,</p> <p>15 whether there was a plan, at this time, to roll out</p> <p>16 something related to buying groups?</p> <p>17 A. I really don't know what he's referring to in</p> <p>18 this e-mail.</p> <p>19 Q. Okay. Okay. You can put that one aside.</p> <p>20 A. Okay.</p> <p>21 Q. While working at Henry Schein, do you have the</p> <p>22 occasion to attend trade shows?</p> <p>23 A. I do.</p> <p>24 Q. And in your current position, how frequently</p> <p>25 do you attend trade shows?</p>

201	<p>1 A. I attend anywhere from two to four a year.</p> <p>2 Q. Did you attend more trade shows when you were</p> <p>3 in your prior roles as zone manager?</p> <p>4 A. Zone manager, no. Well, regional shows, yes.</p> <p>5 So it was probably within the two-to-four range, also,</p> <p>6 as zone manager.</p> <p>7 Q. Okay. And what is the purpose of attending</p> <p>8 these trade shows?</p> <p>9 A. Supporting the dental society, and then we</p> <p>10 also do have some engagement with the customer. We're</p> <p>11 hoping, as a company, that we can sell products and sell</p> <p>12 equipment. But the shows have really gone down, so</p> <p>13 we're there to support the dental societies.</p> <p>14 Q. What is to be gained by supporting the dental</p> <p>15 societies?</p> <p>16 A. Partnerships. It's how the dental industry</p> <p>17 has been, and, you know, we want to make sure that we're</p> <p>18 keeping relationships healthy and strong with the dental</p> <p>19 societies.</p> <p>20 Q. Is that because the dental societies have</p> <p>21 members that are potential customers or customers for</p> <p>22 Schein?</p> <p>23 A. It's part of it, but we also do different</p> <p>24 outreach programs. It's a relationship with the dental</p> <p>25 societies. It doesn't go much further than that, I</p>	203	<p>1 A. Sure.</p> <p>2 Q. You mentioned, "We attend regional shows and</p> <p>3 attend the A shows, which are the bigger shows." What</p> <p>4 are the shows that you're referring to?</p> <p>5 A. So I'm referring to the regional shows. The</p> <p>6 Oregon Dental Society will have one. Seattle will have</p> <p>7 one for Washington. Utah will have one. And then you</p> <p>8 have the CDAs, you have the Hinman, the Greater New</p> <p>9 York, the Chicago Midwinter. So there's, I believe,</p> <p>10 roughly -- and there's some specialty shows. So I</p> <p>11 believe there's, roughly, 70 shows.</p> <p>12 Q. Roughly, 70 shows that are on the schedule and</p> <p>13 that have been on the schedule for a long time that</p> <p>14 someone from Henry Schein attends those shows?</p> <p>15 A. Yes. Yes.</p> <p>16 Q. Okay. And you mentioned the A shows, the</p> <p>17 bigger shows, are those like more national shows, or</p> <p>18 what are those?</p> <p>19 A. Yeah. Within the industry, there's bigger</p> <p>20 shows. So we have CDA North and South, Chicago</p> <p>21 Midwinter, Hinman, and then the Greater New York, and</p> <p>22 then wherever the ADA is that year.</p> <p>23 Q. What's the ADA?</p> <p>24 A. The American Dental Association.</p> <p>25 Q. So is that a complete list of what you would</p>
202	<p>1 guess.</p> <p>2 Q. Is the main purpose of attending trade</p> <p>3 association shows to interface with the end consumers?</p> <p>4 MR. McDONALD: Object to the form.</p> <p>5 A. From Henry Schein's end of things, we would</p> <p>6 like to interact with end consumers. Yeah, because we</p> <p>7 would want it to be a sales show.</p> <p>8 Q. Okay. How do you personally decide which</p> <p>9 trade shows to attend?</p> <p>10 A. We pretty much have a schedule of trade shows</p> <p>11 that we attend. We attend the regional shows and we</p> <p>12 attend the what we call A shows, which are the bigger</p> <p>13 shows. So it's the show schedule has been in place for</p> <p>14 a long period of time, and we just follow the show</p> <p>15 schedule.</p> <p>16 Q. Okay. So what are the regional shows that you</p> <p>17 attend?</p> <p>18 A. That I have attended, or --</p> <p>19 Q. Well, you said the schedule has been in place</p> <p>20 for a long period of time and we follow the schedule.</p> <p>21 So I'm trying to get a list of what is on that schedule.</p> <p>22 MR. McDONALD: So you don't mean "you," generally?</p> <p>23 You mean, "you," Henry Schein?</p> <p>24 MS. GOFF: Sure. Let me just ask a different</p> <p>25 question.</p>	204	<p>1 consider to be the A shows?</p> <p>2 A. Yeah. Yes.</p> <p>3 Q. Okay. So is the Texas Dental Association show</p> <p>4 one of the, roughly, 70 shows that has been on the</p> <p>5 schedule for a long time and that someone from Henry</p> <p>6 Schein typically attends?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you ever see competitors at trade</p> <p>9 shows?</p> <p>10 A. Competitors are on the floor at the trade</p> <p>11 show, yes.</p> <p>12 Q. And have you ever attended a trade show in</p> <p>13 which Patterson or Benco did not attend?</p> <p>14 MR. McDONALD: You mean one, or the other, or both?</p> <p>15 Q. Have you ever -- I'll ask a different</p> <p>16 question.</p> <p>17 Have you ever been to a trade show in which</p> <p>18 Benco did not attend?</p> <p>19 A. And we attended and they did not?</p> <p>20 Q. Correct.</p> <p>21 A. Not that I'm aware of. Possibly the TDA last</p> <p>22 year.</p> <p>23 Q. Okay. You're not sure?</p> <p>24 A. I'm not positive if they were there or not.</p> <p>25 Q. What about Patterson? Can you think of any</p>

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1 trade shows that Schein attended but Patterson did not
 2 attend?
 3 A. The TDA last year.
 4 **Q. And so Schein attended the TDA last**
 5 **year?**
 6 A. We did.
 7 **Q. Was it beneficial? Was Schein benefited by**
 8 **the fact that Patterson did not attend the TDA last**
 9 **year?**
 10 MR. McDONALD: Object to the form.
 11 A. I didn't -- I didn't recognize any great
 12 benefit.
 13 **Q. Did Schein interface with customers of**
 14 **Patterson at the TDA?**
 15 MR. McDONALD: Object to the form.
 16 A. We interacted with customers. I don't know
 17 who held the majority of the business with those
 18 customers.
 19 **Q. All right. Do you know whether, as a result**
 20 **of the TDA last year at that show, whether Schein gained**
 21 **any business from Patterson?**
 22 A. No, I don't know that.
 23 **Q. Okay. You don't know either**
 24 **way?**
 25 A. I don't know either way.

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1 (Exhibit 202, 9/30/2013 E-mail Re:
 2 TDA Perks Problem, was marked for
 3 purposes of identification.)
 4 A. Okay.
 5 **Q. So Exhibit 202 is an e-mail chain between you**
 6 **and Mr. Dean Kyle dated September 30th, 2013, "Re: TDA**
 7 **Perks Problem." Do you see that?**
 8 A. I do.
 9 **Q. So Mr. Dean Kyle wrote, in the bottom e-mail,**
 10 **"Big buzz in Texas, dot, dot, calls coming in all**
 11 **day. Seems the Texas Dental Association perks program**
 12 **has signed a deal with a distributor to sell product at**
 13 **35 percent off, in parentheses, not sure off what?"**
 14 **Was this the first that you had heard about**
 15 **the Texas Dental Association signing a deal with the**
 16 **distributor to sell product?**
 17 A. From my recollection, yes.
 18 **Q. Okay. And did you understand this to mean**
 19 **that TDA would be competing with Schein in the sales of**
 20 **dental supplies?**
 21 A. At this point, I don't believe I understood
 22 what was happening, or what was going on, or what it
 23 meant.
 24 **Q. Did you ever come to understand that TDA was**
 25 **competing with Schein in the dental product sales**

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1 market?
 2 MR. McDONALD: Object to the form.
 3 A. So down the road we learned that the TDA was
 4 endorsing a competitor and having that competitor
 5 endorsed on the floor of the TDA.
 6 **Q. What competitor was that?**
 7 A. It turned out -- the fulfillment end of it
 8 turned out to be One Source.
 9 **Q. Was it SourceOne?**
 10 A. SourceOne, sorry.
 11 **Q. Okay. Did it concern you that the TDA was**
 12 **endorsing a competitor?**
 13 A. We didn't -- we weren't happy with the fact
 14 that there was going to be a specific dealer endorsed at
 15 that show. It never happened before.
 16 **Q. And why weren't you happy about it?**
 17 A. Because those state association shows are an
 18 unbiased show. And the relationship between dental
 19 associations and all of the different constituents
 20 of the dental industry, it's not supposed to be
 21 favored.
 22 So we were paying to be on at their show as a
 23 business decision that they were endorsing someone other
 24 than Henry Schein to do business, that the doctors did
 25 business with. It didn't make sense.

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1 (Exhibit 203, 10/16/2013 E-mail Re:
 2 Ron Fernandez call, was marked for
 3 purposes of identification.)
 4 A. Okay.
 5 **Q. Okay. So the court reporter handed you what**
 6 **has been marked as Exhibit 203. The top e-mail is an**
 7 **e-mail from Tim Sullivan to you with a CC to Dave Steck**
 8 **dated October 16th, 2013, "Re: Ron Fernandez call."**
 9 **Do you see that?**
 10 A. I do.
 11 **Q. Okay. Let's turn to the oldest e-mail first.**
 12 **The bottom e-mail begins on Bates-stamped page 799.**
 13 **That's an e-mail from Mr. Glenn Showgren to Dean Kyle**
 14 **and you. Do you see that?**
 15 A. I do.
 16 **Q. Did you supervise Mr. Showgren at the time of**
 17 **this e-mail?**
 18 A. No. I supervised Dean. Glenn reported to
 19 Dean.
 20 **Q. So what was Glenn's job title at the time of**
 21 **this e-mail?**
 22 A. Regional manager of San Antonio.
 23 **Q. And what was Dean's title?**
 24 A. Zone manager. At that time, it was the
 25 Southwest zone.

52 (Pages 205 to 208)

209	211
<p>1 Q. Okay. Thank you. And the subject is "Ron Fernandez call." Do you know who Ron Fernandez is?</p> <p>2 A. I do know who Ron Fernandez is.</p> <p>3 Q. Who is he?</p> <p>4 A. Ron used to work for Henry Schein; at this</p> <p>5 time, he was regional manager for Benco.</p> <p>6 Q. Do you know him personally?</p> <p>7 A. I've met him and have had conversations with</p> <p>8 him when he was at Henry Schein, but brief.</p> <p>9 Q. Did you keep in touch with him after he left?</p> <p>10 A. No.</p> <p>11 Q. And what was his job position at Schein?</p> <p>12 A. An equipment specialist. He sold equipment</p> <p>13 for us.</p> <p>14 Q. So Mr. Showgren writes, "Call was mostly about</p> <p>15 the TDA merch program. The bullet points for Glenn are</p> <p>16 below."</p> <p>17 Did Glenn Showgren inform you that he was</p> <p>18 going to speak with Mr. Ron Fernandez before he did so?</p> <p>19 A. No.</p> <p>20 Q. Did you ask him to prepare bullet points on</p> <p>21 the call?</p> <p>22 A. No.</p> <p>23 Q. What is your understanding of why he wrote,</p> <p>24 "The bullet points for Joe are below"?</p> <p>25</p>	<p>1 A. I do.</p> <p>2 Q. And do you have an understanding of what he</p> <p>3 meant by "pulling out of the state show"?</p> <p>4 A. Not attending the show.</p> <p>5 Q. So Benco was considering not attending the TDA</p> <p>6 trade show?</p> <p>7 MR. McDONALD: Object to the form.</p> <p>8 A. That's what I'm reading, "pulling out of the</p> <p>9 show."</p> <p>10 Q. Okay. And then you wrote, in the second</p> <p>11 bullet point, "Chuck Cohen will be reaching out to, or</p> <p>12 has reached out to, Tim Sullivan to see if HSD would do</p> <p>13 the same thing."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Who is Chuck Cohen?</p> <p>17 A. Chuck Cohen is the owner of Benco.</p> <p>18 Q. Okay. Then next, it says, "Ron wanted to know</p> <p>19 if I have a relationship with local PDCO RM to see if</p> <p>20 they would consider pulling out as well."</p> <p>21 What's your understanding of what "PDCO"</p> <p>22 means?</p> <p>23 A. Patterson Dental.</p> <p>24 Q. And then is "RM" regional manager?</p> <p>25 A. Yes.</p>
210	212
<p>1 MR. McDONALD: Object to the form.</p> <p>2 A. Glenn knows how many e-mails I get, and he had</p> <p>3 a history of writing very long e-mails. And I told him</p> <p>4 he needs to bullet point the e-mail he sends me in the</p> <p>5 future.</p> <p>6 Q. Okay. So you asked him to put all of his</p> <p>7 e-mails to you in bullet-point form?</p> <p>8 A. That going forward I told him, if I was going</p> <p>9 to read his e-mails, he had to bullet point them.</p> <p>10 Q. Okay. And so did you read his e-mail when you</p> <p>11 got it?</p> <p>12 A. From what I recall.</p> <p>13 Q. And what's your understanding of why</p> <p>14 Mr. Showgren sent this e-mail to you?</p> <p>15 MR. McDONALD: Object to the form.</p> <p>16 A. Glenn believed he had information that he</p> <p>17 wanted to share.</p> <p>18 Q. He felt that it was information that you</p> <p>19 should know about?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 A. I'm assuming, because Glenn sent it to me.</p> <p>22 Q. Okay. So then the first bullet point is,</p> <p>23 "Benco considering suspending all activities with the</p> <p>24 TDA, including pulling out of the state show."</p> <p>25 Do you see that?</p>	<p>1 Q. Do you know whether Mr. Showgren ever</p> <p>2 contacted anyone at Patterson regarding the TDA trade</p> <p>3 show?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Did you ever give Mr. Showgren instructions on</p> <p>6 whether or not he should reach out to someone at</p> <p>7 Patterson about the pulling out of the trade show?</p> <p>8 A. No.</p> <p>9 Q. And then the next bullet is -- well, we can</p> <p>10 skip the next bullet. The last bullet is, "I laid out</p> <p>11 ground rules that I will not, in caps, discuss a pricing</p> <p>12 response, and any action would have to be cleared by my</p> <p>13 legal team before communicating with the TDA." Do you</p> <p>14 see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you have a sense for why Mr. Showgren</p> <p>17 included that bullet point?</p> <p>18 A. I don't.</p> <p>19 Q. Did you ever instruct Mr. Showgren not to</p> <p>20 discuss pricing or pricing responses with competitors?</p> <p>21 A. I don't recall a specific conversation with</p> <p>22 Glenn about that.</p> <p>23 Q. Okay. And was there any policy at Schein not</p> <p>24 to discuss pricing with competitors?</p> <p>25 A. So going back to the Core Pedia training, it</p>

213	<p>1 was known not to, but I don't recall if I specifically 2 had a conversation with Glenn about it.</p> <p>3 Q. Okay. Was there a specific policy at Schein 4 not to discuss pricing with competitors?</p> <p>5 A. Through the Core Pedia training, there was 6 education on it. I don't know if there is a written 7 policy on that.</p> <p>8 Q. Okay. You've never seen a written policy on 9 it?</p> <p>10 A. I don't --</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 A. I don't recall seeing a written policy.</p> <p>13 Q. Okay. And so these bullet points that are set 14 forth here by Mr. Showgren, those are bullet points 15 regarding the call that he had with Mr. Ron Fernandez, 16 correct?</p> <p>17 A. That's what it appears to be, correct.</p> <p>18 Q. And then after you received this e-mail, what 19 did you do?</p> <p>20 A. It looks like I sent it to Tim, sent an e-mail 21 to Tim.</p> <p>22 Q. And why did you send it to Tim?</p> <p>23 A. It would be an event that I would want him to 24 be aware of.</p> <p>25 Q. Why is that?</p>	215	<p>1 similar discussions between regional managers and 2 competitors?</p> <p>3 MR. McDONALD: Object to the form.</p> <p>4 A. Ask that again.</p> <p>5 Q. Sure. So have you ever heard of or received 6 e-mails about similar discussions to the one that 7 Mr. Showgren was e-mailing you about speaking with a 8 competitor?</p> <p>9 A. Not laid out in an e-mail form like this.</p> <p>10 Q. Okay. Have you heard of, orally, any other 11 conversations between Schein employees and employees of 12 a competitor?</p> <p>13 A. During the course of litigation, I was made 14 aware of some communication.</p> <p>15 Q. Okay. Outside of litigation, do you have any 16 recollection, just from your time and the various 17 positions you've been in at Henry Schein, of receiving 18 any e-mails discussing communications with competitors?</p> <p>19 A. From a competitor, is that what you're asking?</p> <p>20 Q. No, no. From a Schein employee.</p> <p>21 MR. McDONALD: Object to the form. Do you 22 understand her question?</p> <p>23 A. No, I don't.</p> <p>24 Q. I'll reask it. So outside of litigation, do 25 you have any recollection of hearing about anyone from</p>
214	<p>1 A. Because it's the TDA. It's the dental 2 association.</p> <p>3 Q. So the event that you wanted him to be aware 4 of was about the TDA program or --</p> <p>5 A. Of being aware of the TDA, and his name was 6 mentioned in the e-mail from Glenn.</p> <p>7 Q. Okay. Did you want Tim to be aware that there 8 were communications between Mr. Showgren and 9 Mr. Fernandez?</p> <p>10 A. I don't recall if that was the main intent of 11 me sending that to Tim.</p> <p>12 Q. Okay. Sitting here today, what do you think 13 the main intent of you sending it to Tim was?</p> <p>14 A. To make him aware of the TDA, but also that 15 his name was mentioned in an e-mail from Glenn regarding 16 a conversation he had with Ron.</p> <p>17 Q. Okay. So taking the first part, "to make him 18 aware of the TDA," what do you mean by that?</p> <p>19 A. It was that the TDA, the situation was 20 happening, so I was making him aware, giving him an 21 update on the TDA, and his name was mentioned on an 22 e-mail, so I sent it to him.</p> <p>23 Q. Well, what situation?</p> <p>24 A. The TDA perks program.</p> <p>25 Q. Have you heard of or received e-mails about</p>	216	<p>1 Henry Schein talking to competitors?</p> <p>2 A. So competitors try to recruit our reps. So if 3 I hear that someone from Henry Schein is talking to a 4 competitor, it's usually a recruiting situation that I'm 5 aware of.</p> <p>6 Q. So have you heard of Henry Schein employees 7 talking to competitors about recruiting situations?</p> <p>8 A. They are being recruited by the competitor.</p> <p>9 Q. I see. Outside of the recruiting context, 10 have you ever heard of someone from Henry Schein talking 11 to a competitor other than this e-mail that we've just 12 reviewed?</p> <p>13 MR. McDONALD: And outside the context of 14 litigation.</p> <p>15 Q. And outside the context of litigation?</p> <p>16 A. Other than "Hi's" on a show floor, no.</p> <p>17 Q. Okay. All right. So you sent the e-mail to 18 Tim Sullivan. And you wrote, on October 16th, 2013, at 19 6:26 a.m., "I'm not sure if Chuck contacted you about 20 the TDA yet. I do believe we need to have some serious 21 conversations with them about their strategy."</p> <p>22 When you wrote "have serious conversations 23 with them about their strategy," were you referring to 24 conversations with Chuck Cohen or others at Benco?</p> <p>25 MR. McDONALD: Object to the form.</p>

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1 A. I was referring to conversations with the TDA.
 2 **Q. Do you recall writing this e-mail?**
 3 A. I don't specifically remember writing it,
 4 but...
 5 **Q. How do you know that's what you meant in this**
 6 **e-mail?**
 7 MR. McDONALD: Object to the form.
 8 A. Because when you also start reading the rest
 9 of it, I know we were trying to communicate with the
 10 TDA. And it was new to us, what was going on, so we
 11 needed to have an open dialogue with the TDA.
 12 **Q. So is it your understanding, sitting here**
 13 **today, that you meant, by "them" and "their," that you**
 14 **meant the TDA?**
 15 A. Yes.
 16 **Q. But you don't recall what you meant at the**
 17 **time that you wrote this e-mail?**
 18 MR. McDONALD: Object to the form.
 19 A. I don't remember writing the exact -- typing
 20 the exact e-mail. I don't remember that moment in time.
 21 **Q. Okay. So then you continue to say, "We can**
 22 **start the conversations from the local level, but I'm on**
 23 **board with pulling out of shows if this is the direction**
 24 **dental associations want to take things." Do you see**
 25 **that?**

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1 A. I do.
 2 **Q. And so what did you mean by "start**
 3 **conversations from the local level"?**
 4 A. The TDA has board members, and we would have
 5 started having discussions with the TDA board members
 6 and hopefully get a meeting with the TDA board.
 7 **Q. What did you mean by "local level"?**
 8 A. They have doctors that are local, and they are
 9 in various parts of Texas. So we would have a
 10 conversation with them locally, and then what ultimately
 11 ended up happening was one of those doctors was the
 12 reason why we got in front of the TDA board.
 13 **Q. So were the doctors that you're referring to**
 14 **members of the TDA?**
 15 A. So I was very general there. I didn't know
 16 the doctors. But we had had conversations. The doctor
 17 that ultimately got us the meeting with the TDA was a
 18 member of the TDA.
 19 **Q. Okay. And what did you mean by the second**
 20 **part of the sentence, "If this is the direction dental**
 21 **associations want to take things"?**
 22 A. Well, once again, we make a business decision
 23 to attend dental shows, and we pay the money to the
 24 dental associations. So if they were going to endorse
 25 competitors who were paying to be at their show, it's

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1 really not smart. It's our choice not to be there.
 2 **Q. So by "the direction dental associations want**
 3 **to take things," you meant endorsing competitors?**
 4 A. Yes.
 5 **Q. And then moving up later on in the e-mail**
 6 **chain, so it's on the first page ending in Bates-stamped**
 7 **79098, there is an e-mail on October 16th, 2013, at**
 8 **5:57 a.m. from Tim Sullivan. And, he wrote, in the last**
 9 **sentence of the e-mail, "Pulling from show is a major**
 10 **move, which I'm not opposed to, but I want to make sure**
 11 **we've exhausted all other options." Do you see that?**
 12 A. I do.
 13 **Q. Did you agree with him that pulling from a**
 14 **show was a major move?**
 15 A. We haven't done it before, so it was something
 16 that would be different for sure.
 17 **Q. And you had attended the TDA show -- Schein**
 18 **had attended the TDA show for many years prior to this**
 19 **time?**
 20 A. Yes.
 21 **Q. Any idea how long?**
 22 A. No.
 23 **Q. And then you wrote, in response, "I will send**
 24 **again. We are not at the, quote --**
 25 **THE REPORTER: I'm sorry. I can't hear.**

220

1 **Q. "We are not at the, quote, debt ceiling time**
 2 **line, but it is a good idea that we discuss our reaction**
 3 **to the TDA positioning themselves as a competitor."**
 4 **Do you see that?**
 5 A. I do.
 6 **Q. So you felt that TDA was positioning**
 7 **themselves as a competitor; is that right?**
 8 A. Well, at the moment, I wasn't sure what the
 9 TDA was doing. So without having any knowledge of their
 10 plans or doing any discovery with them or having a
 11 conversation, it was lining up to be that way.
 12 **Q. Based on the information you had received as**
 13 **of the date of this e-mail, it looked like TDA was**
 14 **positioning themselves as a competitor?**
 15 A. Yeah.
 16 **Q. Okay. Do you recall any discussions about the**
 17 **possibility of pulling out of the TDA meeting prior to**
 18 **this e-mail chain?**
 19 A. I don't recall.
 20 **Q. You don't recall either way, or you don't**
 21 **recall any discussions?**
 22 A. I know -- I know discussions were happening,
 23 and we were trying to get a meeting with the TDA. And
 24 one of the options was not to attend the TDA. The
 25 timing of those discussions, I don't know specifically

55 (Pages 217 to 220)

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1 if they happened prior to this e-mail or not.
 2 (Exhibit 204, 12/16/13 E-mail RE:
 3 TDA Perks-Equipment, was marked for
 4 purposes of identification.)

5 A. Okay.

6 **Q. Okay. So the court reporter has handed you**
 7 **what has been marked as Exhibit 204. The top e-mail is**
 8 **an e-mail from Dave Steck to Tim Sullivan with a CC to**
 9 **you, dated December 16th, 2013, "Re: TDA**
 10 **Perks-Equipment."**

11 **Turning to the e-mail dated December 13th,**
 12 **2013, it's on the page with the Bates stamp ending in**
 13 **79898. It's from Dean Kyle to you?**

14 A. Okay.

15 **Q. And Mr. Kyle writes, in the last sentence,**
 16 **"FYI, Patterson pulled out of convention. I firmly**
 17 **believe they made the move expecting us to follow suit."**
 18 **Do you see that?**

19 A. I do.

20 **Q. Is Mr. Kyle informing you that Patterson**
 21 **pulled out of the TDA convention?**

22 A. When he puts "FYI Patterson pulls out of the
 23 convention," he does write that, yeah.

24 **Q. Yes. Did you understand him to mean the TDA**
 25 **convention?**

222

1 A. I did.

2 **Q. And do you know how Mr. Kyle got that**
 3 **information?**

4 A. I do not.

5 **Q. Do you know whether Mr. Kyle spoke with anyone**
 6 **at Patterson about the TDA?**

7 A. Not to my knowledge, he did not.

8 **Q. Did you ever ask Mr. Kyle about whether he**
 9 **spoke with anyone at Patterson?**

10 A. No, I didn't.

11 **Q. Did you ever ask him how he got the**
 12 **information that Patterson pulled out of the convention?**

13 A. No. I just figured he got it off of the Web
 14 site or something, a booth of exhibitors.

15 **Q. The TDA Web site?**

16 A. (No verbal response.)

17 MR. McDONALD: You need to say -- you need to say
 18 yes.

19 A. Yes. Sorry.

20 **Q. Do you know why Mr. Kyle was providing you**
 21 **with this information?**

22 A. During this whole time, we were, again, trying
 23 to understand what was going on, trying to get a meeting
 24 with the TDA, and it was just the dates.

25 **Q. And why do you think he was providing you an**

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1 **update about what Patterson was doing?**

2 A. I don't know.

3 **Q. Do you think he thought it was important to**
 4 **you, what Patterson was doing?**

5 MR. McDONALD: Object to the form.

6 A. You'd have to ask Dean that.

7 **Q. Okay. You said that you've -- when I asked**
 8 **you how Mr. Kyle got the information that Patterson**
 9 **pulled out of the convention, you said you figured he**
 10 **got it off the Web site or something, a booth of**
 11 **exhibitors.**

12 **So you're assuming that he got the information**
 13 **that Patterson pulled out of the convention from some**
 14 **publicly available Web site?**

15 A. That was the assumption.

16 **Q. Did you ever ask him specifically?**

17 A. I did not.

18 **Q. Okay. And where -- strike that.**

19 **Does the TDA typically post a both of**
 20 **exhibitors on a Web site?**

21 A. Yeah. That's how I found out we weren't
 22 going.

23 **Q. Okay. And how long, prior to the convention,**
 24 **does that list of exhibitors go up on the Web site?**

25 A. I don't know specifically.

224

1 **Q. Do you know if it happens months before the**
 2 **actual convention?**

3 A. We'd have to ask our events team. I could not
 4 give you a date.

5 **Q. Okay. So then Mr. Kyle writes, after he said**
 6 **Patterson pulled out of the convention, he wrote, "I**
 7 **firmly believe they made the move expecting us to follow**
 8 **suit."**

9 **What is your understanding of why he expected**
 10 **Schein to follow suit?**

11 MR. McDONALD: Object to the form.

12 A. I don't know.

13 **Q. What is your understanding of where he would**
 14 **have gotten that belief?**

15 MR. McDONALD: Object to the form.

16 A. In his own mind.

17 **Q. Is that your understanding, or was that just**
 18 **your guess?**

19 A. I don't know.

20 **Q. Did you follow up with him to ask him why he**
 21 **believed that Patterson made the move expecting Schein**
 22 **to follow suit?**

23 A. No.

24 **Q. Did you think it was strange that he said to**
 25 **you that he firmly believed that Patterson made the move**

56 (Pages 221 to 224)

225

1 **expecting Schein to follow suit?**

2 A. I don't remember what I was thinking once I
3 read that e-mail.

4 **Q. Okay. Sitting here today, do you think it's
5 strange that he informed you that he believed that
6 Patterson made the move expecting Schein to follow suit?**

7 A. I just read it as his opinion.

8 **Q. So you don't think it's weird or strange?**

9 A. I just think it was his opinion. I'm not
10 thinking it's weird.

11 **Q. All right. So then you responded by, it looks
12 like, forwarding that e-mail to Tim Sullivan and Dave
13 Steck. Do you see that?**

14 A. I do.

15 **Q. Okay. And you wrote, in the second sentence,
16 "I'm leaning towards pulling out of the TDA, but will
17 not do this until I talk to you guys." Do you see that?**

18 A. I do.

19 **Q. And why were you leaning towards pulling out
20 of the TDA at this time?**

21 A. From what I recall, we were not successful at
22 all in trying to get a meeting with the TDA after
23 several tries. And because it was silent, that was what
24 I was thinking about.

25 **Q. So you mentioned a few times that you were**

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1 or agree with the recommendation.

2 **Q. So Tim had the ultimate authority which would
3 be informed by someone's recommendation?**

4 A. That's correct.

5 **Q. Whose recommendation?**

6 A. Mine.

7 **Q. And so did Tim ultimately make a decision with
8 regard to whether to pull out of the TDA?**

9 A. Yes.

10 **Q. And what was his decision?**

11 A. That we were -- well, what ended up happening
12 is, with the conversations with the TDA, after the
13 discussions with them, they actually removed us from the
14 TDA, but we were working towards not going to TDA, and
15 Tim was in agreement with that.

16 **Q. And starting when were you working towards not
17 going to the TDA?**

18 A. The discussions were taking place, and we
19 finally got a meeting with the TDA, which was, roughly,
20 at the beginning of April, I believe. We hadn't made a
21 decision for that long a period of time until we were
22 able to meet with them in Vegas.

23 **Q. So at what point did you first start trying to
24 get a meeting with TDA?**

25 A. With Dean and the local team?

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1 **trying to get a meeting with the TDA. Why were you
2 trying to get a meeting with the TDA?**

3 A. Well, it's important that you have a dental
4 association that you partnership with for a long time,
5 have a partnership with for a long time, you want to
6 understand the direction they're heading and get the
7 facts rather than just the word on the street or what
8 we're hearing from dentists.

9 **Q. And so did you reach out to someone at TDA to
10 try to get a meeting?**

11 A. The local team and Dean were trying to get
12 that meeting.

13 **Q. What local team?**

14 A. The local managers, and Dean Kyle was heading
15 that up.

16 **Q. Local managers at Schein?**

17 A. That's correct.

18 **Q. And as of the date of this e-mail, on December
19 23rd, were they successful in getting a meeting with
20 TDA?**

21 A. From what I recall, they were not.

22 **Q. Okay. Who had authority to make the ultimate
23 decision whether to pull out of the TDA?**

24 MR. McDONALD: Object to the form.

25 A. In the HSD world, Tim had to make the decision

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1 **Q. Yes.**

2 A. The discussions started taking place, I want
3 to say, back in November of '13.

4 **Q. Did you instruct Dean and the local team to
5 try to get a meeting with TDA?**

6 A. We wanted to have -- it started off with they
7 were trying to talk to the TDA on their own, and I was
8 being updated on if we were successful with getting any
9 of the meetings with the TDA. So, yeah, then it
10 became -- it came on my radar. If I was going to meet
11 with the TDA, we've got to talk to them.

12 **Q. And you said that the discussions about trying
13 to get a meeting with the TDA started in November of
14 2013?**

15 A. That's what I recall when they started to try
16 to get the meeting.

17 **Q. Okay. And were you involved at that point?**

18 A. I was not.

19 **Q. How did you find out that they were trying to
20 get a meeting?**

21 A. Through a conversation and discussions.

22 **Q. Okay. And were they updating you in realtime;
23 like, in November of 2013, were you getting information
24 about attempts to contact TDA?**

25 A. In that time period of November/December, I

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1 know it was mentioned to me that we were still
2 attempting to get a meeting. We had a meeting with TDA
3 and we hadn't been successful.

4 (Exhibit 205, Cavaretta E-mail to
5 Alguire, was marked for purposes of
6 identification.)

7 A. Okay.

8 **Q. Okay. So the court reporter has handed you
9 what's been marked as Exhibit 205, which is an e-mail
10 from you to Todd Alguire?**

11 A. Alguire.

12 **Q. Alguire. Thank you. Dated February 26th,
13 2014, "Re: TDA Conversation." Who is Todd Alguire?**

14 A. He is an FSC in the San Antonio region.

15 **Q. Okay. So you wrote, in your e-mail, "I'm
16 pretty positive PDCO is out. And if not, they will be
17 when we pull out after April 2nd." Do you see that?**

18 A. I do.

19 **Q. And what made you say that you were pretty
20 positive that PDCO was out?**

21 A. Based on some of the exchanges we saw today
22 and what I understood was happening, that they were out.

23 **Q. So based on the e-mail from Mr. Kyle that we
24 looked at earlier, it said that PDCO is not attending
25 the convention?**

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1 **they got the information that Patterson was not
2 attending the convention?**

3 A. No, I didn't.

4 **Q. And why were people telling you that Patterson
5 was not attending?**

6 MR. McDONALD: Object to the form.

7 A. Why were people telling me that?

8 **Q. Yes.**

9 MR. McDONALD: Object to the form.

10 **Q. Did you have an understanding of why you were
11 being informed by individuals at Schein that Patterson
12 was not attending TBA?**

13 A. No. At the time, it was really irrelevant to
14 me.

15 **Q. So you were confused why someone would tell
16 you that Patterson was not attending the convention?**

17 A. No, I wasn't confused. It was irrelevant. It
18 didn't matter to me.

19 **Q. Why didn't it matter?**

20 A. Because what they did or what they were doing
21 had no impact on the decision that or the recommendation
22 I was going to make on whether we attended or not. It
23 was our decision solely.

24 **Q. So whether or not Patterson went to the
25 convention was not relevant to you?**

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1 A. That would be one of the points of reference,
2 yeah.

3 **Q. And then you said, "from what I understood was
4 happening." What do you mean by that?**

5 A. Can you frame that up for me?

6 **Q. So I asked you what made you say that you were
7 pretty positive that PDCA was out -- PDCO was out. And
8 you said, "It's based on some of the changes we saw
9 today and what I understood was happening."**

10 A. Yeah. So the events team, the public forum,
11 there was just people internally and then out in the
12 field telling me that they weren't going, so...

13 **Q. Do you recall anyone other than Mr. Kyle
14 telling you that Patterson was not going?**

15 A. A specific person, not that I recall.

16 **Q. Generally, what types of people are you
17 referring to besides Mr. Kyle?**

18 A. As far as people in the field?

19 **Q. Yeah. People who told you that Patterson was
20 not going to the convention?**

21 A. I don't know. I don't recall specific names.
22 I just know that that was conversations. I had been at
23 sales meetings in front of sales teams, so that was the
24 understanding or the word on the street.

25 **Q. And did you ask any of those sales teams where**

232

1 A. Not to me, no.

2 **Q. So why were you discussing it in this e-mail
3 with Mr. Alguire?**

4 A. Alguire. He references it in his e-mail from
5 a conversation with a customer, which was we were
6 getting a lot of our information from, also. And he
7 mentions it several times in his e-mail. So I was just
8 responding to it.

9 **Q. Right. So Mr. Alguire --**

10 A. Alguire.

11 **Q. Alguire, sorry.**

12 A. It took me a while, too.

13 **Q. He wrote, midway through the second paragraph,
14 "She also felt very strongly that Patterson was going to
15 attend the meeting despite what they had been saying."
16 Do you see that?**

17 A. I do.

18 **Q. And then you responded that you were pretty
19 positive that PDCO was out?**

20 A. I did.

21 **Q. And so what was that based on?**

22 A. Well, the line above also says, "How Patterson
23 was asked to join, but basically said we don't need
24 you," in addition to the information that I was hearing
25 from -- whether it was Dean or from the field, that's

233

1 what I was believing had happened.

2 **Q. Okay. And then you wrote, "And if not, they**
3 **will be when we pull out after April 2nd." Do you see**
4 **that?**

5 A. I do.

6 **Q. So you wrote, "when we pull out after April**
7 **2nd." So as of February 26th, 2014, you were planning**
8 **to pull out of the TDA on April 2nd, correct?**

9 MR. McDONALD: Object to the form.

10 A. On February 26th, we, at that point, were
11 leaning towards pulling out.

12 **Q. Okay. Why didn't you pull out on that date**
13 **then?**

14 A. Because I wanted to have a meeting with the
15 TDA.

16 **Q. Okay. And why didn't -- why was the meeting**
17 **not scheduled until April 2nd?**

18 A. The TDA schedule.

19 **Q. So if the meeting had been earlier in time,**
20 **would Schein have pulled out earlier in time?**

21 MR. McDONALD: Object to the form.

22 A. It would.

23 MR. McDONALD: Don't speculate. If you know,
24 answer the question.
25

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1 And we presented our side of we didn't
2 understand the direction they were heading, even
3 offering ways to help them with our core development,
4 our business solutions, potentially putting some type of
5 rebate together for the dental society, because they
6 were losing money because people weren't joining the
7 society anymore. We came up with solutions, but it
8 didn't matter. They were so far down the road at that
9 point.

10 **Q. Okay. So were you trying to convince them not**
11 **to do the perks program?**

12 A. We were trying to explain to them that
13 endorsing a competitor at the meeting and really
14 changing the partnership in many ways, that that wasn't
15 necessary, that we have everything to help them.

16 **Q. Okay. So you were trying to explain to them**
17 **or convince them not to endorse the competitor?**

18 A. We were trying to explain to them that it
19 wasn't necessary to endorse a competitor on the floor,
20 and, also, they haven't given us a chance to vet out all
21 of the solutions that we have to offer.

22 **Q. Was there any other reason why Schein pulled**
23 **out of the TDA convention other than the fact that TDA**
24 **was endorsing a competitor?**

25 MR. McDONALD: Object to the form.

234

1 A. Can you ask the question again?

2 **Q. Do you have an understanding of whether, if**
3 **the meeting between TDA and Schein took place earlier in**
4 **time, that Schein would have pulled out earlier in**
5 **time --**

6 MR. McDONALD: Object to the form.

7 **Q. -- assuming everything at the meeting, how it**
8 **went on April 2nd?**

9 A. It all depended on the meeting. So if the
10 meeting would have happened earlier or remained the
11 same, the recommendation would have been similar.

12 **Q. Okay. So did you attend the meeting with TDA?**

13 A. I did.

14 **Q. Was it on or about April 2nd?**

15 A. On or about April 2nd, yes.

16 **Q. Who else attended from Schein?**

17 A. Dean Kyle and Kyle Steck.

18 **Q. Just the three of you?**

19 A. Just the three of us.

20 **Q. And can you just tell me, generally, what**
21 **happened at the meeting?**

22 A. Yeah. We sat down with them and just asked
23 more about the direction the TDA was heading. They laid
24 out their plan to us, and they laid out why they were
25 doing. They believed they needed to do it.

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1 A. Not that I recall.

2 **Q. So after that meeting, did you come away with**
3 **the belief that Schein would be pulling out of TDA?**

4 A. When we left the meeting, yes. And then there
5 was communication between Dean and the TDA. And, at
6 that time, Dr. Duncan reached out to me. And I think he
7 was the president at the time. And he expressed a
8 desire to talk again, that maybe there was an
9 opportunity that, you know, we could bridge the gap.

10 So we didn't actually officially pull out at
11 that point. That was a holding pattern internally based
12 on a conversation with Dr. Duncan. And then a long
13 story short, I was in -- I think it was Hawaii, and the
14 events team contacted me saying, "Hey, we're no longer
15 on the TDA floor any longer. What's going on?" And I
16 called Dr. Duncan twice. When I finally got ahold of
17 him, he just let me know that there was cooler heads, or
18 his opinion wasn't heard, or I forget how he positioned
19 it, and, therefore, we weren't going to the TDA.

20 **Q. If TDA had decided not to endorse Smile**
21 **Source -- I mean, SourceOne, would Schein have attended**
22 **the TDA convention?**

23 MR. McDONALD: Object to the form.

24 A. If there wasn't a bias towards a competitor on
25 the floor, I don't know why we would have pulled out.

237

1 **Q. So just going back to the chain of events**
 2 **after the meeting, so immediately after the meeting, you**
 3 **came away with the belief that Schein would be pulling**
 4 **out of the TDA?**

5 A. Yes. Yes, because they were not -- here is
 6 what happened. It's that they wanted to meet in June to
 7 hear what we had to say, but they weren't changing their
 8 plans. So the thought that Dean and I had as well was
 9 that we're going to pull out.

10 **Q. And was the convention in April?**

11 A. Yeah. It was -- it was a short period of time
 12 after our meeting. I don't know if it was the end of
 13 April or the beginning of May.

14 **Q. Okay. So then sometime after you left the**
 15 **meeting, Mr. Duncan called you. And it's at that point**
 16 **you felt that maybe things were up in the air and they**
 17 **might not be endorsing SourceOne?**

18 A. Yeah. Dr. Duncan called, and I thought there
 19 was hope that we could figure something out and help
 20 them out.

21 **Q. Okay.**

22 A. Okay.
 23 (Exhibit 206, 4/9/2014 E-mail Re:
 24 Belmont/TDA, was marked for purposes
 25 of identification.)

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1 **Q. And so the court reporter handed you what has**
 2 **been marked as Exhibit 601, which is an e-mail from Kyle**
 3 **Steck to you and Dean Kyle with a CC to Dave Steck. The**
 4 **court reporter handed you what has been marked as 206,**
 5 **excuse me.**

6 A. Correct.

7 **Q. Okay. In the top e-mail, Mr. Kyle Steck**
 8 **writes, "Ron Fernandez from Benco, in parentheses, S TX**
 9 **Mgr just called me, they are out of TDA." What does "S**
 10 **TX Mgr" mean?**

11 A. South Texas manager.

12 **Q. This is the same Ron Fernandez who Mr. Glenn**
 13 **Showgren had spoken with before, correct?**

14 A. That is correct.

15 **Q. And was this useful information for you to**
 16 **receive?**

17 MR. McDONALD: Object to the form.

18 A. It was an update. It was information on how
 19 useful it was.

20 **Q. So as of April 9th, 2014, had Schein**
 21 **officially pulled out of the TDA?**

22 A. On this date, I believe we had been aware we
 23 were no longer on the floor, and, yeah, we weren't going
 24 to the meeting.

25 **Q. Okay. If Benco had attended the TDA show but**

239

1 **Schein did not, could that potentially have resulted in**
 2 **customers lost to Benco?**

3 MR. McDONALD: Object to the form.

4 A. I don't know.

5 **Q. If Benco attended but Schein did not, do you**
 6 **think that there could have been any competitive**
 7 **advantage to Benco attending?**

8 MR. McDONALD: Object to the form.

9 A. I don't believe so, because our local
 10 customers still do business with Henry Schein.

11 **Q. Local customers in Texas?**

12 A. Yeah. We were also still attending the other
 13 state shows that were happening in Texas, too.

14 **Q. Got it. So there are other state shows?**

15 A. Yeah. Yeah. This was the dental association
 16 show, but all of the -- there were other regional shows
 17 that take place that we were still attending.

18 **Q. Okay. You could put that one aside.**

19 MR. McDONALD: If you're going to mark something
 20 new, could we take a quick break?

21 MS. GOFF: Sure. Off the record.

22 (A short recess was had.)

23 (Exhibit 207, 4/10/2014 E-mail Re:

24 Texas Dental Association, was marked
 25 for purposes of identification.)

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1 **Q. The court reporter has handed you an Exhibit**
 2 **207, which is an e-mail from you to Tim Sullivan with a**
 3 **CC to Dave Steck, dated April 10th, 2014. Let me know**
 4 **when you've had a chance to review it.**

5 A. I read it.

6 **Q. Okay. So you wrote to Mr. Sullivan, "The mfgs**
 7 **and dealers that we believe have also pulled out are as**
 8 **follows: PDCO, Benco, VOCO, Belmont, Brewer,**
 9 **Axis/Sybron, Sirona, PSA reduced their booth size to**
 10 **tabletop." And then you wrote, "I cannot confirm for**
 11 **sure, Tim, as we are not talking to these companies**
 12 **directly, but we are hearing this from respectable**
 13 **sources."**

14 **Do you see that?**

15 A. I do.

16 **Q. Okay. First, what does "mfgs" refer to?**

17 A. Manufacturers.

18 **Q. Okay. And why did you feel it was necessary**
 19 **to inform Tim of the manufacturers and dealers that you**
 20 **believed pulled out of the show?**

21 MR. McDONALD: Object to the form.

22 A. Just giving a general update.

23 **Q. Did you think that Mr. Sullivan was interested**
 24 **in this information?**

25 A. Considering the topic being a topic of

60 (Pages 237 to 240)

241

1 discussion, it was just a follow-up with him on what was
2 happening.

3 **Q. Did Mr. Sullivan ask you to keep him updated?**

4 A. Not that I recall.

5 **Q. And then, with regard to your last -- or the**
6 **last sentence that I read, which is, "I cannot confirm**
7 **for sure, Tim, as we are not talking to these companies**
8 **directly, but we are hearing this from respectable**
9 **sources," what did you mean by that?**

10 A. Well, in previous e-mails, Tim was clear not
11 talking to anybody outside of Henry Schein or -- so I
12 wanted to make sure he knew we weren't doing that.

13 **Q. Okay. So what did you mean by you were**
14 **hearing it from respectable sources?**

15 A. So we were hearing it from the people in the
16 field that were telling us what was going on, or doctors
17 what were going on, or, of course, on the Web site of
18 the TDA, you know, who was attending the meeting and who
19 was not.

20 **Q. And you said "people in the field." Did you**
21 **mean FSCs?**

22 A. I don't think I was being specific to a group
23 of people.

24 **Q. Okay. So in your testimony just now, you**
25 **said, "so we're hearing it from people in the field."**

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1 **Who did you mean, and what people in the field?**

2 A. It could be FSCs, ESSs, ETSSs, doctors.

3 **Q. People who worked at Schein?**

4 A. Yes.

5 **Q. What are ESSs?**

6 A. Equipment specialists.

7 **Q. Okay. With regard to Benco, didn't you, in**
8 **fact, learn from Kyle Steck, who spoke directly to a**
9 **Benco employee, about the fact that Benco was not**
10 **attending the TDA?**

11 A. Yes. Mm-hmm. The previous e-mail that was in
12 there.

13 **Q. Okay. So that's Exhibit 206; is that right?**
14 **You can look at it.**

15 A. That would be Exhibit 206.

16 **Q. Okay. So with regard to Benco, you actually**
17 **learned that Benco was pulling out from someone that**
18 **worked for Benco itself?**

19 A. Well, Kyle sent that. I learned from Kyle.

20 **Q. Okay. And Kyle learned from Benco?**

21 A. That's what he states, yes.

22 **Q. So you wrote, "I cannot confirm for sure, Tim,**
23 **as we are not talking to these companies directly, but,**
24 **in fact, Mr. Kyle was speaking with Benco directly,**
25 **correct?**

243

1 MR. McDONALD: Object to the form.

2 **Q. Sorry. Mr. Kyle Steck was speaking with --**
3 **was speaking with Benco directly, correct?**

4 A. I don't know if he received an e-mail from Ron
5 or how he obtained the information, but he mentioned
6 that Ron -- oh, Ron called him, yes.

7 **Q. Okay. So Mr. Kyle Steck was speaking with**
8 **Benco directly?**

9 MR. McDONALD: Object to the form.

10 A. Ron Fernandez did call Kyle directly and let
11 him know in an e-mail.

12 **Q. And why did you tell Tim that, quote, we are**
13 **not talking to these companies directly?**

14 A. Since the update came from me, I believe I was
15 talking on my behalf, but I don't recall exactly.

16 **Q. So your understanding, sitting here today, is**
17 **that by "we," you just meant I?**

18 A. Yeah.

19 **Q. Did Schein pull out of any other trade**
20 **association shows following pulling out of the TDA?**

21 A. Yes, we did.

22 **Q. Which one?**

23 A. Well, we didn't pull out of the show. We
24 didn't sign up for the Arizona Dental Show.

25 **Q. And why was that?**

244

1 A. They were endorsing a competitor again, so it
2 was going to be a biased show.

3 **Q. Okay. And so Schein did not attend the AZDA**
4 **show because of that?**

5 MR. McDONALD: Object to the form.

6 A. Yeah. We decided not to attend that show.

7 **Q. What year was that?**

8 A. In 2014.

9 **Q. Okay. So you testified earlier that Schein**
10 **attended the TDA last year; is that right?**

11 A. We did.

12 **Q. In 2016?**

13 A. Yes.

14 **Q. Okay. Why did Schein attend last year?**

15 A. We were told we were attending.

16 **Q. Told by who?**

17 A. I was told by Tim.

18 **Q. Okay. So Tim Sullivan made the decision for**
19 **Schein to attend?**

20 THE REPORTER: I'm sorry?

21 A. Yeah. Tim told me we were going.

22 **Q. And did you make any recommendations to Tim**
23 **before he made that decision?**

24 A. No.

25 **Q. Do you have an understanding of why Tim made**

61 (Pages 241 to 244)

245

1 the decision to -- for Schein to attend the TDA last
 2 year?
 3 A. You'd have to ask Tim.
 4 **Q. Did he inform you of why he was making that**
 5 **decision?**
 6 A. He let me know we were going.
 7 **Q. Did he give you any more insight into why he**
 8 **made that decision?**
 9 A. Not specifically.
 10 **Q. Generally?**
 11 A. I'm assuming, so, no.
 12 **Q. Aside from telling you that you were going to**
 13 **the TDA, did Tim Sullivan provide any other explanation**
 14 **for why you were going to the TDA?**
 15 A. Not that I recall.
 16 **Q. I wanted to turn back to Exhibit 203 that we**
 17 **looked at earlier.**
 18 A. Okay.
 19 **Q. And then turning, again, to the e-mail from**
 20 **Glenn Showgren with the bullet points starting on the**
 21 **page that ends in Bates number 79099.**
 22 A. Okay.
 23 **Q. Are you there?**
 24 A. I am.
 25 **Q. Okay. Do you have an understanding of why**

246

1 **Mr. Fernandez called Mr. Showgren?**
 2 A. No, I don't.
 3 **Q. And then looking at the bullet point, the**
 4 **fourth bullet point in the e-mail --**
 5 MR. McDONALD: On the next page?
 6 **Q. Yeah, exactly. So it's on the page ending in**
 7 **79100.**
 8 A. Okay.
 9 **Q. I skipped this bullet point earlier, but**
 10 **Mr. Showgren wrote, "I will be having lunch with Ron the**
 11 **week after next to discuss concerns and share what we**
 12 **have found about the program."**
 13 **Why do you think Mr. Showgren is planning to**
 14 **meet with Ron?**
 15 MR. McDONALD: Object to the form.
 16 A. I don't know.
 17 **Q. Did you approve of that meeting?**
 18 A. No.
 19 **Q. Can you think of any reason why Mr. Showgren**
 20 **would want to meet with Ron Fernandez to discuss the**
 21 **TDA?**
 22 A. No.
 23 MR. McDONALD: Object to the form.
 24 **Q. And did you instruct Mr. Showgren not to meet**
 25 **with Ron?**

247

1 A. I did not.
 2 **Q. Do you know whether the meeting took place?**
 3 A. Through the course of litigation, I believe
 4 the meeting took place.
 5 MR. McDONALD: Object to form. Don't speculate.
 6 THE WITNESS: Oh.
 7 MR. McDONALD: If you know, tell her.
 8 A. I don't recall.
 9 **Q. Have you seen e-mails that discuss or lead you**
 10 **to believe that the meeting between Mr. Showgren and Ron**
 11 **Fernandez took place?**
 12 A. I don't recall, at this moment.
 13 **Q. What leads you to believe that the meeting**
 14 **took place?**
 15 MR. McDONALD: Object to the form. Don't
 16 speculate.
 17 A. I don't recall, at this point.
 18 **Q. Did you ever talk to Glenn about whether he**
 19 **met with Ron?**
 20 A. Not that I recall.
 21 **Q. Did you and Mr. Showgren discuss the call that**
 22 **Mr. Showgren had with Ron Fernandez aside from this**
 23 **e-mail?**
 24 A. I don't recall having a conversation with
 25 Glenn about any communication with Ron.

248

1 **Q. Okay. Did you have a discussion with anyone**
 2 **about the communication that Glenn had with Ron?**
 3 A. Not that I recall.
 4 **Q. So you said, at the time of this e-mail, Glenn**
 5 **Showgren was a regional manager; is that right?**
 6 A. I did.
 7 **Q. And at some point, he changed positions?**
 8 A. He did.
 9 **Q. What did he change to again?**
 10 A. He moved to the California zone manager, and
 11 then Kyle Steck replaced Glenn.
 12 **Q. Do you know, approximately, when Glenn**
 13 **Showgren moved to the California zone manager position?**
 14 A. The beginning of 2014.
 15 **Q. Okay. Is there any relation between Kyle**
 16 **Steck and Dave Steck?**
 17 A. Yes.
 18 **Q. What is the relation?**
 19 A. David is Kyle's father.
 20 **Q. Okay. And then going to the last bullet point**
 21 **in Mr. Showgren's e-mail, he wrote, "I laid out ground**
 22 **rules that I will not discuss pricing response and any**
 23 **action will have to be cleared by my legal team before**
 24 **communicating with the TBA." Do you sea that?**
 25 A. I do.

62 (Pages 245 to 248)

249	<p>1 Q. What is your understanding of what you meant 2 by "any action would have to be cleared by my legal team 3 before communicating with TDA"? 4 A. I have no idea. 5 Q. Did you understand it to mean that action by 6 Schein to communicate with TDA? 7 MR. McDONALD: Object to the form. 8 A. You'd have to ask Glenn. 9 Q. Do you have an understanding of -- well, 10 scratch that. 11 Is there any prohibition that you are aware of 12 about communicating with the TDA, of Schein 13 communicating with the TDA? 14 A. Not that I'm aware of. 15 Q. Can you think of any reason why a 16 communication with the TDA would need to be cleared by a 17 legal team? 18 MR. McDONALD: Object to the form. 19 A. Not that I'm aware of. 20 Q. Do you understand Mr. Showgren's e-mail to be 21 referring to an action by Benco and Schein together to 22 be communicating with the TDA? 23 MR. McDONALD: Object to the form. 24 A. Not that I'm aware of. 25 Q. Before you spoke with TDA, did you need to get</p>	251	<p>1 and then acknowledging that, based on the discussions 2 that were in the e-mails, we were fully aware that Andy 3 was going to continue on with the co-op with other 4 dealers. 5 Q. Who was Andy? Was he the head of the Dental 6 Co-Op of Utah, or something like that? 7 A. Yes. 8 Q. And what other dealers did you understand that 9 they were going to continue doing business with? 10 MR. McDONALD: Object to form. 11 A. Based on the e-mail, I believe one of our team 12 members were suggesting who they would do business with, 13 but Andy was saying they were going to -- they were 14 going to have nonexclusive dealers. So I don't recall 15 if he stresses or specifies which dealers he would be 16 doing business with. 17 Q. Just off of your recollection sitting here 18 today, do you recall who the Dental Co-Op of Utah ended 19 up using as a dealer? 20 A. As we sit here today, I do not. 21 MS. GOFF: Okay. I don't have any other questions, 22 but thank you very much for coming in today. I 23 appreciate it. I know it's been a long day. And I 24 think, with that, we can close the deposition 25 investigation hearing.</p>
250	<p>1 clearance from your legal team? 2 A. Not that I recall. 3 Q. Can you think of any reason why you would need 4 to? 5 A. Based on what was happening then, I wouldn't 6 have -- I don't recall getting any type of -- 7 THE REPORTER: I can't hear. 8 A. I don't recall getting any type of guidance 9 from the legal team. 10 Q. Schein regularly communicates with dental 11 associations; is that right? 12 A. Team members, yeah. 13 Q. Okay. Earlier we discussed that, at some 14 point, Schein stopped doing business with the Dental 15 Co-Op of Utah. Do you remember that? 16 A. Yes. Yes. 17 Q. Was there any concern that your competitors 18 would start doing business with the Dental Co-Op of Utah 19 once you stopped? 20 A. Sure. There's a -- there is -- when you end a 21 relationship, there is an opening for a competitor. 22 Q. Was that something that you considered before 23 deciding to terminate the relationship with the dental 24 co-op? 25 A. I believe we decided to end the relationship,</p>	252	<p>1 MR. McDONALD: I want to visit to see if I have any 2 clarifying questions. 3 MS. GOFF: Okay. We can go off the record. 4 (Discussion off the record.) 5 MR. McDONALD: We don't have any questions. Thank 6 you. 7 MS. GOFF: Thank you. 8 (Off the record at 5:21 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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ACKNOWLEDGMENT OF DEPONENT

I, JOE CAVARETTA, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

DATE SIGNATURE

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CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, Jennifer L. Bernier, Certified Shorthand Reporter No. 084-004190, RPR, CRR, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was not discussed; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 31st day of May, 2017.

My commission expires: June 24, 2020

Notary Public in and for the State of Illinois

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ERRATA SHEET

DEPOSITION OF: Joseph V. Cavaretta

DATE: May 23, 2017

CASE NAME: *Henry Schein, Inc., Patterson Companies, Inc. and Benco
Dental Supply Company; Matter No. 1510190*

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
12	5	Delete "base"	Typographical error
14	22	Change "that I'm responsible for that there is" to "that I'm responsible for and there is"	Typographical error
15	13	Change "Kathleen Tittus, and Betty Unger" to "Kathleen Titus, Keith Gauzza, and Betty Unger"	Clarification/misspoke
18	20	Change "equity ownership as practices" to "equity ownership in the practices"	Clarification/misspoke
19	13	Change "customer" to customers"	Typographical error
28	5	Change "there is" to "there are"	Typographical error
31	22	Change "Arend" to "Aaron"	Typographical error
31	24	Change "Hewlett" to "Hulick"	Typographical error
32	22	Change "Hewlett" to "Hulick"	Typographical error
33	15	Change "Hewlett" to "Hulick" Change "Arend" to "Aaron"	Typographical error
36	7	Change "manufacture relations" to "manufacturer relations"	Typographical error
37	7	Change "Girkin" to "Gerken"	Typographical error
42	13	Change "It's we give him" to "We give him"	Clarification/misspoke
43	11	Change "Tay" to "Tae"	Typographical error
58	25	Change "it would be" to "they would be"	Typographical error
61	2	Delete "and their market share is usually our relationship."	Clarification/misspoke
63	16	Change "It's you have" to "You have"	Typographical error

66	4	Change "in a way" to "in any way"	Typographical error
69	6	Change "Core Pedia" to "Corepedia"	Typographical error
70	6	Change "Core Pedia" to "Corepedia"	Typographical error
72	14	Delete "to"	Typographical error
73	5	Change "ours" to "hours"	Typographical error
73	7	Change "conduct" to "content"	Typographical error
77	10	Delete "don't"	Typographical error
83	19	Change "It's every one is a" to "Every one is a"	Typographical error/clarification
89	2	Change "there has been groups" to "there have been groups"	Typographical error
98	3	Change "there was opportunities" to "there were opportunities"	Typographical error
101	18	Change "improving" to "increasing"	Typographical error
102	20	Change "knee" to "knew"	Typographical error
103	5	Change "the own offering" to "our own offering"	Typographical error/misspoke
104	23	Change "There is" to "There are"	Typographical error/misspoke
105	4	Change "There is" to "There are"	Typographical error/misspoke
108	1	Change "there was" to "there were"	Typographical error/misspoke
108	18	Change "mutual grow" to "mutually grow"	Typographical error
122	21	Change "they offer to their – plus they have" to "they offer to their members – plus they have"	Clarification
129	17	Delete "that's"	Typographical error
133	20	Delete "was"	Typographical error
134	14	Change "are" to "were"	Typographical error/misspoke
137	6	Change "A year." to "A year?"	Typographical error/clarification
144	9	Delete "using the matter"	Typographical error/misspoke
148	11	Change "demanding" to "demand"	Typographical error
157	14	Change "PDA" to "PVA"	Typographical error
157	20	Change "Well, the prime vendor agreement" to "Well, under the prime vendor agreement"	Clarification
158	12-13	Change "But there is manufacturers	Typographical error

		that we didn't do business with that the co-op, now, we were going in" to "But there were manufacturers that we didn't do business with, that the co-op, now, were going in"	
160	6	Change "Mexico" to "New Mexico"	Typographical error
170	5	Change "his own" to "the zone"	Typographical error
176	3-4	Change "again, it was using GPO" to "again, GPO was used"	Typographical error/misspoke
185	24	Change "It was we educated the regional managers on" to "It was something we educated the regional managers on"	Typographical error/clarification
186	14	Change "FMSN" to "FMM or NSM"	Typographical error/clarification
190	12	Change "When" to "Well"	Typographical error/misspoke
197	3	Change "Sallis" to "the Salas"	Typographical error
199	23	Change "Hall" to "Hal"	Typographical error
203	8	Change "Hinman, the Greater New York" to "Hinman, Yankee in Boston, the Greater New York"	Clarification/misspoke
203	21	Change "Midwinter, Hinman, and then the Greater New York" to "Midwinter, Hinman, Yankee in Boston and then the Greater New York"	Clarification/misspoke
207	22-23	Change "So we were paying to be on at their show as a business decision that they were endorsing someone other than Henry Schein" to "So we were paying to be at their show as a business decision but they were endorsing someone other than Henry Schein"	Typographical error/clarification
212	25	Change "Core Pedia" to "Corepedia"	Typographical error
213	5	Change "Core Pedia" to "Corepedia"	Typographical error
226	4	Delete "partnership with for a long time,"	Misspoke
227	14	Change "TDA" to "exhibit floor"	Clarification/misspoke
227	22	Change "Vegas" to "Texas"	Typographical error/misspoke
230	22	Change "that was" to "there were"	Typographical error
232	5	Change "which was we were" to	Typographical error

		"which was where we were"	
234	10	Change "or" to "and"	Typographical error/clarification
236	17	Change "there was cooler heads" to "cooler heads did not prevail"	Clarification/misspoke
241	17	Delete "what were going on"	Typographical error/misspoke

I, Joseph V. Cavaretta do hereby acknowledge that I have read the above-referenced transcript, that I have made any corrections, additions or deletions that I was desirous of making; and that the transcript contains my true and correct testimony.

EXECUTED this 29 day of June, 2017.

at Milwaukee, WI
(City) (State)

[Signature]
Signature of Witness

Subscribed and sworn to and before me this 29 day of June 2017.

[Signature]
Notary Public

SEAL:



CX0306

In the Matter of:

Henry Schein, Inc., et al.

July 12, 2017

Randy Foley

Condensed Transcript with Word Index



For The Record, Inc.

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24 CSR No. 12286	24
25 Job No: 21470	25

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BY MR. SOLOMON:

Q. Mr. Foley, you're appearing here today pursuant to a subpoena issued by the Federal Trade Commission; is that correct?

A. Yes.

Q. And I've placed a document in front of you which was marked as Exhibit 289. Do you understand that to be the subpoena compelling your testimony here today?

A. Yes.

Q. Do you understand, Mr. Foley, that you're testifying under oath and are obligated to provide true and correct information?

A. Yes.

Q. And do you understand the consequences under federal perjury laws of providing untruthful information while testifying under oath?

A. Yes.

Q. Mr. Foley, you mentioned you haven't given sworn testimony before; is that right?

A. Correct.

Q. Okay. So just a few ground rules. As you probably recognize, everything you're saying -- we're saying here today is being recorded by our Court Reporter, so we want to keep two things in mind. First

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San Francisco, California
 Wednesday, July 12, 2017
 RANDY FOLEY,
 having been first duly sworn by the reporter, was examined and testified as follows:
 ---o0o---

[Whereupon, Deposition Exhibit 289 was marked for identification.]

EXAMINATION

BY MR. SOLOMON:

Q. Good morning, Mr. Foley. Thanks for being here today. My name is Ronnie Solomon, and I'm an attorney with the Federal Trade Commission. With me this morning is my colleague, Lin Kahn, also an attorney with the Federal Trade Commission. And also sitting in on today's proceeding is Grace Paek, who is one of our summer law clerks.

This investigational hearing is being conducted as part of the Commission's investigation of Schein in matter Number 1510190.

For the record, would counsel please state their appearance?

MR. McDONALD: Yeah, John McDonald and Lauren Fincher, both on behalf of Henry Schein and the witness.

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please try to avoid gestures or head nods as answers. Please try and clearly verbalize all of your answers for me. Okay?

A. Yes.

Q. The second thing is we need to try not to interrupt each other. So if you could just let me finish my question before providing an answer, that would be helpful. Okay?

A. Yes.

Q. If you don't understand something or if you're having trouble hearing me, just let me know, and I'll do my best to rephrase or re-ask the question.

A. Will do.

Q. Okay. Perfect.

We'll take breaks today from time to time. If at any time you need a break, please just let me know, and we can take a break as long as there's no question pending. Is that okay?

A. Yes.

Q. Mr. Foley, is there any reason why you can't provide complete and truthful testimony here today?

A. No.

Q. How did you prepare for today's deposition?

A. I met with counsel next to me for a few hours yesterday.

9	<p>1 Q. Mr. McDonald?</p> <p>2 A. Yes.</p> <p>3 Q. Did you review any documents?</p> <p>4 A. Just -- yes.</p> <p>5 Q. Do you recall how many documents you reviewed?</p> <p>6 A. I would guess -- sorry -- 12, 15.</p> <p>7 Q. Did you do anything else to prepare for</p> <p>8 today's investigational hearing?</p> <p>9 A. No.</p> <p>10 Q. Okay. Mr. Foley, what is your highest level</p> <p>11 of education?</p> <p>12 A. I have a bachelor's of business from the</p> <p>13 University of Michigan.</p> <p>14 Q. Do you hold any other degrees, Mr. Foley?</p> <p>15 A. No, just that.</p> <p>16 Q. You were previously employed by Henry Schein;</p> <p>17 is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Schein is a distributor of dental supplies; is</p> <p>20 that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Are you currently retired?</p> <p>23 A. Yes.</p> <p>24 Q. Do you hold any employment at the moment?</p> <p>25 A. No.</p>	11	<p>1 Q. And what is Soft Tech, Incorporated?</p> <p>2 A. We had a dental software program for group</p> <p>3 practices.</p> <p>4 Q. Were you employed prior to that?</p> <p>5 A. For six years prior to that, I managed a</p> <p>6 dental office and dental lab.</p> <p>7 Q. And when did you begin that employment?</p> <p>8 A. Six years prior to -- math here would be 1983</p> <p>9 so -- I'm sorry. '88. It would be about '82. Okay.</p> <p>10 Q. Prior to that, did you hold any other</p> <p>11 employment?</p> <p>12 A. From graduation in 1977 till 1982, I was a</p> <p>13 cost accountant at a company called Federal-Hewitt, a</p> <p>14 scrap metal automotive supplier.</p> <p>15 Q. Any other employment that you haven't already</p> <p>16 mentioned?</p> <p>17 A. No.</p> <p>18 Q. So my understanding is that you worked at</p> <p>19 Henry Schein since 2003; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Have you been in the special markets division</p> <p>22 that whole time?</p> <p>23 A. Nearly. From 2003, the software division, I</p> <p>24 fell under special markets even though I was with the</p> <p>25 software division for a few years. Then the software</p>
10	<p>1 Q. What was your position at Schein prior to your</p> <p>2 retirement?</p> <p>3 A. I was vice president of sales, field sales for</p> <p>4 special markets.</p> <p>5 Q. And when did you hold that position?</p> <p>6 A. I became vice president about three years ago.</p> <p>7 Q. 2014?</p> <p>8 A. 2013.</p> <p>9 Q. Prior to that, did you hold any other</p> <p>10 positions at Henry Schein?</p> <p>11 A. From 2009 to 2013, I was a director in that</p> <p>12 same title but a director title in special markets.</p> <p>13 Q. Did you hold a position at Henry Schein prior</p> <p>14 to director of special markets?</p> <p>15 A. Correct. Yes. From 2003 to 2009, I was the</p> <p>16 national sales manager for our software division, Henry</p> <p>17 Schein Practice Solutions.</p> <p>18 Q. What about prior to -- strike that.</p> <p>19 What about prior to 2003, were you employed by</p> <p>20 Henry Schein?</p> <p>21 A. No.</p> <p>22 Q. What were you -- what was your employment</p> <p>23 prior to 2003?</p> <p>24 A. The 16 years prior to 2003, I was a software</p> <p>25 salesperson for Soft Tech, Incorporated out of Detroit.</p>	12	<p>1 division was independent of special markets until I</p> <p>2 came in 2009 and took my role back with special</p> <p>3 markets.</p> <p>4 Q. You were working in special markets</p> <p>5 continually from 2009 until your retirement?</p> <p>6 A. Correct.</p> <p>7 Q. What does "special markets" refer to?</p> <p>8 A. It refers to nontraditional dentists, private</p> <p>9 practices. So any provider that is not a private</p> <p>10 dentist, special markets would deal with that type of</p> <p>11 client.</p> <p>12 Q. Is Henry Schein Special Markets separate from</p> <p>13 Henry Schein Dental?</p> <p>14 A. It's a separate division from Henry Schein</p> <p>15 Dental, yes.</p> <p>16 Q. In what ways are the two entities separate?</p> <p>17 MR. McDONALD: Object to the form; calls for a</p> <p>18 legal conclusion.</p> <p>19 You can give your understanding.</p> <p>20 THE WITNESS: That our -- Henry Schein Dental</p> <p>21 focused on private practices, and Henry Schein Special</p> <p>22 Markets focused on non-private dentists.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. So you mentioned your position as a director</p> <p>25 from 2009 to 2013 and then your position as a vice</p>

13	<p>1 president of sales from 2013 until your retirement.</p> <p>2 A. That is correct.</p> <p>3 Q. What was the difference in your duties and</p> <p>4 responsibilities between those two titles?</p> <p>5 A. In 2009 when I became vice president, I then</p> <p>6 managed a couple of other directors of other divisions</p> <p>7 within special markets which included our federal team</p> <p>8 sales and our dental school division within special</p> <p>9 markets. Those two people now would report to me.</p> <p>10 Those two divisions, those two segments within special</p> <p>11 markets now fell underneath me.</p> <p>12 Q. I'm sorry. You go ahead.</p> <p>13 A. Prior to that those two did not fall under me.</p> <p>14 Q. You mentioned a moment ago when you became</p> <p>15 vice president in 2009.</p> <p>16 Did you mean in 2013?</p> <p>17 A. I'm sorry. I meant 2013.</p> <p>18 Q. So the difference between your position as a</p> <p>19 director and as a vice president was that as a vice</p> <p>20 president you oversaw two additional divisions; is that</p> <p>21 right?</p> <p>22 A. Correct, with director roles.</p> <p>23 Q. Apart from that, were there any other</p> <p>24 differences between your titles -- strike that.</p> <p>25 Apart from that, were there any other</p>	15	<p>1 MR. SOLOMON: Directly.</p> <p>2 THE WITNESS: Directly, I had about a dozen.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. How many employees reported to you indirectly?</p> <p>5 A. Another dozen. So a total of -- 12 direct, 12</p> <p>6 indirect, approximately.</p> <p>7 Q. Of the different customer segments that</p> <p>8 special markets focused on, were you particularly</p> <p>9 knowledgeable about any one in particular?</p> <p>10 A. Can you repeat that?</p> <p>11 Q. Sure. Of the different customer segments that</p> <p>12 special markets focused on, were you particularly</p> <p>13 knowledgeable about any one segment in particular?</p> <p>14 A. At the end my focus was the DSO segment. The</p> <p>15 other segments were moved to another division such as</p> <p>16 community health centers, but DSOs became a major</p> <p>17 focus.</p> <p>18 Q. What is a DSO?</p> <p>19 A. It's a dental service organization. It's</p> <p>20 basically any -- we defined any group of dentists or</p> <p>21 practices that had three or more locations as a dental</p> <p>22 service organization. We defined anybody above 20 as</p> <p>23 an elite dental service organization.</p> <p>24 Q. Why were DSOs a major focus for Henry Schein</p> <p>25 Special Markets?</p>
14	<p>1 differences between your positions as director and vice</p> <p>2 president?</p> <p>3 A. No.</p> <p>4 Q. Okay. What were your general duties and</p> <p>5 responsibilities as vice president of sales and special</p> <p>6 markets?</p> <p>7 A. I was focused on field sales team numbers, as</p> <p>8 all salespeople under all of those divisions worked out</p> <p>9 of their homes and would travel to their customers. So</p> <p>10 I oversaw all people out on the field and was</p> <p>11 responsible for our community health segment; our DSO,</p> <p>12 dental service organizations; our institutional</p> <p>13 customers such as correctional facilities; our federal</p> <p>14 division which oversaw military bases and VA hospitals.</p> <p>15 And that would be it.</p> <p>16 Q. You managed all of the field sales</p> <p>17 representatives within the special markets division?</p> <p>18 A. I had -- directly I managed the people in</p> <p>19 community health centers, DSOs, and the institutional</p> <p>20 accounts. My directors of school managed directly</p> <p>21 their team, and the manager and director of federal</p> <p>22 directly managed his team, but eventually they all</p> <p>23 reported up to me.</p> <p>24 Q. How many employees did you manage?</p> <p>25 MR. McDONALD: Directly?</p>	16	<p>1 MR. McDONALD: Object to the form.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: That is where we started when we</p> <p>4 started special markets, is with the DSO segment, and</p> <p>5 it was one of the fastest-growing segments in the</p> <p>6 market. And we saw, obviously, a need for a different</p> <p>7 approach to that group, that segment of the business.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Mr. Foley, in your position as vice president</p> <p>10 and director of special markets, were you a part of</p> <p>11 Schein's dental leadership team?</p> <p>12 MR. McDONALD: Object to form.</p> <p>13 THE WITNESS: If I was not part of the</p> <p>14 personal, the private HSD dental team and I was</p> <p>15 included in certain meetings, but not at the executive</p> <p>16 level at Schein.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. And when I was referring to Schein's dental</p> <p>19 leadership team, I should clarify. I'm just focusing</p> <p>20 on the larger dental business within Henry Schein.</p> <p>21 A. Okay. My main focus was always special</p> <p>22 markets, period, for the most -- period.</p> <p>23 Q. Did you develop overall strategy for special</p> <p>24 markets?</p> <p>25 A. I contributed to the strategy of special</p>

17	<p>1 markets, yes.</p> <p>2 Q. How did you contribute?</p> <p>3 A. I would assist with how we would acquire more</p> <p>4 customers within the segments. I would work with our</p> <p>5 marketing teams, with our -- our service teams, our</p> <p>6 software teams as to figure out how to work closely</p> <p>7 with them in finding new customers and growing our</p> <p>8 customer base. So I would do a business plan based on</p> <p>9 those criteria on a yearly basis.</p> <p>10 Q. How did special markets work to acquire more</p> <p>11 customers within the focus customer segments?</p> <p>12 A. Through doing a good job and word of mouth</p> <p>13 that we were a good company to work with, but my sales</p> <p>14 team actively pursued, you know, new contacts, new</p> <p>15 leads, and tried -- and worked at closing those. We</p> <p>16 developed tools to help close them.</p> <p>17 We worked trade shows specifically to those</p> <p>18 segments. We would work, for example, community health</p> <p>19 centers had trade shows in Illinois and other states.</p> <p>20 We also set up in the community health centers</p> <p>21 relationships with a number of prominent buying groups</p> <p>22 that would promote community health centers.</p> <p>23 We also would work with organizations within</p> <p>24 the DSO segment such as the ADSO, and sponsor meeting</p> <p>25 with them and participate in them.</p>	19	<p>1 A. Let's say the ADSO for a membership wanted us</p> <p>2 to join their association or sponsor their association,</p> <p>3 or if a customer wanted us to be part of an</p> <p>4 appreciation event, whatever that could be, if there</p> <p>5 was an issue with somebody being invoiced improperly,</p> <p>6 or if somebody -- a customer needed some type of</p> <p>7 compensation for, you know, us messing up something, I</p> <p>8 could authorize anything up to \$25,000.</p> <p>9 Initially it was 10,000.</p> <p>10 Q. Were there any decisions that you needed to</p> <p>11 seek authority from someone above you for?</p> <p>12 MR. McDONALD: Object to the form; overly</p> <p>13 broad.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: Yes, I would always pass on for</p> <p>16 the most part. I was uncomfortable at a certain level.</p> <p>17 Let's say it was over \$5,000. I would copy this to my</p> <p>18 boss, Hal Muller, and the head of -- the CFO of our</p> <p>19 division, Ilene Rosenbaum, and explain what I was</p> <p>20 needing to do.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Who is Hal Muller?</p> <p>23 A. Hal Muller is president of special markets,</p> <p>24 and he was my direct report to.</p> <p>25 Q. When did you first start reporting to</p>
18	<p>1 Q. What is ADSO?</p> <p>2 A. ADSO? The ADSO stand for, I think, the</p> <p>3 Association of Dental Service Organizations. It's the</p> <p>4 group of DSOs, their own meeting, unlike state meetings</p> <p>5 for private dentists. It's unique to them.</p> <p>6 Q. What is a community health center?</p> <p>7 A. A community health center is a federally</p> <p>8 qualified community health center referred to as a</p> <p>9 FQHC. I don't know the designation. I think it's a</p> <p>10 5013(c) type of group. It's a -- includes a board of</p> <p>11 director, a C-suite, provides dental, medical -- like a</p> <p>12 CFO, CEO. C-suite, s-u-i-t-e.</p> <p>13 And they provide care to the indigent.</p> <p>14 Q. In your position as a director and a vice</p> <p>15 president of special markets, what decisions did you</p> <p>16 have the authority to make?</p> <p>17 A. I had decisions on certain pricing</p> <p>18 flexibility. I had decisions on giving customers</p> <p>19 credit for issues that they may have had. I had</p> <p>20 responsibility authorization up to \$25,000 without</p> <p>21 approval on giving any kind of marketing material,</p> <p>22 whatever I felt necessary for the moment to -- to</p> <p>23 handle any situations.</p> <p>24 Q. You mentioned a \$25,000 authorization. What</p> <p>25 were you authorized to do with \$25,000?</p>	20	<p>1 Mr. Muller?</p> <p>2 A. Again, he was part of special markets when I</p> <p>3 started in software division at 2003. So I didn't</p> <p>4 directly report to Hal Muller at that time. In 2009 I</p> <p>5 directly reported to Hal Muller.</p> <p>6 Q. And Mr. Muller was based in Melville, New</p> <p>7 York; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. And where were you based?</p> <p>10 A. I was home based out of Detroit.</p> <p>11 Q. Were you based in Detroit during your entire</p> <p>12 time at special markets?</p> <p>13 A. My entire time at Henry Schein.</p> <p>14 Q. Did you ever have meetings with Mr. Muller</p> <p>15 while you were a VP and director of special markets?</p> <p>16 A. On a regular basis, yes.</p> <p>17 Q. How often would you meet with Mr. Muller?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 You mean in person? Is that what you're --</p> <p>20 asking?</p> <p>21 MR. SOLOMON: I'm just referring to any sort</p> <p>22 of meetings.</p> <p>23 MR. McDONALD: Okay.</p> <p>24 MR. SOLOMON: In person, phone, e-mail.</p> <p>25 THE WITNESS: Well, on e-mail and phone, we</p>

21	<p>1 talked on a regular basis and e-mailed on a regular</p> <p>2 basis. I would try to get to Melville once every two</p> <p>3 months. And then Hal and I would co-travel to certain</p> <p>4 customer events together and attend certain trade shows</p> <p>5 together.</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. When you say you would e-mail on a regular</p> <p>8 basis, does that mean every day?</p> <p>9 A. Hal? E-mail Hal?</p> <p>10 Q. I'm still referring to Hal.</p> <p>11 A. No, not every day.</p> <p>12 Q. How often would -- let me ask the question.</p> <p>13 What does "regular basis" refer to?</p> <p>14 A. A few times a week.</p> <p>15 Q. And how often would you and Mr. Muller speak</p> <p>16 on the telephone?</p> <p>17 A. At most once a week.</p> <p>18 Q. You referred a moment ago to something called</p> <p>19 "co-travel."</p> <p>20 A. Yes.</p> <p>21 Q. What were you referring to?</p> <p>22 A. Co-travel is when we go to visit with a</p> <p>23 customer, a C-suite at one of our customers, that Hal</p> <p>24 and I may go together as a team and meet with a</p> <p>25 customer and discuss their growth plans or whatever was</p>	23	<p>1 do those by myself.</p> <p>2 Q. And what is Council Connections?</p> <p>3 A. Council Connections is a community health</p> <p>4 center buying group; GPO as they refer -- a buying</p> <p>5 group/GPO based out of here in California, and their</p> <p>6 focus is exclusively community health centers.</p> <p>7 Q. What is CommonWealth?</p> <p>8 A. CommonWealth is identical to -- similar to</p> <p>9 Council Connections, but they re based out of Boston,</p> <p>10 and most of their focus too is community health</p> <p>11 centers, but most of their focus is the East Coast.</p> <p>12 Q. How did you land in your role as a vice</p> <p>13 president or as a director and then a vice president at</p> <p>14 special markets?</p> <p>15 A. In 2009, the person I replaced, Glen Meltzer,</p> <p>16 had left, quit the company. And Hal called me and</p> <p>17 asked if I would accept a promotion from the software</p> <p>18 division and become director of the merchandise side of</p> <p>19 special markets, and I agreed to it.</p> <p>20 Q. Do you know why Mr. Muller wanted to promote</p> <p>21 you to that role?</p> <p>22 A. I -- yes.</p> <p>23 Q. Why?</p> <p>24 A. I did a -- I did a great job in our software</p> <p>25 division in working with special market-type clients</p>
22	<p>1 on their plate at the time. And also when there were</p> <p>2 certain events like the ADSO annual meeting, Hal and I</p> <p>3 would be at that meeting together.</p> <p>4 Q. How often would you engage in co-travel?</p> <p>5 A. Maybe about seven times a year.</p> <p>6 Q. Was co-travel focused on any one type of</p> <p>7 customer?</p> <p>8 A. It would -- later as -- in my VP role, it was</p> <p>9 more with the -- the DSO-type client.</p> <p>10 Q. Did you do any other travel while you were at</p> <p>11 special markets apart from co-traveling?</p> <p>12 A. Yes. I would attend certain events by myself,</p> <p>13 representing Henry Schein, and I would co-travel with</p> <p>14 my team members on a regular basis.</p> <p>15 Q. What kind of events would you attend by</p> <p>16 yourself?</p> <p>17 A. There were certain -- like, there's one would</p> <p>18 be the ADAGP, the American Dental Association of Group</p> <p>19 Practices. Hal wouldn't attend that; I would attend</p> <p>20 it. So whenever Hal -- we would -- we would share out</p> <p>21 certain events, and he would go to certain ones; I</p> <p>22 would go to others.</p> <p>23 For example, I also would attend Council</p> <p>24 Connections, which was a buying group, and</p> <p>25 CommonWealth, their association meetings, and I would</p>	24	<p>1 including all the community health centers, and they</p> <p>2 had exceptional growth in the software division while I</p> <p>3 managed it. And he thought I'd be a perfect fit as we</p> <p>4 had the exact same customer base, moving me into the</p> <p>5 more revenue stream of, you know, supplies and service.</p> <p>6 Q. Apart from Mr. Muller, did you report directly</p> <p>7 to anyone else at special markets?</p> <p>8 A. No.</p> <p>9 Q. Did you interact -- strike that.</p> <p>10 Are you familiar with Mr. Tim Sullivan?</p> <p>11 A. Yes.</p> <p>12 Q. Who is Mr. Sullivan?</p> <p>13 A. He is the president of our private HSD</p> <p>14 division.</p> <p>15 Q. Did you ever interact with Mr. Sullivan while</p> <p>16 you were at special markets?</p> <p>17 A. Yes.</p> <p>18 Q. How often did you interact with Mr. Sullivan?</p> <p>19 A. Maybe five times a year.</p> <p>20 Q. Were these generally in-person interactions?</p> <p>21 A. Again, I consider an e-mail an interaction.</p> <p>22 Is that correct to you, or are you asking face-to-face?</p> <p>23 Q. Just interactions in general. That could be</p> <p>24 in person, e-mail, just communications with</p> <p>25 Mr. Sullivan.</p>

25

1 A. Okay. I would communicate with him
2 occasionally, let's say, in e-mails about a dozen times
3 a year. And then we would run into -- we would work
4 together -- not work together. We would see each other
5 at certain meetings at Henry Schein. For example, we
6 have a meeting for all of our HSD team members every
7 year, and I would attend that meeting as a
8 representative of special markets. Tim Sullivan would
9 be at that meeting.

10 **Q. Is that an annual meeting?**

11 A. Yes.

12 **Q. Was anyone else from special markets present
13 at that meeting?**

14 A. It would be either -- it would be, yes, Hal
15 Muller and myself.

16 **Q. And why did -- why was there a representative
17 from special markets at that meeting?**

18 A. We worked closely with our HSD team, as the
19 service and equipment comes out of that group. A
20 number of our field sales consultant, FSCs, are
21 assigned to our customers, and they would be at that
22 meeting. So generally we wanted to work the best
23 synergy as possible, so we would be at their -- show
24 respect and be at their meeting.

25 **Q. And would you have any conversations with**

26

1 **Mr. Sullivan at those meetings?**

2 A. Just general, how you doing, you know, basic
3 ones like that.

4 **Q. Do you recall who else was present at those
5 meetings from Henry Schein Dental?**

6 MR. McDONALD: Object to the form; overly
7 broad.

8 THE WITNESS: Well, the entire -- you know,
9 it's their annual meeting, so their entire executive --
10 their entire executive team would be at those meetings
11 as well as zone managers and regional managers. It's a
12 very large meeting.

13 BY MR. SOLOMON:

14 **Q. About how many people would you say were
15 usually present at those meetings?**

16 A. I don't have the idea of the size of our HSD
17 team.

18 **Q. When did these meetings usually occur?**

19 A. Once a year. Oh, I'm sorry. Hotel rates are
20 cheap in a hot place, so it would be July.

21 **Q. And where were these meetings held?**

22 A. They would be, like, at Orlando at the Gaylord
23 Hotel, or this year it was Gaylord in Nashville,
24 Tennessee. So around the country.

25 **Q. Do you recall what those meetings were called?**

27

1 A. No.

2 **Q. Do you recall whether those meetings had a
3 specific name?**

4 MR. McDONALD: Object to the form; asked and
5 answered.

6 THE WITNESS: No.

7 BY MR. SOLOMON:

8 **Q. Have you ever spoken with Mr. Sullivan on the
9 telephone?**

10 A. No. On a conference call. I'd been on a
11 couple of conference calls that he's been involved in.

12 **Q. About how many conference calls?**

13 A. Maybe two a year.

14 **Q. What was the purpose of those conference
15 calls?**

16 MR. McDONALD: Object to the form; overly
17 broad.

18 THE WITNESS: I really don't remember the
19 specifics of any of those calls.

20 BY MR. SOLOMON:

21 **Q. Did you interact with -- strike that.**

22 **Are you familiar with Mr. Dave Steck?**

23 A. Yes.

24 **Q. Who is Mr. Steck?**

25 A. He is vice president -- he was vice president

28

1 at the time of the field sales team for -- for our
2 private division HSD, my counterpart for the private
3 division. I was vice president of special markets.

4 **Q. Do you know whether Mr. Steck reported to
5 Mr. Sullivan?**

6 A. Yes, he did.

7 **Q. Have you ever communicated with Mr. Steck?**

8 A. Yes.

9 **Q. About how many times have you spoken or
10 communicated with Mr. Steck?**

11 A. Maybe 24 times a year.

12 **Q. What was the purpose for your communications
13 with Mr. Steck?**

14 MR. McDONALD: Object to the form; overly
15 broad.

16 THE WITNESS: As he oversaw the field sales
17 consultant team, the FSCs. Can I refer to them as FSCs
18 moving forward?

19 BY MR. SOLOMON:

20 **Q. Sure.**

21 A. As he oversaw the FSCs, he and I would talk a
22 couple times a month about issues with, you know --
23 with any issues with FSCs, and between special markets
24 and between Henry Schein Dental, assignment of
25 accounts, you know, can they be assigned, can't they be

7 (Pages 25 to 28)

29	31
<p>1 assigned.</p> <p>2 Q. Were these communications by phone, e-mail, or</p> <p>3 in person?</p> <p>4 A. The vast majority of my communications with</p> <p>5 most people are by e-mail.</p> <p>6 Q. Okay. Have you ever met with Mr. Steck in</p> <p>7 person?</p> <p>8 A. At -- at trade shows, similar to Tim Sullivan.</p> <p>9 Q. What would -- strike that.</p> <p>10 Did Mr. Sullivan have any authority over you?</p> <p>11 A. None.</p> <p>12 Q. Did Mr. Sullivan have any authority over</p> <p>13 Mr. Muller?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Okay. While you were vice president and</p> <p>16 director at special markets, you mentioned you had a</p> <p>17 number of direct reports.</p> <p>18 Where were your direct reports located?</p> <p>19 A. My federal direct was located in North</p> <p>20 Carolina, Charlotte, and my dental school direct report</p> <p>21 was based out of Fort Lauderdale, Florida.</p> <p>22 Q. Who were your direct reports?</p> <p>23 A. Can you -- you asked me for directors or</p> <p>24 direct reports?</p> <p>25 Q. I'm sorry. I'm asking for direct reports.</p>	<p>1 then I had Kenny Levenstein out of Palmdale. That</p> <p>2 would be it.</p> <p>3 Q. All of these individuals are strategic account</p> <p>4 managers?</p> <p>5 A. Correct, except for the person out of North</p> <p>6 Carolina. He was director of federal sales, Mark</p> <p>7 Schreder. And John Bellerio was the director of dental</p> <p>8 schools out of Fort Lauderdale.</p> <p>9 Q. Who is Kathleen Titus?</p> <p>10 A. Kathleen Titus once reported to me, and when</p> <p>11 we developed our mid-market team and we moved community</p> <p>12 health centers to our other division, she -- she</p> <p>13 transferred to that division.</p> <p>14 Q. And what --</p> <p>15 A. Go ahead.</p> <p>16 Q. What was Kathleen's title when she reported to</p> <p>17 you?</p> <p>18 A. She was a SAM also.</p> <p>19 Q. Was Ms. Titus based in Melville, New York?</p> <p>20 A. No. She was based in Sacramento area.</p> <p>21 Q. How often would Ms. Titus provide reports to</p> <p>22 you regarding business when she reported to you?</p> <p>23 MR. McDONALD: Object to the form; overly</p> <p>24 broad.</p> <p>25 THE WITNESS: My team was to provide weekly</p>
<p>1 A. Okay. I then had a representative out of Bay</p> <p>2 City, Michigan; one in Los Angeles; one in --</p> <p>3 MR. McDONALD: Let me just -- are you going to</p> <p>4 ask him the names?</p> <p>5 MR. SOLOMON: Yeah. I'll just re-ask the</p> <p>6 question.</p> <p>7 MR. McDONALD: Do it all at once.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Who were your direct reports at Henry Schein</p> <p>10 Special Markets?</p> <p>11 MR. McDONALD: And where were they located; is</p> <p>12 that what you want to know too? Get it all done.</p> <p>13 BY MR. SOLOMON:</p> <p>14 Q. You can also tell me where they were located.</p> <p>15 A. Generally, Becky Demers, D-e-m-e-r-s, in</p> <p>16 Michigan; Daniel Hobson in Los Angeles.</p> <p>17 Q. If you can also tell me their titles, that</p> <p>18 would be helpful.</p> <p>19 A. Okay. Each of these will be what we call</p> <p>20 "strategic account managers," SAMs. Okay. So Becky</p> <p>21 Demers was a SAM, as well as Daniel Hobson. Then I had</p> <p>22 Casey Silvas out of Kansas City as a SAM. I had Dave</p> <p>23 Muller out of New York. I had Deb Johnson out of New</p> <p>24 York. And right towards the end, I had Mary Keller out</p> <p>25 of Phoenix. I'm trying to remember everything. And</p>	<p>1 reports updates as to progress with -- or just updates</p> <p>2 as to where they stood with their customers, anything</p> <p>3 they'd like to share with the management, upper</p> <p>4 management. So I requested weekly reports. I very</p> <p>5 seldom got them, but on a weekly basis, I requested</p> <p>6 reports.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. How often did Ms. Titus provide weekly reports</p> <p>9 to you?</p> <p>10 A. Probably once a month.</p> <p>11 Q. Who is Andrea Hight?</p> <p>12 A. Andrea Hight once reported to me as a SAM.</p> <p>13 She too went -- when Kathleen Titus took her transfer</p> <p>14 over to our mid-market division, Andrea Hight also went</p> <p>15 over to the mid-market division. So she reported to me</p> <p>16 up to about 2014. I think that's when the transfers --</p> <p>17 when people started to move.</p> <p>18 Q. And when did Ms. Hight first start reporting</p> <p>19 to you?</p> <p>20 A. She was with me day one when I started in</p> <p>21 2009.</p> <p>22 Q. Where was Ms. Hight based?</p> <p>23 A. Salt Lake City.</p> <p>24 Q. How often would Ms. Hight provide reports to</p> <p>25 you?</p>

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1 A. She was better. About once a week.
 2 **Q. You mentioned that Ms. Hight and Ms. Titus**
 3 **were transferred from special markets to Henry Schein**
 4 **Dental at some point, right?**
 5 A. Yes.
 6 **Q. When did that occur?**
 7 A. I think 2013, 2014 is when we split off the
 8 community health center segment. And our DSO segment
 9 for groups under 20 locations, we handed over those
 10 segments to our HSD division. So there was a transfer
 11 period. It wasn't just a quick hand-off. And during
 12 that time, Kathleen went -- moved with that division,
 13 and then Andrea moved with that division.
 14 **Q. Why did that transfer occur?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Meaning why did we split the
 17 divisions?
 18 MR. SOLOMON: Right.
 19 THE WITNESS: Okay.
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: The -- we saw that the -- the
 22 DSO segment, the larger groups, the top 50, were
 23 growing quickly, and their demands for attention and
 24 focus were growing. So therefore, I took over a team
 25 that would focus exclusively on that. And since these

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1 other segments, our field sales consultants called on
 2 them, we felt that those segments could be handled at
 3 this time better by our HSD division.
 4 BY MR. SOLOMON:
 5 **Q. Do you recall who made that decision?**
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: That would have been upper
 8 management decision between Hal Muller and other
 9 executive leads.
 10 BY MR. SOLOMON:
 11 **Q. Would someone from Henry Schein Dental have**
 12 **been involved in that decision?**
 13 A. Yes.
 14 MR. McDONALD: Object to the form. Hang on.
 15 THE WITNESS: Oh.
 16 MR. McDONALD: Object to the form; lack of
 17 foundation.
 18 BY MR. SOLOMON:
 19 **Q. And why were -- why was Ms. Hight transferred**
 20 **from special markets to Henry Schein Dental when that**
 21 **customer transfer occurred?**
 22 A. She preferred working with our community
 23 health center and our smaller customers versus the
 24 larger ones.
 25 **Q. Why was Ms. Titus transferred from special**

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1 **markets to Henry Schein Dental when that customer**
 2 **transfer occurred?**
 3 A. She preferred working with community health
 4 center, as she helped build that segment with me.
 5 **Q. Do you recall how many customers were**
 6 **transferred from special markets to Henry Schein Dental**
 7 **as part of that customer transfer process?**
 8 A. Approximately 125 DSOs were transferred to
 9 HSD, and I don't know the exact number of community
 10 health centers we had at the time.
 11 **Q. Were these customers transferred to a specific**
 12 **division within Henry Schein Dental?**
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I don't understand the layout of
 15 Henry Schein Dental.
 16 BY MR. SOLOMON:
 17 **Q. Do you recall whether this was around the same**
 18 **time that the mid-market division was created within**
 19 **Henry Schein Dental?**
 20 A. Yes. That's how they referred to it; mid
 21 market.
 22 **Q. Do you know whether the customers that were**
 23 **transferred from special markets were transferred to**
 24 **the mid-market division within Henry Schein Dental?**
 25 A. That's where they went, correct.

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1 **Q. Do you know why they were transferred to the**
 2 **mid-market division?**
 3 MR. McDONALD: Object to the form; lack of
 4 foundation.
 5 THE WITNESS: We -- we simply created a new
 6 segment called "mid market" within Henry Schein Dental
 7 that was still associated somehow with special markets,
 8 but I don't want to speculate.
 9 BY MR. SOLOMON:
 10 **Q. What is mid market?**
 11 A. We defined "mid market" as customers, group
 12 practices that were between 2 and 20 locations and did
 13 less than \$1 million in merchandise purchases per year,
 14 as well as any community health center.
 15 **Q. Do you recall whether Mr. Muller supported the**
 16 **decision to move those customers to Henry Schein**
 17 **Dental?**
 18 A. Yes.
 19 **Q. Do you recall whether there was any**
 20 **disagreement between Henry Schein Dental and special**
 21 **markets regarding that transfer of customers?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I'm not aware of any.
 24 BY MR. SOLOMON:
 25 **Q. Who is Paul Berkey?**

9 (Pages 33 to 36)

37	<p>1 A. Paul Berkey is the director of merchandise. 2 He handles our pricing exclusively for special markets. 3 Q. Does Mr. Berkey report to you directly? 4 A. No. 5 Q. Who does Mr. Berkey report to? 6 A. I don't know. 7 Q. Are you at all familiar with Henry Schein's 8 medical supplies division? 9 A. Yes. 10 Q. What do you know by Henry Schein's medical 11 supplies division? 12 MR. McDONALD: Object to the form; vague. 13 THE WITNESS: When I oversaw the community 14 health center segment, all community health centers 15 provide medical as well as dental services, and I 16 worked with our medical team in creating pricing plans 17 linked to their GPOs to provide an easy way for offices 18 to order dental and medical supplies from Henry Schein. 19 BY MR. SOLOMON: 20 Q. Did you work -- strike that. 21 Were those medical GPOs? 22 A. Yes. 23 Q. Who did you work with from Henry Schein 24 medical? 25 A. I -- I worked mostly with the sales, regional</p>	39	<p>1 Go ahead. 2 THE WITNESS: I don't have any idea. 3 BY MR. SOLOMON: 4 Q. Does Henry Schein's medical division have a 5 special markets department? 6 A. It is not under the name of special markets. 7 Q. What is it called? 8 A. IDN, I believe. Distributed networks. 9 Something along those lines. 10 Q. You don't recall the exact name? 11 A. No. Drawing a blank. 12 Q. Does pricing differ between Henry Schein's 13 dental division and Henry Schein's medical division? 14 MR. McDONALD: Object to the form; lack of 15 foundation. 16 THE WITNESS: Dental -- yes, we -- medical had 17 their pricing plans; dental has their pricing plans. 18 Two separate sales teams. 19 BY MR. SOLOMON: 20 Q. Is there any difference between the prices 21 charged to customers -- strike that. 22 Does Henry Schein's dental segment charge 23 higher prices than the medical segment? 24 MR. McDONALD: Object to the form; overly 25 broad; vague; lack of foundation.</p>
38	<p>1 sales managers, zone managers that oversaw the FSCs on 2 the medical side. On occasion I would work with the 3 pricing committees as far as creating dental/medical 4 plans. 5 Q. Who did you work with, specifically? 6 A. I don't recall any names. It was minimal. 7 Q. Why did you work with Henry Schein s medical 8 segment on those projects? 9 A. For synergistic purposes, medical may have a 10 community health center that dental is not in. So we'd 11 work together to hope that they would introduce our 12 dental team and vice versa. 13 We had a big -- we had a good market share of 14 community health centers and medical, we would 15 introduce our medical team to help win medical business 16 within those community health centers. 17 Q. Did that relationship ever result in new 18 business for Henry Schein's special markets division? 19 A. Yes. 20 Q. How many new customers would you say were 21 gained through that relationship? 22 MR. McDONALD: Object to -- 23 THE WITNESS: I don't have -- 24 MR. McDONALD: Hang on a second. Object to 25 the form.</p>	40	<p>1 THE WITNESS: I'm not -- it is my 2 understanding that there's much more volume in the 3 medical side and medical pricing is lower, in general, 4 than dental pricing. 5 BY MR. SOLOMON: 6 Q. And what is your understanding based on? 7 A. When working with the GPOs that -- on numerous 8 occasions, crossover items would be less, like gloves 9 on the medical side than on the dental, but then I 10 would work out sales plans to have the cross items 11 comparably priced so that they would -- that the 12 customer could order right from dental and get 13 crossover items at the same price. 14 Q. What do you mean by "crossover items"? 15 A. In dental there's certain specific items that 16 only a dentist would use like a composite material in a 17 mouth, and it would never be used by medical. But 18 gloves, masks, you know, gowns, things like that, you 19 know, infection control products primarily are used by 20 both medical and dental. So those crossover items, we 21 would pick out those and price them similarly between 22 the two plans. 23 Q. Were they priced cheaper for dental customers 24 when you worked with Henry Schein medical? 25 MR. McDONALD: Object to the form.</p>

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<p>1 THE WITNESS: If the customer was both with 2 dental and with a community health center, for example, 3 that was buying medical and dental from us, the price 4 would be identical for those crossover items whether 5 they bought from medical or whether they bought from 6 dental on crossover items only. 7 BY MR. SOLOMON: 8 Q. Would those customers receive cheaper prices 9 for those crossover items as compared to the prices 10 charged by Henry Schein's dental division? 11 MR. McDONALD: Object to the form; lack of 12 foundation. 13 THE WITNESS: I need clarification on dental 14 division. A private division? 15 BY MR. SOLOMON: 16 Q. Henry Schein special markets. 17 A. If a customer was exclusively dental, our 18 prices could be higher for certain products than 19 similar product in medical, yes. 20 Q. Did you regularly interact with anyone from 21 Henry Schein medical? 22 A. No. 23 Q. How would you describe your relationship with 24 Mr. Muller? 25 A. He was my direct boss. We've known each other</p>	<p>1 "relationship"? 2 BY MR. SOLOMON: 3 Q. Did the -- did Henry Schein Dental and Special 4 Markets work closely? 5 A. Yes, we worked closely together. 6 Q. For what purposes? 7 A. The -- the equipment in special markets, we 8 had a special markets equipment team that I worked 9 closely with and also a special markets service team 10 which services equipment within the dental offices. 11 Those teams reported directly through Henry Schein 12 Dental. So we had to interface with that division on a 13 regular basis whenever there were equipment and service 14 issues because we were continually trying to bring in 15 our service team, our equipment team, our software team 16 into those. So we were dependent on those. 17 And then on a number of customers, we do have 18 FSCs assigned which report through HSD. So we had to 19 make sure we were supporting their programs and paying 20 them properly. 21 Q. You're referring to special markets customers 22 that have FSCs assigned to them; is that right? 23 A. Correct. 24 Q. Why would a special markets customer have an 25 HSD, FSC assigned to it?</p>
<p>1 for -- before my start at -- no, at my start at Henry 2 Schein since 2003. And we -- we re socially friendly 3 together, and that's how I would describe it. 4 Q. Do you still keep in touch with Mr. Muller? 5 A. Once a month we talk. He was a friend. 6 Q. Do you still keep in touch with anyone else 7 from Henry Schein? 8 A. Becky Demers was also a friend of mine who I 9 hired into special markets. And on occasion I talked 10 to Pam Reece, Pam Reece who replaced me. More as she 11 was a friend too when we worked together in the 12 software division. 13 Those are, basically, the only three people I 14 have maintained contact with since I've retired. 15 Q. What was your reason for retiring from Henry 16 Schein? 17 A. Too much travel. I have been traveling for -- 18 in my prior role, I had been traveling for 32 years, so 19 I was burned out with travel, and I can't take -- I'm 20 not going to move to Melville. 21 Q. What was the relationship between Henry Schein 22 Dental and Special Markets when you were employed by 23 Henry Schein? 24 MR. McDONALD: Object to the form; vague. 25 THE WITNESS: Can you tell me what you mean by</p>	<p>1 A. Certain customers are smaller. Let's say you 2 take an office with 20 locations in Las Vegas. They 3 may have an FSC calling on all 20 of those locations. 4 Generally as a customer got larger, they -- they 5 requested that they not have FSCs call on their 6 offices, but smaller ones, we might need for a while. 7 Q. How else did special markets and HSD work 8 together? 9 A. That would be basically it. 10 Q. About how often would you consult with someone 11 from Henry Schein Dental when you worked at special 12 markets? 13 A. I would probably about once or twice a week. 14 Q. Would you describe the relationship as 15 harmonious between Henry Schein Dental and special 16 markets? 17 A. Yes. 18 Q. Did you believe that the two entities always 19 worked well together? 20 A. Yes. 21 Q. Were there ever any disagreements between the 22 two entities? 23 MR. McDONALD: Object to the form; overly 24 broad; lack of foundation. 25 THE WITNESS: Yes.</p>

45	<p>1 BY MR. SOLOMON:</p> <p>2 Q. What kind of disagreements?</p> <p>3 MR. McDONALD: Same objection.</p> <p>4 THE WITNESS: How much an FSC should be paid</p> <p>5 on certain accounts that they're assigned to.</p> <p>6 Generally FSCs may want to be assigned to a customer</p> <p>7 when the customer doesn't want them assigned. They</p> <p>8 don't like it.</p> <p>9 When a DSO would acquire one of their</p> <p>10 practices, they would -- and that DSO does not want</p> <p>11 assignment, we would then have to remove the FSC from</p> <p>12 that account.</p> <p>13 However, we created a severance package on</p> <p>14 that account kind of for the FSC so it wouldn't be so</p> <p>15 harsh on them. That's how we would work harmoniously,</p> <p>16 by offering six months of revenue to the FSC so they</p> <p>17 could find other business.</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. Was Henry Schein Dental satisfied with that</p> <p>20 severance plan?</p> <p>21 A. Yes.</p> <p>22 MR. McDONALD: Object to the form.</p> <p>23 Go ahead.</p> <p>24 THE WITNESS: Yes.</p> <p>25 BY MR. SOLOMON:</p>	47	<p>1 inventory management in our Web systems. Accounting</p> <p>2 functionalities from a centralized point of view.</p> <p>3 We had -- we were continually developing</p> <p>4 things that would -- you know, we had enterprise</p> <p>5 software applications that would run multiple</p> <p>6 locations, no limitations, et cetera, so...</p> <p>7 Q. Were the value-added services that Henry</p> <p>8 Schein Special Markets provided to its customers only</p> <p>9 for special markets' customers?</p> <p>10 A. There were some crossovers but they were --</p> <p>11 the needs of the big groups were different than the</p> <p>12 private practices. So we had unique value-adds and</p> <p>13 similar ones.</p> <p>14 Q. How did special markets help to recruit</p> <p>15 dentists wanting to sell their dental practices?</p> <p>16 A. We would -- we had -- Schein had -- I don't</p> <p>17 know how you refer to it -- a brokerage office that</p> <p>18 sells dental practices, that a dentist could actually</p> <p>19 say, "I want to sell my practice," and we would work</p> <p>20 with some of their team members to -- to help them push</p> <p>21 those customers more towards special markets versus</p> <p>22 selling them in the HSD world.</p> <p>23 We also allowed some of our DSO customers to</p> <p>24 present to those sales teams of their value-add as to</p> <p>25 why behoove their client to join Heartland Dental, for</p>
46	<p>1 Q. Were there any other kinds of disagreements</p> <p>2 between Henry Schein Dental and special markets that</p> <p>3 you recall?</p> <p>4 A. No.</p> <p>5 Q. Did you believe that Mr. Sullivan and</p> <p>6 Mr. Muller worked well together?</p> <p>7 A. Yes.</p> <p>8 Q. What does the term "one Schein" refer to?</p> <p>9 A. It refers to us providing everything that a</p> <p>10 dental practice may need. It was referred more by our</p> <p>11 private division, and they refer to it as a wheel that</p> <p>12 we would supply technology, software, service,</p> <p>13 equipment, merchandise, consulting.</p> <p>14 Q. So that term had no application to Henry</p> <p>15 Schein special markets?</p> <p>16 A. We had a different way of presenting it. We</p> <p>17 had value-add programs that were similar to that. Yes,</p> <p>18 he did. Sorry. Let's say that. Yes. In a different</p> <p>19 way.</p> <p>20 Q. What kinds of value-add services did Henry</p> <p>21 Schein Special Markets provide to its customers?</p> <p>22 A. We would help them recruit dentists that were</p> <p>23 wanting to move to -- sell their practices. We'd help</p> <p>24 them recruit dentists right from dentals, as we had the</p> <p>25 dental school market. We would help them with</p>	48	<p>1 example, or Aspen Dental.</p> <p>2 Q. Do you recall whether that brokerage office</p> <p>3 helped move customers from Henry Schein Dental to</p> <p>4 special markets?</p> <p>5 A. Rarely it worked, but it -- yes.</p> <p>6 Q. When you say "rarely," what do you mean?</p> <p>7 A. The majority of the brokerage offices would</p> <p>8 simply sell to another practice locally, private,</p> <p>9 versus go to the -- go to our group practices.</p> <p>10 Q. Would they sell to other Henry Schein</p> <p>11 customers?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 THE WITNESS: I'm not sure.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Was the brokerage office a part of Henry</p> <p>16 Schein, or was it a separate entity?</p> <p>17 MR. McDONALD: Object to the form; lack of</p> <p>18 foundation.</p> <p>19 THE WITNESS: I believe we had -- I don't</p> <p>20 know.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. So we talked a little bit about your Henry</p> <p>23 Schein Special Markets' customer segments. I'd just</p> <p>24 like to go over them and confirm that those are the</p> <p>25 correct segments.</p>

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1 **You've mentioned institutional dental service**
2 **organizations, federal government customers, and dental**
3 **schools. Do I have that correct?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: When I left, those were the
6 divisions, yes.

7 BY MR. SOLOMON:

8 **Q. Do you know whether any divisions were added**
9 **or created after your departure from special markets?**

10 A. I'm unaware of any. I don't know.

11 **Q. What types of customers fell under the**
12 **umbrella of institutional customers?**

13 A. It would be correctional facilities, you know,
14 Department of Corrections like California Department of
15 Corrections; private correctional facilities;
16 hospital-based dentists, primarily children's
17 hospitals; and state -- state contracts like MMCAPs.
18 You know, state and county health departments were
19 under institutional.

20 MMCAPs was a buying group for -- underneath
21 that division.

22 **Q. What does MMCAPs stand for?**

23 A. Multi -- I -- I can't remember the -- it's out
24 of Minnesota. So I don't know if it's Minnesota or
25 it's Minnesota, you know, Managed something. I can't

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1 remember exactly. But it's out of the Twin Cities, and
2 it's national for the whole country. It's M-M-C-A-P.

3 **Q. Do you recall what type of buying group that**
4 **was?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: It was a state -- state-managed,
7 was State of Minnesota buying group that focused on
8 county health and, you know, basically, county
9 state-run contracts.

10 BY MR. SOLOMON:

11 **Q. Have the types of customers that fell under**
12 **special markets changed over time?**

13 MR. McDONALD: Well, object to the form, and
14 it's asked and answered.

15 If you're asking him if those categories were
16 the same earlier than when he left, is that -- is that
17 your question?

18 BY MR. SOLOMON:

19 **Q. My question is just: Over time while you were**
20 **at special markets, have the customer categories**
21 **changed?**

22 A. Oh, no.

23 MR. McDONALD: Well, I want us to have a clear
24 record. He's already talked about CHCs that were
25 special markets that left. And so do you need him to

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1 say that again? Because I want the record clear that
2 that was a customer that --

3 BY MR. SOLOMON:

4 **Q. I'm just talking about -- we'd been talking**
5 **about the four segments and --**

6 A. The institution.

7 **Q. Right.**

8 A. The institutional, schools, DSOs, right.

9 And -- and institutional, schools, DSOs and federal.

10 **Q. And that remained the same the entire time you**
11 **were at special markets?**

12 A. The entire time after we changed over to mid
13 market. I remember I had -- I had community health
14 center vocational schools and smaller DSOs too, but
15 those -- those changed and went to mid market.

16 **Q. What customer segment did those fall under**
17 **before they were moved to mid market?**

18 A. Under special markets.

19 **Q. Did they have their own customer segment**
20 **category?**

21 A. Yes.

22 **Q. What was it called?**

23 A. Well, FQHC was called CHCs. Under vocational
24 schools, it was called "vocational." Under DSOs didn't
25 have a separate. They were all lumped together with

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1 the big ones and the small ones. It still stayed the
2 same.

3 **Q. Do special markets customers get prices that**
4 **are discounted when compared to prices offered to**
5 **private practice and middle-market customers?**

6 MR. McDONALD: Object to the form; lack of
7 foundation.

8 THE WITNESS: I'm not aware of the pricing
9 structure now for mid market versus private practice or
10 DSOs.

11 BY MR. SOLOMON:

12 **Q. What are the benefits that customers within**
13 **special markets receive as compared with Henry Schein**
14 **Dental or mid market?**

15 A. Well, we have much more volume at a customer.
16 We might have a customer doing 30 million a year in
17 merchandise. So their pricing would be -- could be
18 lower than a private practice and could be lower than a
19 group only doing \$500,000 or a million dollars with us.

20 So I don't see it as being -- interdivisional,
21 but more so based on the size of the actual customer.

22 **Q. So special markets offers lower prices to its**
23 **customers; is that right?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: Not overall. To the largest

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1 customers.
 2 BY MR. SOLOMON:
 3 **Q. How does Henry Schein special markets secure**
 4 **lower pricing for its customers?**
 5 A. We -- we actually negotiate with our vendor
 6 partners per customer. I'm going to talk about our top
 7 50 customers. So we would work with, for example, 3M.
 8 And one of our customers, based on volume, 3M would
 9 give us discounted pricing. We would give that
 10 customer discounted pricing that we would honor and
 11 thus charge a lower price to that customer on items not
 12 on their formulary. They were provided, at max, a
 13 20 percent off catalog price.
 14 **Q. Are there any other ways in which Henry Schein**
 15 **special markets secured lower pricing for its**
 16 **customers?**
 17 A. No.
 18 **Q. How many manufactures did Henry Schein special**
 19 **markets work with, in general?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I don't know the number.
 22 There's unlimited. We have 25,000 products that we
 23 sell.
 24 BY MR. SOLOMON:
 25 **Q. How about if it's just limited to the**

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1 **merchandise category?**
 2 A. Even so, that's what I was -- I'm sorry. I
 3 should clarify. That was merchandise. There was a lot
 4 of different vendors in the merchandise, and our
 5 customers touched upon many of those.
 6 **Q. Do you recall who special markets' top**
 7 **manufacturer partners were?**
 8 A. Yes.
 9 **Q. Who were they?**
 10 A. 3M; Dentsply; Danaher, D-a-n-a-h-e-r; VOCO.
 11 And that would be primarily the top five.
 12 MR. McDONALD: That's only four.
 13 THE WITNESS: Oh.
 14 MR. McDONALD: Did you say Kerr?
 15 THE WITNESS: Kerr and Danaher would be the
 16 same. Sorry.
 17 MR. McDONALD: Okay.
 18 BY MR. SOLOMON:
 19 **Q. So that's -- Kerr and Danaher are the same**
 20 **company?**
 21 A. Yes. They're subdivisions, correct.
 22 **Q. So we have four?**
 23 A. Okay. Yeah.
 24 **Q. When Henry Schein Special Markets moved**
 25 **customers to Henry Schein Dental around 2014, did it**

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1 **experience a loss in overall revenue?**
 2 A. No.
 3 **Q. How do you know?**
 4 A. I just know that there was -- I heard that
 5 everything transitioned very well over. I was very
 6 focused on the transition to make sure
 7 that everybody -- it was invisible to the customer, the
 8 transfer.
 9 **Q. You said that you heard everything**
 10 **transitioned very well.**
 11 **Who did you hear that from?**
 12 A. From Kathleen Titus and Andrea Hight, who were
 13 the ones that reported to me.
 14 **Q. And how do you know that there was no loss in**
 15 **overall revenue for Henry Schein Special Markets?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I think I would have heard about
 18 it.
 19 BY MR. SOLOMON:
 20 **Q. But you have no personal knowledge of that,**
 21 **right?**
 22 A. Correct.
 23 **Q. Okay. How would you have heard about it if**
 24 **that had occurred?**
 25 A. Because I was part of the transition, I would

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1 have had a complaint saying, hey, we're losing revenue;
 2 this isn't going smoothly. I hear nothing like that,
 3 so I assumed everything just transferred over. Again,
 4 it was more of a transfer internally than it was
 5 anything else. I could see no reason why there would
 6 be any loss of revenue.
 7 **Q. How were you a part of transition?**
 8 A. As a number of my team members went with the
 9 transition, and as I oversaw the community health
 10 center segment, and as I oversaw those 120 DSOs, I
 11 helped -- I helped with -- that division take over
 12 those accounts and shared any information possible that
 13 I had. And, obviously, they took a couple of my team
 14 members with them who took that knowledge with them,
 15 and they were very strong team members.
 16 **Q. Who else was involved in the transition?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Our pricing committee, Paul
 19 Berkey and Hal Muller; and Annette Martino in our
 20 marketing division.
 21 BY MR. SOLOMON:
 22 **Q. Was anyone from Henry Schein Dental involved**
 23 **in the transition?**
 24 A. I'm not familiar with their management
 25 structure.

14 (Pages 53 to 56)

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1 **Q. Did you interface with anyone from Henry**
 2 **Schein Dental as part of the transition?**
 3 A. No.
 4 MR. McDONALD: So, Ronnie, we've been going
 5 over an hour.
 6 MR. SOLOMON: Yeah.
 7 MR. McDONALD: Whenever you get there.
 8 MR. SOLOMON: I think we're there. Let's go
 9 ahead and take a break. I was just going to suggest
 10 that also.
 11 (Brief recess.)
 12 MR. SOLOMON: Back on the record at 10:27.
 13 BY MR. SOLOMON:
 14 **Q. Mr. Foley, I'm not sure if I asked you this**
 15 **already. What year did you retire in?**
 16 A. 2016.
 17 **Q. Okay. What month?**
 18 A. December.
 19 **Q. Okay. Mr. Foley, we've mentioned the term**
 20 **"GPO," "group purchasing organization," today.**
 21 **What does the term "group purchasing**
 22 **organization" mean to you?**
 23 A. It -- it has a dual meaning which is
 24 confusing, but GPO in itself in the medical world is --
 25 they do not exist in the dental realm, but our buying

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1 groups, we may cross over and say buying group/GPO. So
 2 in that terminology, GPO means buying group to me in
 3 the dental world.
 4 **Q. What is your understanding of a buying group?**
 5 A. A buying group is an entity that offers
 6 services to end users, marketing plans, and reduced
 7 costs on supplies, reduced cost on phones and other
 8 services to -- to a select group of dentists.
 9 **Q. And how are buying groups and group purchasing**
 10 **organizations different?**
 11 A. I consider them to be the same. A GPO on the
 12 medical side is a very large entity. And, again, I --
 13 they do not exist in the -- in the definition of
 14 "medical GPOs" on the dental side.
 15 **Q. So is it just a terminology difference in your**
 16 **mind?**
 17 A. Yes. I say a buying group, and somebody will
 18 refer to it in GPOs in the dental. Council Connections
 19 may consider themselves a GPO, but they're not in the
 20 sense of a GPO like they are in the medical world. So
 21 I call them a "buying group/GPO."
 22 **Q. So how are GPOs on the medical side different**
 23 **from GPOs and buying groups on the dental side?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I -- high volume, owned by

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1 hospitals or something. I don't understand them on the
 2 medical side.
 3 BY MR. SOLOMON:
 4 **Q. How do you know that they're different from**
 5 **GPOs and buying groups on the dental side?**
 6 A. That they're more prevalent on the medical
 7 side and they're based on huge volume, and there's no
 8 huge volume on the dental side.
 9 **Q. And what is your understanding based on?**
 10 A. Working with our medical team on community
 11 health centers, working with certain GPOs.
 12 **Q. Have you ever referred to -- strike that.**
 13 **Have you ever used the terms "GPO" and "buying**
 14 **group" interchangeably to refer to an entity in the**
 15 **dental industry?**
 16 A. Yes.
 17 **Q. And why would you do that?**
 18 A. Some people call it "GPO"; some call it
 19 "buying group." In my head, I just -- in my head I say
 20 "buying group." Same thing.
 21 **Q. Do you know whether CHC buying groups and GPOs**
 22 **are all on the medical side?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: The way I term -- the way I say
 25 it, medical has GPOs like Novation, Broadlane,

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1 Amerinet, whereas dental is more of a buying group.
 2 BY MR. SOLOMON:
 3 **Q. When did you first encounter GPOs and buying**
 4 **groups?**
 5 A. When I started with the software division in
 6 2003.
 7 **Q. How many GPOs and buying groups have you come**
 8 **across during your time at Henry Schein Special**
 9 **Markets?**
 10 MR. McDONALD: Object to the form; overly
 11 broad.
 12 THE WITNESS: I would say about a dozen.
 13 BY MR. SOLOMON:
 14 **Q. Were those groups -- strike that.**
 15 **Were those GPOs and buying groups in the**
 16 **dental industry?**
 17 A. Clarify. You mean our -- our private
 18 division?
 19 **Q. Were they dental GPOs and buying groups, or**
 20 **medical GPOs and buying groups?**
 21 A. They were dental.
 22 **Q. And did you interact with any of these GPOs or**
 23 **buying groups?**
 24 A. Yes.
 25 **Q. What was your reason for interacting with**

15 (Pages 57 to 60)

61	<p>1 them?</p> <p>2 A. In a software world, I created pricing plans</p> <p>3 for a number of the dental buying groups/GPOs for</p> <p>4 reduced software pricing to -- at the rates equal to</p> <p>5 our merchandising discounts for those buying groups.</p> <p>6 Q. Was this while you were at special markets?</p> <p>7 A. While I was with our software division, there</p> <p>8 was a time that special markets oversaw the division.</p> <p>9 So, yes part of the time, and no part of the time.</p> <p>10 Q. Okay. And I just wanted to focus on the time</p> <p>11 period from 2009 onward when you were director and vice</p> <p>12 president in special markets.</p> <p>13 A. Okay.</p> <p>14 Q. Is your answer the same for that time period?</p> <p>15 A. Ask the question again based on the 2009.</p> <p>16 Q. Sure.</p> <p>17 A. Please.</p> <p>18 Q. What was your inter- -- what was your reason</p> <p>19 for interacting with buying groups and GPOs during the</p> <p>20 time frame from 2009 onward?</p> <p>21 A. In each of our segments, there were a number</p> <p>22 of buying groups that existed when I started in 2009,</p> <p>23 and I -- and my sales team would work with those buying</p> <p>24 groups as well as myself in calling on them and</p> <p>25 promoting them.</p>	63	<p>1 support or dental service organizations?</p> <p>2 A. No. Their members were private dentists.</p> <p>3 Q. In what way were these buying groups and GPOs</p> <p>4 for dental service organizations?</p> <p>5 A. They were not for dental service</p> <p>6 organizations, these GPOs. They were for private</p> <p>7 practice.</p> <p>8 Q. So they weren't DSO buying groups and GPOs?</p> <p>9 A. You need to clarify that. They fell -- we</p> <p>10 considered them in the DSO segment because they had</p> <p>11 multiple customers. Therefore, they fell within the</p> <p>12 DSO segment, but their members were private dentists.</p> <p>13 Q. Do you know whether these five buying groups</p> <p>14 and GPOs remained with special markets after the 2014</p> <p>15 customer transfer?</p> <p>16 A. Yes. I'm sorry. Rephrase the question.</p> <p>17 Q. Was there something you didn't understand, or</p> <p>18 you just want me to repeat it?</p> <p>19 A. Repeat it.</p> <p>20 Q. Do you know whether these five buying groups</p> <p>21 and GPOs remained with special markets after the 2014</p> <p>22 customer transfer?</p> <p>23 A. They remained with Henry Schein. Some went to</p> <p>24 mid market. Some stayed with my group. Okay.</p> <p>25 Q. Do you recall which were moved to Henry Schein</p>
62	<p>1 Q. Why would you and your sales team call on and</p> <p>2 promote GPOs and buying groups?</p> <p>3 MR. McDONALD: Object to the form.</p> <p>4 THE WITNESS: In the community health segment,</p> <p>5 about 30 percent of our revenue came from buying -- on</p> <p>6 merchandise came from about five buying groups on the</p> <p>7 community health center side. So we maintained a</p> <p>8 strong relationship with those buying groups to promote</p> <p>9 Henry Schein.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. What about in the DSO segment, were there any</p> <p>12 GPOs or buying groups that special markets worked with?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall how many?</p> <p>15 A. Maybe five.</p> <p>16 Q. Do you recall the names of any of those GPOs</p> <p>17 or buying groups?</p> <p>18 A. Yes.</p> <p>19 Q. What were the names?</p> <p>20 A. Dental Partners of Georgia; OrthoSynetics;</p> <p>21 Tralongo, Tralongo Dental; Dental Gator; Breakaway.</p> <p>22 That's what I recall about that.</p> <p>23 Q. For these five entities, you've referred to</p> <p>24 them as a DSO buying group or GPO.</p> <p>25 Do you know whether their members were dental</p>	64	<p>1 Dental?</p> <p>2 A. Yes.</p> <p>3 Q. Which ones?</p> <p>4 A. Breakaway, and I think that's it, just</p> <p>5 Breakaway.</p> <p>6 Q. The rest remained with special markets?</p> <p>7 A. Correct.</p> <p>8 Q. Do you know why Breakaway was moved from</p> <p>9 special markets to Henry Schein Dental, but not the</p> <p>10 others?</p> <p>11 A. It was a small -- it was small. It was less</p> <p>12 than 20 members.</p> <p>13 Q. Were the four groups that remained with</p> <p>14 special markets, still customers of special markets at</p> <p>15 the time of your retirement?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know who was responsible for overseeing</p> <p>18 those customer accounts?</p> <p>19 A. They fell under me, but are you asking which</p> <p>20 SAMs oversaw those?</p> <p>21 Q. I just would like to know who at special</p> <p>22 markets was responsible for managing those accounts?</p> <p>23 A. They fell under my team.</p> <p>24 Q. And were each of these groups assigned a SAM?</p> <p>25 A. Yes.</p>

65	<p>1 Q. Do you recall who -- strike that.</p> <p>2 Do you recall which SAMs were responsible for</p> <p>3 overseeing these accounts?</p> <p>4 A. Yes.</p> <p>5 Q. Who were they?</p> <p>6 A. Per account?</p> <p>7 Q. Yes.</p> <p>8 A. Becky Demers oversaw Dental Partners of</p> <p>9 Georgia and OrthoSynetics. I'm drawing the blank</p> <p>10 for the -- the other. Tralongo was overseen by Dave</p> <p>11 Muller. And I'm drawing on who the -- who the fourth</p> <p>12 was. Give me a second. I gave you OrthoSynetics.</p> <p>13 MR. McDONALD: It was Dental Gator.</p> <p>14 THE WITNESS: Dental Gator. Dental Gator was</p> <p>15 overseen by Daniel Hobson. Thank you.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Do you recall who oversaw Breakaway Dental?</p> <p>18 A. At the end, it was Kip Roland under mid</p> <p>19 market, and that would be a mid-market person.</p> <p>20 Q. You mentioned a group called OrthoSynetics?</p> <p>21 A. Yes.</p> <p>22 Q. Did I pronounce that right?</p> <p>23 A. You did.</p> <p>24 Q. Do you recall whether the members of</p> <p>25 OrthoSynetics were dentists or orthodontists?</p>	67	<p>1 a corporate account?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. What did Schein special markets do to make</p> <p>6 that determination?</p> <p>7 A. Determined whether there was ownership of the</p> <p>8 actual end members. I would distinguish whether they</p> <p>9 were a buying group or a DSO.</p> <p>10 Q. And why was that important in making that</p> <p>11 determination?</p> <p>12 A. They could -- a DSO could drive compliance to</p> <p>13 formularies. We simply made a determination, is this</p> <p>14 categorized as a buying group? Is their ownership of a</p> <p>15 practice, or is this a DSO? That's simply the only</p> <p>16 reason we would make that determination.</p> <p>17 Q. Do you recall who made that determination?</p> <p>18 A. I would make that determination, Hal would</p> <p>19 make that determination, just based on their model.</p> <p>20 Q. Was there anything else you would look at with</p> <p>21 respect to a group s model to determine whether it was</p> <p>22 a GPO, a buying group or a corporate account?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: No.</p> <p>25 BY MR. SOLOMON:</p>
66	<p>1 A. Primarily orthodontists, the majority.</p> <p>2 Q. How did you know that these five entities were</p> <p>3 buying groups or GPOs?</p> <p>4 A. Well, I worked closely with all of their --</p> <p>5 their management teams in developing pricing strategy,</p> <p>6 and then whether to assign FSCs or not, and just</p> <p>7 working with their corporate entity in promoting their</p> <p>8 buying group to their end users and Henry Schein.</p> <p>9 Q. Do you recall whether anyone within special</p> <p>10 markets was unhappy about the fact that special markets</p> <p>11 had these buying group or GPO customers?</p> <p>12 A. Within special markets?</p> <p>13 Q. Right.</p> <p>14 A. No.</p> <p>15 Q. What about outside of special markets?</p> <p>16 A. No.</p> <p>17 MR. McDONALD: Object to the form.</p> <p>18 THE WITNESS: I'm sorry. No.</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. Okay. Does Schein Special Markets -- or</p> <p>21 strike that.</p> <p>22 Did Schein Special Markets do anything to</p> <p>23 determine whether a group practice was -- strike that.</p> <p>24 Did Schein Special Markets do anything to</p> <p>25 determine whether a group was a GPO, a buying group, or</p>	68	<p>1 Q. Does special markets have agreements with its</p> <p>2 customers that govern the sale of dental supplies?</p> <p>3 A. Yes.</p> <p>4 Q. What were those agreements called?</p> <p>5 A. Prime vendor agreements.</p> <p>6 Q. Did you ever -- strike that.</p> <p>7 Did you ever review a prime vendor agreement</p> <p>8 while you were employed at special markets?</p> <p>9 A. Yes.</p> <p>10 Q. How often would you review those agreements?</p> <p>11 A. As they renewed.</p> <p>12 Q. Was that often?</p> <p>13 A. Yes.</p> <p>14 Q. Did those agreements have any provisions</p> <p>15 prohibiting special markets' customers from supporting</p> <p>16 GPOs or buying groups?</p> <p>17 MR. McDONALD: Object to the form.</p> <p>18 THE WITNESS: It had provisions that they</p> <p>19 could not extend their specific pricing to buying</p> <p>20 group-type organizations.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Did all customer agreements have those</p> <p>23 provisions?</p> <p>24 MR. McDONALD: Object to the form; overly</p> <p>25 broad; no foundation.</p>

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1 THE WITNESS: Later in the years, yes.
 2 BY MR. SOLOMON:
 3 **Q. When you say "later in the years," what do you**
 4 **mean?**
 5 A. 2000- -- you know, 2015, 2016 we started to
 6 make the contracts all identical. It may be earlier.
 7 I apologize. It may be even earlier.
 8 **Q. Did some prime vendor agreements have those**
 9 **provisions prior to 2015, 2016 when they became**
 10 **standard?**
 11 MR. McDONALD: Object to the form; lack of
 12 foundation.
 13 THE WITNESS: I'm not sure.
 14 BY MR. SOLOMON:
 15 **Q. Do you know why those provisions were added**
 16 **into the prime vendor agreements?**
 17 MR. McDONALD: Same objection.
 18 THE WITNESS: Yes.
 19 BY MR. SOLOMON:
 20 **Q. Why?**
 21 A. Our vendor partners did not want to extend
 22 their reduced cost pricing for a particular customer if
 23 they also were to set up a buying group under their
 24 plan.
 25 **Q. When you say "vendor partners," are you**

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1 **referring to a manufacturer?**
 2 A. Yes.
 3 **Q. Do you recall which vendor partners held that**
 4 **sentiment?**
 5 A. Most.
 6 **Q. The largest vendor partners would be included**
 7 **in that?**
 8 A. Yes.
 9 **Q. Why would a vendor partner care whether a**
 10 **customer was setting up a buying group?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: Not sure.
 13 BY MR. SOLOMON:
 14 **Q. Did you do anything to learn more about why**
 15 **vendor partners cared about whether customers were**
 16 **setting up buying groups?**
 17 A. Repeat the question.
 18 **Q. Sure. Did you do anything to learn more about**
 19 **why vendor partners cared whether customers were**
 20 **setting up buying groups?**
 21 A. No.
 22 **Q. Did you ever have any discussions with**
 23 **Mr. Muller about this?**
 24 A. Yes.
 25 **Q. What did you discuss?**

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1 A. That we would need to set up a different
 2 pricing plan that did not include the vendor discounts
 3 for any DSO that also had a buying group underneath
 4 them.
 5 **Q. Because the vendor partners were objecting to**
 6 **customers setting up buying groups, right?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: No. They were -- no. They were
 9 objecting to us extending their discounts to those
 10 buying groups.
 11 BY MR. SOLOMON:
 12 **Q. Did all of the vendor partners for special**
 13 **markets object to extending discounts to customer**
 14 **buying groups?**
 15 A. No.
 16 **Q. Do you recall which ones objected?**
 17 A. No.
 18 **Q. Do you recall whether most vendor partners**
 19 **objected?**
 20 A. No.
 21 **Q. Was it more than one?**
 22 A. Yes.
 23 **Q. Was it more than five?**
 24 A. No.
 25 **Q. So less than five?**

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1 A. Approximately.
 2 **Q. But you don't recall which ones specifically?**
 3 A. No.
 4 **Q. Were there some vendors who had no opinion as**
 5 **to whether customers were -- strike that.**
 6 **Were there some vendors who had no opinion as**
 7 **to whether Henry Schein was extending discounts to**
 8 **buying groups?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Repeat the question.
 11 MR. SOLOMON: Sure.
 12 BY MR. SOLOMON:
 13 **Q. Were there some vendors who had no opinion as**
 14 **to whether Henry Schein Special Markets was extending**
 15 **discounts to buying group customers?**
 16 A. Yes.
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Yes.
 19 BY MR. SOLOMON:
 20 **Q. Which ones?**
 21 A. In general. It's a general answer that
 22 there's so many vendors, I don't know which ones, but
 23 some were -- some really didn't monitor it at all.
 24 **Q. Do you recall how many did not monitor it?**
 25 A. There's so many vendors, I do not recall.

18 (Pages 69 to 72)

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1 **Q. Did any of Henry Schein Special Markets'**
 2 **vendor partners ask you to put those provisions in**
 3 **customer agreements?**
 4 A. No.
 5 **Q. Do you know why special markets did it?**
 6 MR. McDONALD: Object to the form; lack of
 7 foundation.
 8 THE WITNESS: Again, we were not wanting to
 9 extend their formulary, their pricing to the -- the
 10 buying groups that we would -- we would create a
 11 separate one for their buying groups.
 12 BY MR. SOLOMON:
 13 **Q. A separate formulary?**
 14 A. Correct.
 15 **Q. Who created the separate formulary for buying**
 16 **groups?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Our division, Paul Berkey.
 19 BY MR. SOLOMON:
 20 **Q. Do you recall -- strike that.**
 21 **How do you know that some vendors were opposed**
 22 **to extending discounts to buying groups?**
 23 A. There was an e-mail once with one of our
 24 buying group's customers, the ADSOs, where a Patterson
 25 field sales consultant brought it to their attention.

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1 **Q. Who was the e-mail from?**
 2 A. I did not receive the e-mail.
 3 **Q. How do you know about it?**
 4 A. One of my team members informed me that an
 5 e-mail from Patterson -- I'm unclear, but I remember
 6 there was a note that a medical -- an FSC from
 7 Patterson Dental was upset and reported it up the
 8 Patterson chain.
 9 **Q. How did that affect Henry Schein?**
 10 A. The vendor partner asked us not to extend the
 11 pricing for that particular customer to their buying
 12 group arm.
 13 **Q. Do you recall who the vendor partner was?**
 14 A. Kerr.
 15 **Q. Do you recall why Kerr asked Schein not to**
 16 **extend pricing for a particular buying group?**
 17 A. No.
 18 **Q. Do you recall the name of the buying group?**
 19 A. Dental Gator.
 20 **Q. And Dental Gator was a customer of Henry**
 21 **Schein Special Markets?**
 22 A. Correct.
 23 **Q. Did that affect the relationship between**
 24 **special markets and Dental Gator?**
 25 A. No. They understood.

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1 **Q. Who understood?**
 2 A. Dental Gator.
 3 **Q. Why would a complaint from -- strike that.**
 4 **How was Patterson involved in Dental Gator?**
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: Dental Gator acquired or
 7 affiliated with a Patterson customer.
 8 BY MR. SOLOMON:
 9 **Q. Do you recall who the customer was?**
 10 A. No, I do not know who it is.
 11 **Q. And just for the record, what is Patterson**
 12 **that you're referring to?**
 13 A. Patterson Dental is -- Patterson Dental is a
 14 dental distributor.
 15 **Q. And they're a competitor of Schein?**
 16 A. Correct.
 17 **Q. Do you recall who made you aware of this issue**
 18 **with respect to Dental Gator?**
 19 A. No.
 20 **Q. Do you recall the language in the provision**
 21 **preventing customers from establishing or supporting**
 22 **buying groups or GPOs?**
 23 MR. McDONALD: Object to the form;
 24 mischaracterizes testimony.
 25 THE WITNESS: No. Oh, I'm sorry. No.

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1 BY MR. SOLOMON:
 2 **Q. Do you know who drafted it?**
 3 A. That would be from Hal Muller.
 4 **Q. He drafted the provision?**
 5 A. He was ultimately responsible for the actual
 6 prime vendor agreement.
 7 **Q. And do you know whether he drafted that**
 8 **particular provision?**
 9 A. In the final versions, yes. In earlier
 10 versions it could have been one of my team members that
 11 are working with the customer.
 12 **Q. How did that provision affect the relationship**
 13 **between special markets and Dental Gator?**
 14 A. It -- it didn't. We put them on a separate
 15 sales plan and promoted their program.
 16 **Q. Did that provision affect any other buying**
 17 **group or GPO customers of special markets?**
 18 A. Not that I know of.
 19 **Q. Apart from Kerr, were any other vendor**
 20 **partners opposed to special markets extending special**
 21 **pricing to buying groups or GPOs?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: Yes.
 24 BY MR. SOLOMON:
 25 **Q. Do you recall which ones?**

19 (Pages 73 to 76)

77	<p>1 A. Just a couple.</p> <p>2 Q. Which ones?</p> <p>3 A. Like, maybe Dentsply, 3M and Kerr, the top</p> <p>4 five.</p> <p>5 Q. And how do you know that Dentsply, 3M --</p> <p>6 strike that.</p> <p>7 How do you know that Dentsply and 3M were</p> <p>8 opposed to that?</p> <p>9 A. They basically asked us not to extend</p> <p>10 customers that are on a particular sales plan such as</p> <p>11 MB2 Dental to extend their plan with chargebacks to</p> <p>12 Dental Gator.</p> <p>13 Q. Do you know why they asked that?</p> <p>14 A. No.</p> <p>15 Q. Did you speak with someone at either 3M or</p> <p>16 Dentsply specifically about this?</p> <p>17 A. No.</p> <p>18 Q. How did you find out about it?</p> <p>19 A. I understood that we had to change -- create a</p> <p>20 new sales plan for Dental Gator when we were told that</p> <p>21 we needed to remove the chargebacks. So we created a</p> <p>22 new duplicate plan for Dental Gator.</p> <p>23 Q. How specifically did you find out that 3M and</p> <p>24 Dentsply were opposed to extending special pricing to</p> <p>25 buying groups and GPOs?</p>	79	<p>1 GPOs that were comprised of private practice dentists?</p> <p>2 MR. McDONALD: Same objection.</p> <p>3 THE WITNESS: They would bring in clients that</p> <p>4 we wouldn't have before, and it allowed us -- it opened</p> <p>5 a door for our one Schein world to a number of people.</p> <p>6 And for existing customers, it -- again, it could lead</p> <p>7 to longer retention on the customer.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Do you know whether Henry Schein gained new</p> <p>10 customers as a result of any buying groups or GPOs?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know how many?</p> <p>13 A. No.</p> <p>14 Q. How do you know that Henry Schein gained new</p> <p>15 customers as a result of buying groups or GPOs?</p> <p>16 A. Well, I had growth numbers with OrthoSynetics,</p> <p>17 there were growth numbers with Breakaway, okay, and a</p> <p>18 number of them had a high growth, you know, double</p> <p>19 percent growth.</p> <p>20 Q. When you say "double percent growth," are you</p> <p>21 referring to revenue growth?</p> <p>22 A. Revenue growth and merchandise only.</p> <p>23 Q. And was the revenue growth specific to special</p> <p>24 markets?</p> <p>25 A. Well, Breakaway was with mid market</p>
78	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: I want to say I'm not definitely</p> <p>3 sure how I found out. I just understood that we</p> <p>4 couldn't allow chargebacks for most our vendors to the</p> <p>5 buying groups.</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. Did Henry Schein special markets have</p> <p>8 discretion to extend discounts to buying groups and</p> <p>9 GPOs regardless of whether a vendor partner agreed or</p> <p>10 disagreed?</p> <p>11 A. Yes. For example, we offered a 20 percent off</p> <p>12 catalog to both, whether it was a GPO or a DSO.</p> <p>13 Q. How did special markets view the existence of</p> <p>14 buying groups and GPOs in the dental industry?</p> <p>15 MR. McDONALD: Object to the form.</p> <p>16 THE WITNESS: Favorably.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. How so?</p> <p>19 A. They were added revenue for our division. For</p> <p>20 those that brought value to their customer in the</p> <p>21 community health center world, we understood that they</p> <p>22 were associated with a buying group. Their retention</p> <p>23 rate with Schein was higher than a person not</p> <p>24 associated with a buying group.</p> <p>25 Q. What were the benefits of buying groups and</p>	80	<p>1 eventually. But yes, we had revenue growth with most</p> <p>2 of the people I listed.</p> <p>3 Q. While you were at Schein Special Markets, how</p> <p>4 did special markets handle inquiries from buying groups</p> <p>5 and GPOs to establish supply agreements for dental</p> <p>6 products?</p> <p>7 A. In the final years, if we -- I would just</p> <p>8 simply refer them to our -- our private division</p> <p>9 because they and HSD took over buying groups.</p> <p>10 Q. When did HSD take over buying groups?</p> <p>11 A. Formally it began more when the mid market --</p> <p>12 around the mid-market time, but they had some -- they</p> <p>13 already had some buying groups in place. As far as</p> <p>14 when I started, they had a few that they owned</p> <p>15 themselves. And we basically grandfathered the ones</p> <p>16 that we had in place that were larger. And then any</p> <p>17 new ones, basically, I would refer them to talk to</p> <p>18 somebody at -- at our -- at HSD.</p> <p>19 Q. You mentioned it was around the time that</p> <p>20 mid-market segment began?</p> <p>21 A. Umm-hmm.</p> <p>22 Q. So would you say that Henry Schein Dental took</p> <p>23 over buying groups in or around 2014?</p> <p>24 MR. McDONALD: Object to the form.</p> <p>25 THE WITNESS: Yes.</p>

81	83
<p>1 BY MR. SOLOMON: 2 Q. And when you say that Henry Schein Dental took 3 over buying groups, what do you mean? 4 A. That since the buying groups usually had FSCs 5 assigned, we felt that it would be a better fit that 6 HSD work the buying groups in developing their 7 relationship versus special markets. We only 8 maintained those that were associated with our groups. 9 Q. At that point all new inquiries regarding GPOs 10 and buying groups were sent to HSD; is that right? 11 A. Yes. 12 Q. Did you ever send any inquiries -- or strike 13 that. 14 Did you ever personally send any inquiries 15 from GPOs and buying groups over to HSD? 16 A. Yes. 17 MR. McDONALD: Object to the form. 18 THE WITNESS: Sorry. 19 BY MR. SOLOMON: 20 Q. Do you recall how many? 21 A. No. 22 Q. Did special markets -- strike that. 23 Even though Henry Schein Dental took over 24 buying groups, special markets still kept the buying 25 group customers that it had apart from Breakaway</p>	<p>1 A. No. 2 Q. Do you recall what Henry Schein Dental did 3 with Breakaway Dental once it was transferred to HSD? 4 A. Yes. 5 Q. What did it do? 6 A. They helped grow the business. It grew 7 substantially with mid market. 8 Q. How did they help grow the business? 9 MR. McDONALD: Object to the form; lack of 10 foundation. 11 THE WITNESS: They met with their management 12 team in Austin or San Antonio, wherever it is, and 13 helped develop stronger programs, worked with 14 compliance on their formulary. 15 BY MR. SOLOMON: 16 Q. Did Henry Schein Dental support Breakaway's 17 buying group component? 18 MR. McDONALD: Object to the form. 19 THE WITNESS: Yes. The majority of it was a 20 buying group. 21 BY MR. SOLOMON: 22 Q. Did Breakaway Dental remain a customer of 23 Henry Schein Dental? 24 A. At the time that I left, they were a customer. 25 Q. Did you ever hear during your time at special</p>
82	84
<p>1 Dental; is that right? 2 MR. McDONALD: Object to the form. 3 THE WITNESS: Yes. 4 BY MR. SOLOMON: 5 Q. Do you recall who at Henry Schein Dental 6 handled inquiries from GPOs and buying groups? 7 A. No. 8 Q. Do you recall who you would have sent those 9 inquiries over to when you sent them to HSD? 10 A. Brian Brady. 11 Q. Who is Brian Brady? 12 A. He was a part of the mid-market management 13 team at HSD at Henry Schein Dental. 14 Q. And when did Brian Brady join Henry Schein 15 Dental's mid-market management team? 16 A. I'm not sure. 17 Q. Did you interact with anyone else from Henry 18 Schein Dental -- or strike that. 19 Was there anyone at Henry Schein Dental to 20 whom you sent inquires regarding buying groups and 21 GPOs? 22 A. No. 23 Q. Do you know what Henry Schein Dental did with 24 the buying groups and GPOs once the inquiries were sent 25 over from special markets?</p>	<p>1 markets that HSD was not interested in doing business 2 with buying groups or GPOs? 3 A. No. 4 Q. Did you ever hear of a formal policy not to do 5 business with buying groups or GPOs either at special 6 markets or at Henry Schein Dental? 7 A. No. 8 Q. Have you ever heard of a buying group or GPO 9 rule at Henry Schein? 10 MR. McDONALD: Object to the form. 11 THE WITNESS: No. 12 BY MR. SOLOMON: 13 Q. Did you know of any Henry Schein employees who 14 wanted to avoid working with GPOs or buying groups? 15 MR. McDONALD: Object to the form. 16 THE WITNESS: Yes. 17 BY MR. SOLOMON: 18 Q. Who were they? 19 A. In general, it may be some FSCs when a buying 20 group would take over one of their customers. There 21 would be flack. 22 Q. When you say "flack," what do you mean? 23 A. I mean there would be disruption that their 24 customer is now joining a buying group. 25 Q. How did you know that?</p>

85	<p>1 A. Because I would receive inquiries as to who is 2 this buying -- who is this organization. And in 3 earlier years when they moved to special markets, it 4 may cause some issues, but that was at that level, the 5 FSC level only.</p> <p>6 Q. Did you ever hear that Tim Sullivan was not 7 interested in working with buying groups or GPOs?</p> <p>8 A. No.</p> <p>9 Q. Have you ever communicated with Mr. Sullivan 10 about buying groups or GPOs?</p> <p>11 A. Maybe. I don't recall. I'll say no.</p> <p>12 Q. Do you recall whether special markets and 13 Henry Schein Dental ever had any disagreements that 14 concerned working with GPOs or buying groups?</p> <p>15 A. Yes.</p> <p>16 Q. What were those disagreements about?</p> <p>17 A. When we would -- when there might be a buying 18 group that was solely based on price and offered no 19 other service whatsoever to the end user, there may be, 20 again, questioning why we're doing business with that 21 particular group.</p> <p>22 Q. And who would question why you were doing 23 business with that particular group?</p> <p>24 A. If it was a special markets customer, it would 25 come from our private division, HSD division.</p>	87	<p>1 Q. How did you know that?</p> <p>2 A. I would -- just through field communication. 3 Somebody would inform me that this is all they re up 4 to.</p> <p>5 Q. Did you ever do any research yourself to learn 6 whether buying groups or GPOs offered value-added 7 services to its members?</p> <p>8 A. No.</p> <p>9 Q. Do you recall ever feeling pressure from Henry 10 Schein Dental as a result of special markets working 11 with a GPO or buying group?</p> <p>12 A. Never.</p> <p>13 Q. Did anyone at special markets ever express to 14 you that they felt any pressure from Henry Schein 15 Dental --</p> <p>16 A. No.</p> <p>17 Q. -- because of working with buying groups or 18 special markets?</p> <p>19 A. No.</p> <p>20 Q. Were there any buying groups or GPOs of which 21 you were aware that did offer its members value-added 22 services?</p> <p>23 A. Yes.</p> <p>24 Q. Which ones?</p> <p>25 A. Council Connections, Commonwealth purchasing</p>
86	<p>1 Q. So the disagreement concerned special markets 2 working with buying groups and GPOs?</p> <p>3 A. Not really.</p> <p>4 Q. So who voiced the disagreement?</p> <p>5 A. The disagreement, again, would be generated 6 from an FSC concerned about the buying group being 7 price only, no other value-added service.</p> <p>8 Q. So FSCs were concerned about buying groups not 9 offering value-added services?</p> <p>10 A. Yes.</p> <p>11 Q. Why were they concerned about that?</p> <p>12 A. It blocked them from offering working with a 13 partner at the customer level. They felt they owned 14 the customer, and they would try to work with -- wanted 15 to work with the buying group, but certain buying 16 groups, only a very few that I know of, were -- were 17 not cooperative.</p> <p>18 Q. What do you mean when you say they "were not 19 cooperative"?</p> <p>20 A. They basically didn't partner with us on our 21 one Schein program and were very limited in what -- 22 their capability of success offering price.</p> <p>23 Q. So those buying groups and GPOs did not offer 24 any value-added services to its members?</p> <p>25 A. Yes.</p>	88	<p>1 Group, Texas Association of Community Health Centers, 2 Dental Partners of Georgia, Dental Gator, 3 OrthoSynetics, Tralongo, MMCAPs, and E&I in the dental 4 school side.</p> <p>5 Q. What types of value-added services did these 6 groups offer to their members?</p> <p>7 A. They would pay their -- you know, host their 8 software, pay their bills, their invoicing, process 9 bills. They would promote Schein. They would promote 10 our software, our equipment, our services.</p> <p>11 Q. Anything else?</p> <p>12 A. They would help their member practices grow 13 along with our marketing programs and value-adds.</p> <p>14 Q. How did you learn about these value-added 15 services?</p> <p>16 A. I had relationships with a number of them, 17 like in particular, Council Connections and 18 Commonwealth and OrthoSynetics. On Dental Gator, 19 they -- they fell under me, and I would be -- I would 20 participate in their -- if they had a 21 customer-appreciation event I would be -- I would 22 represent Schein from a VP level at those events.</p> <p>23 Q. Did anyone from HSD ever disagree with you as 24 to whether these groups offered their members 25 value-added services?</p>

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1 A. Not these groups.

2 **Q. I think you may have mentioned this in passing**
3 **a little bit, but I'm curious why Henry Schein Dental**
4 **cared whether buying groups or GPOs offered value-added**
5 **services to their members? Why was that something that**
6 **was important to HSD?**

7 MR. McDONALD: Object to the form, lack of
8 foundation.

9 THE WITNESS: They wanted the customer to
10 grow. So if it was just based on pricing and pricing
11 only, there was no value. And some may prevent
12 relationships with our FSCs from going in and helping
13 that customer grow.

14 BY MR. SOLOMON:

15 **Q. So for those buying groups or GPOs that lacked**
16 **value-added services, did HSD refuse to work with them?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: No.

19 BY MR. SOLOMON:

20 **Q. What did Henry Schein Dental do to encourage**
21 **those groups to offer value-added services to its**
22 **members?**

23 MR. McDONALD: Object to the form; lack of
24 foundation.

25 THE WITNESS: They -- from my knowledge, they

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1 would try to meet with the buying group to help them
2 expand their services.

3 BY MR. SOLOMON:

4 **Q. Anything else?**

5 MR. McDONALD: Object to the form; lack of
6 foundation.

7 THE WITNESS: No.

8 BY MR. SOLOMON:

9 **Q. And would those be buying groups or GPOs that**
10 **were customers of Henry Schein Dental?**

11 A. Rephrase that. I mean say it again.

12 **Q. Would those be buying groups or GPOs that were**
13 **customers of Henry Schein Dental?**

14 A. Yes, they were customers that they'd work
15 with.

16 **Q. Okay. Do you recall the names of any specific**
17 **GPOs or buying groups that did not offer value-added**
18 **services to its members?**

19 A. Steadfast Dental is the only one I can think
20 of.

21 **Q. What is Steadfast Dental?**

22 A. Steadfast was developed within special
23 markets, focused on oral health -- oral surgeons, and
24 so their members were primarily oral surgeons.

25 **Q. When you say it "was developed within special**

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1 **markets," what do you mean by that?**

2 A. We -- they first came to special markets in
3 2009 or '10 because it's when I started, and we created
4 the -- the sales plan for them. So I was there for
5 initially when we started the group.

6 **Q. Did Steadfast Dental also have a medical**
7 **aspect to its group?**

8 A. Not that I'm -- no, not that I'm aware of.

9 **Q. Was it also called Steadfast Medical.**

10 A. Could be. I only know it as Steadfast. Okay.

11 **Q. Did Henry Schein Special Markets ever end its**
12 **relationship with Steadfast?**

13 A. I am -- it transferred to mid market. I'm not
14 aware of what happened with it.

15 **Q. You don't know whether it remained as a**
16 **customer with mid market following its transfer?**

17 A. At the time that it transferred, it was a
18 customer. I'm not sure if it ended up, you know, as a
19 customer or not later on.

20 **Q. And why was Steadfast transferred as a**
21 **customer from special markets to Henry Schein Dental?**

22 A. In the move to mid market, it was small. It
23 had maybe ten -- ten members, and under X amount -- I
24 do not know the dollar value, but it wasn't that high.

25 **Q. Do you recall whether Henry Schein medical had**

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1 **a relationship with Steadfast as well?**

2 A. No, not aware.

3 **Q. Do you recall whether the members of Steadfast**
4 **were private practice oral surgeons?**

5 A. For the most part, yes.

6 **Q. Were there any other GPOs or buying groups of**
7 **which you were aware that did not offer value-added**
8 **services to its members?**

9 A. No.

10 MR. SOLOMON: So we've been going for about an
11 hour now.

12 MR. McDONALD: Sure.

13 MR. SOLOMON: If you guys want to take a
14 break, I'm happy to take a break now.

15 MR. McDONALD: Sure.

16 MR. SOLOMON: Okay.

17 (Brief recess.)

18 MR. SOLOMON: Back on the record at 11:31.

19 BY MR. SOLOMON:

20 **Q. Mr. Foley, before the break we talked a little**
21 **bit about disagreements between Henry Schein Dental and**
22 **Special Markets concerning buying groups and GPOs, and**
23 **you referred to a concern among FSCs regarding whether**
24 **buying groups and GPOs offer value-added services to**
25 **their members.**

93	<p>1 Do you recall that discussion?</p> <p>2 A. Yes.</p> <p>3 Q. What specifically was the nature of the</p> <p>4 disagreement between Henry Schein Dental and Special</p> <p>5 Markets?</p> <p>6 MR. McDONALD: Object to the form.</p> <p>7 THE WITNESS: Well, we paid the FSCs. If the</p> <p>8 account belonged to special markets, the buying group,</p> <p>9 and it -- and it affiliated with a private HSD</p> <p>10 customer, the FSC would be paid a lower rate. So they</p> <p>11 were frustrated with that lower rate, but they also</p> <p>12 wanted -- they didn't want the buying group to run</p> <p>13 interference with their ability to sell to that</p> <p>14 practice that they had a relationship with.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Anything else?</p> <p>17 A. No.</p> <p>18 Q. How did special markets handle that</p> <p>19 disagreement?</p> <p>20 A. We -- we would have HSD simply have to deal</p> <p>21 with it, with the FSC.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. We would have HSD simply explain to the --</p> <p>24 the -- we would have Henry Schein Dental explain to the</p> <p>25 FSC that this is a supported buying group by special</p>	95	<p>1 group would expand outside of its territory into</p> <p>2 another state. That's usually when it would pop up.</p> <p>3 They were unfamiliar with it.</p> <p>4 Q. Did those disagreements affect the</p> <p>5 relationship between HSD and special markets?</p> <p>6 A. No.</p> <p>7 Q. We also talked a little bit before the break</p> <p>8 about FSCs who were concerned that some buying group</p> <p>9 and GPOs were only focused on price.</p> <p>10 Do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. Did special markets care whether buying group</p> <p>13 and GPOs were only focused on price?</p> <p>14 A. Yes.</p> <p>15 Q. Why?</p> <p>16 A. We wanted -- again, we wanted to facilitate</p> <p>17 the practice member to be able to grow. So we would</p> <p>18 simply go to the GP- -- again, you're saying buying</p> <p>19 groups and GPOs, like if they're buying groups, slash,</p> <p>20 GPOs, if that means anything. I mean, that's</p> <p>21 important. But we consider the buying group -- if we</p> <p>22 could help facilitate them to be focused on more,</p> <p>23 that's what we would do special at markets.</p> <p>24 Q. How would special markets facilitate that?</p> <p>25 A. For example, with Dental Gator, we helped</p>
94	<p>1 markets. It was the same situation when a DSO would</p> <p>2 acquire a private practice. There would be, you</p> <p>3 know -- the FSC may get upset with that too.</p> <p>4 Q. Do you recall discussing that disagreement</p> <p>5 with anyone from Henry Schein Dental?</p> <p>6 A. I would work -- yes.</p> <p>7 Q. Who?</p> <p>8 A. I would work perhaps with the regional manager</p> <p>9 at HSD at the time on the FSC and help explain, if this</p> <p>10 were a buying group, who are they. A lot of questions</p> <p>11 were, "Who is this group? I've never heard of it." I</p> <p>12 got a lot of e-mails asking who is this, who is that.</p> <p>13 Q. Anyone else at Henry Schein Dental who you</p> <p>14 would speak with regarding that disagreement?</p> <p>15 A. No. Generally I could handle it through the</p> <p>16 regional managers.</p> <p>17 Q. How long did the disagreement between HSD and</p> <p>18 special markets last?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: It was per -- per incident</p> <p>21 basis. It would be very short, you know.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. When you say "per incident basis," was it an</p> <p>24 ongoing disagreement that kept coming up over time?</p> <p>25 A. Earlier on it would come up when a buying</p>	96	<p>1 create not only a printed formulary of their pricing</p> <p>2 but also other value-adds that Henry Schein had to</p> <p>3 offer for them to hand out to their members. We handed</p> <p>4 out -- we provided brochures on our software, on our</p> <p>5 equipment, that they could give to their Dental Gator</p> <p>6 members. Not just our pricing.</p> <p>7 Q. Did special markets ever sell to any buying</p> <p>8 groups or GPOs that were only focused on price?</p> <p>9 MR. McDONALD: Object to the form; asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: I'm sorry.</p> <p>12 MR. McDONALD: Go ahead. You can answer if</p> <p>13 you understand.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Which one?</p> <p>17 A. To my knowledge, Steadfast.</p> <p>18 Q. Any others?</p> <p>19 A. It's the only one I know of.</p> <p>20 Q. And we talked about a little bit about</p> <p>21 Steadfast being transferred from special markets to HSD</p> <p>22 before the break.</p> <p>23 Do you recall that?</p> <p>24 A. Yes.</p> <p>25 Q. And that was because Steadfast was a smaller</p>

<p style="text-align: right;">97</p> <p>1 group and it was transferred to the mid-market segment; is that right?</p> <p>2 A. Correct.</p> <p>3 MR. SOLOMON: Okay.</p> <p>4 [Whereupon, Exhibit 274 was referenced.]</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Mr. Foley, I'm handing you a document that was previously marked as Exhibit 274, which is a document Bates labeled Henry Schein 00073733.</p> <p>7 Can you please look that document over and let me know when you've had a chance to review it?</p> <p>8 A. Okay.</p> <p>9 Q. Mr. Foley, do you recognize Exhibit 274?</p> <p>10 A. No.</p> <p>11 Q. What is your understanding of what Exhibit 274 represents?</p> <p>12 MR. McDONALD: Object to the form; lack of foundation.</p> <p>13 THE WITNESS: I don't understand the form because I don't understand who Melanie Bingham is and what the question is.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. This e-mail -- Exhibit 274 represents an e-mail chain that includes Ms. Hight and Joe Cavaretta, right?</p>	<p style="text-align: right;">99</p> <p>1 Q. Were its members DSOs?</p> <p>2 A. No. It fell under the DSO category. Its members were private dentists. I'm sorry. IDA itself was a DSO of about eight locations, and it had maybe a dozen members attached to it as affiliated buying group offices.</p> <p>3 Q. Do you recall what the name of the -- do you recall whether the affiliated buying group offices had a unified name?</p> <p>4 A. No.</p> <p>5 Q. So IDA was a DSO that had a buying group component?</p> <p>6 A. Correct.</p> <p>7 Q. Did you personally ever work with IDA or its members?</p> <p>8 A. With IDA itself, yes; not with its members, no.</p> <p>9 Q. Were you personally familiar with its buying group component?</p> <p>10 A. Yes.</p> <p>11 Q. How so?</p> <p>12 A. I understood -- I knew that it had about a dozen buying group components to it in the Nevada-Idaho market, and I had met with their CEO at a couple of trade shows here and there.</p>
<p style="text-align: right;">98</p> <p>1 A. Correct.</p> <p>2 Q. And Ms. Hight reported to you directly, right?</p> <p>3 A. At that date, yes.</p> <p>4 Q. Who is Joe Cavaretta?</p> <p>5 A. Joe Cavaretta is -- was director of sales over HSD.</p> <p>6 Q. Did you work with Mr. Cavaretta while you were at special markets?</p> <p>7 A. Occasionally, yes.</p> <p>8 Q. On what sorts of thing did you work with Mr. Cavaretta?</p> <p>9 A. With certain accounts and special markets that had FSCs assigned to them, situations about the buying groups or customers that were expanding to other areas.</p> <p>10 I do want to say on this that IDA was a buying group supported by special markets, so it's another buying group that I forgot to mention earlier. This just rings -- it's called Intermountain Dental Associates.</p> <p>11 Q. Intermountain Dental Associates, do you recall whether that was a CHC buying group?</p> <p>12 A. No. It's a -- I'm sorry. It is not a CHC buying group.</p> <p>13 Q. What kind of buying group is it?</p> <p>14 A. It's a DSO buying group.</p>	<p style="text-align: right;">100</p> <p>1 Q. When did special markets form a relationship with IDA?</p> <p>2 A. When I started in 2009, the relationship was already in place.</p> <p>3 Q. Did IDA remain a customer of special markets during your entire tenure at special markets?</p> <p>4 A. Yes.</p> <p>5 Q. Did its buying group component remain during your entire tenure at special markets?</p> <p>6 A. Yes.</p> <p>7 Q. I'd like to direct your attention to the top e-mail in Exhibit 274, which is from Ms. Hight to Joe Cavaretta and someone named Melanie Bingham. It appears to be a discussion regarding IDA and whether or not it is a GPO. And Ms. Hight says: (Reading.)</p> <p>8 "...we have tightened our criteria for defining Special Markets and I ran the scenario past Randy Foley."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know what Ms. Hight is referring to by "tightening criteria" for special markets?</p> <p>12 A. No.</p> <p>13 Q. Do you recall Ms. Hight running the scenario described in this e-mail by you?</p>

101	<p>1 A. No.</p> <p>2 Q. Do you recall any discussions with Ms. Hight</p> <p>3 surrounding IDA and whether it was a buying group or</p> <p>4 GPO?</p> <p>5 A. Yes.</p> <p>6 Q. What was the substance of those discussions?</p> <p>7 A. That they were a full value-added buying group</p> <p>8 from day one, providing their members with services as</p> <p>9 well as their -- their -- as far as their DSO segment.</p> <p>10 Q. And why was Ms. Hight concerned about that?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: I don't know. She managed this</p> <p>13 account, so I -- I'm confused about the e-mail.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Why are you confused?</p> <p>16 A. I don't understand -- I actually don't follow</p> <p>17 the logic in the e-mail of what they're talking about.</p> <p>18 Adding a member? I don't get it. It's not about</p> <p>19 changing anything at IDA, from what I can gather. They</p> <p>20 were a good customer and a good buying group.</p> <p>21 Q. What do you understand this e-mail to be</p> <p>22 about?</p> <p>23 MR. McDONALD: Object to the form; lack of</p> <p>24 foundation.</p> <p>25 THE WITNESS: I -- I'm not -- I'm sorry. I'm</p>	103	<p>1 A. I was very well -- yes, I was very well aware</p> <p>2 that it was a buying group.</p> <p>3 Q. Do you recall any discussions with Ms. Hight</p> <p>4 surrounding IDA and whether it was a buying group?</p> <p>5 A. Yes.</p> <p>6 Q. Apart from the one we just talked about, what</p> <p>7 other discussions have you had with Ms. Hight</p> <p>8 surrounding IDA?</p> <p>9 A. I would approve pricing for IDA as they grew.</p> <p>10 So Andrea would work with me on this account. So I</p> <p>11 oversaw the account as a vice president. She oversaw</p> <p>12 it as a SAM.</p> <p>13 Q. Did the buying group component of IDA force</p> <p>14 its members to buy from Henry Schein?</p> <p>15 A. I'm not aware, no. I'm not aware.</p> <p>16 Q. So you're not sure one way or the other?</p> <p>17 A. Correct. You used the word "force." I don't</p> <p>18 know if that's the -- if they required them to buy it</p> <p>19 from Henry Schein or not. They could have bought from</p> <p>20 multiple vendors. I'm unaware.</p> <p>21 Q. Turning to the next sentence in this e-mail,</p> <p>22 Ms. Hight, writes: (Reading.)</p> <p>23 "Even with forcing a member to buy from</p> <p>24 us, they do not fit Special Markets</p> <p>25 criteria because as you say with this</p>
102	<p>1 not following what it's about because I don't</p> <p>2 understand who Melanie Bingham is and what's the</p> <p>3 purpose -- what the main complaint or issue is here.</p> <p>4 It doesn't say. Basically, IDA is on a P20 sales plan.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. What is a P20 sales plan?</p> <p>7 A. We have sales plans that are for smaller</p> <p>8 customers, that a number of our customers may be on the</p> <p>9 same P20 plan. It's a formulary of items, and they get</p> <p>10 20 percent off catalog items that are not on the</p> <p>11 formulary.</p> <p>12 Q. What types of customers are categorized under</p> <p>13 the P20 plan?</p> <p>14 A. Ones that are not large enough to have their</p> <p>15 own custom formulary.</p> <p>16 It's a way for us to give smaller groups a</p> <p>17 good discount when they're in the small -- it's either</p> <p>18 a P5, a P10, a P15, a P20; the last number referring to</p> <p>19 how much off catalog for non-formulary items.</p> <p>20 We progress them through those stages when</p> <p>21 they first start out. So IDA was on a P20 based on the</p> <p>22 fact they only had 25 locations.</p> <p>23 Q. Do you recall any other discussions with</p> <p>24 Ms. Hight surrounding IDA and whether or not it was a</p> <p>25 buying group?</p>	104	<p>1 new approach they are taking, they</p> <p>2 really look like a GPO which we don't</p> <p>3 do."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what Ms. Hight is referring to in</p> <p>7 that sentence?</p> <p>8 A. No.</p> <p>9 Q. When she says "they really look like a GPO</p> <p>10 which we don't do," do you know whether she's referring</p> <p>11 to a policy of not working with GPOs?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 THE WITNESS: I'm not sure, but if she's</p> <p>14 actually talking about buying group or GPO so...</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Does Ms. Hight's reference to not working with</p> <p>17 GPOs make sense to you?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. Because she helped set up Dental Gator. She</p> <p>21 managed this account, IDA. Those are the two that she</p> <p>22 managed, and it was a strong relationship with IDA.</p> <p>23 Q. She also -- turning to the first part of that</p> <p>24 sentence we just read, "Even with forcing a member to</p> <p>25 buy from us, they do not fit Special Markets criteria,"</p>

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1 **do you know what Ms. Hight is referring to there?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No.
 4 BY MR. SOLOMON:
 5 **Q. You can put that document aside.**
 6 A. Okay. Thanks.
 7 MR. SOLOMON: Umm-hmm.
 8 I'm handing the witness Exhibit 290, which is
 9 a document Bates labeled Henry Schein 000164800. And
 10 there is an attachment which includes metadata about
 11 the e-mail.
 12 [Whereupon, Deposition Exhibit 290 was
 13 marked for identification.]
 14 BY MR. SOLOMON:
 15 **Q. Unfortunately, we were unable to process some**
 16 **of the images that you guys sent us last week, so we re**
 17 **still using the metadata cover sheet for some of these.**
 18 MR. McDONALD: This doesn't need to be on the
 19 record.
 20 (Off the record discussion.)
 21 THE WITNESS: Okay.
 22 BY MR. SOLOMON:
 23 **Q. Mr. Foley, what is Exhibit 290?**
 24 A. Well, it's an e-mail about Synergy Dental
 25 Partners, which I don't remember, that was doing

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1 business with Darby Dental.
 2 **Q. Do you recall this e-mail?**
 3 A. No.
 4 **Q. And you don't recall an entity called Synergy**
 5 **Dental Partners?**
 6 A. No.
 7 **Q. Reading this e-mail, do you have a sense as to**
 8 **whether or not it was a GPO or a buying group?**
 9 A. Yes.
 10 **Q. Was it?**
 11 A. I have a sense that it was a buying group
 12 based on price only.
 13 **Q. Do you recall anything else about Synergy**
 14 **Dental Partners?**
 15 A. No.
 16 **Q. How do you know that this was a buying group**
 17 **based on price only?**
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Because I'm saying here we said
 20 no to partnering with them.
 21 BY MR. SOLOMON:
 22 **Q. And how does that -- how do you know that that**
 23 **means that they're a buying group based on price only?**
 24 A. Because if they would work with us as a
 25 partnership -- like a couple of questions, what are you

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1 offering your members, and they say, "We're just going
 2 to get a group of dentists to buy at this price," we'll
 3 say we'll pass. It's not a good partnership for Henry
 4 Schein if -- to work with somebody just based on that.
 5 **Q. And is there anything in this e-mail that**
 6 **tells you that this group was based on price only?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: No.
 9 BY MR. SOLOMON:
 10 **Q. So what is your understanding of that based**
 11 **on, sitting here today?**
 12 MR. McDONALD: Object to the form.
 13 Go ahead.
 14 THE WITNESS: It's the only reason I would say
 15 no, in my mind.
 16 BY MR. SOLOMON:
 17 **Q. What do you mean?**
 18 A. I say here that they approached us a year ago
 19 and we said no. So basically did not pass a litmus
 20 test of what they would offer our end users other than
 21 just saying, "We're going to lead with a discounted
 22 price from Schein," period.
 23 **Q. Did special markets have a litmus test that it**
 24 **used to evaluate buying groups and GPOs?**
 25 A. It was very vague. It was, again, is there

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1 going to be a partnership with this buying group? Are
 2 they going to value-added services like Council
 3 Connections and our other ones? And if so, we would
 4 then pursue it.
 5 **Q. Who developed that litmus test?**
 6 A. I'm not aware.
 7 **Q. You don't refer to the litmus test in this**
 8 **Exhibit 290, correct?**
 9 A. Correct.
 10 **Q. Did -- or strike that.**
 11 **Why did special markets work with Steadfast as**
 12 **a customer which, as we've discussed, did not offer its**
 13 **members value-added services?**
 14 A. Initially, they did, and as they grew, they
 15 stopped and changed their -- their business model. And
 16 then that's why we then said, "live and learn." That
 17 we -- that this is -- this is where Steadfast is
 18 headed.
 19 **Q. And what happened when Steadfast changed its**
 20 **model?**
 21 A. It caused --
 22 MR. McDONALD: Hang on. Object to the form.
 23 Go ahead.
 24 THE WITNESS: Okay. I don't know exactly what
 25 happened. I don't recollect what happened because I

27 (Pages 105 to 108)

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1 transferred it to mid market, and what happened to it
 2 from then, I'm not sure.
 3 BY MR. SOLOMON:
 4 **Q. Did Steadfast change its model while it was a**
 5 **special markets customer?**
 6 A. May have. I didn't pay attention to it. I do
 7 remember that it was a profitable customer for us. And
 8 I was focused on -- that it was generating revenue. So
 9 I just let it exist as it did.
 10 **Q. So special markets did not approach Steadfast**
 11 **as a result of its change in business model?**
 12 A. Correct. We had other things to go -- doing
 13 other things at the time.
 14 **Q. Was it -- was the fact that Steadfast Medical**
 15 **changed its business model important to special**
 16 **markets?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Yes.
 19 BY MR. SOLOMON:
 20 **Q. How so?**
 21 A. We don't want them to run interference from us
 22 working with the end-user member partners, and also we
 23 want them to promote all Schein product, Schein
 24 services, the Schein -- the one Schein approach.
 25 **Q. But special markets didn't do anything to**

1 in mid market that that P&L fell strictly under mid
 2 market. A vague recollection.
 3 BY MR. SOLOMON:
 4 **Q. When you say it fell under your P&L, what do**
 5 **you mean?**
 6 A. All of special markets' revenue and
 7 profitability were under a special markets P&L. When
 8 mid market was created, the P&L still remained under
 9 special markets during the transition period. Then
 10 that budget for those sales for -- for everybody else
 11 then transferred to the P&L for mid-market HSD.
 12 **Q. Do you recall how you learned that Steadfast**
 13 **had changed its business model?**
 14 A. Not exactly.
 15 **Q. But you did learn about it at some point?**
 16 A. Yes, because they assigned somebody to work
 17 closely with Kip Roland, or somebody in Texas worked
 18 with them when we moved it to mid market. Somebody
 19 then -- I did not have anybody on my team really
 20 monitoring the small account who was just there.
 21 **Q. Turning back to Exhibit 290, the next sentence**
 22 **refers to a small -- another group in NC asking for the**
 23 **same.**
 24 **Do you see that?**
 25 A. Yes.

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1 **address the fact that it had changed its business model**
 2 **to remove value-added services, right?**
 3 A. Under my -- when it was under me, I did not
 4 understand that it was -- had changed its -- its
 5 business model. It seemed to have done so when it went
 6 to mid market.
 7 **Q. When did you learn that it had changed its**
 8 **business model?**
 9 A. I -- I vaguely remember that when it was in
 10 mid market, that their -- that mid market had a concern
 11 about Steadfast's model, but it was off my plate at
 12 that time.
 13 **Q. So you don't recall one way or the other**
 14 **whether the change occurred while it was in special**
 15 **markets?**
 16 MR. McDONALD: Object to the form;
 17 mischaracterizes his testimony.
 18 THE WITNESS: You know, during the transition
 19 period, even though the accounts were transferring to
 20 mid market, they still fell under my P&L. So I was
 21 reluctant if -- to allow anybody to make any changes to
 22 customers during that transition period.
 23 I vaguely remember -- you know, I just
 24 remember Steadfast's model being changed when our
 25 mid-market division was formed, but it was after a year

1 **Q. Does "NC" refer to North Carolina?**
 2 A. Yes.
 3 **Q. Do you recall which group you're referring to**
 4 **in this e-mail?**
 5 A. No.
 6 **Q. You go on to say: (Reading.)**
 7 **But they charge a mgmnt. fee to**
 8 **customer.**
 9 **Are you referring to a management fee?**
 10 A. Yes.
 11 **Q. Is it fair to say that Steadfast Medical did**
 12 **not charge a management fee to its customer?**
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I'm sorry. I'm not aware if
 15 they did.
 16 BY MR. SOLOMON:
 17 **Q. Sitting here today, reading this e-mail, do**
 18 **you understand -- do you understand that you're saying**
 19 **that Steadfast -- or strike that.**
 20 A. I'm sorry. Yeah.
 21 **Q. I'm sorry.**
 22 A. You asked me Steadfast.
 23 **Q. I'm sorry. Just let me ask the question**
 24 **again.**
 25 **Is it fair to say Synergy Dental Partners did**

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114	<p>1 000159018.</p> <p>2 A. Okay.</p> <p>3 Q. Mr. Foley, have you had a chance to review</p> <p>4 Exhibit 291?</p> <p>5 A. Yes.</p> <p>6 Q. What is Exhibit 291?</p> <p>7 A. It's a multitude of -- first of all, it's an</p> <p>8 e-mail from a regional manager at Schein asking if I</p> <p>9 know about this particular group, however you pronounce</p> <p>10 it. And Brian Brady instead answers it, because Brian</p> <p>11 Brady now handles buying groups within our private</p> <p>12 division, HSD, and explains that this buying group is</p> <p>13 handled by Kathleen Titus and that they're on a G10</p> <p>14 pricing plan. And I -- continue?</p> <p>15 Q. I'm sorry?</p> <p>16 A. Is that -- that's what I see in this e-mail.</p> <p>17 Q. Okay. What group were you referring to?</p> <p>18 What's the group that's being discussed in this e-mail?</p> <p>19 A. Is it KlearImpakt? Klearpacked (phonetic)? I</p> <p>20 can't read what it is, but KlearImpakt, I never heard</p> <p>21 of it.</p> <p>22 Q. Do you recall this e-mail chain?</p> <p>23 A. No.</p> <p>24 Q. I'd like to direct your attention to the</p> <p>25 second page --</p>	116	<p>1 A. I'm referring to when we initially set up some</p> <p>2 buying groups like Smile Source and Dental Gator we</p> <p>3 would get pushback from our private division as to</p> <p>4 their value. And here it was kind of along the lines</p> <p>5 of that here they are setting up buying groups now and</p> <p>6 there's no issue with them doing it, questioning</p> <p>7 whether it was an issue with the buying groups or the</p> <p>8 fact that special markets owned it.</p> <p>9 Q. Did you think that that was unfair?</p> <p>10 MR. McDONALD: Object to the form.</p> <p>11 THE WITNESS: I felt it was hypocritical.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. How so?</p> <p>14 A. In that they set up -- that they were setting</p> <p>15 up a buying group that -- and previously had issue --</p> <p>16 had concerns about us setting up a buying group.</p> <p>17 Q. What concerns did Henry Schein Dental</p> <p>18 previously have about special markets working with</p> <p>19 buying groups?</p> <p>20 MR. McDONALD: Objection to form; overly</p> <p>21 broad.</p> <p>22 THE WITNESS: That there was reduction in</p> <p>23 pricing and that all they provided -- that they made</p> <p>24 believe that all these groups provided were pricing</p> <p>25 only, so we'd get pushback from our private division,</p>

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<p>1 some of the regional managers, and field sales 2 consultants. 3 BY MR. SOLOMON: 4 Q. Who from the private division would give the 5 pushback? 6 A. It was -- in this e-mail, I'm mentioning Jake 7 Meadows. 8 Q. And who is Jake Meadows? 9 A. He's a -- I don't know his exact title at 10 Schein. A zone manager or above that. 11 Q. Did you receive pushback from anyone else at 12 Henry Schein Dental? 13 A. No. 14 Q. You also go on to write: (Reading.) 15 "What is so different about this group 16 compared to Gator or Smile Source, other 17 than the G spot plan." 18 Do you see that? 19 A. Umm-hmm. 20 Q. "Gator" refers to Dental Gator, right? 21 A. Correct. 22 Q. What did you mean there? 23 A. That when we had -- we were doing business 24 initially with Dental Gator and Smile Source, there was 25 pushback about this and it's no different than this</p>	<p>1 it is. Things are changing. 2 Q. Were you upset about the pushback you received 3 from Henry Schein Dental? 4 A. No. 5 Q. Why not? 6 A. They were my -- they were customers and they 7 were profitable to us, and it was a changing time. And 8 we could see the writing on the wall that there would 9 be more buying groups, and we had good relationships 10 with these groups. 11 Q. So would you just ignore the pushback that you 12 received from HSD? 13 A. Yes, for the most part. 14 Q. Did you have many conversations with 15 Mr. Muller concerning the pushback that special markets 16 was receiving? 17 A. Yes. 18 Q. About how many conversations would you say you 19 had with Mr. Muller? 20 A. It would be on a per-case basis, whatever we 21 would receive an e-mail that I felt at this level. 22 In this particular situation, I'm just sharing 23 the -- what did I use? -- the hypocrisy, but it was 24 answered right away by Brian Brady that we re doing 25 business with them and they're a viable buying group.</p>
118	120
<p>1 particular arrangement with this group of 35. It is a 2 buying group. The only difference is it's on a G plan 3 versus ours being on a more aggressive P plan. 4 Q. You say when "we were doing business initially 5 with Dental Gator," did special markets end its 6 relationship with Dental Gator? 7 A. No. "Initially" meaning when we first started 8 Dental Gator there was issues. Later those issues were 9 resolved between our two divisions as to the value of 10 Dental Gator. 11 Q. When you were -- 12 A. And I had mentioned earlier that Dental Gator 13 initially needed some coaching from us as to how to add 14 some value-added services, which they accepted, and we 15 moved forward. 16 Q. You referred a moment ago to pushback. What 17 exactly did you mean by that? 18 A. That our private division was at this -- in 19 the early days years ago, would -- were not in 20 agreement at that time with a number of the buying 21 groups being under special markets. 22 Q. And how did that pushback manifest itself to 23 you? 24 A. Just complaints, you know, but the plans 25 stayed in place. And you just, you know -- it is what</p>	<p>1 And it's a new Schein. This is September 2015 2 when mid market took over the buying groups. So it was 3 a good move for us to move our buying groups to mid 4 market. We even moved Smile Source. Now I remember. 5 This is back in 2009. That is another buying group 6 that was once under special markets. 7 Q. You mentioned a moment ago -- my question to 8 you was -- you referred to pushback; what exactly did 9 you mean by that? You responded: (Reading.) 10 "That our private practice division was 11 at this -- in the early days years 12 ago...were not in agreement at the time, 13 with a number of the buying groups being 14 under special markets." 15 What you did mean by "the early days years 16 ago"? 17 A. When buying groups were more in their initial 18 stages like the Dental Gators and them coming up, and 19 Smile Source in 2009, and Steadfast in 2010. In those 20 initial days, there was -- there was concern and 21 pushback at that time, but later our -- our divisions 22 agreed that -- the need for these buying groups, and we 23 started to work more closely with them. We always 24 worked with them. We just managed to get our private 25 division to work more closely with them.</p>

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1 **Q. And when did that agreement between Henry**
2 **Schein Dental and Special Markets occur?**
3 MR. McDONALD: Object to the form.
4 THE WITNESS: It really wasn't an agreement.
5 It was just change in -- I don't know the date of when
6 they were more agreeable to the buying groups that we
7 possessed.
8 BY MR. SOLOMON:
9 **Q. Do you recall an approximate time frame as to**
10 **when Henry Schein Dental became more favorable toward**
11 **buying groups and GPOs?**
12 MR. McDONALD: Object to the form.
13 THE WITNESS: I do know that around 2010 we
14 introduced them to Smile Source and had the Smile
15 Source team meet with them to describe their
16 value-adds. And we decided at that time that Smile
17 Source would be better handled by Henry Schein Dental
18 than by us. It would help alleviate the issues with
19 FSCs.
20 BY MR. SOLOMON:
21 **Q. For the record, what is the Smile Source?**
22 A. Smile Source was a GPO. I'm sorry. It was a
23 buying group -- I'm sorry; I'll keep it that way --
24 was a buying group that offered a lot of services, and
25 we helped expand in special markets over the years and

1 Sullivan.
2 **Q. Did you have any input in that decision?**
3 A. I was part of meetings where I actually
4 brought in the Smile Source people to meet with Hal
5 Muller in New York, and then to pitch their sales pitch
6 to us. And then I -- I was -- I handed them off to a
7 meeting with, I believe, Hal Muller, Dave Steck, and
8 John Chatum in Milwaukee.
9 **Q. And what year did that -- those meetings take**
10 **place?**
11 A. That would be, like, 2010, 2011.
12 **Q. And those meetings were concerning moving**
13 **Smile Source from special markets to HSD?**
14 A. Correct, as a buying group.
15 **Q. Did Smile Source agree with the decision to**
16 **move it from special markets to HSD?**
17 A. Yes.
18 MR. McDONALD: Object to the form.
19 BY MR. SOLOMON:
20 **Q. How do you know that?**
21 A. They -- I was in -- you know, I was in
22 meetings where they were -- they liked what our
23 value-added services were and how we could work
24 together more closely. So they enjoyed that part of
25 it. And I later know that I -- I do know that later

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1 then moved it over to -- to HSD.
2 BY MR. SOLOMON:
3 **Q. When did special markets first establish a**
4 **relationship with Smile Source?**
5 A. It was around my starting period because they
6 were at their early numbers. I would say 2008.
7 **Q. And how long did Smile Source remain a**
8 **customer of special markets?**
9 A. I believe for about two or three years.
10 **Q. What happened after that?**
11 A. Again, we had a meet with HSD, and we simply
12 transferred that account. This was before mid market.
13 We simply transferred the account and the ownership of
14 it to HSD.
15 **Q. Why was it transferred to HSD?**
16 A. We felt that HSD with their FSCs would --
17 could work more closely with their members. They had
18 very progressive members that could use a lot of our
19 value-added services; whereas with special markets, we
20 were, you know -- we were limited in dealing with the
21 actual offices. We preferred to deal centrally. We
22 felt it would be a better fit for HSD.
23 **Q. Do you recall whose decision it was to**
24 **transfer Smile Source to HSD?**
25 A. It was decision between Hal Muller and Tim

1 they left us.
2 **Q. When you say "they left us," what do you mean?**
3 A. They partnered with a different vendor later
4 on.
5 **Q. After Smile Source moved to Henry Schein**
6 **Dental, it then ended its relationship with Henry**
7 **Schein Dental; is that right?**
8 A. Yes, some day, I'm -- not exactly when, I had
9 heard that they moved to Burkhart Dental.
10 **Q. Did Smile Source's pricing stay the same when**
11 **it moved to Henry Schein Dental?**
12 A. Yes. We transferred their pricing plan to a
13 plan at HSD. They're on separate systems, so we made a
14 copy of the plan.
15 **Q. How do you know that?**
16 A. Because it required -- it was an odd procedure
17 for them to actually copy the plan over and -- they had
18 created a new sales plan number. I just remember Paul
19 Berkey having to work with their team in getting their
20 pricing moved into a different format on a different
21 system.
22 **Q. Was special markets a profitable -- strike**
23 **that.**
24 **Was Smile Source a profitable customer when it**
25 **belonged to special markets?**

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1 A. Yes, very.
 2 **Q. How so?**
 3 A. They were growing. They were adding very --
 4 larger practices where they were growing into at the
 5 time, and they had a -- they had a great business plan
 6 for growth, and they were sticking to it.
 7 **Q. Did Smile Source bring new customers to Henry**
 8 **Schein who were previously serviced by other**
 9 **distributors?**
 10 A. Yes.
 11 **Q. How do you know?**
 12 A. I remember them being -- bringing in --
 13 because they brought in a bigger customer in the -- in
 14 either Nevada or Utah. When I was managing the
 15 account, I remember a big win that was a Patterson
 16 account.
 17 **Q. Do you recall how many new customers Smile**
 18 **Source brought to Henry Schein?**
 19 A. No.
 20 **Q. Were you responsible for the relationship with**
 21 **Smile Source while it was a special markets customer?**
 22 A. I had a SAM at the time, Rick Heysquierdo,
 23 H-e-y-s-q-u-i-e-r-d-o, who managed the account because
 24 they're based out of Houston.
 25 **Q. Did you have any reservations about moving**

1 **Q. Did you express those reservations to**
 2 **Mr. Muller or Mr. Sullivan?**
 3 A. I would have -- I would express those to --
 4 Hal Muller.
 5 **Q. And what was his response?**
 6 A. The account would be better served in our
 7 private division; we should move it to them.
 8 **Q. And why Mr. Muller -- do you recall why**
 9 **Mr. Muller thought it would be better served in the**
 10 **private division HSD?**
 11 A. Yes.
 12 **Q. Why?**
 13 A. Because of the -- there -- because of the --
 14 what we could bring -- what HSD could bring in their
 15 value-adds compared to what we were able to bring at
 16 that time is very limited. We were focused on DSOs.
 17 This particular buying group was very
 18 aggressive and progressive, and we felt it could be
 19 built better with the FSCs involved.
 20 **Q. Who started the conversation at Henry Schein**
 21 **surrounding the transfer of Smile Source to HSD?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I don't know.
 24 BY MR. SOLOMON:
 25 **Q. Do you recall whether it was someone from HSD?**

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1 **Smile Source from special markets to Henry Schein**
 2 **Dental?**
 3 A. I didn't want to lose the -- I didn't want to
 4 lose the revenue. That's all. The only reservation I
 5 had.
 6 **Q. Why was that a concern for you?**
 7 A. It was in my P&L and they were growing, and I
 8 was handing it over to another division.
 9 **Q. Did you ultimately lose revenue as a result of**
 10 **the transfer to HSD?**
 11 A. In my P&L, I did.
 12 **Q. How much revenue did you lose?**
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: Yeah, I don't remember.
 15 BY MR. SOLOMON:
 16 **Q. Do you recall whether it was significant?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: You'd have to define
 19 "significant."
 20 BY MR. SOLOMON:
 21 **Q. Was it more than 100,000?**
 22 A. Yes.
 23 **Q. Do you recall whether it was more than**
 24 **500,000?**
 25 A. I would say it would be about that.

1 A. No, I don't recall.
 2 **Q. Do you recall whether Smile Source asked**
 3 **special markets to provide additional value-added**
 4 **services?**
 5 A. I don't remember.
 6 **Q. I just want to look at one more thing in**
 7 **Exhibit 291, Mr. Foley. Just directing your attention**
 8 **to the first page.**
 9 **The top e-mail, the first sentence, you say to**
 10 **Mr. Muller: (Reading.)**
 11 **"You and I need to create our own new**
 12 **world. We could do this, it is so easy**
 13 **and you know it's all about reduced**
 14 **supplies."**
 15 **What were you referring to in that sentence?**
 16 A. When you take a basic buying group, the kind
 17 that does not offer any value services -- I was simply
 18 making, like, Hal and I or any Joe on the street could
 19 call and say, "Hey, I'd like to set up a buying group
 20 and get reduced supplies pricing."
 21 **Q. Was that something that you thought would be a**
 22 **good thing?**
 23 A. I thought it would be a simple thing. Not --
 24 not being facetious here in my comment. That is
 25 ridiculous.

32 (Pages 125 to 128)

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1 **Q. When you say you know it's all about reduced**
2 **supplies, are you saying that that was -- strike that.**

3 **Are you saying that -- are you saying that**
4 **reduced supplies are important to Henry Schein**
5 **customers?**

6 MR. McDONALD: Object to the form.

7 THE WITNESS: No, I believe I'm stating that
8 it would be related to reduced supply pricing for
9 buying groups that focused only on pricing, nothing
10 more.

11 MR. McDONALD: If you're at a spot, why don't
12 we take a lunch break.

13 MR. SOLOMON: We've been going for about an
14 hour.

15 MR. McDONALD: Yeah, we have, and it's 2:30 to
16 us.

17 MR. SOLOMON: Okay. Sure.

18
19 (Whereupon, at the hour of 12:20 p.m. a recess
20 was taken until the hour of 1:13 p.m.)

21 ---oOo---

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1 AFTERNOON SESSION

2 ---oOo---

3 MR. SOLOMON: Back on the record at 1:13.
4 I'm handing the witness Exhibit 292, which is
5 a document Bates labeled Henry Schein 000084884. It's
6 a December 22nd, 2014 e-mail chain.

7 [Whereupon, Deposition Exhibit 292 was
8 marked for identification.]

9 BY MR. SOLOMON:

10 **Q. Mr. Foley, just let me know when you've had a**
11 **chance to review it.**

12 A. It's a long one. Okay. Okay.

13 **Q. Mr. Foley, what is Exhibit 292?**

14 A. It's in regards to Atlantic Dental Group or --
15 Atlantic -- Atlantic Dental Group. And this was an
16 up-and-coming group that we were unfamiliar with
17 whether they were a DSO, about the ownership, or
18 whether they were classified as a buying group.

19 And I'm in communication -- and we're being
20 informed by a vendor partner, VOCO, that they would
21 like to work with this group and provide -- you know,
22 and it appears they're saying that the account was
23 already being worked on by Benco, and basically they're
24 asking me do I know about the account. And I'm saying
25 I think it may be a GPO or its hybrid DSO; what do the

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1 local people on the street know. I really can't figure
2 this out, in a sense.

3 So at the end, Jake Meadows was in his -- the
4 ball was put in his court to figure out what -- you
5 know, how to proceed if they want to -- that they
6 currently are with Benco and we would like to try to
7 win this business; would it be me or would it be Jake
8 Meadows.

9 **Q. Did Schein ever do anything to try and win the**
10 **Atlantic Dental Care business?**

11 A. To my knowledge, at one point Jake Meadows met
12 with them at the Chicago mid winter. I remember a
13 future e-mail. I don't know. I would think it was
14 after this e-mail that they met face-to-face at the
15 Chicago mid winter. <

16 **Q. And did that result in a relationship -- a**
17 **business relationship with Atlantic Dental Care?**

18 A. Not that I'm aware of.

19 **Q. And Chicago mid winter, does that refer to a**
20 **trade show that takes place in Chicago?**

21 A. Yes, in February.

22 **Q. Just turning your attention to the second**
23 **page of this e-mail chain, December 22nd, 2014 at**
24 **1:40 p.m. You state in the second line: (Reading.)**
25 **"Looks like a buying group/GPO and I**

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1 **believe we walked away from this."**

2 **Do you see that?**

3 A. Yes.

4 **Q. What did you mean by that?**

5 A. In the early years when they first formed and
6 was much smaller, it appeared to be simply a buying
7 group based on price, and we were basically confused
8 about what they had to offer and didn't pursue it.
9 They didn't come to us, but we didn't really go after
10 them for an agreement. And now I'm questioning is this
11 a hybrid-type DSO.

12 **Q. When you say "we," were you referring to**
13 **special markets?**

14 A. Yes, umm-hmm.

15 **Q. So special markets walked away from Atlantic**
16 **because it didn't offer value-added services to its**
17 **members?**

18 A. We didn't actually pursue it; let's go that
19 route. They were not a customer. They did not come to
20 us. People were saying, "Are you doing business with
21 this group?" And we'd basically looked on the website
22 and said, I don't think we would do business with
23 their -- based on what they offer. Basically, just
24 lower-priced supplies at first. But they expanded
25 their model, and then we engaged our private division

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1 because at this time they were starting to transition
2 and say, "Why don't you guys work with this group,
3 unless you think it's a DSO."
4 **Q. Do you recall how you first learned about**
5 **Atlantic Dental Care?**
6 A. Yes. I believe the -- I remember the local
7 FSCs in that region in Virginia and where they were
8 based out of were losing their customers to this group
9 who were aligned with Benco.
10 **Q. And how did you learn about that?**
11 A. The FSCs would make -- you know, actually made
12 a comment to a region manager who then passed it on to
13 me and said, are we doing business with them.
14 **Q. For the record, what is Benco?**
15 A. Benco is another dental distributor.
16 **Q. And it's a competitor of Schein?**
17 A. Correct.
18 **Q. So you mentioned that one of the reasons why**
19 **special markets did not pursue Atlantic dental care**
20 **initially was because it did not offer value-added**
21 **services; is that right?**
22 A. Yes.
23 **Q. Were there any other reasons why special**
24 **markets did not pursue Atlantic Dental Care initially?**
25 A. It may have been based on that it was small at

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1 the time, the size.
2 **Q. Why was -- strike that.**
3 **Why were value-added services important to**
4 **Henry Schein Special Markets?**
5 A. Again, we wanted to make sure that we could
6 build the practices, have access to the practices
7 and -- via whoever is controlling the practices,
8 whether it's a buying group or whether it's a DSO.
9 **Q. When you say "we," you're referring to special**
10 **markets?**
11 A. Yes, yes. Special markets, correct.
12 **Q. Did you receive any input from anyone at HSD**
13 **when you initially explored Atlantic Dental Care?**
14 A. Initially only that they were -- at this time
15 of this e-mail, they were losing their customers to
16 Benco because Benco had aligned themselves with
17 Atlantic Dental.
18 **Q. So --**
19 A. We did not.
20 **Q. When you say "we did not," you did not align**
21 **yourself with Atlantic dental care; is that what you're**
22 **saying?**
23 A. Correct.
24 **Q. Okay. So employees of HSD were telling you**
25 **that there were customer losses to Benco through**

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1 **Atlantic dental care?**
2 A. Yes.
3 **Q. Did that concern you?**
4 A. Not from a special markets perspective, but as
5 wearing my Henry Schein hat, yes. It lost revenue for
6 the company.
7 **Q. Did anyone from Henry Schein Dental want to**
8 **pursue Atlantic dental care as a customer at that time?**
9 A. Yes.
10 MR. McDONALD: Hang on. Object to the form;
11 lack of foundation.
12 Go ahead.
13 THE WITNESS: Yes.
14 BY MR. SOLOMON:
15 **Q. Do you recall who?**
16 A. Jay Meadows specifically and the regional
17 manager in the Virginia area. I don't recall their
18 name.
19 **Q. Do you recall whose decision it was within**
20 **special markets not to pursue Atlantic dental care?**
21 A. No.
22 **Q. Would it have been your decision?**
23 A. It could have been.
24 **Q. Did -- you can put that document aside for**
25 **now, Mr. Foley.**

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1 A. Okay.
2 MR. SOLOMON: Handing the witness Exhibit 293,
3 which is a document Bates labeled Henry Schein
4 00015- -- 145110, and a Monday, May 12th, 2014 e-mail
5 chain.
6 [Whereupon, Deposition Exhibit 293 was
7 marked for identification.]
8 MR. McDONALD: I'll agree with you that it
9 starts with a May 12th e-mail chain, but that's not the
10 whole document, just so the record's clear.
11 MR. SOLOMON: The last-in-time e-mail in the
12 chain is May 12th, 2014.
13 MR. McDONALD: I agree with that.
14 BY MR. SOLOMON:
15 **Q. Okay.**
16 A. Okay. Go ahead.
17 **Q. Mr. Foley, what is Exhibit 293?**
18 A. In regards to Steadfast -- you're right --
19 Medical. That's the name of the company. They're a
20 GPO -- Medical. That's their -- which is Steadfast I
21 mentioned earlier.
22 **Q. Which is a buying group, right?**
23 A. Correct. It's a buying group that originated
24 in special markets.
25 And Kathleen Titus is wanting to meet with

34 (Pages 133 to 136)

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1 their executive team to discuss how they are operating,
2 and she's getting pushback from them. And she's
3 explaining to them that they appear to be more of a
4 procurement program than they are a GPO, and that
5 they're not partnering with us, that we have plenty of
6 GPO partnerships, that we're both in a position to win.
7 She'd like to have that same relationship with
8 Steadfast, but this is where Steadfast is, obviously,
9 disengaging with us and becoming more a procurement
10 place. So they're copying me on here because at this
11 time Steadfast fell under my P L.

12 And my pushback is, "Hey, I don't want to lose
13 this account. They're up 36 percent from last year.
14 And can we do a full-court press and can we get more
15 information if they're running into AR problems, or if
16 they're -- if they're paying their bills like -- I'm
17 sorry -- are they paying their partners -- their vendor
18 partners' bills -- I'm sorry -- are they paying their
19 members' invoicing? You know, how engaged are they?
20 Are they really just a procurement group? So that was
21 my concern before I -- before I said go ahead and
22 cancel the relationship.

23 MR. McDONALD: And, Mr. Foley, he simply asked
24 you whether they were a buying group. So listen to his
25 question.

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1 THE WITNESS: Oh, sorry.

2 MR. McDONALD: It's okay.

3 BY MR. SOLOMON:

4 **Q. Mr. Foley, where do you refer to concerns**
5 **about them being a procurement group in this e-mail?**

6 A. I saw it a minute ago. Hold on. It is on the
7 third page at the top.

8 **Q. Ms. Titus refers to it as a procurement**
9 **service?**

10 A. Correct.

11 **Q. Do you know what she meant by that?**

12 A. Yes.

13 **Q. What did she mean?**

14 A. That they're basically processing orders for
15 all of their members, finding out which vendor -- even
16 if the customer places the order through Schein, that
17 they're receiving the order and saying you can buy this
18 cheaper from somebody else.

19 **Q. Is a procurement service different from a**
20 **buying group or a GPO?**

21 A. Yes, very much.

22 **Q. How so?**

23 A. A buying group has -- a buying group allows
24 the end user to buy from whoever they want to and does
25 not base recommendations on going to other vendors.

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1 **Q. Did you ever look into whether Steadfast**
2 **Medical was a procurement service?**

3 A. No.

4 **Q. Did you agree with Ms. Titus in her assessment**
5 **that Steadfast Medical was a procurement service?**

6 A. Yes.

7 **Q. Where do you agree with her in this e-mail?**

8 MR. McDONALD: Object to the form.

9 THE WITNESS: It's not -- it's not here in the
10 e-mail, but I'm giving her authority to do -- to move
11 it to mid market and do what they want with it.

12 BY MR. SOLOMON:

13 **Q. Why did you want to move it to mid market?**

14 A. Because at that time their numbers were lower
15 and it was during the transition period.

16 I'm sorry. Let me correct myself.

17 I didn't want to transfer them anywhere. I
18 state that in the e-mail. I wanted to keep it. She
19 simply -- Kathleen's simply requesting that because it
20 fell underneath me that we shut it down.

21 **Q. Did you agree with her that special markets**
22 **should shut down Steadfast Medical?**

23 A. I don't remember. I don't remember. I know
24 that it happened.

25 **Q. What do you mean by that?**

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1 A. I believe that we -- we then lost the numbers
2 in my reports, that their -- their plan was
3 discontinued.

4 **Q. So was Steadfast Medical shut down?**

5 A. We discontinued their discounted plan, so
6 their prices went up.

7 **Q. Why?**

8 A. Because they weren't operating as either a
9 buying group or as a DSO; therefore, we weren't going
10 to allow, you know, discounted pricing.

11 **Q. And whose decision was it to discontinue**
12 **Steadfast Medical's discount plan?**

13 A. It would have been mine or Hal's based on
14 Kathleen's input at this --

15 **Q. And was Steadfast Medical Kathleen's customer?**

16 A. It would have transferred to Kathleen during
17 the transition as a mid-market customer eventually.

18 **Q. At the time of this e-mail in May of 2014, was**
19 **Steadfast Medical Ms. Titus's customer?**

20 A. I don't believe so.

21 **Q. Was it your customer?**

22 A. It was my team's customer, yes.

23 **Q. Do you know who specifically was responsible**
24 **for managing the account?**

25 A. No. We kept our distance from it for the most

141	<p>1 part.</p> <p>2 Q. What do you mean by that?</p> <p>3 A. We had a hundred smaller groups in the DSO</p> <p>4 segment that we weren't as focused on, and this was one</p> <p>5 of them. So I really didn't have anybody specifically</p> <p>6 on that account.</p> <p>7 Q. I just want to direct your attention to the</p> <p>8 second page of Exhibit 293, your e-mail to Ms. Titus</p> <p>9 copying Joe Cavaretta at 5:47 p.m. on May 12th.</p> <p>10 You say: (Reading.)</p> <p>11 "As much as I'm against these GPOs we</p> <p>12 still need to talk before moving this</p> <p>13 account to HSD."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Were you referring to Steadfast Medical in</p> <p>17 that sentence there?</p> <p>18 A. Yes.</p> <p>19 Q. Why were you categorizing Steadfast Medical as</p> <p>20 a GPO as opposed to a procurement service?</p> <p>21 MR. McDONALD: Object to the form.</p> <p>22 THE WITNESS: Because they weren't following</p> <p>23 the buying group GPO mantra of partnering with us, that</p> <p>24 there's -- based on Kathleen's statement that they were</p> <p>25 simply processing orders and funneling them to</p>	143	<p>1 Q. Do you know why Ms. Titus was concerned about</p> <p>2 shutting down Steadfast Medical if it wasn't her</p> <p>3 customer?</p> <p>4 A. Yes.</p> <p>5 Q. Why?</p> <p>6 A. Because she was given that territory in the</p> <p>7 mid-market area and Steadfast was opening up practices</p> <p>8 in that area and promoting their services with our</p> <p>9 reduced sales -- with our reduced pricing and playing</p> <p>10 the role of a procurement company only and not as a</p> <p>11 buying group.</p> <p>12 Q. At the time of this e-mail, Ms. Titus worked</p> <p>13 for special markets, right?</p> <p>14 A. She worked -- at the time of this e-mail, she</p> <p>15 would have worked for special markets mid market.</p> <p>16 Again, I'm sorry. She would be with -- the P L was</p> <p>17 still under me. Kathleen was HSD. Kathleen Titus was</p> <p>18 with HSD mid market at this time.</p> <p>19 Q. I just would like to direct your attention to</p> <p>20 her signature on the first page. It says: (Reading.)</p> <p>21 "Henry Schein Special Markets/Corporate</p> <p>22 Account Group."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Was she -- does that mean that she was with</p>
142	<p>1 different supplier partners or to distributors.</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Would you have been okay with Steadfast</p> <p>4 Medical if it was simply a buying group or GPO and not</p> <p>5 a procurement service?</p> <p>6 A. Yes. I was asking could you find more data</p> <p>7 about them to see if they re similar to OrthoSynetics,</p> <p>8 which is a good buying group only for oral surgery; can</p> <p>9 you give me more data?</p> <p>10 Q. Why did you say in that sentence: (Reading.)</p> <p>11 "As much as I am against these GPOs"?</p> <p>12 A. I am -- again, when it comes to just price,</p> <p>13 that segment of GPO/buying groups that focuses</p> <p>14 exclusively on price, I'm not for. And this is where</p> <p>15 Steadfast was going downhill. That was not their</p> <p>16 original way of doing business.</p> <p>17 Q. You don't say -- you don't refer to price in</p> <p>18 this specific e-mail, do you?</p> <p>19 A. No.</p> <p>20 Q. Just turning to the first page of Exhibit 293,</p> <p>21 Ms. Titus in the first paragraph states: (Reading.)</p> <p>22 "I don't want to transfer them anywhere.</p> <p>23 I want to shut them down completely."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	144	<p>1 special markets?</p> <p>2 A. At this time, I believe she was with mid</p> <p>3 market but during the transition did not change her</p> <p>4 title because we did not want to affect customers as to</p> <p>5 all the changes that were occurring. I don't know what</p> <p>6 her new title became.</p> <p>7 Q. So Ms. Titus was interested in shutting down</p> <p>8 Steadfast Medical because it would have affected</p> <p>9 customers on the HSD side of the business?</p> <p>10 A. It would affect the members of Steadfast, yes.</p> <p>11 They were on the HSD side, and because it was a -- a</p> <p>12 procurement program and nothing like a GPO or like a</p> <p>13 DSO.</p> <p>14 Q. And how would that have affected Henry Schein</p> <p>15 Dental's business?</p> <p>16 A. Repeat that.</p> <p>17 Q. Sure. How would that have affected Henry</p> <p>18 Schein Dental -- Henry Schein Dental's business?</p> <p>19 A. As Steadfast wasn't partnering with us, and by</p> <p>20 promoting best pricing from any vendor that sold an</p> <p>21 item at the lowest price, an office that was buying</p> <p>22 from us may be redirected to buy from a competitor</p> <p>23 because Steadfast is gatekeeping pricing procurement</p> <p>24 for that particular group.</p> <p>25 Q. So the concern was that members of Steadfast</p>

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1 **Medical would purchase supplies from some of Schein's competitors?**

2 A. Via the fact that we had -- yes, via the fact
3 that we had created a relationship with Steadfast.

4 **Q. What do you mean by that?**

5 A. Okay. We had created initially with Steadfast
6 the whole concept of work with them and being a buying
7 group. And at this time they had moved away from that
8 and become a -- I'm sorry -- a buying group that would
9 work closely with our members, and instead almost
10 became a competitor to our FSCs.

11 **Q. Do you recall any instances in which Steadfast
12 Medical acted as a competitor to Schein's FSCs?**

13 MR. McDONALD: Object to the form.

14 THE WITNESS: I'm sorry. No.

15 BY MR. SOLOMON:

16 **Q. Did Henry Schein Special Markets lose revenue
17 when Steadfast Medical was shut down as a customer?**

18 MR. McDONALD: Object to the form; lack of
19 foundation.

20 THE WITNESS: My division would have lost the
21 revenue, special markets. I'm unaware of whether Henry
22 Schein lost revenue by recapturing -- by maintaining
23 the customers' link to Steadfast.

24 BY MR. SOLOMON:

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1 **Q. Do you recall how much revenue your division
2 within special markets lost from the loss of Steadfast
3 Medical?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: That was in the e-mail, I
6 believe, in my body. Let me see. No, I'm not sure.
7 I'm not sure of it.

8 I just understand that its growth was --
9 its -- they were up 75 percent in overall merchandise
10 revenue. I don't know what the base number was on that
11 17 percent, whether it was 5000,000 or --

12 BY MR. SOLOMON:

13 **Q. So Steadfast Medical was bringing -- strike
14 that.**

15 **So the revenue from Steadfast Medical was
16 growing?**

17 A. Yes.

18 **Q. Do you recall whether Ms. Titus was against
19 Henry Schein working with buying groups?**

20 A. No.

21 **Q. Do you recall any efforts by her to dismantle
22 any buying groups?**

23 A. No, other than this one. But it's a
24 procurement. Okay?

25 **Q. Was Ms. Titus -- strike that.**

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1 **Did Ms. Titus work closely with employees of
2 Henry Schein Dental?**

3 A. Yes.

4 **Q. Do you recall who?**

5 A. In general, you know, she was now part of HSD
6 when she moved to mid market. So it would be Joe
7 Cavaretta, the regional managers, the FSCs, whoever.

8 **Q. Do you recall whether Ms. Titus worked with
9 Tim Sullivan?**

10 A. I'm unaware if they worked at all together.

11 MR. SOLOMON: So you can go ahead and put
12 Exhibit 293 aside.

13 I'm handing the witness Exhibit 294, Bates
14 labeled Henry Schein 000151240, and this is an e-mail
15 chain, the last of time -- last in time of which is
16 November 20th, 2014.

17 [Whereupon, Deposition Exhibit 294 was
18 marked for identification.]

19 THE WITNESS: Okay.

20 BY MR. SOLOMON:

21 **Q. Mr. Foley, what is Exhibit 294?**

22 A. It's a -- an e-mail from one of our medical
23 regional managers requesting us work with a
24 correctional facility and jails on a GPO medical plan.

25 **Q. Do you recall this e-mail?**

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1 A. Yes.

2 **Q. The medical regional manager you're referring
3 to, is that Rachelle Ferrigno?**

4 A. Yes.

5 **Q. Ms. Ferrigno writes on the first page of this
6 e-mail chain, in an e-mail to you: (Reading.)
7 "We are aware that the special markets
8 division is not working with GPOs for
9 our dental business."**

10 **Do you know why Ms. Ferrigno said that --**

11 A. Yes.

12 **Q. -- special markets was not working with GPOs
13 for the dental business?**

14 A. Yes.

15 **Q. Why did she say that?**

16 A. She's referring to true GPOs in the sense, not
17 buying groups. And she's aware that dental -- the
18 dental industry does not work with GPOs in the same
19 sense that medical has GPOs like Broadlane and
20 Amerinet.

21 **Q. How do you know that's what Ms. Ferrigno means
22 there?**

23 A. Because she states it was sent from Premier
24 GPO, which is the name of a medical GPO, and he's
25 requesting if dental has a GPO-type plan, a true GPO,

37 (Pages 145 to 148)

149	<p>1 okay, not a buying group.</p> <p>2 Q. And why did the dental side of Henry Schein</p> <p>3 not work with true GPOs?</p> <p>4 A. I--</p> <p>5 MR. McDONALD: Hang on. Object to the form.</p> <p>6 THE WITNESS: I am not aware of why the dental</p> <p>7 industry does not work with GPOs.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. So you're saying the whole dental industry</p> <p>10 doesn't work with GPOs?</p> <p>11 A. That I know of, the true sense of a GPO like</p> <p>12 Broadlane.</p> <p>13 Q. Like. I'm sorry. What was the --</p> <p>14 A. Broadlane, Novation.</p> <p>15 Q. Are you aware of any other companies -- strike</p> <p>16 that.</p> <p>17 Are you aware of any other dental distributors</p> <p>18 that do not work with true GPOs like Broadlane and</p> <p>19 Novation?</p> <p>20 MR. McDONALD: Object to the form;</p> <p>21 mischaracterizes his testimony.</p> <p>22 THE WITNESS: I am unaware -- I am unaware of</p> <p>23 GPOs being in the segment, in the dental segment.</p> <p>24 BY MR. SOLOMON:</p> <p>25 Q. So you've never encountered a GPO like</p>	151	<p>1 something wrong with the exhibit.</p> <p>2 MR. SOLOMON: I'm in agreement with that.</p> <p>3 MR. McDONALD: Finally.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Mr. Foley, what is Exhibit 295?</p> <p>7 A. It's Kathleen Titus explaining to a number of</p> <p>8 people at HSD and Hal Muller what she believed</p> <p>9 Breakaway practice is and that she plans on meeting</p> <p>10 with them to find out more and to disseminate the</p> <p>11 information about them to all the regional manager</p> <p>12 because they keep on popping up on people's radar.</p> <p>13 Q. Breakaway Dental was one of the buying</p> <p>14 groups/GPOs that fell under special markets, right?</p> <p>15 A. That is correct.</p> <p>16 Q. I'd like to direct your attention to the last</p> <p>17 e-mail on May 20th, 2014 at 12:37 p.m. It's on the</p> <p>18 first page of the e-mail chain.</p> <p>19 A. Very top.</p> <p>20 Q. At the very top. And there's an e-mail from</p> <p>21 yourself, and it doesn't indicate on the face of the</p> <p>22 e-mail to whom the e-mail was sent, but we have some</p> <p>23 additional information which you'll see on the first</p> <p>24 page of the exhibit that tells us that the e-mail was</p> <p>25 sent by you to Hal Muller, Chuck Jenkins. And your</p>
150	<p>1 Broadlane or Novation in the dental industry?</p> <p>2 A. Correct, in the true sense of a GPO.</p> <p>3 Q. And what do you mean by that?</p> <p>4 A. That they themselves are buying the</p> <p>5 merchandise at a highly discounted rate to pass on to</p> <p>6 their members.</p> <p>7 Q. Do you mean that the GPO is purchasing the</p> <p>8 supplies directly from a manufacturer?</p> <p>9 A. I believe that's --</p> <p>10 MR. McDONALD: Hang on. Object to the form.</p> <p>11 Go ahead.</p> <p>12 Lack of foundation.</p> <p>13 THE WITNESS: I believe that's how -- I</p> <p>14 believe that's how GPOs operate, that they buy directly</p> <p>15 from the manufacturer partners on the medical side.</p> <p>16 MR. SOLOMON: You can put Exhibit 294 aside</p> <p>17 for that.</p> <p>18 I'm handing the witness Exhibit 295, Bates</p> <p>19 labeled Henry Schein 000166442, which is an e-mail</p> <p>20 chain. The last in time is a May 20th, 2014 e-mail.</p> <p>21 MR. McDONALD: And so we're not confused at a</p> <p>22 later date, the actual first page of the</p> <p>23 exhibit doesn't have a Bates number on it. It's the</p> <p>24 metadata, which we're in agreement with. I don't want</p> <p>25 us looking at the transcript later and thinking there's</p>	152	<p>1 e-mail address is also listed there as a recipient.</p> <p>2 So just want to provide that information to</p> <p>3 you for context before we go ahead and talk about this</p> <p>4 top e-mail.</p> <p>5 Do you recall writing this e-mail?</p> <p>6 A. No.</p> <p>7 Q. What are you referring to when you say:</p> <p>8 (Reading.)</p> <p>9 "I'm not sure who gave her the marching</p> <p>10 orders to dismantle these"?</p> <p>11 A. I am not sure, as this is not -- because the</p> <p>12 e-mail below, it talks nothing about dismantling this</p> <p>13 particular customer. So I'm not sure what would lead</p> <p>14 to that message. I see nothing in here that triggers</p> <p>15 that type of response.</p> <p>16 Q. Do you recall what you were referring to in</p> <p>17 this e-mail?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did you ever have a discussion with</p> <p>20 Mr. Muller or Mr. Chuck Jenkins apart from this e-mail</p> <p>21 about Kathleen Titus dismantling certain customers?</p> <p>22 A. No.</p> <p>23 Q. Who is Chuck Jenkins?</p> <p>24 A. Chuck Jenkins is director of equipment. He s</p> <p>25 my counterpart on the equipment side of special</p>

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1 markets.
 2 **Q. Did you ever have a follow-up discussion with**
 3 **Ms. Titus surrounding the information in this exhibit?**
 4 A. No. I think I was giving the heads-up to
 5 Chuck Jenkins to keep an eye on Breakaway Dental, that
 6 we make sure that this gets done, this meeting happens,
 7 because they were a very positive GPO, and he had
 8 helped start it, Chuck Jenkins.
 9 **Q. You also -- in the next sentence, you say:**
 10 **(Reading.)**
 11 **"She also talked to the head guy at the**
 12 **UT HSD buying group doing almost 2m with**
 13 **HSD."**
 14 **Do you see that?**
 15 A. Yes.
 16 **Q. Does "2m" refer to -- what does "2m" refer to?**
 17 A. 2 million.
 18 **Q. Do you recall what the name of the buying**
 19 **group was that you referred to in your sentence here?**
 20 A. No, but I do know there was a buying group in
 21 Utah. I can't remember the name that fell under HSD.
 22 **Q. Do you know why Kathleen Titus was talking to**
 23 **the head of a buying group in Utah?**
 24 A. Yes.
 25 **Q. Why?**

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1 A. Because in her mid-market role that was within
 2 her territory and region, and perhaps they had moved
 3 that buying group -- excuse me -- to under her care
 4 even though it was an HSD. Well, she was now part of
 5 HSD.
 6 **Q. Did you ever -- strike that.**
 7 **Do you recall whether Kathleen Titus was**
 8 **trying to shut down or dismantle the Breakaway buying**
 9 **group?**
 10 A. No.
 11 **Q. You don't recall or she --**
 12 A. Ask the question again. I'm sorry.
 13 **Q. Sure. Do you recall whether Kathleen Titus**
 14 **was trying to shut down or dismantle the Breakaway**
 15 **buying group?**
 16 A. She was not trying to close down the -- shut
 17 down Breakaway.
 18 **Q. Was she trying to dismantle it?**
 19 A. No.
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I'm sorry. No.
 22 BY MR. SOLOMON:
 23 **Q. Do you know whether Kathleen Titus was trying**
 24 **to shut down or dismantle the UT HSD buying group**
 25 **referred to in this exhibit?**

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1 A. Yes. I had heard that she was going to meet
 2 with them.
 3 **Q. For what reason?**
 4 A. Again, to find out if their buying group that
 5 we have a relationship with that offers value-added
 6 such as her meeting that she was attempting with
 7 Steadfast, or if it was more of a procurement-type
 8 arrangement, nothing more.
 9 **Q. So my original question was: Do you know**
 10 **whether Kathleen Titus was trying to shut down or**
 11 **dismantle the UT HSD buying group referred to in this**
 12 **exhibit?**
 13 A. I don't know if she was going to shut it down.
 14 I knew she was going to go talk to them.
 15 **Q. Was it possible that she would try to shut it**
 16 **down based on the information that they provided to**
 17 **her?**
 18 A. It could be.
 19 **Q. Why would she do that?**
 20 A. Again, if they are -- their relationship was
 21 more of a procurement like Steadfast and nothing more,
 22 then she may have been talking to them to see if they
 23 would increase our access to their members or we
 24 wouldn't provide the discounted pricing.
 25 **Q. Were you concerned about shutting down groups**

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1 **such as the UT HSD buying group?**
 2 A. I -- I'm very unfamiliar with the group. I
 3 can't even remember their name. It fell within HSD.
 4 So it was out of my scope. Breakaway was under my
 5 scope.
 6 **Q. Do you know whether Ms. Titus had to clear the**
 7 **decision to shut down groups such as Breakaway with**
 8 **anyone above her?**
 9 A. Sure.
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: I'm sorry.
 12 BY MR. SOLOMON:
 13 **Q. Do you know who she would have to clear that**
 14 **with?**
 15 A. No, but -- not exactly who, but she couldn't
 16 do it on her own.
 17 **Q. Would she have to seek your permission?**
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: She would have to seek my
 20 permission on a special markets group, not on an HSD
 21 group.
 22 BY MR. SOLOMON:
 23 **Q. Did she seek your permission with respect to**
 24 **Breakaway Dental?**
 25 A. No. She wanted to increase the -- I mean, she

39 (Pages 153 to 156)

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1 wanted to get to know them. She's just getting to know
2 who they are at this time.

3 **Q. Did she seek your permission with respect to**
4 **Steadfast Medical?**

5 A. Yes.

6 MR. SOLOMON: I'm handing the witness a
7 document that was previously marked as Exhibit 272
8 which is a document Bates labeled Henry Schein
9 000178482. The last-in-time in e-mail in this chain is
10 Monday, February 20th, 2012 at 1:30 p.m.

11 [Whereupon, Exhibit 272 was referenced.]

12 THE WITNESS: Okay.

13 BY MR. SOLOMON:

14 **Q. Mr. Foley, what is Exhibit 272?**

15 A. It's a request from -- what's the date? --
16 from one of my regional account managers about
17 Atlantic -- oh, no; I'm sorry -- about Pro ABC which
18 sounds to be a buying group.

19 **Q. Who is the regional account manager you're**
20 **referring to?**

21 A. Debbie Torgersen.

22 **Q. And did Ms. Torgersen report to you?**

23 A. At this time, yes.

24 **Q. Directing your attention to the first page,**
25 **your e-mail to Ms. Torgersen. You say: (Reading.)**

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1 **"Honestly, within Schein we have a few**
2 **buying groups (BG) that we wish we**
3 **didn't have."**

4 **Do you see that?**

5 A. Yes.

6 **Q. Why did Schein have buying groups that it**
7 **wished it didn't have? What were you referring to**
8 **there?**

9 A. This was at the beginning of -- in the early
10 years of working in special markets and more buying
11 groups come in to play. And at the end of the day,
12 special markets would rather be working with DSO-type
13 customers and perhaps not buying groups.

14 **Q. Do you recall which buying groups you were**
15 **referring to specifically in that sentence?**

16 A. No. It was a general statement.

17 **Q. Turning to the next few sentences here, it**
18 **looks like there's a discussion of Smile Source.**

19 **Do you see that?**

20 A. Yes.

21 **Q. We discussed Smile Source earlier today, which**
22 **was a buying group/GPO that Schein had a relationship**
23 **with?**

24 A. Special markets, yes.

25 **Q. And then HSD had a relationship with Smile**

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1 **Source as well as because it was transferred from**
2 **special markets to HSD, right?**

3 A. That's correct.

4 **Q. You say in your e-mail here: (Reading.)**

5 **"We were doing fine with Smile Source**
6 **until they offered to enroll a dentist**
7 **in Miami. As this was an existing HSD**
8 **customer, the FSC went ballistic and**
9 **voiced his concerns all the way up to**
10 **Stan."**

11 **Do you see that?**

12 A. Yes.

13 **Q. Who is Stan?**

14 A. Stan Bergman, our CEO.

15 **Q. Do you recall this episode referred to in**
16 **Exhibit 272?**

17 A. Yes.

18 **Q. And was the reason special markets transferred**
19 **Smile Source to HSD because of a complaint from a field**
20 **sales consultant?**

21 A. Not specifically from one field sales
22 consultant.

23 **Q. How many complaints were there?**

24 A. Well, let's say not from -- no, it's not
25 from -- not just from an FSC complaint.

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1 **Q. What were the other reasons why special**
2 **markets transferred Smile Source to HSD?**

3 A. That it would be better served working with
4 the FSCs and providing value-added programs. That's
5 why we had them meet with the team in West Allis at HSD
6 to tell them their plans and how HSD could work more
7 closely with them.

8 **Q. You also refer to a meeting here between Tim**
9 **Sullivan, Dave Steck, yourself, and Mr. Muller.**

10 **Do you see that?**

11 A. Yes.

12 **Q. Do you recall that meeting specifically?**

13 A. No.

14 **Q. Okay. Turning to the last sentence in the**
15 **first paragraph of this e-mail, you say: (Reading.)**

16 **"Tim Sullivan is happy that we are one**
17 **less buying group."**

18 **Do you see that?**

19 A. Yes.

20 **Q. Is it fair to say, based on this statement,**
21 **that Mr. Sullivan was pleased that Schein was no longer**
22 **working with Smile Source?**

23 A. No.

24 MR. McDONALD: Object to the form.

25 THE WITNESS: Sorry.

161	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Why do you say that?</p> <p>3 A. I think it was a -- a smart-ass -- excuse</p> <p>4 me -- type comment to my regional manager.</p> <p>5 Q. What did you mean by it?</p> <p>6 A. Basically that, oh, well, there was a -- a --</p> <p>7 a frustration working with buying groups, and I think</p> <p>8 there was a lot -- I think Smile Source was a difficult</p> <p>9 transition for that for HSD. And I just made a simple</p> <p>10 comment that I betcha he's happy that we lost it.</p> <p>11 Q. Why did you think Tim Sullivan would be happy</p> <p>12 to lose a customer?</p> <p>13 MR. McDONALD: Object to the form; asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: I'm not sure.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. What frustration were you just referring to a</p> <p>18 moment ago with respect to Smile Source and HSD?</p> <p>19 A. That when it came to setting up formularies,</p> <p>20 even though we had transferred over their pricing from</p> <p>21 special markets to HSD, HSD had a difficult time in</p> <p>22 maintaining that and also maintaining reports for the</p> <p>23 customer.</p> <p>24 Q. Do you know why it had such a difficult time</p> <p>25 doing that?</p>	163	<p>1 Source?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: I'm not sure.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. You also -- you also mentioned it was a</p> <p>6 difficult transition.</p> <p>7 Were you referring to the same frustrations</p> <p>8 surrounding reporting with respect to Smile Source?</p> <p>9 A. Yes.</p> <p>10 Q. Turning back to your sentence here regarding</p> <p>11 Tim Sullivan, did you mean that Tim Sullivan would be</p> <p>12 happy any time Henry Schein ended a relationship with a</p> <p>13 buying group?</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. How do you know that?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE WITNESS: I'm not sure. He didn't have --</p> <p>20 never presented to me any negative thing in general</p> <p>21 about buying groups.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. Turning to the next paragraph in this e-mail,</p> <p>24 there's another discussion about buying groups. And</p> <p>25 turning to the last sentence, you say: (Reading.)</p>
162	<p>1 A. Yes.</p> <p>2 Q. Why?</p> <p>3 A. They didn't have the systems in place that we</p> <p>4 had in special markets that did reports on a regular</p> <p>5 basis for our largest customers.</p> <p>6 Q. Why were those reports important?</p> <p>7 MR. McDONALD: Object to the form.</p> <p>8 THE WITNESS: It helped give Smile Source an</p> <p>9 understanding of the purchases by each of their</p> <p>10 locations and helped us keep track of, you know,</p> <p>11 whether people were being compliant to the formularies.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. So was the frustration on the part of Smile</p> <p>14 Source?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Do you know whether HSD was frustrated with</p> <p>17 Smile Source?</p> <p>18 A. Yes.</p> <p>19 Q. And what was the source of those frustrations?</p> <p>20 A. That they didn't have the systems in place.</p> <p>21 There was a lot of manual tracking. They just weren't</p> <p>22 as geared to working with a multi-site group of this</p> <p>23 size like we were in special markets.</p> <p>24 Q. Do you know whether Henry Schein Dental had</p> <p>25 difficulty in keeping the same pricing for Smile</p>	164	<p>1 "So this is a corporate decision not to</p> <p>2 participate in these."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you referring to a corporate decision not</p> <p>6 to participate in buying groups and GPOs?</p> <p>7 MR. McDONALD: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. What are you referring to there?</p> <p>11 A. I'm referring to the types of buying groups</p> <p>12 that simply offer a lower price and no other service,</p> <p>13 because at this time we had a number of buying groups</p> <p>14 in place that we're doing well with in both divisions.</p> <p>15 Q. So was there a corporate decision not to work</p> <p>16 with those kinds of buying groups?</p> <p>17 A. I can't say that it was a corporate decision.</p> <p>18 Q. What kind of decision would you call it?</p> <p>19 A. It was a decision to, again, not work with --</p> <p>20 to be -- to analyze any prospect that comes to us and</p> <p>21 determine if it's just price only, that we would not</p> <p>22 work with them and instead would work with them if they</p> <p>23 would work with us as a partner in value-add services</p> <p>24 like our other buying groups.</p> <p>25 Q. Who made that decision?</p>

165	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: It was not a written policy, so</p> <p>3 I'm unsure of who made the decision. It was just</p> <p>4 general knowledge.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Do you recall how you learned about it?</p> <p>7 A. It would -- not really.</p> <p>8 Q. Do you recall anything about how you learned</p> <p>9 about it?</p> <p>10 A. It would be in conversation with Hal Muller</p> <p>11 and myself as to what we should do and which divisions</p> <p>12 they should fall under and when to engage and when not</p> <p>13 to engage.</p> <p>14 Q. Did Ms. -- I'm sorry. You can finish?</p> <p>15 A. When to invest time and not to invest time.</p> <p>16 Q. Did Mr. Muller -- strike that.</p> <p>17 Do you know whether Mr. Muller developed that</p> <p>18 policy?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Do you recall whether there were any</p> <p>23 consequences to violating that policy?</p> <p>24 A. None.</p> <p>25 Q. How do you know?</p>	167	<p>1 Q. Had you ever discussed it with anyone from --</p> <p>2 strike that.</p> <p>3 Had you ever discussed it with someone from</p> <p>4 Henry Schein Dental?</p> <p>5 A. Not that I am aware of.</p> <p>6 Q. Did that idea ever change?</p> <p>7 A. Oh, definitely.</p> <p>8 Q. When did it change?</p> <p>9 A. As years went on, we saw the value of the</p> <p>10 buying -- of the buying groups and developed more</p> <p>11 people involved with them, from Brian Brady and on, to</p> <p>12 help work with these buying groups and expand them, you</p> <p>13 know, to be more a partner than -- there were a number</p> <p>14 of them that were very basic. Would come and say, hey,</p> <p>15 I could do better pricing. Those are the ones that we</p> <p>16 would say, well, this doesn't have any value; move on.</p> <p>17 Q. And do you recall the approximate time frame</p> <p>18 when that change was made?</p> <p>19 A. It was gradual over the time that I was in</p> <p>20 special markets from -- well, again, we had Smile</p> <p>21 Source and a number of -- Breakaway and others in place</p> <p>22 back in 2010, 2009. So it would be -- over the years,</p> <p>23 it was more of a question whether it would fall in</p> <p>24 special markets or should it go to -- should it move to</p> <p>25 HSD.</p>
166	<p>1 A. Because it wasn't a written policy or form</p> <p>2 that was disseminated. At the time being a smaller</p> <p>3 division, it was not a black-and-white-type</p> <p>4 environment. It was more gray area. So it was trying</p> <p>5 to -- as one came along, what is our next step to do.</p> <p>6 Q. Do you recall when the policy began?</p> <p>7 MR. McDONALD: Object to the form.</p> <p>8 He's told you several times it wasn't a</p> <p>9 policy.</p> <p>10 THE WITNESS: Yeah, there's no -- yeah. No.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. How would you describe it, then, if it wasn't</p> <p>13 a policy?</p> <p>14 A. It was just a general -- it wouldn't be a</p> <p>15 policy. It would be a general rule as to when to</p> <p>16 engage with -- not even rule; just a general idea when</p> <p>17 somebody should be -- when should be a buying group or</p> <p>18 whether they should -- are they just based on price.</p> <p>19 Q. Do you recall -- I'm sorry. Did you want to</p> <p>20 finish?</p> <p>21 A. No.</p> <p>22 Q. Do you recall when that was developed?</p> <p>23 A. No.</p> <p>24 Q. Did Henry Schein Dental know about that idea?</p> <p>25 A. Not that I am aware of.</p>	168	<p>1 Q. We talked a little bit about Smile Source</p> <p>2 earlier today.</p> <p>3 A. Umm-hmm.</p> <p>4 Q. I don't think we've talked about who was</p> <p>5 responsible for managing that relationship. Apologies</p> <p>6 if we have, but I just want to ask again.</p> <p>7 Who was responsible for managing the</p> <p>8 relationship with Smile Source when it belonged to</p> <p>9 special markets?</p> <p>10 A. That was with Rick Heysquierdo --</p> <p>11 Q. That's right. Okay.</p> <p>12 A. -- and myself.</p> <p>13 Q. That refreshes my memory. Thank you.</p> <p>14 MR. McDONALD: You can't forget that name.</p> <p>15 MR. SOLOMON: Right.</p> <p>16 THE WITNESS: I won't tell you what I call</p> <p>17 him.</p> <p>18 MR. SOLOMON: I won't ask.</p> <p>19 You can put that document aside.</p> <p>20 I'm handing the witness Exhibit 296, a</p> <p>21 document Bates labeled Henry Schein 000114680. It's an</p> <p>22 e-mail chain. The last-in-time e-mail is November 4th,</p> <p>23 2013, at 11:44 a.m.</p> <p>24 [Whereupon, Deposition Exhibit 296 was</p> <p>25 marked for identification.]</p>

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1 THE WITNESS: Okay.
 2 BY MR. SOLOMON:
 3 **Q. What is Exhibit 296?**
 4 A. It's an e-mail from John Boresi, who was new
 5 in special markets, who was -- who was asking who was
 6 Smile Source, based on some documentation he saw about
 7 how big they were.
 8 **Q. What was Mr. -- Mr. Boresi was a general**
 9 **manager for exclusives and specialty products; is that**
 10 **right? I'm just looking at his signature line on the**
 11 **first page.**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Yes. I was just checking his
 14 timing as to -- because he was prior to that special
 15 markets.
 16 BY MR. SOLOMON:
 17 **Q. So at the time of this e-mail, he worked for**
 18 **special markets or HSD?**
 19 A. No. He worked -- no. He worked for a
 20 completely separate entity called our exclusives, Henry
 21 Schein Exclusives.
 22 **Q. And prior to that, he worked for special**
 23 **markets?**
 24 A. Correct.
 25 **Q. So this e-mail concerns Smile Source, right?**

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1 A. Yes.
 2 **Q. And at the time of this e-mail, Smile Source**
 3 **no longer had a relationship with Henry Schein, right?**
 4 A. Per this e-mail, yes.
 5 **Q. I'd like to direct your attention to the**
 6 **second page of this e-mail and the paragraph toward the**
 7 **top. You're referring to the opening of 27 offices,**
 8 **and you state: (Reading.)**
 9 **"We should bend our buying group rules."**
 10 **What did you mean there?**
 11 A. That I wanted this account back under special
 12 markets as a buying group and not with HSD.
 13 **Q. Do you recall whether it was still with HSD at**
 14 **this time?**
 15 A. The fact that it was once with HSD meant that
 16 it would stay in HSD's bucket.
 17 **Q. If you turn to the first page, you'll note --**
 18 **the beginning of your e-mail, you state that they moved**
 19 **to Burkhardt.**
 20 **So it sounds like at the time of this e-mail**
 21 **they no longer had a relationship with any part of**
 22 **Henry Schein's business?**
 23 A. Correct.
 24 **Q. So at the time of this e-mail represented in**
 25 **Exhibit 296, were you interested in redeveloping a**

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1 **relationship with Smile Source?**
 2 A. No. I was simply responding to who they are
 3 and wished I could, but wasn't engaged in doing it.
 4 **Q. Why were you not engaged in doing it?**
 5 A. It fell under HSD. It was their decision to
 6 re-engage or win back the customer, not mine. I wished
 7 it was mine.
 8 **Q. Turning back to your sentence, you mention**
 9 **buying group rules.**
 10 **What rules are you referring to?**
 11 MR. McDONALD: Object to the form; asked and
 12 answered.
 13 THE WITNESS: Again, just a general thing
 14 that -- as I mentioned earlier, that this account falls
 15 maybe more into a buying group, that we need to make
 16 sure that we can do business with them or not,
 17 depending on certain criteria.
 18 BY MR. SOLOMON:
 19 **Q. So at the time of this e-mail, would working**
 20 **with Smile Source violate the rule referred to in this**
 21 **e-mail?**
 22 A. No, because they were a great buying group
 23 when they were with -- with me originally.
 24 MR. McDONALD: I objected to the form.
 25 BY MR. SOLOMON:

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1 **Q. So why did you need to bend the rule?**
 2 MR. McDONALD: Object to the form; asked and
 3 answered.
 4 THE WITNESS: I wanted to -- I wanted to bring
 5 back the rule that HSD was now handling buying groups.
 6 I wanted it back into the special markets arena.
 7 BY MR. SOLOMON:
 8 **Q. So the rule you're referring to here also**
 9 **includes the rule that buying groups were handled by**
 10 **HSD?**
 11 A. Yeah, at a certain time, we decided to move
 12 buying groups to HSD.
 13 **Q. You can put that document aside.**
 14 A. Okay.
 15 MR. SOLOMON: You know, we've been going for
 16 an hour now. Why don't we take a quick break?
 17 THE WITNESS: Okay. Thank you.
 18 MR. McDONALD: Okay.
 19 MR. SOLOMON: Thanks.
 20 (Brief recess.)
 21 MR. SOLOMON: Back on the record at 2:23 p.m.
 22 BY MR. SOLOMON:
 23 **Q. Mr. Foley, who would you say are Schein's**
 24 **largest competitors in the special markets space?**
 25 A. The largest would be Benco Dental. The

43 (Pages 169 to 172)

173	<p>1 second-largest would be Patterson Dental.</p> <p>2 Q. Have you ever communicated with someone who</p> <p>3 worked at Patterson Dental?</p> <p>4 A. No.</p> <p>5 Q. Are you aware of anyone else at Schein</p> <p>6 communicating with someone from Patterson Dental?</p> <p>7 A. No.</p> <p>8 Q. Have you ever communicated with someone who</p> <p>9 worked at Benco Dental?</p> <p>10 A. Yes.</p> <p>11 Q. Who?</p> <p>12 A. John Klavon, Johnny Bunn, and Pat Ryan.</p> <p>13 Q. Okay. Who is John Klavon?</p> <p>14 A. He is a special markets sales rep for Benco.</p> <p>15 I'm not aware of his title.</p> <p>16 Q. How do you know Mr. Klavon?</p> <p>17 A. He -- I would -- we would see each other or</p> <p>18 run into each other at trade shows on occasion.</p> <p>19 Q. What was the purpose of your speaking with</p> <p>20 Mr. Klavon?</p> <p>21 A. Just general pleasantries while at a reception</p> <p>22 with a customer.</p> <p>23 Q. Were you introduced to Mr. Klavon?</p> <p>24 A. No.</p> <p>25 Q. Is Mr. Klavon -- do you know whether</p>	175	<p>1 A. Yes. Special markets.</p> <p>2 Q. How do you know Mr. Ryan?</p> <p>3 A. I met him once at a trade show.</p> <p>4 Q. What was the name of the trade show?</p> <p>5 A. I can't remember.</p> <p>6 Q. Do you recall where it took place?</p> <p>7 A. Can't remember.</p> <p>8 Q. Were you introduced to Mr. Ryan?</p> <p>9 A. No, I don't think so.</p> <p>10 Q. How did you come to become -- how did --</p> <p>11 strike that.</p> <p>12 How did you become acquainted with Mr. Ryan?</p> <p>13 A. Similar to Johnny and John Klavon, by saying</p> <p>14 hi while at a trade show together.</p> <p>15 Q. So that was an in-person introduction?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: It may be from one of their --</p> <p>18 from Johnny Bunn or John Klavon.</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. How many other times have you spoken with</p> <p>21 Mr. Ryan?</p> <p>22 A. One other time.</p> <p>23 Q. When was that?</p> <p>24 A. He called me once.</p> <p>25 Q. When was that?</p>
174	<p>1 Mr. Klavon is high up at Benco Dental?</p> <p>2 A. I have no idea.</p> <p>3 Q. Okay. How would you describe your</p> <p>4 relationship with Mr. Klavon?</p> <p>5 A. Just general "how are you" when we're at a</p> <p>6 trade show.</p> <p>7 Q. Who is Johnny Bunn?</p> <p>8 A. Very similar to John Klavon.</p> <p>9 Q. Is he also a sales representative for Benco</p> <p>10 special markets division?</p> <p>11 A. Yes.</p> <p>12 Q. How do you know Mr. Bunn?</p> <p>13 A. From trade shows, running into him on</p> <p>14 occasion.</p> <p>15 Q. Were you introduced to Mr. Bunn?</p> <p>16 A. No.</p> <p>17 Q. Okay. How would you describe your</p> <p>18 relationship with Mr. Bunn?</p> <p>19 A. Just "how are you" at a trade show. Nothing</p> <p>20 more.</p> <p>21 Q. And who is Pat Ryan?</p> <p>22 A. Not exactly sure of his title, but he's with</p> <p>23 Benco. I know who he is.</p> <p>24 Q. Do you recall what division he works at within</p> <p>25 Benco?</p>	176	<p>1 A. I don't know exactly when it was.</p> <p>2 Q. Do you recall the year?</p> <p>3 A. I would recall that it would be probably four</p> <p>4 years after I'd been with special markets, so 2013</p> <p>5 maybe, 2012.</p> <p>6 Q. Was that after you had met Mr. Foley at a</p> <p>7 trade show?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 MR. SOLOMON: Strike that.</p> <p>10 My apologies.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. Was that after you had met Mr. Ryan at a trade</p> <p>13 show?</p> <p>14 A. Yes.</p> <p>15 Q. Why did Mr. Ryan call you?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: I thought he wanted to call me</p> <p>18 and offer me a position, but instead he called me to</p> <p>19 tell me that -- that he received a bid for Smile Source</p> <p>20 and that he wasn't going to bid on it.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. What did you say in response to that?</p> <p>23 A. I don't remember, but I just listened and said</p> <p>24 very little.</p> <p>25 Q. What else did you discuss with Mr. Ryan?</p>

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1 A. Just that.
 2 **Q. Do you know why Mr. Ryan called you to discuss**
 3 **Smile Source?**
 4 A. I'm not sure. I understand there was a bid,
 5 but Smile Source was no longer with me. I had nothing
 6 to do with the bid or aware that there was a bid.
 7 **Q. Did he ask you any questions about Smile**
 8 **Source?**
 9 A. I don't remember.
 10 **Q. Was he interested to know whether Schein would**
 11 **do business with Smile Source?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I'm not -- I'm not sure.
 14 BY MR. SOLOMON:
 15 **Q. What do you recall Mr. Ryan saying**
 16 **specifically about Smile Source?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I don't remember the specifics.
 19 I just remember that I got a call because I've never
 20 gotten a call from Benco. And I have to adhere to
 21 company worldwide business standards, so I remember
 22 being uneasy on the call and simply being quiet.
 23 Totally unexpected to call.
 24 BY MR. SOLOMON:
 25 **Q. Did you say anything in response to Mr. Ryan?**

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1 A. No.
 2 **Q. You referred to company worldwide business**
 3 **standards. What do you mean?**
 4 A. As part of a -- as a director or as a vice
 5 president, I had to take -- we had worldwide business
 6 standards. Things on anti-kickback, on collusion, on
 7 sharing -- on trade secrets, those types of -- it was
 8 through Corpedia. I can't pronounce what it was. It
 9 was a Web-based system that we had to take on a regular
 10 basis annually.
 11 **Q. And why did the call from Mr. Ryan make you**
 12 **think about those annual trainings?**
 13 A. Because immediately he was talking about a
 14 customer, a prospect, and it's against our company, you
 15 know, rules for me to discuss customers and trade
 16 secrets and what we're dealing with customers.
 17 **Q. You mentioned you felt uneasy; is that right?**
 18 A. Yes.
 19 **Q. How did you end the discussion with Mr. Ryan?**
 20 A. I don't remember the basics. Basically, talk
 21 to you later. We never had a conversation after that.
 22 **Q. Did you tell Mr. Ryan that you thought the**
 23 **conversation made you feel uneasy?**
 24 A. No.
 25 **Q. Do you recall how long the phone conversation**

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1 **lasted?**
 2 A. It was a very short call. I think -- I think
 3 he understood I wasn't offering anything, so we --
 4 basically, see you later.
 5 **Q. Was it longer than five minutes?**
 6 A. Oh, no.
 7 **Q. How long would you say it lasted?**
 8 A. Maybe a minute.
 9 **Q. Did Mr. Ryan mention anyone from Benco during**
 10 **the phone call?**
 11 A. No.
 12 **Q. So he didn't discuss someone named Chuck**
 13 **Cohen?**
 14 A. No.
 15 **Q. What did you do after the conversation ended?**
 16 A. I basically hung up and I did not report the
 17 call. I just let it go. I may have mentioned it to
 18 Hal Muller that he had called me, and that would be it.
 19 **Q. Why did you mention it to Hal Muller?**
 20 A. Well, there are rules that if something
 21 happens I should report certain calls, but since I
 22 didn't engage, I just simply made a comment, I think,
 23 to Hal that -- that Pat Ryan called me. I thought they
 24 were going to offer me a job. And I don't know if I
 25 said if he wanted to talk about Smile Source or not. I

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1 don't remember the conversation or the e-mail.
 2 **Q. Do you recall what Mr. Muller told you in**
 3 **response to your reporting it to him?**
 4 A. No. It was, "You didn't do anything, so don't
 5 worry about it."
 6 **Q. How many times did you discuss the phone call**
 7 **with Mr. Muller?**
 8 A. Only once.
 9 **Q. Was that discussion in person, by phone, or by**
 10 **e-mail?**
 11 A. I think simply by e-mail.
 12 **Q. Did you tell Mr. Ryan that it was**
 13 **inappropriate to talk about customers?**
 14 A. No.
 15 **Q. Why not?**
 16 A. He said he opened up and said what he wanted
 17 to say, and I just listened and didn't offer anything
 18 up on the Schein side.
 19 **Q. Did you give him any indication that you were**
 20 **not interested in discussing customers or Smile Source?**
 21 A. I can't remember how I ended the call. I
 22 could have simply said I can't talk about this.
 23 **Q. Did you report the call to anyone apart from**
 24 **Mr. Muller within Schein?**
 25 A. No.

45 (Pages 177 to 180)

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1 **Q. Did you have any follow-up conversations with**
 2 **Mr. Ryan?**
 3 A. No.
 4 **Q. How would you describe your relationship with**
 5 **Mr. Ryan?**
 6 A. I met him once at a trade show, he called me
 7 once, and maybe I've run into him at subsequent trade
 8 shows just to say hi.
 9 I viewed Benco as a very stiff competitor.
 10 Didn't want to -- I would -- you know, I would want to
 11 win any business I could from them and keep any
 12 business, so I kept my distance.
 13 **Q. Do you know how Mr. --**
 14 MR. McDONALD: I mean, I want to be sure that
 15 the record is clear. He said, "I would want to win any
 16 business," not "wouldn't."
 17 THE REPORTER: Okay.
 18 MR. McDONALD: Yeah, that's a big difference.
 19 BY MR. SOLOMON:
 20 **Q. Mr. Foley, do you know how Mr. Ryan got your**
 21 **telephone number?**
 22 A. No.
 23 **Q. Do you recall ever giving him your phone**
 24 **number?**
 25 A. No.

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1 **Q. Did you develop a sense as to why Mr. Ryan was**
 2 **asking you about Smile Source?**
 3 A. Yes.
 4 **Q. What was your sense?**
 5 A. That if they re up for bid, he wondered if I
 6 would be bidding against it.
 7 **Q. You mentioned that Mr. Ryan told you that he**
 8 **was not interested in bidding on Smile Source, right?**
 9 A. That's correct.
 10 **Q. So why would he want to know whether you were**
 11 **bidding on Smile Source?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I'm unsure why.
 14 BY MR. SOLOMON:
 15 **Q. Was that information of interest to you in any**
 16 **way?**
 17 A. Which information?
 18 **Q. The information Mr. Ryan gave you about Benco**
 19 **not wanting to bid on Smile Source?**
 20 A. No.
 21 **Q. Did Mr. Ryan tell you why Benco would not bid**
 22 **on Smile Source?**
 23 A. No.
 24 **Q. Did you ask?**
 25 A. No.

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1 **Q. Did he give you any other information about**
 2 **Benco's position with respect to Smile Source?**
 3 A. No.
 4 **Q. So he simply just told you that Benco would**
 5 **not bid on Smile Source?**
 6 A. I believe he said Benco does not want to bid
 7 on Smile Source.
 8 **Q. Did he say anything else surrounding Smile**
 9 **Source?**
 10 A. No.
 11 **Q. And that was the end of the conversation?**
 12 A. Yes.
 13 **Q. Did you respond with any words?**
 14 MR. McDONALD: Object to the form; asked and
 15 answered.
 16 THE WITNESS: I don't remember saying anything
 17 other than ending the call.
 18 BY MR. SOLOMON:
 19 **Q. Do you have Mr. Ryan's phone number?**
 20 A. No.
 21 **Q. Do you know whether Mr. Ryan is friendly with**
 22 **anyone else at Schein?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: No.
 25 BY MR. SOLOMON:

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1 **Q. Do you know whether Mr. Ryan has communicated**
 2 **with anyone else at Schein?**
 3 A. No.
 4 MR. SOLOMON: I'm handing Mr. Foley
 5 Exhibit 279, a document Bates labeled Henry Schein
 6 000170759, and it is an e-mail chain. The last-in-time
 7 e-mail is October 9th, 2013, at 8:45 a.m.
 8 [Whereupon, Exhibit 279 was referenced.]
 9 BY MR. SOLOMON:
 10 **Q. Mr. Foley, let me know when you've had a**
 11 **chance to review that.**
 12 A. Okay.
 13 **Q. Mr. Foley, what is Exhibit 279?**
 14 A. It's an e-mail regarding Smile Source and how
 15 much they have grown and how much we are doing with
 16 them with our OraPharma relationship.
 17 **Q. Turning to the last-in-time e-mail on**
 18 **October 9th, 2013. That's an e-mail from you. And per**
 19 **the cover sheet of this exhibit, the metadata tells us**
 20 **that you sent this e-mail to Mr. Muller.**
 21 **Do you have any reason to dispute that?**
 22 A. No.
 23 **Q. You tell Mr. Muller: (Reading.)**
 24 **"Next time we talk remind me to tell you**
 25 **about my conversation with Pat Ryan at**

46 (Pages 181 to 184)

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1 **SM Benco. They're anti Buying Group and**
 2 **Smile Source recently reached out to**
 3 **them. I'm being careful not to cross**
 4 **any boundaries, like collusion."**
 5 **When you say "their anti Buying Group," how**
 6 **did you know that was true?**
 7 A. I believe that Pat may have made that comment
 8 to me on the phone call.
 9 **Q. So Mr. Ryan told you that Benco was anti**
 10 **buying group?**
 11 A. I will assume that based on what I'm writing
 12 to Hal Muller. I don't remember the details of the
 13 call.
 14 **Q. So you don't recall asking Mr. Ryan why Benco**
 15 **was anti buying group?**
 16 A. I don't remember if I asked. I don't think I
 17 asked him anything. He may have volunteered that
 18 statement.
 19 **Q. Why did you want Mr. Muller to remind you to**
 20 **tell him about this discussion?**
 21 A. This is- -- when you asked, did I alert
 22 anybody about my conversation, I'm thinking telling Hal
 23 that, "Hey, next time we talk, I want to tell you that
 24 I had a call from Benco and I was careful not to cross
 25 any boundaries."

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1 **Q. Why did you tell Mr. Muller that you were**
 2 **careful not to cross any boundaries?**
 3 A. I want him to understand that Benco had
 4 reached out to me, what they said, and that I was
 5 careful not to talk anymore about it.
 6 **Q. Did you have any follow-up conversations with**
 7 **Mr. Muller after this e-mail?**
 8 A. Not that I can remember.
 9 **Q. Do you recall whether Mr. Muller ever brought**
 10 **this discussion with Pat Ryan up to you again?**
 11 A. No, I don't remember.
 12 **Q. Okay.**
 13 MR. McDONALD: Well, object to the form.
 14 BY MR. SOLOMON:
 15 **Q. You tell Mr. Muller that Smile Source is anti**
 16 **buying group and that Smile Source recently reached out**
 17 **to Benco, right?**
 18 A. Yes.
 19 **Q. Was this the type of information that you**
 20 **thought Mr. Muller would want to know?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I'm not sure. Again, I think
 23 I'm simply telling him what -- what Pat Ryan said on
 24 the call to me.
 25 BY MR. SOLOMON:

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1 **Q. Did you think that this would be something**
 2 **that was important for you to tell Mr. Muller?**
 3 A. I think it was important for me to tell him
 4 that I had a call from a competitor which I've never
 5 had before.
 6 **Q. Did you discuss this call with Mr. Ryan with**
 7 **anyone else at Schein?**
 8 A. No.
 9 **Q. Do you know whether Mr. Muller told anyone**
 10 **else at Schein about this phone call with Pat Ryan?**
 11 A. I'm not aware of any.
 12 **Q. Did you think that the intelligence that**
 13 **Mr. Ryan provided you regarding Benco's position on**
 14 **Smile Source was interesting or relevant to Schein?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: No. I was, again, removed from
 17 Smile Source. So whatever they want to do, let them do
 18 it. I don't know if this was up for bid at the time
 19 with us or if we were engaged. So I just listened to
 20 what he said and said, oh, well.
 21 BY MR. SOLOMON:
 22 **Q. You used the word "collusion" in your e-mail.**
 23 A. Umm-hmm.
 24 **Q. Were you concerned that collusion had**
 25 **occurred?**

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1 A. I'm not exactly sure of what -- I made sure
 2 that I didn't say anything so I wouldn't be colluding
 3 with another distributor.
 4 **Q. What is your understanding of what "collusion"**
 5 **means?**
 6 A. That if we were to share each other's plan we
 7 could manipulate this particular Smile Source,
 8 something along those lines.
 9 **Q. Did you mean anything else by that term?**
 10 A. No, not that I know of.
 11 **Q. Mr. Foley, we talked a little bit about today**
 12 **about a group called Dental Gator --**
 13 **You can put that aside.**
 14 A. Thank you.
 15 **Q. We talked a little bit about a group called**
 16 **Dental Gator, which I understand to be a buying group**
 17 **that fell under special markets; is that right?**
 18 A. That's correct.
 19 **Q. Dental Gator remained with special markets and**
 20 **was not transferred to HSD; is that your understanding?**
 21 A. As of my time of departure, it was still with
 22 special markets.
 23 **Q. Was it ever transferred -- or strike that.**
 24 **Do you know whether it was transferred to HSD**
 25 **following your departure?**

47 (Pages 185 to 188)

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1 A. I'm not sure.
 2 **Q. Have you ever heard that it was following**
 3 **the --**
 4 A. I would doubt it.
 5 **Q. Okay. And do you know whether Dental Gator**
 6 **was a buying group component of a DSO customer called**
 7 **MB2?**
 8 A. Yes.
 9 **Q. Was MB2 a customer of special markets?**
 10 A. Yes.
 11 **Q. Was it an important customer?**
 12 A. Yes.
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I'm sorry. Yes.
 15 BY MR. SOLOMON:
 16 **Q. Do you know -- strike that.**
 17 **Do you have any understanding as to why MB2**
 18 **established Dental Gator?**
 19 A. Yes.
 20 **Q. What's your understanding?**
 21 A. They wanted to get their foot into the door of
 22 private practices that they could -- that they could
 23 acquire as part of their MB2 model which is ownership
 24 of the practices. This was a good foot in the door for
 25 them.

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1 **Q. But why was it a good foot in the door?**
 2 A. They could go in as more along of a consulting
 3 buying group, offering services to help alleviate
 4 overhead for a private practice without the private
 5 practice having to forfeit ownership to MB2.
 6 **Q. Do you know whether the goal was to convert**
 7 **private practice offices to members of a dental service**
 8 **organization?**
 9 A. Can you repeat that?
 10 **Q. Sure. Do you know whether the goal was to**
 11 **convert private practices offices into members of a**
 12 **dental service organization?**
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: For MB2 -- for MB2's goal? Yes,
 15 that was their goal, to acquire practices under their
 16 DSO. Specifically them only, not all DSOs.
 17 BY MR. SOLOMON:
 18 **Q. Do you know whether that business model worked**
 19 **in acquiring private practice offices?**
 20 A. It worked on occasion for them, yes.
 21 **Q. What do you mean by that?**
 22 A. They had a number of offices that eventually
 23 moved off of Dental Gator and moved into MB2 under the
 24 MB2 umbrella.
 25 **Q. Do you recall how many offices?**

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1 A. No.
 2 **Q. How did you first learn about Dental Gator?**
 3 A. When we were renewing their contract with
 4 Andrea Hight working with them, they mentioned that
 5 they were going to set up a buying group called Dental
 6 Gator.
 7 **Q. Did you hear about it first from Ms. Hight?**
 8 A. I believe so.
 9 **Q. And what did Ms. Hight tell you?**
 10 A. That she wanted to work out an agreement so
 11 that they could move forward with their buying group
 12 but at the same time make sure that the agreement was
 13 separate of MB2's business model of ownership.
 14 **Q. Do you know why that was important to her?**
 15 A. Yes.
 16 **Q. Why?**
 17 A. Because we needed to make sure that the
 18 pricing plan that we had couldn't be extended -- MB2's
 19 pricing plan was specific to MB2 based on requirements
 20 from vendor partners, et cetera, not to be shared with
 21 general dentists for any just random reason.
 22 So we wanted to make sure that we
 23 distinguished that this agreement related to the DSO
 24 part of you and this part of it talks about the buying
 25 group part of you. Working them as a dual entity.

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1 **Q. Why were you concerned about that?**
 2 A. We didn't want to have the confusion of -- we
 3 had agreements that were focused on the DSO segment
 4 that they belonged to that they're part of. At the
 5 same time they were wearing two hats as a buying group.
 6 So we wanted to make sure that -- again, that they
 7 would not extend their discounted pricing based on
 8 arrangements with our vendor partners to the buying
 9 group arm.
 10 **Q. Would that affect special markets in any way?**
 11 A. No.
 12 **Q. So why was it important for special markets to**
 13 **distinguish the buying group from the DSO component?**
 14 A. It would affect the -- the relationship or the
 15 policies of our vendor partners.
 16 **Q. Did special markets receive complaints from**
 17 **vendor partners with respect to Dental Gator?**
 18 A. Yes.
 19 **Q. Do you recall which vendors?**
 20 A. It was Kerr Dental.
 21 **Q. Were there any other vendors?**
 22 A. Not that I'm aware of.
 23 **Q. What did Kerr Dental say?**
 24 MR. McDONALD: Object to the form; asked and
 25 answered. You asked all this stuff earlier today,

48 (Pages 189 to 192)

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1 Ronnie.
 2 Go ahead. Tell him again.
 3 THE WITNESS: That -- that Kerr Dental had --
 4 that their chargebacks related to the DSO component to
 5 the customer and they were not to be used in the
 6 private sector, which Dental Gator was engaging with in
 7 their buying group.
 8 BY MR. SOLOMON:
 9 **Q. Did special markets receive any complaints**
 10 **from Henry Schein Dental with respect to Dental Gator?**
 11 A. Yes.
 12 **Q. What was the nature of those complaints?**
 13 A. There again, they were -- they were from
 14 mainly FSCs attached to accounts where Dental Gator
 15 would enter into one of their customers and they were
 16 unaware of who they were and they were concerned about
 17 reduced commission.
 18 **Q. Were there any other concerns that were voiced**
 19 **to you that originated from Henry Schein Dental about**
 20 **Dental Gator?**
 21 A. Yes.
 22 **Q. What were those concerns?**
 23 A. That their initial setup focused primarily on
 24 saving the customer pricing and did not -- did not
 25 include all the other value-added services that they

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1 had to offer initially.
 2 **Q. Were there -- when you say "initially," what**
 3 **do you mean?**
 4 A. When they -- Dental Gator was brand-new to
 5 them, to MB2. It was their first foray into the buying
 6 group environment. And so when they started out, the
 7 way they advertised themselves showed that they focused
 8 basically on just saving you a dime on your supplies
 9 and nothing more.
 10 **Q. Did that change?**
 11 A. Yes.
 12 **Q. When did that change?**
 13 A. We had -- I believe Andrea Hight met with them
 14 subsequently to this and sat down with them and helped
 15 them develop the marketing materials that were about
 16 what their program included, including other Schein
 17 value-adds like our software, like our services, like
 18 our equipment. We actually created a -- helped them
 19 create a brochure.
 20 **Q. Did Dental Gator ask Ms. Hight to meet with**
 21 **them?**
 22 A. I believe it was the reverse.
 23 **Q. Ms. Hight wanted to meet with Dental Gator?**
 24 A. Yes. It was her account.
 25 **Q. Were there any other concerns that HSD had**

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1 **with respect to Dental Gator?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Not that I'm aware of.
 4 BY MR. SOLOMON:
 5 **Q. Was there ever any conflict or disagreement**
 6 **between special markets and HSD as to whether Schein**
 7 **should work with or support Dental Gator?**
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: Initially, there were. Again,
 10 when they were focused -- when their literature focused
 11 exclusively on just pricing.
 12 BY MR. SOLOMON:
 13 **Q. What was the nature of that disagreement**
 14 **between special markets and HSD?**
 15 A. HSD did not like that they were leading into
 16 customers, saying "We can save you" -- I'm throwing a
 17 figure out -- "20 percent on your supplies if you join
 18 us." That's it. No other -- no other comments about
 19 what else -- what they also offered.
 20 **Q. What was special markets' position on that?**
 21 A. We -- we had to meet with Andrea and ask them
 22 to -- to lead with other -- to go ahead and say they
 23 can save the supplies but at the same time lead with
 24 other benefits and include these that we have to offer
 25 at Schein in addition to what you're offering these

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1 customers.
 2 **Q. But initially, special markets had a**
 3 **disagreement with HSD; is that right?**
 4 A. Initially HSD was frustrated with -- was --
 5 had disagreements with how -- HSD fields sales
 6 consultants had an issue with how Dental Gator was
 7 presenting themselves in the market.
 8 **Q. And why did special markets disagree with HSD**
 9 **over that issue?**
 10 A. We -- at the initial point, we agreed with
 11 what their concern was with Dental Gator and then asked
 12 Dental Gator to change the way they're doing -- the way
 13 they're presenting themselves so that they could remain
 14 as a buying group, and they did.
 15 **Q. So what was the substance of the disagreement**
 16 **between special markets and HSD?**
 17 A. Again, that the FSCs were -- that they were
 18 leading solely with a price option to the dentists;
 19 "Hey, join us. We'll save you this." Nothing else is
 20 being said. For the most part, they wanted more to be
 21 said about what they have to offer to the customer so
 22 that the FSCs can help build that dental practice.
 23 **Q. Did special markets disagree that that was a**
 24 **problem?**
 25 A. No, we didn't disagree. We understood -- we

49 (Pages 193 to 196)

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1 understood their concern, and we -- we asked MB2 to
 2 change the way they advertised their buying group.
 3 **Q. I'm just trying to specifically understand**
 4 **what the -- what the point of disagreement was. I'm**
 5 **hearing you say that HSD was -- disagreed with the way**
 6 **Dental Gator was conducting its business, but I'm not**
 7 **sure I understand what the nature of the disagreement**
 8 **was between HSD and special markets.**
 9 A. We controlled the account. Special markets
 10 controlled the account, so they were turning to us to
 11 correct the situation. It wasn't a disagreement
 12 between HSD and special markets. It was a request from
 13 HSD to address the situation with Dental Gator.
 14 **Q. Did special markets ever refuse to address the**
 15 **situation?**
 16 A. No.
 17 **Q. Okay. Do you recall whether Mr. Tim Sullivan**
 18 **ever expressed concern surrounding Dental Gator?**
 19 A. No.
 20 **Q. Do you recall whether Mr. Muller ever had any**
 21 **disagreements or differences of opinion with**
 22 **Mr. Sullivan surrounding Dental Gator?**
 23 A. No.
 24 **Q. Is it fair to say that Schein special markets**
 25 **wanted to keep the relationship with Dental Gator as-is**

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1 **but that Henry Schein Dental did not?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No.
 4 BY MR. SOLOMON:
 5 **Q. Why not?**
 6 A. We were in agreement with a buying -- with HSD
 7 that the buying group should lead in with all of its
 8 value-adds and not just price. We agreed with that, as
 9 we did with Smile Source and other buying groups. We
 10 wanted Dental Gator to follow that. They were
 11 brand-new to this segment. They were brand-new as to
 12 being a buying group.
 13 **Q. You never felt pressure to shut down Dental**
 14 **Gator?**
 15 A. No.
 16 **Q. Are you aware of any discussions to shut down**
 17 **Dental Gator?**
 18 A. No.
 19 MR. SOLOMON: I'm handing the witness
 20 Exhibit 297, which is a document Bates labeled Henry
 21 Schein 000090794. It's an e-mail chain. The
 22 last-in-time e-mail is October 21st, 2014, at 5:23 p.m.
 23 [Whereupon, Deposition Exhibit 297 was
 24 marked for identification.]
 25 THE WITNESS: Okay.

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1 BY MR. SOLOMON:
 2 **Q. Mr. Foley, what is Exhibit 297?**
 3 A. It starts with Dental Gator going into the
 4 Cincinnati market and the regional manager questioning
 5 who is Dental Gator, and responses coming from within
 6 HSD that this is a new buying group. They say "GPO,"
 7 but buying group. And that the field is confused as
 8 they're not aware of this new buying group.
 9 **Q. At some point you're asked what Dental Gator**
 10 **is; is that right?**
 11 A. I am asked, but I'm not seeing where I answer
 12 that.
 13 **Q. Let's just take a look at the e-mail that**
 14 **spans the bottom of the second page to the top of the**
 15 **third page.**
 16 A. I'm sorry. Again.
 17 **Q. Sure. Let's take a look at the e-mail that**
 18 **spans the bottom of the second page and continues on to**
 19 **the third page, and it's an October 21, 2014 e-mail at**
 20 **2:57 p.m.**
 21 A. Okay.
 22 **Q. Do you see that?**
 23 A. Yes.
 24 **Q. Okay. So this is an e-mail from Joe Cavaretta**
 25 **to you, and Mr. Muller and Mr. Sullivan and Mr. Steck**

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1 **are copied?**
 2 A. Okay.
 3 **Q. And the subject is Dental Gator. Turning your**
 4 **attention to the substance of the e-mail, Mr. Cavaretta**
 5 **writes: (Reading.)**
 6 **"During our last MM call we all agreed**
 7 **that we need to be aligned on a strategy**
 8 **with existing GPOs."**
 9 **Do you know what Mr. Cavaretta was referring**
 10 **to with respect to alignment on strategy?**
 11 A. No.
 12 **Q. Do you recall ever having discussions with HSD**
 13 **about aligning strategies with respect to GPOs?**
 14 A. I believe this is about -- yes. I'll answer
 15 yes.
 16 **Q. And what was the nature of those discussions?**
 17 A. Again, how -- how best serve the GPOs, whether
 18 they would be -- or buying groups, whether they'd be
 19 better in HSD or special markets, and then what -- what
 20 do we prefer the buying groups to offer to our end
 21 users.
 22 **Q. Mr. Muller -- turning to the next-in-time**
 23 **e-mail at 2:04 p.m., Mr. Muller responds. He says:**
 24 **(Reading.)**
 25 **I will Randy address, at the moment we**

50 (Pages 197 to 200)

201	<p>1 feel good at the point we are at with"</p> <p>2 staying -- "with them staying as they</p> <p>3 are."</p> <p>4 What do you understand Mr. Muller to be saying</p> <p>5 here?</p> <p>6 A. Yeah, I -- Hal is stating -- I believe he is</p> <p>7 stating that Dental Gator is staying along with MB2 the</p> <p>8 way it's set up.</p> <p>9 Q. Is it fair to say that special markets didn't</p> <p>10 see an issue with Dental Gator at the time of this</p> <p>11 e-mail?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Did you agree with Mr. Muller's</p> <p>14 position that Dental Gator should stay as they are?</p> <p>15 A. Yes.</p> <p>16 Q. Why?</p> <p>17 A. I believed in their model after we had</p> <p>18 adjusted them slightly to -- you know, to offer their</p> <p>19 products. And they had actually hired somebody at</p> <p>20 Dental Gator to help expand -- they actually hired one</p> <p>21 of our field sales consultants to help grow the Dental</p> <p>22 Gator, and I believed in their model to help acquire</p> <p>23 more practices and fall under the MB2 umbrella.</p> <p>24 Q. Did this position cause internal conflict</p> <p>25 between Henry Schein Dental and special markets?</p>	203	<p>1 Q. Did you and Mr. Muller have any internal</p> <p>2 discussions between yourselves as to how to handle this</p> <p>3 disagreement?</p> <p>4 A. I believe so.</p> <p>5 Q. And what did you come up with?</p> <p>6 A. Explaining to the -- making sure that they --</p> <p>7 that Andrea changed the way that they present their</p> <p>8 model and that we would just continue to do business</p> <p>9 with them and let the FSCs whine about it that it may</p> <p>10 affect.</p> <p>11 Q. Did that end the disagreement between HSD and</p> <p>12 special markets?</p> <p>13 A. I would say FSCs always whine about something.</p> <p>14 So I could say no to that, but it -- specifically</p> <p>15 talking about FSCs, not about HSD and special markets.</p> <p>16 Q. Are there any FSCs who are a part of this</p> <p>17 e-mail discussion between yourself, Mr. Cavaretta,</p> <p>18 Mr. Sullivan, Mr. Steck, and that's it?</p> <p>19 A. I'm not sure who is Scott Janczak is, what his</p> <p>20 title is. But I know that Butch Stenger is a regional</p> <p>21 manager. I'm not sure who Scott is. I'm sorry; I do</p> <p>22 know who Scott is. He's an inside sales rep.</p> <p>23 So no FSCs on here.</p> <p>24 Q. So fair to say that HSD leadership was</p> <p>25 concerned about Dental Gator?</p>
202	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: Yes, with the FSCs as evidenced</p> <p>3 in this e-mail.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. What about with Mr. Sullivan?</p> <p>6 MR. McDONALD: Object to the form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. How do you know that?</p> <p>10 A. When I read what he's saying, his facetious</p> <p>11 statement, "So also close down, Heartland Comfort."</p> <p>12 These are all large DSOs that we do business with,</p> <p>13 meaning that, hey, this is the way it is, and we're</p> <p>14 going to continue with this buying group as we are with</p> <p>15 all the big DSOs.</p> <p>16 Q. Mr. Cavaretta, was he a field sales</p> <p>17 consultant?</p> <p>18 A. No. He was a -- he was either a direct -- he</p> <p>19 was a director level, oversaw the -- I believe the</p> <p>20 western zone of the United States.</p> <p>21 Q. And per this e-mail, he was opposed to Dental</p> <p>22 Gator continuing as it was at this time?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Correct, yes.</p> <p>25 BY MR. SOLOMON:</p>	204	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Why not?</p> <p>5 A. I think they would go with whatever Hal and I</p> <p>6 had to say about how we set up the arrangement, and I</p> <p>7 think Tim Sullivan is basically agreeing with that. So</p> <p>8 just move on, guys. And Hal is, like, we're going to</p> <p>9 leave-this-as-it-is type -- the way it's currently set</p> <p>10 up.</p> <p>11 Q. So Mr. Sullivan was fine leaving it up to</p> <p>12 special markets?</p> <p>13 A. Yes.</p> <p>14 MR. SOLOMON: Handing the witness Exhibit 298,</p> <p>15 Bates labeled Henry Schein 000151639, an e-mail chain.</p> <p>16 The top last-in-time e-mail is January 18th, 2015, at</p> <p>17 1:15 p.m.</p> <p>18 [Whereupon, Deposition Exhibit 298 was</p> <p>19 marked for identification.]</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Mr. Foley, what is Exhibit 298?</p> <p>23 A. I'm not sure what it -- what it's talking</p> <p>24 about as far as infinite looper. It does not ring a</p> <p>25 bell. I'm somewhat confused. But the origination of</p>

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1 this e-mail is from an FSC complaining about
 2 InfiniteLooper and/or Dental Gator. I don't know the
 3 relationship between the two.
 4 **Q. The subject of the e-mail refers to Dental**
 5 **Gator, right?**
 6 A. Well, it says "InfiniteLooper -- Discount
 7 Dental Supplies" and "Dental Gator." So I don't
 8 understand what InfiniteLooper and the connection with
 9 Dental Gator is.
 10 **Q. What do you understand the e-mail chain to be**
 11 **about?**
 12 A. That an FSC and some -- and a zone manager in
 13 that area are upset about Dental Gator getting into a
 14 particular account. If that's considered
 15 InfiniteLooper, I'm not sure.
 16 **Q. If you turn to the last page of this exhibit,**
 17 **there's a link and a website. The Web address is**
 18 **infiniteLooper.com.**
 19 **Do you see that?**
 20 A. Yes.
 21 **Q. Is it possible that InfiniteLooper refers to a**
 22 **website that mentions Dental Gator?**
 23 MR. McDONALD: Object to the form.
 24 If you know, but don't speculate.
 25 THE WITNESS: Yeah, I'm not sure.

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1 BY MR. SOLOMON:
 2 **Q. Mr. Foley, does this e-mail -- or does**
 3 **Exhibit 298 reflect your recollection as to whether**
 4 **Mr. Tim Sullivan had a disagreement with special**
 5 **markets concerning Dental Gator?**
 6 A. I don't remember the e-mail, but I'm being --
 7 I can see that there is a disagreement here.
 8 **Q. Where do you see disagreement?**
 9 A. When he reprimands Hal not to disregard --
 10 underestimate the impact of Dental Gator and what it's
 11 having on the local sales teams.
 12 **Q. Do you know why Mr. Sullivan would be**
 13 **reprimanding Mr. Muller?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Because Hal is saying, like,
 16 give it a rest, move on. He's showing that it's not
 17 important, that accept it and move on.
 18 BY MR. SOLOMON:
 19 **Q. And Mr. Sullivan disagreed with that?**
 20 MR. McDONALD: Object to the form. The
 21 document speaks for itself. If you know, tell him.
 22 THE WITNESS: No, I don't know.
 23 BY MR. SOLOMON:
 24 **Q. Do you recall any other instances of**
 25 **Mr. Sullivan reprimanding Mr. Muller?**

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1 A. No.
 2 **Q. Were you surprised -- do you recall whether**
 3 **you were surprised to see that Mr. Sullivan was**
 4 **reprimanding Mr. Muller concerning Dental Gator?**
 5 A. Yes.
 6 **Q. Why?**
 7 A. I asked Hal, "So is Tim reprimanding you?"
 8 I'd never seen Tim respond to Hal that way.
 9 **Q. Did you think that was abnormal for**
 10 **Mr. Sullivan to respond that way?**
 11 A. I think that Hal can ruffle some feathers with
 12 people, but I was -- I was, again, you know, surprised
 13 that Tim was -- handed the report to Tim, so I was
 14 surprised that Tim was going directly to Hal Muller
 15 with an issue versus going to his manager -- Hal's
 16 manager or direct report.
 17 **Q. Turning to -- I'd like to take a look at your**
 18 **response, January 18th, 2015, 11:26 a.m.**
 19 A. Which page?
 20 **Q. Oh, the first page.**
 21 A. Thank you.
 22 **Q. Yup. So you refer to Tim reprimanding**
 23 **Mr. Muller. I see that there.**
 24 A. Umm-hmm.
 25 **Q. And then go on to talk about someone named KT.**

208

1 **Does that refer to Kathleen Titus?**
 2 A. Yes, it does.
 3 **Q. Stating that: (Reading.)**
 4 **"We need to take a closer look at the**
 5 **GPOs."**
 6 **Do you see that?**
 7 A. Yes.
 8 **Q. What do you -- what did you mean there?**
 9 A. That Kathleen -- that my interpretation of a
 10 call with Kathleen is that we really need to get more
 11 involved with buying groups that provide other services
 12 where we can stay involved. So she's moving into
 13 agreement that -- that GPOs are a good thing for HSD at
 14 the time, for Henry Schein as a whole.
 15 **Q. Were you surprised that she was telling you**
 16 **that?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I think I was happy that she was
 19 telling me that.
 20 BY MR. SOLOMON:
 21 **Q. Was that a change in policy from Ms. Titus's**
 22 **previous positions?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I would not say it was a change
 25 in policy. It was a change in opinion of Kathleen

52 (Pages 205 to 208)

209	211
<p>1 Titus. 2 BY MR. SOLOMON: 3 Q. You say: (Reading.) 4 "Totally confused and tired of the 5 Dental Gator thing." 6 What did you mean there? 7 A. I'm tired of the e-mails coming back and forth 8 from the FSCs complaining about Dental Gator, the 9 whining. 10 Q. In the last sentence, you write: (Reading.) 11 "...I thought HSD was bidding on the 12 Smile Source business???" 13 And then three question marks. 14 Why are you referring to Smile Source in an 15 e-mail about Dental Gator? 16 A. Because the people at HSD are complaining 17 about us working with Dental Gator, a buying group, yet 18 here they are, I heard, bidding on business with Smile 19 Source, a dental group. So I don't understand why with 20 us they're complaining when in fact they're trying to 21 grow the buying group segment themselves. So I was 22 wondering why they would even complain. 23 Q. So you thought those were inconsistent 24 positions? 25 A. Yes.</p>	<p>1 THE WITNESS: No, I'm not sure. 2 BY MR. SOLOMON: 3 Q. And who is Scott Janczak? 4 A. He's the inside sales rep attached to -- with 5 special markets attached to Dental Gator and B2. 6 Q. The subject of this e-mail is Dr. Ronald 7 Wilson, Greenville Smiles. 8 Do you see that? 9 A. Yes. 10 Q. What is Greenville Smiles? 11 A. It's the name of their dental practice. 12 Q. Whose dental practice? 13 A. Dr. Wilson's, I believe. 14 Q. Do you recall whether it was a private 15 practice? 16 A. Yes. 17 Q. Okay. Turning to Mr. Russ Baker's e-mail on 18 the second page at 9:41 a.m., starting with: (Reading.) 19 "Scott, let me bring Kathleen, Andrea 20 and Jason into this conversation." 21 Do you see that paragraph I'm referring to? 22 A. I do. 23 Q. The last sentence, Mr. Baker writes: 24 (Reading.) 25 "It is my understanding that this</p>
<p>1 MR. SOLOMON: Let's see. How long have we 2 been going now, about an hour now? Do you want to take 3 another break? 4 MR. McDONALD: Sure. 5 MR. SOLOMON: Okay. 6 (Brief recess.) 7 MR. SOLOMON: I'm handing the witness 8 Exhibit 299, which is a document Bates labeled Henry 9 Schein 000151381, an e-mail. The last-in-time e-mail 10 is October 9th, 2015, at 9:50 a.m. 11 [Whereupon, Deposition Exhibit 299 was 12 marked for identification.] 13 THE WITNESS: Okay. 14 BY MR. SOLOMON: 15 Q. Mr. Foley, what is Exhibit 299? 16 A. It's another situation with an FSC and a 17 region manager upset that one of their customers is 18 moving to Dental Gator. 19 Q. Do you recall this series of e-mails? 20 A. Yes. 21 Q. Turning your attention to the second page of 22 the e-mail chain. Who is Russ Baker? 23 A. I believe he's a -- 24 MR. McDONALD: Well, if you know tell him, but 25 don't guess.</p>	<p>1 violates our policy as we do not engage 2 with GPOs. If I'm wrong, please 3 enlighten me." 4 Do you know what policy Mr. Baker was 5 referring to? 6 A. No. 7 Q. Were you surprised to read Mr. Baker's e-mail 8 referring to a policy not to engage in GPOs? 9 MR. McDONALD: Object to the form. 10 THE WITNESS: Yes. 11 BY MR. SOLOMON: 12 Q. Why? 13 A. Because, again, this is where the local 14 team -- the local regional teams are not that involved 15 with the buying groups. In this particular situation, 16 he's based out of the Greenville, North Carolina, South 17 Carolina area, and this is their first foray of this 18 group into that area. So he would be unaware of any 19 policy that we don't engage in GPOs. 20 Q. So did you think that Mr. Baker was wrong 21 about a policy not to engage in GPOs? 22 A. Yes. 23 Q. Do you know where he might have learned about 24 such a policy? 25 A. No.</p>

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1 MR. McDONALD: Object to the form.
 2 THE WITNESS: Sorry.
 3 BY MR. SOLOMON:
 4 **Q. Did you ask him at any point what he was**
 5 **talking about?**
 6 A. No.
 7 **Q. Why not?**
 8 A. I wasn't concerned. Again, this was just
 9 another issue with Dental Gator that -- and Andrea was
 10 responding to it, saying, hey, this is more -- this is
 11 more -- it's a bit more tricky than a GPO, maybe
 12 assuming what he's thinking it is, and she would handle
 13 it.
 14 **Q. Turning to the first page, the e-mail from**
 15 **Mr. Baker on the first page, in the second sentence, he**
 16 **refers to an MSO: (Reading.)**
 17 "They are attempting to make this look
 18 like a MSO."
 19 Do you see that?
 20 A. Yes.
 21 **Q. What is Mr. Baker referring to with respect to**
 22 **an MSO?**
 23 A. A management service organization.
 24 **Q. What is that?**
 25 A. Where -- it would be almost an acronym to DSO,

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1 dental service organization.
 2 **Q. Are the two the same thing?**
 3 A. I don't refer -- we don't use "MSO."
 4 Typically we refer to everyone as a DSO.
 5 **Q. Do the terms mean the same thing?**
 6 A. I'm not sure what Scott -- well, I'm sorry.
 7 I'm not sure what Russ is referring to when he says
 8 "MSO." I assume he's referring to a DSO.
 9 MR. SOLOMON: I'm handing the witness a
 10 previously marked exhibit, 286.
 11 [Whereupon, Exhibit 286 was referenced.]
 12 THE WITNESS: Whoops. Sorry. Okay.
 13 BY MR. SOLOMON:
 14 **Q. Mr. Foley, have you seen Exhibit 286 before?**
 15 A. No.
 16 **Q. I will represent to you that this is something**
 17 **that the FTC received from your counsel and these are**
 18 **responses from Henry Schein to civil investigative**
 19 **demands that were served. I'd like to direct your**
 20 **attention to the fourth page of this document, the one**
 21 **before the last -- the page before the last. There you**
 22 **go.**
 23 **The top of the page says: (Reading.)**
 24 **"Supplemental Response to Specification**
 25 **No. 5."**

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1 **Do you see that?**
 2 A. Yes.
 3 **Q. And then it says: (Reading.)**
 4 **"Schein currently has or had a business**
 5 **relationship with the following buying**
 6 **groups."**
 7 **And there is a chart with a list of buying**
 8 **groups, and the second column includes information**
 9 **regarding dates of relationship.**
 10 **I'd just like to walk through each of these**
 11 **entities with you and ask you a few questions about,**
 12 **you know, what these entities are and whether or not**
 13 **they're a buying group of CHCs or private practice**
 14 **dentists. And you can just tell me what you know.**
 15 A. Okay.
 16 **Q. I'd like to start with the first group here,**
 17 **Advantage Dental Group.**
 18 **Are you familiar with that entity?**
 19 A. Yes.
 20 **Q. What is it?**
 21 A. It's a buying group under HSD.
 22 **Q. What kind of buying group is it?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: A standard buying group, you
 25 know, offering reduced supplies and other services to

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1 -- oh, I'm sorry -- to general dentists.
 2 BY MR. SOLOMON:
 3 **Q. So its members are private practice dentists?**
 4 A. Yes.
 5 **Q. Do you know whether it is a buying group**
 6 **component of a dental service organization?**
 7 A. Yes.
 8 **Q. It is?**
 9 A. Yes.
 10 **Q. And how do you know -- how do you know about**
 11 **Advantage Dental Group?**
 12 A. Advantage Dental was one of our elite dental
 13 service organizations similar to MB2 Dental. And they
 14 had a buying group component to them called Advantage
 15 Dental, but that fell under HSD, completely separate
 16 from the DSO, unlike Dental Gator and MB2.
 17 **Q. The next entity is called Arizona Association**
 18 **of Community Health Centers.**
 19 **Are you familiar with that entity?**
 20 A. No.
 21 **Q. Have you ever heard of it?**
 22 A. No.
 23 **Q. So you're not familiar with whether it's a**
 24 **buying group or GPO?**
 25 A. No.

54 (Pages 213 to 216)

217	<p>1 Q. Turning to the third name, Breakaway Practice, are you familiar with that entity?</p> <p>2 A. Yes.</p> <p>3 Q. What is Breakaway Practice?</p> <p>4 A. It's a -- it's a buying group for private</p> <p>5 practices.</p> <p>6 Q. Okay. And do you know whether Breakaway -- the Breakaway buying group is a buying group component of a DSO?</p> <p>7 A. Yes.</p> <p>8 Q. It is?</p> <p>9 A. Yes.</p> <p>10 Q. And how do you know that?</p> <p>11 A. I know that Dr. LeJeune owns about eight</p> <p>12 practices that are a DSO component, and Breakaway,</p> <p>13 which is much larger, is the buying group component of</p> <p>14 them under -- and it now falls under mid market.</p> <p>15 Q. It says here that the relationship spanned from June 2016 to the present. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Did Henry Schein have a relationship with Breakaway prior to June 2016?</p> <p>18 A. Yes, I -- yes.</p> <p>19 Q. What was the nature of that relationship?</p>	219	<p>1 Q. Did that entity fall under special markets or HSD?</p> <p>2 A. Special markets and moved to mid market during</p> <p>3 the -- is now under mid market.</p> <p>4 Q. Did you ever interact with this entity?</p> <p>5 A. Not me specifically.</p> <p>6 Q. Okay. How do you know it's a buying group?</p> <p>7 A. They -- it was under Daniel Hobson, who</p> <p>8 reports to me.</p> <p>9 Q. The next entity, Commonwealth Purchasing Group, which I think we discussed earlier today?</p> <p>10 A. Community health centers.</p> <p>11 Q. And Commonwealth was a customer of special markets originally?</p> <p>12 A. Yes.</p> <p>13 Q. Was --</p> <p>14 A. And but --</p> <p>15 Q. You can go ahead.</p> <p>16 A. Yes, and then part of mid market now.</p> <p>17 Q. The next entity, Corydon Palmer Dental Society Group, are you familiar with that entity?</p> <p>18 A. No.</p> <p>19 Q. So do you know whether or not it's a buying group?</p> <p>20 A. No.</p>
218	<p>1 A. I don't understand the June 2016 date.</p> <p>2 Breakaway was formed in 2009 or 2010, to my knowledge.</p> <p>3 Q. So do you think that that date is not accurate?</p> <p>4 A. Yes, I think that's an error.</p> <p>5 Q. Is it possible that the relationship with Breakaway in 2009 or 2010 was only with the DSO?</p> <p>6 A. No. There were -- they did have the -- the</p> <p>7 name itself, Breakaway, is designed to go after private</p> <p>8 practices, to break away from a DSO.</p> <p>9 Q. Did Breakaway originate in special markets?</p> <p>10 A. Yes.</p> <p>11 Q. How about Advantage Dental Group?</p> <p>12 A. No. Sorry. The buying group component did</p> <p>13 not originate in special markets.</p> <p>14 Q. Okay. Turning to the next entity, Colorado Community Health Network, are you familiar with that entity?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. It relates to community health centers in the</p> <p>18 state of Colorado, buying group.</p> <p>19 Q. All of its members are community health centers?</p> <p>20 A. Yes.</p>	220	<p>1 Q. The next one, Council Connections, are you familiar with that entity?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. It's a buying group for community health</p> <p>5 centers based out of California.</p> <p>6 Q. And that was at one point in special markets, and then it moved to HSD?</p> <p>7 A. No. I -- it was -- yes, we moved to mid</p> <p>8 market. Okay.</p> <p>9 Q. The next one is Dental Gator, which we've spoken about at length today. Obviously, you're familiar with it; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And that is a buying group component of MB2?</p> <p>12 A. Correct.</p> <p>13 Q. The next one is DPGA, Dental Partners of Georgia. Are you familiar with that entity?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It's a buying group that focuses on small</p> <p>17 group practices.</p> <p>18 Q. So it's a buying group composed of private practices?</p>

221	223
<p>1 A. Yes.</p> <p>2 Q. Actually, let me just be clear. You said</p> <p>3 "small group practices."</p> <p>4 A. Their members happen to be, like, four or five</p> <p>5 sites, private dentist that focus on Medicaid, pedo</p> <p>6 Medicaid. And they have about five customers with</p> <p>7 about five sites each.</p> <p>8 Q. So its individual members are small group</p> <p>9 practices?</p> <p>10 A. Correct.</p> <p>11 Q. Did Dental Partners of Georgia fall under</p> <p>12 special markets?</p> <p>13 A. Yes.</p> <p>14 Q. Was it later moved to mid market?</p> <p>15 A. No.</p> <p>16 Q. Did you work with this particular entity while</p> <p>17 you were at special markets?</p> <p>18 A. Yes.</p> <p>19 Q. In what capacity?</p> <p>20 A. My SAM, Becky Demers, was responsible for the</p> <p>21 account, and I would be engaged in it when needed. And</p> <p>22 I would meet -- I met with a couple of other members</p> <p>23 face-to-face.</p> <p>24 Q. The next entity is called Huntington Dentists</p> <p>25 Group. Are you familiar with that entity?</p>	<p>1 composed of private practices?</p> <p>2 A. Yes.</p> <p>3 Q. Did Intermountain Dental belong to special</p> <p>4 markets?</p> <p>5 A. Yes.</p> <p>6 Q. Was it later moved to mid market?</p> <p>7 A. No.</p> <p>8 Q. The next one is KlearImpakt. Are you familiar</p> <p>9 with that entity?</p> <p>10 A. Only from today's e-mail that I saw, but no in</p> <p>11 general.</p> <p>12 Q. So you're not sure whether or not it's a</p> <p>13 buying group?</p> <p>14 A. Correct.</p> <p>15 Q. The next one, Long Island Dental Forum, are</p> <p>16 you familiar with that entity?</p> <p>17 A. No.</p> <p>18 Q. You're not sure whether or not that is a</p> <p>19 buying group?</p> <p>20 A. I don't know.</p> <p>21 Q. Louisiana Primary Care Association, are you</p> <p>22 familiar with that?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p> <p>25 A. It's a buying group for community health</p>
<p>1 A. No.</p> <p>2 Q. Next one is Illinois Primary Healthcare</p> <p>3 Association. Are you familiar with that entity?</p> <p>4 A. Yes.</p> <p>5 Q. What is it?</p> <p>6 A. Community health centers in the state of</p> <p>7 Illinois.</p> <p>8 Q. Okay. Was that a customer of special markets</p> <p>9 originally?</p> <p>10 A. Yes.</p> <p>11 Q. Later moved to mid market?</p> <p>12 A. Correct.</p> <p>13 Q. Next one is called IDA. Are you familiar with</p> <p>14 that entity?</p> <p>15 A. Yes. That's Intermountain Dental Associates</p> <p>16 we discussed earlier.</p> <p>17 Q. That is --</p> <p>18 A. Go ahead.</p> <p>19 Q. I'm sorry. You go ahead.</p> <p>20 MR. McDONALD: Well, why don't you ask him a</p> <p>21 question so it's clear.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. Were you going to say something else or --</p> <p>24 A. No.</p> <p>25 Q. Is Intermountain Dental a buying group</p>	<p>1 centers in the state of Louisiana.</p> <p>2 Q. Was that a special markets customer?</p> <p>3 A. Yes.</p> <p>4 Q. Was it later moved to mid market?</p> <p>5 A. Yes.</p> <p>6 Q. OrthoSynthetics (sic), which I believe we've</p> <p>7 also discussed today, you're familiar with that entity,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. That is a buying group composed of</p> <p>11 orthodontists?</p> <p>12 A. Private dentists/orthodontists.</p> <p>13 Q. And OrthoSynthetics fell under special</p> <p>14 markets?</p> <p>15 A. Yes.</p> <p>16 Q. And it remained with special markets during</p> <p>17 your tenure there?</p> <p>18 A. Yes.</p> <p>19 Q. The next one is called Quatrius. Are you</p> <p>20 familiar with that entity?</p> <p>21 A. No.</p> <p>22 Q. You don't know whether it's a buying group?</p> <p>23 A. Correct.</p> <p>24 Q. Texas Association of Community Health, are you</p> <p>25 familiar with that entity?</p>

225	<p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. It's -- it's a buying group for community</p> <p>4 health centers mainly in Texas, but it is nationwide.</p> <p>5 Q. Did that at one time fall under special</p> <p>6 markets?</p> <p>7 A. Yes.</p> <p>8 Q. And it was later transferred to mid market?</p> <p>9 A. Correct.</p> <p>10 Q. Tralongo is the next entity here. Are you</p> <p>11 familiar with Tralongo?</p> <p>12 A. Yes.</p> <p>13 Q. What is Tralongo?</p> <p>14 A. It's a buying group for private dentists.</p> <p>15 Q. Was Tralongo a customer of special markets?</p> <p>16 A. For a -- for equipment and service. We were</p> <p>17 bidding on trying to win their business on the</p> <p>18 merchandise side when I was with them.</p> <p>19 Q. Do you know whether Tralongo had any</p> <p>20 relationship with Henry Schein Dental?</p> <p>21 MR. McDONALD: Object to the form.</p> <p>22 THE WITNESS: Yes, yes in that when they</p> <p>23 bought equipment, that would go through our Henry</p> <p>24 Schein Dental division at special market pricing.</p> <p>25 BY MR. SOLOMON:</p>	227	<p>1 A. Yes.</p> <p>2 Q. Did Tralongo originate in special markets?</p> <p>3 A. Yes.</p> <p>4 Q. Was it later moved to HSD?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 A. Not during my tenure. Okay.</p> <p>8 Q. Thank you.</p> <p>9 Smile Source, we've also talked about at</p> <p>10 length today, that is a buying group composed of</p> <p>11 private practice dentists; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And it says here that the relationship</p> <p>14 was from 2004 to 2006.</p> <p>15 Would you agree with that?</p> <p>16 A. No.</p> <p>17 Q. Why not?</p> <p>18 A. I know that they were a customer when I</p> <p>19 started in 2009 and 2010.</p> <p>20 Q. Okay.</p> <p>21 A. I'm unaware of the start date.</p> <p>22 Q. Star County Dental Society Group, are you</p> <p>23 familiar with that?</p> <p>24 A. No.</p> <p>25 Q. You don't know whether that's a buying group,</p>
226	<p>1 Q. So was -- you said you were bidding on trying</p> <p>2 to win the Tralongo business while you were at Henry</p> <p>3 Schein Special Markets.</p> <p>4 Did Henry Schein Special Markets, in fact, win</p> <p>5 the business?</p> <p>6 A. At the time that I had left, no.</p> <p>7 Q. You were still at Henry Schein Special Markets</p> <p>8 in November 2015, right?</p> <p>9 A. Yes.</p> <p>10 Q. So it says here that the relationship began in</p> <p>11 November 2015. Does that seem inaccurate to you?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Why not?</p> <p>16 A. Because we sold -- they had a relationship</p> <p>17 with us on the -- on the service and on the equipment</p> <p>18 side. So they were a customer in that respect.</p> <p>19 Q. So special markets was trying to win business</p> <p>20 with respect to -- additional business with respect to</p> <p>21 merchandise?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So as of 2015, the relationship between</p> <p>24 Schein and Tralongo was only focused on equipment and</p> <p>25 service?</p>	228	<p>1 right?</p> <p>2 A. Don't know.</p> <p>3 Q. Steadfast Medical, we've discussed. What is</p> <p>4 Steadfast Medical?</p> <p>5 A. It was a buying group focused on oral</p> <p>6 surgeons.</p> <p>7 Q. Did Steadfast Medical originate in special</p> <p>8 markets?</p> <p>9 A. Yes.</p> <p>10 Q. And it was later moved to HSD, or was it later</p> <p>11 moved to HSD?</p> <p>12 A. I am unaware. I don't know where it went.</p> <p>13 Q. Okay. The next one is Washington Association</p> <p>14 of Community and Migrant Farm Workers.</p> <p>15 Are you familiar with that entity?</p> <p>16 A. Yes.</p> <p>17 Q. What is it?</p> <p>18 A. It's a buying group for the State of</p> <p>19 Washington for community health groups and migrant farm</p> <p>20 workers association.</p> <p>21 Q. Was -- did that entity originate in special</p> <p>22 markets?</p> <p>23 A. Yes.</p> <p>24 Q. Was it later moved to HSD?</p> <p>25 A. Yes, and mid market.</p>

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1 **Q. Are you aware of any other buying groups that**
 2 **Schein has worked with that are not listed in this**
 3 **chart?**
 4 A. No.
 5 MR. SOLOMON: All right. I actually don't
 6 have very much more to go through today. I just want
 7 to spend five minutes regrouping, see if there's
 8 anything else I'd like to ask Mr. Foley, and then we
 9 can likely finish.
 10 MR. McDONALD: Okay.
 11 (Brief recess.)
 12 MR. SOLOMON: Back on record at 4:01 p.m.
 13 I'd like to take a look at Exhibit 270 one
 14 more time.
 15 (Off the record discussion.)
 16 BY MR. SOLOMON:
 17 **Q. Mr. Foley, just the first page of Exhibit 272,**
 18 **referring to your -- your e-mail. Let's take a look at**
 19 **the second paragraph beginning with "the issue here is**
 20 **that."**
 21 **Do you see where I'm pointing you to?**
 22 A. Yes, uh-huh.
 23 **Q. You say: (Reading.)**
 24 **"When existing Schein customers enroll,**
 25 **it simply erodes margins. When the BG**

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1 **markets their reduced spend, existing**
 2 **customers come to Schein and say I**
 3 **don't want to join the group, but I want**
 4 **their pricing..."**
 5 **And then in parenthesis, you write: (Reading.)**
 6 **"...(per Tim Sullivan)."**
 7 **Do you see that?**
 8 A. Yes.
 9 **Q. What were you referring to by "per Tim**
 10 **Sullivan"?**
 11 A. Tim Sullivan once mentioned to me that when a
 12 buying group just based on price is set up, and let's
 13 say they put a booth at a trade show, that a customer
 14 will come up and say, "I really don't want to join that
 15 group. I just want their pricing." He once made a
 16 comment to me about that.
 17 **Q. Did he think that was a bad thing?**
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: No. Not sure.
 20 BY MR. SOLOMON:
 21 **Q. Did he state that that was a reason why Henry**
 22 **Schein Dental shouldn't work with GPOs or buying**
 23 **groups?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I'm not sure.

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1 BY MR. SOLOMON:
 2 **Q. Do you recall anything else about the**
 3 **conversation with Mr. Sullivan?**
 4 A. No.
 5 **Q. Do you recall why Mr. Sullivan told you that**
 6 **information?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Only that we may have been on a
 9 conversation about buying groups.
 10 BY MR. SOLOMON:
 11 **Q. What else was discussed during that**
 12 **conversation?**
 13 A. Do not remember.
 14 **Q. Do you recall who else was a part of that**
 15 **conversation?**
 16 A. No.
 17 **Q. Has Mr. Sullivan ever mentioned anything else**
 18 **negative with respect to GPOs or buying groups apart**
 19 **from what's written here?**
 20 A. No.
 21 **Q. Have you heard others within HSD expressing**
 22 **the same sentiment with respect to buying groups or**
 23 **GPOs as Mr. Sullivan is here in Exhibit 272?**
 24 A. No.
 25 **Q. Are you familiar with -- strike that.**

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1 **Do you know why Henry Schein Dental would want**
 2 **to work with buying groups or GPOs?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Yes.
 5 BY MR. SOLOMON:
 6 **Q. Why?**
 7 A. That they're expanding in scope and function
 8 and meaning in the dental industry. So we set up a
 9 separate -- I mean, a team to help focus on that
 10 particular segment which we didn't have before.
 11 **Q. What are Henry Schein Dental's incentives to**
 12 **work with GPOs or buying groups?**
 13 MR. McDONALD: Object to the form; lack of
 14 foundation.
 15 THE WITNESS: I'm not exactly sure of the --
 16 the -- the potential of working with them, the dollar
 17 potential.
 18 BY MR. SOLOMON:
 19 **Q. What do you mean by that?**
 20 A. I'm not sure of what percent of market share
 21 they would be and how -- you know, how -- if -- you
 22 know, what the goal is of our HSD division in working
 23 with buying groups if there's a projection out there.
 24 **Q. Do you know how buying groups or GPOs could be**
 25 **beneficial to Henry Schein Dental business?**

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233	<p>1 MR. McDONALD: Object to the form; lack of 2 foundation. 3 THE WITNESS: Yes. It would bring in more 4 customers -- they could bring in more customers. And 5 as I stated earlier, we have found that when a customer 6 is associated with good buying groups, our retention 7 rate of keeping that customer buying from Schein is 8 higher than just a customer out on their own. 9 BY MR. SOLOMON: 10 Q. Where would those new customers come from? 11 A. From the marketplace in general or from other 12 distributors -- by doing business with other 13 distributors. 14 Q. Could buying groups or GPOs affect Henry 15 Schein Dental's existing customers? 16 MR. McDONALD: Object to the form; lack of 17 foundation. 18 THE WITNESS: Yes. 19 BY MR. SOLOMON: 20 Q. How so? 21 A. Only -- 22 MR. McDONALD: Object to the form. 23 THE WITNESS: -- perhaps in reduced -- reduced 24 pricing. 25 BY MR. SOLOMON:</p>	235	<p>1 A. Yes. 2 MR. SOLOMON: Okay. I don't think I have any 3 further questions here. 4 Lynn, do you have anything? Thank you. 5 BY MR. SOLOMON: 6 Q. Mr. Foley, before we finish up here today, I 7 just had a couple of questions surrounding CHCs. We 8 talked about them at length today. I just want to 9 understand a little bit more about how they operate. 10 Do you know whether most CHCs are a part of a 11 buying group or a GPO? 12 MR. McDONALD: Object to the form. 13 THE WITNESS: Not the majority of them. 14 BY MR. SOLOMON: 15 Q. Do you know what percentage of CHCs are a part 16 of a GPO or buying group? 17 A. In -- in the -- in our segment, they 18 represented 33 -- about a third of our revenue and 19 supplies, CHCs that were part of a buying group. 20 MR. SOLOMON: Okay. I don't think I have any 21 further questions on that. So I think we can finish 22 up. 23 MR. McDONALD: I just have a clarifying 24 question. Are you done? 25 MR. SOLOMON: I'm finished.</p>
234	<p>1 Q. Would that result in eroded margins? 2 MR. McDONALD: Object to the form. 3 THE WITNESS: Depends if the customer could 4 buy more from Schein being more focused with the buying 5 group to override any loss in margin, you know, higher 6 volume to compensate for reduced pricing in margin. 7 BY MR. SOLOMON: 8 Q. Do you know whether it could also result in 9 eroded margins? 10 MR. McDONALD: Object to the form. 11 THE WITNESS: Only because of lower pricing. 12 BY MR. SOLOMON: 13 Q. Do you know whether Mr. Sullivan's concern 14 about eroded margins with respect to private practice 15 dentists is still a -- or was a concern for Henry 16 Schein Dental when you left? 17 A. No. 18 Q. How do you know? 19 A. Because we were actually adding more buying 20 groups at the time when I was leaving in the HSD 21 division. 22 Q. HSD was adding more buying groups at the time 23 you were leaving? 24 A. Correct. 25 Q. In 2016?</p>	236	<p>1 MR. McDONALD: Okay. 2 EXAMINATION 3 MR. McDONALD: Mr. Foley, today when you 4 referred to GPOs, did you mean to also -- did you mean 5 to refer to buying groups? 6 A. Yes. 7 Q. When you refer to GPOs, were you referring to 8 anything other than a buying group? 9 A. No. 10 MR. McDONALD: That's all the questions I 11 have. 12 MR. SOLOMON: Yeah, let's take a quick break. 13 MR. McDONALD: Really? 14 MR. SOLOMON: I might have a follow-up 15 question to that because I'm a little confused as to, 16 like, the distinctions between buying groups and GPOs. 17 And I just want to look back at his prior testimony 18 before we finish up. So shouldn't take too long. 19 (Off the record discussion.) 20 FURTHER EXAMINATION 21 BY MR. SOLOMON: 22 Q. Mr. Foley, have you referred to buying groups 23 and GPOs interchangeably at any point during your time 24 at special markets? 25 A. Yes.</p>

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1 **Q. Why is that?**
 2 A. I consider a -- people use the term "GPO" like
 3 Council Connections, and other ones, they call
 4 themselves a GPO when in fact they re a buying group.
 5 So I consider them the same entity.
 6 **Q. And you've used the terms interchangeably?**
 7 A. It's confusing but, yes, I consider a buying
 8 group -- a GPO is really a buying group on the dental
 9 side.
 10 **Q. Okay. I don't think --**
 11 A. I'm sorry. I refer to it always as a buying
 12 group. Others call them GPO. I clarify that it's a
 13 buying group.
 14 **Q. Well, you've referred to some of the entities**
 15 **today as GPO/buying groups, right?**
 16 A. I consider that a buying group, correct.
 17 **Q. But you have used the terms interchangeably in**
 18 **your e-mails?**
 19 A. Correct.
 20 MR. SOLOMON: Thank you. No further
 21 questions.
 22 MR. McDONALD: Thanks.
 23 THE REPORTER: And, Mr. McDonald, you would
 24 like a copy of the transcript?
 25 MR. McDONALD: Yes, but not a rough.

1 CERTIFICATE OF REPORTER
 2
 3 I, SHAARON M. SHIGIO, a Certified Shorthand
 4 Reporter, hereby certify that the witness in the
 5 foregoing deposition was by me duly sworn to tell the
 6 truth, the whole truth and nothing but the truth in the
 7 within-entitled cause;
 8 That said deposition was taken down in shorthand
 9 by me, a disinterested person, at the time and place
 10 therein stated, and that the testimony of the said
 11 witness was thereafter reduced to typewriting, by
 12 computer, under my direction and supervision;
 13 That before completion of the deposition, review
 14 of the transcript {X} was { } was not requested. If
 15 requested, any changes made by the deponent (and
 16 provided to the reporter) during that period allowed
 17 are appended hereto.
 18 I further certify that I am not of counsel or
 19 attorney for either or any of the parties to the said
 20 deposition, nor in any way interested in the events of
 21 this cause, and that I am not related to any of the
 22 parties thereto.
 23 DATED:
 24
 25 Shaaron M. Shigio, CSR #12286

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1
 2 (Whereupon, at the hour of 4:11 p.m. the
 3 matter was adjourned.)
 4
 5 ---o0o---
 6
 7 I declare under penalty of perjury that the
 8 foregoing is true and correct. Subscribed at
 9 _____, California, this _____ day of
 10 _____, 2017.
 11
 12
 13
 14 _____
 15 RANDY FOLEY
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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ERRATA SHEET

DEPOSITION OF: Randy Foley

DATE DEPOSITION: July 12, 2017

CASE NAME: In the Matter of Henry Schein, Inc., et al, No. 1510190

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
10	11-12	Delete "in that same title but a director title"	Clarification
11	12	Change "till" to "until"	Typographical error/clarification
13	5	Change "2009" to "2013"	Misspoke
16	13	Delete "If"	Typographical error/clarification
17	24	Change "meeting" to "meetings"	Typographical error
18	10	Change "5013(c)" to "501(c)(3)"	Typographical error
18	11	Change "director" to "directors"	Typographical error
18	20	Change "responsibility authorization" to "responsibility for authorization"	Typographical error/clarification
19	24	Change "my direct report to" to "who I directly reported to"	Clarification
42	10	Delete "Pam Reece,"	Typographical error/clarification
44	13	Change "probably about" to "probably consult about"	Typographical error/clarification
46	18	Change "he did" to "we did"	Typographical error/clarification
46	24	Change "dentals" to "dental school"	Typographical error/clarification
47	25	Change "why behoove" to "why it would behoove"	Typographical error/clarification
56	2	Change "hear" to "heard"	Typographical error/clarification
58	18	Change "refer to it in GPOs in the dental" to "refer to it as GPOs in dental"	Clarification

108	2	Change “to value-added” to “to provide value-added”	Typographical error/clarification
108	17	Delete “we—that this is --”	Typographical error/clarification
110	10	Delete “that their --”	Typographical error/clarification
113	5	Change “a reference” to “an inference”	Typographical error/clarification
118	8	Change “was” to “were”	Typographical error/clarification
119	20	Change “whatever” to “whenever”	Typographical error/clarification
122	11	Change “meet” to “meeting”	Typographical error/clarification
122	25	Change “was decision” to “was a decision”	Typographical error/clarification
123	8	Change “Chatum” to “Chatham”	Typographical error
131	15	Delete “<”	Typographical error
132	14	Delete “, umm-hmm”	Clarification
132	23	Change “their” to “them”	Typographical error
133	12	Change “region” to “regional”	Typographical error/clarification
135	16	Change “Jay” to “Jake”	Typographical error
137	12	Delete stray quotation mark	Typographical error
145	7	Change “work” to “working”	Typographical error
145	8-9	Delete “that and become a – I’m sorry --”	Typographical error/clarification
146	9	Change “75” to “17”	Typographical error
146	11	Change “5000,000” to “500,000”	Typographical error
147	23	Change “us work” to “us to work”	Typographical error
151	11	Change “manager” to “managers”	Typographical error
155	1	Delete “Yes.”	Clarification/misspoke
155	5	Delete “that”	Clarification/misspoke
155	5-6	Change “value-added such as” to “value-added services such as”	Clarification/misspoke
157	18	Change “to be” to “like”	Clarification/misspoke
166	10	Change “there’s no -- yeah” to “there’s	Clarification/misspoke

		no policy”	
178	8	Change “Corpedia” to “Corepedia”	Typographical error
181	10	Delete “Didn’t want to – I would – you know,”	Clarification/misspoke
190	2	Change “more along of a consulting” to “more along the lines of a consulting”	Clarification/misspoke
191	25	Change “working them” to “working with them”	Clarification/misspoke
192	20	Delete “Dental”	Clarification/misspoke
202	18-19	Delete “—he was either a direct – he was a”	Clarification/misspoke
203	19	Change “who is Scott” to “who Scott”	Clarification/misspoke
206	17	Change “that” to “to”	Typographical error/clarification
207	13	Delete “ –I was again, you know, surprised that Tim was – handed the report to Tim,”	Clarification/misspoke
210	17	Change “region” to “regional”	Typographical error
211	5	Change “B2” to “MB2”	Typographical error
212	19	Change “that we don’t engage in” to “regarding”	Clarification/misspoke
220	9	Delete “No.”	Clarification/misspoke

I, Keith Randy Foley, do hereby acknowledge that I have read the above-referenced deposition transcript, that I have made any corrections, additions or deletions that I was desirous of making; and that the transcript contains my true and correct testimony.

EXECUTED this 16th day of August, 2017.

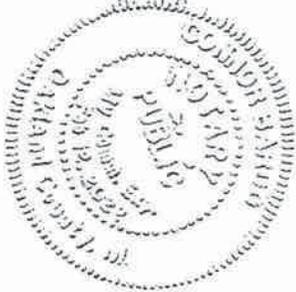
at Royal Oak, MI
(City) (State)

Keith Randy Foley
Signature of Witness

Subscribed and sworn to and before me this 16 day of August, 2017.

CB
Notary Public

SEAL:



CONNOR BARDO
Notary Public - Michigan
Oakland County.
My Commission Expires Feb. 12, 2022
Acting in the County of OAKLAND

CX0310

In the Matter of:

Henry Schein, Inc., et al.

May 26, 2017

David A. Steck

Condensed Transcript with Word Index



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FEDERAL TRADE COMMISSION

1 HENRY SCHEIN, INC., PATTERSON)
 2 COMPANIES, INC., AND BENCO DENTAL) MATTER NO.
 3 SUPPLY COMPANY) 151090
 4 -----)
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 10
 11 INVESTIGATIONAL HEARING OF DAVID A. STECK
 12 Chicago, Illinois
 13 Friday May 26, 2017

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 18
 19
 20
 21
 22 REPORTED BY:
 23 Stephanie A. Battaglia, CSR, RMR, CRR
 24
 25

3

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 7 Investigational Hearing of DAVID A. STECK, at
 8 the Federal Trade Commission, 55 West Monroe Street,
 9 Suite 1825, Chicago, Illinois, 60603, commencing at
 10 7:53 a.m., Friday May 26, 2017, before STEPHANIE A.
 11 BATTAGLIA, CSR, RMR, CRR, pursuant to notice.
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6	8
<p>1 MR. SOLOMON: Good morning, Mr. Steck.</p> <p>2 THE WITNESS: Good morning.</p> <p>3 MR. SOLOMON: Thank you for being here</p> <p>4 today.</p> <p>5 My name is Ronnie Solomon. I am an</p> <p>6 attorney with the Federal Trade Commission. With me</p> <p>7 this morning is my colleague, Karen Goff, who is also</p> <p>8 an attorney with the Federal Trade Commission.</p> <p>9 This investigational hearing is being</p> <p>10 conducted as part of the Commission's investigation of</p> <p>11 Henry Schein in Matter No. 1510190.</p> <p>12 For the record would counsel please state</p> <p>13 their appearance.</p> <p>14 MR. McDONALD: John McDonald.</p> <p>15 DAVID A. STECK,</p> <p>16 called as a witness herein, having been first duly</p> <p>17 sworn was examined and testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. Mr. Rogan, you are appearing today</p> <p>21 pursuant to a subpoena issued by the Federal Trade</p> <p>22 Commission, is that correct?</p> <p>23 A. My name is not Mr. Rogan.</p> <p>24 Q. I am sorry. Mr. Steck.</p> <p>25 A. Yes.</p>	<p>1 Q. Mr. Steck, I understand you have given</p> <p>2 sworn testimony before, is that correct?</p> <p>3 A. It is true, yes.</p> <p>4 Q. So you probably understand how this</p> <p>5 works, but I just want to go over a few ground rules</p> <p>6 just for the record.</p> <p>7 First, we need to make sure not to</p> <p>8 interrupt each other and to provide clearly verbal</p> <p>9 answers so no head nods, no gestures or anything like</p> <p>10 that, okay?</p> <p>11 A. Yes.</p> <p>12 Q. Secondly, I will do my best to ask you</p> <p>13 clear questions, but if something I ask you is not</p> <p>14 clear or you don't understand, feel free to let me</p> <p>15 know and I will do my best to rephrase it, okay?</p> <p>16 A. Okay.</p> <p>17 Q. We will take breaks today throughout the</p> <p>18 day. If for any reason you feel you need a break,</p> <p>19 just let me know and we can go ahead and take a break</p> <p>20 as long as there is no question pending. And</p> <p>21 obviously if you need to confer with your counsel on</p> <p>22 privilege issues before you answer a question you can</p> <p>23 take a break for that reason, okay?</p> <p>24 A. Okay.</p> <p>25 Q. Mr. Steck, is there any reason why you</p>

9	<p>1 cannot provide complete and truthful testimony here 2 today? 3 A. No. 4 Q. How did you prepare for today's 5 testimony? 6 A. I met yesterday with another counsel and 7 talked to them about -- 8 MR. McDONALD: Do not reveal what you 9 talked about. 10 THE WITNESS: Right, okay. 11 BY MR. SOLOMON: 12 Q. So you said you met with counsel 13 yesterday? 14 A. Yes. 15 Q. And did you review any documents? 16 A. Yes. 17 Q. How many documents would you say you 18 reviewed? 19 A. I don't recall exactly. 20 Q. Mr. Steck, do you have a general sense of 21 what the FTC's investigation of Henry Schein Dental is 22 about? 23 A. I really don't. 24 Q. The purpose of today's hearing is for me 25 to get information from you and help us understand</p>	11	<p>1 Q. Mr. Steck, what is your highest level of 2 education? 3 A. Well, I attended MBA classes, 4 master's-level classes at San Diego State, but I 5 didn't finish my MBA. 6 Q. Do you have a bachelor's degree? 7 A. I do. 8 Q. Where is your degree from? 9 A. University of San Diego. 10 Q. When did you graduate? 11 A. 1979. 12 Q. You are currently employed by Henry 13 Schein Dental, is that correct? 14 A. Correct. 15 Q. And Henry Schein Dental is a distributor 16 of dental supplies, equipment, and a provider of 17 dental service, is that correct? 18 A. Yes. 19 Q. What is your current title at Henry 20 Schein Dental? 21 A. Vice president and general manager. 22 Q. And when did you start in that position? 23 A. I started in this position in January 24 of 2005. 25 Q. And prior to that what position did you</p>
10	<p>1 some of the facts so that the FTC can determine how to 2 proceed with this investigation in this case, do you 3 understand that? 4 A. Yes. 5 Q. So you said you don't have a general 6 sense of what the investigation is about. 7 A. No, I don't. 8 Q. Have you spoken with your counsel 9 generally about the nature of the investigation? 10 MR. McDONALD: And I don't want you to 11 reveal communications you had with counsel. 12 He has answered your question, Ronnie, 13 that he doesn't understand what the investigation is 14 about. And, I will be perfectly honest, I don't 15 either. 16 MR. SOLOMON: I just want to make sure 17 before we start he generally -- we know why we are 18 here today. 19 BY MR. SOLOMON: 20 Q. So you don't understand what the 21 investigation is about. I wanted to ask if you had 22 any personal views on the merits of the FTC's 23 investigation. 24 A. Well, since I don't really understand it, 25 no, I don't.</p>	12	<p>1 hold? 2 A. I was a zone general manager on the west 3 coast managing part of the United States. 4 Q. And what states were a part of your 5 region as west coast zone manager? 6 A. Southern California, Arizona, Hawaii, 7 Nevada, and Colorado. 8 Q. And where were you based when you were a 9 west coast zone manager? 10 A. San Diego. 11 Q. Prior to serving as a west coast zone 12 manager, what was your position at Henry Schein? 13 A. I was in charge of -- I was vice 14 president of marketing for Sullivan Dental Products. 15 Q. And when did you begin in that position? 16 A. That would have been '95, sometime in 17 '95. 18 Q. Did you hold any other positions at 19 Sullivan Dental? 20 A. That was -- yes, to answer your question, 21 yes. But titles were kind of fluid at Sullivan Dental 22 so you kind of changed a lot, but I went from 23 marketing into equipment and then after Sullivan was 24 purchased by Schein I served in an equipment capacity 25 for a while there, too, before I went to the zone</p>

13

1 position.

2 **Q. When you say you served in an equipment**
3 **capacity, what do you mean?**

4 A. I was vice president of the equipment
5 business in charge of the equipment business.

6 **Q. What were your duties and**
7 **responsibilities in that position?**

8 A. Pretty much working with the equipment
9 manufacturers that we represented at that time and,
10 you know, working with our sales team and trying to
11 grow equipment sales and pretty much anything that
12 involved that.

13 **Q. Did you ever serve as a sales rep at**
14 **Sullivan Dental?**

15 A. I have served as a sales rep, but not
16 with Sullivan Dental.

17 **Q. And how long were you a sales rep?**

18 A. Ten years.

19 **Q. When did you start in that role?**

20 A. Well, I started right after college, so
21 it would have been the fall of 1979 until about 1989,
22 and it was for a family business at the time. It was
23 in the dental business.

24 **Q. What was the name of that company?**

25 A. Coast Dental Supplies.

14

1 **Q. Coast Dental, did that later become a**
2 **part of Sullivan Dental?**

3 A. Yes.

4 **Q. So you have been in the dental business**
5 **for most of your life?**

6 A. Yes, a long time.

7 **Q. So in your current position as vice**
8 **president and general manager of Henry Schein Dental**
9 **what are your current duties and responsibilities?**

10 A. My primary responsibility is for the
11 sales group which consists of, you know, three
12 different types of salespeople that we have field
13 sales consultants, we have equipment specialists, and
14 we have technology specialists. And then there are
15 heads of each of those groups that I supervise, along
16 with sales -- we have a sales development individual
17 and also the middle market part of the business as
18 well.

19 **Q. How many people do you manage in that**
20 **role?**

21 A. I have right now nine direct reports.
22 But -- speaking direct or indirect?

23 **Q. Direct.**

24 A. Direct.

25 **Q. Are your direct reports all located at**

15

1 **the corporate headquarters or throughout the country**
2 **in the field?**

3 A. Most of them are where we are at in
4 Wisconsin, one is in New York, one is in Baltimore.

5 **Q. Can you name -- can you -- strike that.**
6 **Who are your direct reports?**

7 A. Joe Cavaretta, Jake Meadows, Don Hobbs,
8 John Cox, Brian Brady, Kevin Burniston, Mackenzie
9 Richter, is that eight?

10 **Q. I think that is less than eight.**

11 MR. McDONALD: It is seven.

12 THE WITNESS: Seven. Well, my assistant,
13 Tay Mitchell, she is one of my direct reports.

14 There is one in there I am forgetting.

15 Oh, Eric Nuss is in charge of our
16 business solutions.

17 BY MR. SOLOMON:

18 **Q. Who is Joe Cavaretta?**

19 A. Joe is vice president of sales for the
20 western half the United States.

21 **Q. How about Jake Meadows?**

22 A. He is the vice president of sales for the
23 eastern part of the United States.

24 **Q. And Brian Brady?**

25 A. He is the director of group practices.

16

1 **Q. And I am guessing one of the employees**
2 **you named would be the sales lead for the central part**
3 **of the United States?**

4 A. No, just east and west.

5 **Q. Just east and west, okay.**

6 **Can you walk me through what a typical**
7 **day looks like for you in your current position?**

8 A. Well, you know, obviously every day is a
9 little different. There are days that are very
10 meetings heavy where I am having meetings with direct
11 reports and then also group meetings with either some
12 of them, all of them, or some other parts of the
13 business. I would say a typical day for me has at
14 least four to five meetings in it as well as phone
15 calls and projects that I am working on.

16 **Q. How many people would you say you meet**
17 **with on a daily basis from within Henry Schein?**

18 A. That would vary. Anywhere from two to
19 three to twenty, depending on the day.

20 **Q. Do you consider yourself to be a part of**
21 **Schein's dental leadership team?**

22 A. Yes.

23 **Q. In what sense?**

24 A. Well, I am sort of the face of the sales
25 group.

17	<p>1 Q. Do you have any decision-making responsibility?</p> <p>2 A. Yes.</p> <p>3 Q. What kind of decision-making responsibility do you have?</p> <p>4 A. Well, you know, I help put together the compensation plans for the salespeople, I make decisions on strategic initiatives that we do in terms of marketing programs with customers, and I pretty much -- pretty much am involved in anything involving sales in the dental business.</p> <p>5 Q. Are there any decisions that you would have to clear with someone who is in a position above you?</p> <p>6 A. Plenty of them, sure.</p> <p>7 Q. Can you give me some examples?</p> <p>8 A. Anything that involves spending money up over a certain number or in a certain range, anything that would involve a policy change from things we have done in the past, anything that would involve a particular employee of a certain level in the company, and that would be the most common ones anyway.</p> <p>9 Q. Anything else?</p> <p>10 A. There is all kinds of things, it is, you know, it is obviously it is a group of people.</p>	19	<p>1 different going forward, I would talk to him about those, assuming they were large enough.</p> <p>2 Q. Understood.</p> <p>3 Do you have any special areas of responsibility or oversight in your current position outside of sales?</p> <p>4 A. Well, there is some marketing obviously. Sales in our definition includes some marketing responsibilities closely connected to we have a marketing group that handles equipment and technology that I am indirectly related to and then the same thing with the consumables part of our business in New York.</p> <p>5 Q. And can you give me an example of how marketing would fit into your area of oversight?</p> <p>6 A. Well, again, picking what products, what categories we want to emphasize, how we want to go to market with them, constructing promotions, anything like that.</p> <p>7 Q. Has your role changed over time?</p> <p>8 A. I don't think my role has changed as much as the company has just gotten larger.</p> <p>9 Q. How has the company grown over time?</p> <p>10 A. Well, it is, you know, we have gone from -- Henry Schein, Inc., obviously has grown faster than</p>
18	<p>1 Q. And who would you need to declare -- strike that.</p> <p>2 With who would you need to clear those type of decisions?</p> <p>3 A. Tim Sullivan generally my boss.</p> <p>4 Q. What is Tim Sullivan's position?</p> <p>5 A. He is the president of Henry Schein Dental. Actually, he is the president of North American Dental Group, which includes Henry Schein Dental and Henry Schein Canada.</p> <p>6 Q. You mentioned one type of decision making -- one type of decision you would need to clear with Mr. Sullivan is, for example, a policy change. Can you give me an example of what that would be?</p> <p>7 A. I think mostly around compensation policy I can think would be the bulk of what we would discuss. If there are certain classes of product that we paid our sales force one way and wanted to change it to something different, that would be a policy change I would talk to him about. How we handle a particular manufacturer who we may not have had good relations with in the past and we want to give them some opportunities or the other way around where they have been for whatever reason haven't been as what we hoped they would be we might handle them a little</p>	20	<p>1 Henry Schein Dental, so I don't know if you are talking about Henry Schein, Inc., or Henry Schein Dental.</p> <p>2 Q. I am referring specifically to Henry Schein Dental.</p> <p>3 A. It has grown significantly. I don't know what the average rate of growth has been over the last 12 years that I have been involved in this job, but, you know, it is probably in the four or five percent range a year.</p> <p>4 Q. And, just so I understand, your areas of responsibility are only over or within the Henry Schein Dental business, right?</p> <p>5 A. Yes.</p> <p>6 Q. You mentioned Henry Schein has -- Henry Schein Dental has experienced some growth over the years. Has that presented any unique challenges?</p> <p>7 MR. McDONALD: Object to the form.</p> <p>8 THE WITNESS: I guess I need to know what you mean by unique challenges.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. I don't have anything in mind, I am just generally trying to get a sense for changes at the company that you witnessed as a result of growth.</p> <p>11 A. I think obviously we have had to</p>

21	<p>1 restructure our management group a couple of times in 2 order to meet the needs of the market and the needs of 3 the sales team.</p> <p>4 For example, the technology side of our 5 business didn't exist when I took this job. It was 6 all considered equipment. We kind of broke that out 7 and made that a special -- we actually had two sales 8 forces there at one time, we now only have one. So 9 that has been probably the most dynamic area of the 10 business that has required the most time.</p> <p>11 Q. Anything else?</p> <p>12 A. The only other changes, you know, I think 13 that we have done is just continuing to really 14 emphasize recruiting and bringing in really good 15 people. Especially we recruit a lot out of college 16 now, we didn't used to do that. And we are always 17 trying to find top, quality people to represent the 18 company, and that is a big and very difficult job. I 19 mean, not me personally doing it, but I am obviously 20 very closely attached to it.</p> <p>21 Q. How did you land in your current 22 position?</p> <p>23 A. I was promoted from my prior role. You 24 can ask Tim why, I guess, but obviously they felt I 25 was the best candidate for this.</p>	23	<p>1 A. Yes, sure.</p> <p>2 Q. How often?</p> <p>3 A. You know, it is hard to say. Sometimes I 4 go through periods of time where they are in the 5 office a lot for whatever reasons and I am able to sit 6 down with them, other times I have to go to them. But 7 I would say I directly speak to somebody at least once 8 a week even on the phone. It is certainly sometimes 9 more than that.</p> <p>10 Q. How many sales representatives does Henry 11 Schein Dental have?</p> <p>12 A. Of the three different types put together 13 about 1200.</p> <p>14 Q. Do you ever meet with dentists?</p> <p>15 A. Yes, sure.</p> <p>16 Q. How often?</p> <p>17 A. Not often. Usually at conventions.</p> <p>18 Q. And do you ever do co-travel with vendors 19 to visit dentists?</p> <p>20 A. I co-travel with our salespeople to visit 21 dentists. I have never co-traveled with a 22 manufacturer, I did when I was in sales, I don't now. 23 And, again, that might be once or twice a year.</p> <p>24 Q. And, tell me if I am correct, that 25 involves actually going into the office of a dentist</p>
22	<p>1 Q. So Mr. Sullivan promoted you?</p> <p>2 A. Yes.</p> <p>3 Q. And how long have you known Mr. Sullivan?</p> <p>4 A. Since 1992 when Sullivan bought Coast 5 Dental Supply, the company I had with my 6 father-in-law.</p> <p>7 Q. How would you describe your professional 8 relationship with Mr. Sullivan?</p> <p>9 A. Very good. I mean, we have been together 10 now 25 years, known each other pretty well.</p> <p>11 Q. Would you describe yourselves as friends?</p> <p>12 A. Friends in a business sense, yes. We are 13 not -- we don't do things personally together.</p> <p>14 Q. Is traveling a part of your position at 15 all?</p> <p>16 A. Yes.</p> <p>17 Q. How so?</p> <p>18 A. Well, we have to travel to different 19 things, events, conventions, meetings specifically, 20 usually in New York, that is where Henry Schein's 21 corporate headquarters are; occasionally out to the 22 field just to visit operations in the field; a little 23 bit of everything.</p> <p>24 Q. Do you ever meet with Henry Schein Dental 25 sales representatives?</p>	24	<p>1 and talking about onsite challenges and kind of seeing 2 how a dentist practices sort of in an everyday 3 environment, is that right?</p> <p>4 A. Yes. You go in there, you talk about 5 their practice. Obviously somewhere in there you talk 6 about where they buy from or how they buy or whether 7 there are things we can help them with that they would 8 like to have that we provide. Obviously we are always 9 trying to adapt ourselves to the client.</p> <p>10 Q. Why do you attend those trips?</p> <p>11 A. I learn something every time I talk to a 12 dentist.</p> <p>13 Q. Can you give me an example of something 14 you learned recently?</p> <p>15 A. You learn all kinds of things. 16 Primarily they want to talk about their 17 economic challenges they are struggling with and 18 different insurance reimbursement changes that have 19 happened. But they also want to talk about 20 technology, what is happening in the technology world 21 because they are also not very -- most of them are not 22 as technology-aware, they do dentistry for a living 23 and they are busy doing that. 24 So those are generally the two areas that 25 most customers want to talk about.</p>

25

1 **Q. So the dentists that you visit during**
2 **these trips are usually private practice dentists,**
3 **right?**

4 A. Yes, generally, yes.

5 **Q. Do you ever visit corporate practices?**

6 A. I have never met -- never gone into a
7 corporate dental practice personally. I have met some
8 corporate dental executives at trade shows and at
9 meetings.

10 **Q. Do you ever visit any other types of**
11 **dental practices that are not considered private**
12 **practice?**

13 A. Well, I mean, a couple years ago we
14 created this business called the mid market and so I
15 have met a couple of those individuals in their office
16 and met several of them, other events as well.

17 **Q. Can you tell me what mid market refers**
18 **to?**

19 A. Well, mid market was something we created
20 I think three years ago because the special markets,
21 which is the larger customer part of our business,
22 wanted to really focus on its top 50 or so clients.

23 So that top 50 or so they obviously kept
24 and then there is -- they had other people and other
25 types of customers on their list and then we also had

27

1 of POs and different purchasing methods that are
2 outside private practice dentistry.

3 It is just larger organizations I guess
4 is the best way to put it, prisons and large
5 government, some state government. State government
6 can kind of go either way depending on how they want
7 to operate.

8 **Q. Are you responsible for special markets?**

9 A. No.

10 **Q. Who is?**

11 A. Hal Muller is the name of the gentleman
12 who is the president of special markets.

13 **Q. So am I correct in -- let me know if my**
14 **understanding is correct, that Henry Schein Dental and**
15 **special markets focus on different customers?**

16 A. That is correct, 95 percent of the time.
17 There is this middle market area that is never as
18 clean as you want it to be, as I said, sometimes there
19 is going to be some overlap, generally speaking that
20 is right.

21 **Q. Is it the case that special markets and**
22 **Henry Schein Dental sometimes service the same**
23 **clients?**

24 A. No, generally, no, they go one way or the
25 other.

26

1 private practice dentists who were going in together
2 and forming group practices, two areas were sort of
3 starting to grow together. And so they were starting
4 to grow together. And because of special markets'
5 desire to want to focus on that top group we decided
6 to create a middle group.

7 **Q. Is there a specific definition of middle**
8 **market that Henry Schein uses?**

9 A. I can give you general guidelines, but I
10 will tell you that they -- because the market is
11 evolving very quickly, those change, too, generally it
12 is a dentist who has between 3 and 20 locations,
13 community health centers, and, what else, local
14 hygiene and assisting schools, and then also buying
15 organizations.

16 **Q. Would that include any institutional**
17 **customers such as the federal government?**

18 A. Those are still in special markets.

19 **Q. Those are still in special markets.**

20 A. Uh-huh.

21 **Q. So special markets focuses on what type**
22 **of customer?**

23 A. Generally more than 20 locations,
24 generally doing upwards of a million dollars a year in
25 purchases, generally, again, things that require a lot

28

1 **Q. So there is sort of a gray area where it**
2 **is unclear whether it falls into special markets or**
3 **would be mid market, is that right?**

4 A. Yes.

5 **Q. And how are decisions made as to whether**
6 **a customer should fall under special markets or mid**
7 **market when the definition is not as clear?**

8 A. Generally we sit down and talk to, you
9 know, our team talks to Hal about it and Hal and his
10 team about it and we generally come to an
11 understanding.

12 **Q. Got it.**

13 **Do you ever attend dental conferences or**
14 **trade shows?**

15 A. Yes.

16 **Q. How often?**

17 A. At least six a year.

18 **Q. Are there any trade shows or conferences**
19 **that you regularly attend?**

20 A. Yes, most of them are annual conferences.

21 **Q. Which ones?**

22 A. It is the Chicago midwinter meeting,
23 happens here every February, the California Dental
24 Association meeting which happens in May, the American
25 Dental Association meeting, which moves around every

29

1 year, that is normally in October, and the greater New
2 York, which is in New York over Thanksgiving weekend.

3 **Q. And how do you choose which conferences**
4 **to attend?**

5 A. The larger ones I go to all of them.
6 Some of the smaller ones I will try to rotate, I will
7 go to one one year and then another another year just
8 to kind of -- so I can be visible to the sales group.

9 **Q. Which smaller ones do you attend?**

10 A. Boston and Atlanta and sometimes. I am
11 trying to think, sometimes northern California has a
12 meeting, I have gone to that one before.

13 Those are generally the ones that I am
14 probably -- I am probably forgetting one, but those
15 are the ones that are most common.

16 **Q. How do you decide which of the smaller**
17 **conferences and trade shows to attend?**

18 A. There usually has to be a reason. Again,
19 I try to go to one or two a year to be out there so I
20 can try and see the team. If there is a new manager,
21 we have a new manager in that market, I will usually
22 try to go to support them. It is -- there is a
23 variety of reasons.

24 **Q. Other than seeing a new manager what are**
25 **some reasons why you attend conferences and trade**

30

1 **shows?**

2 A. Generally to talk to the salespeople is
3 the single, most important thing and kind of find out
4 what their life is like these days in that particular
5 area of the business, because the geography is
6 different, California is different than New York, et
7 cetera.

8 So generally my number one reason is to
9 talk to the salespeople, and that is always helpful
10 for me.

11 The second reason is typically to meet
12 with our larger suppliers that always want to have
13 meetings at those shows because everybody is there.

14 Those are the primary.

15 Sometimes there is a local dental
16 association that wants to have some kind of connection
17 with us and I will meet with them as well.

18 **Q. Any other reasons?**

19 A. Those are the primary ones.

20 **Q. Are there any other parts of the Henry**
21 **Schein business outside of dental that you are**
22 **familiar with?**

23 A. Well, what do you mean by familiar?
24 Where we are in certain businesses, yes.

25 **Q. Which businesses?**

31

1 A. Well, we have a medical business and we
2 have an animal health business.

3 **Q. And how familiar are you with the animal**
4 **health and medical business?**

5 A. Very minimal.

6 **Q. What can you tell me about those segments**
7 **of the Henry Schein business?**

8 A. Again, I am not very familiar with them.
9 I mean, I know the sales heads for -- sales heads for
10 medical, I do not know those for animal health.

11 But we don't really -- I mean, we talk
12 every two, three years, it is not a regular meeting or
13 anything like that. I am not part of that.

14 **Q. Who would be a part of those meetings?**

15 A. Senior management above me.

16 **Q. So Mr. Sullivan, for example?**

17 A. Probably not as much anymore. It used to
18 be organized, Mr. Breslawski, who is the president of
19 Henry Schein Dental and the CEO of the dental group
20 worldwide is Mr. Sullivan's boss, he used to have
21 medical as well. When he had medical Tim was probably
22 being more exposed to medical. Now it is strictly
23 dental worldwide.

24 **Q. When you say he used to have medical, who**
25 **are you referring to?**

32

1 A. Jim Breslawski.

2 **Q. Just to be clear so we have a clean**
3 **record, today when I say Henry Schein or Schein I am**
4 **referring to Henry Schein Dental --**

5 A. Okay.

6 **Q. -- unless I say otherwise. I will be**
7 **sure to say Henry Schein Medical or Henry Schein**
8 **Animal Health if I am referring to those segments.**

9 A. Got it.

10 **Q. And feel free to stop if something is**
11 **confusing.**

12 A. Sure.

13 **Q. I understand currently you report to**
14 **Mr. Sullivan in your current role, that's correct?**

15 A. Yes.

16 **Q. And has that changed over time?**

17 A. No.

18 **Q. So you have always reported to**
19 **Mr. Sullivan while working for Henry Schein Dental?**

20 MR. McDONALD: Object to form.

21 THE WITNESS: As long as I have been in
22 this role, yes.

23 BY MR. SOLOMON:

24 **Q. Got it.**

25 **And in your prior roles did you report to**

33

1 anyone else?
 2 A. Yes.
 3 Well, when I was -- when I was in Coast
 4 Dental I reported to my father-in-law. When I was
 5 first with Sullivan Dental I reported to a fellow
 6 named Kevin Ackeret, who was the VP of sales. He is
 7 retired now. And then I reported to Jim Breslawski
 8 for a while because he was president of Henry Schein
 9 Dental. And then I reported to Tim.
 10 **Q. Does Mr. Sullivan keep you apprised of**
 11 **certain things going on in the business from time to**
 12 **time?**
 13 A. Yes.
 14 **Q. What kinds of things?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: You know, again, if there
 17 is -- he and I have monthly sit-down meetings and he
 18 kind of catches me up and if something comes up in the
 19 meantime, if we are in negotiations with a supplier to
 20 bring them on, if they are -- something happened more
 21 broader within the company, you know, that is
 22 developmentally related or if there is new resources
 23 out there that we can utilize to help train people or
 24 develop people, you know, generally that kind of
 25 thing. Most of it is just reviewing what I am doing

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1 so he is familiar with what I am working on.
 2 BY MR. SOLOMON:
 3 **Q. Do you keep Mr. Sullivan apprised**
 4 **generally of what you are working on?**
 5 A. I believe I do. You would have to ask
 6 him.
 7 **Q. How often do you meet with Mr. Sullivan?**
 8 A. As I said, formally once a month, but
 9 informally it could be two, three times a day
 10 depending on the day.
 11 **Q. Do you and Mr. Sullivan sit in the same**
 12 **office?**
 13 A. We are in the same building. We have
 14 different offices in the same building.
 15 **Q. How about how far are your two offices**
 16 **from each other?**
 17 A. I don't know, maybe 20 yards, maybe not
 18 even that far, I don't know.
 19 **Q. Would you say that most of your meetings**
 20 **with Mr. Sullivan are in-person rather than by phone**
 21 **or by e-mail?**
 22 A. Yes.
 23 **Q. And how often do you and Mr. Sullivan**
 24 **exchange e-mails?**
 25 MR. McDONALD: Object to the form.

35

1 THE WITNESS: We are both copied on a lot
 2 of e-mails, too, which is, you know, if they are
 3 direct e-mails from me to him or him to me that is, I
 4 don't know, it depends on the day, usually maybe two
 5 or three a day maybe, maybe even not that many.
 6 BY MR. SOLOMON:
 7 **Q. How often do you and Mr. Sullivan speak**
 8 **on the phone?**
 9 A. Only when we are out of the office. If
 10 we are in the office we will always talk live.
 11 **Q. Do you and Mr. Sullivan ever communicate**
 12 **via text message?**
 13 A. Yes, occasionally.
 14 **Q. How often?**
 15 A. It could be months, sometimes we will do
 16 it two or three times as just the back-and-forth. It
 17 is rarely about business, but it is -- it could be
 18 once a month, it could be once every three or
 19 four months.
 20 **Q. Does Mr. Sullivan ever copy you on**
 21 **e-mails?**
 22 A. Yes.
 23 **Q. And would you say that you are copied on**
 24 **e-mails by Mr. Sullivan when it relates to something**
 25 **that the two of you have discussed?**

36

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: Sometimes, yes, sometimes
 3 it is just he wants my input on something.
 4 BY MR. SOLOMON:
 5 **Q. Are there any other reasons why**
 6 **Mr. Sullivan generally copies you on e-mails?**
 7 MR. McDONALD: Object to form.
 8 THE WITNESS: You would have to ask him.
 9 BY MR. SOLOMON:
 10 **Q. Do other Schein employees regularly copy**
 11 **you on e-mails along with Mr. Sullivan?**
 12 A. Sure.
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: Yes.
 15 BY MR. SOLOMON:
 16 **Q. Do you know why they do that?**
 17 A. Just to keep us informed as to whatever
 18 is happening, we have an employee who has cancer, if
 19 we somebody we know who has issues, if somebody is --
 20 something has happened in the business that they think
 21 we should both be aware of they usually copy both of
 22 us.
 23 **Q. Are there any instances when an employee**
 24 **would only copy you rather than Mr. Sullivan?**
 25 A. If he felt it was something I needed to

37	<p>1 know, yes.</p> <p>2 Q. How about the reverse, are there any</p> <p>3 reasons why an employee would only copy Mr. Sullivan</p> <p>4 than you on an e-mail?</p> <p>5 MR. McDONALD: Object to the form.</p> <p>6 THE WITNESS: Again, you have to ask the</p> <p>7 person sending it. Sometimes they feel they have a</p> <p>8 better connection with Tim than they do with me,</p> <p>9 sometimes it is the other way around.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. Would you say that employees generally</p> <p>12 copy both you and Mr. Sullivan on e-mails?</p> <p>13 MR. McDONALD: Object to the form.</p> <p>14 THE WITNESS: I would say more often than</p> <p>15 not, yes.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Are there any areas of Mr. Sullivan's</p> <p>18 responsibility that you would say you are not</p> <p>19 generally kept apprised of?</p> <p>20 A. Well, I am not apprised of anything going</p> <p>21 on in Canada, he has Canada. Yeah, that would be</p> <p>22 probably the biggest single one.</p> <p>23 Q. Anything within Henry Schein Dental's US</p> <p>24 business?</p> <p>25 MR. McDONALD: Object to the form.</p>	39	<p>1 Q. What kind of companies would you say are</p> <p>2 a part of the Dental Trade Alliance?</p> <p>3 A. Other distributors and manufacturers,</p> <p>4 both.</p> <p>5 Q. So do you attend any meetings as part of</p> <p>6 your role as a board member of the DTA?</p> <p>7 A. Yes. You are generally going to -- we</p> <p>8 have an annual meeting which is in the fall, usually</p> <p>9 in November, that everybody goes to and there is a</p> <p>10 board meeting associated with that. And then there is</p> <p>11 generally one other one during the year and sometimes</p> <p>12 phone meetings.</p> <p>13 Q. How many other members of the board are</p> <p>14 there?</p> <p>15 A. If I had to guess I would say 12 to 15.</p> <p>16 Q. And those board members are all employees</p> <p>17 of other dental distributors and manufacturers?</p> <p>18 A. Yes.</p> <p>19 Q. How long are the board meetings usually?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: Well, it depends. A board</p> <p>22 meeting can be a couple hours, a short one, or they</p> <p>23 can be a couple of days, depending on what you are</p> <p>24 talking about.</p> <p>25</p>
38	<p>1 THE WITNESS: Generally nothing of</p> <p>2 significance, no.</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Mr. Steck, are you a part of any dental</p> <p>5 industry organizations?</p> <p>6 A. Yes, I am part of two.</p> <p>7 Q. And what are those organizations?</p> <p>8 A. One is the Dental Trade Alliance and the</p> <p>9 other is the Dental Lifeline Network.</p> <p>10 Q. What is the Dental Trade Alliance?</p> <p>11 A. That is our trade association for the</p> <p>12 dental business, companies join that, a lot of</p> <p>13 companies are members of it, and I currently sit on</p> <p>14 the board for that for Henry Schein.</p> <p>15 Q. What is -- so your title is board member?</p> <p>16 A. Yes.</p> <p>17 Q. And how long have you held that position?</p> <p>18 A. A year.</p> <p>19 Q. And prior to sitting on the board did you</p> <p>20 hold any positions with the Dental Trade Alliance?</p> <p>21 A. No.</p> <p>22 Q. So you mentioned that there are companies</p> <p>23 within the dental business that join the Dental Trade</p> <p>24 Alliance, right?</p> <p>25 A. Yes.</p>	40	<p>1 BY MR. SOLOMON:</p> <p>2 Q. What are your duties and responsibilities</p> <p>3 as a member of the board of the DTA?</p> <p>4 A. I am on the nominating committee and the</p> <p>5 audit committee.</p> <p>6 Q. And what do you do in those positions?</p> <p>7 A. Well, I am still pretty new to it, but</p> <p>8 you generally -- the nominating committee is</p> <p>9 nominating new board members or new officers for the</p> <p>10 company -- or the association. And the audit</p> <p>11 committee is obviously just looking at the financials.</p> <p>12 Q. You also mentioned you are a member of</p> <p>13 the Dental Lifeline Network?</p> <p>14 A. Correct.</p> <p>15 Q. And what is that?</p> <p>16 A. That is an organization that provides</p> <p>17 dental services to special needs and mentally</p> <p>18 challenged and poor people who can't afford dental</p> <p>19 services.</p> <p>20 Q. And do you have a position within that</p> <p>21 organization?</p> <p>22 A. I am on the board there as well.</p> <p>23 Q. How long have you been on the board of</p> <p>24 that organization?</p> <p>25 A. Four years.</p>

41

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1 **Q. And what do you do as a board member**
2 **within that organization?**

3 A. Attend meetings, help to raise money, and
4 listen to where the challenges are within that
5 community and try to see if you can be helpful at all.

6 **Q. How often do those meetings occur?**

7 A. Those are twice a year, too, generally at
8 trade meetings, like the Chicago midwinter there is a
9 meeting and usually one at the ADA as well.

10 **Q. And how many members are a part of the**
11 **board of that organization?**

12 A. There is on the trade side probably maybe
13 six of us. On the professional side, meaning the
14 dentists, the providers themselves, there is probably
15 another six. And then there is staff that they have
16 that are senior staff members, and I would guess that
17 is about six as well, but those are all very
18 approximate numbers.

19 **Q. When you say trade side, do you mean**
20 **dental distributors and manufacturers?**

21 A. Yes.

22 **Q. My apologies if you already answered**
23 **this, but how long have you been a board member of**
24 **that organization, the Dental Lifeline Network?**

25 A. Four years.

1 So typically trade meetings I will meet with them as
2 well, as I mentioned.

3 **Q. What is a key opinion leader?**

4 A. That is a term that we use in the dental
5 business for somebody who influences dentists
6 clinically, usually clinically, that they would have a
7 discussion, for example, on digital dentistry and how
8 they are utilizing it in their practice and how they
9 think other dentists can utilize it to be successful
10 and will sponsor them and pay an honorarium fee for
11 them to come talk to groups of dentists.

12 **Q. Would you say that key opinion leaders**
13 **influence the decisions that dentists make in their**
14 **practice?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: They certainly can, yes.

17 BY MR. SOLOMON:

18 **Q. In what ways?**

19 A. You know, they are dentists usually whose
20 people know their name and they are interested in what
21 they have to say; whether it is relevant to an
22 individual dentist is their own decision.

23 **Q. In what ways can key opinion leaders**
24 **influence dentists?**

25 MR. McDONALD: Object to the form.

42

44

1 **Q. In the last five years have you been a**
2 **member of any other dental industry or organizations**
3 **that we haven't already talked about?**

4 A. I don't believe so, no.

5 **Q. Do you ever have the occasion to work**
6 **alongside others within the dental industry?**

7 MR. McDONALD: Object to the form, vague.

8 THE WITNESS: Can you be a little more
9 specific there?

10 BY MR. SOLOMON:

11 **Q. Sure.**

12 **Do you ever interact with other members**
13 **of the dental industry, which can include thought**
14 **leaders, representatives of other distributors,**
15 **manufacturers? I am just giving you a hypothetical**
16 **list.**

17 A. Well, occasionally, you know, dental
18 KOLs, or key opinion leaders, those are dentists that
19 lecture and try to have events for dentists, we
20 interact with them because in some cases we will hire
21 them to be at events we have for dentists so we will
22 interact with them. Obviously I mentioned earlier I
23 interact with a lot of the manufacturers on the dental
24 side because they always want to have access to the
25 sales channel, both in equipment and in merchandise.

1 THE WITNESS: You know, again, if they
2 are talking about a particular technology, for
3 example, and they are talking about how it has worked
4 for them it might influence a doctor to buy that
5 technology.

6 BY MR. SOLOMON:

7 **Q. So do key opinion leaders go out in the**
8 **field and meet with dentists?**

9 A. Generally, no. Generally they look for
10 people like us to sponsor them.

11 **Q. And would they give talks at meetings?**

12 A. Yes.

13 **Q. How else would they interact with**
14 **dentists?**

15 A. Sometimes they will through the Internet
16 they will have social networks or they will have
17 people call them on the phone.

18 I mean, dentistry is a fairly casual
19 industry in that most dentists will talk to another
20 dentist for any reason, if a guy called with a
21 question I am sure most key opinion leaders would
22 answer it.

23 **Q. How many key opinion leaders would you**
24 **say that Henry Schein Dental sponsors?**

25 A. I honestly have no idea, I would have to

45	<p>1 look.</p> <p>2 Q. Would you say it is a large number?</p> <p>3 MR. McDONALD: Object to the form, vague.</p> <p>4 THE WITNESS: What do you define as a</p> <p>5 large number?</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. Is it more than ten?</p> <p>8 A. I would say probably more than ten, yes.</p> <p>9 Q. Would you say it is more than twenty?</p> <p>10 A. I don't really know. It is -- it is less</p> <p>11 than fifty.</p> <p>12 Q. Who would know?</p> <p>13 A. You would have to go to various --</p> <p>14 different areas of Henry Schein sponsor different key</p> <p>15 opinion leaders for various reasons and nobody I think</p> <p>16 has a complete master list.</p> <p>17 Q. Do you know how much Henry Schein pays</p> <p>18 key opinion leaders?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: Well, it depends on what</p> <p>21 their honorarium is, we always pay the expenses to go</p> <p>22 someplace and what their honorarium is.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. What is an honorarium?</p> <p>25 A. Normally a speaking fee.</p>	47	<p>1 A. I have been to a couple, it is not</p> <p>2 something I do a lot of.</p> <p>3 Q. Are there any key opinion leaders who</p> <p>4 Henry Schein has sponsored multiple times over the</p> <p>5 years?</p> <p>6 A. Yes, sure.</p> <p>7 Q. Can you think of any?</p> <p>8 A. Sure.</p> <p>9 Dr. Gordon Christiansen is a clinician in</p> <p>10 Utah, we sponsor him usually twice a year.</p> <p>11 Dr. Mark Morrin who is a dentist in</p> <p>12 Detroit who lectures on digital dentistry, we</p> <p>13 typically sponsor him I would say four to six times a</p> <p>14 year.</p> <p>15 And then there are a bunch of others, Ed</p> <p>16 Suh, who is a dentist in Raleigh, North Carolina,</p> <p>17 speaks on digital dentistry speaks three, four times a</p> <p>18 year.</p> <p>19 There is a group of them, I can name five</p> <p>20 or six of them, and they generally all do some kind of</p> <p>21 a series that they will fly around and do.</p> <p>22 Q. A few minutes ago you mentioned that the</p> <p>23 dental business is you said fairly casual I believe</p> <p>24 was the word -- were the words you used?</p> <p>25 A. Between dentists.</p>
46	<p>1 Q. Do you have an idea of what the -- strike</p> <p>2 that.</p> <p>3 Do you have an idea of the amount of</p> <p>4 honorariums that Henry Schein usually pays?</p> <p>5 MR. McDONALD: Object to the form, vague,</p> <p>6 overly broad.</p> <p>7 THE WITNESS: So, you want to give me an</p> <p>8 example and I can --</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. I wish I could. I don't even know what</p> <p>11 an honorarium is, I am trying to explore.</p> <p>12 A. It is just a fee they charge to speak, it</p> <p>13 is the reason they are going. Generally between two</p> <p>14 and ten thousand dollars would be normal.</p> <p>15 Q. And that would be for a one-time speaking</p> <p>16 engagement or would that involve multiple speaking</p> <p>17 engagements?</p> <p>18 A. Generally one time, but if it is multiple</p> <p>19 then we will negotiate a fee for a series or</p> <p>20 something.</p> <p>21 Q. And does someone from Henry Schein</p> <p>22 usually attend the speaking engagements which Henry</p> <p>23 Schein sponsors?</p> <p>24 A. Always, yes.</p> <p>25 Q. Do you ever attend those?</p>	48	<p>1 Q. Between dentists.</p> <p>2 Would you say that also applies to the</p> <p>3 dental industry -- the larger dental industry as well?</p> <p>4 MR. McDONALD: Object to the form, vague.</p> <p>5 THE WITNESS: I would say it is casual</p> <p>6 between ourselves and our manufacturing partners.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. How so?</p> <p>9 A. They call me on the phone for any reason.</p> <p>10 I have never refused an appointment from another</p> <p>11 dental manufacturing company in my career, it doesn't</p> <p>12 matter how small they are, we will see them. It is a</p> <p>13 fairly small industry.</p> <p>14 Q. The dental manufacturing industry is</p> <p>15 fairly small?</p> <p>16 A. No, the whole dental industry is fairly</p> <p>17 small.</p> <p>18 Q. How would you quantify it?</p> <p>19 A. Well, I think estimates has about</p> <p>20 \$6 billion a year in the US.</p> <p>21 Q. So you said that the relationship between</p> <p>22 Henry Schein Dental and manufacturers is casual.</p> <p>23 A. Generally so. I would say, yes.</p> <p>24 Q. Do you know who at Henry Schein is</p> <p>25 primarily responsible for relations with</p>

49	<p>1 manufacturers?</p> <p>2 A. Well, it would be the head of those</p> <p>3 particular -- whatever group the manufacturer falls</p> <p>4 in, if they are a consumables manufacturer it would be</p> <p>5 a gentleman named Paul Hinsch, if it was an equipment</p> <p>6 manufacturer Don Hobbs, and if it was technology</p> <p>7 manager it would be John Cox.</p> <p>8 Q. Do you know how many manufacturers Henry</p> <p>9 Schein Dental does business with?</p> <p>10 A. No, I don't.</p> <p>11 Q. Do you have an approximate number that</p> <p>12 you can think of?</p> <p>13 A. I know -- at our national sales meeting</p> <p>14 people will come, manufacturers will come to exhibit</p> <p>15 at that, it is a little over 100 total that show up.</p> <p>16 Q. Would you say that Henry Schein Dental</p> <p>17 does business with more than 100 manufacturers?</p> <p>18 A. Oh, sure, yes.</p> <p>19 Q. Does Henry Schein Dental have -- strike</p> <p>20 that.</p> <p>21 Are there certain manufacturers who are</p> <p>22 Henry Schein Dental's largest manufacturer partners?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Companies that we sell more</p> <p>25 of their products than others, yes.</p>	51	<p>1 consumables there is a lot.</p> <p>2 But in equipment a company like A-dec,</p> <p>3 which manufactures dental equipment, a company like</p> <p>4 Planmeca, which makes dental imaging equipment.</p> <p>5 There are some other ones as well, Midmark is</p> <p>6 a company we do business with that manufacturers</p> <p>7 equipment, a company called Air Techniques.</p> <p>8 These are the top ones. After that it</p> <p>9 drops off pretty significantly.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. What about on the consumables side of the</p> <p>12 business?</p> <p>13 A. Well, I mentioned the three largest.</p> <p>14 There is some others, Hu-Friedy is the</p> <p>15 name of a company that is here in Chicago that</p> <p>16 manufacture dental instruments.</p> <p>17 A company called Kulzer, is a</p> <p>18 manufacturer that is -- they are German but they</p> <p>19 manufacture -- they sell in the United States.</p> <p>20 Again, there are a number of other ones</p> <p>21 that I can think of.</p> <p>22 A company called VOCO.</p> <p>23 And, again, I could -- GC is another</p> <p>24 company, a Japanese company.</p> <p>25 I mean, I could go on probably for an</p>
50	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Would you say that there are a group of</p> <p>3 manufacturers who are Henry Schein's top manufacturer</p> <p>4 partners?</p> <p>5 MR. McDONALD: Object to the form, vague.</p> <p>6 THE WITNESS: There are ones that are</p> <p>7 larger than others, yes.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Can you give me some examples?</p> <p>10 A. The largest dental supplier -- dental</p> <p>11 manufacturing company, I believe, in the world is</p> <p>12 Dentsply Sirona.</p> <p>13 Then there is a group called KaVo Kerr,</p> <p>14 which is part of a company called Danaher.</p> <p>15 And then 3M has its own dental division,</p> <p>16 we do a lot of business with 3M.</p> <p>17 And then there is some equipment</p> <p>18 companies as well that are fairly large.</p> <p>19 Q. So you mentioned 3M, Dentsply, KaVo Kerr.</p> <p>20 Who else would you say would fall into</p> <p>21 the category of a top manufacturer or partner for</p> <p>22 Schein Dental?</p> <p>23 MR. McDONALD: Object to the form, vague.</p> <p>24 THE WITNESS: Well, it is easier on the</p> <p>25 equipment side because it is more concentrated, where</p>	52	<p>1 hour if you want me to just keep naming dental</p> <p>2 companies. I don't know if that is -- they are all</p> <p>3 fairly small at this point.</p> <p>4 Q. Would you say we have talked about some</p> <p>5 of the larger ones?</p> <p>6 A. Yes, they are all in there.</p> <p>7 Q. So Henry Schein Dental is a distributor</p> <p>8 of dental supplies and equipment, is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And Schein Dental is sometimes referred</p> <p>11 to as a dealer?</p> <p>12 A. Yes, dealer or distributor.</p> <p>13 Q. Sometime throughout today I may refer to</p> <p>14 Henry Schein Dental as a dealer or distributor, and</p> <p>15 you will understand that I am referring to the same</p> <p>16 thing there?</p> <p>17 A. Yes.</p> <p>18 Q. Would you say that Schein is a full-line</p> <p>19 distributor?</p> <p>20 A. Yes.</p> <p>21 Q. Would you say that Schein is a</p> <p>22 full-service distributor?</p> <p>23 A. Yes.</p> <p>24 Q. And would you say that Schein is a</p> <p>25 national distributor?</p>

53	55
<p>1 A. Yes.</p> <p>2 Q. Are you familiar at all with Schein's</p> <p>3 gross margins?</p> <p>4 A. Yes.</p> <p>5 Q. What is Schein's gross margin for</p> <p>6 consumables?</p> <p>7 THE WITNESS: It is okay to answer this?</p> <p>8 MR. McDONALD: It is.</p> <p>9 THE WITNESS: Well, it varies.</p> <p>10 MR. McDONALD: If you know.</p> <p>11 THE WITNESS: I can give you -- it is a</p> <p>12 range.</p> <p>13 What it adds up to, I am not exactly</p> <p>14 sure, but generally speaking it is somewhere in the 25</p> <p>15 to 35 percent margin.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. And are you also familiar with the gross</p> <p>18 margins for equipment?</p> <p>19 A. Yes.</p> <p>20 Q. And what would that number be?</p> <p>21 A. They are almost the same.</p> <p>22 Q. Have Schein's gross margins changed over</p> <p>23 the last five years?</p> <p>24 A. Not measurably, no.</p> <p>25 Q. Do you have a sense for Schein's national</p>	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Sure.</p> <p>3 Does it compete with Patterson for those</p> <p>4 accounts based on price?</p> <p>5 A. Yes, sure.</p> <p>6 Q. How else?</p> <p>7 A. Salespersons, relationship, and services</p> <p>8 and scope of services. That is why hiring people is</p> <p>9 so critical, hiring the right people. Most of the</p> <p>10 time the single biggest influence of where a dentist</p> <p>11 does business is the salesperson and their</p> <p>12 relationship with the salesperson.</p> <p>13 Q. How would a salesperson influence those</p> <p>14 relationships?</p> <p>15 A. Well, they do a good job of making sure</p> <p>16 they got the right products, making sure they didn't</p> <p>17 get too much of the right products, they would also</p> <p>18 look in to having an interest in the customer's</p> <p>19 overall business, how they are doing, giving</p> <p>20 suggestions, advice as if they want that, they would</p> <p>21 certainly be interested in where they are going from a</p> <p>22 technology standpoint what their plan is, trying to</p> <p>23 become an extended member of the dentist's team.</p> <p>24 Q. Does Schein compete with Benco in the</p> <p>25 same manner?</p>
<p>1 market share today?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Only based on what</p> <p>4 manufacturers tell us, large ones that sell to</p> <p>5 everybody. They tell us what our share of their</p> <p>6 business is. So based on what we hear and kind of</p> <p>7 triangulate, it is somewhere in the high 30's.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. Who are Schein Dental's competitors?</p> <p>10 A. Well, our largest competitor is Patterson</p> <p>11 Dental. The second largest competitor would be Benco</p> <p>12 Dental. And then there is a host of independent</p> <p>13 dealers across the country. These are all</p> <p>14 full-service dealers. Then there are a number --</p> <p>15 literally hundreds of Internet dealers that sell</p> <p>16 product on the Internet.</p> <p>17 Q. Does Schein compete against Patterson</p> <p>18 Dental for private practice accounts?</p> <p>19 A. Yes.</p> <p>20 Q. And how does Schein compete against</p> <p>21 Patterson for those accounts?</p> <p>22 MR. McDONALD: Object to the form.</p> <p>23 THE WITNESS: Can you be specific about</p> <p>24 how? I mean, can you give me an example?</p> <p>25</p>	<p>1 A. Yes.</p> <p>2 Q. Would you say that Schein, Patterson, and</p> <p>3 Benco ever try to outbid each other on price in order</p> <p>4 to gain business?</p> <p>5 A. All day every day.</p> <p>6 Q. How important of a factor is price in</p> <p>7 competition?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: It depends on the dentist.</p> <p>10 Some dentists it is everything. Everything I just</p> <p>11 talked about, the professionalism, the salesperson,</p> <p>12 the services don't matter, and in some cases they</p> <p>13 matter more. So it depends on the customer. It is</p> <p>14 certainly an important factor.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. What other factors might influence</p> <p>17 dentists in choosing a distributor?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE WITNESS: I think I just answered</p> <p>20 that, the services and the salesperson provide in the</p> <p>21 relationship.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. Anything else?</p> <p>24 A. Timeliness of delivery, completeness of</p> <p>25 delivery of products, so logistics.</p>

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1 **Q. How would you say Schein's prices compare**
2 **to those of Patterson and Benco?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: Well, again, we all have
5 catalogues, but the catalogues rarely are used, in
6 fact never used rarely with customers who buy in any
7 volume, they are more reference guides. So if we are
8 competing for a specific customer who has so much
9 volume -- you know, it really depends on the
10 situation, the company, and the salesperson has a high
11 level of independence in setting pricing. So some
12 cases the salesperson is the person. But, you know,
13 again, we are within -- we all have similar overhead
14 structure and so our prices are going to be within a
15 range.

16 BY MR. SOLOMON:

17 **Q. Does Schein compete with Patterson and**
18 **Benco for corporate accounts on the basis of price?**

19 A. Yes.

20 **Q. Are there any other ways in which Schein**
21 **competes with Patterson and Benco for corporate**
22 **accounts?**

23 MR. McDONALD: Object to form.

24 THE WITNESS: You would need to speak to
25 Mr. Muller about that one, I am not involved in those.

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1 BY MR. SOLOMON:

2 **Q. Sure.**
3 **That would be the president of special**
4 **markets, Mr. Muller, right?**

5 A. Yes.

6 **Q. How about corporate accounts that fall**
7 **within the middle market segment?**

8 A. I typically am not the one involved with
9 the direct negotiations, but we certainly -- is the
10 question are we competing on price for those, too, is
11 that what you are asking?

12 **Q. Right.**

13 A. Absolutely, absolutely.

14 **Q. Does Schein compete with Burkhardt? I**
15 **guess we should establish are you familiar with**
16 **Burkhardt?**

17 A. Yes, sure.

18 **Q. Who is Burkhardt?**

19 A. They are one of the independents I
20 mentioned that happen to be on the west coast.

21 **Q. Would you say Burkhardt is a competitor of**
22 **Schein?**

23 A. Yes.

24 **Q. Is Burkhardt a full-service distributor?**

25 A. Yes.

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1 **Q. Are they a national distributor?**

2 A. No.

3 **Q. Does Burkhardt offer value-added services**
4 **in the same way that Patterson, Benco, and Schein do?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: I believe, yes, they do.

7 BY MR. SOLOMON:

8 **Q. Would you describe them as a regional**
9 **distributor?**

10 A. I think that is fair, yes.

11 **Q. What region of the country would you say**
12 **they cover?**

13 A. They are based in Tacoma, Washington so
14 their strongest is the northwest, they are on the west
15 coast and they have some associations which has taken
16 them into the midwest. They may have a couple offices
17 in the midwest now, too, I am not exactly sure.

18 **Q. Would you say their primary areas of**
19 **coverage are the west coast and the midwest?**

20 A. Yes --

21 MR. McDONALD: Object to form.

22 THE WITNESS: Primarily the west coast
23 and a little bit in the midwest, yes.

24 BY MR. SOLOMON:

25 **Q. Are you familiar with a distributor**

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1 **called Darby?**

2 A. Yes.

3 **Q. What is Darby?**

4 A. Darby is an Internet and phone
5 distributor. They have no sales force, so they have
6 no salesperson calling in the office, they have no
7 local offices, they have no equipment or service
8 business. So they are definitely not a full-service
9 distributor, they are a different model.

10 **Q. Would you say they are a full-line**
11 **distributor?**

12 A. Can you define what full line is? Does
13 that mean they carry a wide variety of brands or what
14 does it mean?

15 **Q. Yes, I guess what does full line**
16 **generally mean?**

17 A. Typically means they have access to all
18 the major brands of consumables and, yes, they do.

19 **Q. Does Schein compete with Darby?**

20 A. Yes.

21 **Q. On price?**

22 A. Yes.

23 **Q. Any other ways that Schein competes with**
24 **Darby?**

25 A. Again, if I had a customer that wanted to

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1 buy from Darby I would go in and try to be as
2 competitive as I could with what they were paying, but
3 I would also tell them they have to pay little extra
4 because of the services I am going to provide for them
5 and try to get a feeling of what was important to
6 them.

7 **Q. As you mentioned, Darby is not a
8 full-service distributor, right?**

9 A. That's correct.

10 **Q. So Schein would not compete with Darby in
11 the provision of value-added services, is that right?**

12 A. We would compete with them because they
13 don't have them, we would use them as a method of
14 trying to get the customer, but, yes.

15 **Q. Are you familiar with a company called
16 Safco?**

17 A. Yes.

18 **Q. And what is Safco?**

19 A. They are another company like Darby that
20 is smaller and -- they are smaller version, but they
21 operate pretty much the same way.

22 **Q. And they don't have a sales force or
23 offer value-added services?**

24 A. Not that I am aware of.

25 **Q. So Schein would compete with Safco in the**

1 only list list prices, which is what we list as well.

2 **Q. Do you ever take a look at the prices and
3 offerings that Patterson and Benco have?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Personally, no, I don't.

6 BY MR. SOLOMON:

7 **Q. Do people within Schein's organization
8 ever provide you with information they have learned
9 about Patterson and Benco's pricing and offerings?**

10 A. Only from their catalogue price.

11 **Q. How often do you get that information?**

12 A. Generally once a year because that is
13 when people publish.

14 **Q. Would you say that the number of
15 competitors for large group accounts is smaller than
16 the number of competitors for private accounts?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: I wouldn't say smaller, but
19 generally the larger accounts want to do business with
20 somebody who can provide technical service in the
21 office, which reduces down the number of potential
22 companies quite a bit.

23 BY MR. SOLOMON:

24 **Q. We talked a little bit about different
25 customer segments today, I think we talked about**

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1 **same way that it competes with a company like Darby,
2 correct?**

3 A. Correct.

4 **Q. What does Schein Dental do to learn about
5 its competitors' pricing and offerings?**

6 A. The only thing we ever hear really is --
7 again, these companies have websites so sometimes
8 their prices are on their websites.

9 As I mentioned, Patterson, Schein, and
10 Benco and other full-service dealers typically are
11 working from some sort of a list price, which is
12 pretty much meaningless, so it typically is a
13 negotiated situation with each individual dentist in a
14 particular area. So in those cases we learn just from
15 feedback from the salesperson, you know, where they
16 are at.

17 Again, with companies like Safco and
18 Darby and others that are not full-service companies
19 it is usually, again, they are published, the prices
20 are usually published.

21 **Q. So focusing on Patterson and Benco, other
22 full-service distributors, you mentioned that their
23 prices are listed online?**

24 A. They are, sometimes requires a password
25 to get at them so you can't see them. Usually they

1 **middle market customers, private practice customers,
2 and then larger customers that fall within the special
3 markets purview. Do you recall that?**

4 A. Yes.

5 **Q. Would you say that those segments
6 accurately define the various customer segments that
7 Henry Schein Dental focuses on?**

8 A. It is as best a general description, yes,
9 that I think we can come up with. There are segments
10 within each of those, yes, but those are the general
11 umbrellas.

12 **Q. So each of those customer segments have
13 subcategories?**

14 A. Yes.

15 **Q. Can you walk me through them starting
16 with private practice accounts?**

17 A. Well, private practice accounts you have
18 segments of private -- there is ones who do business
19 primarily with government reimbursement, like in lower
20 income areas, and they are operating in a very
21 different way than someone who is on the North Shore
22 of Chicago and seeing professional patients that want
23 a wider scope of services. So a lot is determined by
24 the patient -- within private practice is determined
25 by the patient base that they are seeing and the

65	<p>1 economic patient base of what they are seeing. And 2 there is everything in between somebody who is working 3 in an impoverished area and somebody working in an 4 affluent area.</p> <p>5 Also, as I mentioned, there is ones that 6 have more than one location. Typically when they get 7 to more than three we start kind of moving them into a 8 middle market capacity, but that is not a hard, firm 9 line either.</p> <p>10 So that is a very big part of the 11 business, over -- I think 70 or 10 percent of the 12 business is still private practice. And, again, there 13 is variations.</p> <p>14 A lot of it is the dentist's 15 personalities themselves, many are very techie and 16 want to do, you know, cosmetic dentistry, whatever 17 their inclination or wherever they have gone to dental 18 school, some are more interested in specialty 19 procedures like oral surgery and orthodontics, et 20 cetera, keeping those within a practice, others refer 21 them out. It is a wide range of different approaches 22 to the business within the private practice segment.</p> <p>23 In the mid market segment it is a 24 conglomeration, as I mentioned earlier, community 25 health services -- health centers, I am sorry, CHCs,</p>	67	<p>1 and also how they go to practice, they are 2 specialists.</p> <p>3 Q. Are there any other categories of private 4 practice dentists that Henry Schein refers to? 5 A. Not that I can think of.</p> <p>6 Q. How about within the middle market 7 segment? 8 A. Well, I mentioned the major ones.</p> <p>9 Q. When did Henry Schein Dental first 10 establish its special markets group? 11 A. I can't tell you exactly. It was before 12 I was in this position.</p> <p>13 Q. So it would have been more than ten years 14 ago? 15 A. Yes.</p> <p>16 Q. Do you know how a customer or potential 17 customer qualifies to become a special markets 18 customer? 19 MR. McDONALD: Object to the form, lack 20 of foundation. 21 THE WITNESS: I think I kind of mentioned 22 the different categories within special markets. If a 23 customer falls into it they would qualify to be a 24 special markets customer, size being one of them. 25</p>
66	<p>1 buying groups, hygiene and assisting schools, and 2 mid-sized customers with usually less than 20 3 locations and less than a million dollars a year in 4 consumable purchases.</p> <p>5 And then I mentioned the larger ones.</p> <p>6 And, again, what makes dentistry 7 different is both the mid market and the larger 8 special markets group are morphing every day, there is 9 different models being developed, different people are 10 buying different people, there is consolidation going 11 on, there is private equity is involved, there is a 12 lot of different models being constructed in both 13 those segments that make it interesting to go to work 14 every day.</p> <p>15 Q. Within private practice the subcategories 16 of customers does Henry Schein use any terms to refer 17 to those subcategories of customers? 18 A. Nothing that is specific and widely used. 19 Sometimes we will call a practice that 20 does a lot of specialty work within it and is very 21 technologically grounded we will call that like a 22 super GP, a super general practitioner. Obviously 23 specialists, you know, orthodontists, periodontists, 24 endodontists, whatever, are their own categories and 25 typically those are defined within our computer system</p>	68	<p>1 BY MR. SOLOMON: 2 Q. Are there any other factors that go into 3 that analysis besides size? 4 MR. McDONALD: Object to the form, lack 5 of foundation. 6 THE WITNESS: I mentioned, you know, 7 again, prisons, federal, state governments, that is 8 primarily the biggest part of the group. 9 BY MR. SOLOMON: 10 Q. Is there a specific definition of special 11 markets somewhere within Schein Dental that describes 12 specifically the types of customers that fall within 13 the special markets? 14 A. I am not sure of that. We just -- I am 15 just -- I just kind of know what is in there. I don't 16 believe there is a specific definition in there. 17 The reason it is called special markets 18 is because it is customers that were not traditional. 19 Q. Have customer segments changed over time? 20 A. Yes, sure. 21 There is no doubt that, as I mentioned, 22 we think about 70 percent of the business, the overall 23 business, is still in private practice dentistry. 24 That used to be 80 to 90 percent a couple of years 25 ago, probably ten years ago. To me that seems like</p>

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1 one or two years ago, but it is probably ten years
2 ago.
3 So it has moved more and more towards
4 larger -- at a small rate, but, so there is definitely
5 a trend towards either group practices or large
6 special markets-type practices.
7 **Q. Do you know when that trend began?**
8 A. No.
9 **Q. Do you have any sense for why that trend**
10 **exists?**
11 A. Generally it is economically driven.
12 **Q. What do you mean by that?**
13 A. The majority of dental overhead for a
14 dentist is fixed and it is the actual cost of the
15 facility, the rent they have in the facility, the
16 staff they have in the facility, the equipment they
17 have in the facility, which is usually a monthly note,
18 right, they have a lot of fixed overhead.
19 And as a result of it the more efficient
20 they can make that facility by having multiple
21 dentists working in it over multiple hours the more
22 they can spread the overhead over a wider base of
23 production.
24 That has caused some dentists to go in
25 together and form group practices where they can --

1 **Q. How are the catalogue prices set?**
2 A. Well, I don't do it. It is done by our
3 marketing group in New York and so you would have to
4 ask them, but I think there is a number of factors
5 they look at, including competitiveness of the
6 product, what its list price is, et cetera.
7 **Q. Do you know who is in charge of the**
8 **marketing department?**
9 A. That would be Paul Hinsch.
10 **Q. Do you know whether Patterson and Benco's**
11 **prices are taken into consideration when Patterson**
12 **sets its catalogue prices?**
13 MR. McDONALD: Object to the form.
14 You might want to read your question.
15 BY MR. SOLOMON:
16 **Q. Strike that.**
17 **Do you know whether Patterson and Benco's**
18 **prices are taken into consideration when Schein sets**
19 **its catalogue prices?**
20 MR. McDONALD: Object to the form, lack
21 of foundation.
22 THE WITNESS: I really don't know. You
23 would have to ask whoever does it.
24 BY MR. SOLOMON:
25 **Q. Does Schein have different pricing plans**

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1 multiple dentists, sometimes those are just
2 partnerships, like a small law firm, and then they
3 sometimes become larger, depending on the situation.
4 **Q. Does Henry Schein Dental ever conduct any**
5 **studies to keep track of trends like group practices?**
6 MR. McDONALD: Object to the form, lack
7 of foundation.
8 THE WITNESS: I don't believe we have
9 done a study that I am aware of, it is primarily just
10 market intelligence.
11 BY MR. SOLOMON:
12 **Q. And when you say market intelligence,**
13 **what do you mean?**
14 A. It is coming from the sales field.
15 MR. SOLOMON: I think now would be a good
16 time for a quick break.
17 THE WITNESS: Okay.
18 (Recess taken.)
19 BY MR. SOLOMON:
20 **Q. Mr. Steck, welcome back.**
21 **Before the break we talked a little bit**
22 **about Schein Dental's pricing, and you mentioned there**
23 **is something called a catalogue price that Schein**
24 **Dental uses. Do you recall that?**
25 A. Yes.

1 **for its different customer segments?**
2 A. Yes.
3 **Q. And what are those different pricing**
4 **plans called?**
5 A. They are either called volume purchase
6 agreements, they used to be called sales plans, but
7 they are effectively the same thing.
8 **Q. So volume purchase agreements or sales**
9 **plans?**
10 A. Uh-huh.
11 **Q. And does Schein have different price**
12 **categories that it uses to price its products?**
13 A. I am not sure I understand the question.
14 **Q. Are there different tiers of pricing that**
15 **Schein Dental uses when it prices its products?**
16 A. Well --
17 MR. McDONALD: Object to the form.
18 THE WITNESS: There is many different
19 types of these.
20 Typically the salesperson is the one that
21 is allowed to make a choice of which one they want to
22 offer their customer. There is ones that are flat
23 discount-type plans that offer a flat discount off the
24 catalogue, there is ones that offer different types of
25 discounts off the catalogue, there is ones that are

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1 more price list formulary-type plans. Yes, there are
2 a number of different ones.

3 BY MR. SOLOMON:

4 **Q. Do you know whether these different plans**
5 **have names?**

6 A. Sure they do.

7 **Q. What are they called?**

8 A. Again, there is a lot of them, I couldn't
9 give you a list from my head here.

10 One of them is called Best Rate, that
11 takes the best price in the catalogue quantity rate
12 regardless of quantity purchased, so if there is 100
13 rate and you buy one you get the 100 rate.

14 One is called Custom Quote. Custom Quote
15 is a plan that you use to come in and sit down with
16 the doctor and give them a customized price list.

17 Then there is Custom Quote Plus which is
18 used as an add-on to another VPA, so if you have a
19 different line purchase agreement and you want to add
20 a customized pricing component to it you use Custom
21 Quote Plus and that can take you up to so many
22 different products.

23 As I said, there is a number of different
24 levels of discount on catalogue and three or four
25 different formularies.

1 **those?**

2 A. Well, for actual customers that have some
3 kind of a commitment it is probably somewhere in the
4 30 -- it is probably around where our market share is,
5 somewhere in the 30 percent range.

6 Of the volume we have how much of that is
7 from committed customers it is probably in the 80s.

8 **Q. So you would say 30 percent of your**
9 **private practice customers commit to purchasing a**
10 **certain volume from Schein Dental?**

11 A. I said somewhere in the 30s, yes.

12 **Q. Somewhere in the 30 percent range?**

13 A. 30 -- where our market share is, which is
14 in the high 30s, right.

15 **Q. So the remaining 60 to 70 percent of**
16 **Schein's customers in the private practice segment do**
17 **not commit to purchasing a certain volume from Schein,**
18 **is that right?**

19 A. Yes.

20 **Q. So does Schein offer discounts to those**
21 **customers?**

22 A. Typically.

23 MR. McDONALD: Object to form.

24 Go ahead.

25 THE WITNESS: Typically not.

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1 **Q. What are the different discount levels?**

2 A. They start as low as 5 percent off and go
3 up as high as 15 to 20.

4 **Q. And how -- strike that.**

5 **How do customers qualify for different**
6 **discount levels?**

7 A. It is generally up to the salesperson and
8 how they want to go for it. I mean, there is
9 guidelines in terms of volume, amount committed, they
10 should qualify for this, but a salesperson and a local
11 manager can override that.

12 **Q. And do those discount levels apply both**
13 **to private practice accounts and middle market**
14 **accounts?**

15 A. Typically these are just private practice
16 we are talking about.

17 **Q. How often do private practices commit to**
18 **purchasing a certain volume from Schein?**

19 A. All the time.

20 **Q. What percentage of your private practice**
21 **customer base would you say commits to purchasing a**
22 **certain volume from Schein?**

23 A. Well, of our actual customer base or of
24 our sales volume? Two different numbers.

25 **Q. Do you have a number in mind for both of**

1 You know, again, they typically are
2 buying small volumes. As I mentioned, a very high
3 percentage of our volume is from committed customers.
4 So typically, no, they are paying catalogue price.

5 BY MR. SOLOMON:

6 **Q. So 70 -- strike that.**

7 **The majority of private practice accounts**
8 **pay catalogue price?**

9 MR. McDONALD: Object to the form.

10 THE WITNESS: I would state it as this,
11 the majority of people who do business with us in a
12 non-committed way pay catalogue price.

13 BY MR. SOLOMON:

14 **Q. What do you mean by non-committed way?**

15 A. They are not committing any volume.

16 **Q. And that would represent what percentage**
17 **of your customer base?**

18 MR. McDONALD: Object to the form, vague.

19 THE WITNESS: As I said, a high -- if we
20 are saying 30 something commit, obviously 60 to 70
21 doesn't.

22 BY MR. SOLOMON:

23 **Q. And just so I am clear then, would you**
24 **say that 60 to 70 percent of your customer base pays**
25 **catalogue price?**

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1 A. That may not be right. I would have to
2 look to see.

3 I am just giving you my guess as to where
4 -- how the business falls, but you can ask other
5 people would have a better knowledge of it than I
6 would.

7 **Q. I guess I am just a little bit confused
8 because I think you mentioned earlier that most
9 customers don't pay catalogue price.**

10 A. Committed customers almost zero do.

11 **Q. So you were just referring to committed
12 customers who agree to purchase a certain volume from
13 Schein Dental?**

14 A. Right.

15 **Q. Are you familiar with a pricing plan
16 called the G Plan?**

17 A. Yes.

18 **Q. What is the G Plan?**

19 A. G Plan is a formulary plan, which means
20 it is a plan that has certain products listed on it.
21 I mean, we carry 30 or 40,000 different products, this
22 will have several hundred on it. And they tend to be
23 the more popular ones, but they are not -- there is no
24 one dentist who typically buys everything on the plan,
25 they are going to buy a few things. And the G Plan is

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1 typically a mid market plan.

2 **Q. When you say it is typically a mid market
3 plan, what do you mean?**

4 A. Well, your question prior to this was
5 about private practice, you have now moved into mid
6 markets. I want to just delineate between the two.

7 So the ones I talked about prior to this
8 were private practice plans. The G Plan is a mid
9 market plan.

10 **Q. Do the private practice plans have a
11 name?**

12 A. Well, I mentioned some of them already.

13 **Q. Okay.**

14 **Are you familiar with the term vendor
15 chargebacks?**

16 A. Yes.

17 **Q. And what does that term refer to?**

18 A. Vendor chargebacks are typically used in
19 special markets, that is kind of where they originated
20 in the dental business, where a customer would -- we
21 would visit a customer with a manufacturer, let's use
22 3M, it is a name everyone knows. And the customer
23 wants to buy this product that 3M makes through us but
24 they want to pay so much for it. Well, we can't sell
25 at that price and be profitable. So 3M makes a

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1 decision, all right, on customers of this type of this
2 size we will give you X percent as a charge back in
3 order to make up the margin you are giving up in order
4 to sell it at that price. It is a way of
5 supplementing the price to large volume customers.

6 **Q. So 3M gives a special price to the
7 distributors, is that right?**

8 A. Actually, no. It is a chargeback to the
9 distributor. We are buying at regular wholesale
10 prices and selling at whatever we agree to sell it at.
11 They are supplementing our margins because the prices
12 we have agreed to sell it at together, that they are
13 involved in this, is considerably less than what we
14 would sell it at without their help.

15 **Q. And so the vendor or manufacturer would
16 provide a refund or a chargeback to the distributor
17 when those products are shipped, is that right?**

18 MR. McDONALD: Object to the form.

19 THE WITNESS: When the way -- the way it
20 works, yes, is at the end of the month we would send
21 them a detailed listing of the products that were
22 shipped and how many of them were shipped and what
23 they had agreed to chargeback or in this case pay us,
24 so it is effectively a charge to the vendor and then
25 they would pay us that amount.

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1 BY MR. SOLOMON:

2 **Q. Would you say the vendor is lowering its
3 wholesale price in that instance?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Effectively they are
6 lowering their wholesale price by supplementing us,
7 yes.

8 BY MR. SOLOMON:

9 **Q. Are accounts under the G Plan eligible
10 for vendor chargebacks?**

11 A. I don't believe they are, no.

12 **Q. And why not?**

13 A. Because they are not special markets
14 customers, G Plan is typically a mid market.

15 **Q. And why would mid market customers not be
16 eligible for vendor chargebacks?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: Can you repeat that again?

19 BY MR. SOLOMON:

20 **Q. Sure.**

21 **Why would vendor chargebacks not be
22 available to customers in the mid market segment?**

23 MR. McDONALD: Object to the form.

24 THE WITNESS: Because the manufacturers
25 don't want to do that, it is really up to them. We

81	<p>1 will take all the vendor chargebacks we can get. It</p> <p>2 is really up to the manufacturer. And they are trying</p> <p>3 to keep those kinds of things concentrated amongst the</p> <p>4 very large dental customers.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Do you know why manufacturers do not want</p> <p>7 to offer vendor chargebacks for middle market</p> <p>8 customers?</p> <p>9 MR. McDONALD: Object to the form, lack</p> <p>10 of foundation.</p> <p>11 THE WITNESS: No, you would have to ask</p> <p>12 them.</p> <p>13 I think it is because they are concerned</p> <p>14 about getting out -- they want to just be -- have that</p> <p>15 available within the larger customers.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Are you familiar with the term free</p> <p>18 goods?</p> <p>19 A. Sure.</p> <p>20 Q. What does that term refer to?</p> <p>21 A. Typically free goods are run by</p> <p>22 manufacturers at different times during the year as</p> <p>23 promotions where if you buy six of something you will</p> <p>24 get something free so that the free goods is six plus</p> <p>25 one, for example, the one is considered the free good.</p>	83	<p>1 discounts that fall under that plan?</p> <p>2 A. There are typically -- what is on the G</p> <p>3 Plan is a formulary, those are already discounted.</p> <p>4 There is many cases a discount on top of the things</p> <p>5 that are not on the formulary for the non-formulary</p> <p>6 items, and I believe there is several different levels</p> <p>7 of that.</p> <p>8 Q. Do you know what those different levels</p> <p>9 are?</p> <p>10 A. No.</p> <p>11 Q. Who would know?</p> <p>12 A. Well, people who deal with it everyday.</p> <p>13 You know, Brian Brady would probably know, you know,</p> <p>14 maybe the group practice team would know, but I don't</p> <p>15 off the top of my head.</p> <p>16 Q. Are you familiar with the PG Pricing</p> <p>17 Plan?</p> <p>18 A. Yes.</p> <p>19 Q. What is the PG Pricing Plan?</p> <p>20 A. The PG Plan is another formulary, it is</p> <p>21 slightly more aggressive than the G Plan. The special</p> <p>22 markets formulary is called the P Plan. And so we</p> <p>23 created the G Plan and then the PG Plan is in between</p> <p>24 the two plans in terms of level of pricing.</p> <p>25 Q. When you say it is more aggressive, do</p>
82	<p>1 Q. Do the free goods get shipped directly</p> <p>2 from a manufacturer?</p> <p>3 A. They can go either way. They can either</p> <p>4 -- either there is a coupon, which is the most common</p> <p>5 way, where they have to redeem it and they have to</p> <p>6 send it in to the manufacturer and they get sent a box</p> <p>7 of something, whatever the one free good was. In some</p> <p>8 cases the free goods are run through us, depends on</p> <p>9 the situation.</p> <p>10 Q. And what cases would the free goods be</p> <p>11 shipped by Schein Dental?</p> <p>12 A. I can't really answer that, that is kind</p> <p>13 of outside what I do. That, again, you would have to</p> <p>14 go to the marketing team for that.</p> <p>15 Q. Do customers who qualify for G Plan</p> <p>16 pricing ever receive discounts?</p> <p>17 A. Well --</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE WITNESS: The G Plan is a discount</p> <p>20 plan.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. What are the discounts offered under that</p> <p>23 plan?</p> <p>24 A. I can't tell you, I don't know.</p> <p>25 Q. Do you know whether there is a range of</p>	84	<p>1 you mean lower prices?</p> <p>2 A. Yes, a couple/three percent, it is not a</p> <p>3 lot. I just don't know exactly the number.</p> <p>4 Q. You said three percent.</p> <p>5 A. I said --</p> <p>6 MR. McDONALD: Object to form.</p> <p>7 THE WITNESS: I said a couple or three.</p> <p>8 I am not sure exactly the number, I don't want to say</p> <p>9 because I am not sure.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. And what type of customers qualify for PG</p> <p>12 Plan pricing?</p> <p>13 A. Typically larger mid market customers.</p> <p>14 Q. So is there a certain number of offices a</p> <p>15 mid market customer would need to have to qualify for</p> <p>16 PG Plan pricing?</p> <p>17 MR. McDONALD: Object to the form, lack</p> <p>18 of foundation.</p> <p>19 THE WITNESS: It is not that cut and dry.</p> <p>20 It depends a lot on the situation and the individual</p> <p>21 customer.</p> <p>22 Typically we would offer the G Plan up to</p> <p>23 a customer who buys maybe 250 to \$300,000 a year and</p> <p>24 then once they get north of that they probably would</p> <p>25 move into PG territory. It is not quite that clean.</p>

85	<p>1 That is a general guideline and then once they get up 2 obviously closer to a million dollars they would move 3 into the P Plan or the special markets plans. 4 BY MR. SOLOMON: 5 Q. Are vendor chargebacks available under 6 the PG Plan? 7 A. I don't believe so, no. 8 Q. What about free goods? 9 A. I believe they are. 10 Q. Do customers who qualify for PG Plan 11 pricing receive more free goods than those who qualify 12 for G Plan pricing? 13 MR. McDONALD: Object to the form, lack 14 of foundation. 15 THE WITNESS: I really can't speak 16 definitively, but I believe the free good offers are 17 universal so I don't think it matters. 18 BY MR. SOLOMON: 19 Q. Are you familiar with the terms PG10, 20 PG15, and PG18? 21 A. I can guess what those are. 22 MR. McDONALD: Don't guess. If you know 23 tell him. 24 THE WITNESS: I think I know, but I don't 25 -- I am not for sure.</p>	87	<p>1 foundation. 2 THE WITNESS: Again, I am not that 3 familiar with the P Plan, that is their pricing plan. 4 BY MR. SOLOMON: 5 Q. So someone in special markets like 6 Mr. Muller would be more familiar with that, right? 7 A. Yes. 8 Q. We talked about some of the pricing plans 9 for mid market customers, and then you told me a 10 little bit about pricing with private practice 11 accounts and you mentioned that some private practice 12 customers who commit volume receive certain levels of 13 discounts, do you recall that? 14 A. Yes, but I believe I said all -- pretty 15 much anybody who commits a certain level of volume 16 gets a discount. 17 Q. Do you know who determines whether a 18 private practice dentist -- strike that. 19 Who would determine the level of discount 20 that a private practice dentist would receive? 21 A. Generally the salesperson. 22 Q. And what would the salesperson take into 23 consideration when making that determination? 24 MR. McDONALD: Object to the form, overly 25 broad.</p>
86	<p>1 BY MR. SOLOMON: 2 Q. Do you know whether they are various 3 levels of discounted pricing? 4 A. My suspicion is they would be discounts 5 on the non-formulary items, the actual PG Plan items 6 are the same. 7 Q. We have talked a little bit about 8 discounts. 9 My question is do the discounts come out 10 of Schein's margins or the manufacturer's margins? 11 A. Almost all are out of Schein's margins. 12 Q. Are you familiar with the P Plan? 13 A. Yes. 14 Q. Refresh my memory, I think you just 15 mentioned a moment ago, what is the P Plan? 16 A. The P Plan is the special markets 17 formulary. 18 Q. Do you know how the P Plan prices 19 compared to catalogue prices? 20 A. No. 21 MR. McDONALD: Object to form. 22 BY MR. SOLOMON: 23 Q. Are you familiar with the terms P10, P15, 24 and P20? 25 MR. McDONALD: Objection to form,</p>	88	<p>1 THE WITNESS: We have 850 salesperson 2 that would do that so it is hard to say. But it is 3 usually the amount of committed volume, the history of 4 the customer, what other things they are doing for the 5 customer, you know, there is a number of different 6 elements to it. 7 BY MR. SOLOMON: 8 Q. So do sales representatives have 9 discretion in determining the level of discount to 10 provide to a private practice customer? 11 A. Yes, they do. They have discretion up to 12 cost, they can sell down to cost. 13 Q. When you say they can sell down to cost 14 that would mean that Schein would not make a profit on 15 that particular sale, is that right? 16 A. Potentially, yes. 17 Q. In what instances would a sales 18 representative be allowed to sell down to cost? 19 MR. McDONALD: Object to the form. 20 THE WITNESS: Well, we try to discourage 21 that, of course, but there are cases where there are 22 certain types of products, the best example is gloves, 23 that the margin on is very thin. And occasionally in 24 order to try to get a customer to buy everything else 25 from you you have to get their glove business and the</p>

89	<p>1 glove business could be at near cost. 2 BY MR. SOLOMON: 3 Q. Are there any other products that are 4 sold at or near cost by Schein sales representatives? 5 MR. McDONALD: Object to the form, overly 6 broad. 7 THE WITNESS: I am sure there are, but I 8 can't tell you what they are. 9 BY MR. SOLOMON: 10 Q. Do you know how often sales 11 representatives would sell a product at or near the 12 cost of the product? 13 MR. McDONALD: Object to the form, overly 14 broad. 15 THE WITNESS: No, I can't tell you that. 16 BY MR. SOLOMON: 17 Q. Is it common? 18 MR. McDONALD: Object to the form. 19 THE WITNESS: How would you define 20 common? It is a very small percentage of our 21 business. 22 BY MR. SOLOMON: 23 Q. What percentage would you say? 24 A. I have no idea. 25 Q. What are the range of discounts -- strike</p>	91	<p>1 number of different elements to it. 2 Q. So we have talked about the G Plan, the 3 PG Plan, the P Plan, we have talked a little bit about 4 pricing for private practice accounts, which I 5 understand does not have a specific name. 6 Are there any other pricing plans that 7 Schein uses for its customers that I missed? 8 MR. McDONALD: Object to the form, overly 9 broad. 10 THE WITNESS: Not plans. We negotiate on 11 individual items, as I said. 12 You know, obviously a customer can get a 13 flier from Safco or someone like that advertising a 14 low price on something that the plan they are on 15 wouldn't be that low for that particular item so the 16 salesperson can override the price of that case and 17 sell it at the lower price. 18 BY MR. SOLOMON: 19 Q. What is a price override? 20 A. That is what I just said. 21 Q. How often do price overrides occur? 22 A. I can't speak to it exactly. It depends 23 on the salesperson, it depends on the area of the 24 company. It is significant. 25 Q. When you say significant, can you be more</p>
90	<p>1 that. 2 Do you have a sense for the gross margin 3 that Schein receives for each customer segment that we 4 have talked about today? 5 MR. McDONALD: Object to the form, overly 6 broad, lack of foundation. 7 THE WITNESS: Well, within private 8 practice there is a wide range of gross profits on 9 customers. As I mentioned they aggregate up somewhere 10 in the 32, 33 percent range all rolled into one. In 11 mid market it is probably going to be a couple of 12 points less than that, in special markets it may be 13 less than that. Again, I don't deal in special 14 markets so I am not familiar with that. 15 BY MR. SOLOMON: 16 Q. Would you say that gross margins for 17 larger customers are smaller than for private practice 18 accounts? 19 A. Yes. 20 Q. Do you know why that is? 21 A. Yes, volume, sure, they are buying a 22 higher level of volume. 23 Usually when they get to special markets 24 the model is very different, they are not paying a 25 commission to the salesperson, for example, there is a</p>	92	<p>1 specific? 2 A. I am not going to give you a number 3 because I don't know, I am just speculating. 4 Q. You are responsible for the sales 5 organization of Schein Dental, right? 6 A. Yes. 7 Q. Do you ever receive information about 8 price overrides by sales representatives in the field? 9 A. Yes. We had a report, I think it is run 10 monthly, I generally see it quarterly, but it is given 11 to all the field management. 12 Q. And does -- strike that. 13 Do those reports provide information 14 about the number of price overrides that have 15 occurred? 16 A. Yes. 17 Q. From your review of those reports what 18 would you say is the typical occurrence of price 19 overrides by sales representatives? 20 A. It -- 21 MR. McDONALD: Hang on, object to the 22 form, overly broad. 23 THE WITNESS: It varies widely by area of 24 the country. 25</p>

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1 BY MR. SOLOMON:
 2 **Q. So are certain areas of the country more**
 3 **likely to provide price overrides than others?**
 4 A. Yes.
 5 **Q. Do you know what that depends on?**
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't know what the
 8 depends is. But every area of the United States's
 9 market is slightly different, as I mentioned there are
 10 different independents around the country, some in
 11 some markets and some in others. The makeup of a
 12 dentist population socioeconomically in any area can
 13 be very different from one area to another.
 14 The two most common areas for price
 15 overrides are Los Angeles and New York.
 16 BY MR. SOLOMON:
 17 **Q. Do you know why that is the case?**
 18 A. Much more competitive areas.
 19 **Q. How often do sales representatives in Los**
 20 **Angeles and New York typically provide price overrides**
 21 **for customers?**
 22 MR. McDONALD: Object to the form, overly
 23 broad.
 24 THE WITNESS: I can't give you a number,
 25 I haven't studied the reports enough where I can say.

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1 BY MR. SOLOMON:
 2 **Q. Apart from a number can you just give me**
 3 **a ballpark estimate?**
 4 MR. McDONALD: He is not going to guess.
 5 You gave him a warning at the beginning about giving
 6 perjured testimony, he told you he doesn't know so he
 7 is not going to guess, he is not here to guess.
 8 BY MR. SOLOMON:
 9 **Q. I am not asking you to guess, I am**
 10 **just --**
 11 MR. McDONALD: Yes, you are.
 12 BY MR. SOLOMON:
 13 **Q. I am not asking you to guess, I am trying**
 14 **to ask if you know certain information. You told me**
 15 **you can't think of an exact number, I am asking if you**
 16 **have a ballpark estimate, I think that is a fair**
 17 **question.**
 18 MR. McDONALD: I think ballpark estimate
 19 is the same as guess.
 20 MR. SOLOMON: I think ballpark estimate
 21 can be used in the absence of a specific number. He
 22 receives the reports quarterly, I am asking if he has
 23 a ballpark estimate, it is a fair question.
 24 MR. McDONALD: You probably have the
 25 reports that we produced to you.

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1 MR. SOLOMON: He should --
 2 MR. McDONALD: No, he shouldn't. He is
 3 not here -- if you have a document then give it to
 4 him.
 5 Ronnie, I don't know what in the world
 6 this has to do with your investigation, but you use
 7 your time however you want to.
 8 MR. SOLOMON: I will.
 9 MR. McDONALD: At the end of the day
 10 don't complain when you run out of time when you are
 11 spending all your time on this stuff. He is not going
 12 to guess.
 13 BY MR. SOLOMON:
 14 **Q. Mr. Steck, I am not asking you to guess,**
 15 **I am just asking you for information that you have**
 16 **access to.**
 17 MR. McDONALD: Ask your question.
 18 BY MR. SOLOMON:
 19 **Q. Let's move on.**
 20 **Do -- strike that.**
 21 **Does the price a private practice**
 22 **customer receives ever depend on how the private**
 23 **practice dentist negotiates with the sales**
 24 **representative?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: So what I am understanding
 2 you to say is does the price that they are actually
 3 paying is that influenced by their discussions with
 4 the salesperson?
 5 BY MR. SOLOMON:
 6 **Q. Right.**
 7 A. Absolutely. I have already said that,
 8 yes.
 9 **Q. Can you give me some examples of how a**
 10 **dentist can negotiate a price with a sales**
 11 **representative?**
 12 A. I just did.
 13 **Q. So you talked a little bit about Safco**
 14 **showing a flier to a sales representative.**
 15 A. To a dentist. It usually goes to the
 16 dentist, it is mailed to them.
 17 **Q. So a dentist would provide a copy of the**
 18 **flier to the sales representative and ask for a price**
 19 **match, is that right?**
 20 A. Yes.
 21 **Q. Any other ways in which a private**
 22 **practice dentist can negotiate price other than by**
 23 **showing what a competitor's price is?**
 24 A. Well, that is generally how it is done,
 25 it is either that or they look at the Internet or they

24 (Pages 93 to 96)

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1 look at -- they get prices from somewhere and they are
2 sitting down with the rep and talking to the rep about
3 it.

4 **Q. Mr. Steck, are you familiar with the term**
5 **group purchasing organization?**

6 A. Yes.

7 **Q. What is a group purchasing organization?**

8 A. My understanding is that a group
9 purchasing organization is a medical term that is used
10 in the medical industry and actually goes out and
11 negotiates with manufacturers similar to what we
12 talked about with the vendor chargeback system to get
13 product to large customers, so they are negotiating
14 and getting particular pricing for their members, and
15 then distributors can either accept that or they can't
16 or they have the option to, that is my understanding.

17 **Q. What is your understanding based on?**

18 A. Just what I heard from the medical team.

19 **Q. Who have you heard that from in the**
20 **medical team?**

21 A. My counterpart is Brad Connett, again,
22 very insulated from medical, I don't know a lot about
23 it, what I told you is pretty much what I know.

24 **Q. Have you ever used the term group**
25 **purchasing organization or GPO to refer to an entity**

1 -- people sign up, buy memberships in them.

2 **Q. And what is your understanding of buying**
3 **groups based on?**

4 A. Just market intelligence that I get from
5 people on my team and people on their teams.

6 **Q. You referred to in your prior answer a**
7 **study club.**

8 A. Yes.

9 **Q. What is a study club?**

10 A. Dentists often will group together
11 sometimes in a geography, sometimes across the
12 country, with a leader who teaches them clinical
13 aspects of dentistry, new techniques, things that
14 happening in the business, continuing education
15 related, that they will do. And then this in some
16 cases, at least in a couple I am aware of, has been
17 added as a component of being part of the study club
18 you get this potential benefit.

19 **Q. What kind of benefits are you referring**
20 **to?**

21 A. Well, it would be a pricing list or
22 pricing discount.

23 **Q. What in your mind is the difference**
24 **between a GPO and a buying group?**

25 A. I already just said that I thought,

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1 **within the dental industry?**

2 A. It has been -- the term has been used
3 loosely and because it is so well established in
4 medical it has kind of found its way over.

5 But the way that groups function in
6 dental would be more properly called a buying group or
7 a buying club. The vast majority were not out
8 negotiating prices with manufacturers, they are trying
9 to negotiate with distributors on behalf of their
10 members.

11 **Q. What is a buying group?**

12 A. Well, it can be a lot of things. As I
13 mentioned, that part of the business is very dynamic,
14 it is moved -- changing quite often. And it can be
15 anything from a group of four or five dentists that
16 get together and say let's buy as a group because we
17 are friends and whatever and they make that decision,
18 and those have been going on for years. Or it can be
19 more formal, sometimes it is a study group where there
20 is a group of dentists that belong to a study group.
21 There are even some state dental societies that have
22 tried to get into the business and tried to allow some
23 kind of plan for their members. And then there is
24 more recently there have been actual organizations
25 that have been formed that, you know, perform that for

1 didn't I, in terms of -- GPO in my understanding
2 negotiates with manufacturers, where a buying group
3 typically negotiates with distributors.

4 **Q. And you formed that understanding during**
5 **your discussions with someone on the medical side of**
6 **Henry Schein, is that right?**

7 A. Yes.

8 **Q. Are you aware of any specific**
9 **characteristics that would define a buying group?**

10 A. Only that they would represent a group of
11 dentists. As I said, it can happen in a lot of
12 different ways, but they would represent a group of
13 dentists and ask for a program or a plan or a VPA or
14 whatever for a group of customers or potential
15 customers.

16 **Q. Do you know how buying groups form within**
17 **the dental industry?**

18 A. As I said, it can happen a lot of
19 different ways.

20 **Q. Are you -- strike that.**

21 **Have you ever met with representatives of**
22 **any buying groups?**

23 A. The only ones I have personally met with
24 is the California Dental Association.

25 **Q. What is the California Dental**

101	<p>1 Association?</p> <p>2 A. Well, California Dental Association or</p> <p>3 CDA is the largest dental association in the United</p> <p>4 States in that it is dentists from the state of</p> <p>5 California that belong to it.</p> <p>6 I assume it is like the bar association,</p> <p>7 there should be state bar associations, it is --</p> <p>8 although there is a difference, in that dentists have</p> <p>9 to pay dues to join the dental association to be part</p> <p>10 of the CDA. If I am a practicing dentist and I have a</p> <p>11 license to practice in the state of California I have</p> <p>12 to pay dues annually to belong to the ADA, the</p> <p>13 American Dental Association and the CDA.</p> <p>14 And so the CDA is basically the -- they</p> <p>15 do lobbying work for customers, they hold the</p> <p>16 conventions that we talked -- that I mentioned</p> <p>17 earlier, they do a number of different things for</p> <p>18 their members.</p> <p>19 Q. So CDA itself is not a buying group.</p> <p>20 A. No. It is a dental association of</p> <p>21 dentists that they belong to. It has been around</p> <p>22 forever.</p> <p>23 Q. I asked you if ever met with</p> <p>24 representatives of a buying group. Are you referring</p> <p>25 to --</p>	103	<p>1 Buying groups are typically individual</p> <p>2 dental offices that join a club and/or an association</p> <p>3 or a study club or whatever it happens to be, and this</p> <p>4 is one of the benefits of that, that they have access</p> <p>5 to discounted pricing.</p> <p>6 Q. Are there any other characteristics that</p> <p>7 you would look at to determine whether an entity is a</p> <p>8 buying group or a corporate account?</p> <p>9 A. Not that I can recall. The most</p> <p>10 important one is common ownership and single</p> <p>11 purchasing, single account receivable.</p> <p>12 Q. Does Schein view buying groups as</p> <p>13 competitors or potential customers of Schein?</p> <p>14 A. That is a difficult question. We do</p> <p>15 business with a lot of buying groups today. We</p> <p>16 wouldn't be doing business with them if we felt they</p> <p>17 were competitors. So, you know, buying groups</p> <p>18 typically do not have direct access to the product,</p> <p>19 they need to work through a distributor partner.</p> <p>20 Q. Why is that?</p> <p>21 A. Because they don't -- they are not</p> <p>22 authorized distributors, they don't have their own</p> <p>23 warehouses typically, they don't have their own</p> <p>24 warehouses, their own sales channels, their own</p> <p>25 service departments, kind of thing, so they are pretty</p>
102	<p>1 A. CDA wanted to form its own buying group.</p> <p>2 Q. Who did you meet with from the CDA?</p> <p>3 A. I met with the head of their business</p> <p>4 services, I met with the head of the CDA, and I met</p> <p>5 with the person -- actually it was a couple of</p> <p>6 different people in charge of that particular aspect</p> <p>7 of the business.</p> <p>8 Q. And what are their names?</p> <p>9 A. The head of the CDA's name is Peter</p> <p>10 DuBois. The head of the Business Solutions name is</p> <p>11 Bob Spinelli. And I honestly can't remember the names</p> <p>12 of the purchasing people.</p> <p>13 Q. Any other buying groups with whom you</p> <p>14 have met?</p> <p>15 A. Not personally, no.</p> <p>16 Q. How does Schein determine whether a group</p> <p>17 is a buying group or a corporate account?</p> <p>18 A. Well, a corporate account would be, I</p> <p>19 think, pretty easily distinguished because of the fact</p> <p>20 it is under one ownership, there is one person or one</p> <p>21 group of people that are negotiating for that group of</p> <p>22 -- typically multiple location practices, and in many</p> <p>23 cases the purchase orders themselves come from one</p> <p>24 location and then we ship to the different locations</p> <p>25 within the practice. That is a wholly owned model.</p>	104	<p>1 much working with people that do.</p> <p>2 Q. Do you know whether buying groups ever</p> <p>3 approach manufacturers directly to purchase products?</p> <p>4 A. I believe that has happened, yes.</p> <p>5 Q. How do you know that?</p> <p>6 A. Just from talking to manufacturers.</p> <p>7 Q. Which manufacturers have told you that?</p> <p>8 A. Dentsply has told me that, 3M has told me</p> <p>9 that.</p> <p>10 Q. Have Dentsply and 3M told you that they</p> <p>11 have sold products to buying groups?</p> <p>12 A. They do not to my knowledge sell to any</p> <p>13 buying group, they sell to distributors that sell to</p> <p>14 buying groups or dealers.</p> <p>15 Q. Do you know whether 3M and Dentsply have</p> <p>16 ever told products directly to buying groups?</p> <p>17 MR. McDONALD: Object to the form, lack</p> <p>18 of foundation.</p> <p>19 THE WITNESS: I am not aware of any.</p> <p>20 MS. REPORTER: Are you saying Dentist</p> <p>21 Supply?</p> <p>22 THE WITNESS: Dentsply is</p> <p>23 D-e-n-t-s-p-l-y. It started as Dentist Supply and</p> <p>24 they shortened it.</p> <p>25 MR. McDONALD: It is one word.</p>

105	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Does Schein ever request any information</p> <p>3 to determine whether a potential customer is a buying</p> <p>4 group?</p> <p>5 A. Request information? Well, I am having a</p> <p>6 hard time understanding the question. Usually they</p> <p>7 present themselves as a buying group. I mean, we</p> <p>8 would ask them how many members they had, you know --</p> <p>9 Q. Any --</p> <p>10 A. -- how they organize themselves. There</p> <p>11 is questions we ask them about how their</p> <p>12 going-to-business strategy is.</p> <p>13 Q. Anything else that Schein would ask a</p> <p>14 potential customer to determine whether they are a</p> <p>15 corporate account or a buying group other than what</p> <p>16 you have just mentioned?</p> <p>17 A. Not that I can think of.</p> <p>18 Q. Okay.</p> <p>19 When did you first hear about buying</p> <p>20 groups in the dental industry?</p> <p>21 A. Well, as I said earlier, they have been</p> <p>22 around in some form for many, many years. And more</p> <p>23 recently they have become more organized in a bigger</p> <p>24 part of the business, but I can't speak exactly when</p> <p>25 that would be. Probably Coast Dental. I mean,</p>	107	<p>1 THE WITNESS: Can you say that again,</p> <p>2 just maybe a little different?</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Sure.</p> <p>5 Do buying groups ever approach Schein to</p> <p>6 purchase supplies?</p> <p>7 A. Yes, sure.</p> <p>8 Q. How often would you say that happens?</p> <p>9 A. I can't -- it depends -- again, it could</p> <p>10 be once a month, it could be once every few months, it</p> <p>11 depends on how many are forming, and not all of them</p> <p>12 want to do business with Schein, some of them want to</p> <p>13 do business with other people.</p> <p>14 Q. Has that changed over the last five</p> <p>15 years?</p> <p>16 MR. McDONALD: Object to the form, vague.</p> <p>17 THE WITNESS: I would say it has become</p> <p>18 more prevalent, but I can't give you any contrasting</p> <p>19 numbers.</p> <p>20 BY MR. SOLOMON:</p> <p>21 Q. Was there ever a time when Schein did not</p> <p>22 work with buying groups?</p> <p>23 A. I believe we have always had buying</p> <p>24 groups in various forms.</p> <p>25 I would say there was a time when I</p>
106	<p>1 obviously -- so.</p> <p>2 Q. So sometime in the 1990s?</p> <p>3 A. I don't want to say. I have been in</p> <p>4 sales -- most of my sales career was in the 1980s, so</p> <p>5 I know I heard of dentists that had gotten together</p> <p>6 and formed little mini groups during that time.</p> <p>7 Q. You mentioned in your previous answer</p> <p>8 that more recently they have become more organized in</p> <p>9 a bigger part of the business. What did you mean by</p> <p>10 that?</p> <p>11 A. Well, I think, you know, again, our</p> <p>12 history shows that in the last several years that they</p> <p>13 have become -- they are either more of them forming or</p> <p>14 they are adding more members or they are becoming more</p> <p>15 able to commit volume of customers, and that is what I</p> <p>16 would suggest by organized.</p> <p>17 Q. And what is your understanding based on?</p> <p>18 A. Market intelligence, what I hear from</p> <p>19 people.</p> <p>20 Q. Would that be from people in the field?</p> <p>21 A. Yes, generally, yes.</p> <p>22 Q. Do you know whether buying groups ever</p> <p>23 approached Schein to establish supply agreements for</p> <p>24 dental products?</p> <p>25 MR. McDONALD: Object to the form, vague.</p>	108	<p>1 mentioned before they started becoming more organized</p> <p>2 where we weren't -- a lot of them were what I would</p> <p>3 call ordering aggregators where they basically just</p> <p>4 signed up dentists as members for a very low fee but</p> <p>5 couldn't commit any volume so they would basically</p> <p>6 say, all right, we have 20 or 3 members, whatever</p> <p>7 members, and those customers have access to this</p> <p>8 pricing.</p> <p>9 But it doesn't mean they are going to buy</p> <p>10 from you, it just means that they have access to the</p> <p>11 pricing, which to us is no different than mailing them</p> <p>12 a catalogue. So those kinds of groups we still don't</p> <p>13 like doing business with because if they can't commit</p> <p>14 volume there is really no reason to give them a</p> <p>15 discount because all we are doing is kind of</p> <p>16 negotiating against ourselves.</p> <p>17 Q. And what is your understanding of whether</p> <p>18 a buying group can commit volume based on?</p> <p>19 A. Based on what the buying group's rules</p> <p>20 are with its members.</p> <p>21 Q. So you understand that certain buying</p> <p>22 groups have rules surrounding volume?</p> <p>23 A. Yes.</p> <p>24 Q. And how do you know that?</p> <p>25 A. Based on intelligence I have gotten from</p>

109	<p>1 my direct reports.</p> <p>2 Q. Have you ever discussed rules surrounding</p> <p>3 volume directly with a representative of a buying</p> <p>4 group?</p> <p>5 A. I mentioned the only group I ever</p> <p>6 personally discussed it with was CDA.</p> <p>7 Q. And did you discuss volume commitments</p> <p>8 when you met with CDA?</p> <p>9 A. Yes, yes, we did.</p> <p>10 Q. So you talked a little bit about the</p> <p>11 difference between buying groups that can commit</p> <p>12 volumes and those that you believe cannot.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And you said that Henry Schein Dental</p> <p>15 still doesn't like to work with those buying groups</p> <p>16 that you believe can't commit volume, is that right?</p> <p>17 A. That is generally, yes, that's right.</p> <p>18 Q. Did Henry Schein Dental ever have a</p> <p>19 policy not to work with buying groups that it believed</p> <p>20 could not commit volume?</p> <p>21 A. We certainly had discussions discouraging</p> <p>22 doing business with people that were simply looking to</p> <p>23 substantiate themselves. Whether that was</p> <p>24 characterized in e-mails or communication as we are</p> <p>25 not going to be doing business with buying groups,</p>	111	<p>1 that right?</p> <p>2 A. I believe, yes, I believe we have had</p> <p>3 discussions about doing business with certain types of</p> <p>4 buying groups that we don't believe bring value to</p> <p>5 their members.</p> <p>6 Q. So those discussions, those were</p> <p>7 internally, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And who were you trying to discourage</p> <p>10 from doing business with buying groups?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: Well, it would be anybody</p> <p>13 on our team.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. And why were you discouraging people on</p> <p>16 your team from doing business with certain types of</p> <p>17 buying groups?</p> <p>18 A. I thought I just answered that. The</p> <p>19 buying group is not providing any value to its</p> <p>20 customers, they are simply trying to insert themselves</p> <p>21 between us and the customer and we just didn't see any</p> <p>22 reason to do that if they couldn't commit volume.</p> <p>23 Q. How would you discourage members of</p> <p>24 Schein's team from doing business with those entities?</p> <p>25 A. Well, any time they are coming up in the</p>
110	<p>1 that would be labeling that group as a buying group,</p> <p>2 that type of customer as a buying group. As I said,</p> <p>3 we have done business with buying groups for years.</p> <p>4 Q. You mentioned you had discussions</p> <p>5 discouraging doing business with people that were</p> <p>6 simply looking to substantiate themselves. Who are</p> <p>7 those discussions with?</p> <p>8 A. You mean internally? I don't know quite</p> <p>9 what you mean by that, who are those discussions with,</p> <p>10 within Schein?</p> <p>11 Q. I don't know, that is why I am asking</p> <p>12 you, you mentioned you had discussions --</p> <p>13 A. We had talk between Tim, myself, Joe,</p> <p>14 different people within the sales groups about what is</p> <p>15 kind of bubbling up out there, we want to be active in</p> <p>16 the market and we want to compete in the market. We</p> <p>17 are always aware of what is happening. I think the</p> <p>18 term buying group and the term GPO sometimes get used</p> <p>19 loosely.</p> <p>20 Q. You mentioned those discussions were</p> <p>21 surrounding discouraging doing business with certain</p> <p>22 buying groups.</p> <p>23 Is that --</p> <p>24 A. Certain types.</p> <p>25 Q. Certain types of buying groups, do I have</p>	112	<p>1 marketplace of one form, it would go to management and</p> <p>2 management would go to management and talk about it</p> <p>3 and that is how we would say, okay, what is this, this</p> <p>4 is nothing more than a buying club or a buying group,</p> <p>5 as I said the term is used a little loosely, and</p> <p>6 doesn't really bring any value to the customer, cannot</p> <p>7 commit value, doesn't meet certain criteria, and we</p> <p>8 choose not to bid on the business.</p> <p>9 Q. And what criteria are you referring to?</p> <p>10 A. If they can't commit volume, I mention</p> <p>11 that, another thing we look for do they provide a</p> <p>12 value to the customer other than just aggregating</p> <p>13 their purchases. In the role of the CDA they provide</p> <p>14 a number of value to their customers, to their</p> <p>15 members, as do other buying groups.</p> <p>16 Q. What do you mean by value?</p> <p>17 A. Do they do something for them that is</p> <p>18 helpful, do they help them with continuing education,</p> <p>19 do they do something in helping negotiate insurance</p> <p>20 benefits, do they do -- there is a variety of</p> <p>21 different elements they can take.</p> <p>22 Q. Why are those aspects important to</p> <p>23 Schein?</p> <p>24 A. Well, we want to do business with people</p> <p>25 that if they are belonging to a particular -- if a</p>

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1 dentist belongs to a certain group, you know, we
 2 believe that that group should probably provide some
 3 value to the customer other than just -- otherwise the
 4 doctor can get a better deal on their own from us.
 5 **Q. Why do you -- why is that important to**
 6 **Schein?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I am still -- I don't quite
 9 understand the question.
 10 MR. SOLOMON: Court reporter, can you
 11 repeat the question?
 12 (Record read as requested.)
 13 MR. McDONALD: Same objection.
 14 THE WITNESS: I don't understand the form
 15 of the question.
 16 BY MR. SOLOMON:
 17 **Q. Sure.**
 18 **I think you just mentioned a few**
 19 **different things, you want to do business with people**
 20 **belonging to a certain group, they should provide some**
 21 **value to the customer other than just getting a better**
 22 **deal.**
 23 A. Uh-huh.
 24 **Q. Does that accurately sum up what you just**
 25 **stated?**

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1 A. Yes, I think so. Except -- let me just
 2 qualify the better deal.
 3 The better deal issue is that in almost
 4 every case we have looked at a dentist can do better
 5 negotiating with us on their own committing volume
 6 than they can working through a buying group.
 7 **Q. How do you know that?**
 8 A. Experience.
 9 **Q. Can you be more specific what you mean by**
 10 **experience?**
 11 MR. McDONALD: Objection, form.
 12 THE WITNESS: I mean, a doctor who buys
 13 \$40,000 a year in dental supplies and sits down with
 14 us and says I am going to buy \$40,000 from you, I am
 15 going to do this, I am going to do this, and I am
 16 going to do this will get a better deal than we can
 17 give to a buying group which can't commit that.
 18 BY MR. SOLOMON:
 19 **Q. How do you know that?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It is based on basic
 22 business, I think.
 23 BY MR. SOLOMON:
 24 **Q. Have you personally been involved in any**
 25 **of those discussions that you just referred to?**

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1 A. I just mentioned the only one I have been
 2 involved with is the CDA.
 3 **Q. What do you mean by a better deal for**
 4 **customers?**
 5 A. Larger discount or lower pricing.
 6 **Q. Have you ever looked at the types of**
 7 **pricing or discounts that buying groups provide to**
 8 **their members?**
 9 A. Let me understand that. You are saying
 10 have I ever looked at what buying groups provide to
 11 their members in terms of pricing?
 12 **Q. Right.**
 13 A. I am only familiar with the ones we have
 14 negotiated with and, again, I have only personally
 15 been involved with one of them.
 16 **Q. You also talked a little bit about value,**
 17 **I think you used that term a few times, and I just**
 18 **want to understand what would be encompassed in the**
 19 **term value.**
 20 **What do you mean by the term value?**
 21 A. Well, we believe that customers buy based
 22 on what a perceived value is from a particular place,
 23 the reason some people go to Nordstrom and other
 24 people go to Wal-Mart, there is reasons why, there is
 25 services you get, there is elements of what you do,

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1 and so we believe the value of putting in a
 2 professional salesperson and the service support
 3 behind that salesperson that is expensive to provide
 4 that we do, and others do, is a value to the customer.
 5 If we didn't we wouldn't do it. It is a very
 6 expensive thing to do. So that is why we put that in,
 7 we believe that is a value to the customer, along with
 8 the prices we sell at.
 9 **Q. And you also talked about the fact that**
 10 **you think buying groups don't provide value to their**
 11 **members, is that right?**
 12 A. It is not what I said.
 13 MR. McDONALD: Object to form.
 14 BY MR. SOLOMON:
 15 **Q. Do you think that buying groups provide**
 16 **value to their members?**
 17 A. I think some do.
 18 **Q. In what ways?**
 19 A. I already mentioned, some of them
 20 negotiate insurance rates, some provide continuing
 21 education, some provide an atmosphere of regular
 22 meetings, some provide clinical work, some have their
 23 own KOLs, there is a lot of different elements of
 24 that.
 25 **Q. Forgive me if I asked a question and you**

29 (Pages 113 to 116)

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1 already mentioned it, I appreciate you letting me
2 know, it is probably because I just want a little more
3 clarity, apologies in advance.

4 A. All right.

5 **Q. Did Schein ever -- strike that.**

6 So you talk a little about internal
7 discussions discouraging team members from doing
8 business with certain types of buying groups, do you
9 recall that discussion?

10 A. Yes.

11 **Q. And you talked a little bit about
12 management would take a look at certain buying groups
13 and determine whether or not Schein should do business
14 with those groups.**

15 A. Yes.

16 **Q. Do you know who made those decisions
17 within Henry Schein Dental's management?**

18 A. It could be a variety of people along the
19 chain. The regional manager is the lowest level -- I
20 shouldn't say lowest, they are the closest to the
21 field, they supervise the actual field salespeople.
22 They can say, no, this isn't what I really want to
23 pursue. They go to the zone manager who is their boss
24 who also has the authority to say no and then it would
25 go to a Joe or his counterpart and they could say no

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1 and then it would come to me or Tim.

2 **Q. Have you ever looked at a buying group
3 and determined that Schein should not do business with
4 it?**

5 A. Yes.

6 **Q. On how many occasions have you made those
7 determinations?**

8 A. I have no idea.

9 **Q. Have you made -- strike that.**

10 **Would you discuss those buying groups
11 with Mr. Sullivan?**

12 MR. McDONALD: Object to the form.

13 THE WITNESS: On some occasions if they
14 made it up to me, yes.

15 BY MR. SOLOMON:

16 **Q. You said if they made it up to me. Who
17 is the they that you are referring to?**

18 A. If the buying group decision made its way
19 up to my desk I would probably talk to Mr. Sullivan
20 about it before we would do anything. I mean, he was
21 very well aware of the CDA and what was going on
22 there, for example.

23 **Q. Got it.**

24 **So you and Mr. Sullivan would have a
25 discussion about whether or not Schein should do**

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1 **business with certain buying groups?**

2 MR. McDONALD: Object to the form,
3 misstates the testimony.

4 THE WITNESS: If they made it up that
5 far, yes, we would. As I said, they could be objected
6 to anywhere along the line.

7 BY MR. SOLOMON:

8 **Q. Did you ever provide guidance to
9 employees who were below you regarding whether Schein
10 should do business with certain buying groups?**

11 A. I think the word ever is what bothers me.
12 You know, ever is a long time.

13 Have we ever said we don't like buying
14 groups or we don't like buying clubs, yes, I am sure
15 we said that along the line.

16 As I said, we have been doing business
17 with them in one form or another for years so that
18 statement in itself contradicts what is actually
19 happening, so if I am saying that it is actually not
20 true because in some cases we are already doing
21 business with somebody. I am sure there have been
22 discussions where we have said let's not do business
23 with buying groups. But, as I said, we have already
24 been doing business with buying groups.

25 **Q. Do you know how often you would have**

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1 **those discussions?**

2 MR. McDONALD: Object to the form.

3 THE WITNESS: Whenever one came up to me
4 would be the only time I would be involved.

5 BY MR. SOLOMON:

6 **Q. Do you believe that GPO's -- strike that.
7 Do you believe that buying groups can be
8 a risk to Schein's business?**

9 MR. McDONALD: Object to the form, overly
10 broad, vague.

11 THE WITNESS: The word can is a little --
12 it could -- could they be? Potentially they could be
13 a risk, but they also can be an opportunity, they can
14 provide an opportunity to grow the business because a
15 buying group, for example, we just signed on with a
16 company called Smile Source, that gave us access to
17 customers that we didn't have, so that was an
18 opportunity.

19 Where it can be a risk is if they come in
20 and are taking Schein accounts and then we are
21 basically -- we could be losing business in that
22 sense.

23 It really is both.

24 BY MR. SOLOMON:

25 **Q. You mentioned a company called Smile**

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<p>1 Source. When did Schein first form a relationship 2 with Smile Source? 3 MR. McDONALD: Object to the form, lack 4 of foundation. 5 THE WITNESS: I believe it was late '90s, 6 early 2000s because they were originally a special 7 markets account. 8 BY MR. SOLOMON: 9 Q. Did they ever become a Henry Schein 10 Dental account? 11 A. Yes. 12 Q. When was that? 13 A. I don't exactly remember the year it 14 happened. 15 But special markets made the 16 determination that Smile Source really was -- since it 17 was private practice dentists that were members of it, 18 it belonged with Henry Schein Dental and then it went 19 to Henry Schein Dental, and I believe we subsequently 20 lost the business. 21 Q. Do you know when Schein lost that 22 business? 23 A. No. 24 Q. And so you mentioned in your prior answer 25 we just signed on with a company called Smile Source,</p>	<p>1 don't know who would be on the list, we have -- I 2 guess we would have to go to Brian Brady or someone in 3 the mid market group. 4 Q. Are buying groups an important part of 5 Schein's business? 6 MR. McDONALD: Object to the form, vague. 7 THE WITNESS: Well, I think everything is 8 an important part of Schein's business. It is a 9 growing part of Schein's business. 10 BY MR. SOLOMON: 11 Q. Have buying groups historically been an 12 important part of Schein's business? 13 MR. McDONALD: Object to the form, vague. 14 THE WITNESS: Well, I think I already 15 testified that they -- we have been doing business 16 with them for years in a more casual basis and it has 17 become more formal in the last couple of years as they 18 become -- they have kind of become some different 19 types of entities. 20 BY MR. SOLOMON: 21 Q. When you say that Schein has been doing 22 business with buying groups in a more casual basis, 23 what do you mean? 24 A. Maybe that is a bad term. 25 What I mean was that they were smaller</p>
<p>122</p> <p>1 do you know when that was? 2 A. It was very recent, I want to say early 3 this year. 4 Q. Do you know who was responsible for 5 bringing Smile Source back into Henry Schein's 6 business as a customer? 7 A. There were a number of people. I was not 8 one of them, but there were a number of people that 9 did it. Joe Cavaretto was sort of the main person, 10 but there were others, Brian Brady was involved, Tim 11 was involved. And a couple other people, too. 12 Q. You mentioned that Schein has done 13 business with buying groups. Can you name any buying 14 groups that Schein has done business with other than 15 Smile Source? 16 A. Well, there is Dental Gator that I know 17 is out there. 18 There is a long list of them and, no, I 19 don't recall off the top of my head a lot of names 20 that are on that list. 21 Q. Do you know how many names would be on 22 that list? 23 A. I can't tell you, no. 24 Q. Do you know who would know? 25 A. We could certainly compile a list, I</p>	<p>124</p> <p>1 and they were more localized, and usually that 2 decision was made by the local manager. 3 MR. SOLOMON: I think we can take a quick 4 break. 5 (Recess taken.) 6 BY MR. SOLOMON: 7 Q. Mr. Steck, I just want to circle back on 8 a couple quick things we discussed before the break. 9 You talked about GPOs not existing within 10 the dental industry to your understanding. Do I have 11 that correct? 12 A. As they exist in medical, yes, I would 13 say that. 14 Q. Do GPOs exist at all in the dental 15 industry? 16 MR. McDONALD: Object to the form. 17 THE WITNESS: Well, again, as I 18 understand the definition of GPO, buying clubs 19 certainly exist, buying groups exist, but GPOs as I 20 understand the definition, no, they don't currently. 21 BY MR. SOLOMON: 22 Q. And when did you form that understanding? 23 MR. McDONALD: Object to the form. 24 THE WITNESS: I guess the last three or 25 four years, whenever we -- they first -- the names</p>

125	<p>1 started coming up, I can't tell exactly when that was.</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Have you ever used the term GPO to refer</p> <p>4 to a buying group?</p> <p>5 A. Yes, I am sure we have. As I said</p> <p>6 earlier, the definition of the two gets a little loose</p> <p>7 sometimes.</p> <p>8 Q. So you understood the difference between</p> <p>9 GPOs and buying groups, but you used the term GPO</p> <p>10 because you were just conflating the two?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: Yeah, I probably was and</p> <p>13 others probably were as well.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. Also before the break I think a little</p> <p>16 bit earlier today we discussed corporate accounts,</p> <p>17 some of them fall within mid market, others are part</p> <p>18 of special markets. Do you normally refer to</p> <p>19 corporate accounts as corporate accounts or DSOs or</p> <p>20 something else?</p> <p>21 A. That is an interesting question because</p> <p>22 there is a number of different elements.</p> <p>23 Corporate account typically refers to</p> <p>24 something that is in special markets, it is a large</p> <p>25 entity, the term.</p>	127	<p>1 A. Yes, larger ones would be part of that,</p> <p>2 yes.</p> <p>3 Q. And the middle market accounts, which are</p> <p>4 smaller corporate accounts, would those also be called</p> <p>5 DSOs or something else?</p> <p>6 A. They could be called DSOs, small DSOs.</p> <p>7 Q. Also before the break we talked a little</p> <p>8 bit about the difference between certain types of</p> <p>9 buying groups that you have encountered, and you</p> <p>10 talked a little bit about ones that you believe</p> <p>11 offered value and ones that can offer volume</p> <p>12 commitment. Do you recall that discussion?</p> <p>13 A. Yes.</p> <p>14 Q. What does Schein do to learn about what a</p> <p>15 buying group's rules are with respect to volume</p> <p>16 commitments?</p> <p>17 A. Well, whoever is the contact at Schein</p> <p>18 presumably would ask that question as part of kind of</p> <p>19 getting to know whoever.</p> <p>20 Most cases the buying groups, at least up</p> <p>21 until now, have approached us rather than us</p> <p>22 approaching them. Now, maybe that is changing now</p> <p>23 with some of the market dynamics, but when they</p> <p>24 approach us we typically ask questions like how are</p> <p>25 you organized, how do your members buy in, what are</p>
126	<p>1 Then they changed -- they decided they</p> <p>2 wanted to be referred to as DSOs, I am not sure</p> <p>3 exactly when that was, but it was a number of years</p> <p>4 ago.</p> <p>5 So then we have large DSOs and small</p> <p>6 DSOs.</p> <p>7 And so large DSOs are typically what I</p> <p>8 would call a corporate account, and those would be in</p> <p>9 the special market groups.</p> <p>10 Smaller DSOs would be in either the</p> <p>11 bottom end of the special markets group or the high</p> <p>12 end of what we call mid market.</p> <p>13 Q. And what is a DSO?</p> <p>14 A. Dental service organization.</p> <p>15 Q. What is a dental service organization?</p> <p>16 A. It is the name they have chosen to refer</p> <p>17 to themselves as.</p> <p>18 Q. So it is a term used to refer to</p> <p>19 corporate accounts?</p> <p>20 A. Yes, multi, I would say, yes, it is a</p> <p>21 term that they have chosen to refer to multi-location</p> <p>22 dental offices under a single ownership.</p> <p>23 Q. And apologies if I don't have this</p> <p>24 correct. So DSOs would fall under the special markets</p> <p>25 purview, the larger ones would, is that right?</p>	128	<p>1 their commitments to you, how does it all happen, how</p> <p>2 many do you have. Those are all qualifying questions.</p> <p>3 There is not a formal process that I am aware of.</p> <p>4 Q. Mr. Steck, we are just going to take a</p> <p>5 look at some documents.</p> <p>6 A. Okay.</p> <p>7 (Document identified as Exhibit 229 for</p> <p>8 identification.)</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Mr. Steck, the court reporter has handed</p> <p>11 you Exhibit 229. Can you please just take a look at</p> <p>12 that and let me know when you have had a chance to</p> <p>13 read it.</p> <p>14 A. Okay.</p> <p>15 Q. Mr. Steck, did you prepare this document?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall preparing this document?</p> <p>18 A. No. It was four years ago, five years</p> <p>19 ago, but I don't recall -- definitely I wrote it.</p> <p>20 Q. So this would have been in the 2012/2011</p> <p>21 timeframe?</p> <p>22 A. I am not sure. It says other projects</p> <p>23 2012, so I would guess that is when it was.</p> <p>24 Q. How often do you prepare reports such as</p> <p>25 these?</p>

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1 A. Well, it goes on and off. I would like
2 to say every month or every six weeks or so we do
3 different types of reports, but this one I have never
4 been as consistent with it as I would like to be.
5 **Q. Do you prepare these reports for your own**
6 **personal reference?**
7 A. No. These are usually sent to Tim.
8 **Q. Does Tim ask that you prepare these on**
9 **any regular basis?**
10 A. He will say please start sending them
11 again, I will send them, things happen and we start
12 sending them again, it is just -- it is off and on.
13 **Q. Why does Tim -- strike that.**
14 **Do you know why Mr. Sullivan asks you to**
15 **prepare reports such as these?**
16 A. I think two reasons, one is that, again,
17 you need to ask him, but I believe it is so, A, he has
18 a good document to when we meet personally to kind of
19 go through and kind of tick off things that discuss
20 order of review; and the other is the event he is
21 asked by his superiors what is going on so he can
22 forward the document.
23 **Q. Do you recall meeting with Mr. Sullivan**
24 **to discuss this particular activity report?**
25 A. No.

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1 **Q. Turning to the first bullet point of this**
2 **report, I think it says FMM preparation, do you see**
3 **that?**
4 A. Yes.
5 **Q. What is FMM?**
6 A. Field management meeting.
7 **Q. What is that?**
8 A. That is a meeting we have every January
9 in Wisconsin and it is typically we bring in all our
10 regional and zone managers, it is a sales manager
11 meeting.
12 **Q. And who is in charge of leading that**
13 **meeting?**
14 A. I am.
15 **Q. What is the purpose of those meetings?**
16 A. Well, it is the only time we get our
17 managers together all year by themselves and so it is
18 to try to help them be successful throughout the year,
19 help them put together a business plan for the year,
20 help them to talk about the initiatives going within
21 the company. Mostly information sharing.
22 **Q. And where do these meetings usually take**
23 **place?**
24 A. I mentioned already in Milwaukee.
25 **Q. Thank you.**

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1 **Turning to the last bullet point on this**
2 **page, it begins with FDA partnership, do you see that?**
3 A. Yes.
4 **Q. Do you understand the FDA to be the**
5 **Florida Dental Association?**
6 A. Yes.
7 **Q. And is the Florida Dental Association a**
8 **state association similar to the California Dental**
9 **Association?**
10 A. Yes, it is.
11 **Q. Reading this paragraph here, you wrote**
12 **"Have had two internal calls and one external call on**
13 **partnering with the Florida Dental Association." Do**
14 **you see that?**
15 A. Yes.
16 **Q. With whom did you speak internally about**
17 **partnering with the FDA?**
18 A. It would have been with our zone manager
19 who at the time I believe was Jeff Reichardt and also
20 probably with director of sales who I am not sure who
21 that was at the time, that might have been Michael
22 Porro and perhaps even a regional manager, but there
23 were two or three internal people I was talking to
24 about that.
25 **Q. Do you recall those discussions?**

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1 A. Generally.
2 **Q. And do you -- can you tell me what you**
3 **discussed?**
4 A. Well, yes, you know, we had been
5 approached by the Florida Dental Association to put
6 together a program for its members.
7 They initially came in and asked us for a
8 large discount across the board for all FDA members on
9 everything they buy regardless of whether they
10 committed volume or anything and we refused because it
11 is not within the parameters that we dealt with. But
12 we said we would be willing to work with them on some
13 other things. And so that is what we started working
14 on and that is what that was about.
15 **Q. Did the Florida Dental Association tell**
16 **you that members would not be able to commit volume as**
17 **part of this proposed or arrangement?**
18 A. They told us that the customers or their
19 members would all make their own individual buying
20 decisions so that is effectively saying, no, they
21 would not be able to commit volume.
22 **Q. You go on to write -- actually, just**
23 **turning, let's stay on that same sentence there, you**
24 **also talk about an external call that you had. Can**
25 **you tell me who that call was with?**

33 (Pages 129 to 132)

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1 A. It was with two or three members of the
 2 FDA.
 3 **Q. Do you recall their names?**
 4 A. No. It was whoever the president of the
 5 FDA was at the time and two or three of their board
 6 members.
 7 **Q. And turning to the next sentence you**
 8 **write "this is the classic 'buying group' approach**
 9 **that we aren't buying into." Do you see that?**
 10 A. Yes.
 11 **Q. Does "we" refer to Schein Dental?**
 12 A. Yes.
 13 **Q. Why was Schein Dental not interested in**
 14 **working with buying groups such as the one started by**
 15 **the Florida Dental Association?**
 16 A. Well, we would have -- we were interested
 17 or we wouldn't have been talking to them.
 18 The issue was that they were not able to
 19 commit volume for their members or give us any kind of
 20 minimum purchase levels that would allow a discount to
 21 take place or a reduced pricing arrangement. So we
 22 ultimately did make them an offer, but they chose to
 23 go with someone different.
 24 **Q. And what was the offer that Schein made**
 25 **to the FDA?**

1 A. Well, I think what I kind of said
 2 earlier, it was just a group of dentists that there
 3 was no -- they were just looking for a group discount
 4 for no particular reason and no particular commitment.
 5 That to me is what a classic buying group as I
 6 mentioned earlier is.
 7 **Q. Would you say that classic -- the term --**
 8 **strike that.**
 9 **Would you say that the term classic**
 10 **buying group as you use it in this sentence would**
 11 **apply to all state dental association buying groups?**
 12 MR. McDONALD: Object to the form, overly
 13 broad, lack of foundation.
 14 THE WITNESS: Not necessarily. There are
 15 clearly some that wanted to take the same approach and
 16 then there is others like the CDA that was not that
 17 was looking for a different type of arrangement.
 18 BY MR. SOLOMON:
 19 **Q. And how did the CDA arrangement differ**
 20 **from the FDA arrangement?**
 21 A. They required the doctor to purchase an
 22 additional membership into their own what they called
 23 The Dental Solutions Company, which was a subsidiary
 24 of the CDA. And at that time they were supposed to
 25 commit so much of their volume by doing that if they

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1 A. Well, I think it refers to it in here, we
 2 are going to pull together some special speaking
 3 arrangements or seminars for them around the state in
 4 terms of trying to survive the current economic
 5 climate because that was really the genesis of the
 6 entire discussion started from them because they felt
 7 their members were under undue economic stress because
 8 of a number of variety of things that had happened.
 9 And so we offered that if a customer signed up on a
 10 plan we would normally offer a \$25,000 customer that
 11 they could get that same plan with a \$15,000
 12 commitment. So we gave them a reduced commitment to
 13 get the pricing, but it still required a commitment
 14 and call that an FDA benefit.
 15 **Q. You mentioned that the FDA ultimately**
 16 **decided to work with a different distributor, is that**
 17 **right?**
 18 A. Yes.
 19 **Q. Do you recall which distributor that was?**
 20 A. I am not sure, but it wasn't us.
 21 **Q. Turning back to the last sentence we**
 22 **focused on, you referred to classic buying group**
 23 **approach.**
 24 A. Uh-huh.
 25 **Q. What did you mean by that term?**

1 were going to take advantage of it.
 2 **Q. Are you aware any other buying group**
 3 **approaches apart from the classic buying group**
 4 **approach that you referred to here?**
 5 MR. McDONALD: Object to the form, overly
 6 broad.
 7 THE WITNESS: Well, I mentioned, there
 8 are once, again, that have always existed that could
 9 commit volume. There were a couple in the CHC space
 10 that have existed for a long time that we do business
 11 with. As I mentioned, there were others that were out
 12 there, too, that were more smaller.
 13 BY MR. SOLOMON:
 14 **Q. So has Schein worked with buying groups**
 15 **that are in the CHC space?**
 16 A. Yes.
 17 **Q. And do the buying groups in the CHC space**
 18 **commit to volume purchasing requirements with Schein?**
 19 A. Yes, they normally can commit -- I don't
 20 know if they -- I shouldn't say that. I don't know
 21 that they -- I have not been directly conversational,
 22 I know those numbers go back a number of years and
 23 that virtually all the CHCs follow them.
 24 **Q. Do you know who would know that**
 25 **information?**

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1 A. Whoever negotiates those agreements, and
 2 I am not even sure who that is right now.
 3 **Q. So turning back to your discussion with**
 4 **Mr. Sullivan I think you testified you discussed this**
 5 **particular opportunity with Mr. Sullivan after you**
 6 **prepared this report, is that right?**
 7 A. Yes.
 8 **Q. And do you recall your discussion with**
 9 **Mr. Sullivan?**
 10 A. No.
 11 **Q. Turning to the last sentence in this**
 12 **paragraph, I will read the whole sentence but then I**
 13 **will just focus on one part of it. "We are presenting**
 14 **this on Wednesday and they may choose to look**
 15 **elsewhere, but this is as far as we can go in**
 16 **everyone's estimation."**
 17 **I just want to focus on the last part,**
 18 **"but this is as far as we can go in everyone's**
 19 **estimation," do you see that?**
 20 A. Yes.
 21 **Q. What does that refer to?**
 22 A. The group of people internally that were
 23 discussing it felt that the approach we were taking
 24 with them was fair and was as far as we should go
 25 given the fact it was a non-committed relationship.

1 A. Yes.
 2 **Q. And I want to focus on the middle of the**
 3 **page, your e-mail to Mr. Hinsch, at 11:59 a.m., you**
 4 **say "here is the best I can explain it," and you write**
 5 **"there are three types of buying groups," and kind of**
 6 **want to walk through what you wrote here, the three**
 7 **different types.**
 8 **You write "The first type we don't want**
 9 **anything to do with as they are short-lived and not**
 10 **well funded."**
 11 **What type of buying group were you**
 12 **referring to in that sentence?**
 13 A. A number of people who have tried to go
 14 into the space have gone out of business and they
 15 typically are just trying to get a piece of the
 16 dentist, their whole purpose is to try to get
 17 membership fees in the dentist and a rebate from us.
 18 And so in some cases they have not been able to
 19 survive because they have never been able to do a
 20 value to the customer and also, you know, just we are
 21 not on good financial, sound bases so we just don't
 22 want to be doing business with people like that.
 23 **Q. What is your understanding of that type**
 24 **of buying group based on?**
 25 A. Based on history, we have seen a number

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1 **Q. Apart from yourself and Mr. Sullivan and**
 2 **the two salespeople in Florida, was there anyone else**
 3 **that was a part of this discussion surrounding working**
 4 **with the FDA?**
 5 A. I don't remember.
 6 (Document identified as Exhibit 230 for
 7 identification.)
 8 BY MR. SOLOMON:
 9 **Q. Mr. Steck, the court reporter has handed**
 10 **you Exhibit 230, if you would mind just taking a look**
 11 **and let me know if you have had a chance to read it.**
 12 A. Okay.
 13 **Q. Mr. Steck, do you recall this e-mail**
 14 **discussion?**
 15 A. Yes.
 16 **Q. This is an e-mail chain between yourself**
 17 **and Mr. Hinsch and some other Schein employees in**
 18 **September of 2015, is that right?**
 19 A. The beginning of it was several
 20 employees, and after that it became just Paul and me
 21 going back and forth.
 22 **Q. Thanks for that clarification.**
 23 **So on the first page it looks like this**
 24 **is -- this is where it just dropped off to a**
 25 **discussion between you and Mr. Hinsch, right?**

1 of them that didn't make it.
 2 **Q. Have you discussed that type of buying**
 3 **group with sales representatives at any point?**
 4 A. Not that I remember, but I may have.
 5 **Q. Does Schein use a term internally to**
 6 **refer to those types of buying groups?**
 7 A. Not that I remember, not that I am aware
 8 of.
 9 **Q. Turning to the second type, you write**
 10 **"The second type are things like dental associations**
 11 **which are really affiliate buying groups." Do you see**
 12 **that?**
 13 A. Yes.
 14 **Q. And then you write "that was what we**
 15 **discussed today."**
 16 **Why did you categorize state dental**
 17 **associations as a separate type of buying group?**
 18 A. Because they are ones that people are
 19 members of already that want to add in a buying group
 20 component.
 21 **Q. And how does that differ from other types**
 22 **of buying groups?**
 23 A. Because other buying groups are trying to
 24 sell memberships to join the group, these people are
 25 already members of this group.

35 (Pages 137 to 140)

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1 **Q. Are there any other ways in which dental**
2 **associations are different from other types of buying**
3 **groups?**

4 MR. McDONALD: Object to the form, overly
5 broad.

6 THE WITNESS: Lots of ways. Dental
7 associations present all kinds of benefits for their
8 members whereas a buying group of first order simply
9 has one benefit, they think they are trying to get
10 their customers a better deal.

11 BY MR. SOLOMON:

12 **Q. And what is your understanding of that**
13 **difference based on?**

14 A. Experience.

15 **Q. Any personal experience?**

16 A. Well, I mentioned I have already
17 testified I was involved with the CDA and well before
18 that with the FDA in that sense. I have very little
19 experience with the first type of buying group
20 personally.

21 **Q. Turning to -- I want to move on to the**
22 **next sentence, you write "The third ones like Smile**
23 **Source, ADP, Kois, Dental Gator and a few others can**
24 **commit business. This third type are the ones we**
25 **don't want our customers to join." Do you see that**

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1 sentence?

2 A. Yes.

3 **Q. So I just want to start, my first**
4 **question is how is this third type of buying group**
5 **distinct from other types of buying groups in your**
6 **mind?**

7 A. Well, this is the type of group that I
8 mentioned earlier that provide a value beyond just
9 aggregating dental purchases and can commit a volume.

10 **Q. So is it fair to say that the type of**
11 **buying groups you list here, Smile Source, ADP, Kois,**
12 **Dental Gator, are ones that you think can commit**
13 **volume?**

14 A. Yes.

15 **Q. Why did Schein not want its customers to**
16 **join this type of buying group?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: Well, I mean, as you can
19 see we do business with Gator, we now do business with
20 Smile Source, so this is one of those things as I
21 mentioned as part of the business is somewhat
22 evolving. The issue with them joining that is that
23 the loyalty of the customer in some cases we are
24 concerned transfers to the buying group and not to us
25 and so we want to make sure the customer's primary

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1 loyalty is to Henry Schein so that they consider
2 themselves a Schein customer and not necessarily a
3 Dental Gator customer.

4 BY MR. SOLOMON:

5 **Q. And how do you know that a customer's**
6 **loyalty would shift from Henry Schein to a buying**
7 **group?**

8 A. We don't know that. We were fearful of
9 that. So -- in fact, we have seen in some cases that
10 wasn't the case, but we were fearful of the fact that
11 if Dental Gator then or somebody decided they didn't
12 want to do business with Schein anymore as their
13 distributor they could move a large block of business.

14 **Q. Did that fear stem from anything that**
15 **buying groups told you in particular?**

16 A. Not really, no, just knowing how they
17 work.

18 **Q. What about buying groups that had**
19 **customers who were not previously Henry Schein**
20 **customers, would that fear still apply?**

21 A. Not to the same degree, no, because it is
22 new business.

23 **Q. Was Schein interested in gaining new**
24 **business from buying groups?**

25 A. We are always interested in gaining new

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1 business, yes.

2 **Q. Did Schein do anything to determine**
3 **whether buying groups such as the ones listed here as**
4 **the third type did Schein ever do anything to**
5 **determine whether those buying groups had customers**
6 **who were already working with Henry Schein?**

7 A. I believe -- again, I wasn't involved in
8 any of these particular discussions, but I believe
9 typically when we get into a negotiation with a group
10 we do -- if they will furnish us their member source
11 we do see how many are currently doing business with
12 Schein.

13 **Q. At the time of this e-mail do you know**
14 **whether Henry Schein Dental was working with Smile**
15 **Source?**

16 A. I can't speak to the time of this e-mail.
17 As I said, we had them originally, we lost them, we
18 tried to get them back, I was involved in that, and we
19 didn't get them back, and then this happened. Again,
20 I was referring to obviously recently we got involved
21 with them again.

22 **Q. At the time of this e-mail is it fair to**
23 **assume that Schein did not want its customers to work**
24 **with or join Smile Source?**

25 A. Yes, because at that time we were not

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1 authorized to work with Smile Source.

2 **Q. The same question but for ADP.**

3 A. Yes, except -- I can't even remember what
4 ADP is.

5 **Q. And then the same question for Kois.**

6 A. It is Kois. Yes, they are with Burkhart,
7 they were a different distributor, so we wouldn't want
8 them to join the group because we would lose the
9 business.

10 **Q. And then the same question for Dental
11 Gator.**

12 A. Dental Gator we did have the business
13 with already so that is not as big a problem.

14 **Q. I would like to back up a little bit and
15 ask, do you know why Mr. Hinsch was asking about
16 buying groups in this e-mail?**

17 A. I think it was if you will read the
18 e-mail it goes back to what the G Plan is, which we
19 discussed earlier, and his concern was that the G Plan
20 would be widely distributed as an effective pricing
21 arrangement for anybody who joined a buying club
22 whether they were committed to the business or not.

23 **Q. And why was he concerned about that?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: Because we preferred to

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1 A. No, typically not.

2 **Q. Do you know whether the Select program
3 was ever launched?**

4 A. It really wasn't.

5 **Q. Do you know why?**

6 A. I think a couple of things. One is that
7 we began getting much more active and found out that
8 some of these buying groups were -- actually could be
9 decent customers and there really wasn't a reason to
10 have to try to take customers out of them. And I
11 think we are -- you know, it just never kind of took
12 wings. We have plenty of other pricing plans that we
13 reviewed earlier and customer loyalty programs which
14 we have not talked about that keep a customer with
15 Schein that are intended to keep a customer with
16 Schein and we just ultimately decided we didn't need
17 anything like this.

18 **Q. You just mentioned in your prior answer
19 that Schein found out that some of these buying groups
20 could actually be decent customers and there really
21 wasn't a reason to have to try to take customers out
22 of them. How did Schein learn that information?**

23 A. By doing business with some of them.

24 **Q. Do you have any examples of buying groups
25 you have done business with that you learned that**

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1 offer that to people who have committed business.

2 BY MR. SOLOMON:

3 **Q. You go on to write "This is why Brady is
4 developing the Select Program as a back pocket method
5 of keeping customers from joining when they are
6 considering it." Do you see that?**

7 A. Yes.

8 **Q. What is the Select Program?**

9 A. Well, Select is what we now call the mid
10 market small DSOs so we call large ones Elite, we call
11 mid market ones Select.

12 But the Select program initially was
13 intended as a special pricing plan, which in this case
14 was the G Plan, as well as other benefits that we were
15 going to package into a particular plan that we would
16 offer to customers if they were interested in joining
17 a buying group.

18 **Q. And how would Schein determine whether
19 its customers were interested in joining a buying
20 group?**

21 A. Usually the doctor would tell a
22 salesperson, otherwise we wouldn't know.

23 **Q. Would sales representatives normally ask
24 dentists whether they were interested in joining
25 buying groups?**

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1 **information?**

2 A. Well, there is -- I do not personally,
3 there is a long schedule of buying groups we do
4 business with that you probably have.

5 **Q. So the Select program never was
6 established, right?**

7 A. Not -- the word Select was then changed
8 and used to define smaller DSOs. It was never
9 established into a program for private practice
10 dentists to try to keep them from joining the buying
11 groups.

12 **Q. Did Schein do anything else to try to
13 prevent its customers from joining the third type of
14 buying group mentioned in your e-mail?**

15 A. Not --

16 MR. McDONALD: Hang on, object to form.

17 THE WITNESS: Not in an organized way. I
18 am sure individual salespeople found out doctors were
19 going to join a buying group and tried to give them a
20 better individual price, but not anything on a large
21 scale.

22 (Document identified as Exhibit 231 for
23 identification.)

24 BY MR. SOLOMON:

25 **Q. Mr. Steck, the court reporter has handed**

37 (Pages 145 to 148)

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1 you Exhibit 231. Have you had a chance to take a look
2 at it?

3 A. I have looked at the e-mail. I have seen
4 this before, the PowerPoint.

5 **Q. Do you want me to give you a chance to
6 look it over or are you ready to discuss it?**

7 MR. McDONALD: It is long, Ronnie, do you
8 want to be efficient about this, do you want to direct
9 him to certain pages to look at?

10 BY MR. SOLOMON:

11 **Q. You recall this presentation?**

12 A. I recall seeing it, yes. I was not there
13 at the meeting when it was presented.

14 **Q. You were not at the meeting?**

15 A. No.

16 **Q. Do you know who prepared this
17 presentation?**

18 A. Yes, Brad Connett.

19 **Q. And Mr. Connett --**

20 A. At the time he was my equivalent of
21 medical.

22 **Q. Do you know why Mr. Connett prepared this
23 presentation?**

24 MR. McDONALD: Object to form.

25 THE WITNESS: I do not.

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1 A. Yes.

2 **Q. Are you familiar at all with the Georgia
3 Dental Association?**

4 A. Not much beyond what is in this e-mail
5 but, yes.

6 **Q. Are you familiar with the buying group
7 that the Georgia Dental Association established?**

8 A. I am familiar with they established one,
9 but I am not familiar with it specifically.

10 **Q. Do you know whether the Georgia Dental
11 Association asked Schein Dental to bid for purposes of
12 the buying group it was forming?**

13 A. I believe we did.

14 **Q. Do you know when that happened?**

15 A. I believe they did. I assume it was the
16 timeframe of the documents here.

17 **Q. And did Schein -- I think you said I
18 believe they did. Did Schein actually bid to enter
19 into a supply agreement with the Georgia Dental
20 Association?**

21 A. I am not sure. My memory is we
22 eventually withdrew.

23 **Q. Do you know when that took place?**

24 A. Sometime in this timeframe.

25 **Q. When did Schein withdraw?**

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1 BY MR. SOLOMON:

2 **Q. Were you asked to attend the meeting that
3 corresponded to this presentation?**

4 A. Yes, but I wasn't able to make it.

5 **Q. Do you know whether anyone within Henry
6 Schein Dental had asked for information about GPOs
7 from Henry Schein Medical?**

8 A. I do not know that.

9 **Q. Do you know whether that was the purpose
10 of this presentation?**

11 A. I don't know the reason the presentation
12 of the meeting was called.

13 **Q. You can put that document aside for now.
14 (Document identified as Exhibit 232 for
15 identification.)**

16 BY MR. SOLOMON:

17 **Q. Mr. Steck, the court reporter has handed
18 you Exhibit 232. Would you let me know when you have
19 looked it over?**

20 A. Okay.

21 **Q. This is an e-mail between or among
22 yourself, Mr. Meadows, and Mr. Sullivan internally
23 from January of 2015, and it looks like it relates to
24 an earlier e-mail regarding the Georgia Dental
25 Association, is that right?**

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1 MR. McDONALD: Object to the form.

2 THE WITNESS: It was similar to the
3 Florida arrangement, they wanted a blanket low price
4 list for anybody in the Georgia Dental Association
5 without committing any volume and we just weren't
6 going to do that.

7 BY MR. SOLOMON:

8 **Q. And you discussed volume commitments with
9 the Georgia Dental Association, is that right?**

10 A. I was not involved in the discussions, I
11 am not sure what was discussed. I would think it was
12 but I don't know.

13 **Q. Do you know who was involved in those
14 discussions?**

15 A. Jake is one and whoever else was involved
16 at that time, I am not sure.

17 **Q. I kind of want to -- strike that.**

18 I want to take a look at your e-mail in
19 the second page at the top, January 18, 2015 at
20 7:47 a.m., I think you are referring to Mr. Meadows,
21 and you write "Thanks, Jake. We will definitely not
22 be the low bid, but I like our chances with the
23 individual members. Interesting news and
24 unfortunately a trend." So let's just take this
25 sentence by sentence.

38 (Pages 149 to 152)

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1 "Thanks, Jake," what were you thanking
2 Mr. Meadows here?
3 A. Just providing information.
4 **Q. Had you asked Mr. Meadows to provide**
5 **information on the GDA?**
6 A. No.
7 **Q. The next sentence "We will definitely not**
8 **be the low bid, but I like our chances with the**
9 **individual members." What did you mean when you said**
10 **"we will definitely not be the low bid"?**
11 A. Well, companies that don't have similar
12 overhead structures to ours, you mentioned a couple
13 earlier that were not full-service distributors, bid
14 on these things as well. And, honestly, these type of
15 arrangements that are non-committed typically work
16 better for them than they do for us and I knew they
17 would probably underbid us because their overhead is
18 lower.
19 **Q. Who would underbid Schein?**
20 A. Didn't we already discuss who those were?
21 **Q. That is what I am just trying to**
22 **understand.**
23 A. Darby we talked about. Safco locally.
24 And there is probably 20 other ones out there that
25 would bid on something like this.

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1 **Q. So is it your understanding that Schein**
2 **did not ultimately bid for the GDA --**
3 A. My memory is we did not, but I am not
4 sure that is right.
5 **Q. And then you write "but I like our**
6 **chances with the individual members." What are you**
7 **referring to by individual members?**
8 A. We have market share in Georgia now and
9 if the GDA was going to put out a price list for all
10 members I felt we could probably compete with it with
11 individual members who were willing to make a
12 commitment.
13 **Q. You referred to individual members who**
14 **were willing to make a commitment. Did you know**
15 **whether the Georgia Dental Association dentists were**
16 **willing to make a commitment to Henry Schein in the**
17 **event that they worked with Henry Schein?**
18 A. I did not know that. I suspect that was
19 the case and I believe that is why we didn't bid.
20 **Q. What was your suspicion based on?**
21 A. "The way most of them have gone, you can
22 see this unfortunately a trend."
23 **Q. And what were you referring to there?**
24 A. Florida.
25 **Q. So -- I am just trying to understand.**

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1 "The way most of them have gone, you can see
2 unfortunately this is a trend," meaning that most
3 dentists could not commit volume?
4 A. Most dental associations could not get
5 their members to commit their volume. Dentists do
6 what they are going to do, independent businesses,
7 just because I am a member doesn't mean I am going to
8 necessarily follow the plan you put out as the
9 administrator of that association.
10 **Q. When you write "I like our chances with**
11 **the individual members," did you mean that Schein**
12 **could get those individual dentists to commit volume?**
13 A. Yes, we do today.
14 **Q. How would that happen?**
15 MR. McDONALD: Object to the form.
16 THE WITNESS: Individual conversation
17 with the field salesperson.
18 BY MR. SOLOMON:
19 **Q. And based on your earlier testimony I**
20 **understand that is a small percentage, not a majority,**
21 **of your customer base, is that right?**
22 MR. McDONALD: Object to the form.
23 THE WITNESS: I have to point out is a
24 very large part of our volume though. You keep trying
25 to say small number of customers, but the volume that

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1 we actually do it is a high percentage of our volume,
2 big difference.
3 BY MR. SOLOMON:
4 **Q. Did you have any discussions with**
5 **Mr. Sullivan about the Georgia Dental Association's**
6 **buying group?**
7 A. Again, he was copied on this e-mail for a
8 while, I think, yes, he was on this one, so I may have
9 mentioned it in a follow-up discussion with him, but I
10 don't recall the conversation.
11 (Document identified as Exhibit 233 for
12 identification.)
13 BY MR. SOLOMON:
14 **Q. Mr. Steck, the court reporter has handed**
15 **you Exhibit 233. This is an e-mail from December --**
16 **an e-mail chain from December 11, 2015 --**
17 A. Yes.
18 **Q. -- among several different it looks like**
19 **Schein employees both from the medical and the dental**
20 **side, is that correct?**
21 A. That is the way I am reading it, yes.
22 **Q. Who is Bill Barr?**
23 A. He is on the medical side of the
24 business.
25 **Q. How do you know Mr. Barr?**

39 (Pages 153 to 156)

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1 A. He was recommended me by Mr. McKinley.
 2 **Q. Who is Mr. McKinley?**
 3 A. He was the president of the medical
 4 business at that time.
 5 **Q. Why did Mr. McKinley recommend Mr. Barr**
 6 **to you?**
 7 A. Because Mr. McKinley and I are friendly,
 8 we get along well, and had had a discussion
 9 particularly around technology and trying to get
 10 dentists to buy expensive pieces of equipment when
 11 sometimes it economically didn't make sense for them
 12 and how could we find another method to go to market
 13 and they were talking about something that he had been
 14 previously before in the medical group, Mr. McKinley
 15 and our medical group had been at Olympus and they had
 16 come up with a methodology for getting their customers
 17 to buy expensive pieces of their equipment called a
 18 cost per procedure and Bill Barr was familiar with it
 19 so he asked me to sit there and talk to Bill about it.
 20 **Q. What is Olympus?**
 21 A. Olympus is a big company that makes
 22 cameras and things like that.
 23 **Q. Are --**
 24 A. They are not in dental.
 25 **Q. I want to just take a look at the top of**

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1 **the third page, Henry Schein-000006269, it looks to be**
 2 **an exchange between yourself, Mr. Barr, Mr. Muller, a**
 3 **few others including Brad Connett, Dave McKinley.**
 4 **Who is Rachelle Belloit?**
 5 A. I don't know.
 6 **Q. Who is Allen Kim?**
 7 A. That is Kim Allen.
 8 **Q. Kim Allen.**
 9 A. She was the president at the time of our
 10 animal health business.
 11 **Q. So the subject of this e-mail is GPO**
 12 **activity.**
 13 **Do you know why Mr. Barr would be**
 14 **e-mailing you about GPO activity?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I don't. He might have
 17 been asked to send it to me, I don't know.
 18 BY MR. SOLOMON:
 19 **Q. You respond to Mr. Barr's e-mail "Thanks,**
 20 **Bill. This isn't much of a surprise, but appreciate**
 21 **the information. No doubt organized buying is coming**
 22 **to the dental business in one form or another. We**
 23 **continue to internally debate how best to deal with**
 24 **this."**
 25 **Just focusing on the last sentence there,**

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1 **is it fair to say that at the time of this e-mail**
 2 **Schein had not formed a policy with respect to buying**
 3 **groups?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: We were already doing
 6 business with buying groups. The policy was we were
 7 individually looking at them. The statement was
 8 really about the belief this would become a bigger
 9 part of the marketplace.
 10 BY MR. SOLOMON:
 11 **Q. Where do you say that here?**
 12 A. I don't. That was my -- that was my
 13 point when I was saying this.
 14 **Q. That buying groups would become a bigger**
 15 **part of the market?**
 16 A. We believed that that would be the case.
 17 I mean, obviously some of the things we have already
 18 looked at show that.
 19 **Q. And did you think that that would be a**
 20 **good thing for Henry Schein Dental?**
 21 A. I don't know whether it is a good thing
 22 or not. As I said, it could be a threat, it could be
 23 an opportunity.
 24 **Q. "No doubt organized buying is coming to**
 25 **the dental business in one form or another," I just**

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1 **want to focus on that sentence.**
 2 **Again, what did you mean when you say it**
 3 **was coming to the dental business?**
 4 A. We felt that it would become a bigger
 5 part of the dental business. Obviously it was already
 6 there in some respects because we were already doing
 7 business with some.
 8 **Q. What did you mean by organized buying in**
 9 **that sentence?**
 10 A. Another way of saying buying group or
 11 whatever. An organization other than the dentists
 12 themselves making purchasing negotiations with us.
 13 **Q. You go on to write "all information and**
 14 **advice is appreciated."**
 15 **Why were you seeking information and**
 16 **advice from Mr. Barr regarding GPOs and buying groups?**
 17 A. He had experience with them and if there
 18 is anything he could tell us that would help us it
 19 would be appreciated.
 20 **Q. Did you ever have a conversation with**
 21 **Mr. Barr about GPOs and buying groups?**
 22 A. No. We had a conversation about cost per
 23 procedure.
 24 **Q. And when did that conversation take**
 25 **place?**

40 (Pages 157 to 160)

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1 A. I don't remember, but it was somewhere
2 shortly after this was, as I said, could you set up
3 30 minutes with Bill, that was my assistant at the
4 time, I am sure that happened.
5 **Q. So you never had a conversation with**
6 **Mr. Barr about GPOs and buying groups?**
7 A. Not that I can recall, no.
8 **Q. The same question but for Mr. Connett.**
9 A. No, not that I can recall.
10 **Q. The same question for Mr. Hal Muller.**
11 A. Yes, we -- Hal is part of the dental
12 group and because of that we -- he reports to
13 Mr. Breslawski, as does Tim Sullivan, so we have
14 regular meetings with Hal, buying groups have come up,
15 we don't discuss it at length, but we have discussed
16 Smile Source, we have discussed Dental Gator, a number
17 of other ones, some which were part of special markets
18 and then brought down to Henry Schein Dental.
19 **Q. How often have you discussed buying**
20 **groups and GPOs with Mr. Muller?**
21 A. I couldn't even begin to guess, I don't
22 know.
23 **Q. Would that mean it was pretty often?**
24 MR. McDONALD: Object to the form.
25 THE WITNESS: I don't believe we have

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1 discussed them much at all in the last couple of
2 years, but during the transitional phase we discussed
3 them fairly regularly, but I wouldn't want to guess on
4 a number, I don't know.
5 BY MR. SOLOMON:
6 **Q. Do you recall any specific discussions**
7 **with Mr. Muller surrounding GPOs and buying groups?**
8 A. No.
9 **Q. Do you know whether Mr. Muller has a**
10 **specific opinion regarding GPOs or buying groups?**
11 A. I do not.
12 MR. SOLOMON: I think this would be a
13 natural point for a quick break.
14 (Recess taken.)
15 BY MR. SOLOMON:
16 **Q. Mr. Steck, welcome back.**
17 **Mr. Steck, are you familiar with the**
18 **Texas Dental Association?**
19 A. Yes.
20 **Q. What is the Texas Dental Association?**
21 A. It is the state association for dentists
22 similar to the FDA, the GDA, or the CDA.
23 **Q. Is it sometimes referred to as the TDA?**
24 A. Yes.
25 **Q. Does the TDA have an annual trade show?**

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1 A. Yes.
2 **Q. Have you ever attended the TDA's annual**
3 **trade show?**
4 A. I have.
5 **Q. Which years did you attend?**
6 A. I don't remember exactly.
7 **Q. Do you attend every year?**
8 A. No.
9 **Q. Do you -- have you attended more than**
10 **once?**
11 A. I think I have been twice, but couldn't
12 tell you which years.
13 **Q. Who from Schein usually attends those**
14 **meetings?**
15 MR. McDONALD: Object to the form.
16 THE WITNESS: Well, whomever is -- sales
17 team, from the local sales team, of course, and the
18 local management, and sometimes one of us from
19 corporate will go down.
20 BY MR. SOLOMON:
21 **Q. And what instances would someone from**
22 **corporate attend the TDA meeting?**
23 A. It could be for a variety of reasons,
24 there is a local issue or I mentioned earlier a new
25 manager could be coming on, a variety of reasons, just

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1 to kind of get out and see salespeople.
2 **Q. Who else apart from yourself from**
3 **corporate attends the TDA trade shows?**
4 A. Well, again, you are speaking
5 specifically to the TDA, I am speaking more broadly
6 that it could be the FDA, I have been to the Florida
7 meeting, you can go anywhere, it is not just me,
8 others go, too. Tim I think has been to the TDA. Joe
9 goes probably more often than I do.
10 **Q. Has Mr. Breslawski ever attended the TDA**
11 **trade show?**
12 A. I don't know.
13 **Q. Why does Schein attend trade shows such**
14 **as the TDA?**
15 A. To sell stuff generally, interact with
16 customers, but the intention of either selling stuff
17 at the meeting or afterwards.
18 **Q. Does it also result in goodwill from**
19 **Schein's customers?**
20 A. I believe to some degree, yes, it does.
21 **Q. In what ways?**
22 A. Well, I think they like having us there,
23 being able to talk to us, talk about what they are
24 interested in.
25 **Q. Does Schein pay to attend the TDA trade**

41 (Pages 161 to 164)

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1 **show annually?**
 2 A. Yes.
 3 **Q. Do you know how much Schein usually pays**
 4 **for that?**
 5 A. I have no idea. There is a fee for the
 6 booth rental and then there is a much larger fee to
 7 bring in booth properties, set them up, and that type
 8 of thing.
 9 **Q. Do you know whether it is several**
 10 **thousand dollars?**
 11 A. It is more than that.
 12 **Q. Does Schein provide funds to the TDA**
 13 **apart from the fees paid for the annual trade show?**
 14 MR. McDONALD: Object to the form, lack
 15 of foundation.
 16 THE WITNESS: I am not sure.
 17 BY MR. SOLOMON:
 18 **Q. Do you know who would know?**
 19 A. I am presuming Joe Cavaretta, but I would
 20 not know for sure whether he would know either.
 21 **Q. Do you know whether Schein has ever**
 22 **donated money to the TDA?**
 23 MR. McDONALD: Object to form, lack of
 24 foundation.
 25 THE WITNESS: I do not know.

1 as almost a virtual warehouse.
 2 **Q. What is your understanding of Source One**
 3 **based on?**
 4 A. Based on just familiarity -- just knowing
 5 a little bit about who they are and what they do in
 6 the market.
 7 **Q. Have you ever done any research to learn**
 8 **more about Source One?**
 9 A. Well, I have been deposed by one of their
 10 attorneys, so I was exposed to it that way. But I
 11 haven't done a great amount of personal research, no.
 12 **Q. When did you first learn about the TDA**
 13 **Perks Supply program?**
 14 A. I honestly can't tell you, shortly after
 15 it came into being, I guess, whenever that was.
 16 **Q. Do you recall how you learned about it?**
 17 A. No.
 18 **Q. Do you recall what your reaction was when**
 19 **you learned about the program?**
 20 A. I don't remember exactly what it was, I
 21 can imagine it probably wasn't positive.
 22 **Q. When you say it probably wasn't positive,**
 23 **were you upset?**
 24 A. I can't remember.
 25 **Q. Were you happy?**

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1 BY MR. SOLOMON:
 2 **Q. Are you familiar with the Texas Dental**
 3 **Association's Supply Perks program?**
 4 A. Yes, I am, it is.
 5 MR. McDONALD: It is Perks Supplies.
 6 MR. SOLOMON: Perks Supplies, thank you.
 7 BY MR. SOLOMON:
 8 **Q. What is the TDA Perks Supplies program?**
 9 A. My understanding of the program is they
 10 have endorsed a company that is not an annual
 11 distributor, but a buying group-type company, and they
 12 offer their pricing schedule to their customers. It
 13 is not a full-service distributor, and customer -- my
 14 understanding, it also goes beyond dental supplies,
 15 there are other things that customers can buy that are
 16 not -- through the TDA that are supposed benefits to
 17 the customer, a better deal than they can get
 18 themselves.
 19 **Q. Do you know the name of the distributor**
 20 **who works with the TDA Perks Supplies program?**
 21 A. I want to be distinctive here, that the
 22 people they work with is actually a buying
 23 organization called Source One, they are not an actual
 24 authorized distributor themselves to my knowledge. I
 25 believe they send orders to various places, they act

1 A. No.
 2 **Q. Did you think it was a good idea**
 3 **generally for the TDA to create a Perks Supply**
 4 **program?**
 5 A. No.
 6 **Q. How did Schein respond to the creation of**
 7 **the TDA Perks Supply program?**
 8 MR. McDONALD: Object to the form, overly
 9 broad.
 10 THE WITNESS: Again, I wasn't personally
 11 involved in it.
 12 My understanding is that our local what
 13 we call zone manager, one level up from regional
 14 manager, had pretty close ties with a lot of the TDA
 15 governing body and met with them on multiple occasions
 16 trying to see if we could have a role in the program.
 17 BY MR. SOLOMON:
 18 **Q. Did you have any involvement with respect**
 19 **to Schein's response to the TDA Perks Supply program?**
 20 A. No, I was not personally involved.
 21 **Q. Do you know whether Schein -- strike**
 22 **that.**
 23 **You referred to the zone manager one**
 24 **level up from regional manager who was involved with**
 25 **that. Who was that?**

169	<p>1 A. Dean Kyle is his name.</p> <p>2 Q. And Dean Kyle is a zone manager, is that</p> <p>3 right?</p> <p>4 A. He was, he is retired now.</p> <p>5 Q. And what zone was Mr. Kyle responsible</p> <p>6 for?</p> <p>7 A. The southwest zone, which included the</p> <p>8 state of Texas.</p> <p>9 Q. Did you ever communicate internally with</p> <p>10 anyone at Schein regarding the TDA Perks Supply</p> <p>11 program?</p> <p>12 A. I may have, I don't recall.</p> <p>13 Q. How about externally, have you ever</p> <p>14 communicated with anyone externally regarding the TDA</p> <p>15 Perks Supply program?</p> <p>16 A. I believe I received an e-mail or two</p> <p>17 from manufacturers about it, but I have not -- I</p> <p>18 didn't seek anything out.</p> <p>19 Q. Do you recall which manufacturers those</p> <p>20 were?</p> <p>21 A. One was Ivoclar and one was Dentsply, I</p> <p>22 believe.</p> <p>23 Q. Were those the only two manufacturers</p> <p>24 that you communicated with about the TDA Perks supply</p> <p>25 program?</p>	171	<p>1 sold through authorized distributors.</p> <p>2 Q. When you say set the record straight,</p> <p>3 what do you mean by that?</p> <p>4 A. Well, that they felt that the company</p> <p>5 that the TDA Perks program was using, Source One</p> <p>6 Dental, Inc., was having products sent to customers</p> <p>7 from non-authorized distributors.</p> <p>8 Q. Did Dentsply tell you that?</p> <p>9 A. I believe they did.</p> <p>10 Q. Do you recall who from Dentsply told you</p> <p>11 that specifically?</p> <p>12 A. You just asked me that, no, I don't.</p> <p>13 Q. Do you have any understanding as to why</p> <p>14 Dentsply would want to set the record straight with</p> <p>15 Schein concerning the distribution of their products</p> <p>16 through unauthorized dealers?</p> <p>17 A. They do it quite frequently in other</p> <p>18 situations, too, is that they want to be clear about</p> <p>19 who their authorized distributors are and that they</p> <p>20 want products sold to Dentsply to authorized</p> <p>21 distributors, so any time there is a complaint or some</p> <p>22 kind of a note that ends up in the marketplace about</p> <p>23 activity and for dentists getting their products they</p> <p>24 are concerned about it and in some cases they will</p> <p>25 approach us.</p>
170	<p>1 A. I believe that is true, yes, I believe</p> <p>2 that is right.</p> <p>3 Q. And why did Dentsply contact you</p> <p>4 surrounding the TDA program?</p> <p>5 MR. McDONALD: Object to the form.</p> <p>6 THE WITNESS: I believe they felt that</p> <p>7 the -- the same thing with Ivoclar, they felt that</p> <p>8 their products were being sold through the TDA Perks</p> <p>9 program by an unauthorized distributor.</p> <p>10 BY MR. SOLOMON:</p> <p>11 Q. What were your communications with</p> <p>12 Dentsply about?</p> <p>13 A. That was it.</p> <p>14 Basically they contacted me, not the</p> <p>15 other way around.</p> <p>16 Q. Who from Dentsply contacted you?</p> <p>17 A. I don't even remember. It may have been</p> <p>18 -- I don't remember exactly.</p> <p>19 Q. Why would -- strike that.</p> <p>20 Do you have any understanding as to why</p> <p>21 someone from Dentsply contacted you surrounding the</p> <p>22 TDA Perks program?</p> <p>23 A. I do not know why they contacted me,</p> <p>24 except I think they wanted to set the record straight</p> <p>25 that they were not -- their product should only be</p>	172	<p>1 Q. Do you recall what you told Dentsply when</p> <p>2 it contacted you about the TDA?</p> <p>3 A. No, I don't.</p> <p>4 Q. You also mentioned a company called</p> <p>5 Ivoclar?</p> <p>6 A. Right.</p> <p>7 Q. Is Ivoclar a manufacturer?</p> <p>8 A. Yes.</p> <p>9 Q. One of the manufacturers with whom Schein</p> <p>10 Dental works with, right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall who from Ivoclar contacted</p> <p>13 you surrounding the TDA Perks supply program?</p> <p>14 A. I believe it was John Stack.</p> <p>15 Q. Who is John stack?</p> <p>16 A. He works for Ivoclar. He, I believe, is</p> <p>17 either director or vice president of marketing or</p> <p>18 something like that.</p> <p>19 Q. How well do you know Mr. Stack?</p> <p>20 A. Reasonably well.</p> <p>21 Q. How do you know Mr. Stack?</p> <p>22 A. Just from industry events and meetings,</p> <p>23 et cetera. He has been there a while.</p> <p>24 Q. Do you recall when Mr. Stack contacted</p> <p>25 you?</p>

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1 A. I do not.
 2 **Q. Do you recall how many times Mr. Stack**
 3 **contacted you?**
 4 A. I believe it was only once, but that is
 5 all I can recall.
 6 **Q. Do you recall what Mr. Stack told you**
 7 **when he contacted you?**
 8 A. Similar message, I believe it was, that
 9 Source One was getting product from -- it was selling
 10 product in there that was non-authorized.
 11 **Q. Do you recall what your reaction to his**
 12 **communication was?**
 13 A. I think probably the same as it was with
 14 Dentsply, I think that was it.
 15 **Q. Is it your testimony that other**
 16 **manufacturers had not reached out to you concerning**
 17 **the TDA Perks Supply program apart from Dentsply and**
 18 **Ivoclar?**
 19 MR. McDONALD: Object to the form, asked
 20 and answered.
 21 THE WITNESS: I don't recall any of
 22 those.
 23 BY MR. SOLOMON:
 24 **Q. So we talked a little bit about**
 25 **manufacturers, Dentsply and Ivoclar.**

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1 A. Ivoclar, right.
 2 **Q. Have you ever communicated with any other**
 3 **entities apart from manufacturers such as a**
 4 **distributor regarding the TDA Perks Supply program?**
 5 A. Regarding specifically around the TDA
 6 Perks Supply program, is that the question?
 7 **Q. That is my question.**
 8 A. I have not specifically talked to any
 9 distributor of specifically about the TDA Perks
 10 program.
 11 **Q. How about generally?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I had contact with the
 14 distributor with one of our competitors who called me
 15 to let me know that they were withdrawing from the TDA
 16 meeting.
 17 BY MR. SOLOMON:
 18 **Q. Which competitor are you referring to?**
 19 A. Patterson Dental.
 20 **Q. Patterson Dental.**
 21 **Who from Patterson Dental contacted you?**
 22 A. Dave Misiak is his name.
 23 **Q. Who is Dave Misiak?**
 24 A. I think at the time he was their vice
 25 president of sales.

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1 **Q. Do you know Mr. Misiak?**
 2 A. We have shook hands at a couple of trade
 3 meetings, but not on any kind of intimate level, no.
 4 **Q. How many times would you say you have**
 5 **communicated with Mr. Misiak in total?**
 6 A. Over the last several years or so,
 7 probably three or four.
 8 **Q. Does Mr. Misiak have your phone number?**
 9 A. Apparently so because he called me on it.
 10 **Q. Do you know how he got your phone number?**
 11 A. No idea.
 12 **Q. Did he call your office phone?**
 13 A. I don't remember whether it was my office
 14 or my cell number.
 15 **Q. Would you be surprised to know that**
 16 **Mr. Misiak had your cell phone number?**
 17 A. I would not be surprised because he can
 18 easily get it from the manufacturing community.
 19 **Q. Do you know whether he got it from**
 20 **someone in the manufacturing community?**
 21 A. I don't. I don't.
 22 **Q. So Mr. Misiak contacted you, do you**
 23 **recall when?**
 24 A. No. It was -- no, I don't recall exactly
 25 when it was, what year or whatever. It was -- I would

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1 have to look, I don't know.
 2 **Q. Why did Mr. -- I believe you stated that**
 3 **he called you to let you know that Patterson was**
 4 **withdrawing from the TDA meeting, is that right?**
 5 A. That's right.
 6 **Q. Is that all you discussed with**
 7 **Mr. Misiak?**
 8 A. Yes.
 9 **Q. Why did Mr. Misiak call you to provide**
 10 **that information?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: And I don't honestly know.
 13 BY MR. SOLOMON:
 14 **Q. How long was your discussion with**
 15 **Mr. Misiak?**
 16 A. Not very long, two, three minutes.
 17 **Q. Do you recall what else you discussed**
 18 **during that discussion with Mr. Misiak?**
 19 A. No, I don't.
 20 **Q. Were you surprised that Mr. Misiak was**
 21 **calling you to provide that information?**
 22 A. Yes.
 23 **Q. Why?**
 24 A. Because he has never called me before.
 25 **Q. Did you think it was out of the ordinary**

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1 **for Mr. Misiak to call you and provide you that**
2 **information?**

3 A. I would say, yes, he has never called me
4 before for any other reason so, yes.

5 **Q. Did you convey your surprise to**
6 **Mr. Misiak during your discussion?**

7 A. Surprise that he had called me?

8 **Q. Right.**

9 A. Is that what the question is?
10 No, I don't believe I did.

11 **Q. What did you tell Mr. Misiak?**

12 A. I told him we hadn't made a decision what
13 we were going to do with the TDA yet.

14 **Q. What else --**

15 MR. McDONALD: To be clear he said had
16 not.

17 THE WITNESS: We had not made a decision
18 what we were going to do with the TDA yet.

19 BY MR. SOLOMON:

20 **Q. And why did you tell that to Mr. Misiak?**

21 A. Just to let him know on our side we
22 hadn't made any decisions.

23 **Q. Why?**

24 A. Well, he was -- he may have asked, I
25 don't even remember.

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1 had made a decision? I would say it was irrelevant in
2 our decision, yes.

3 **Q. Did you tell anyone else about your**
4 **conversation with Mr. Misiak?**

5 A. Yes.

6 **Q. Who did you tell?**

7 A. Tim Sullivan.

8 **Q. Anyone else?**

9 A. Not that I can remember.

10 **Q. Is it possible that you told anyone else**
11 **about your discussion?**

12 A. At some point I probably did tell Joe
13 Cavaretta as well.

14 **Q. Anyone else?**

15 A. Not that I can remember.

16 **Q. Just so we have a clean record,**
17 **Mr. Steck, I just want to be able to finish my**
18 **question before you provide an answer.**

19 A. Sure.

20 **Q. So you communicated with Mr. Sullivan and**
21 **Mr. Cavaretta. But you can't recall anyone else with**
22 **whom you communicated about your conversation with**
23 **Mr. Misiak, is that right?**

24 A. I cannot recall. Dean may have been
25 copied on an e-mail that I sent, I don't know.

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1 **Q. So you told him because he asked you for**
2 **that information?**

3 A. I don't remember the exact conversation,
4 the nature of the conversation, but I did tell him
5 during the conversation that we had not made a
6 decision.

7 **Q. Did Mr. Misiak ask for that information?**

8 A. I don't recall.

9 **Q. Were you interested in whether Patterson**
10 **was attending the TDA trade show?**

11 A. Not really.

12 **Q. Did you tell Mr. Misiak that you weren't**
13 **interested in that information?**

14 A. No.

15 **Q. Why not?**

16 A. I felt it would be insulting.

17 **Q. Why would that be insulting?**

18 A. Well, I just didn't -- I didn't want to
19 -- he called me to tell me what they had already
20 communicated to the TDA so it was somewhat public
21 information, I just didn't really feel the need to say
22 anything other than we hadn't made a decision yet
23 ourselves.

24 **Q. Would you say it was irrelevant?**

25 A. That they weren't going or -- that they

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1 **Q. What did you tell Mr. Sullivan regarding**
2 **your conversation with Mr. Misiak?**

3 A. Exactly what I just told you, that he had
4 called me to inform me they weren't going.

5 **Q. What did Mr. Sullivan say in response to**
6 **that?**

7 A. Oh, I mean, it wasn't -- it wasn't a big
8 deal from our perspective because it wasn't going to
9 affect what we were going to do.

10 **Q. Why not?**

11 A. Because we make our decisions ourselves.

12 **Q. Why did you tell Mr. Sullivan about the**
13 **call with Mr. Misiak?**

14 A. I would tell Mr. Sullivan about any
15 contact from a competitor that involved the business
16 issue.

17 **Q. Why?**

18 A. Because we are not supposed to talk about
19 business issues with our competitors.

20 **Q. Why not?**

21 MR. McDONALD: Object to form.

22 THE WITNESS: It is not supposed to be
23 discussed, that is all, it is part of our policies.

24 BY MR. SOLOMON:

25 **Q. What policies are you referring to?**

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1 A. There is antitrust, anti -- there is all
 2 kinds of different policies we have to take the state
 3 up to, but anything like that that is significantly
 4 competitive or talks about a competitive issue I would
 5 have reported it.
 6 **Q. You would report it to who?**
 7 A. Mr. Sullivan.
 8 **Q. How long after you spoke with Mr. Misiak**
 9 **did you tell Mr. Sullivan about the conversation?**
 10 A. No idea. It wasn't long, no idea.
 11 **Q. Do you recall anything else Mr. Sullivan**
 12 **said in response to you telling him about your**
 13 **conversation with Mr. Misiak?**
 14 A. No.
 15 **Q. Did you tell Mr. Sullivan that you would**
 16 **be speaking with Mr. Misiak again?**
 17 A. I can't remember whether I told him or
 18 Joe that I would let him -- I would let Mr. Misiak
 19 know once we made a decision and informed the TDA, but
 20 I never did that.
 21 **Q. So you may have told Mr. Sullivan that**
 22 **you were getting back to Mr. Misiak about Schein's**
 23 **decision regarding the TDA?**
 24 A. That is possible.
 25 **Q. Do you recall --**

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1 A. I don't remember it, but it is possible.
 2 **Q. Did you and Mr. Sullivan discuss anything**
 3 **else surrounding the call with Mr. Misiak?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Not that I remember.
 6 BY MR. SOLOMON:
 7 **Q. Did you report the call to anyone else**
 8 **within Schein?**
 9 MR. McDONALD: Object to the form, asked
 10 and answered.
 11 THE WITNESS: Not that I have not already
 12 stated.
 13 BY MR. SOLOMON:
 14 **Q. You said you also spoke to Mr. Cavaretta**
 15 **surrounding your call with Mr. Misiak. What did you**
 16 **discuss with Mr. Cavaretta?**
 17 A. The same thing I discussed with
 18 Mr. Sullivan.
 19 **Q. Was this a phone call with Mr. Cavaretta?**
 20 A. No. He works in the same office as we
 21 do, I think it was a personal conversation.
 22 **Q. So you had an in-person conversation with**
 23 **Mr. Cavaretta surrounding your call with Mr. Misiak?**
 24 A. Yes, and the TDA situation in general,
 25 yes, right.

183

1 **Q. How many in-person conversations did you**
 2 **have with Mr. Cavaretta surrounding that topic?**
 3 A. I could --
 4 MR. McDONALD: Object to the form.
 5 Which topic, TDA or the phone call?
 6 BY MR. SOLOMON:
 7 **Q. Let's focus on the phone call first. How**
 8 **many conversations did you have with Mr. Cavaretta**
 9 **surrounding your phone call with Mr. Misiak?**
 10 A. I don't recall, but I can't imagine it
 11 was more than one.
 12 **Q. What else did you discuss with**
 13 **Mr. Cavaretta surrounding the phone call from**
 14 **Mr. Misiak?**
 15 A. That was it.
 16 **Q. Did Mr. Cavaretta have any reaction to**
 17 **you telling him that Mr. Misiak called you?**
 18 A. I don't remember.
 19 **Q. Did Mr. Misiak mention any other**
 20 **Patterson employees during your phone call with him?**
 21 A. No, I don't believe so.
 22 **Q. You don't recall whether he --**
 23 A. I don't recall, but I don't think he did.
 24 **Q. You testified earlier that you believe**
 25 **you discussed the TDA with Mr. Misiak for about two or**

184

1 **three minutes, is that right?**
 2 A. That is what I said, yes.
 3 **Q. So was your whole phone call longer than**
 4 **two or three minutes?**
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I already said it was a
 7 two- or three-minute call.
 8 BY MR. SOLOMON:
 9 **Q. So the entire call was two or three**
 10 **minutes?**
 11 A. Yes.
 12 **Q. And during that whole time you discussed**
 13 **the TDA Perks Supply program?**
 14 A. That was it. It was actually about the
 15 TDA meeting, not specifically about the perks.
 16 **Q. Thanks for that clarification.**
 17 **Have you discussed the TDA or the TDA**
 18 **Perks Supply program with any other distributors?**
 19 A. No.
 20 **Q. No one from Benco, right?**
 21 A. No, not myself, no.
 22 **Q. Schein ultimately did withdraw from the**
 23 **TDA trade show following the endorsement of Source**
 24 **One, is that right?**
 25 MR. McDONALD: Object to the form.

46 (Pages 181 to 184)

185

1 THE WITNESS: We did withdraw after a
 2 series of meetings I was not part of with TDA, tried
 3 to come to a middle ground, but we weren't able to.
 4 BY MR. SOLOMON:
 5 **Q. Do you know who was a part of those**
 6 **meetings?**
 7 A. It was Joe, it was Dean Kyle, and it was
 8 our regional manager who just happened to be my son at
 9 that time.
 10 **Q. For the record, who is your son?**
 11 A. Kyle Steck.
 12 **Q. Do you know when the decision was made to**
 13 **withdraw from the TDA trade show?**
 14 A. I don't know the exact date.
 15 **Q. Did you have any involvement in that**
 16 **decision?**
 17 A. Not really, no.
 18 **Q. When you say not really --**
 19 A. I was aware of the fact they were
 20 discussing it, but I was not involved in making the
 21 decision.
 22 **Q. How did you know that they were**
 23 **discussing it?**
 24 A. Because they told me they were going to
 25 go meet with the TDA.

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1 **Q. Mr. Cavaretta and Mr. Kyle Steck and**
 2 **Mr. Dean Kyle told you that?**
 3 A. Mr. Cavaretta told me that.
 4 **Q. When did he tell you that, do you recall?**
 5 A. I don't. Before the meeting.
 6 **Q. Whose decision was it ultimately to**
 7 **withdraw?**
 8 MR. McDONALD: Object to the form and
 9 foundation.
 10 THE WITNESS: The decision to withdraw is
 11 made by -- was made by Tim after a recommendation from
 12 Joe and Dean and presumably Kyle that we shouldn't go
 13 because they weren't able to come to any kind of
 14 agreement with them.
 15 BY MR. SOLOMON:
 16 **Q. Do you know when that recommendation was**
 17 **given to Mr. Sullivan?**
 18 A. Immediately after the meeting.
 19 **Q. Do you know when that meeting happened?**
 20 A. No.
 21 **Q. Do you have an approximate timeframe that**
 22 **you can think of?**
 23 A. It is all in the e-mail chains. It is
 24 all in the evidence. I don't know, a month, two
 25 weeks, three weeks before the meeting, I don't exactly

187

1 remember.
 2 MR. McDONALD: If you know tell him, but
 3 don't guess.
 4 THE WITNESS: Okay.
 5 BY MR. SOLOMON:
 6 **Q. What was your personal opinion the**
 7 **decision to withdraw from the TDA?**
 8 A. I agreed with it.
 9 **Q. Why?**
 10 A. Because I think we didn't approve of what
 11 the TDA was doing and felt that they had taken -- by
 12 endorsing a full line or full access, I should say,
 13 non-full-service source they were -- we didn't feel
 14 that was a good practice for a state association that
 15 really has always been politically somewhat neutral
 16 between distributor loyalties and obviously all the
 17 distributors were going to the meeting and we were
 18 putting money in their pocket by going to the meeting,
 19 we didn't like that.
 20 **Q. Why didn't Patterson like that -- strike**
 21 **that.**
 22 **Why didn't Schein like that?**
 23 A. Because, again, we are contributing to
 24 this meeting.
 25 Meetings as they stand alone sometimes

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1 aren't really profitable, in some cases they are loss
 2 leaders, you don't make a lot of money at them, they
 3 are expensive to go to. We felt we were supporting
 4 them by going.
 5 And then they decided -- they didn't even
 6 give us an opportunity to try to work with them after
 7 attempts on our side.
 8 **Q. How did Schein try to work with the TDA?**
 9 A. I wasn't part of those direct
 10 discussions, you would have to ask the people that
 11 were there.
 12 **Q. Do you know whether -- strike that.**
 13 **Do you know whether their withdrawal from**
 14 **the TDA was based on anything other than the**
 15 **endorsement of Source One?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I do not. I know that was
 18 part of the issue.
 19 BY MR. SOLOMON:
 20 **Q. Did you communicate with any third**
 21 **parties who are not manufacturers or distributors**
 22 **about the TDA's Perks Supply program?**
 23 A. Can you restate that?
 24 **Q. Sure.**
 25 **Did you communicate with any third**

47 (Pages 185 to 188)

189

1 **parties apart from manufacturers or distributors about**
2 **the TDA's Perks Supply program?**

3 A. I did communicate with a contact at the
4 ADA, I was here at the ADA's request for a meeting,
5 and I brought that up to one of the ADA officials, and
6 she asked me to send her information so I did.

7 **Q. What is the ADA?**

8 A. American Dental Association.

9 **Q. Who did you communicate with from the**
10 **ADA?**

11 A. I don't recall. It is in the e-mails.
12 But she was the person that was in charge of that at
13 the time, she had the position of being the liaison to
14 the state associations.

15 **Q. And you said -- you testified that the**
16 **ADA requested a meeting with you?**

17 A. With me and with one of our business
18 solutions executives because the ADA was interested in
19 having us help them find content for their members and
20 rebuilding their own website so we could be of help to
21 them.

22 **Q. Did the ADA ask you for a meeting to**
23 **specifically discuss the TDA?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: No, they did not.

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1 MR. McDONALD: Object to the form.

2 THE WITNESS: Not that I can recall.

3 BY MR. SOLOMON:

4 **Q. Are you aware of any communications**
5 **between someone from Schein and one of Schein's**
6 **competitors about the TDA Perks Supply program?**

7 A. Yes. I am aware that a regional manager
8 in the area had had a conversation or a phone call
9 from a member of the Benco team.

10 **Q. Do you recall who that regional manager**
11 **was?**

12 A. I believe it was Glenn Showgren.

13 **Q. Is Glenn Showgren still an employee of**
14 **Schein Dental?**

15 A. Yes.

16 **Q. Do you know when Mr. Showgren spoke to a**
17 **member of the Benco team?**

18 A. I do not.

19 **Q. Do you recall who the Benco employee**
20 **Mr. Showgren spoke with was?**

21 A. Yes.

22 **Q. Who was it?**

23 A. Ron Fernandez.

24 **Q. Do you know Ron Fernandez?**

25 A. I have met him. I don't know him, but I

190

1 BY MR. SOLOMON:

2 **Q. When did you meet with someone from the**
3 **ADA -- strike that.**

4 **When did you meet with someone from the**
5 **ADA?**

6 A. I don't remember the exact meeting and
7 time of that meeting, but it was obviously before all
8 the TDA decisions were made about the TDA meeting.

9 **Q. Okay.**

10 **Would you say that Schein took some time**
11 **to come to a decision surrounding its attendance at**
12 **the TDA trade show?**

13 A. Yes.

14 **Q. Do you know why that was the case?**

15 A. It took us a while to get a meeting with
16 the TDA for one thing, that was one issue. We wanted
17 to be sure before we made a decision.

18 **Q. And why was that?**

19 A. You want to be sure about a decision like
20 that before you did it, it was worth it to continue to
21 discuss it.

22 **Q. Any other reasons why -- strike that.**

23 **Any other reasons why Schein took a long**
24 **time to come to a decision regarding its attendance at**
25 **the TDA trade show?**

192

1 met him once.

2 **Q. Did Mr. Fernandez -- strike that.**

3 **Is Mr. Fernandez a former Schein**
4 **employee?**

5 A. Yes.

6 **Q. And do you know what Mr. Showgren**
7 **discussed with Mr. Fernandez?**

8 A. My recollection is it was around Benco's
9 -- whether Benco was going to participate in the TDA
10 as well and some other manufacturers who were not
11 happy with the TD decision as well.

12 **Q. How did you learn about the communication**
13 **between Mr. Showgren and Mr. Fernandez from Benco?**

14 A. An e-mail was showed to me at a
15 deposition.

16 **Q. Did you know about that communication**
17 **prior to the deposition you just referred to?**

18 A. Something may have been said to me, I
19 don't recall though.

20 **Q. When you say something may have been said**
21 **to you, what do you mean by that?**

22 A. Well, somebody may have said that Glenn
23 got a call from Ron Fernandez of Benco, it is possible
24 somebody said that to me, I just don't remember.

25 **Q. Are you aware of anyone else from Schein**

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1 **communicating with a competitor about the TDA Perks**
2 **Supply program?**

3 A. I am not aware, no, I can't remember, no.

4 **Q. Is it possible that those communications**
5 **took place?**

6 MR. McDONALD: Object to the form.

7 If you know tell him, but don't guess.

8 THE WITNESS: I don't know.

9 BY MR. SOLOMON:

10 **Q. Who would know?**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: You would have to talk to
13 people who are managing that area because there was a
14 lot of communication going on at that time about that,
15 I wasn't part of it.

16 BY MR. SOLOMON:

17 **Q. Who would I need to speak with to learn**
18 **that information?**

19 A. Whoever the managers were at the time of
20 that area.

21 **Q. Do you know who those people are?**

22 A. Glenn Showgren is one and my son was
23 another.

24 **Q. Anyone else?**

25 A. Dean Kyle.

195

1 BY MR. SOLOMON:

2 **Q. Mr. Steck, you have Exhibit 234 in front**
3 **of you. Do you recall this e-mail?**

4 A. Yes.

5 **Q. This is an e-mail chain about the TDA**
6 **Perks Supply program, is that right?**

7 A. Yes, it appears to be.

8 **Q. I want to direct your attention to Page 2**
9 **of the e-mail, Bates numbered HS-00005653. And for**
10 **the record this is an e-mail from December of 2013.**

11 **Focusing on the top there is an e-mail**
12 **from Mr. Dean Kyle and he says "FYI, Patterson pulled**
13 **out of the convention. I firmly believe they made the**
14 **move expecting us to follow suit." Do you see that**
15 **sentence I am referring to?**

16 A. At the very top of the page?

17 **Q. Right.**

18 A. Yes, I see that.

19 **Q. Do you know how Mr. Dean knew that**
20 **Patterson was withdrawing from the TDA convention as**
21 **referenced in this e-mail?**

22 MR. McDONALD: Mr. Kyle, not Mr. Dean.

23 THE WITNESS: It is Dean Kyle.

24 MR. SOLOMON: I will reask it.

25

194

1 **Q. Anyone else?**

2 MR. McDONALD: Object to form.

3 THE WITNESS: Probably Joe Cavaretta.

4 BY MR. SOLOMON:

5 **Q. Anyone else?**

6 A. That is all I know.

7 **Q. Are you aware of anyone else from Schein**
8 **communicating with a competitor about Schein's**
9 **decision to withdraw from the 2014 TDA trade show?**

10 MR. McDONALD: Object to the form,
11 mischaracterizes his testimony.

12 THE WITNESS: I am not aware, no, not
13 that I can remember, no.

14 BY MR. SOLOMON:

15 **Q. Are you aware of anyone else from Schein**
16 **communicating with a manufacturer about the TDA Perks**
17 **Supply program for the decision to withdraw from the**
18 **TDA in 2014?**

19 MR. McDONALD: Other than what he has
20 already testified to?

21 MR. SOLOMON: Right.

22 THE WITNESS: No.

23 (Document identified as Exhibit 234 for
24 identification.)

25

196

1 BY MR. SOLOMON:

2 **Q. Do you know how Mr. Kyle knew that**
3 **Patterson was withdrawing from the TDA convention as**
4 **referenced in this e-mail?**

5 A. I believe it was public information.

6 **Q. What do you mean by it was public**
7 **information?**

8 A. They notified the TDA, it was public, it
9 was out there, everybody knew they weren't going.

10 **Q. How did you form that understanding?**

11 A. Because any time a company makes a
12 decision like that it gets around, they tell their
13 people they are not going and they tell other people.

14 **Q. Do you know whether Patterson's decision**
15 **regarding the TDA trade show attendance was public**
16 **information when you spoke with Mr. Misiak on the**
17 **telephone?**

18 A. I believe it was.

19 **Q. How do you know it was public at that**
20 **time?**

21 A. Because I believe they had already
22 informed them.

23 **Q. And how did you learn that?**

24 A. I think it was afterwards that I had
25 learned that they had already informed them.

49 (Pages 193 to 196)

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1 **Q. Do you know whether it was public**
 2 **information at the time you spoke with Mr. Misiak?**
 3 A. You just asked that question and I said I
 4 assumed it was, yes.
 5 **Q. But you don't know for sure?**
 6 MR. McDONALD: Object to the form, asked
 7 and answered.
 8 THE WITNESS: I am pretty sure it was.
 9 BY MR. SOLOMON:
 10 **Q. And Mr. Misiak told you it was public**
 11 **information during your conversation?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I don't remember the exact
 14 words he said, but I believe it was he said we have
 15 informed the TDA we are not going.
 16 BY MR. SOLOMON:
 17 **Q. Did that mean it was public information**
 18 **in your mind?**
 19 A. Yes, pretty much, yes.
 20 **Q. Did you do anything else to determine**
 21 **whether that information was actually public?**
 22 A. No, not that I can remember.
 23 **Q. Turning to the first page of the e-mail,**
 24 **you forward this to Mr. Sullivan. Rather the e-mail**
 25 **is forwarded to Mr. Sullivan and then at some point it**

198

1 **looks like at 8:33 a.m. you say "I talked to the ADA**
 2 **about this when I was there and sent them the info,"**
 3 **do you see that?**
 4 A. Yes.
 5 **Q. Do you recall what information you**
 6 **provided to the ADA?**
 7 A. I just testified to that, it was the
 8 information on the TDA Perks.
 9 **Q. What information specifically did you**
 10 **provide?**
 11 A. I think it was an ad that they had had in
 12 a magazine or something.
 13 **Q. And why did you provide that information**
 14 **to the ADA?**
 15 A. I was making them aware of the fact that
 16 one of their state associations was doing that.
 17 **Q. Why?**
 18 A. Because it was a new development at the
 19 time.
 20 **Q. And why did you want the ADA to know**
 21 **about that?**
 22 A. Because I thought it was relevant.
 23 **Q. Relevant to what?**
 24 A. Relevant to the fact that their state
 25 associations, which they mutually collect dues for,

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1 was trying to endorse people who typically didn't
 2 support them. I mean, the ADA had a petition to us
 3 for our support in terms of constructing business
 4 solutions, that is why I was there.
 5 I was just making them aware of it, that
 6 is all, she asked to see it.
 7 **Q. Who is she?**
 8 A. The person who I have already referred to
 9 several times at the ADA meeting that I had, I can't
 10 remember her name. If you look in the e-mails I am
 11 sure it is in there.
 12 **Q. How many times did you meet with someone**
 13 **from the ADA surrounding the TDA Perks Supply program?**
 14 A. I only came to the ADA once.
 15 **Q. Did you have any conversations apart from**
 16 **your meeting at the ADA with someone from the ADA**
 17 **about the TDA Perks Supply program?**
 18 A. I had a conversation with an old client
 19 of mine who was about to become ADA president and told
 20 her about the situation.
 21 **Q. Who is the client you are referring to?**
 22 A. Carol Summerhays.
 23 **Q. Who is Carol Summerhays?**
 24 A. She is a dentist in San Diego.
 25 **Q. You said she is a former client?**

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1 A. I used to be her salesperson, she was a
 2 client, she is retired now.
 3 **Q. So Carol Summerhays was the ADA president**
 4 **at the time of this e-mail?**
 5 A. No. She was about to become ADA
 6 president.
 7 **Q. And what did you discuss with**
 8 **Ms. Summerhays?**
 9 A. I told her about the CDA -- excuse me,
 10 the TDA's decision to go into this business and that
 11 it was causing issues with the dealer community.
 12 **Q. Is it fair to say that you wanted**
 13 **Ms. Summerhays to take some sort of action in response**
 14 **to the information you provided her?**
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I wanted her to be aware of
 17 it if she was going to be the ADA president.
 18 BY MR. SOLOMON:
 19 **Q. Why?**
 20 A. I have already answered why I thought it
 21 was relevant to the ADA, same reason.
 22 **Q. Did you want her to do something about**
 23 **it?**
 24 A. I would not have been upset had she
 25 talked to the TDA to find out why they were doing it,

50 (Pages 197 to 200)

201	<p>1 but I didn't ask for any action.</p> <p>2 Q. Did you want her to do something about</p> <p>3 it?</p> <p>4 MR. McDONALD: Object to form.</p> <p>5 THE WITNESS: I didn't expect her to do</p> <p>6 anything about it.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. So you just provided the information to</p> <p>9 her so she knew about it?</p> <p>10 A. Yes.</p> <p>11 Q. But you didn't want her to take any</p> <p>12 action in response?</p> <p>13 A. No, I did not ask her for any action.</p> <p>14 Q. Turning to the next e-mail here,</p> <p>15 Mr. Sullivan -- actually, let's stay on that e-mail</p> <p>16 from 8:33 a.m., just kind of turning to the next</p> <p>17 sentence, you say "personally I think we should get</p> <p>18 together with a group of other dealers and</p> <p>19 manufacturers and send them a petition." Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Is it fair to say that you were proposing</p> <p>23 that Schein and other dealers stop the TDA Perks</p> <p>24 Supply program through a petition?</p> <p>25 MR. McDONALD: Object to the form.</p>	203	<p>1 would be?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Who exhibits at their</p> <p>4 meeting is a public record, Patterson, Benco, it is</p> <p>5 Midway Dental, Midwest Dental, it is a bunch of other</p> <p>6 independents in Texas, it is manufacturers all up and</p> <p>7 do you know the line large and small.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. You say a few individual letters have</p> <p>10 already gone out -- strike that.</p> <p>11 A few individual letters have already</p> <p>12 gone to them. Letters from who were you referring to</p> <p>13 there?</p> <p>14 A. I think several people had written -- my</p> <p>15 understanding was a few manufacturers or other people</p> <p>16 had written letters to them but I had not seen them.</p> <p>17 Q. How did you know about them?</p> <p>18 A. I was told about them by somebody, I am</p> <p>19 not sure who.</p> <p>20 Q. You said letters from other manufacturers</p> <p>21 and other people, what did you mean by other people?</p> <p>22 A. Other companies that would have exhibited</p> <p>23 at the TDA.</p> <p>24 Q. Other distributors?</p> <p>25 A. Possibly.</p>
202	<p>1 THE WITNESS: First of all, I regret</p> <p>2 writing that.</p> <p>3 Secondly is the TDA need to know they</p> <p>4 were upsetting people, that is the way I chose to put</p> <p>5 it.</p> <p>6 I regret writing it the way I did.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Why do you regret writing it?</p> <p>9 A. Because we were never to get together</p> <p>10 with a group of other dealers and manufacturers, we</p> <p>11 would have sent our own letter, that just isn't</p> <p>12 realistic.</p> <p>13 Q. Why did you write it?</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 THE WITNESS: As I said, I regret writing</p> <p>16 it.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. What other dealers were you referring to</p> <p>19 when you wrote this e-mail?</p> <p>20 A. I wasn't referring to anybody</p> <p>21 specifically.</p> <p>22 Q. Were you referring to anyone generally?</p> <p>23 A. I was referring to anybody who exhibits</p> <p>24 at their meeting.</p> <p>25 Q. Can you give me some examples of who that</p>	204	<p>1 MR. McDONALD: Object to form.</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. Did you know specifically about any</p> <p>4 letters from any other distributors?</p> <p>5 A. No.</p> <p>6 Q. Did you think that the TDA would be more</p> <p>7 receptive to Schein's position if it worked with</p> <p>8 Patterson and Benco?</p> <p>9 MR. McDONALD: Object to the form.</p> <p>10 THE WITNESS: I don't think I thought</p> <p>11 about that at all, I just was -- felt we should</p> <p>12 express the fact we weren't happy with the decision</p> <p>13 they had made.</p> <p>14 BY MR. SOLOMON:</p> <p>15 Q. And I know you say you regret writing</p> <p>16 this sentence regarding working with other dealers and</p> <p>17 manufacturers, but I am trying to understand, you</p> <p>18 know, back then at the time of this e-mail on</p> <p>19 December, 2013 why you thought it was a good idea?</p> <p>20 MR. McDONALD: Object to form.</p> <p>21 THE WITNESS: I simply thought the more</p> <p>22 they heard from people they weren't happy with the way</p> <p>23 they were going about the TDA Perks program the better</p> <p>24 chance they would reconsider it.</p> <p>25</p>

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1 BY MR. SOLOMON:

2 **Q. Had you discussed this idea with anyone**
3 **prior to writing this e-mail in December of 2013?**

4 A. No.

5 **Q. And that would apply both internally to**
6 **Schein as well as externally from Schein?**

7 A. Yes, I didn't discuss it with anybody.

8 **Q. Okay.**

9 **And then turning to a few individual**
10 **letters have already gone out to them, what does them**
11 **refer to in this sentence?**

12 A. The TDA.

13 **Q. It looks like Mr. Sullivan responds to**
14 **your e-mail and he says "don't think we can do the**
15 **petition idea... lawyers call that collusion." Do you**
16 **see where I am referring to?**

17 A. Yes.

18 **Q. Do you have any understanding as to what**
19 **Mr. Sullivan meant in his statement?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: Yes. He meant that when
22 you get together with other people for that kind of a
23 thing that people can say you were colluding with one
24 another.

25 As I said, I regret writing the

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1 **statement that organized dentistry is a mess?**

2 A. Organized dentistry is under stress
3 because a lot of younger dentists are not joining the
4 state and dental associations and so they are trying
5 to find anyway they can to make themselves more
6 relevant including a buying program like this.

7 **Q. You also respond to Mr. Sullivan's**
8 **earlier e-mail "Can ADA influence TDA?" Do you see**
9 **that?**

10 A. That was his e-mail to me.

11 **Q. Right.**

12 **Do you know why Mr. Sullivan was asking**
13 **whether the ADA could influence the TDA?**

14 A. Just wanted to know. I explained it in
15 the next paragraph.

16 **Q. Did you think at the time of writing this**
17 **e-mail that the ADA could influence the TDA?**

18 A. I didn't know.

19 **Q. So you had no opinion one way or the**
20 **other?**

21 A. Not really.

22 **Q. Was it your intent to provide information**
23 **to the ADA so that it can influence the TDA?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: I had no expectation of

206

1 statement.

2 BY MR. SOLOMON:

3 **Q. Did you agree with his assessment that**
4 **the petition idea might be considered collusion?**

5 A. No.

6 MR. McDONALD: Object to the form.

7 THE WITNESS: I am not a lawyer so I
8 don't have an opinion on that. It wasn't a good idea.

9 BY MR. SOLOMON:

10 **Q. Did you tell Mr. Sullivan after this**
11 **e-mail that you thought it wasn't a good idea?**

12 A. I don't think we discussed it after this
13 e-mail.

14 **Q. Were you surprised that Mr. Sullivan**
15 **suggested that the petition idea might be collusion?**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: I don't remember whether I
18 was surprised or not.

19 BY MR. SOLOMON:

20 **Q. Turning to the top of this e-mail, you**
21 **respond to Mr. Sullivan. Also Joe Cavaretta is copied**
22 **on this e-mail. "They asked for the info after I**
23 **explained the conflict... organized dentistry is a**
24 **mess."**

25 **What were you referring to in your**

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1 anything. I just simply had mentioned it in a meeting
2 and they asked for information.

3 BY MR. SOLOMON:

4 **Q. Did you have any other follow-up**
5 **communications with either Ms. Summerhays or someone**
6 **from the ADA regarding the TDA following this e-mail?**

7 A. Not that I can remember.

8 MR. SOLOMON: We have been going a little
9 while now, it is almost 20 after, we can take a break
10 now because I think if we get into some more documents
11 we might be going a little while.

12 MR. McDONALD: That is fine.

13 MR. SOLOMON: Let's break for lunch.

14 (Lunch recess taken.)

209

1 AFTERNOON SESSION
 2 BY MR. SOLOMON:
 3 **Q. Before the break we talked about a phone**
 4 **conversation you had with Mr. Misiak in which he told**
 5 **you that Patterson would not be attending the TDA**
 6 **annual trade show. Do you recall that discussion?**
 7 A. Yes.
 8 **Q. My question to you is about whether he**
 9 **told you or asked that Schein take any action in**
 10 **response to him telling you about that information, so**
 11 **let me ask the question, did Mr. Misiak ask or**
 12 **encourage Schein to take any action with respect to**
 13 **the TDA or the TDA Perks Supply program during your**
 14 **phone conversation with him?**
 15 A. I don't believe so, no.
 16 **Q. We also talked about you mentioned a**
 17 **Schein policy, Schein antitrust policy that you**
 18 **thought was implicated by your conversation with**
 19 **Mr. Misiak. Do you recall that?**
 20 A. Not really. It wasn't confidential
 21 information. At least I didn't believe it to be
 22 confidential information.
 23 But if I was contacted by my member of a
 24 competitive company I would tell my boss.
 25 **Q. Right.**

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1 **My question, I am not as interested in**
 2 **whether or not it is confidential information, but I**
 3 **think you mentioned that -- you mentioned an antitrust**
 4 **policy that you thought was implicated. Do you recall**
 5 **that?**
 6 A. Yes, sure.
 7 **Q. Is that a written policy?**
 8 A. It is a Corpedia practice that we take
 9 through -- there is a written policy, but it is part
 10 of a training program we go through every year.
 11 **Q. What is the training program called?**
 12 A. It is called Corpedia, it is an online
 13 program.
 14 **Q. How long does the training take to**
 15 **complete?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: There are different modules
 18 in the Corpedia and they take different times, I
 19 believe this one is about an hour.
 20 BY MR. SOLOMON:
 21 **Q. And you have taken this training on more**
 22 **than one occasion?**
 23 A. Every year.
 24 **Q. Do you recall when you started taking the**
 25 **training?**

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1 A. I do not.
 2 **Q. Do you know who else at Schein is**
 3 **required to take the Corpedia training?**
 4 A. I believe everybody above a certain
 5 level, and I am not certain what that level is.
 6 **Q. So how does that Corpedia training relate**
 7 **to your conversation on the phone with Mr. Misiak?**
 8 MR. McDONALD: Object to form.
 9 THE WITNESS: Again, the training deals
 10 primarily with confidential information, whether it is
 11 -- you are not allowed to talk about confidential
 12 information obviously with a competitor of the
 13 company, and I don't believe I did.
 14 BY MR. SOLOMON:
 15 **Q. Do you believe that what Mr. Misiak told**
 16 **you was public, right?**
 17 A. I did.
 18 **Q. And so why did you think that one of**
 19 **Schein's antitrust policies was implicated by your**
 20 **phone call with Mr. Misiak?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't know that I said
 23 that.
 24 What I said was that I would report
 25 anything to my boss that I thought would be

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1 potentially even related to that.
 2 BY MR. SOLOMON:
 3 **Q. Potentially related to what?**
 4 A. To anything involving competitors or
 5 potentially antitrust.
 6 **Q. Did you think that your phone call with**
 7 **Mr. Misiak potentially involved an antitrust**
 8 **violation?**
 9 A. No.
 10 **Q. Why not?**
 11 A. Because I believed it to be public
 12 information.
 13 **Q. I think we are going to take a look at**
 14 **another document.**
 15 **(Document identified as Exhibit 235 for**
 16 **identification.)**
 17 BY MR. SOLOMON:
 18 **Q. Mr. Steck, the court reporter has handed**
 19 **you Exhibit 235. Please let me know when you have had**
 20 **a chance to take a look.**
 21 A. Okay, I am familiar with it.
 22 **Q. Do you recall this e-mail?**
 23 A. Yes.
 24 **Q. This is an e-mail chain between yourself,**
 25 **Mr. Cavaretta, Mr. Dean, and Mr. Kyle Steck, is that**

53 (Pages 209 to 212)

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1 right?
 2 A. Yes.
 3 **Q. I would like to just focus your attention**
 4 **on the first page of the e-mail, let's see -- it is**
 5 **actually the second page of the e-mail, my apologies.**
 6 **You tell Mr. Dean Kyle, Mr. Kyle Steck, and**
 7 **Mr. Cavaretta, "Guys, I have to get back to PDCO on**
 8 **whether or not we are attending the TDA." Do you see**
 9 **that?**
 10 A. Yes.
 11 **Q. Does PDCO refer to Patterson?**
 12 A. Yes.
 13 **Q. Why did you need to get back to Patterson**
 14 **about whether Schein was attending the TDA?**
 15 A. I must have said during the conversation
 16 I would let Dave Misiak know once we made a decision
 17 and gotten to the TDA, I assume that is what I said.
 18 **Q. Do you know why you would have told**
 19 **Mr. Misiak that?**
 20 A. Just as courtesy for him telling me.
 21 **Q. Any other reason why you would have told**
 22 **Mr. Misiak what Schein was doing --**
 23 A. No.
 24 **Q. -- with respect to the TDA?**
 25 A. No.

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1 **Q. So it was just a courtesy?**
 2 A. That is the way I saw it, yes.
 3 **Q. Did Mr. Misiak ask you to get back to**
 4 **him?**
 5 A. I don't remember.
 6 **Q. Is it possible that he did?**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I wouldn't want to
 9 speculate, I can't remember whether he asked me to or
 10 not.
 11 BY MR. SOLOMON:
 12 **Q. And this e-mail is from January 21, 2014.**
 13 A. Right.
 14 **Q. Do you recall how much time after you**
 15 **wrote this e-mail your call -- strike that.**
 16 **Do you recall when you spoke to**
 17 **Mr. Misiak in relation to this January 21, 2014**
 18 **e-mail?**
 19 A. I never spoke to Mr. Misiak after that.
 20 **Q. How much -- strike that.**
 21 **You spoke to Mr. Misiak prior to this**
 22 **e-mail, right?**
 23 A. Yes.
 24 **Q. You recall when that was?**
 25 A. No, late -- no. Sometime in December, I

215

1 think, but I am not sure.
 2 **Q. So it would have been within a few weeks**
 3 **to a month of writing this e-mail?**
 4 A. Possibly.
 5 **Q. Okay.**
 6 **Did you feel any obligation to get back**
 7 **to Mr. Misiak regarding Schein's plans with respect to**
 8 **the TDA trade show?**
 9 A. I think this e-mail says I felt it was
 10 courtesy to get back, obligation, courtesy, you know,
 11 take your pick.
 12 **Q. Did Patterson's decision not to attend**
 13 **the TDA influence your opinion as to whether Schein**
 14 **should attend the TDA trade show?**
 15 A. No.
 16 **Q. Why not?**
 17 A. Because I knew we had what we believed to
 18 be a good relationship with the TDA and we were
 19 willing to try to meet with them and talk to them
 20 about it before we made any final decisions.
 21 **Q. Did you tell Mr. Misiak -- do you recall**
 22 **whether you told Mr. Misiak that their decision not to**
 23 **attend the TDA was not material to you?**
 24 A. I don't recall saying anything.
 25 **Q. Just kind of turning to the first page**

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1 here, Mr. Misiak -- I am sorry, Mr. Cavaretta responds
 2 to your e-mail, and he says, "Sorry, Dave, I thought
 3 we had a phone conversation about this prior to the
 4 FMM confirming our direction." Do you see that?
 5 A. Yes.
 6 **Q. And I think you mentioned previously that**
 7 **FMM refers to the field management meeting?**
 8 A. Correct.
 9 **Q. Do you recall a phone conversation with**
 10 **Mr. Cavaretta about Patterson's -- strike that.**
 11 **Do you recall a phone conversation with**
 12 **Mr. Cavaretta about Patterson's decision not to attend**
 13 **the TDA?**
 14 A. I don't remember.
 15 **Q. Do you have any idea as to what**
 16 **Mr. Cavaretta is referring to here?**
 17 A. He is saying he thought we had a phone
 18 conversation, obviously I forgot we had a phone
 19 conversation or we didn't have a phone conversation, I
 20 am not sure.
 21 **Q. And that phone conversation, according to**
 22 **Mr. Cavaretta in this e-mail, was part of a field**
 23 **management meeting, right?**
 24 A. It was prior to that.
 25 **Q. My apologies, it was prior to the field**

54 (Pages 213 to 216)

217	<p>1 management meeting.</p> <p>2 Do you know whether anyone else would</p> <p>3 have been a part of that phone conversation other than</p> <p>4 Mr. Cavaretta and yourself?</p> <p>5 A. I would doubt it, but I don't remember.</p> <p>6 Q. Let's move on to the next e-mail, you</p> <p>7 respond to Mr. Cavaretta and you say "We did. I just</p> <p>8 wanted to be double sure before telling PDCO</p> <p>9 anything."</p> <p>10 So my question to you is why did you want</p> <p>11 to be doubly sure before telling Patterson about</p> <p>12 Schein's plans?</p> <p>13 A. I wanted to give him accurate</p> <p>14 information. At this time we were still going back</p> <p>15 and forth whether we were going to go or not. If you</p> <p>16 read the e-mail it says we were going to go and then</p> <p>17 not go in years coming. I wasn't sure where we stood.</p> <p>18 Q. Why were you interested in giving</p> <p>19 Patterson accurate information?</p> <p>20 A. Well, he had given me accurate</p> <p>21 information. Again, I felt courtesy to call him back</p> <p>22 and to let him know what we were doing, but I didn't</p> <p>23 want to tell him something wrong.</p> <p>24 Q. Why not?</p> <p>25 A. Just wouldn't be good. I try to be</p>	219	<p>1 Q. Specifically Mr. Misiak?</p> <p>2 MR. McDONALD: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Were you concerned about Mr. Misiak's</p> <p>6 opinion of you if you provided him with inaccurate</p> <p>7 information?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: I didn't really think about</p> <p>10 it.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. Were you concerned about Patterson's</p> <p>13 reaction to what Schein decided with respect to the</p> <p>14 TDA?</p> <p>15 A. No, no, we make our own decision.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. Well, they might agree with it, they</p> <p>18 might disagree with it, it doesn't really bother me at</p> <p>19 all.</p> <p>20 Q. Do you know whether anyone else at Schein</p> <p>21 was concerned about providing accurate information to</p> <p>22 Patterson regarding the TDA trade show?</p> <p>23 MR. McDONALD: Object to the form,</p> <p>24 mischaracterizes the testimony.</p> <p>25 THE WITNESS: I don't recall.</p>
218	<p>1 accurate with everybody.</p> <p>2 Q. So you were concerned about providing</p> <p>3 inaccurate information to a competitor?</p> <p>4 MR. McDONALD: Object to the form.</p> <p>5 THE WITNESS: I was concerned about</p> <p>6 providing inaccurate information to anybody. I wanted</p> <p>7 to tell him the truth when I knew what I knew, I</p> <p>8 didn't know at that point.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Did you think there would be any</p> <p>11 consequence to providing inaccurate information to</p> <p>12 Mr. Misiak?</p> <p>13 A. Never thought about it.</p> <p>14 MR. McDONALD: Object to form.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Did providing inaccurate information to</p> <p>17 Patterson concern you in any way?</p> <p>18 A. Not really, no.</p> <p>19 Q. You say not really.</p> <p>20 A. I mean -- no, I just -- I wouldn't -- I</p> <p>21 wouldn't knowingly provide inaccurate information to</p> <p>22 anyone.</p> <p>23 Q. So you wanted to make sure that you</p> <p>24 provided Patterson with correct information?</p> <p>25 A. Yes, that's right.</p>	220	<p>1 Somebody else talking to Patterson, is</p> <p>2 that what you are saying?</p> <p>3 BY MR. SOLOMON:</p> <p>4 Q. Well, my question was specifically about</p> <p>5 whether anyone else at Schein was concerned about</p> <p>6 providing accurate information to Patterson about</p> <p>7 Schein's plans with respect to the TDA trade show.</p> <p>8 A. I have no idea.</p> <p>9 MR. McDONALD: Hang on, please pause.</p> <p>10 Object to the form.</p> <p>11 THE WITNESS: No idea.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. Did you ever get back to Mr. Misiak after</p> <p>14 writing this e-mail on January 21, 2014?</p> <p>15 A. No.</p> <p>16 Q. So you never called Mr. Misiak after</p> <p>17 this?</p> <p>18 A. No.</p> <p>19 Q. Did you ever e-mail him after this?</p> <p>20 A. I --</p> <p>21 MR. McDONALD: Object to the form,</p> <p>22 mischaracterizes the document. This is not an e-mail.</p> <p>23 THE WITNESS: No, I had e-mailed him and</p> <p>24 telling him I would get back to him, but I did not get</p> <p>25 back to him.</p>

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1 BY MR. SOLOMON:
 2 **Q. Why did you not get back to Mr. Misiak?**
 3 A. Because when we chose to withdraw it was
 4 public information very quickly and got every
 5 everywhere, everybody knew, there was no reason to get
 6 back.
 7 **Q. And that would have been in the April,
 8 2014 timeframe when Schein made a decision, right?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I believe so.
 11 BY MR. SOLOMON:
 12 **Q. Mr. --**
 13 MR. McDONALD: What is redacted, do you
 14 know, did you all do that?
 15 MR. SOLOMON: Yes, we did.
 16 MR. McDONALD: What is it?
 17 MR. SOLOMON: This was a document
 18 produced by Patterson, it has a Patterson Bates number
 19 on it, so that would have been an internal e-mail that
 20 took place at Patterson.
 21 MR. McDONALD: Okay.
 22 MR. SOLOMON: It is possible that one of
 23 the witnesses might have seen that in one of the other
 24 litigations, I don't know, but we redacted it just to
 25 be careful.

222

1 MR. McDONALD: Okay.
 2 (Document identified as Exhibit 236 for
 3 identification.)
 4 BY MR. SOLOMON:
 5 **Q. Mr. Steck, have you had a chance to look
 6 at Exhibit 236?**
 7 A. Yes.
 8 **Q. Do you recall this e-mail?**
 9 A. I recall sending it, yes.
 10 **Q. And this is from you to Mr. Misiak on
 11 January 21, 2014, and the subject is Texas.**
 12 A. Uh-huh.
 13 **Q. When you say "Hi, Dave. I will be
 14 calling you to let you know about our decision on the
 15 matter we recently discussed in the next couple of
 16 days."
 17 What does the matter we recently
 18 discussed referred to in your e-mail?**
 19 A. It refers to the fact that he had called
 20 me to let me know he wouldn't be attending the TDA.
 21 **Q. You said you would be getting back to him
 22 about Schein's decision, right?**
 23 A. Yes.
 24 **Q. So that would refer to Schein's decision
 25 about whether or not to attend the TDA?**

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1 A. Yes.
 2 **Q. Did you tell anyone else at Schein apart
 3 from Mr. Cavaretta that you would be contacting
 4 Mr. Misiak as you have in this e-mail, Exhibit 236?**
 5 A. I don't recall.
 6 **Q. Did you ever discuss this e-mail with
 7 Mr. Sullivan?**
 8 A. I don't know that I discussed this e-mail
 9 with Mr. Sullivan, no, I don't recall if I did or not.
 10 **Q. You say that you would be getting back to
 11 Patterson in the next couple of days.
 12 What did you plan to tell Mr. Steck --
 13 strike that.
 14 What did you plan to tell Mr. Misiak when
 15 you got back to him?**
 16 A. I would tell him if we made a decision,
 17 that is what the e-mail says.
 18 **Q. And why did you want to get back to him
 19 within a couple of days?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I thought that we were
 22 going to be making a decision in the next couple of
 23 days. It turned out it took several -- a couple of
 24 months.
 25

224

1 BY MR. SOLOMON:
 2 **Q. So this e-mail in January, 2014 at
 3 5:23 p.m., was this the last time you communicated
 4 with Mr. Misiak?**
 5 A. Yes.
 6 **Q. And you -- is it your testimony that you
 7 never communicated with Mr. Misiak again after this
 8 e-mail?**
 9 A. I am going to qualify that, I never
 10 communicated with Mr. Misiak about the TDA since then.
 11 **Q. Mr. Steck, as you can see this e-mail was
 12 produced to us by it has a Bates number that
 13 represents it originated from Patterson Dental.**
 14 A. Yes.
 15 **Q. We didn't find a corresponding copy of
 16 this e-mail in Henry Schein's production.
 17 I am wondering if do you know whether
 18 this is something that would have stayed in your
 19 e-mail records after the sending of this e-mail.**
 20 A. I can't imagine why it wouldn't, a lot of
 21 other ones were in there, I don't know why this wasn't
 22 in there.
 23 **Q. Do you recall ever deleting this e-mail?**
 24 A. Not specifically, no.
 25 **Q. Generally?**

56 (Pages 221 to 224)

225

1 A. No.
 2 **Q. Is it possible that you did at some point**
 3 **after writing this e-mail?**
 4 MR. McDONALD: Object to the form, don't
 5 speculate.
 6 THE WITNESS: No, I don't know.
 7 BY MR. SOLOMON:
 8 **Q. Would you have expected this to have been**
 9 **in Schein's document production?**
 10 A. Yes.
 11 (Document identified as Exhibit 237 for
 12 identification.)
 13 BY MR. SOLOMON:
 14 **Q. Mr. Steck, the court reporter has handed**
 15 **you Exhibit 237. Please let me know when you have had**
 16 **a chance to look it over.**
 17 A. Okay.
 18 **Q. This document is Bates labeled Henry**
 19 **Schein-000012343. Strike that.**
 20 **Henry Schein-000012169 is the first page**
 21 **and the second page is Henry Schein 0000012343. And**
 22 **these two pages represent excerpts that were taken**
 23 **from a document that was produced to us by Henry**
 24 **Schein.**
 25 A. Okay.

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1 **Q. I would just like to direct your**
 2 **attention to Page 2 of the document, about six lines**
 3 **from the top. There is an entry from January 6, 2014**
 4 **at 12:42 p.m. Do you see that, Mr. Steck?**
 5 A. I do.
 6 **Q. And I would just like to confirm the**
 7 **left-hand most column in this document has a phone**
 8 **number there (414) 688-1925. Am I correct that that**
 9 **is your cell phone number?**
 10 A. Yes, it is.
 11 **Q. And turning to a few columns over there**
 12 **is a To line and there is another number**
 13 **(651) 686-1652. Do you see that?**
 14 A. I do.
 15 **Q. Do you recognize that number?**
 16 A. No.
 17 **Q. Do you have any doubt that this -- strike**
 18 **that.**
 19 **Is it possible that this is Mr. Misiak's**
 20 **cell phone number?**
 21 A. I have no idea, I don't have his cell
 22 phone number.
 23 **Q. You have no reason to doubt that would be**
 24 **Mr. Misiak's cell phone number, right?**
 25 MR. McDONALD: Object to form.

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1 THE WITNESS: I don't know. It could be,
 2 could not be, I talked to other people in St. Paul,
 3 too.
 4 BY MR. SOLOMON:
 5 **Q. And as you just mentioned, the phone**
 6 **number is associated with a St. Paul, Minnesota**
 7 **address, do you see that?**
 8 A. Yes.
 9 **Q. And then one line over from direction, it**
 10 **says incoming, do you see that?**
 11 A. Yes.
 12 **Q. Does that represent that this was an**
 13 **incoming call to your cell phone?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I have not seen this report
 16 before, but I will presume that that is what that
 17 means.
 18 BY MR. SOLOMON:
 19 **Q. According to the duration column of this**
 20 **document the call that we are focusing on lasted for**
 21 **about 14 minutes, do you see that?**
 22 A. Yes.
 23 **Q. Does this refresh your recollection about**
 24 **a conversation you had with Mr. Misiak in January**
 25 **of 2014?**

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1 A. Again, I am not sure this is his phone
 2 number, this phone number, then I guess it was 14
 3 minutes, but I don't know that that is the case. I
 4 get calls from other places, too.
 5 **Q. And assuming this is Mr. Misiak's phone**
 6 **number --**
 7 MR. McDONALD: Are you representing that?
 8 MR. SOLOMON: I will represent that this
 9 is Mr. Misiak's office phone number.
 10 MR. McDONALD: We can cut through this if
 11 we just make that representation to him.
 12 BY MR. SOLOMON:
 13 **Q. So my question again is does this refresh**
 14 **your recollection about a conversation with Mr. Misiak**
 15 **in early January, 2014 about the TDA?**
 16 A. Yes.
 17 **Q. And this would have been the phone**
 18 **conversation you earlier testified about with**
 19 **Mr. Misiak, is that right?**
 20 A. Yes.
 21 **Q. And you previously testified that it was**
 22 **only two or three minutes, do you recall that?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: That was my recollection.
 25

57 (Pages 225 to 228)

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231

1 BY MR. SOLOMON:
 2 **Q. According to this document your**
 3 **conversation with Mr. Misiak was 14 minutes long, is**
 4 **that right?**
 5 A. That is what it says.
 6 **Q. You also testified earlier that your**
 7 **entire phone call was dedicated to talking about the**
 8 **TDA and whether or not Patterson and Schein would be**
 9 **attending the TDA, that you didn't discuss any other**
 10 **topics, do you recall that?**
 11 MR. McDONALD: Object to the form,
 12 mischaracterizes the testimony.
 13 THE WITNESS: I don't recall discussing
 14 anything other than the TDA situation.
 15 BY MR. SOLOMON:
 16 **Q. Would it be fair to say that you**
 17 **discussed the TDA situation with Mr. Misiak for 14**
 18 **minutes?**
 19 A. Possibly.
 20 **Q. Would it be typical for you to speak to**
 21 **Mr. Misiak by phone for 14 minutes?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I don't know that I have
 24 ever received another call from Mr. Misiak, before or
 25 since.

1 A. Yes.
 2 **Q. And then the next phone number listed**
 3 **under Source App: IMessage is (414) 688-1925, and I**
 4 **believe you just testified that is your cell phone**
 5 **number, is that right?**
 6 A. Yes, it is.
 7 **Q. So this is -- this represents a text**
 8 **message communication between yourself and your son**
 9 **Kyle Steck, right?**
 10 A. It was Kyle sending it to me, but yes.
 11 **Q. I will just kind of walk through the**
 12 **substance of it, Mr. Steck he "just walked out of our**
 13 **TDA meeting" -- strike that. "Just walked out of our**
 14 **meeting with TDA."**
 15 **Would you agree that this text message is**
 16 **about a meeting Mr. Kyle Steck had with the TDA in**
 17 **April of 2014?**
 18 A. Yes. I don't believe he was there by
 19 himself, I believe he was there with others, too.
 20 **Q. And what was the purpose of this meeting?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I believe it was about
 23 trying to decide whether we are going to go to the TDA
 24 and if there was something to try to work with them on
 25 to try to stay part of the meeting and then become

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232

1 BY MR. SOLOMON:
 2 **Q. Before this instance here?**
 3 A. Yes.
 4 **Q. You can put that document aside. We may**
 5 **refer to it again.**
 6 **(Document identified as Exhibit 238 for**
 7 **identification.)**
 8 BY MR. SOLOMON:
 9 **Q. Mr. Steck, the court reporter has handed**
 10 **you Exhibit 238. Please let me know what you have a**
 11 **chance to review it. For the record it bears Bates**
 12 **Nos. HSD-AZ0136566.**
 13 A. I see it.
 14 **Q. Do you recall this communication?**
 15 A. I believe I do.
 16 **Q. This appears to be a text message between**
 17 **two phone numbers, starting at the top there is a**
 18 **number it is (512) 221-8968.**
 19 **Mr. Steck, do you recognize that number?**
 20 A. I don't recognize the number, but -- no,
 21 I don't recognize that number specifically, but I do
 22 believe I know who it is from.
 23 **Q. Who is it from?**
 24 A. I believe it is from my son.
 25 **Q. Would that be Mr. Kyle Steck?**

1 part of the program.
 2 BY MR. SOLOMON:
 3 **Q. Mr. Kyle Steck goes on to say "tough**
 4 **decision to make." Do you see that?**
 5 A. Yes.
 6 **Q. Is it fair to say that Schein had not yet**
 7 **made up its mind as to whether it was attending the**
 8 **TDA 2014 trade show at the time of this communication?**
 9 A. Yes, that is what I would infer from
 10 this, yes.
 11 **Q. I want to turn to the sentence before**
 12 **last of this communication, Mr. Kyle Steck writes**
 13 **"Nonetheless, it invites the possibility that**
 14 **Patterson will come back and they can stick it to us."**
 15 **Do you see that?**
 16 A. Yes.
 17 **Q. Is it fair to say that Mr. Kyle Steck was**
 18 **referring to Patterson retaliating against Schein for**
 19 **cooperating with the TDA?**
 20 MR. McDONALD: Object to form.
 21 THE WITNESS: That is not the way I would
 22 read it.
 23 BY MR. SOLOMON:
 24 **Q. How would you read that sentence?**
 25 A. That we were choosing not to go, that

233

235

1 Patterson could decide to come back and then be at the
2 meeting without us.

3 **Q. Meaning Patterson would change its mind
4 and it would attend the meeting?**

5 A. Yes.

6 **Q. How do you know that is what Mr. Kyle
7 Steck was referring to here?**

8 MR. McDONALD: Object to the form. You
9 asked his understanding and he gave it to you.

10 MR. SOLOMON: I am just asking
11 understanding how he knows that.

12 MR. McDONALD: You can also read Kyle's
13 EUO, which you have in your possession, where he
14 testifies about this.

15 MR. SOLOMON: I don't know what you are
16 referring to.

17 MR. McDONALD: Kyle Steck's examination
18 under oath from the Texas Attorney General that has
19 been provided to you.

20 MR. SOLOMON: I am just talking to --
21 trying to get Mr. Dave Steck's understanding.

22 MR. McDONALD: Again, you asked him for
23 his understanding and he gave it to you.

24 MR. SOLOMON: And I am asking what that
25 understanding is based on. I think that is a proper

1 **you had with Mr. Kyle Steck about this text message
2 represented in this document in front of you?**

3 A. I don't recall anything specific to this
4 text message, no.

5 **Q. Do you recall whether or not you
6 responded to Mr. Kyle Steck?**

7 A. With the text message back?

8 **Q. Uh-huh, right.**

9 A. I don't recall.

10 **Q. Did you follow-up with Mr. Kyle Steck by
11 phone or e-mail?**

12 A. I don't remember.

13 Are we done with this one?

14 **Q. You can put it aside for now.**

15 A. Okay.

16 (Document identified as Exhibit 239 for
17 identification.)

18 BY MR. SOLOMON:

19 **Q. Mr. Steck, do you recall the text message
20 conversation represented in Exhibit 239?**

21 A. I do now, yes.

22 **Q. And this appears to be another text
23 message conversation between yourself and your son,
24 Mr. Kyle Steck, right?**

25 A. Yes.

234

236

1 question.

2 MR. McDONALD: Okay.

3 THE WITNESS: I am just speculating that
4 is what he intended, that is what he meant by this.

5 BY MR. SOLOMON:

6 **Q. So it is not based on any follow-up
7 conversation you had with Mr. Kyle Steck about what he
8 meant here?**

9 A. No.

10 **Q. The next sentence Mr. Kyle Steck writes
11 "I am sure Joe or Dean will call you..." and I think
12 Joe refers to Mr. Cavaretta and Dean refers to
13 Mr. Dean Kyle, is that right?**

14 A. Yes, I believe that is right.

15 **Q. Did Mr. Cavaretta or Mr. Kyle in fact
16 call you?**

17 A. I don't remember. They certainly might
18 have.

19 **Q. Do you recall what you might have
20 discussed with Mr. Cavaretta or Mr. Kyle?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: We would have discussed the
23 meeting I had with the TDA.

24 BY MR. SOLOMON:

25 **Q. Do you recall any follow-up conversations**

1 **Q. So I just kind of want to start at the
2 top here, the first message in this chain, the text
3 says "Planmeca out of TDA," do you see that?**

4 A. Yes.

5 **Q. That is from Mr. Kyle Steck, right?**

6 A. Yes.

7 **Q. And Planmeca is a manufacturer, is that
8 right?**

9 A. Yes.

10 **Q. Do you know how Mr. Kyle Steck learned
11 that Planmeca was not attending the TDA?**

12 A. I do not.

13 **Q. Do you know whether Planmeca ultimately
14 attended the TDA in 2014?**

15 A. I do not.

16 **Q. Do you know why Mr. Kyle Steck was
17 sending you a text message about Planmeca's plans with
18 respect to attendance at the TDA trade show?**

19 A. He was just relating news relative to the
20 TDA.

21 **Q. Why?**

22 A. It is a hot topic.

23 **Q. Was this information of interest to you
24 at the time?**

25 A. Yes.

237

1 **Q. Why?**
 2 A. I just wanted -- it was interesting to
 3 know.
 4 **Q. Had you ever communicated with anyone at**
 5 **Planmeca about the TDA Perks Supply program?**
 6 A. No, I didn't.
 7 **Q. Did you ever communicate with anyone at**
 8 **Planmeca about whether they were attending TDA in**
 9 **2014?**
 10 A. No.
 11 **Q. You don't know how Mr. Kyle Steck learned**
 12 **this information, right?**
 13 A. I do not.
 14 **Q. It looks like the next message in this**
 15 **chain is a response in which you say "Awesome... What**
 16 **about Midmark?" Do you see that?**
 17 A. Yes.
 18 **Q. And Midmark is another manufacturer,**
 19 **right?**
 20 A. Of dental equipment, yes.
 21 **Q. And why were you asking Mr. Kyle about**
 22 **Midmark -- strike that.**
 23 **Why were you asking Mr. Kyle Steck about**
 24 **Midmark?**
 25 A. Just asking because they were another

238

1 equipment company if they had made any decisions as
 2 well.
 3 **Q. Did you expect that Mr. Kyle Steck would**
 4 **know that information?**
 5 A. Maybe.
 6 **Q. Why?**
 7 A. Because he is the local manager and he is
 8 aware of that kind of stuff.
 9 **Q. Was it of interest to you whether Midmark**
 10 **was attending the 2014 TDA trade show?**
 11 A. It would have been interesting to know
 12 one way or the other, but it wasn't affecting me one
 13 way or the other.
 14 **Q. Why not?**
 15 A. Because we had already made a decision.
 16 **Q. At the time of this e-mail April 21, 2014**
 17 **Schein had made a decision about the TDA, is that what**
 18 **you are testifying?**
 19 MR. McDONALD: Object to the form.
 20 If you know tell him.
 21 THE WITNESS: I believe we had, but I am
 22 not sure.
 23 BY MR. SOLOMON:
 24 **Q. If Schein had already made a decision at**
 25 **the time of this text message why were you interested**

239

1 **to know about the plans of other manufacturers?**
 2 A. We weren't the only ones who had issues
 3 with the TDA in this program.
 4 **Q. I think my question is a little bit**
 5 **different.**
 6 **I am just curious why you wanted to know**
 7 **what other manufacturers were doing if Schein had**
 8 **already made the decision to pull out of the show.**
 9 A. It is just interesting to know how
 10 everybody is looking at the situation, that is all.
 11 **Q. Why is that?**
 12 A. I don't think there is anything more to
 13 add to that.
 14 **Q. Why not?**
 15 A. Because there isn't. I mean, it was
 16 interesting to know somebody else had made that
 17 decision, they all made it independently.
 18 **Q. How do you know that?**
 19 A. I had no conversations with them.
 20 **Q. Who are you referring to by them in your**
 21 **last answer?**
 22 A. Any of the manufacturers that are listed
 23 here.
 24 **Q. And then just turning to the next message**
 25 **in this conversation, Mr. Steck writes "I think it was**

240

1 **safe for Planmeca in that they only do small business**
 2 **with Burkhart and Sirona is already out with**
 3 **Patterson." Do you see that?**
 4 A. Yes.
 5 **Q. Do you know how Mr. Kyle Steck knew that**
 6 **Sirona was already out with Patterson?**
 7 A. No.
 8 **Q. Do you know why he provided that**
 9 **information to you?**
 10 A. Again, just he thought it would be of
 11 interest.
 12 **Q. Why?**
 13 A. Just to understand what was going on with
 14 the meeting.
 15 **Q. Did you tell anyone at Schein's corporate**
 16 **office about this conversation you had with Mr. Kyle**
 17 **Steck?**
 18 A. I don't recall.
 19 MR. McDONALD: The text message, is that
 20 what you are talking about?
 21 MR. SOLOMON: That's right.
 22 THE WITNESS: I don't recall, but I very
 23 well might have.
 24 BY MR. SOLOMON:
 25 **Q. Who would you have told?**

60 (Pages 237 to 240)

241	<p>1 A. Probably Tim Sullivan.</p> <p>2 Q. What would you have told Tim Sullivan?</p> <p>3 A. That these manufacturers had elected not</p> <p>4 to come.</p> <p>5 Q. Why would you tell Mr. Sullivan that</p> <p>6 information?</p> <p>7 A. It is of interest to him, too, as much as</p> <p>8 it was to me.</p> <p>9 Q. How do you know that?</p> <p>10 MR. McDONALD: Object to the form.</p> <p>11 THE WITNESS: Just it just was, we had</p> <p>12 made a decision to pull out and other people -- I</p> <p>13 believe we had made a decision to pull out. If other</p> <p>14 people had come to a similar decision it was their</p> <p>15 decision to make.</p> <p>16 (Document identified as Exhibit 240 for</p> <p>17 identification.)</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. Mr. Steck, you have Exhibit 240 in front</p> <p>20 of you. Would you let me know when you had a chance</p> <p>21 to review it?</p> <p>22 A. I read it.</p> <p>23 Q. Do you recall this e-mail?</p> <p>24 A. Yes.</p> <p>25 Q. What is this e-mail?</p>	243	<p>1 BY MR. SOLOMON:</p> <p>2 Q. Do you know why Mr. Stack was providing</p> <p>3 that information to you?</p> <p>4 A. No idea.</p> <p>5 Q. Mr. Stack writes, the sentence before the</p> <p>6 last, "just wanted to drop you a quick note to</p> <p>7 confirm..." Do you see where I am referring to?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know what Mr. Stack was</p> <p>10 confirming?</p> <p>11 A. No idea.</p> <p>12 Q. Had you asked Mr. Stack to confirm</p> <p>13 Ivoclar was pulling its authorized dealer to selling</p> <p>14 at the TDA to the Perks Supply program?</p> <p>15 A. No, I was not.</p> <p>16 Q. So you have no understanding as to what</p> <p>17 Mr. Stack is confirming here?</p> <p>18 A. No.</p> <p>19 Q. Were you surprised by his reference to</p> <p>20 confirming something when you read this e-mail?</p> <p>21 A. I didn't get that into the wording of it,</p> <p>22 he was just letting me know that they had made a</p> <p>23 distribution decision. It is not that uncommon for</p> <p>24 manufacturers to let us know they made particular</p> <p>25 distribution decisions after they make them.</p>
242	<p>1 A. This is the one I referred to earlier in</p> <p>2 my testimony.</p> <p>3 Q. That would be a conversation between</p> <p>4 yourself and Mr. John Steck who was from Ivoclar?</p> <p>5 A. Right.</p> <p>6 Q. I kind of just want to walk through this</p> <p>7 e-mail here.</p> <p>8 Is it fair to say Mr. Steck was e-mailing</p> <p>9 you regarding Ivoclar's discontinuing its authorized</p> <p>10 products?</p> <p>11 MR. McDONALD: Objection to form.</p> <p>12 MR. SOLOMON: I hadn't finished my</p> <p>13 question.</p> <p>14 MR. McDONALD: Sorry, I thought you had</p> <p>15 paused.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Is it fair to say that Mr. Steck was</p> <p>18 e-mailing you regarding Ivoclar discontinuing its</p> <p>19 authorized distribution of products through the TDA?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: I would characterize it as</p> <p>22 the Ivoclar had requested at the west coast that was</p> <p>23 featuring the products through Source One, which was</p> <p>24 the TDA Perks supplier, and let us know that.</p> <p>25</p>	244	<p>1 Q. Did you discuss this e-mail with</p> <p>2 Mr. Sullivan?</p> <p>3 A. I don't believe I did.</p> <p>4 Q. And at the top you say, "Thanks, John."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Why were you thanking Mr. Stack in your</p> <p>8 e-mail here?</p> <p>9 A. Thank you for sending an e-mail, for</p> <p>10 giving you information. There was nothing to it.</p> <p>11 Q. Did you think this information was</p> <p>12 helpful?</p> <p>13 A. Not really.</p> <p>14 Q. So you were just thanking John for</p> <p>15 providing it in any case?</p> <p>16 A. We have a good relationship.</p> <p>17 Q. How many times have you met with Mr. John</p> <p>18 Stack?</p> <p>19 A. Half a dozen, maybe more.</p> <p>20 Q. On what occasions do you meet with</p> <p>21 Mr. Stack?</p> <p>22 A. Well, Ivoclar is a large manufacturer, we</p> <p>23 are a large distributor for them. I don't know,</p> <p>24 couple times a year maybe for one reason or another.</p> <p>25 Q. My apologies if you testified about this</p>

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1 earlier, I don't recall, but where would you normally
2 meet with Mr. Stack?

3 A. It is hard to say. Our meetings have not
4 been regular, so they have been whenever he has asked
5 for them or his boss who is copied in the e-mail has
6 asked for them. Again, it tends to be a couple times
7 a year and usually it is at conventions.

8 **Q. Who is Mr. Stack's boss that you are
9 referring to?**

10 A. Pierre Lamoure.

11 **Q. Do you know what Mr. Lamoure's title is
12 at Ivoclar?**

13 A. I believe he was VP of sales.

14 **Q. And how well do you know Mr. Lamoure?**

15 A. Pretty well.

16 **Q. How often do you meet with Mr. Lamoure?**

17 A. I just mentioned, it is not regular, it
18 is whatever he asks for it. It is probably a couple
19 of times a year, they would come together.

20 **Q. So Mr. Stack and Mr. Lamoure would be at
21 the meetings together?**

22 A. Correct.

23 **Q. Is there anyone else at Ivoclar with whom
24 you regularly communicate?**

25 MR. McDONALD: Object to the form.

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1 THE WITNESS: Not regularly, no.

2 BY MR. SOLOMON:

3 **Q. How about irregularly?**

4 A. They all change people occasionally from
5 time to time, it is hard to tell. I can't think of
6 anybody. There may be someone else, but I can't think
7 of them right now.

8 **Q. Would you say that Mr. Stack and
9 Mr. Lamoure are your primary points of contact at
10 Ivoclar?**

11 A. Mr. Lamoure is my primary contact,
12 Mr. Stack is somebody who works for him and I come in
13 contact with and seen at a few meetings, et cetera.

14 **Q. Does Schein ever hold joint meetings with
15 manufacturers?**

16 MR. McDONALD: Object to the form.

17 If you understand you can answer.

18 THE WITNESS: I was going to ask for
19 clarification.

20 You mean a meeting where we sit down with
21 the manufacturer to talk about business or something,
22 is that what you are asking?

23 BY MR. SOLOMON:

24 **Q. Yes.**

25 A. All the time, sure.

247

1 **Q. Does Schein ever hold any offsite
2 meetings or retreats from manufacturers?**

3 A. Yes.

4 **Q. Which ones?**

5 A. It varies.

6 We do an annual meeting offsite with
7 Dentsply Sirona, Dentsply, prior to the merger. We
8 have done them with 3M, we have done them with KaVo
9 Kerr. I don't believe I have ever been one with
10 Ivoclar. We have done them with some of the equipment
11 companies as well.

12 **Q. Why does Schein participate in those
13 meetings?**

14 A. We talk about what we can do to grow the
15 business together, what opportunities there are in the
16 marketplace for us to work together.

17 **Q. Do these meetings typically have an
18 agenda?**

19 A. Yes.

20 **Q. Do you know who prepares those agendas?**

21 A. Usually the company.

22 **Q. So the manufacturer would prepare the
23 agenda in advance of the meeting?**

24 A. Yes.

25 **Q. Do you know how long these meetings**

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1 **usually last for?**

2 MR. McDONALD: Object to the form.

3 THE WITNESS: It varies. The actual
4 business meetings are usually a few hours and normally
5 if they are offsite there is some kind of recreation
6 involved.

7 BY MR. SOLOMON:

8 **Q. So that would be a golf outing or dinner
9 or something along those lines?**

10 A. Yes.

11 **Q. About how many people from Schein usually
12 attend those meetings?**

13 A. It depends. It can be as few as two or
14 three, it can be as many as eight or nine probably.

15 **Q. Do you usually attend -- strike that.**

16 **Do you try to attend all of the offsite
17 meetings with manufacturers?**

18 A. I think to, yes.

19 **Q. What about Mr. Sullivan?**

20 A. He does most of the time, he can't make
21 all of them.

22 **Q. Who else usually attends these types of
23 meetings from Henry Schein Dental?**

24 A. Normally someone from our New York team,
25 marketing team, and usually Joe or Jake, our two VPs

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1 of sales, or both, and usually someone on my team that
2 is in a position to handle relations with that
3 company, whoever that is.

4 **Q. Can you give me an example of something**
5 **that a manufacturer would want to discuss as part of**
6 **an agenda at one of these meetings?**

7 A. Sure. You know, how can we grow our
8 business together, what segments of the market do we
9 want to go after together, what products do we sell we
10 can make we can do a better job with, how do we work
11 more closely with your sales team, those are all
12 things we talked about.

13 **Q. Does Schein ever provide the manufacturer**
14 **with a topic of discussion at these types of meetings?**

15 A. We could, we have, yes, we have.

16 **Q. Can you give me an example.**

17 A. If we felt that, for example, with an
18 equipment company, if we felt they had a product that
19 was underdeveloped or category was underdeveloped that
20 we thought we would do a better job with some help
21 from them we would probably put that on the agenda.

22 **Q. Does Schein ever discuss customers with**
23 **manufacturers at these types of meetings?**

24 A. Not generally, no.

25 **Q. Has that ever happened in your**

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1 **experience?**

2 A. The only ones I believe have ever been
3 discussed were large DSOs, could make a significant
4 impact in the marketplace if the business was lost or
5 gained.

6 **Q. What kind of discussions would those be?**

7 A. Hey, we are really excited, we have
8 Heartland down or insert a name of a DSO to sell our
9 product or buy our product or what can we do, in which
10 case I am usually not the person to ask that question
11 because my group doesn't deal with those.

12 **Q. Who would be the person who would have**
13 **those discussions with a manufacturer?**

14 A. Hal Muller and Paul Burke, Paul Burke, he
15 works for Hal Muller.

16 **Q. I am not sure if we discussed him at all**
17 **today, can you -- do you know what his title is?**

18 A. No. It is somewhere around there, he
19 handles a lot of the vendor relations for special
20 markets.

21 **Q. Do any of Schein's top manufacturing**
22 **partners sell directly to customers?**

23 A. Well, Dentsply has direct divisions that
24 sell directly to customers that are not -- they are
25 mostly specialized products like implants and things

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1 like that.

2 **Q. Go you --**

3 A. Things not traditionally that we don't
4 traditionally sell that much.

5 **Q. Do those divisions ever sell merchandise**
6 **or consumables to customers directly?**

7 A. I would --

8 MR. McDONALD: Object to the form.

9 THE WITNESS: I would be careful of the
10 word ever.

11 I believe they sell to dental schools
12 direct, but to dentists themselves, private practicing
13 dentists, which is what I am most familiar with, I am
14 not familiar with them selling direct.

15 BY MR. SOLOMON:

16 **Q. Are you aware of any products that**
17 **manufacturers sell directly which Schein also sells?**

18 A. Yes, sure.

19 **Q. Can you give me some examples?**

20 A. Well, there are a couple of brands that
21 sell both direct and through Schein.

22 **Q. Can you give -- name those brands?**

23 A. One that came to mind is a company called
24 Centrix and they sell both through us and through
25 distribution -- through us and directly.

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1 **Q. Do you know why the manufacturer sells**
2 **directly?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: I don't know why each of
5 them make that decision, no.

6 BY MR. SOLOMON:

7 **Q. Does Schein have an opinion about that**
8 **decision?**

9 MR. McDONALD: Object to the form.

10 He is not here as a corporate rep, you
11 can ask him if he has an opinion.

12 BY MR. SOLOMON:

13 **Q. Do you have an opinion about**
14 **manufacturers selling directly the same products which**
15 **Schein also sells?**

16 A. I think they would limit the level of
17 support they would get from the salesperson by doing
18 that.

19 **Q. What do you mean by that?**

20 A. Because these products are consumables,
21 so if I were to sell a product from a brand like
22 Centrix that was in a dental office, I am a Schein
23 rep, and then they can call and order direct I
24 wouldn't be commissioned or get credit for it after
25 that.

253	<p>1 Q. So would a sales representative be 2 disincentivized to sell products which manufacturers 3 also sell directly to customers? 4 A. We don't disincentivize them, but I 5 believe they would believe that the fact that the 6 customer could buy it without them and being involved 7 in it would be reason not to promote it. 8 Q. What do you mean by promote it? 9 A. Doctors ask for product advice all the 10 time. 11 Q. Any other -- strike that. 12 Would a Schein sales representative do 13 anything to steer manufacturers away from products 14 that manufacturers sell directly? 15 MR. McDONALD: Object to the form. 16 You ought to read your question, Ronnie, 17 you might want to restate it. 18 BY MR. SOLOMON: 19 Q. Thank you, I appreciate that. 20 Would a Schein sales representative do 21 anything to steer a customer away from a product which 22 a manufacturer sells directly? 23 A. They very well might. 24 Q. What could a sales representative do in 25 that instance?</p>	255	<p>1 Q. What kind of discussions have you had? 2 A. Well, generally they want to know what 3 our opinion is on them so we generally share with them 4 what we have been talking about with them today. 5 Q. Have you spoken with all of Schein's top 6 manufacturing partners about buying groups? 7 A. No. 8 Q. Which ones have you spoken with? 9 A. Dentsply, they are the most interested. 10 There may be one or two others, but I can't really 11 remember specifically. 12 What happened, I believe, with the 13 Dentsply case, is that they already had an agreement 14 with Smile Source so when we took over or were 15 authorized as a Smile Source distributor that they 16 just let us know what that was. 17 Q. You said -- you mentioned that Dentsply 18 -- you said Dentsply they are the most interested, 19 referring to buying groups. What did you mean by 20 that? 21 A. Dentsply of all the companies we do 22 business with is the most aggressive in terms of 23 trying to find new parts of the market that they can 24 sell to. 25 Q. Have representatives of Dentsply ever</p>
254	<p>1 A. Promote a competing product that did not 2 self direct. 3 Q. Are you aware of that ever happening in 4 the field? 5 A. I can't cite a specific instance, but I 6 am sure it happens. 7 Q. So we talked a little about Dentsply has 8 certain divisions that sell direct. Do you know 9 whether there are any other manufacturers which Schein 10 works that also sell directly to customers? 11 A. Yes. KaVo Kerr has some direct 12 companies. 13 Almost all of these are what I call 14 specialty businesses, in other words, they sell to 15 orthodontists, endodontists, they don't sell to 16 general practitioners, which is a little different. 17 The -- I am just thinking who else. 18 There might be one or two others. 19 Like I said, most manufacturers sell 20 direct to dental schools just because the products are 21 discounted so low. 22 That is the only ones I can think of. 23 Q. Do you ever discuss buying groups with 24 manufacturers? 25 A. We have had discussions about them, sure.</p>	256	<p>1 encouraged Schein to work with a specific buying group 2 or GPA? 3 A. Not to my knowledge. 4 Q. Have you ever asked a manufacturer 5 whether they would support Schein working with a 6 buying group or GPO? 7 A. Not that I can remember. 8 Q. Do you know whether anyone else at Schein 9 has had those types of conversations with a 10 representative of a manufacturer? 11 A. No. 12 I know there was some discussion when we 13 did the Smile Source thing earlier this year with 14 A-Dec who was approached by Smile Source and they 15 asked us what we thought, but that was the extent of 16 it. 17 Q. Have you or anyone else at Schein ever 18 suggested that Schein would not be in favor of a 19 manufacturer selling directly to a buying group or 20 GPO? 21 MR. McDONALD: Object to the form. 22 THE WITNESS: I don't remember ever 23 having a conversation like that, but I think it would 24 be obvious to the manufacturing community that if they 25 started selling directly to a buying group, which is</p>

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1 effectively selling directly to the dentist, same
2 thing, that we wouldn't view it positively, but I
3 don't believe they have ever asked the question.

4 BY MR. SOLOMON:

5 **Q. Why do say it would be rather obvious to
6 the manufacturing community?**

7 A. Because we make money selling products.
8 And so if they are bypassing us then we are not going
9 to have access to the products.

10 **Q. And so in that instance or in that
11 scenario Schein would lose sales?**

12 A. Yes, sure.

13 **Q. But you are not aware of any specific
14 conversations you or anyone else at Schein has had
15 with the manufacturer about that topic?**

16 A. I can't recall any, no.

17 **Q. Did you ever have the sense that
18 manufacturers were interested in directly selling to a
19 GPO or a buying group?**

20 MR. McDONALD: Object to form.

21 THE WITNESS: Did I ever -- can you
22 restate that, ever have the sense that --

23 BY MR. SOLOMON:

24 **Q. Sure.**

25 **Did you ever have the sense that**

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1 THE WITNESS: Where they refused to
2 provide special pricing, meaning they were not giving
3 us or the GPO any kind of special pricing other than
4 their normal wholesale is what you are asking?

5 BY MR. SOLOMON:

6 **Q. Right. That would be one instance of
7 that.**

8 A. Yeah, no, I am not aware of that.

9 MR. SOLOMON: I think we can take a short
10 break.

11 (Recess taken.)

12 BY MR. SOLOMON:

13 **Q. Mr. Steck, apart from Mr. Misiak -- apart
14 from a call you had with Mr. Misiak in January of 2014
15 have you communicated with anyone from Patterson in
16 the past ten years?**

17 A. Communicated is a wide term. I mean,
18 saying hello at a trade show, sure.

19 **Q. Have you had communications with anyone
20 from Patterson other than saying hello at a trade
21 show?**

22 A. Well, I work on a committee with Tim
23 Rogan on Dental Lifeline Network, he is on that as
24 well.

25 **Q. Who is Tim Rogan?**

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1 **manufacturers were interested in directly selling to a
2 GPO or buying group?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: No.

5 BY MR. SOLOMON:

6 **Q. Do dental manufacturers offer chargebacks
7 or discounts specific to buying groups or GPOs?**

8 MR. McDONALD: Object to the form, lack
9 of foundation.

10 THE WITNESS: I am not aware of any
11 personally with buying groups. We talked about it
12 earlier with corporate accounts. I am not aware of
13 any specific to buying groups. But there may be --
14 Smile Source which, again, I am not that familiar
15 with, there may be some kind of arrangement like that
16 and I am not familiar with that.

17 BY MR. SOLOMON:

18 **Q. Do you know whether that would be with
19 Dentsply?**

20 A. I don't know.

21 **Q. Are you aware of any instances in which a
22 manufacturer refused to provide special pricing for a
23 GPO or buying group customer?**

24 MR. McDONALD: Object to the form, lack
25 of foundation.

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1 A. Well, I believe he is works for Misiak,
2 but he is -- he and I are on the same board together.

3 **Q. Is Mr. Rogan an employee of Patterson?**

4 A. Yes.

5 **Q. So Mr. Rogan is a part of the Dental
6 Lifeline Network board, is that right?**

7 A. Yes.

8 **Q. Do you attend meetings for that
9 organization at which Mr. Rogan is also present?**

10 A. Generally he attends the same meetings I
11 do, yes.

12 **Q. About how many times a year do those
13 meetings occur?**

14 A. I already testified to this, but it is
15 twice a year usually.

16 **Q. Thank you.**

17 **Do you speak with Mr. Rogan at these
18 meetings?**

19 A. Generally about Dental Lifeline Network
20 matters, yes.

21 **Q. About anything else?**

22 A. Not really.

23 **Q. How long do those meetings usually last?**

24 A. They can be as long as a day, sometimes
25 usually a couple -- usually a couple hours.

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- 1 **Q. About how many people would you say**
 2 **attend those meetings?**
 3 A. We went through that earlier, I think
 4 there is about -- from the trades, dealers, and
 5 manufacturers probably six or so and then there is
 6 another six from the dental profession that are
 7 dentists and about six that are staff. Again, these
 8 are all approximate numbers, I can't give you exact.
 9 **Q. Have you ever discussed business other**
 10 **than business relating to the Dental Lifeline Network**
 11 **at one of those meetings?**
 12 A. No.
 13 **Q. Are there any other employees of**
 14 **distributors that are a part of that organization's**
 15 **board?**
 16 A. In the last year Chuck Cohen has joined
 17 the board as well.
 18 **Q. Who is Chuck Cohen?**
 19 A. Chuck is I believe his title is managing
 20 director of Benco.
 21 **Q. How many times have you -- strike that.**
 22 **Have you ever met Mr. Chuck Cohen?**
 23 A. Sure, yes.
 24 **Q. How many times?**
 25 A. Well, I met him before, just, again,

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- 1 saying hello, meetings, we are part of the same Dental
 2 Lifeline Network team, we used to do videos for the
 3 Dental Lifeline Network together. I don't know, maybe
 4 a dozen.
 5 **Q. A dozen over --**
 6 A. Ten years.
 7 **Q. Are you aware of any communications**
 8 **between Mr. Sullivan and Mr. Cohen?**
 9 A. Not currently, no.
 10 **Q. What about in the past?**
 11 A. I know they had had a conversation in the
 12 past about recruiting each other's salespeople.
 13 **Q. And how do you know about that**
 14 **conversation?**
 15 A. Because we had had an agreement with them
 16 that we would have so many days that the salesperson
 17 would be out of the territory if we recruited them and
 18 it was mutual.
 19 **Q. Did Mr. Sullivan ever tell you about a**
 20 **conversation he had with Mr. Cohen?**
 21 A. Related to the point I just made, yes.
 22 **Q. So he talked to you about a specific**
 23 **conversation he had with Mr. Cohen?**
 24 A. Yes.
 25 **Q. Was that a conversation by phone or in**

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- 1 **person or by e-mail?**
 2 A. I believe it was by phone, I don't know.
 3 **Q. Did Mr. Sullivan -- strike that.**
 4 **Do you know why Mr. Sullivan told you**
 5 **about that conversation?**
 6 A. Well, because I am involved with
 7 recruiting competitive salespeople from other places
 8 and so he just wanted me to be aware.
 9 **Q. Did Mr. Sullivan ever tell you about a**
 10 **conversation he had with Mr. Cohen about an entity**
 11 **called Atlantic Dental Care?**
 12 A. No, I don't believe so.
 13 **Q. Have you ever communicated with anyone**
 14 **else from Benco over the last ten years?**
 15 A. No.
 16 **Q. Have you ever spoken with Mr. Chuck Cohen**
 17 **about anything unrelated to the business of the Dental**
 18 **Lifeline Network?**
 19 A. Other than personal how are you doing,
 20 stuff, he had cancer, I probably asked how he was
 21 feeling and things like that.
 22 **Q. Anything else?**
 23 A. No.
 24 **Q. Have you ever met with Mr. Rogan where**
 25 **others were not present?**

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- 1 A. No.
 2 **Q. The same question for Mr. Chuck Cohen.**
 3 A. No.
 4 **Q. Have you ever spoken with Mr. Cohen by**
 5 **telephone?**
 6 A. Yes, related to a Dental Lifeline
 7 Network, I believe, last year, related to a Dental
 8 Lifeline Network fundraiser.
 9 **Q. So that would have been in 2016?**
 10 A. Yes, I think so.
 11 **Q. Do you know when Mr. Cohen joined the**
 12 **Dental Lifeline Network?**
 13 A. I think it was in 2016, earlier.
 14 **Q. Early 2016?**
 15 A. Yes, I think so.
 16 **Q. Would you say -- do you have an**
 17 **approximate month in mind, or is that something you**
 18 **recall?**
 19 A. I am not sure, I am not sure. If I had
 20 to guess I would say last spring, but I don't know.
 21 **Q. So the spring of 2016.**
 22 A. Maybe, yes.
 23 **Q. Have you ever communicated with anyone**
 24 **from Patterson about buying groups?**
 25 A. No.

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1 **Q. Have you ever communicated with anyone**
 2 **from Benco about buying groups?**
 3 A. No.
 4 **Q. Are you aware of anyone else from Schein**
 5 **communicating with Patterson about buying groups?**
 6 A. No.
 7 **Q. Are you aware of anyone else from Schein**
 8 **communicating with Benco about buying groups?**
 9 A. No.
 10 **Q. Mr. Steck, I would like to just have you**
 11 **look at Exhibit 237 again. And this time we are just**
 12 **going to look at the first page of that document.**
 13 **About 19 lines down, about 12 lines from**
 14 **the bottom, there is an entry on November 9, 2015 at**
 15 **2:01 p.m. Do you see that?**
 16 A. Yes.
 17 **Q. And just to go over this again on the**
 18 **left-hand column under device, is that your phone**
 19 **number (415) 688-1925?**
 20 A. (414) 688, yes, that is my number.
 21 **Q. That is your cell phone number, right?**
 22 A. Yes.
 23 **Q. According to this record here you had a**
 24 **phone call with a number that is listed as**
 25 **(570) 407-1340. Do you see that?**

1 THE WITNESS: It could be, I mean, not --
 2 we don't speak regularly, you can check the phone
 3 records. I remember a phone conversation with chuck
 4 about the Dental Lifeline Network, that is about the
 5 only thing I can remember.
 6 BY MR. SOLOMON:
 7 **Q. Do you recall what you and Mr. Cohen**
 8 **discussed during that phone call?**
 9 A. Well, we were -- wanted to put together
 10 some additional ways to raise money.
 11 The other thing this could be potentially
 12 was when he was trying to decide if he wanted to go on
 13 the Dental Lifeline Network board, that would make
 14 sense, too. I do remember a conversation with him now
 15 about that when he wanted to see if it is something he
 16 should do.
 17 **Q. Did Mr. Cohen call you at any point to**
 18 **ask you about his decision to join the Dental Lifeline**
 19 **Network?**
 20 A. We did speak, yes, I just didn't know if
 21 it was on cell, we did speak at some point. He called
 22 to see what I thought about the organization.
 23 **Q. Do you know how Mr. Cohen got your phone**
 24 **number?**
 25 A. No.

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1 A. Yes.
 2 **Q. And the number is associated with**
 3 **Pittston, Pennsylvania, right?**
 4 A. Yes.
 5 **Q. Do you recognize that phone number?**
 6 A. No.
 7 **Q. I will represent you to you that that is**
 8 **the cell phone number for Mr. Chuck Cohen. Do you**
 9 **have any reason to doubt that?**
 10 A. No.
 11 **Q. Does this phone record refresh your**
 12 **recollection about a conversation you had with**
 13 **Mr. Cohen of Benco on November 9, 2015 by telephone?**
 14 A. No, it does not.
 15 The only thing I could think is maybe I
 16 am off on my timing on Dental Lifeline Network, but,
 17 no, I can't -- I don't remember it.
 18 **Q. So you have no recollection of this phone**
 19 **call?**
 20 A. No.
 21 **Q. Apart from your communications with**
 22 **Mr. Cohen relating to the Dental Lifeline Network**
 23 **would it be typical for you to speak with Mr. Cohen by**
 24 **telephone?**
 25 MR. McDONALD: Object to the form.

1 **Q. And what did you discuss with Mr. Cohen**
 2 **during that conversation?**
 3 A. I remember talking about the organization
 4 why I thought the organization was a good
 5 organization, why I got involved with it, and, you
 6 know, that I thought he would be good if he wanted to
 7 be involved with it.
 8 **Q. Do you know why Mr. Cohen was asking you**
 9 **for that kind of advice?**
 10 MR. McDONALD: Object to form.
 11 THE WITNESS: I just wanted to know about
 12 -- he didn't know a lot about it, I think it was just
 13 naturally he wanted to reach out to somebody who was
 14 in a similar capacity and see what they thought of
 15 that organization.
 16 BY MR. SOLOMON:
 17 **Q. Do you know whether anyone else from**
 18 **Henry Schein is a part of the Dental Lifeline Network**
 19 **board?**
 20 A. No one else from Henry Schein is part of
 21 the board.
 22 **Q. Do you know whether Mr. Cohen reached out**
 23 **to anyone else from the Dental Lifeline board to**
 24 **discuss this his potential membership on the**
 25 **organization?**

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1 A. I don't know for a fact that he did. He
2 said he was going to reach out to some other people
3 but I don't know if he did.

4 **Q. Did he tell you who he was going to reach**
5 **out to?**

6 A. Most likely it would have been Brett -- I
7 can't think of the last name, he is the CEO of
8 Dentsply. I will think of it. I am blanking on his
9 last name. You can look it up, it is on the Internet,
10 he was the CEO of Dentsply prior to the merger, and
11 then became -- Wise, W-i-s-e -- then he became like an
12 associate chairman because the guy that was the Sirona
13 chair became the CEO.

14 **Q. Do you recall whether you discussed**
15 **anything else with Mr. Cohen apart from his potential**
16 **membership on the Dental Lifeline Network board?**

17 A. I do not recall, no.

18 **Q. Did you discuss this phone call with**
19 **Mr. Cohen with anyone else at Henry Schein?**

20 A. I seriously doubt it, no, I don't think
21 so.

22 **Q. So you didn't tell Mr. Sullivan about**
23 **this phone call?**

24 A. No, because it was about a charity board
25 position.

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1 **Q. I kind of want to just turn back to the**
2 **annual meetings we just talked about for the Dental**
3 **Lifeline Network.**

4 **I think you mentioned, obviously correct**
5 **me if I am wrong, I think you mentioned that these**
6 **meetings take place at annual trade shows or annual**
7 **DTA meetings?**

8 A. They are based in Denver, they will try
9 to do a meeting a year in Denver. I made it twice in
10 the amount of time I have been on the board. They are
11 hard because they are -- it is a long way and they are
12 stand-alone meetings. Typically they have a meeting
13 at the Chicago midwinter, at the ADA, and sometimes
14 will have one, although I don't think we did this
15 year, at the DTA meeting.

16 **Q. And physically speaking where do these**
17 **meetings take place, is it in a conference room?**

18 A. Usually.

19 **Q. Or restaurant?**

20 A. Usually conference room.

21 **Q. Where else would these kinds of meetings**
22 **take place?**

23 A. That is the only place they would be.

24 **Q. Just in a conference room?**

25 A. Yes.

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1 **Q. Does someone record minutes of those**
2 **meetings?**

3 A. Yes.

4 **Q. Do you know who records those?**

5 A. Yes, the secretary of Dental Lifeline
6 Network.

7 **Q. What is his or her name?**

8 A. I believe -- I believe it is Steve -- I
9 think his last name is very long and very Polish, I
10 can't remember the name, it begins with a W. I can't
11 remember.

12 **Q. If you think of it you let me know?**

13 A. I will let you know, yes.

14 There are minutes for all the meetings.

15 **Q. So we talked a little bit today about the**
16 **California Dental Association, which you have also**
17 **referred to as the CDA.**

18 A. Yes.

19 **Q. And you also referred to an organization**
20 **called the Dentist Service Company, do I have that**
21 **right?**

22 A. That is part of the CDA company, yes,
23 Dental Solutions Company.

24 **Q. Dental Solutions Company.**

25 **Is that -- TDSC would be the acronym for**

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1 **that, correct?**

2 A. Yes.

3 **Q. Did Henry Schein have any relationship**
4 **with TDSC?**

5 A. TDSC was just recently formed in the last
6 couple of years and so we didn't have any relationship
7 specifically with them, no.

8 **Q. Do you have an approximate date that you**
9 **can recall as to when it was formed?**

10 A. No.

11 **Q. But in the last two years it was formed?**

12 A. I think so.

13 **Q. So sometime in mid 2015 or early 2015 or**
14 **after?**

15 A. It would be my -- I don't know.

16 Somewhere in there, yes, it is fairly recent.

17 **Q. Do you recall whether Schein responded to**
18 **an RFP for the TDSC?**

19 A. Yes, we did.

20 **Q. And what happened with that RFP?**

21 A. We bid on the items that were on the
22 proposal and submitted it.

23 **Q. And what happened?**

24 A. They looked at the RFP and decided that
25 we had won a number of them. My memory says about

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1 40 percent of the items that we won were the low bid
2 on.
3 **Q. What do you mean by we were the low bid?**
4 A. They had several other people bid on it,
5 too.
6 **Q. So did Schein form a relationship with**
7 **the TDSC as a result of that RFP process?**
8 A. No.
9 **Q. Why not?**
10 A. Because the way they structured it was
11 not the way when we first started negotiations. They
12 changed how they were going to structure this. We are
13 still interested in doing something with TDSC. In
14 fact, I met with them recently, but they set it up so
15 the dentist would order from their website and place
16 an order and that order would be then sent to the
17 appropriate distributor who was the low bid on that
18 particular item, and that wasn't what we agreed to.
19 **Q. What had you agreed to with the TDSC?**
20 A. That they would place the orders through
21 us and that we would be able to then match other
22 prices, whatever the lowest bid was we would be able
23 to match that price for the customer.
24 **Q. And when did Schein form that agreement**
25 **with the TDSC?**

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1 MR. McDONALD: Object to the form.
2 THE WITNESS: It was during the early
3 negotiation process.
4 BY MR. SOLOMON:
5 **Q. Who was a part of that negotiation**
6 **process from Schein?**
7 A. Primarily Glenn Showgren.
8 **Q. Anyone else?**
9 A. Not that I know of.
10 **Q. How about from the CDA?**
11 A. Well, Bob Spinelli, as I mentioned
12 earlier is the head of it, and then whoever they had
13 hired to do this part of the business.
14 **Q. Do you recall the name of that person?**
15 A. No.
16 **Q. Do you recall whether special markets was**
17 **involved in that RFP?**
18 A. They were not.
19 **Q. So am I correct in understanding that**
20 **Henry Schein has never entered into a formal**
21 **relationship with the CDA or TDSC for the sale of**
22 **dental products and services?**
23 A. To my knowledge we had never been in any
24 kind of formal relationship.
25 **Q. And I think you mentioned just a few**

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1 **moments ago that you recently talked to the CDA again,**
2 **is that right?**
3 A. Yes.
4 **Q. Do you know who from Schein recently**
5 **talked to the CDA?**
6 A. It was myself and Glenn.
7 **Q. What were those discussions about?**
8 A. Just asking if there had been any change
9 in their plan or structure.
10 **Q. And what did you learn?**
11 A. They said no.
12 **Q. And why were you interested in -- strike**
13 **that.**
14 **Why did you ask CDA for that information?**
15 A. Because we don't think their current
16 structure is going to work.
17 **Q. Why not?**
18 A. Because dentists hate getting things from
19 five different places.
20 **Q. Did you hope to renew discussions with**
21 **the CDA about working with Henry Schein?**
22 A. Yes.
23 (Document identified as Exhibit 241 for
24 identification.)
25

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1 BY MR. SOLOMON:
2 **Q. Just let me know when you have had a**
3 **chance to read Exhibit 241, which is Bates labeled**
4 **HS-00015015.**
5 A. I am familiar with this.
6 **Q. And this is an e-mail chain between --**
7 **strike that.**
8 **This is an e-mail chain among yourself,**
9 **Mr. Sullivan, Mr. Cavaretta, Mr. Dean Kyle, and**
10 **Mr. Kyle Steck, is that right?**
11 A. Yes.
12 **Q. The subject is Dentsply, right?**
13 A. Yes.
14 **Q. Who is -- you refer to a Keith from**
15 **Dentsply in the bottom e-mail of this document. Who**
16 **is Keith from Dentsply?**
17 A. He is their VP of sales.
18 **Q. What is Keith's last name?**
19 A. Clements.
20 **Q. Do you know why Mr. Clements called you**
21 **regarding the TDA?**
22 A. He called to tell me they were going to
23 be staying in the TDA. I did not ask him to call me.
24 **Q. Do you have any understanding as to why**
25 **he told you that information?**

69 (Pages 273 to 276)

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1 A. I think because he had heard we pulled
2 out.
3 **Q. Did Mr. Clements tell you anything else**
4 **apart from what you just stated?**
5 A. No, I don't remember.
6 **Q. Had you previously communicated with**
7 **Mr. Clements about the TDA?**
8 A. No.
9 **Q. Had you previously communicated with**
10 **anyone else from Dentsply about the TDA?**
11 A. I don't believe so, no.
12 **Q. Turning to the second sentence of that**
13 **e-mail, Mr. -- you write "They will be informing them**
14 **that they feel the TDA has put all manufacturers in a**
15 **very difficult place and that going forward that they**
16 **won't participate if their dealers don't." Do you see**
17 **that sentence?**
18 A. I do.
19 **Q. My question -- my first question is what**
20 **is your understanding of how the TDA put manufacturers**
21 **in a difficult place?**
22 A. Those were his words. He felt that
23 because his dealers were not at the convention and
24 that he was that they were in a difficult place, but
25 that was his term.

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1 **Q. And who were his dealers?**
2 A. Patterson, Schein and Benco.
3 **Q. Do you have any understanding as to why**
4 **it was important to Dentsply that their dealers attend**
5 **the TDA?**
6 MR. McDONALD: Object to form.
7 MR. SOLOMON: I will rephrase it.
8 BY MR. SOLOMON:
9 **Q. Do you have any understanding as to why**
10 **it was important to Dentsply that Patterson, Benco and**
11 **Schein attend the TDA?**
12 MR. McDONALD: Object to the form.
13 THE WITNESS: Typically at a show we will
14 bring doctors to their booth and they will buy things.
15 BY MR. SOLOMON:
16 **Q. Any other reasons?**
17 A. It is really the only one I can think of.
18 **Q. So his reference to dealers in that**
19 **sentence that we just read, that refers to Patterson,**
20 **Schein, and Benco, is that right?**
21 A. I believe that is right.
22 **Q. And how do you know that?**
23 A. Because it was already known that Benco
24 and Patterson weren't coming.
25 **Q. Do you recall whether Mr. Clements told**

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1 **you or referred to Schein -- Patterson and Benco**
2 **during your call?**
3 A. I believe he did, but I don't recall.
4 **Q. You don't recall what he told you about**
5 **Patterson and Benco?**
6 A. No.
7 **Q. Do you recall how long your conversation**
8 **with Mr. Clements lasted?**
9 A. No.
10 **Q. Just moving along to the next sentence in**
11 **the e-mail, "Not exactly what we were hoping for, but**
12 **I understood their rationale" is what you say. Do you**
13 **see that?**
14 A. Yes.
15 **Q. So my question is was Schein hoping that**
16 **Dentsply would withdraw from the 2014 TDA annual**
17 **meeting?**
18 A. Again, to put in context a time, at the
19 time this was going on, we saw it if somebody would
20 withdraw it was showing they also had issues with the
21 way the TDA was going to market. It wasn't so much
22 about the meeting as it was about the fact that they
23 had this buying arrangement, this TDA Perks
24 arrangement, that we weren't really comfortable with.
25 **Q. Were you hoping that Dentsply would**

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1 **withdraw from the TDA?**
2 A. I suppose I was.
3 **Q. Why?**
4 A. Just validated our opinion.
5 **Q. Any other reasons?**
6 A. No.
7 **Q. Did you ever communicate that hope to**
8 **someone from Dentsply?**
9 A. No.
10 **Q. Did you ever tell that to Mr. Clements**
11 **during your phone call with him?**
12 A. Not that I remember.
13 **Q. Is it possible you did?**
14 A. I don't remember. I don't think so.
15 They had already made a decision.
16 **Q. Did you tell Mr. Clements that you hoped**
17 **Dentsply would pull out before your phone call with**
18 **him?**
19 A. No.
20 **Q. Turning to the next paragraph you go on**
21 **to explain in the last paragraph of this e-mail that**
22 **you plan to reach out to Carol Summerhays, who I think**
23 **we talked about previously, and I believe she says**
24 **here that she is the 2012 CDA president. Do you see**
25 **that?**

70 (Pages 277 to 280)

281	<p>1 A. Yes.</p> <p>2 Q. Did you ever -- strike that.</p> <p>3 You go on to say "I will also make clear</p> <p>4 that if the state dental associations go this route</p> <p>5 they better be prepared for economic losses on their</p> <p>6 shows and that we will organize and start competing</p> <p>7 conventions." Do you see that sentence?</p> <p>8 A. I do.</p> <p>9 Q. Is it fair to say that you wanted the CDA</p> <p>10 to know that Schein would work to organize against</p> <p>11 state association buying groups?</p> <p>12 A. This is another comment that I regret</p> <p>13 putting in here because the way it reads is much</p> <p>14 harsher than it was intended.</p> <p>15 But when I talked to Carol I made it</p> <p>16 clear that this was not -- it wasn't good that the</p> <p>17 dental associations were endorsing competitors and</p> <p>18 that people who weren't endorsed were not going to</p> <p>19 view that well.</p> <p>20 Q. Why do you regret writing this sentence?</p> <p>21 A. Well, because we weren't going to start</p> <p>22 competing conventions, that just wasn't going to</p> <p>23 happen.</p> <p>24 Q. Do you know why you wrote that you would</p> <p>25 in this e-mail?</p>	283	<p>1 it.</p> <p>2 Q. Did you change your mind on the idea of</p> <p>3 starting a competing convention at any point?</p> <p>4 MR. McDONALD: Object to the form.</p> <p>5 THE WITNESS: I never had the idea of</p> <p>6 starting a competing convention, I just wrote it in</p> <p>7 there. I never really did anything about it and</p> <p>8 wasn't serious about it.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. You also referred to state associations</p> <p>11 and economic losses. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What did you mean by that statement?</p> <p>14 A. Dental associations make money on the</p> <p>15 trade shows, they use them to raise money.</p> <p>16 Q. And so how would state associations</p> <p>17 suffer economic losses on their shows?</p> <p>18 A. If we and anyone else stops -- any time</p> <p>19 anyone decides not to come to a convention if they</p> <p>20 cannot be replaced there is an economic loss to the</p> <p>21 dental society.</p> <p>22 Q. Did you ever tell a state association</p> <p>23 that it would suffer economic losses as a result of</p> <p>24 starting a buying group?</p> <p>25 A. No.</p>
282	<p>1 A. Well, in Europe they do. In Europe the</p> <p>2 trade runs all the shows, not the dental associations,</p> <p>3 it is very unique in the United States that the</p> <p>4 dentists themselves run their own trade shows.</p> <p>5 Q. Had you considered starting a competing</p> <p>6 convention at any point?</p> <p>7 A. No.</p> <p>8 Q. Did you discuss starting a competing</p> <p>9 convention with Mr. Sullivan?</p> <p>10 A. No.</p> <p>11 Q. Had you envisioned starting a competing</p> <p>12 convention with other distributors?</p> <p>13 A. No.</p> <p>14 Q. Had you ever had any conversations with</p> <p>15 other distributors about putting together a competing</p> <p>16 convention?</p> <p>17 A. No.</p> <p>18 Q. So apart from I think you just mentioned</p> <p>19 that they do it in Europe, apart from that, is there</p> <p>20 any other reason why you suggested starting a</p> <p>21 competing convention in this e-mail here?</p> <p>22 A. No. It is just basically if we were</p> <p>23 going to become at odds with the dental associations</p> <p>24 that we still need to see dentists and have events.</p> <p>25 But, as I said it, reads much harsher than I intended</p>	284	<p>1 Q. I want to take a look at Mr. Sullivan's</p> <p>2 response, he says "just to be clear... we are not</p> <p>3 contacting other exhibitors and asking them to pull</p> <p>4 out of any shows."</p> <p>5 What is your understanding of why</p> <p>6 Mr. Sullivan wanted to be clear on that point?</p> <p>7 A. Because of the fact that he understood</p> <p>8 from reading it that it could be interpreted</p> <p>9 differently than I intended it.</p> <p>10 Q. How do you know that?</p> <p>11 A. That is my intention, you have to ask</p> <p>12 him.</p> <p>13 Q. Did you ever discuss this e-mail with</p> <p>14 Mr. Sullivan?</p> <p>15 A. I don't believe we did, no.</p> <p>16 Q. Is it your understanding that</p> <p>17 Mr. Sullivan believed that you wanted to contact other</p> <p>18 exhibitors to ask about pulling out of state</p> <p>19 association shows?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: Can you ask the question</p> <p>22 again?</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. Sure.</p> <p>25 Is it your understanding that</p>

285

1 **Mr. Sullivan believed that you wanted to contact other**
 2 **exhibitors to ask about pulling out of state**
 3 **association shows?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I don't think he believed
 6 it, I think he just thought I was angry.

7 BY MR. SOLOMON:

8 **Q. And what is your understanding of that**
 9 **based on?**

10 A. Well, again, you have to ask him.

11 I mean, if I was going to start
 12 contacting other people and making any kind of a trade
 13 show of our own he would have known about it and I
 14 would have asked permission before I did it.

15 **Q. Do you think he would have supported**
 16 **that?**

17 A. No.

18 **Q. Why not?**

19 A. Because he would only want to do it as
 20 our own Henry Schein.

21 **Q. Why is that?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: For a lot of reasons, just
 24 makes sense to do it by ourselves, that way the
 25 customers who come are ours.

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1 trade show that I attended in Georgia is the Hinman
 2 meeting, I don't know whether it is their trade show
 3 or it is run by a different association.

4 **Q. Do you recall whether that was a**
 5 **particularly large trade show?**

6 A. Midsize.

7 **Q. Did you understand the GDA to have**
 8 **established a group purchasing organization for its**
 9 **members at some point?**

10 MR. McDONALD: Object to the form.

11 THE WITNESS: Based on the prior stuff,
 12 yes, we knew they were interested in doing that.

13 BY MR. SOLOMON:

14 **Q. Do you recall whether they ever succeeded**
 15 **in that endeavor?**

16 A. I don't know. I believe we chose not to
 17 bid. Okay.

18 (Document identified as Exhibit 242 for
 19 identification.)

20 BY MR. SOLOMON:

21 **Q. Mr. Steck, Exhibit 242 is an e-mail Bates**
 22 **labeled HS-00131947 dated September 14, 2015.**

23 **Mr. Steck, do you recall this e-mail?**

24 A. Yes, I believe I do, yes.

25 **Q. And the subject of this e-mail is Buying**

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1 BY MR. SOLOMON:

2 **Q. At the time of this e-mail did you in**
 3 **fact want to contact other exhibitors to ask them to**
 4 **pull out of state association trade shows?**

5 A. No.

6 **Q. He also writes the next sentence in this**
 7 **e-mail "also, let's not inform CDA or others that we**
 8 **will start to 'organize' other manufacturers and**
 9 **dealers to create competing conventions." Do you see**
 10 **that --**

11 A. Yes.

12 **Q. -- excerpt I just referred to?**

13 A. Yes.

14 **Q. Do you know why Mr. Sullivan made that**
 15 **statement?**

16 A. I think it was just what we said a few
 17 minutes ago, he didn't think it was a good idea. As I
 18 said, it was not a good idea.

19 **Q. Are you familiar, Mr. Steck, with the**
 20 **Georgia Dental Association, I think we talked about**
 21 **that earlier today, sometimes it is referred to as the**
 22 **GDA, do you recall that discussion?**

23 A. I do.

24 **Q. Did you ever attend a GDA trade show?**

25 A. They -- I don't know that -- the only

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1 **Group Meeting Tomorrow at 2:30, do you see that?**

2 A. Yes.

3 **Q. Do you know whether you attended that**
 4 **meeting?**

5 A. I believe I did, yes.

6 **Q. Do you know who else was at that meeting?**

7 A. I do not.

8 **Q. Do you know what was discussed at that**
 9 **meeting?**

10 A. Well, the things that were on this
 11 e-mail. Tim obviously was coming to me, that is why I
 12 sent him the e-mail.

13 **Q. Did you discuss the Georgia Dental**
 14 **Association's buying group at this meeting?**

15 A. I believe we did.

16 **Q. Was Henry Schein Dental interested in**
 17 **working with the Georgia Dental Association buying**
 18 **group at the time of this e-mail?**

19 A. Again, I wasn't personally involved. I
 20 believe that we showed interest and had conversations
 21 with him and ultimately decided not to.

22 **Q. Just turning to the middle of this**
 23 **e-mail, there is a paragraph starting with Georgia**
 24 **Dental Association, colon, do you see that?**

25 A. Yes.

72 (Pages 285 to 288)

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1 **Q. Just directing your attention to the**
 2 **sentence beginning with obviously, you state**
 3 **"obviously whatever we do here will go national so we**
 4 **are on scary grounds with a short timeframe to**
 5 **respond. They are looking for our proposal asap, Jake**
 6 **is going to ask for more time." Do you see that?**
 7 A. Yes.
 8 **Q. What were you referring to in that**
 9 **sentence?**
 10 A. What specifically are you talking about?
 11 **Q. What did you mean by go national?**
 12 A. It was our belief that if we made an
 13 alliance with a dental association, a state dental
 14 association, that other dental associations would see
 15 it and want to do something similar.
 16 **Q. Was that concerning to you at the time of**
 17 **this e-mail?**
 18 A. Not if the terms were right, no.
 19 **Q. And as part of the proposal to the**
 20 **Georgia Dental Association you list a few bullet**
 21 **points at the bottom of this e-mail, do you see that?**
 22 A. Yes.
 23 **Q. And one of them is an NDA to obtain the**
 24 **list of names who have pledged their business to their**
 25 **buying group and you write "we will analyze the list**

1 Source, but, again, I wasn't disclosed to them.
 2 **Q. Do you know whether that has happened**
 3 **with respect to other buying groups?**
 4 A. I do not.
 5 **Q. Do you know when the decision was made**
 6 **within Schein not to respond to the Georgia Dental**
 7 **Association's RFP?**
 8 A. No, I don't.
 9 **Q. Do you recall who would have made that**
 10 **decision?**
 11 A. I do not recall, no.
 12 **Q. Do you recall whether it was discussed at**
 13 **this September, 2015 meeting referenced in the e-mail?**
 14 A. I believe it was.
 15 **Q. Do you recall any specifics surrounding**
 16 **that discussion?**
 17 A. I do not.
 18 **Q. Did Schein ever have any communications**
 19 **with Patterson regarding the Georgia Dental**
 20 **Association's buying group?**
 21 A. Not to my knowledge.
 22 **Q. How about with Benco?**
 23 A. Not to my knowledge.
 24 **Q. Did anyone at Schein ever look at whether**
 25 **Patterson was bidding on the GDA's buying group?**

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1 **to determine 'risk' with our offer." Do you see that?**
 2 A. Yes.
 3 **Q. What did you mean by analyzing risk in**
 4 **that sentence?**
 5 A. Well, as we mentioned earlier, there are
 6 risks and there are opportunities with any buying
 7 group because a risk would be if the customers were
 8 already all doing business with Schein. If we didn't
 9 do business with them then we have the risk of losing
 10 that business. It is an opportunity if they are not
 11 doing business with Schein to gain the business.
 12 **Q. How would Henry Schein analyze that list**
 13 **of customers?**
 14 A. Just look it up and see how much business
 15 they were doing.
 16 **Q. And does Henry Schein normally request**
 17 **such lists from buying groups that approach it to do**
 18 **business?**
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I don't know. I am not
 21 comfortable with the word normally. I know it has
 22 happened, I don't believe it happens every day.
 23 BY MR. SOLOMON:
 24 **Q. How do you know it has happened?**
 25 A. Well, I believe it happened to Smile

1 A. I don't know, but typically they don't
 2 tell us who else is bidding.
 3 **Q. Is that something someone from Schein**
 4 **would have looked into?**
 5 A. I don't know. We could have.
 6 **Q. Do you know who would have looked into**
 7 **it?**
 8 A. No.
 9 **Q. Do you know whether someone did look into**
 10 **that?**
 11 A. I do not.
 12 **Q. The same question but for Benco.**
 13 A. Same answer.
 14 (Document identified as Exhibit 243 for
 15 identification.)
 16 BY MR. SOLOMON:
 17 **Q. Mr. Steck, please take a look at**
 18 **Exhibit 243 and just let me know when you have had a**
 19 **chance to review it. Mr. Steck, have you reviewed**
 20 **Exhibit 243?**
 21 A. I have reviewed the first page of it.
 22 The rest of it I have read before, but if you want me
 23 to spend time reading through it I can.
 24 **Q. I think that is all right, we can go**
 25 **ahead.**

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1 So, Mr. Steck, this is an October,
 2 2015-e-mail conversation between yourself and Keith
 3 Clements from Dentsply and the document is Bates
 4 labeled Henry Schein-000024459.
 5 We talked about Mr. Clements earlier from
 6 Dentsply, and in this e-mail here, Exhibit 243, it
 7 looks like Mr. Clements forwards you an e-mail from
 8 Frank Capaldo regarding the Georgia Dental
 9 Association's buying cooperative, and then he asks to
 10 speak with you. Would you agree with that
 11 characterization of this e-mail?
 12 A. That Keith would like to speak with me.
 13 Q. Right.
 14 A. Yes.
 15 Q. He says, "Dave, call me on my cell when
 16 you have a moment, need to speak with you about this
 17 group."
 18 Do you recall speaking with Mr. Clements
 19 about this group?
 20 A. Very vaguely.
 21 Q. What do you recall?
 22 A. He just asked me if we were -- I think he
 23 asked me if we were going to do something with it at
 24 the point, I don't think I knew.
 25 Q. Do you recall what he asked you

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1 specifically?
 2 A. No.
 3 Q. Do you know why Mr. Clements was curious
 4 as to what Henry Schein thought about this GDA buying
 5 group?
 6 A. You would have to ask him, I don't know.
 7 Q. What did you tell Mr. Clements in your
 8 phone call with him?
 9 A. As I said, I don't remember exactly.
 10 Q. Do you recall generally?
 11 A. I think he simply asked us whether we
 12 were going to be involved with this and I believe I
 13 said I didn't know at that point in time.
 14 Q. And you have no understanding as to why
 15 Mr. Clements wanted to know that information, is that
 16 right?
 17 A. Well, no, I don't.
 18 Q. Do you have any understanding as to why
 19 Mr. Clements wanted to know that information?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I do not.
 22 MR. SOLOMON: I think we can take a quick
 23 break.
 24 (Recess taken.)
 25

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1 (Document identified as Exhibit 244 for
 2 identification.)
 3 BY MR. SOLOMON:
 4 Q. Mr. Steck, the court reporter has handed
 5 you Exhibit 244, which is a document Bates labeled
 6 Henry Schein-000060287. Have you seen this
 7 communication before?
 8 A. Yes. I don't really remember it very
 9 well, but I have seen it.
 10 Q. And it appears that this is a
 11 communication between yourself and Mr. Kyle Steck, is
 12 that right?
 13 A. Yes.
 14 Q. And in the from line it says Dad Steck,
 15 that would be you?
 16 A. Yes.
 17 Q. And that is your phone number there right
 18 next to it?
 19 A. Yes.
 20 Q. The body of the message says, "Okay...
 21 PDCO leaked last night to their team, we are calling
 22 suppliers all morning and confirming it. We will tell
 23 the sales team via internal memo later today."
 24 In that excerpt I just read you does PDCO
 25 refer to Patterson?

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1 A. Yes.
 2 Q. What is this text message about?
 3 A. I really don't know. I believe -- I
 4 believe it was about A-Dec.
 5 Q. And how do you know that?
 6 A. Because of the timing.
 7 Q. What was happening with A-Dec at the time
 8 of this document?
 9 A. A-Dec had been selling through Patterson
 10 but not through Schein and then made the decision in
 11 late 2014 to open to Schein in 2015.
 12 Q. And A-Dec is a manufacturer?
 13 A. They are the largest manufacturer of
 14 dental equipment in the United States.
 15 Q. How did Schein learn that Patterson
 16 leaked that information to its team?
 17 A. It came from the investment community.
 18 Q. What do you mean by investment community?
 19 A. The CEO of Patterson addressed a group of
 20 managers with investors in the room and told them that
 21 they expect that Schein would be getting opened by
 22 A-Dec in the next few months.
 23 Q. And how did you learn about that meeting?
 24 A. Because it was all over the investment
 25 community Internet that night.

74 (Pages 293 to 296)

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1 **Q. So you learned that information from a**
 2 **website on the Internet?**
 3 A. Yes, from one of the investors that
 4 follows both companies.
 5 **Q. Do you recall which investors that was?**
 6 A. Jeff Johnson.
 7 **Q. And Jeff Johnson is a part of what**
 8 **organization?**
 9 A. RW Baird.
 10 **Q. Is that an investment firm?**
 11 A. Yes.
 12 (Document identified as Exhibit 245 for
 13 identification.)
 14 BY MR. SOLOMON:
 15 **Q. Mr. Steck, the court reporter has handed**
 16 **you Exhibit 245, which is a document beginning with**
 17 **Bates number Henry Schein-0000128721.**
 18 A. Okay.
 19 **Q. Let me know when you have had a chance to**
 20 **look it over.**
 21 MR. McDONALD: Do you know where this
 22 came from?
 23 MR. SOLOMON: I don't.
 24 MR. McDONALD: The custodian?
 25 MR. SOLOMON: Thank you for the

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1 clarification.
 2 MR. McDONALD: I know we produced it.
 3 MR. SOLOMON: I was just about to say.
 4 BY MR. SOLOMON:
 5 **Q. So this was Dave Steck was listed as the**
 6 **custodian on this particular version of the document.**
 7 **There was no metadata associated with it in terms of a**
 8 **date.**
 9 MR. McDONALD: Okay.
 10 MR. SOLOMON: It is sort of what I would
 11 like to learn a little bit about.
 12 THE WITNESS: Okay.
 13 Do you want me to read through it
 14 completely or just --
 15 BY MR. SOLOMON:
 16 **Q. Whenever you are comfortable enough that**
 17 **you are able to just discuss the document.**
 18 A. I think I am comfortable enough to
 19 discuss it.
 20 **Q. Okay.**
 21 **So this appears to me to be a document**
 22 **that was a hard copy document that was copied or**
 23 **scanned. Is that your understanding as well?**
 24 A. I don't know. I have seen it before, I
 25 don't know where it came from.

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1 **Q. If you look at the first page of this**
 2 **document there appears to be a tab folder on top that**
 3 **says GPO Strategy.**
 4 **Does that appear to you to be a file that**
 5 **you -- strike that.**
 6 **Does this appear to be something from**
 7 **your files?**
 8 A. No. It appears to be a tab in a binder.
 9 **Q. And this is not a binder that you own or**
 10 **have made or that is a part of your own records?**
 11 A. It may be. I didn't create it.
 12 **Q. Do you know who would have created it?**
 13 A. I do not.
 14 **Q. And you said you have seen these**
 15 **documents before.**
 16 A. Yes.
 17 **Q. Do you recall in what context you have**
 18 **seen these documents before?**
 19 A. I think it was part of a meeting we had,
 20 but I don't know who actually did this. I am having a
 21 hard time figuring out by reading it either.
 22 Are you waiting for me to say something?
 23 **Q. Whenever you are ready to discuss the**
 24 **document.**
 25 A. I think I am ready to discuss it, I can't

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1 be a master of all of it.
 2 **Q. Sure.**
 3 **Do you recall who prepared these**
 4 **documents?**
 5 A. No.
 6 **Q. The third page of this document begins**
 7 **with a sentence that says Objective, do you see that?**
 8 A. Yes.
 9 **Q. And it appears to be a study about Smile**
 10 **Source, it says "identify details on the Smile Source**
 11 **(SS) offering."**
 12 A. Yes.
 13 **Q. Do you have any idea who would have**
 14 **prepared that document or report?**
 15 A. I would be guessing, I don't know. It is
 16 well done, whoever did it, did a good job with it. I
 17 am trying to think of who that could be. I don't
 18 know.
 19 **Q. Do you have any understanding as to when**
 20 **this report would have been prepared?**
 21 A. No, no -- there is no date on it?
 22 **Q. There does not appear to be a date on it.**
 23 A. I don't know.
 24 **Q. Do you recall whether anyone within Henry**
 25 **Schein's dental organization was conducting a study on**

75 (Pages 297 to 300)

301

1 **Smile Source at any point?**
 2 A. Not a study.
 3 I know a lot of us -- different people
 4 were in conversations with them, but I don't know
 5 anybody that actually did a study like this.
 6 **Q. You can put that document aside unless**
 7 **you have any other information you would like to share**
 8 **about it.**
 9 A. No.
 10 I don't know. I wish I could help you,
 11 but I don't.
 12 **Q. Do you keep any files in hard copy at**
 13 **your office that relate to buying groups or GPOs?**
 14 A. I keep lots of files in my office in hard
 15 copy. I am sure there is things like this in them, I
 16 can't speak specifically. They are organized by time
 17 period.
 18 **Q. Do you organize your files by topic?**
 19 A. Usually by topic by year.
 20 **Q. Do you recall whether you have a file**
 21 **that is specific to buying groups or GPOs?**
 22 A. I do not recall.
 23 **Q. Does Henry Schein Dental ever hold**
 24 **internal meetings from time to time to discuss buying**
 25 **groups or GPOs?**

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1 A. I can't recall any meeting we have had
 2 that was specifically for that reason. As you saw in
 3 some of the other we have had meetings where it was
 4 discussed.
 5 **Q. So you are not aware of any regular**
 6 **meetings internally, the purpose of which is to**
 7 **discuss buying groups or GPOs?**
 8 A. The only areas -- I am not aware of them,
 9 the only areas that would take place would be within
 10 the mid market group.
 11 **Q. Do you know who would be a part of those**
 12 **meetings?**
 13 A. Brian Brady and whoever else on his team
 14 was involved.
 15 **Q. Were you a part of any of those meetings**
 16 **at any point?**
 17 A. No.
 18 **Q. I have no further questions today about**
 19 **the documents we have looked at.**
 20 **Before we finish today I would just like**
 21 **to ask you if you have any other information you would**
 22 **like to provide us with that you would like us to**
 23 **consider in our investigation of this matter.**
 24 A. Not that I am aware of. But I am happy
 25 to -- you mean verbal information or written

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1 documents?
 2 **Q. Both.**
 3 A. Written documents I would have to look, I
 4 don't know as I sit here.
 5 Verbal information, no, I think I have
 6 told you everything I know.
 7 **Q. Okay.**
 8 **WELL, thank you very much for your time,**
 9 **we really appreciate it.**
 10 MS. REPORTER: Signature?
 11 MR. McDONALD: Yes.
 12 (WHICH WERE ALL OF THE PROCEEDINGS HAD OR
 13 TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)
 14
 15
 16
 17
 18
 19
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 21
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304

1
 2 FEDERAL TRADE COMMISSION
 3 HENRY SCHEIN, INC., PATTERSON)
 4 COMPANIES, INC., AND BENCO DENTAL) MATTER NO.
 5 SUPPLY COMPANY) 151090
 6)
 7 -----)
 8 I, DAVID A. STECK, being first duly sworn, on
 9 oath say that I am the deponent in the aforesaid
 10 deposition taken on May 26, 2017; that I have read the
 11 foregoing transcript of my deposition, consisting of
 12 pages No. 1 through No. 304, inclusive, and affix my
 13 signature to same.
 14
 15 -----
 16 DAVID A. STECK
 17
 18 Subscribed and sworn to
 19 before me this day of
 20 , 2017
 21
 22 Notary Public
 23
 24
 25

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF DUPAGE)
3 I, STEPHANIE A. BATTAGLIA, CSR and Notary
4 Public in and for the County of DuPage and State of
5 Illinois, do hereby certify that on May 26, 2017, at
6 7:53 a.m., at 55 West Monroe Street, Suite 1825,
7 Chicago, Illinois, the deponent DAVID A. STECK
8 personally appeared before me.
9 I further certify that the said DAVID A.
10 STECK was by me first duly sworn to testify and that
11 the foregoing is a true record of the testimony given
12 by the witness.
13 I further certify that the deposition was
14 terminated at 3:31 p.m.
15 I further certify that I am not counsel for
16 nor related to any of the parties herein, nor am I
17 interested in the outcome hereof.
18 In witness whereof, I have hereunto set my
19 hand and seal of office this ____ of June, 2017.
20
21 Notary Public
22 CSR No. 084-003337 - Expiration Date: May 31, 2019.
23
24
25

A				
A-dec 51:2 256:14 296:4,7,9,12,22	action 200:13 201:1 201:12,13 209:9 209:12	afford 40:18	and/or 103:2	244:25
a.m 2:10 139:3 152:20 198:1 201:16 305:6	active 110:15 147:7	aforsaid 304:7	Angeles 93:15,20	App 231:3
able 23:5 106:15 132:16,21 133:18 139:18,19 150:4 164:23 179:17 185:3 186:13 273:21,22 298:17	activity 4:8,20 129:24 158:12,14 171:23	agenda 247:18,23 249:6,21	angry 285:6	Apparently 175:9
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ERRATA SHEET

DEPOSITION OF: David A. Steck

DATE: May 26, 2017

CASE NAME: *Henry Schein, Inc., Patterson Companies, Inc. and Benco Dental Supply Company; Matter No. 1510190*

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
15	13	Change "Tay" to "Tae"	Typographical error
17	22	Change "that" to "those"	Typographical error/misspoke
18	5	Change "Tim Sullivan generally my boss." to "Tim Sullivan generally, my boss."	Typographical error/clarification
18	16	Delete "can"	Clarification/misspoke
19	9	Delete "we have"	Clarification/misspoke
		Change "mid market" to "midmarket" throughout	Typographical error
25	16	Change "several of them, other events" to "several of them at other events as well"	Typographical error
26	3-4	Delete "And so they were starting to grow together"	Clarification
30	14	Change "the primary" to "the primary reasons."	Typographical error
36	19	Change "we somebody we" to "somebody we"	Typographical error
43	1	Change "typically trade meetings" to "typically at trade meetings"	Typographical error
43	10	Change "and will sponsor" to "and we will sponsor"	Typographical error
48	19	Change "estimates has" to "estimates have"	Typographical error
49	6	Change "manufacturer Don Hobbs" to "manufacturer, Don Hobbs"	Typographical error
49	7	Change "manager" to "manufacturer"	Typographical error
51	16	Change "manufacture" to "manufactures"	Typographical error

56	20	Change "the services and the salesperson provide in the relationship" to "the services and the relationship the salesperson provides"	Clarification/misspoke
		Change "catalogues" to "catalogs" and "catalogue" to "catalogs" throughout	Typographical error
57	6	Delete "rarely"	Typographical error/misspoke
57	11-12	Change "some cases" to "in some cases"	Typographical error
65	11	Delete "or 10"	Clarification/misspoke
65	13	Change "variations" to "variation"	Typographical error
65	14	Change "dentist's" to "dentists"	Typographical error
78	24	Change "they want to pay so much" to "they only want to pay so much"	Clarification
84	23	Change "250" to "\$250,000"	Typographical error
88	1	Change "salesperson" to "salespeople"	Typographical error/misspoke
93	7-8	Change "the depends is" to "it depends on"	Typographical error/misspoke
93	8	Change "United States's" to "United States"	Typographical error/misspoke
105	11	Change "how" to "what"	Typographical error/misspoke
111	3	Change "about doing" to "about not doing"	Typographical error
112	2	Delete "go to management"	Typographical error
122	9	Change "Joe Cavaretto" to "Joe Cavaretta"	Typographical error
129	19-20	Change "that discuss order of review" to "that we discuss in order of review"	Clarification/misspoke
136	21	Change "conversational" to "involved"	Clarification/misspoke
151	8	Change "with" to "that"	Typographical error/misspoke
154	22	Change "see this unfortunately a trend" to "see this unfortunately is a trend"	Typographical error/misspoke
157	1	Change "He was recommended me" to "He was recommended to me"	Typographical error/clarification
157	13	Change "been" to "seen"	Typographical error/clarification
166	4	Delete ", it is"	Typographical error/misspoke

171	20	Change "sold to Dentsply" to "sold from Dentsply"	Typographical error
174	9	Delete "of"	Typographical error
185	8-9	Delete "at that time"	Clarification/misspoke
202	3	Change "need" to "needed"	Typographical error/misspoke
203	5	Delete "Midway Dental,"	Typographical error/clarification
203	7	Change "do" to "down"	Typographical error
204	22	Change "they weren't happy with" to "that weren't happy with"	Typographical error
207	5	Change "anyway" to "any way"	Typographical error
209	23	Change "my" to "a"	Typographical error/misspoke
234	23	Change "I had" to "they had"	Typographical error/misspoke
236	19	Change "relating" to "relaying"	Typographical error
236	22	Change "It is" to "It was"	Typographical error
242	22	Change "the Ivoclar had requested at the west coast" to "Ivoclar had requested that of the west coast"	Typographical error/clarification
243	15	Change "I was not" to "I had not"	Clarification/misspoke
244	10	Change "giving you" to "giving me"	Typographical error/misspoke
248	18	Change "I think to" to "I think so"	Typographical error/misspoke
259	8	Change "Yeah, no, I am not aware of that" to "No, I am not aware of that"	Clarification/misspoke
284	11	Change "intention" to "understanding"	Clarification/misspoke
288	22	Change "him" to "them"	Typographical error/misspoke
291	1	Change "disclosed to them" to "involved with them"	Typographical error/misspoke
302	3	Change "the other we" to "the other documents we"	Typographical error/misspoke

I, David A. Steck do hereby acknowledge that I have read the above-referenced transcript, that I have made any corrections, additions or deletions that I was desirous of making; and that the transcript contains my true and correct testimony.

EXECUTED this 29th day of June, 2017.

at West Allis WISCONSIN
(City) (State)

David A. Steck
Signature of Witness

Subscribed and sworn to and before me this 29th day of June 2017.

Tornelia L. Mitchell
Notary Public

SEAL:



8/24/2018

CX0311

In the Matter of:

Henry Schein, Inc., et al.

May 25, 2017

Tim Sullivan

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

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1 FEDERAL TRADE COMMISSION

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4 HENRY SCHEIN, INC., PATTERSON)

5 COMPANIES, INC., AND BENCO DENTAL) MATTER NO.

6 SUPPLY COMPANY) 1510190

7)

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12 INVESTIGATIONAL HEARING OF TIM SULLIVAN

13 VOLUME 1

14 Chicago, Illinois

15 Thursday, May 25, 2017

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24 REPORTED BY:

25 Greg S. Weiland, CSR, RMR, CRR

3

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7 Investigational Hearing of TIM SULLIVAN,

8 at the Federal Trade Commission, 55 West Monroe

9 Street, Suite 1825, Chicago, Illinois 60603,

10 commencing at 7:53 a.m., Thursday, May 25, 2017,

11 before GREG S. WEILAND, CSR, RMR, CRR, pursuant to

12 notice.

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1 INDEX

2 May 25th, 2017

3 TESTIMONY OF TIM SULLIVAN

4 PAGE

5 Examination by Ms. Kahn8

6

7 DEPOSITION EXHIBITS

8 NUMBER DESCRIPTION PAGE

9 Exhibit 208 Subpoena Ad Testificandum to 9

10 Tim Sullivan

11 Exhibit 209 Series of e-mails sent in 151

12 October 2014, Bates labeled

13 Henry Schein-000043081 through

14 43083

15 Exhibit 210 E-mail sent on Thursday 163

16 November 19, 2015, Bates

17 labeled Henry Schein-000018481

18 through 000018483

19 Exhibit 211 Series of e-mails sent on 183

20 Sunday, July 17, 2011, Bates

21 labeled Henry Schein-000055836

22 through 000055837

23

24

25

5				7			
DEPOSITION EXHIBITS (CONTINUED)				DEPOSITION EXHIBITS (CONTINUED)			
NUMBER	DESCRIPTION	PAGE		NUMBER	DESCRIPTION	PAGE	
1	Exhibit 212	Series of e-mails sent on Wednesday, October 29, 2014, Bates labeled	198	1	Exhibit 222	Group exhibit, text messages, Bates labeled	284
2		Henry Schein-000043065 through 000043069		2		Henry Schein-000068194 and 000068432	
3	Exhibit 213	Series of e-mails sent October 20-21, 2014, Bates labeled	200	3	Exhibit 223	Group exhibit, text messages, Bates labeled	289
4		Henry Schein-000090794 through 000090798		4		Henry Schein-000068325 through 000068337	
5	Exhibit 214	E-mails sent January 26-28, 2015, Bates labeled	211	5	Exhibit 224	AT&T statement, Voice Usage For: (414) 975-8377, Pages 81 through 84	291
6		Henry Schein-000048069 through 000048071		6	Exhibit 225	E-mails sent in March-April 2013, Bates labeled	311
7	Exhibit 215	E-mail sent on Tuesday, November 3, 2015, Bates labeled	216	7		Henry Schein-000164441 through 000164456	
8		Henry Schein-000088519 through 000088520		8	Exhibit 226	E-mails sent January-February 2012, Bates labeled	334
9	Exhibit 216	E-mails sent on Tuesday, November 3, 2015, Bates labeled	225	9		Henry Schein-000178388 through 000178391	
10		Henry Schein-000024466 through 000024467		10	Exhibit 227	E-mails sent on October 3, 2014, Bates labeled	344
11				11		Henry Schein-000043052	
12				12			
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DEPOSITION EXHIBITS (CONTINUED)				(Witness sworn.)			
NUMBER	DESCRIPTION	PAGE		TIM SULLIVAN			
1	Exhibit 217	Series of e-mails sent on Tuesday, November 3, 2015, Bates labeled	234	after being first duly sworn, testified as follows:			
2		Henry Schein-000004474 through 000004475		EXAMINATION			
3	Exhibit 218	E-mails sent in July 2012, Bates labeled	239	BY MS. KAHN:			
4		Henry Schein-000045132 through 000045133		Q. Good morning, Mr. Sullivan.			
5	Exhibit 219	E-mails sent on Wednesday September 9, 2015, Bates labeled	246	A. Good morning.			
6		Henry Schein-000086916 through 000086920		Q. Thank you for being here today. My name is Lin Kahn. I'm an attorney with the Federal Trade Commission, and I'm here today with Ronnie Solomon and Karen Goff, also attorneys with the FTC.			
7	Exhibit 220	E-mails sent on Tuesday, September 17, 2013, with attachments, Bates labeled	249	Today's investigational hearing is being conducted as part of the Commission's investigation of Henry Schein, Matter Number 1510190.			
8		HSD0067484, and HSD-AZ0067485 1 through 20		For the record, would counsel please state their appearance.			
9	Exhibit 221	Meeting announcement, Subject: Educational Overview of GPO's, Bates labeled	249	MR. McDONALD: John McDonald.			
10		Henry Schein-000093215		BY MS. KAHN:			
11				Q. Mr. Sullivan, you are appearing today pursuant to subpoena issued by the FTC; is that correct?			
12				A. Correct.			
13				Q. I'm going to ask the court reporter to mark this as Exhibit 208.			
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<p>1 (Exhibit 208 was marked for 2 identification.) 3 BY MS. KAHN: 4 Q. Do you understand that this is the 5 subpoena compelling your testimony today, 6 Exhibit 208? 7 A. Yes. 8 Q. Okay. You can put that aside. 9 You have provided sworn testimony before, 10 correct? 11 A. Correct. 12 Q. How many times? 13 A. Twice in this for this circumstance; once 14 was in Dallas and another time in Milwaukee for the 15 Source One case and the class action. 16 Q. And you understand that those cases are 17 separate from the FTC's investigation? 18 A. Correct, yes. 19 Q. Okay. I'm sure you're familiar with the 20 rules, but let me just take a few minutes to go over 21 them with you again. 22 Our conversation is being transcribed by a 23 court reporter today, so there are a couple of basic 24 ground rules. 25 Let's try not to interrupt one another.</p>	<p>1 To the extent you have a sense and it's based upon 2 communications with counsel, then I don't want you 3 revealing those communications, okay? 4 BY MS. KAHN: 5 Q. And just to be clear, I'm just asking yes 6 or no if you have a sense of what the investigation 7 is about. 8 A. Through the communication I had with 9 counsel, yes. 10 Q. Okay. Do you have a personal view of the 11 merits of the FTC's investigation? 12 A. No. 13 Q. You're employed by Henry Schein, correct? 14 A. Yes. 15 Q. Your current title is? 16 A. President of our North American dental 17 group. 18 Q. How many years have you had that title? 19 A. I've been with Henry Schein 20 years. I 20 started out as president of the U.S. dental 21 business. I was executive vice president for four 22 or five years; I've been president of North America 23 for about eight years now. 24 Q. And you started to do this a little bit, 25 but can you run through all of your prior positions</p>
10	12
<p>1 I'll let you finish, and please let me finish my 2 questions as well. 3 Please verbalize your answers instead of 4 nodding or using gestures. 5 Is that okay? 6 A. Okay. 7 Q. I'll do my best to ask clear questions, 8 but if you don't understand something, just let me 9 know and I will try to rephrase or clarify. 10 Okay? 11 A. Okay. 12 Q. We will take breaks from time to time, but 13 if you need a break at a certain point, just let me 14 know and we can go off the record. The only thing 15 that I ask is that you answer any pending questions 16 before you leave the room. 17 Okay? 18 A. Okay. 19 Q. Is there any reason why you cannot provide 20 complete and truthful testimony today? 21 A. No. 22 Q. And before we get started, I'm wondering 23 if you have a general sense of what the FTC's 24 investigation of Henry Schein is about. 25 MR. McDONALD: Well, I'll instruct you.</p>	<p>1 at Henry Schein? 2 A. Sure. So we merged with Henry Schein in 3 1997, and at that time I was president of our U.S. 4 dental business. And around '99-2000 I became 5 executive vice president of our U.S. dental business 6 and I believe it was around 2004 became president of 7 the U.S. dental business once again, and then took 8 responsibility for Canada about four years ago, and 9 that's when the North America dental group title was 10 added. 11 So between U.S. and North America, it's 12 been the last about eight to twelve years. 13 Q. Got it. And you mentioned executive VP of 14 U.S.? 15 A. Correct. 16 Q. What was that? What did that title 17 entail? 18 A. I was responsible for the field sales 19 organization and marketing team of the U.S. dental 20 business. 21 Q. Prior to Schein you worked for Sullivan 22 Dental; is that correct? 23 A. Correct. 24 Q. And that was your family business? 25 A. It started out as that. My father started</p>

13

1 in 1980. I joined the company in 1989, but we went
2 public in 1990 and a secondary offering in '92. And
3 by then my father brought on other partners into the
4 business, so it was never really run as a family
5 business, per se. Then we joined with Henry Schein
6 in 1997.

7 **Q. Sullivan Dental was a distributor of
8 dental supplies and equipment; is that right?**

9 A. That's correct.

10 **Q. And did they provide services as well?**

11 A. Yes.

12 **Q. Did you help out in the business before
13 you started officially working for Sullivan Dental?**

14 A. One summer.

15 **Q. And what did you do?**

16 A. I helped drive -- drove around with our
17 service technicians and helped install dental
18 equipment in dental offices.

19 **Q. Who was your first position at Sullivan
20 Dental?**

21 A. That's interesting. I was the assistant
22 controller. There was no controller. When he came
23 into business my father thought the title of
24 controller was too big for a young college brat, and
25 so I was assistant controller for a couple of years;

15

1 salespeople, service technicians, sales and service
2 centers, you know, branches across the country.
3 Henry Schein was going through the process of
4 transitioning from this mail order telesales
5 organization to full service.

6 So Henry Schein had an excellent brand
7 name from a marketing standpoint, innovative company
8 technology standpoint. Those are areas that we were
9 struggling in from the Sullivan Dental perspective.

10 So the combination of the direction they
11 were heading and the direction -- and our need on
12 the telesales side, overall marketing, technology,
13 was an area that from my perspective, you know, we
14 needed help with.

15 So the timing of putting the two companies
16 together was just -- it just felt right.

17 **Q. Got it. And at the time, around the time
18 of the merger, what was the largest full-service
19 dental distributor in the U.S.?**

20 A. Patterson Dental.

21 **Q. Patterson, okay. Since joining Schein,
22 have you personally been involved in the process of
23 acquiring other companies?**

24 A. Yes, some, yes, for -- within the U.S.
25 dental business, yes.

14

1 and I became controller vice president of operations
2 and then chief financial officer and ultimately
3 president of Sullivan Dental in 1997, which I only
4 held that title for about six months because six
5 months later we merged with Henry Schein.

6 **Q. Got it. And at the time of the merger, do
7 you have a sense of what the approximate market
8 share was for Sullivan Dental?**

9 MR. McDONALD: Object to the form.

10 THE WITNESS: Boy.

11 MR. McDONALD: Vague as to scope.

12 THE WITNESS: It's 5 percent maybe.

13 BY MS. KAHN:

14 **Q. And that's nationally?**

15 A. Correct, in the U.S.

16 **Q. And why did you decide to merge with
17 Henry Schein?**

18 A. We were, Sullivan Dental, we were
19 historically a full-service dental organization. We
20 started the business that way; my father started the
21 business that way. Henry Schein was historically a
22 mail order, if you would, telesales/marketing
23 company.

24 They were making the transition into full
25 service. We already had a national footprint with

16

1 **Q. Okay. Is that part of your job duties and
2 responsibilities?**

3 A. To get involved, yes, but I don't lead the
4 discussions. I don't lead the negotiations. We
5 have a business development team led by Mark Mlotek,
6 who is the primary person that we worked with during
7 our merger discussions; and he has a gentleman by
8 the name of Scott Sanders that focuses strictly on
9 the dental business.

10 **Q. Got it.**

11 A. So he takes the lead in negotiations. I
12 get involved just, you know, talking to the owners,
13 you know, kind of telling them my experience going
14 through the process, you know, here I am 20 years
15 later, it's a great company, and then helping to
16 answer any questions from a transitional standpoint
17 from them so they'll feel comfortable to join the
18 organization.

19 **Q. And would you say Mr. Sanders is the
20 primary contact person with the companies that
21 Henry Schein are trying to acquire in the U.S. on
22 the dental side?**

23 A. On the dental side, yes.

24 **Q. Henry Schein has three divisions; is that
25 correct?**

17	<p>1 A. Correct.</p> <p>2 Q. And can you just name them for us?</p> <p>3 A. Sure. We have a global dental business, a</p> <p>4 global animal health business, the vet business,</p> <p>5 companion pet business, and then it's a global</p> <p>6 medical, which is primarily the U.S. There's not</p> <p>7 much on a global standpoint, so dental, vet and</p> <p>8 medical.</p> <p>9 Q. Henry Schein Dental is a distributor of</p> <p>10 dental supplies, equipment and service, correct?</p> <p>11 A. Correct.</p> <p>12 Q. As president of Henry Schein Dental, have</p> <p>13 you had interactions with the medical division?</p> <p>14 A. Interactions, yes.</p> <p>15 Q. In what context?</p> <p>16 A. I don't sit in any of their meetings; they</p> <p>17 don't sit in on any of our meetings. We report to</p> <p>18 the executive management committee of the company.</p> <p>19 Excuse me, a little head cold I'm dealing with.</p> <p>20 So monthly we present to the EMC. We</p> <p>21 don't sit in in each others' meetings, so I'm not in</p> <p>22 depth in their meetings; but Dave McKinley used to</p> <p>23 be the president of the medical division. I'd see</p> <p>24 him from time to time at various functions and</p> <p>25 meetings.</p>	19	<p>1 Q. Right. And who was in charge of Canada</p> <p>2 before you were in charge?</p> <p>3 A. Rich Miranda.</p> <p>4 Q. What would you say are your general duties</p> <p>5 and responsibilities for U.S., for the U.S. dental</p> <p>6 business?</p> <p>7 A. Really set the strategy, the tones around</p> <p>8 the culture and our, you know, just really</p> <p>9 going-to-market strategy for the U.S. dental.</p> <p>10 So the primary responsibility I have is</p> <p>11 the single office space practitioner. We have a</p> <p>12 segment we call our mid market space, which is where</p> <p>13 customers are joining together themselves owning</p> <p>14 multiple locations; and then there's a complete</p> <p>15 separate what we call our elite dental support</p> <p>16 organization, DSO. That's run separately by a</p> <p>17 gentleman by the name of Hal Muller. So I have</p> <p>18 responsibility for that mid market and single office</p> <p>19 space practitioner segment.</p> <p>20 We do sell equipment and service to the</p> <p>21 elites as well, but from a customer relationship</p> <p>22 standpoint that's owned by Hal Muller.</p> <p>23 Q. And do you see -- oversee Hal Muller at</p> <p>24 all?</p> <p>25 A. No. We both report in to Jim Breslawski.</p>
18	<p>1 Q. What is the EMC?</p> <p>2 A. Executive management committee.</p> <p>3 Q. And there's a monthly presentation to the</p> <p>4 EMC?</p> <p>5 A. Correct.</p> <p>6 Q. That involves all three divisions?</p> <p>7 A. Well, I'm not sure how often the others do</p> <p>8 it, but we -- presenting to the EMC, I'm sorry. So</p> <p>9 it's a meeting we call it. It's just an executive</p> <p>10 review with Stan Bergman, as our chairman and CEO,</p> <p>11 and Jim Breslawski, who I report to.</p> <p>12 Q. And I don't think I quite have it clear in</p> <p>13 my head. Is that just with dental?</p> <p>14 A. Yes, that's just dental.</p> <p>15 Q. Got it. Are there any meetings where all</p> <p>16 three divisions are presenting information about</p> <p>17 their division?</p> <p>18 A. No.</p> <p>19 Q. Would you say you have any insight into</p> <p>20 the medical distribution market?</p> <p>21 A. No.</p> <p>22 Q. And you've been responsible for both U.S.</p> <p>23 and Canada for four years you said?</p> <p>24 A. Yeah, Canada was just added four years</p> <p>25 ago.</p>	20	<p>1 Q. I guess in my mind that structure is a</p> <p>2 little unclear because you do oversee all of</p> <p>3 North America dental, right?</p> <p>4 A. Yes. Well, in Henry Schein.</p> <p>5 Q. So you oversee all of it except for the</p> <p>6 elite DSO portion?</p> <p>7 A. So not quite. So we have -- so the single</p> <p>8 office space practitioner and as they grow into this</p> <p>9 mid market segment; the elites are Hal. We have a</p> <p>10 lab division within -- so when I said there's three</p> <p>11 divisions within Henry Schein, Inc., those are the</p> <p>12 three main divisions. Within each division there</p> <p>13 are other subdivisions, if you would.</p> <p>14 So in the U.S. market, for example, our</p> <p>15 lab business, Zahn, that is run separately. That's</p> <p>16 not part of the U.S. dental business that I'm</p> <p>17 responsible for.</p> <p>18 So when we talk about Henry Schein Dental</p> <p>19 that does not include special markets. That does</p> <p>20 not include our lab business. We have a division</p> <p>21 called Henry Schein Practice Solutions, so that's a</p> <p>22 team that runs -- manages our practice management</p> <p>23 systems. Dentrax is the primary brand there on the</p> <p>24 dental side. That team is run out of Utah by a</p> <p>25 gentleman named Kevin Bunker. There is a dental</p>

21	<p>1 specialty group. We have folks on the specialists 2 in the market that there's a different go-to-market 3 strategy for specialists versus the primary general 4 practitioner. 5 So there's divisions within the U.S. 6 market that don't all report in to me. 7 Q. Got it. 8 A. And there's presidents of each of those 9 divisions as well. 10 Q. Got it. And does Hal Muller oversee 11 special markets for Canada as well? 12 A. No, no. 13 Q. And who oversees that? 14 A. Peter Jugoon, J-u-g-o-o-n, is the 15 gentleman responsible for that; and he reports in to 16 Cy Elborne, E-l-b-o-r-n-e, who is the president of 17 Canada. 18 Q. And how would you describe the dynamic of 19 your division versus Hal Muller's division? 20 MR. McDONALD: Object to the form. 21 THE WITNESS: It's structured really 22 completely differently. The customers are 23 structured differently. They're more centralized in 24 decision making. Even in the mid-market space where 25 they have multiple locations, in most cases the</p>	23	<p>1 my team that works in partnership with Hal and his 2 team when, you know, going to propose, you know, to 3 one of these customers. 4 And then once that happens, our team is 5 responsible for installing, servicing, you know. So 6 the day-to-day operations of a dental practice, we 7 still help manage that. 8 Q. How often would you say you interact with 9 Mr. Muller? 10 A. A couple times a month. 11 Q. Okay. Would you say you have a general 12 sense of special markets and Mr. Muller's division? 13 A. Yes. 14 If I can go back to the question you asked 15 about medical. 16 Q. Sure. 17 A. You asked about do I have a general -- can 18 you just repeat that? 19 Q. Yes. The earlier question was do you have 20 any insight into the medical distribution market. 21 A. Yeah, so, I mean, I understand the 22 differences between, you know, how we go to market 23 and dental versus medical, so I have a general 24 insight. In other words, they don't have any 25 equipment and service division. They sell equipment</p>
22	<p>1 individual locations are still making their own, you 2 know, buying decisions; or, you know, there might be 3 some primary decision maker, but they're still -- 4 the role of what we call our field sales consultant 5 is critical, FSC -- Acronyms R' Us at 6 Henry Schein -- so whereas in this elite special 7 markets group, the role of a field sales consultant, 8 the territory rep, a salesperson, is for the most 9 case not needed. It's a corporate buyer that's 10 funded differently; there's venture capital money 11 involved. So it's a different sales process, 12 different decision-making process. 13 Q. And in running your division, do you have 14 to confer with Mr. Muller's division from time to 15 time? 16 A. We don't have to and we do. It just makes 17 sense. 18 Q. Sure. 19 A. Because those customers, the large 20 customers in his space, he really primarily focuses 21 on the sundries, the merchandise side of the 22 business, you know. Part of the -- you know, the 23 proposals and contracts that they have including 24 pricing on equipment and service, but that's -- we 25 have a special markets equipment team that's part of</p>	24	<p>1 there, but it's operated and managed completely 2 different than how we do things on the dental side. 3 So in that sense I have a sense of the 4 differences between, you know, our dental division 5 and our medical division, but as far as the medical 6 industry I'm not as attuned to that. 7 So I just want to -- you asked something 8 that later triggered. I wanted to make sure I 9 answered that clearly. 10 Q. Sure. I appreciate that. 11 And what's -- your understanding of the 12 differences, what's that based on? 13 A. Meetings that I've had with Dave McKinley 14 and their folks in medical. There's a segment of 15 the medical division that can cross over a little 16 bit with dental. Oral surgeons, for example, oral 17 surgeons are dentists, they're D.D.S.s, but they 18 might also be a part of a group or an organization 19 within the medical side. 20 So we work closely to make sure there's 21 clarification on how to approach oral surgeons as an 22 example, but in general understanding how -- we've 23 attempted to figure out is there a way that we can 24 work -- use our service technician team to help on, 25 you know, installs on medical equipment.</p>

25	<p>1 We've tried some pilots. It's just a 2 completely different strategy, a different 3 go-to-market. The equipment is sold differently 4 from the manufacturers on the equipment side. They 5 take care of the installation and service, so we 6 don't really need to get involved. 7 So it's a different cost structure, a 8 different go-to-market structure. 9 Q. What meetings have you had with 10 Mr. McKinley? 11 A. Just, I mean, in most cases they're not 12 meetings that we have set up together, but we might 13 see each other at a function, you know, sidebar 14 discussions. We've had some meetings set up to 15 specifically talk through, you know, the 16 go-to-market strategy with oral surgeons. 17 There's a group of what we call community 18 health centers, and community health centers have 19 both a medical and a dental aspect within there, so 20 we want to make sure we're aligned how we approach 21 the community health centers. 22 So there's -- I mean, there's meetings, 23 scheduled meetings. I'm not sure when you say what 24 type of meetings. I'm not sure how to -- 25 Q. Sure. That's -- I appreciate your answer.</p>	27	<p>1 A. Correct. 2 Q. Has Henry Schein considered entering other 3 healthcare distribution markets? 4 MR. McDONALD: Object to the form, lack of 5 foundation. 6 THE WITNESS: Such as? 7 BY MS. KAHN: 8 Q. Such as vision. 9 A. Not that I know of, no. 10 Q. For today when I say "Henry Schein" or 11 "Schein," I'm referring just to the dental division 12 unless I say otherwise. 13 A. Okay. 14 Q. Okay. 15 A. Then on dental for sure we have not 16 discussed going into vision. 17 Q. Sure. No, my earlier question was with 18 respect to Henry Schein, Inc. 19 So going back to your duties and 20 responsibilities as president of Schein Dental, what 21 do you spend most of your time doing as president? 22 A. E-mails, really just analyzing what's 23 happening, you know, how our results compared to our 24 budget; working with Dave Steck, who is our general 25 manager, he's responsible for the field</p>
26	<p>1 So would you say that you have a good 2 understanding of the medical division limited to 3 oral surgeons and CHCs? 4 MR. McDONALD: Object to the form. 5 THE WITNESS: Well, yes, but also how they 6 go to market with the rest of the physician space, 7 again, it's no different than how we do in dental. 8 BY MS. KAHN: 9 Q. And in terms of the how to go-to-market 10 strategy, what's that understanding of yours based 11 on? 12 A. Just, again, based on how we offer -- I 13 consider us a full-service distributor. We do 14 basically anything and everything within the dental 15 office and dental practice. I don't believe that's 16 the case on the medical side. 17 Or what they do do is, again, it's the 18 equipment that's required in the medical office that 19 we, you know, participate in is the tables and 20 chairs. The big, huge, you know, exam, things that 21 they -- I think that's sold separately and sold 22 directly; we don't get involved in that. 23 Q. And that understanding, what you just 24 testified to, that's based on discussions with 25 Mr. McKinley?</p>	28	<p>1 organization; understanding where we're performing 2 well in some markets versus others and what can we 3 do to help turn around in the markets that maybe 4 we're not performing so well in. 5 Paul Hinsch is on the marketing side. 6 He's working a little closer with most of our 7 suppliers, so making sure our supplier relationships 8 are intact and strong. 9 Michele Filiault handles all of our 10 operations team, the service technicians. We have 11 750 service techs across the country, and so she's 12 responsible for the teams that manage those service 13 technicians and all the facilities. 14 So just really focused on is the business 15 running smoothly, and there's always fires 16 somewhere, and I spend too much of my time on fires 17 versus sitting back and having the opportunity to 18 really think strategically. 19 Q. You mentioned suppliers earlier. 20 Are you referencing manufacturer, 21 manufacturers that you -- that Schein partners with? 22 A. Correct. 23 Q. And the person that's in charge of that 24 relationship is Paul Rich you said? 25 A. Pull Hinsch, H-i-n-s-c-h. He's</p>

29	<p>1 responsible for the supplier relationships on our 2 merchandise side of the business. We have other 3 relationships as well on the equipment and 4 technology side. 5 Don Hobbs is responsible for what we call 6 our traditional equipment suppliers, chairs, units 7 and lights. John Cox helps manage our product 8 solutions group, which is, you know, CAD/CAM and 9 digital integration, digital technologies. 10 Q. Do you set the overall strategy and 11 direction for Schein? 12 A. Well, again, for Schein Dental? 13 Q. Yes. 14 A. I'm sorry, you said that. Yes. So we 15 have a team of folks; we get together twice a year, 16 and that's -- usually the latter one, the winter one 17 is typically around, excuse me, you know, our 18 budgets are set, and now what's our strategy to 19 help, you know, make sure we execute and perform to 20 the budget. But ultimately that is my 21 responsibility, yes. 22 MR. McDONALD: And as further 23 clarification, when you're saying "Henry Schein" 24 means Henry Schein Dental, it's Henry Schein Dental 25 North America. You're not referring to global?</p>	31	<p>1 A. So we have a gross margin, operating 2 margin and our net margin in the business. 3 Paul Hinsch, as I mentioned before, he's primarily 4 responsible for the margin management, if you would, 5 on our merchandise side of our business to work with 6 our manufacturers, to make sure we're buying as good 7 as anyone in the marketplace, that we have a good 8 rebate program that's aligned with our suppliers for 9 achieving the goals that they set for us; and then 10 from there how do we use that and figure out the 11 end-user pricing to our customers. 12 Q. You oversee Paul Hinsch; is that right? 13 A. Correct. 14 Q. Is margin management part of your job? 15 A. I mean, I definitely am ultimately 16 responsible for it, but I -- it's in very good hands 17 with Paul Hinsch. 18 Q. I'm not sure if you can quantify this, but 19 what portion of your time would you say is devoted 20 to margin management? 21 A. Very little. 22 Q. Is there a certain margin that Schein 23 tries to maintain? 24 MR. McDONALD: Object to the form, vague. 25 THE WITNESS: As our budgets are set each</p>
30	<p>1 MS. KAHN: That's correct. 2 MR. McDONALD: Okay. Just to be sure. 3 MS. KAHN: I appreciate the clarification, 4 but please just state an objection. 5 MR. McDONALD: Well, we want to have a 6 clear record. I'm not being obstructive. 7 MS. KAHN: I understand. 8 MR. McDONALD: I want to make sure that 9 we're clear that he doesn't have knowledge of the 10 strategy on global and he's talking North America. 11 MS. KAHN: I understand. 12 MR. McDONALD: Thank you. 13 BY MS. KAHN: 14 Q. Is part of your job to try to maximize 15 Schein's profits? 16 A. I don't know if I'd use the word 17 "maximize." Part of my job is to make sure that I 18 achieve the budget that we set for the year. 19 Q. And would you say part of your job is to 20 try to increase Schein's market share? 21 A. Yes. 22 Q. Are you familiar with the term "margin 23 management"? 24 A. Yes. 25 Q. What does that term mean?</p>	32	<p>1 year, our goal is to -- you know, part of the 2 overall mix is our gross margin. So yes, there's a 3 margin budget, operating expense budget right on 4 down through -- there's line items for each P&L, our 5 P&L line item that has budgets and targets for. 6 BY MS. KAHN: 7 Q. Who sets the budget? 8 A. Ultimately Steve Paladino, who is our 9 chief financial officer, sets it for the overall 10 organization. From there he is -- again, I believe 11 how it works is he kind of breaks it out between 12 dental, medical and animal health. 13 Jim Breslawski is responsible for the 14 global dental, so he is provided the overall target 15 from Steve there. And then from there he had Graham 16 Stanley, who is the chief financial officer for our 17 global dental business, and he breaks it down by 18 geography as far as, you know, setting targets. 19 Q. Do you have any involvement? 20 A. Not in setting the targets, no. 21 Q. Would you say part of your job is to watch 22 for market developments that may impact Schein's 23 margins? 24 A. Yes, overall market conditions, yes. 25 Q. And is part of your job to prepare Schein</p>

33

1 for risks in the marketplace?

2 A. Yes.

3 **Q. Do you spend any time on specific customer**
4 **accounts?**

5 A. Rarely. The only time I really get
6 involved, if there's a customer complaint of some
7 sort; and even in those cases it's only if the
8 customer for whatever reason just wants to send a
9 letter or an e-mail to the president of the company
10 about they're upset about something, and I'll get
11 involved and help get things resolved.

12 But I don't negotiate pricing with
13 customers; I don't meet with them on how their
14 business is doing in particular.

15 **Q. Do you get involved in determining whether**
16 **or not to try to go after a certain customer to**
17 **acquire them as a customer?**

18 A. To be clear, we don't acquire customers,
19 okay.

20 **Q. Sure.**

21 A. Typically no. I mean, so like the big
22 ones Hal gets directly involved, and I don't meet
23 with those customers. If I'm at a dental convention
24 and one of our sales reps is working on a client and
25 says, hey, would you mind meeting Dr. Jones, I'd

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1 like to introduce him to the president, I'll say hi,
2 shake hands, stand there for five or ten minutes,
3 and then -- so but I don't ever get involved in
4 sitting down in-depth and setting -- negotiating
5 price or anything with the customers. That's all
6 happened at the local level.

7 **Q. Do you ever get involved in saying yes,**
8 **we're going to try to bid for a certain customer?**

9 A. Not customer-specific, no.

10 **Q. Okay. And why not?**

11 A. We have -- all that is handled by our
12 local leadership team.

13 **Q. Got it. Would you say you've been**
14 **successful in leading Schein's**

15 A. I'd like to think so.

16 **Q. And what would you say has been the key to**
17 **your success?**

18 A. The people around me. Just hire right.

19 **Q. You surround yourself with good people?**

20 A. Amazing people, yeah.

21 **Q. Would you say that you know Schein's**
22 **business very well?**

23 A. Yes.

24 **Q. Would you say you understand the dental**
25 **industry very well?**

35

1 A. Yes.

2 **Q. Your compensation is comprised of base**
3 **salary and annual incentives and long-term incentive**
4 **awards; is that right?**

5 A. Correct.

6 **Q. And what are the factors that determine**
7 **the incentive portions of your compensation?**

8 A. There's three pieces that make up the
9 bonus, what we call the PIP program, Performance
10 Incentive Plan. There's -- don't hold me to the
11 percentages -- like 25 percent is on functional
12 financial goals. So that basically is set how do we
13 do versus hitting our budget. So the budget that I
14 am responsible for, the U.S. dental business, makes
15 up about a third of my PIP.

16 There's a middle section that is on how
17 does overall Henry Schein, Inc. do, so I have no
18 control over that. That's overall Henry Schein
19 global results.

20 And then another portion is based on what
21 we call MBOs, the management by objectives. And
22 there's typically four or five of those more
23 activity-based type things, things like, you know,
24 working with our -- a couple of key suppliers,
25 things that are going on, you know, this year. Like

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1 last year, for example, A-dec was a new supplier of
2 ours, so there was a specific MBO around, you know,
3 managing the relationship with A-dec.

4 One of our largest partners is KaVo Kerr,
5 part of the Danaher organization, and so there's a
6 specific MBO about managing that through some of the
7 complexities of that relationship.

8 So there's functional, financial,
9 Henry Schein, Inc. financial and then activity-based
10 pieces.

11 **Q. And who evaluates you to determine what**
12 **your incentive compensation would be each year?**

13 A. Jim Breslawski.

14 **Q. And in 2016 were you able to hit budget**
15 **for the dental division?**

16 A. No.

17 **Q. What about 2015?**

18 A. No.

19 **Q. And 2014?**

20 A. I think -- I don't know which years it
21 was, but I think somewhere like two of the last ten
22 years the U.S. dental business has achieved budget.

23 **Q. And how, if you can quantify it, how**
24 **far -- how much were you off by last year?**

25 A. Last year might have been one of our

37

1 biggest misses. We were probably at 91, 92 percent
2 of target.

3 **Q. And was it higher the years before?**

4 A. Yeah. The misses are usually within 2 to
5 5 percent of target.

6 **Q. Have you -- has it been a larger and
7 larger gap in recent years?**

8 A. No. Last year was a unique year.

9 **Q. Why do you think that was?**

10 A. It was just a challenging year. It's one
11 of the toughest years we've had in forecasting. We
12 don't know if it was overall election related. Who
13 knows. The whole market we felt was -- it wasn't
14 necessarily just Henry Schein Dental's performance.
15 The overall market was much softer than we had
16 anticipated going into the year.

17 So part of it is it's not that we perform
18 badly. It's that we missed -- you know, you
19 estimate the market is going to do something and the
20 market doesn't. That's going to drive our -- in
21 most cases that drives our miss.

22 **Q. Sure. And how are you guys doing this
23 year so far?**

24 A. So far we're pretty close to the plan, so
25 we're within [indicating] -- I'm sorry, I can't use

38

1 hands. We're close.

2 **Q. Who are your current direct reports?**

3 A. Paul Hinsch, VP of merchandising and
4 marketing; Michele Filiault, the VP of operations,
5 and she's spelled F-i-l-a-u-l-t [sic]. There is no
6 O, but it's Filiault; Ciprian, C-i-p-r-i-n [sic],
7 Tamas, T-a-m-a-s. Those are the three based in
8 New York.

9 Cy Elborne is the president of Canada.
10 Dave Steck is our vice president and general
11 manager. Chris Peterson is our director of
12 administration. Rodi Rozin, R-o-d-i, R-o-z-i-n,
13 director of business analytics.

14 I believe that is -- well, Wendy Rouse,
15 R-o-u-s-e, is my administrative assistant.

16 **Q. And what about Murray Stamer?**

17 A. He's no longer with the company. Ciprian
18 Tamas replaced him as our VP of finance, chief
19 financial officer.

20 **Q. What about John Chatham?**

21 A. He retired last fall.

22 **Q. What was his title before he retired?**

23 A. VP of -- well, still had the global
24 leadership title but he wasn't doing anything
25 global, but VP of leadership and team development.

39

1 **Q. And are you in the same office building as
2 most of your direct reports?**

3 A. I'm in -- I work out of West Allis,
4 Wisconsin, so three of those, Paul, Michele and
5 Ciprian are all in Melville, New York. The rest of
6 us are in -- well, Cy is up in Canada, and the
7 others are here in Wisconsin.

8 **Q. And of your direct reports, would you say
9 any one of them is sort of your right-hand man?**

10 A. Not really, no. I mean, Dave Steck is
11 responsible for the field organization. So
12 ultimately we are a sales-driven organization, and
13 Dave is responsible for sales.

14 So marketing is a key component of that
15 which Paul is a part of. Michele, you know, is part
16 of our operations. I mean, that marketing,
17 operations and service really drive our overall
18 results and sales, but ultimately Dave is the one
19 that's held the most accountable for sales results,
20 but, you know, they're all, you know, critical to
21 the success of the business.

22 **Q. Sure. Do you communicate frequently with
23 Mr. Steck?**

24 A. Yes.

25 **Q. How frequently would you say?**

40

1 A. Daily. We work in the same office.

2 **Q. And do you communicate to the same
3 frequency with your other direct reports?**

4 A. It's a little more challenging with those
5 in New York simply because you don't see each other
6 just walking to the restroom even. But, you know, I
7 have regular calls set up with them. Most meetings
8 that we have, it's either a videoconference,
9 teleconference. It doesn't matter where people are
10 at, you know; they're involved in the meetings.

11 So from a face-to-face standpoint, it's
12 definitely more frequently with those in Wisconsin.

13 **Q. Do you have regularly-scheduled one-on-one
14 meetings with your direct reports?**

15 A. I do.

16 **Q. How frequently?**

17 A. Once a month.

18 **Q. Together or individually?**

19 A. One on one.

20 **Q. One on one, got it. And do you have any
21 meetings where you meet with all of your direct
22 reports?**

23 A. Yes. That also is monthly.

24 **Q. Would you say you trust Mr. Steck?**

25 A. I do.

10 (Pages 37 to 40)

41	<p>1 Q. Has he been a good employee?</p> <p>2 A. Excellent.</p> <p>3 Q. Are there any other direct reports in the</p> <p>4 last ten years that we haven't discussed?</p> <p>5 A. John, Murray. Brian Watson, he was a dual</p> <p>6 direct report to both myself and Jim Breslawski. He</p> <p>7 left the organization about three years ago.</p> <p>8 Q. What was his title?</p> <p>9 A. VP of equipment.</p> <p>10 Those are the only ones that come to mind.</p> <p>11 Q. Okay. Do you Jake Meadows and</p> <p>12 Joe Cavaretta?</p> <p>13 A. I do.</p> <p>14 Q. And who are they?</p> <p>15 A. Jake is our vice president of the east,</p> <p>16 and -- area, and Joe is VP of the western area.</p> <p>17 Q. They don't directly report to you; is that</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. They report to Mr. Steck?</p> <p>21 A. Correct.</p> <p>22 Q. So I've seen a number of e-mails from</p> <p>23 Mr. Meadows and/or Mr. Cavaretta to you directly.</p> <p>24 Would it be fair to say that you</p> <p>25 communicate directly with them fairly regularly?</p>	43	<p>1 A. Not regularly, no.</p> <p>2 Q. How often would you say those instances</p> <p>3 come about?</p> <p>4 MR. McDONALD: Object to the form, vague,</p> <p>5 overly broad.</p> <p>6 THE WITNESS: Very rare.</p> <p>7 BY MS. KAHN:</p> <p>8 Q. Can you think of any circumstances where</p> <p>9 you've communicated with a zone manager?</p> <p>10 A. Sure. If there's, again, one with a</p> <p>11 customer complaint like I mentioned before, I'll</p> <p>12 make sure if it's in the east that Jake is involved;</p> <p>13 if it's in the west Joe is involved, typically copy</p> <p>14 the zone general manager, the regional manager, you</p> <p>15 know, ask for insights or input.</p> <p>16 If there's an employee issue for whatever</p> <p>17 reason that's bubbled up to me, I want to make sure</p> <p>18 the zone and regional managers are aware; a customer</p> <p>19 issue, same thing, typically, you know, that type of</p> <p>20 level of involvement.</p> <p>21 We get our entire field management team</p> <p>22 together twice a year, once in January in Wisconsin</p> <p>23 and then once at our national sales meeting in June;</p> <p>24 and we have just -- so it's our field managers, zone</p> <p>25 managers, regional managers, operations managers.</p>
42	<p>1 A. Yes.</p> <p>2 Q. And under what circumstances do those</p> <p>3 communications usually come about?</p> <p>4 MR. McDONALD: Object to the form, vague,</p> <p>5 overly broad.</p> <p>6 THE WITNESS: Occasionally -- you know,</p> <p>7 Jake used to be in the West Allis office also. He</p> <p>8 now relocated to the Baltimore area but, again, same</p> <p>9 type of thing; they're just in the office walking</p> <p>10 by, stick their head in, hey, give me a quick heads</p> <p>11 up. Sometimes it would be a scheduled meeting. If</p> <p>12 they can't get ahold of Dave on something they might</p> <p>13 come and ask me.</p> <p>14 So there's no rhyme or reason really just</p> <p>15 to -- you know, why we'd have direct communication</p> <p>16 versus -- sometimes they're sending the message to</p> <p>17 both Dave and I.</p> <p>18 BY MS. KAHN:</p> <p>19 Q. And would you say that Mr. Meadows and</p> <p>20 Mr. Cavaretta are good employees?</p> <p>21 A. Yes.</p> <p>22 Q. And do you trust them?</p> <p>23 A. Very much.</p> <p>24 Q. As a general matter do you communicate</p> <p>25 regularly with zone managers?</p>	44	<p>1 So I'll see them there and interact. But I'm</p> <p>2 rarely, you know, really sitting one on one with any</p> <p>3 of them unless they ask for time with me, which I'm</p> <p>4 happy to give.</p> <p>5 Q. Sure. As a general matter do you</p> <p>6 communicate regularly with the regional managers?</p> <p>7 A. Same --</p> <p>8 MR. McDONALD: Objection, same objection.</p> <p>9 THE WITNESS: Same thing with zone</p> <p>10 managers, when I just happen to see them at these</p> <p>11 situations that I just outlined as well as the FMM,</p> <p>12 or field manager meeting.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Who do you currently report to?</p> <p>15 A. Jim Breslawski.</p> <p>16 Q. Has that been the case for the last ten</p> <p>17 years?</p> <p>18 A. 20, yes.</p> <p>19 Q. And what about Mr. Stanley Bergman, do you</p> <p>20 report to him?</p> <p>21 A. Indirectly, so that's who Jim reports to.</p> <p>22 Q. Do you communicate often with Mr. Bergman?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p>

45	<p>1 BY MS. KAHN:</p> <p>2 Q. What about Mr. Breslawski?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have regularly-scheduled meetings</p> <p>5 with Mr. Breslawski?</p> <p>6 A. Yes.</p> <p>7 Q. How often are those?</p> <p>8 A. On the calendar at least once a month, but</p> <p>9 there's -- that's our -- for our one on one; and we</p> <p>10 have our monthly, the exec review, so that's the</p> <p>11 entire team, and then, you know, scattered meetings</p> <p>12 throughout the month on various topics.</p> <p>13 Q. And how often do you communicate with</p> <p>14 Mr. Bergman?</p> <p>15 A. It could be -- it depends on the day, the</p> <p>16 topic, you know. So at least once or twice a week</p> <p>17 I'd say on -- you know, and most of that is</p> <p>18 e-mail-type communication.</p> <p>19 Q. Earlier you used the term "full-service</p> <p>20 distributor."</p> <p>21 A. Uh-huh.</p> <p>22 Q. What does that term mean to you?</p> <p>23 A. An organization that provides -- basically</p> <p>24 can answer any and all of the needs of a dental</p> <p>25 practice, so from the sundries, the merchandise,</p>	47	<p>1 THE WITNESS: Yeah, I don't have it. I</p> <p>2 could guess at the number, but I don't have it in</p> <p>3 front of me.</p> <p>4 MR. McDONALD: And you're not here to</p> <p>5 speculate or guess. You're here to tell the truth,</p> <p>6 as you know.</p> <p>7 MS. KAHN: Counsel, please just state an</p> <p>8 objection.</p> <p>9 MR. McDONALD: Hey, you know what, I'm</p> <p>10 going to do what I need to do. If you don't like it</p> <p>11 we can stop and leave, okay. I'm going to tell him</p> <p>12 not to speculate. I'm not obstructing. You don't</p> <p>13 want him to speculate; the rules don't require him</p> <p>14 to speculate; he's not going to speculate.</p> <p>15 Ask your question, please.</p> <p>16 MS. KAHN: And for the record, please</p> <p>17 state "objection" and we can move on from there.</p> <p>18 That's all that the FTC's rules and regulations</p> <p>19 allowed.</p> <p>20 MR. McDONALD: I will do what I think I</p> <p>21 need to do to protect the record and my client.</p> <p>22 Thank you.</p> <p>23 BY MS. KAHN:</p> <p>24 Q. Mr. Sullivan, do you have a general sense</p> <p>25 of Schein's gross margin today?</p>
46	<p>1 equipment, installation, repair, the service that's</p> <p>2 involved, warranty work. Really when you walk into</p> <p>3 a dental office there's virtually -- once you walk</p> <p>4 through that door, including the waiting room, we</p> <p>5 can help design and sell office furniture, we can do</p> <p>6 anything and everything in that dental practice.</p> <p>7 Q. And Schein is a full-service distributor,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. And is distributor sometimes referred to</p> <p>11 as a dealer?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the term "national</p> <p>14 distributor"?</p> <p>15 A. Yes.</p> <p>16 Q. What does that term mean to you?</p> <p>17 A. Someone who sells coast to coast.</p> <p>18 Q. And Schein is a national distributor</p> <p>19 today?</p> <p>20 A. Correct.</p> <p>21 Q. What is Schein's U.S. gross margin for</p> <p>22 today?</p> <p>23 MR. McDONALD: Object to the form.</p> <p>24 THE WITNESS: I don't know. We're --</p> <p>25 MR. McDONALD: Don't speculate.</p>	48	<p>1 A. I do.</p> <p>2 Q. What's your general sense?</p> <p>3 A. Meaning what's the percentage, what's</p> <p>4 the --</p> <p>5 Q. A range, whatever your sense is.</p> <p>6 A. 32 to 34 percent range.</p> <p>7 Q. And is that an average of all the dental</p> <p>8 products?</p> <p>9 A. Yes. So our full -- it's the complete</p> <p>10 average from merchandise to equipment.</p> <p>11 Q. Do you have a sense of the margins if we</p> <p>12 were to break it up by equipment and merchandise?</p> <p>13 A. Yes.</p> <p>14 Q. And what's your sense of the two?</p> <p>15 A. Merchandise is in the 37 to 38 percent</p> <p>16 range; equipment is in the 28 to 30 percent range.</p> <p>17 Q. And Schein has private-label products as</p> <p>18 well, right?</p> <p>19 A. Correct.</p> <p>20 Q. And do you have a sense of -- and strike</p> <p>21 that.</p> <p>22 Private-label products only for</p> <p>23 merchandise?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have a sense of Schein's margin if</p>

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1 we were to break it up for merchandise between
2 private label and branded products?

3 A. I know the percentage is higher but in
4 many cases GP dollars are lower. It's a
5 lower-priced item at a higher margin.

6 **Q. When you said "GP," what are you referring
7 to?**

8 A. I'm sorry, gross profit.

9 **Q. And the margin is higher for the
10 private-label products; is that right?**

11 A. The GP -- the gross profit percentage,
12 sorry, is higher. In some cases the GP dollars can
13 actually be lower with the price point.

14 **Q. Has Schein's gross margin increased,
15 decreased or stayed the same in the last five years?**

16 A. It's remained fairly steady.

17 **Q. What about in the last ten years?**

18 A. Fairly steady.

19 **Q. Has there been any changes?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: I'd have to go back and
22 look.

23 BY MS. KAHN:

24 **Q. You can't say one way or the other whether
25 it's gone down a little bit or up a little bit?**

1 **Q. Has the operating margin stayed fairly
2 consistent for the last five years?**

3 A. Yes, it has.

4 **Q. And what about the net margin?**

5 A. Again, so I'm not held responsible. We
6 don't actually calculate it, so I don't know what it
7 is. I just -- in my own mind I calculate it, you
8 know, knowing tax rates and things like that.

9 **Q. What's Schein's national market share
10 today?**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: It is really hard to say.
13 We don't know for sure. There's really no good
14 reporting on this. There's a company called
15 Strategic Dental Marketing; SDM is the acronym we
16 always use for them. And that reporting has
17 become we believe less and less valuable, less
18 accurate, less consistent, and there's a lot of
19 things it does not include.

20 But we estimate our market share in total
21 to be somewhere around 36 to 38 percent.

22 BY MS. KAHN:

23 **Q. And that includes all of the services,
24 supplies and equipment?**

25 A. Correct.

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1 A. I think over this period of time it's
2 stayed fairly consistent.

3 **Q. You mentioned earlier three types of
4 margins: Gross, operating and net. Is that right?**

5 A. Correct.

6 **Q. Do you have a sense of Schein's net
7 margins today?**

8 A. For the dental business, again, we
9 don't -- so you have our gross margin, which is the
10 cost of goods and what we sell to the customer.
11 Then we have our operating expenses; that gets us
12 our operating margin.

13 From there, at the divisional level, you
14 know, the interest and taxes and things like that
15 are not applied to that at the divisional level.
16 That's handled at the corporate level.

17 So I'm really held responsible for
18 ultimately our operating margin. The net margin
19 after tax would be in the 5 to 6 percent range if
20 you applied the tax rates and everything else to
21 that, but we don't typically -- I'm not held
22 accountable to that. That's managed at corporate.

23 **Q. Sure. And what's your sense of the
24 operating margin?**

25 A. 10, roughly 10 percent.

1 **Q. Do you have a sense of market share if we
2 were to focus solely on supplies?**

3 A. Based on these reports it's -- we believe
4 it's roughly 40 percent.

5 **Q. And do you know, are these percentages
6 that you're approximating, do these account for
7 manufacturers that sell direct to dentists?**

8 A. No. So this is what SDM reports on, and
9 they don't get the information from the direct
10 sellers.

11 **Q. Got it. So this is only the market for
12 the distributors?**

13 A. Correct.

14 **Q. Do you have a sense of how large the
15 direct manufacturer to dentist part of the market
16 is?**

17 A. No, and if you could find that for us,
18 that would be helpful.

19 **Q. Is Schein the largest dental distributor
20 in the U.S.?**

21 A. We believe so, yes.

22 **Q. What was Schein's market share about five
23 years ago?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: It really hasn't changed a

53	<p>1 lot over this period of time. We believe we've</p> <p>2 incrementally taken anywhere from, you know, 20 to</p> <p>3 50 basis points of share a year. So five years it</p> <p>4 might have been in the 34 to 36 range; now we're in</p> <p>5 the 36 to 38 range.</p> <p>6 BY MS. KAHN:</p> <p>7 Q. What about ten years ago, do you know?</p> <p>8 A. I'd be speculating. Similar type</p> <p>9 increments, we believe.</p> <p>10 Q. But as a general matter the market share</p> <p>11 has been increasing slightly over time?</p> <p>12 A. Correct.</p> <p>13 Q. Who are Schein's competitors?</p> <p>14 A. Other full-service dental dealers, other</p> <p>15 direct sellers, others -- you know, maybe a</p> <p>16 merchandise-only type company, you know. Some of</p> <p>17 our manufacturers we partner with, but they also</p> <p>18 have a direct selling component to their business,</p> <p>19 and it's primarily on the specialty side of our</p> <p>20 business. So there's components even within our</p> <p>21 partners that, you know, sell direct, so those</p> <p>22 segments we view as competitors.</p> <p>23 Q. Would you say Patterson and Benco are</p> <p>24 Schein's primary competitors?</p> <p>25 A. I would say -- I would say they're our</p>	55	<p>1 market. It will vary.</p> <p>2 So they're our largest national</p> <p>3 competitors, but every market is unique.</p> <p>4 BY MS. KAHN:</p> <p>5 Q. Sure. And I'm just trying to understand</p> <p>6 if you disagree with the statement that Patterson</p> <p>7 and Benco are Schein's primary competitors in the</p> <p>8 U.S. dental market.</p> <p>9 MR. McDONALD: Object to the form, asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: I don't disagree with the</p> <p>12 statement, but I would refer to them as our largest.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Patterson and Benco are also full-service</p> <p>15 dealers; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. And are they both national dealers?</p> <p>18 A. Patterson for sure. Benco, I would call</p> <p>19 them quasi national. I don't know that they're in</p> <p>20 every market across the country. They've expanded</p> <p>21 over the last, you know, five to ten years and</p> <p>22 become more national; so Patterson for sure and</p> <p>23 Benco mostly, yes.</p> <p>24 Q. Is Patterson the second largest U.S.</p> <p>25 dental distributor?</p>
54	<p>1 largest competitors, yes.</p> <p>2 Q. Would you say they're Schein's primary</p> <p>3 competitors?</p> <p>4 MR. McDONALD: Object to the form, asked</p> <p>5 and answered.</p> <p>6 THE WITNESS: They're our largest. It</p> <p>7 varies by market even within the U.S. dental</p> <p>8 business.</p> <p>9 BY MS. KAHN:</p> <p>10 Q. The reason that I ask is that Schein's</p> <p>11 2016 10-K filing identifies Patterson and Benco as</p> <p>12 the primary competitors in the dental market. I'm</p> <p>13 just curious if you agree with that.</p> <p>14 MR. McDONALD: Object to the form.</p> <p>15 THE WITNESS: I'm not responsible for --</p> <p>16 MR. McDONALD: If you have a document you</p> <p>17 can show him, you should do it.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: I'm not responsible for</p> <p>20 filing the 10-K.</p> <p>21 So I view them as our largest competitor.</p> <p>22 They're in every market that we're in. But when I'm</p> <p>23 talking with, say, our manager in Memphis or in</p> <p>24 Knoxville, you know, Nashville Dental, they might be</p> <p>25 a bigger player than Patterson or Benco in that</p>	56	<p>1 A. Yes.</p> <p>2 Q. And do you have a general sense of their</p> <p>3 market share?</p> <p>4 A. Just based on public reporting and knowing</p> <p>5 where we're at, we think they're in the 32 to 34</p> <p>6 range.</p> <p>7 Q. And is Benco the third largest U.S. dental</p> <p>8 distributor?</p> <p>9 A. Correct.</p> <p>10 Q. Do you have a general sense of Benco's</p> <p>11 market share?</p> <p>12 A. No.</p> <p>13 Q. Do you have a sense of who comes in</p> <p>14 fourth?</p> <p>15 A. No. There's a multitude of other regional</p> <p>16 players that we don't know their volume.</p> <p>17 Q. You're familiar with Burkhart Dental?</p> <p>18 A. Yes.</p> <p>19 Q. And Burkhart is a competitor of Schein's?</p> <p>20 A. Yes.</p> <p>21 Q. Are they full-service as well?</p> <p>22 A. Yes.</p> <p>23 Q. And they're regional rather than national,</p> <p>24 right?</p> <p>25 A. Correct.</p>

57	<p>1 Q. Is Darby a competitor?</p> <p>2 A. Yes.</p> <p>3 Q. They're not full-service?</p> <p>4 A. No.</p> <p>5 Q. How would you describe them?</p> <p>6 A. Telesales organization.</p> <p>7 Q. Do they have value-added services?</p> <p>8 MR. McDONALD: Object to the form, vague.</p> <p>9 THE WITNESS: Not that I'm aware of. I'm</p> <p>10 sure they would claim they have some but not in the</p> <p>11 full-service sense.</p> <p>12 BY MS. KAHN:</p> <p>13 Q. Would you consider Darby a national</p> <p>14 distributor?</p> <p>15 A. Yes.</p> <p>16 Q. And do you have a general sense of Darby's</p> <p>17 market share?</p> <p>18 A. No, I do not.</p> <p>19 Q. Are there other telesales distributors in</p> <p>20 the U.S.?</p> <p>21 A. Yes, yes.</p> <p>22 Q. Can you name any off the top of your head?</p> <p>23 A. I knew you were going to ask.</p> <p>24 Safco, S-a-f-c-o. That's really the only</p> <p>25 significant one that comes to mind.</p>	59	<p>1 And that statement says, you know, we believe in</p> <p>2 improving the lives of those we touch. It goes on</p> <p>3 to talk about by focusing on practice care so our</p> <p>4 customers can focus on patient care. And there's</p> <p>5 true meaning behind it. We have what we call our</p> <p>6 practice care wheel and all the things that we</p> <p>7 provide.</p> <p>8 And I'll say, you know, dental schools do</p> <p>9 a fantastic job of teaching kids, you know, how to</p> <p>10 look into an oral cavity and become a good</p> <p>11 healthcare provider. They do a terrible job of</p> <p>12 reminding them when they look up, oh, by the way,</p> <p>13 you're a small business owner, right; and so the</p> <p>14 practice side of dentistry is where we believe our</p> <p>15 role comes in.</p> <p>16 And so we train our team differently than</p> <p>17 our competitors. We go to market differently than</p> <p>18 our competitors. Our advertising is different. We</p> <p>19 really are focused on the practice side of</p> <p>20 dentistry.</p> <p>21 And so we do -- most of our competitors</p> <p>22 provide a lot of the services that we do, the</p> <p>23 merchandise, the equipment. Patterson, as an</p> <p>24 example, has a practice management company,</p> <p>25 Eaglesoft like our Dentrax. All the others refer to</p>
58	<p>1 Q. Would it be accurate to say that Patterson</p> <p>2 and Benco are Schein's only full-service national</p> <p>3 competitors?</p> <p>4 A. Yes, again with the exception I mentioned</p> <p>5 earlier on Benco. They're I call them quasi</p> <p>6 national, but in essence, yes.</p> <p>7 Q. Okay. How does Schein compete against</p> <p>8 Patterson?</p> <p>9 MR. McDONALD: Object to the form, it's</p> <p>10 overly broad, vague.</p> <p>11 THE WITNESS: No different than we compete</p> <p>12 with any of our competitors. We go to market with a</p> <p>13 strategy for our customers. We talk about</p> <p>14 everything that we provide and what differentiates</p> <p>15 us from our competitors.</p> <p>16 We don't have a Patterson-specific plan, a</p> <p>17 Benco-specific plan, a National Dental-specific</p> <p>18 plan.</p> <p>19 BY MS. KAHN:</p> <p>20 Q. Sure. And what would you say</p> <p>21 distinguishes you from other full-service</p> <p>22 competitors?</p> <p>23 A. Well, we have a couple things. Our</p> <p>24 mission statement, it's not just a tagline; it's not</p> <p>25 just a marketing thing. There's meaning behind it.</p>	60	<p>1 someone else's so they can provide practice</p> <p>2 management services. Everyone has some level of</p> <p>3 digital impressioning, you know, CAD/CAM, you know,</p> <p>4 offering. Full-service dealers all have service</p> <p>5 technicians that provide service.</p> <p>6 The one piece that we believe is uniquely</p> <p>7 ours is what we call our business solution segment</p> <p>8 of our practice care wheel, and that's a team of</p> <p>9 folks that are just solely focused on the practice.</p> <p>10 When you go in to meet with your dentist,</p> <p>11 you probably sit down with them and you go through</p> <p>12 and he provides you a patient treatment plan after</p> <p>13 doing an oral exam. We sit with our customers. We</p> <p>14 do a business development meeting with them, and out</p> <p>15 of that comes a practice analysis. That practice</p> <p>16 analysis is like their practice treatment plan. So</p> <p>17 just like they're not going to do all that dentistry</p> <p>18 on your next visit, we're not going to do all this</p> <p>19 on your practice the next time we're here, but it's</p> <p>20 a plan over the next three to five years how we can</p> <p>21 help them to achieve their goals and dreams.</p> <p>22 And, you know, it all sounds great from --</p> <p>23 you know, like motherhood and apple pie, and if</p> <p>24 you're sitting on -- there's real meaning and</p> <p>25 strategy that supports all of that. That is what we</p>

61	<p>1 believe makes us unique versus any of our 2 competitors.</p> <p>3 Q. You mentioned a number of services and 4 products that Schein offers its customers. I'm 5 wondering if there's -- can we use the term 6 "value-added services" to sort of account for all of 7 these various types of services that you just 8 described?</p> <p>9 A. You could, but from our perspective it's 10 too generic --</p> <p>11 Q. Sure.</p> <p>12 A. -- because everyone, you know, Darby 13 included I'm sure, has what they call their 14 value-added services.</p> <p>15 Our unique segment that is different than 16 just a typical value-added service is our business 17 solutions, and that business solutions offering is 18 unique. It would fall under an overall value-added 19 service for sure, but it's a segment that we don't 20 believe anyone in the market does like we do.</p> <p>21 Q. Including Patterson and Benco?</p> <p>22 A. Correct.</p> <p>23 Q. Would you agree that Schein, Patterson and 24 Benco try to outbid each other on price from time to 25 time?</p>	63	<p>1 THE WITNESS: It certainly happens from 2 time to time. I don't know how often it happens. 3 It's definitely not in every scenario.</p> <p>4 Our salespeople call on our customers, you 5 know, 10 to 15 calls a day. Most times they're not 6 dealing with price. There are times they walk in 7 there might be a price-related issue. It could be 8 they saw a price online; it could be Darby called or 9 something; it might be the Patterson rep was just 10 in, who knows. But they're not dealing with that on 11 a day-to-day basis typically.</p> <p>12 BY MS. KAHN:</p> <p>13 Q. Schein publishes its prices for all of its 14 dental products; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Does it do that for the services as well?</p> <p>17 A. I mean, for our service technicians, like 18 our hourly rate for a service tech?</p> <p>19 Q. Yes.</p> <p>20 A. We don't publish it because it varies by 21 market. So it's published internally, but we don't 22 put that like in a catalog or it's not online 23 anywhere, no.</p> <p>24 Q. Okay. And just focusing back on the 25 products, the merchandise, is the published price</p>
62	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: I think we compete with all 3 of our competitors, you know, so if it's -- it could 4 be we're up against Patterson; it could be up 5 against Benco; it could be up against Burkhardt; it 6 could be up against Darby; it could be up against 7 fill in the blank.</p> <p>8 BY MS. KAHN:</p> <p>9 Q. Sure. And you compete on price to gain 10 business from time to time?</p> <p>11 A. Yes, we do.</p> <p>12 Q. If we're focusing just on Schein, 13 Patterson and Benco, how frequent of an occurrence 14 is it when the three of you try to outbid each other 15 on price?</p> <p>16 MR. McDONALD: Object to the form, overly 17 broad, vague.</p> <p>18 THE WITNESS: Yeah, I wouldn't know. I'm 19 not involved in price negotiations with customers.</p> <p>20 BY MS. KAHN:</p> <p>21 Q. Sure. Do you have any general sense of 22 whether that happens at all?</p> <p>23 MR. McDONALD: Object to the form, vague.</p> <p>24 THE WITNESS: It certainly --</p> <p>25 MR. McDONALD: Go ahead.</p>	64	<p>1 also referred to as the catalog price?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know if Patterson also publishes 4 its dental product prices?</p> <p>5 MR. McDONALD: Object to the form. And to 6 be clear, when you say "products," you're referring 7 to merchandise only?</p> <p>8 MS. KAHN: I am right now, and then we can 9 broaden it.</p> <p>10 THE WITNESS: Okay. So we believe -- I 11 believe we're the only ones that publish an annual 12 catalog with the prices in it. Patterson, Benco, 13 Darby, you know, all of our competitors publish 14 fliers from time to time that will have prices 15 included. Most of them will have something online, 16 but in most cases like even with ours you have to 17 have a password for your account specifically to see 18 your pricing. But general pricing is typically 19 available online.</p> <p>20 BY MS. KAHN:</p> <p>21 Q. So I'm just trying to understand your 22 answer.</p> <p>23 You're not sure if Patterson publishes a 24 catalog of prices for all of its merchandise?</p> <p>25 A. No, I know they don't. We are the only</p>

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1 ones that publish an annual catalog that is fully
 2 priced.
 3 **Q. Okay.**
 4 A. Others, other competitors, I don't know
 5 what Patterson does relative to pricing, you know,
 6 but I know that they have fliers from time to time
 7 with a special or promotion. How often they come
 8 out with that I don't know.
 9 **Q. And what about Benco?**
 10 A. I think it's the same thing, from time to
 11 time. They do not have an annual catalog that's
 12 listing prices.
 13 **Q. And you were mentioning prices being**
 14 **available online.**
 15 **Do you know if Patterson has prices for**
 16 **all of their dental merchandise online?**
 17 A. I have not looked. I don't know that
 18 it's -- I believe you have to have a password to
 19 have -- you know, the dentist has to have it for
 20 their pricing. They can see their pricing online.
 21 It's not available for anyone else to see that I'm
 22 aware of.
 23 **Q. Got it. And do you have an understanding**
 24 **of how it works with Benco?**
 25 A. I don't. I think it's very similar to

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1 Patterson's and others.
 2 **Q. And why does -- you mentioned that Schein**
 3 **is the only one that publishes an annual catalog.**
 4 **Why does Schein do that?**
 5 A. That's an excellent question, and we --
 6 it's just historic. We've always been the -- it
 7 goes back to the foundation and the roots of, you
 8 know, Henry Schein. You know, as it expanded, it
 9 was a catalog mail-order-type organization. Our
 10 sales reps -- we know our customers really do like
 11 the catalog. It has a lot of, you know, other
 12 things included in it. But we are going through
 13 the, you know, does it make sense to paper print
 14 versus digital review every year.
 15 **Q. Do you have a general sense of how**
 16 **Schein's prices compare to those of Patterson?**
 17 MR. McDONALD: Object to the form, vague.
 18 THE WITNESS: So Paul Hinsch and team do
 19 as best as possible to analyze our pricing. When we
 20 go to price the catalog every year, you know, we
 21 want to make sure that we're competitively priced.
 22 We're -- we believe we're very competitively priced
 23 with all the full-service dealers.
 24 BY MS. KAHN:
 25 **Q. And when you say "competitively priced,"**

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1 **what do you mean exactly?**
 2 A. Within a range of, you know, 2 to 5 to
 3 8 percent.
 4 **Q. And do you have a general sense of whether**
 5 **Patterson -- excuse me.**
 6 **Do you have a sense of whether Schein is a**
 7 **couple of percentage points higher than the other**
 8 **full-service distributors?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't.
 11 BY MS. KAHN:
 12 **Q. You made a distinction of being**
 13 **competitively priced with all full-service dealers.**
 14 **Do you have a sense of how Schein's prices**
 15 **compare to non-full-service dealers?**
 16 A. I don't.
 17 **Q. Is it fair to say that the**
 18 **non-full-service dealers are cheaper for**
 19 **merchandise?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It really would -- I don't
 22 know. It would vary on -- I'd have to see the
 23 pricing. I don't know.
 24 BY MS. KAHN:
 25 **Q. And why is it that you have an**

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1 **understanding for the full-service dealer**
 2 **competitors but not the non-full-service dealer**
 3 **competitors?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Just through the process
 6 that I know Paul Hinsch goes through. I'm not
 7 exactly sure what that process is and how, you know,
 8 he manages it.
 9 Again, I just -- there's a big piece of me
 10 that just has an emphatic trust with someone like
 11 Paul, but he does -- he goes through analysis of
 12 where we are, you know, how we are priced within the
 13 full-service segment.
 14 BY MS. KAHN:
 15 **Q. Got it.**
 16 A. I don't know that we have access to anyone
 17 else's pricing or how he gets it from -- I'm not
 18 exactly sure how he comes up with the analysis, to
 19 tell you the truth.
 20 So that's only -- we're concerned about
 21 our primary competitive space in the full-service
 22 dealer network.
 23 **Q. Just so I understand, Mr. Hinsch in**
 24 **pricing Schein's products considers the full-service**
 25 **distributor market pricing, is that --**

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1 A. That's correct.

2 **Q. -- fair to say?**

3 A. That's fair to say, yes.

4 **Q. And do you have an understanding of why he**
5 **doesn't take into account the non-full-service**
6 **market?**

7 MR. McDONALD: Object to the form, lack of
8 foundation.

9 THE WITNESS: We know our strategy. We
10 know the market that we're approaching, and we're
11 interested in how we compare as compared to those
12 others that have provided similar services that we
13 do.

14 BY MS. KAHN:

15 **Q. Sure. In your mind is that a different**
16 **market segment than the full-service dealer market?**

17 A. From the standpoint of just from a --
18 excuse me -- market segmentation standpoint, yes. I
19 mean, there's the full-service dealers and then the
20 non-full-service dealers. We're all going, you
21 know, approaching the same customer, but our
22 go-to-market strategies are different.

23 So that's that where we know we need to be
24 structured differently. Our cost structure is
25 different; the services that we provide is

1 where does price rank for you, Doctor. So if price
2 is a significant concern for the dentist, we will
3 then want to talk to them about, you know, your
4 profitability of practice must be a concern for you,
5 right; and in most cases they say yes. Well, let me
6 show you where I can help you in your overall
7 profitability for your practice, and it's not
8 necessarily just about saving 10 percent off your
9 supplies. If you're buying 35 grand a year in
10 supplies, 10 percent would be \$3,500. That's a lot
11 of money, but we know if we go through this practice
12 analysis with you we can help you generate more
13 revenue in your practice that falls to the bottom
14 line than 10 percent off supplies.

15 So we will work with them in that capacity
16 from a full-service offering standpoint. That
17 doesn't mean we won't also then, by the way, still
18 have to do the price matching and still, you know,
19 giving the 10 percent off on the supply side, but we
20 want to make sure that we give the full basket of
21 our offering.

22 BY MS. KAHN:

23 **Q. Sure. From time to time does Schein**
24 **analyze its competitors' business models?**

25 MR. McDONALD: Object to the form.

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1 different. So our cost structure is higher in order
2 to provide all the services that we provide, so we
3 want to make sure, you know, customers that are
4 interested in that type of service are -- we're
5 priced competitively to provide those services.

6 **Q. How would you say Schein competes against**
7 **the non-full-service dealers?**

8 A. Well, again, let me go back to the wheel,
9 the practice care wheel. We want to make sure our
10 customers understand that we are competitively
11 priced. We won't necessarily be the lowest, you
12 know, at all times.

13 But for the services that we provide, you
14 know, the basket of everything, the price is a
15 component of value. So the total value we believe
16 we are the best offering to the marketplace. And
17 price is a component, but it's not necessarily
18 number one in everyone's category.

19 **Q. And do you have a sense of when Schein is**
20 **competing against a non-full-service distributor**
21 **whether price is less important because you're**
22 **trying to sell the value and the value-added**
23 **services?**

24 MR. McDONALD: Object to the form.

25 THE WITNESS: We don't ask specifically

1 THE WITNESS: Yes, in the extent from the
2 standpoint of knowing who our competitors are and,
3 you know, and understanding are they full-service or
4 not. But beyond that, we wouldn't have access to
5 what their, you know, their structure, their
6 go-to-market strategy or model would be.

7 BY MS. KAHN:

8 **Q. Does Schein try to analyze what**
9 **competitors are offering customers?**

10 MR. McDONALD: Object to the form, vague.

11 THE WITNESS: Yes.

12 BY MS. KAHN:

13 **Q. And why is that?**

14 A. It's important to know who your
15 competitors are.

16 **Q. And why is that?**

17 A. So we know who we're competing against.

18 **Q. Does Schein conduct strategic planning?**

19 A. Yes.

20 **Q. Is that done every three years or more**
21 **frequently?**

22 A. So back to Henry Schein, Inc.,
23 Henry Schein, Inc. goes through a three-year
24 strategic planning process, and we're just in the
25 process of -- we're wrapping up our third year of

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1 that plan, and we're launching the strategic
2 planning process for the next three-year strat.
3 plan.

4 At the divisional level we don't have a
5 specific three-year strat. plan, but we want to make
6 sure our operating structure and our go-to-market
7 strategy matches, you know, much of what we're doing
8 from a Henry Schein, Inc. strategic plan
9 perspective. But there may be some things in the
10 global plan, like international growth; okay, that's
11 not part of my plan in the U.S. But human capital
12 is a very important one and, you know, how do we
13 work with our team members; that will make its way
14 into our plan.

15 **Q. And for the -- focusing on the three-year**
16 **strat. plan, what's the purpose of doing the**
17 **three-year strat. plan?**

18 A. Understanding what's happening in the
19 marketplace; are we organized in a way to address
20 what's happening in the marketplace, you know. The
21 market is evolving; it has been evolving, you know,
22 and the pace of change is even faster today than it
23 was five years ago and ten years ago, you know, so
24 understanding what's happening in the marketplace so
25 then we can structure ourselves appropriately to win

1 **Are you familiar with a situational**
2 **analysis focused solely on competitors?**

3 A. Yes.

4 **Q. And what's the purpose of doing that**
5 **analysis?**

6 A. To understand what the competitive
7 landscape is.

8 **Q. Is it fair to say that the purpose of that**
9 **in part is to gain insight into your competitors'**
10 **business models and value propositions?**

11 A. Well, we -- again, in that process we're
12 not going to understand what their business -- how
13 did you word it again?

14 **Q. To gain insight into your competitors'**
15 **business models and value propositions.**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: I don't know that we
18 necessarily analyze their value propositions. We
19 may judge it ourselves. We wouldn't understand what
20 theirs specifically is, but it's more in the
21 understanding of are they a full-service
22 organization, non-full-service, nontraditional type
23 competitors, you know, new entrants into the
24 marketplace, understanding those dynamics.
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1 in the market.

2 **Q. And do you know if Schein does something**
3 **called a situational analysis as part of the strat.**
4 **plan?**

5 A. Yes, it does.

6 **Q. Can you tell me what that is?**

7 A. It's -- so kind of what I just outlined.
8 So the situation analysis would say -- would talk
9 about the competitive landscape, industry dynamics,
10 general economic conditions.

11 **Q. Anything else?**

12 A. Those are the big three that come to mind
13 right now.

14 **Q. And are there specific situational**
15 **analyses for different topics, or is it all lumped**
16 **together?**

17 MR. McDONALD: Objection to the form.

18 THE WITNESS: Meaning we do one
19 specifically for dental. There's -- I believe
20 there's a separate one for medical and animal
21 health.

22 BY MS. KAHN:

23 **Q. Sure.**

24 A. So I don't know what you mean by "topics."

25 **Q. Sorry. Let me ask you a better question.**

1 BY MS. KAHN:

2 **Q. And is part of the reason for doing the**
3 **situational analysis for competitors to try to**
4 **understand threats posed by competitors?**

5 A. Correct.

6 MR. McDONALD: Object to the form.

7 THE WITNESS: Yes.

8 BY MS. KAHN:

9 **Q. And why does Schein try to understand**
10 **threats posed by competitors?**

11 A. I think it's smart.

12 **Q. I'm sorry?**

13 A. It's smart. I mean, if we have to adjust
14 our model to address, you know, what's coming, we
15 need to maybe have to adjust how we go to market.
16 We might have to -- you know, there's more and more
17 information available online today. We want to make
18 sure our e-commerce platform is as good as anyone's
19 out there and ease of doing business, you know.

20 So understanding what our competitors are
21 doing, we want to make sure we're doing something
22 more and better.

23 **Q. Would it be fair to say that Schein may**
24 **adjust its own model based on what it's seeing from**
25 **competitors and threats in the marketplace?**

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1 A. More so adjusting to see what customer
2 needs are, what the economic environment is like,
3 you know, technological changes. Some of that will
4 be driven by what competitors are doing and making
5 sure that we can complete effectively in the
6 marketplace.

7 **Q. Does Schein -- strike that.**

8 **Does Schein try to gather market**
9 **intelligence on Patterson and Benco from time to**
10 **time?**

11 A. Yes.

12 **Q. Can you tell me about that?**

13 A. So we have a number of representatives
14 that have joined us this year alone that have come
15 from Patterson. So we will ask them questions and
16 understanding -- you know, so tell us a little bit
17 about what's the environment like, what's the
18 culture, you know. We -- there has been a shift
19 from -- you know, in suppliers. Was A-dec important
20 to you and we didn't have A-dec here; yes, it was
21 important. Then we did our best to make sure we
22 added A-dec to our lineup.

23 We're great partners with Dentsply. We
24 didn't have Sirona here in the U.S. market. We just
25 were able to negotiate a deal to add Sirona, you

1 **market intelligence?**

2 A. So Patterson as an example is a public
3 company, so we will go to the public filings.
4 That's all that comes to mind right now.

5 **Q. And you mentioned Patterson a lot through**
6 **this, but I wanted to clarify for Benco as well.**
7 **Are there any other ways that Schein tries**
8 **to gather market intelligence about Benco aside from**
9 **what you've already talked about?**

10 A. Not that I'm aware of.

11 MR. McDONALD: When you get to a break,
12 why don't we stop. We've been going for like an
13 hour and 15 or so.

14 MS. KAHN: I've got a quick segment, and
15 then we can break.

16 BY MS. KAHN:

17 **Q. Are you okay to go for a few more minutes?**

18 A. Yes.

19 **Q. How would you describe the competition**
20 **between Schein, Patterson and Benco?**

21 A. Again, no different than any of our
22 competitors. It's a competitive market out there.
23 We welcome the competition.

24 And, again, I've outlined our strategy
25 before. So our go-to-market strategy we believe is

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1 know, coming up with that this year, so
2 understanding -- Patterson reps in particular, was
3 having CEREC important; yeah, okay. Let's do our
4 best to make sure we can provide that type of
5 service.

6 So understanding from that perspective, we
7 will gain some of that intelligence from current
8 employees who used to be employed there.

9 **Q. Any other ways aside from getting**
10 **information from current employees who are former**
11 **Patterson employees?**

12 A. Just from time to time meeting with
13 suppliers, asking them, you know, how are we doing
14 versus any of our competitors, so we're not
15 necessarily asking Patterson, you know, anyone
16 specific. And they'll tell us how we're performing
17 in their portfolio versus others. And then we will
18 ask them, you know, if we're getting beat, you know,
19 why is it, what do you see, is there something we
20 can be doing different and talk about how we can
21 work with you differently and better. It's not
22 necessarily about -- we don't ask specific questions
23 about any of our competitors in that light but
24 understanding how we can perform better with them.

25 **Q. Any other ways that Schein tries to gather**

1 different; we think it's unique. That's how we
2 differentiate ourselves.

3 **Q. Would you say it's fierce or strong?**

4 A. I would say it's fierce.

5 **Q. Is it fair to say that Schein's loss of a**
6 **sale can mean a Patterson or Benco gain?**

7 A. I don't care whose gain it is. If it's
8 our loss, I don't care whose gain it is.

9 **Q. And is it fair to say that a Patterson or**
10 **Benco loss can mean a Schein gain?**

11 A. Again, I don't care whose loss it is as
12 long as it's our gain.

13 **Q. Would you agree that competition between**
14 **Schein, Patterson and Benco for certain accounts has**
15 **driven down prices?**

16 A. I wouldn't -- I wouldn't specifically cull
17 out Patterson or Benco to the price competitiveness
18 in the marketplace. It's a competitive market,
19 always has been, always will be, and it's been --
20 it's driven by a number of factors. Patterson and
21 Benco are part of that, but we do not focus solely
22 on those two organizations.

23 **Q. Okay. Let me broaden up the question a**
24 **little bit.**

25 **Would you agree that competition between**

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1 **Schein and other competitors in the dental market**
2 **for certain accounts has driven down prices paid by**
3 **dentists?**

4 MR. McDONALD: Object to the form.
5 THE WITNESS: I think it's kept -- it's a
6 competitive landscape, you know, and I mentioned our
7 margins haven't changed significantly over the
8 years, you know. The mix of that has.

9 So, you know, some categories have come
10 down while others have gone up, and, you know, the
11 overall blend has been, you know, fairly consistent.
12 BY MS. KAHN:

13 **Q. So you don't think competition has driven**
14 **down prices in the dental market?**

15 A. I don't know if it's driven them down. I
16 mean, prices are a component of value, there's no
17 question, always has been, always will be.

18 **Q. Sorry, I just -- I don't want to belabor**
19 **it too much, but I just want to get a sense of**
20 **whether you think competition in the dental market**
21 **has driven down prices.**

22 MR. McDONALD: Object to the form, asked
23 and answered.

24 THE WITNESS: I don't know how -- I don't
25 know. I don't know, you know. Prices have been

1 you know, 3D cone beam technology, that's probably
2 going to be a 22 or 24 percent gross profit versus a
3 chair unit likely you would see in a dental office,
4 those are typically going to be in the 32 to
5 34 percent gross profit range.

6 So the blend, the digital segment is
7 growing faster than the core equipment, so,
8 therefore, the margin percentage has been driven
9 down. But GP dollars overall have been growing
10 because sales have grown in those segments.

11 **Q. Got it. But the prices, and shifting back**
12 **to merchandise or supplies, there hasn't been any**
13 **changes in prices that you're generally aware of in**
14 **the last five years?**

15 MR. McDONALD: Object to the form, vague.
16 Go ahead.

17 THE WITNESS: It's been significantly
18 stable.

19 BY MS. KAHN:

20 **Q. And do you have a sense of whether**
21 **Schein's catalog prices have stayed the same in the**
22 **last five years?**

23 A. They haven't stayed the same, you know.
24 Typically what happened, you know, whatever --
25 again, our suppliers set the prices, so they're the

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1 fairly consistent over this period of time that
2 we're talking about.

3 BY MS. KAHN:

4 **Q. What period are you referring to?**

5 A. You've been asking about the last five to
6 ten years, so in that period is what I'm in my mind
7 talking about.

8 **Q. So in the last five to -- let's just stay**
9 **with five for now so we can be clear.**

10 **In the last five years prices for dental**
11 **merchandise or supplies have stayed fairly constant,**
12 **is that what you're saying?**

13 A. Correct, yes.

14 **Q. Is that true for the last ten years?**

15 A. I'd have to go back and look, but I
16 believe so, yes.

17 **Q. And what about for equipment?**

18 A. Very similar. Our margins have actually
19 come down on equipment in the last five to ten
20 years, but part of that is driven by mix; and the
21 mix has been driven by what we call, you know, the
22 digital radiography, 2D and 3D, large cone beam
23 machines. It's a high-ticket item, but it's a lower
24 gross margin. The gross margin dollars are still
25 significant. But, you know, if you buy a \$100,000,

1 ones who determine our cost. So if they have a
2 price increase of 1 percent, we're most likely going
3 to raise our prices by 1 or, you know, what's
4 needed; if they raise them by 2, we're going to be
5 sometimes 1.8, sometimes 2.2 depending on -- part of
6 our margin management team will be analyzing the
7 mix.

8 So it will typically follow what's
9 happening with our suppliers relative to their price
10 increases, and that will determine what we're doing
11 in the marketplace in a significant way.

12 **Q. And aside from instances where the**
13 **supplier has increased the price that they sell**
14 **products to you by a certain percentage, has Schein**
15 **increased prices in other instances in the last five**
16 **years?**

17 MR. McDONALD: Object to the form, overly
18 broad.

19 THE WITNESS: We are primarily focused on
20 the price changes from our suppliers. So if they
21 don't have a price change, most likely we will not
22 either.

23 MS. KAHN: Got it. All right. We can
24 take a break.
25

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<p>1 (Whereupon, a recess was taken 2 from 9:17 p.m. to 9:31 a.m.) 3 BY MS. KAHN: 4 Q. We are back on the record. 5 I want to spend a couple minutes and talk 6 about Schein's customers. 7 Who are Schein's customers? 8 A. General practitioners, specialists, anyone 9 with a D.D.S. title. 10 Q. I've seen Schein presentations with a 11 sales pyramid, sales model pyramid. 12 Are you familiar with that? 13 A. Yes. 14 Q. Can you walk me through the different 15 levels of the pyramid? 16 A. Sure. I touched on it earlier. So the 17 base of the pyramid is our general private 18 practitioner, typically your single office space 19 practitioner, maybe one or two locations. 20 The very top of the pyramid is that elite 21 DSO customer segment that's Hal Muller's 22 responsibility. 23 And then we have this mid-market segment, 24 which is where multipractice -- multilocation 25 practices are segmented. In there is also community</p>	<p>1 A. Not anymore. This elite DSO used to be 2 considered the corporate account group. The acronym 3 was CAG, corporate accounts, CAG. We no longer 4 refer to them as that. It's now DSO. 5 Q. And what about the mid-market groups, is 6 there a generic name for that? 7 A. Internally we call them select customers. 8 Q. Are all mid-market customers select 9 customers? 10 A. In essence, yes. I'm sorry, in the 11 mid-market, mid-market segment, the CHCs, the 12 community health centers are also managed by this 13 group. They would not be considered the elite DSOs. 14 They're managed by the same group. 15 Q. You mean the select customers, they're not 16 the select customers? 17 A. Yes. 18 Q. Okay. I think you said elite. 19 A. I'm sorry, you're right. 20 Q. And what about "large group account," is 21 that something that -- a term that you guys use? 22 MR. McDONALD: Object to the form. 23 THE WITNESS: So we've gone through a 24 multitude. We're now -- we now refer to this group 25 in the mid market as select. Used to be LGP, large</p>
<p>1 health centers in the mid-market segment as well. 2 Q. Is the elite -- did you say DSO customers? 3 A. Correct. 4 Q. And what does DSO stand for? 5 A. Dental support organizations. 6 Q. Is that separated from -- is there just a 7 DSO level and then an elite DSO level? 8 A. So this is how we segment the market. The 9 market isn't necessarily segmented this way. 10 So it's roughly our top 50 customers that 11 have the elite DSO status. There are some in the 12 mid-market segment that would refer to themselves as 13 DSOs and, you know, are members of the Association 14 of Dental Support Organizations, ADSO, so we support 15 them out of our mid-market segment there. 16 Q. And so aside from the mid-market DSO and 17 the elite DSO, is there another level of just DSO, 18 or no? 19 A. Not the way we've segmented. 20 Q. Got it, okay. 21 Is it fair to call these different levels 22 different customer segments? 23 A. Yes. 24 Q. Do you or others at Schein use the term 25 "corporate account"?</p>	<p>1 group practices. 2 So you'll see we intertwine these 3 terminologies, you know, from time to time. The 4 goal is to get everyone to talk in the same 5 language: The elite DSOs, the select DSOs, 6 mid-market customers, and the community health 7 centers. 8 BY MS. KAHN: 9 Q. And how large are the mid-market DSOs, how 10 many offices? 11 MR. McDONALD: Object to the form. 12 THE WITNESS: So it does vary because some 13 were grandfathered in from where people were, but 14 going forward our goal is anywhere from about 4 to 15 25 locations or so would be mid market, and anything 16 above that would be select. But, again, it's a 17 real -- it's a gray line at that 25 locations 18 depending how they're structured, what's their 19 go-to-market strategy, what's their growth strategy, 20 do they want a field growth consultant. 21 So there's a number of factors that 22 determine that, but that's the general range. 23 BY MS. KAHN: 24 Q. And above the 25 market approximately then 25 it becomes an elite DSO?</p>

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<p>1 A. That's correct.</p> <p>2 Q. And special markets handles elite DSOs; is</p> <p>3 that right?</p> <p>4 A. That's correct.</p> <p>5 Q. So you're in charge of everything below</p> <p>6 that line, so the private practice and the mid</p> <p>7 market?</p> <p>8 A. Correct.</p> <p>9 Q. Are you familiar with the term "DPM"?</p> <p>10 A. No.</p> <p>11 Q. Okay. What about "DSM"?</p> <p>12 A. Is that an internal -- so internally?</p> <p>13 Q. Yes.</p> <p>14 A. We have a DSL account, which would be</p> <p>15 Henry Schein Dental, and DSM is dental special</p> <p>16 markets.</p> <p>17 Q. Got it.</p> <p>18 A. That's just terms in a computer system.</p> <p>19 That's the tag on there in the system.</p> <p>20 Q. Okay. DSL is --</p> <p>21 A. HSD, so --</p> <p>22 Q. Okay. And so DSL account would be</p> <p>23 mid-market or private-practice accounts?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And DSM would be the elite DSO</p>	<p>1 Q. Does Schein do any sort of surveys of its</p> <p>2 customers?</p> <p>3 A. Individually that's part of our business</p> <p>4 development meeting with them, yes. So it's not a</p> <p>5 survey, per se, as much as it is a, you know,</p> <p>6 discovery meeting with them to understand. There's</p> <p>7 a series of questions that we ask them of what's</p> <p>8 happening within their practice.</p> <p>9 Q. Is the same set of questions that are used</p> <p>10 with most customers?</p> <p>11 A. Generally, but it's up to each rep kind of</p> <p>12 which direction they go with the customer when they</p> <p>13 meet with them.</p> <p>14 Q. Sure. And are the answers stored in some</p> <p>15 centralized location?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. And are the questions stored somewhere</p> <p>18 centrally?</p> <p>19 A. So we will keep -- we keep the practice</p> <p>20 analysis, which is the output of those questions we</p> <p>21 have by customers. Those are kept by -- our field</p> <p>22 sales consultant has it, our regional managers.</p> <p>23 I'm not sure where it's kept corporately,</p> <p>24 quite honestly, in dental.</p> <p>25 Q. Okay. So practice analysis, that term,</p>
<p>1 accounts?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Would you say that Schein tries to</p> <p>4 understand its customers' needs to better serve</p> <p>5 them?</p> <p>6 A. Yes.</p> <p>7 Q. And is it fair to say that Schein tries to</p> <p>8 understand the economic environment that its</p> <p>9 customers operate in?</p> <p>10 A. Yes.</p> <p>11 Q. Does Schein try to understand the economic</p> <p>12 pressures that its customers face?</p> <p>13 A. Yes.</p> <p>14 Q. And how would you say Schein tries to</p> <p>15 learn about these things?</p> <p>16 A. From meeting with customers. So we don't</p> <p>17 use a cookie-cutter approach to all customers. We</p> <p>18 have what we call our business discovery meetings</p> <p>19 with customers to understand what their specific</p> <p>20 challenges and issues are. Some of the pressures</p> <p>21 might be reducing -- you know, a reduction in</p> <p>22 insurance coverages, cost per procedure is -- our</p> <p>23 reimbursement procedure coming down.</p> <p>24 So it's really about individual meetings</p> <p>25 with customers.</p>	<p>1 you're referring to the answers or the result of the</p> <p>2 business development meeting with the dentist?</p> <p>3 A. Yes.</p> <p>4 Q. And, you know, you mentioned a series of</p> <p>5 questions that are part of the business development</p> <p>6 meeting.</p> <p>7 Do you have access to that list of</p> <p>8 questions that go into the business development</p> <p>9 meeting?</p> <p>10 A. I could get them. I mean, I don't.</p> <p>11 Q. How long typically are the business</p> <p>12 development meetings?</p> <p>13 MR. McDONALD: Object to the form.</p> <p>14 THE WITNESS: I have not sat in one of</p> <p>15 them. I think they're -- we typically block an hour</p> <p>16 with a customer to meet with them to go through</p> <p>17 this.</p> <p>18 BY MS. KAHN:</p> <p>19 Q. Would you say that private practices</p> <p>20 are -- strike that.</p> <p>21 Would you say that private practices</p> <p>22 traditionally have been the core of Schein's</p> <p>23 customer base?</p> <p>24 A. Yes.</p> <p>25 Q. And has there been a shrinking of the size</p>

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1 **of private practices as compared to larger groups?**

2 MR. McDONALD: Object to the form, vague.

3 THE WITNESS: Yes.

4 BY MS. KAHN:

5 **Q. And why do you think that's the case?**

6 A. Well, as the elite DSOs have grown, part
7 of that growth has come from they've acquired
8 private practices. So the sheer number of them are
9 growing faster in the elite space, and it's coming
10 from the private practice segment.

11 As the private practice segment has seen
12 what's going on in the elite space but might not
13 necessarily want to be part of that, they still want
14 to control their own destiny and be the boss, make
15 their decisions, they're creating their own groups
16 that have multiple locations.

17 So the shift from single office space
18 practitioner into this mid-market space, that's our
19 fastest-growing segment right now. So all of
20 those -- the growth comes from the single office
21 space practitioners.

22 So the number of them is down; they're
23 just in different segments.

24 **Q. Got it. And why would you say there has
25 been -- you know, you mentioned the elite DSOs**

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1 **them, but then you mentioned that that's not really
2 the case; is that right?**

3 A. Correct.

4 **Q. Can you explain that to me?**

5 A. So that's part of what we do with our
6 customers in the value proposition. So we just --
7 you know, we meet with our customers individually,
8 understand what their specific needs are; we have a
9 solution for them that can help them achieve their
10 hopes, dreams and goals.

11 So they don't -- just, you know, they
12 don't want to become a -- they don't want to sell
13 their practice, but in their mind they're thinking
14 that the elite segment is getting better pricing.
15 In reality what we can offer them as a single office
16 space practitioner is very competitive, but we can
17 work with them in a unique way to run a better
18 business because in their mind what's happening at
19 the elite is it's business-driven, and therefore
20 someone else is making decisions based on that, and
21 so they want to control their destiny in that
22 regard.

23 **Q. Okay. And you mentioned "in their mind" a
24 couple of times.**

25 **What's the basis of those statements that**

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1 **acquiring some of the private practices and in
2 response some of the private practices are growing
3 themselves into larger groups.**

4 **Why -- what's your sense of why they're
5 doing that?**

6 MR. McDONALD: Object to the form, lack of
7 foundation.

8 THE WITNESS: We have as part -- it's
9 output of some of the meetings we have with our
10 other customers, you know. They want to remain
11 independent; they want to continue -- you know, they
12 love the practice of dentistry and what they're
13 doing. They believe -- the elite DSOs they believe
14 for some reason have some competitive advantages
15 over them, which they really don't, but they
16 believe; and so they're looking to compete with
17 those large groups but in a sense not have to --
18 they don't necessarily want to be -- they don't want
19 to sell their practice, so they're forming groups to
20 be more competitive in the marketplace themselves.

21 BY MS. KAHN:

22 **Q. You mentioned the elite DSOs -- strike
23 that.**

24 **You mentioned that some practices believe
25 the elite DSOs have a competitive advantage over**

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1 **you made?**

2 A. It comes from input from the customers.

3 **Q. Okay. So is it fair to say that the
4 customers have told you or others at Schein that
5 they believe that the elite DSOs are getting better
6 pricing than they are?**

7 A. Yes, they have said that.

8 **Q. Anything else that goes into what you --
9 anything else that they've said to you that's along
10 the lines of what we're talking about?**

11 A. Those are the primary factors.

12 **Q. Why do you think it is that they believe
13 that the elite DSOs are getting better pricing than
14 they are?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I think it's just a general
17 feeling that, you know, the larger, the more
18 business you can provide someone, the better pricing
19 you're going to get. That's not always the case,
20 but I think there's a general belief in the overall,
21 you know, marketplace, not just in dental.

22 BY MS. KAHN:

23 **Q. Would you say that the increase in the
24 number of DSOs has impacted Schein's business in any
25 way?**

97	<p>1 MR. McDONALD: Object to the form, vague.</p> <p>2 THE WITNESS: It's helped us -- we've</p> <p>3 focused on that segment, so it's helped us grow in</p> <p>4 the marketplace.</p> <p>5 BY MS. KAHN:</p> <p>6 Q. How so?</p> <p>7 A. We do business with a lot of the large</p> <p>8 elite DSOs that are in the market today.</p> <p>9 Q. How do Schein's margins compare for the</p> <p>10 elite DSOs versus the private practice dentists?</p> <p>11 MR. McDONALD: Object to the form.</p> <p>12 THE WITNESS: I'm not as close to the</p> <p>13 special markets on the elite side, so I don't get</p> <p>14 involved in the quotes, the pricing, or</p> <p>15 understanding what the individual margins are for</p> <p>16 accounts there.</p> <p>17 BY MS. KAHN:</p> <p>18 Q. Do you have any general sense of margins</p> <p>19 for special market accounts?</p> <p>20 MR. McDONALD: Object to the form. If you</p> <p>21 know, tell her, but don't speculate.</p> <p>22 THE WITNESS: So I don't know the exact</p> <p>23 number. I know generally they're lower than our</p> <p>24 private practice, but some of that is funded -- we</p> <p>25 get different pricing, so our suppliers also set up</p>	99	<p>1 MR. McDONALD: Object to the form.</p> <p>2 THE WITNESS: Sorry. No.</p> <p>3 BY MS. KAHN:</p> <p>4 Q. Has there been any downward pressure on</p> <p>5 Schein's margins as a result of the increase in</p> <p>6 larger groups and DSOs?</p> <p>7 MR. McDONALD: Object to the form, vague.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. KAHN:</p> <p>10 Q. Can you explain that to me?</p> <p>11 A. The larger the groups get, the better</p> <p>12 pricing that they want.</p> <p>13 Q. And why is that?</p> <p>14 MR. McDONALD: Object to form.</p> <p>15 THE WITNESS: I think it's basic</p> <p>16 economics. I mean, they're looking for -- they're a</p> <p>17 large customer, you know, and they're expecting</p> <p>18 better pricing.</p> <p>19 BY MS. KAHN:</p> <p>20 Q. Is there a reason that the larger you are</p> <p>21 the better pricing you expect?</p> <p>22 MR. McDONALD: Object to the form.</p> <p>23 THE WITNESS: You'd have to ask them. I</p> <p>24 just -- that's their expectations.</p> <p>25</p>
98	<p>1 different pricing for large groups.</p> <p>2 And so we -- in many of those cases we</p> <p>3 work with our suppliers on specific pricing for an</p> <p>4 account, so we have a lower cost of goods for those</p> <p>5 and so there's a savings for the customer, and</p> <p>6 then that helps protects our margin on the special</p> <p>7 markets. But generally speaking, it is lower than</p> <p>8 where we are on the private practice side.</p> <p>9 BY MS. KAHN:</p> <p>10 Q. And what about comparing the mid-market to</p> <p>11 the private-practice segments, how do the margins</p> <p>12 compare for those two groups?</p> <p>13 A. Very similar.</p> <p>14 Q. Is one higher or lower by any point?</p> <p>15 A. It really varies by account.</p> <p>16 Q. Got it.</p> <p>17 A. But I would say overall very, very, very</p> <p>18 similar.</p> <p>19 Q. And earlier when you said the DSOs get a</p> <p>20 lower margin, you're talking gross margin?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have any sense of net margin, how</p> <p>23 the net margin compares for the DSOs versus the</p> <p>24 private accounts?</p> <p>25 A. No.</p>	100	<p>1 BY MS. KAHN:</p> <p>2 Q. Would you agree that DSOs are able to</p> <p>3 command lower supply prices through aggressive</p> <p>4 procurement practices?</p> <p>5 MR. McDONALD: Object to the form, lack of</p> <p>6 foundation, vague.</p> <p>7 THE WITNESS: I don't know based on</p> <p>8 what -- they're expecting better prices based on</p> <p>9 their volume. I don't know if it's necessarily due</p> <p>10 to procurement or what. It's their volume.</p> <p>11 BY MS. KAHN:</p> <p>12 Q. Would you agree that corporate practices</p> <p>13 have a low demand for value-added services?</p> <p>14 MR. McDONALD: Object to the form --</p> <p>15 THE WITNESS: No.</p> <p>16 MR. McDONALD: -- overbroad.</p> <p>17 BY MS. KAHN:</p> <p>18 Q. You disagree with that?</p> <p>19 A. I disagree with that.</p> <p>20 Q. Can you explain why?</p> <p>21 A. I think everyone expects value-added</p> <p>22 services.</p> <p>23 MR. McDONALD: Can you just pause a</p> <p>24 second. I lost -- okay. I'm back.</p> <p>25</p>

101	<p>1 BY MS. KAHN:</p> <p>2 Q. Do you agree or disagree that DSOs care</p> <p>3 less about personal relationships with a rep?</p> <p>4 A. Yes.</p> <p>5 Q. You agree with that?</p> <p>6 A. With their sales -- with a sales</p> <p>7 representative, yes.</p> <p>8 Q. And why do you think that is?</p> <p>9 A. It's just based on their structure.</p> <p>10 Typically the owner of these large elite DSOs,</p> <p>11 they're -- in some cases, you know, it's someone</p> <p>12 from the VC firm themselves that is running it.</p> <p>13 It's a more business-savvy person, so in their mind</p> <p>14 they believe they know -- they say they can</p> <p>15 understand the business side, so that business</p> <p>16 solutions piece they're less interested in. But</p> <p>17 they still expect all of our other value-added</p> <p>18 services for service technicians and all the other</p> <p>19 things that we provide, practice management software</p> <p>20 services, but that segment of our offering they</p> <p>21 typically say thank you, you know, we've got it.</p> <p>22 Q. And the business solutions piece, remind</p> <p>23 me, is that the piece that you mentioned that no</p> <p>24 other competitor has in the market?</p> <p>25 A. Not the way -- correct, not the way we go</p>	103	<p>1 procedure as much as 25, 30 percent.</p> <p>2 Q. Has that been a development in the last</p> <p>3 five or ten years?</p> <p>4 A. Yes.</p> <p>5 Q. Can you specify a little bit more on when</p> <p>6 that started to be a real issue for private</p> <p>7 practices?</p> <p>8 A. I'd say it started around ten years ago.</p> <p>9 Q. And you also mentioned general economic</p> <p>10 conditions.</p> <p>11 What were you referring to there?</p> <p>12 A. Just the U.S. economy.</p> <p>13 Q. Any other pressures that you haven't</p> <p>14 mentioned?</p> <p>15 A. I'm sure if you show me a report I can</p> <p>16 tell you some more, but that's the top of mind right</p> <p>17 now.</p> <p>18 Q. Fair enough. Would you agree that</p> <p>19 various -- strike that.</p> <p>20 Would you agree that these pressure points</p> <p>21 that we've been talking about have caused private</p> <p>22 practices to seek ways to reduce their supply costs?</p> <p>23 A. Yes.</p> <p>24 Q. Would you say they seem to be more price</p> <p>25 conscious than ten years ago?</p>
102	<p>1 to market with it.</p> <p>2 Q. Got it.</p> <p>3 A. Many will claim they have some of these</p> <p>4 services but not in the way we package it all</p> <p>5 together.</p> <p>6 Q. Sure. In the last five or ten years, what</p> <p>7 types of pressure would you say private practices</p> <p>8 have faced that have sort of -- strike that. Let me</p> <p>9 ask that again.</p> <p>10 In the last five or ten years, what types</p> <p>11 of pressures have you seen on private practices'</p> <p>12 ability to thrive?</p> <p>13 A. Just general economic conditions; pricing</p> <p>14 from insurance companies, so their reimbursement per</p> <p>15 procedure, the pressures have been coming down.</p> <p>16 Again from the private practice</p> <p>17 perspective, the more -- the rise in, again, what</p> <p>18 they view as corporate dentistry, the DSO space,</p> <p>19 they view as a challenge for them to grow.</p> <p>20 Those are the top three that come to mind.</p> <p>21 Q. Can you explain the insurance pressures</p> <p>22 that you were just mentioning?</p> <p>23 A. Sure. Companies like Delta Dental have,</p> <p>24 you know, in certain states have just come across</p> <p>25 the board and cut what they reimburse for a certain</p>	104	<p>1 A. Yes.</p> <p>2 Q. And how have you seen that in your</p> <p>3 experience?</p> <p>4 A. We've just seen we've had to do more price</p> <p>5 matching, what we call price overrides and the</p> <p>6 things that remain, you know, to keep the business</p> <p>7 of our customer. And our first approach would not</p> <p>8 necessarily be just, you know, drop pricing. We</p> <p>9 want to make sure they understand the full value. A</p> <p>10 lot of times that is what's required, but it's just</p> <p>11 a general sense of, you know, price comes up more</p> <p>12 often in the discussion with customers.</p> <p>13 Q. In the last ten years than before?</p> <p>14 A. Yes.</p> <p>15 Q. You mentioned price overrides.</p> <p>16 What are those?</p> <p>17 A. So in our system, the catalog price, if we</p> <p>18 have to override the price that's already in the</p> <p>19 system.</p> <p>20 Q. To give a discount off of the catalog</p> <p>21 price?</p> <p>22 A. Correct.</p> <p>23 Q. Can you talk a little bit about the</p> <p>24 different pricing plans that Schein offers its</p> <p>25 customers?</p>

105	<p>1 MR. McDONALD: Object to the form, overly</p> <p>2 broad.</p> <p>3 THE WITNESS: Generally I can. I don't</p> <p>4 have any --</p> <p>5 BY MS. KAHN:</p> <p>6 Q. Sure.</p> <p>7 A. I don't have the specifics in front of me,</p> <p>8 but we have what we call VPAs, volume purchase</p> <p>9 agreements, and there's a set schedule on the level</p> <p>10 of the amount of business that they commit to</p> <p>11 Henry Schein that can increase or decrease the level</p> <p>12 of either rebate or discount that they get on their</p> <p>13 orders.</p> <p>14 Q. Do any customers pay the catalog price?</p> <p>15 A. Some. Very few.</p> <p>16 Q. So who are the customers? Just as a</p> <p>17 general matter, what's the segment that's paying the</p> <p>18 full catalog price?</p> <p>19 MR. McDONALD: Object to the form, vague.</p> <p>20 THE WITNESS: It's scattered throughout</p> <p>21 the pyramid.</p> <p>22 BY MS. KAHN:</p> <p>23 Q. Got it. The sales pyramid of the various</p> <p>24 customer segments?</p> <p>25 A. Correct.</p>	107	<p>1 A. Yes.</p> <p>2 Q. How would a dentist do that?</p> <p>3 A. Meet with their field sales consultant.</p> <p>4 Q. And are there -- is there training for the</p> <p>5 field sales consultants on when to give a discount</p> <p>6 just because a dentist is asking?</p> <p>7 A. No.</p> <p>8 Q. Do you have a general sense of under what</p> <p>9 circumstances a discount would be given?</p> <p>10 MR. McDONALD: Object to the form, overly</p> <p>11 broad.</p> <p>12 THE WITNESS: This is a</p> <p>13 relationship-driven business. It always has been;</p> <p>14 we believe it always will be. So we leave it in the</p> <p>15 hand of our sales rep, our sales team to set</p> <p>16 pricing. They're paid as a percentage of gross</p> <p>17 profit that's produced, and they can decide the mix</p> <p>18 with their customers.</p> <p>19 BY MS. KAHN:</p> <p>20 Q. Are you familiar with the G plan?</p> <p>21 A. Yes.</p> <p>22 Q. And the PG plan?</p> <p>23 A. Yes.</p> <p>24 Q. And the P plan?</p> <p>25 A. Yes.</p>
106	<p>1 Q. And why is it that those customers that</p> <p>2 are paying -- why is it that they're paying full</p> <p>3 catalog price but others in their same segment are</p> <p>4 not?</p> <p>5 MR. McDONALD: Object to the form, overly</p> <p>6 broad.</p> <p>7 THE WITNESS: Again, it goes back to</p> <p>8 volume that they're committing to us, and it might</p> <p>9 be, you know, you three could be different dentists,</p> <p>10 and you're paying catalog prices on gloves but</p> <p>11 you're not because gloves is really important to him</p> <p>12 but, you know, maybe impression material is more</p> <p>13 important to you, so it will be based on what your</p> <p>14 usage of products are.</p> <p>15 And so we really don't -- we don't go to</p> <p>16 the market with a cookie-cutter approach. It's very</p> <p>17 customized customer by customer based on their needs</p> <p>18 and based on what's important to them.</p> <p>19 BY MS. KAHN:</p> <p>20 Q. And the variations in pricing, is that</p> <p>21 solely based on volume purchased, or is it also --</p> <p>22 you know, you mentioned gloves may be important to</p> <p>23 me.</p> <p>24 Can I negotiate the pricing of gloves</p> <p>25 aside from just my volume commitment?</p>	108	<p>1 Q. Can you tell me what the G plan is?</p> <p>2 A. I can't tell you which one is special</p> <p>3 markets versus mid market, you know. They -- all</p> <p>4 alphabet soup for me, but they're specific, you</p> <p>5 know. Some include vendor chargebacks; one doesn't.</p> <p>6 So it's we share some of the -- actually</p> <p>7 we mimic some of the programs that our special</p> <p>8 markets elite team created and have offered that</p> <p>9 into the mid-market space as well, but I don't</p> <p>10 recall which one is P, which one is G and which one</p> <p>11 is PG.</p> <p>12 Q. Got it. You don't know what they stand</p> <p>13 for either?</p> <p>14 A. No.</p> <p>15 Q. Okay. Who would know about that?</p> <p>16 A. Primarily Joe and Jake have been working</p> <p>17 the closest with our special markets team on that.</p> <p>18 Q. Would Mr. Steck be familiar with these</p> <p>19 various plans?</p> <p>20 A. Yes, he would.</p> <p>21 Q. Okay. You mentioned vendor chargebacks.</p> <p>22 What is that?</p> <p>23 A. So when we -- that's what I was talking,</p> <p>24 referring to earlier. We get better pricing from</p> <p>25 our suppliers based upon certain customers. The way</p>

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<p>1 that happens is we buy at the regular price, you 2 know. What's in our inventory is in our inventory; 3 we buy in bulk 60 days in advance. But if we commit 4 something to a certain customer, that volume gets a 5 discount. We don't re-order for that. They just 6 give a rebate, if you would, for that volume for 7 that specific customer.</p> <p>8 Q. And when you say "they," you're referring 9 to the manufacturer?</p> <p>10 A. Correct.</p> <p>11 Q. And special market customers qualify for 12 vendor chargebacks; is that right?</p> <p>13 A. Correct.</p> <p>14 Q. And I think you mentioned some DSOs within 15 mid market also qualify for vendor chargebacks?</p> <p>16 A. That's correct.</p> <p>17 Q. Which ones qualify versus those that 18 don't?</p> <p>19 A. It varies, and there's no set rule for it. 20 It's negotiated locally.</p> <p>21 Q. Okay. And who does the negotiating for 22 that?</p> <p>23 A. We have what we call regional account 24 managers that's part of the mid market team, and 25 depending on what pricing and requirements are</p>	<p>1 A. That's correct.</p> <p>2 Q. And in special markets there's a similar 3 manager that does something similar to that?</p> <p>4 A. It's a SAM, strategic account manager.</p> <p>5 Q. Okay. Are you familiar with the term 6 "free goods"?</p> <p>7 A. Uh-huh.</p> <p>8 Q. What does that refer to --</p> <p>9 A. Sorry, yes.</p> <p>10 Q. -- in the dental industry?</p> <p>11 MR. McDONALD: Did you get the question? 12 Ask your question again.</p> <p>13 BY MS. KAHN:</p> <p>14 Q. Are you familiar with the term "free 15 goods"?</p> <p>16 A. Yes.</p> <p>17 Q. What does that mean?</p> <p>18 A. So every now and then our suppliers will 19 run a promotion, buy three get one free, and so 20 that's considered the free good. It's in essence a 21 discount, but it's being done through, you know, 22 giving the customer product.</p> <p>23 Q. And do the free goods always come out of 24 the manufacturer's pocket, or does it ever come out 25 of Schein's pocket?</p>
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<p>1 needed for a specific customer will determine which 2 of those acronym plans they qualify for and then if 3 it's needed to get a chargeback from a supplier or 4 not to get it.</p> <p>5 Q. Got it. And regional account managers, is 6 that R-A-M? Is that referred to as R-A-M?</p> <p>7 A. Yes, a RAM.</p> <p>8 Q. RAM. They're within mid market?</p> <p>9 A. Correct.</p> <p>10 Q. So mid market can negotiate vendor 11 chargebacks directly with the manufacturers?</p> <p>12 A. No, that is predetermined. So 3M, for 13 example, if they allow it, that's set. But it's not 14 necessarily every customer will qualify for it. 15 So 3M has to agree, oh, yes, this customer 16 will qualify for it; then they get it. It's not 17 like, well, one is going to get 2 percent, one is 18 going to get 3. Those -- at least as I understand 19 it, those are predetermined and set, and it's up to 20 our team, the RAM team to decide and work with 21 customers and then the suppliers on which accounts 22 can qualify for the lower pricing so that we can get 23 the chargeback from the supplier.</p> <p>24 Q. So the RAMs work both with the customer 25 and the vendors?</p>	<p>1 A. I believe it's -- primarily it's a 2 manufacture-driven program.</p> <p>3 Q. And are they shipped directly from the 4 manufacturers to the dentists?</p> <p>5 A. It will vary. Sometimes that's how it 6 works; sometimes it's out of our inventory.</p> <p>7 Q. If I'm a customer, how do I get free 8 goods?</p> <p>9 MR. McDONALD: Object to the form.</p> <p>10 THE WITNESS: Well, it's up to the field 11 sales consultant working with the manufacturer's 12 rep, you know. Usually those type of programs are a 13 30-day or a 60-day, you know, marketing program that 14 our manufacturers come up with. 15 So the customer might get it because I've 16 walked through the door and talked to them about it. 17 They might -- maybe the manufacturer, it's online; 18 they see it that way.</p> <p>19 And then, again, depending on which 20 program, sometimes the free good comes directly from 21 the manufacturer. Sometimes it comes out of our 22 inventory, so we will ship them the four even though 23 they bought three.</p> <p>24 BY MS. KAHN:</p> <p>25 Q. The G plan, the PG plan and the P plan,</p>

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1 **how do those relate to the catalog price, if you**
 2 **know?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I don't know. I don't
 5 recall.
 6 BY MS. KAHN:
 7 **Q. And are you familiar with within the P**
 8 **plan P10, P15, P20, what those are?**
 9 A. I believe that would be one is 10 percent,
 10 it's 15, and one is 20 percent discount.
 11 **Q. 10 percent discount off of the P plan**
 12 **pricing?**
 13 MR. McDONALD: Object to the form.
 14 Don't speculate. Only if you know.
 15 THE WITNESS: Sorry, I don't know exactly.
 16 BY MS. KAHN:
 17 **Q. Okay. No problem.**
 18 **Are you familiar with the term "buying**
 19 **group"?**
 20 A. I am.
 21 **Q. What does that term mean to you?**
 22 A. It's a group of customers that will get
 23 together and form a group however they refer to
 24 themselves as to negotiate with their larger volume.
 25 **Q. In order to get better pricing?**

1 **Q. The group decides which distributor to**
 2 **work with?**
 3 A. I'm sorry. First off, there are no GPOs
 4 that I'm aware of in the dental community, so I have
 5 not worked directly with them. That's my
 6 understanding how they work. And once they get the
 7 pricing from the manufacturer, then they'll go to
 8 the dealers or whatever their suppliers are in those
 9 segments and to see if the supplier will honor those
 10 pricing.
 11 **Q. And you said historically -- strike that.**
 12 **Historically have you used the terms**
 13 **"buying group" and "GPOs" interchangeably?**
 14 A. Yes, we have.
 15 **Q. And when you say "we," are you just**
 16 **referring to Schein generally?**
 17 A. Yes.
 18 **Q. Are there any other terms that Schein has**
 19 **used interchangeably for buying groups and GPOs?**
 20 A. Not that come to mind right now.
 21 **Q. What about a "buying co-op" or a "buying**
 22 **cooperative," what does that term mean to you?**
 23 A. I think it's similar to a buying group.
 24 **Q. Okay. Have you heard of a buying club?**
 25 A. Just interchangeably with a buying group.

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1 A. Correct, and in some cases about pricing;
 2 some cases they're doing more for the group. It
 3 could be to get better insurance rates; it could be
 4 an overall better cell phone plan.
 5 There's various groups do completely
 6 different things. If you've seen one buying group,
 7 you've seen one buying group.
 8 **Q. Are you familiar with the term "group**
 9 **purchasing organization"?**
 10 A. I am.
 11 **Q. Is that also referred to as GPO?**
 12 A. Yes.
 13 **Q. And what is that? What does that term**
 14 **mean to you?**
 15 A. So unfortunately historically we've
 16 intertwined the terms, so I've learned a lot more in
 17 the last couple years about it.
 18 GPOs are different than buying groups.
 19 GPOs are those that negotiate directly with the
 20 manufacturers on pricing, so they become an
 21 intermediary between us and the customer; and that
 22 pricing is set then by the manufacturer with that
 23 group. And then the group then, you know, decides,
 24 you know, what dealer they want to work with and
 25 provide that pricing through.

1 I don't know if -- there's this thing called study
 2 clubs that in essence try to do the same thing as,
 3 you know, a buying group.
 4 **Q. You mentioned that in the last few years**
 5 **you've learned more about what GPOs are; is that**
 6 **right?**
 7 A. Yes.
 8 **Q. How have you come to learn about that?**
 9 A. Just because we've intertwined the terms
 10 so much and in working with some of our folks on the
 11 medical side where their GPOs are more prevalent,
 12 you know, and then understanding from them then what
 13 a GPO is versus what we see more prevalent in the
 14 dental space is more on buying groups.
 15 **Q. And did you have meetings with the medical**
 16 **side specifically about GPOs?**
 17 A. Not specifically about that, but it's come
 18 up in meetings, yes.
 19 **Q. And what type of meetings?**
 20 A. As I mentioned earlier, Dave McKinley, the
 21 president of our medical division, he was at the
 22 time, he hasn't in the last year or so, so I'd see
 23 him from time to time. We'd be in meetings, and he
 24 would raise, you know, the fact that the GPOs in
 25 medical are interested in working with our dental

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1 group as well, and that's it. And I'd ask him what
2 that means, and I learned more about that through
3 Dave.
4 **Q. Do you have a sense of when you first**
5 **recall Mr. McKinley mentioning that the GPOs on the**
6 **medical side are interested in working in the dental**
7 **space?**
8 A. It's been in the last three to five years.
9 **Q. And has Schein Dental done anything with**
10 **Mr. McKinley with respect to those GPOs that are**
11 **interested in moving over to dental?**
12 A. No.
13 MR. McDONALD: Object to the form.
14 THE WITNESS: Sorry. No.
15 BY MS. KAHN:
16 **Q. And do you know which GPOs specifically?**
17 A. No.
18 **Q. Did Mr. McKinley say that certain medical**
19 **GPOs are interested in working with Schein Dental?**
20 A. They wanted to meet with us on the dental
21 side to gauge our interest.
22 **Q. And did those meetings take place?**
23 A. No.
24 **Q. Why not?**
25 A. I'm not interested in working with GPOs.

1 MR. McDONALD: Object to the form.
2 THE WITNESS: So price is a component of
3 value, and if that's taken out solely, we think that
4 that does not represent appropriately the total
5 value proposition that we bring to a customer.
6 Price is a component.
7 So we want to talk to our customer about
8 price, about what's going on in the practice,
9 business solutions for them, does CAD/CAM make sense
10 for their practice, going 2D/3D, do they want to add
11 another room, are they interested in another
12 location. All of that comes into the value
13 proposition that we meet with our customers about.
14 BY MS. KAHN:
15 **Q. And am I correct to understand you to say**
16 **that if GPOs are placed in between Schein and a**
17 **customer that the GPO would or could solely want to**
18 **talk about price with Schein rather than all of**
19 **these other services and value that Schein brings to**
20 **a customer?**
21 MR. McDONALD: Object to the form,
22 misstated his testimony.
23 THE WITNESS: What I was -- again, I
24 wouldn't put it that way, all right. I would go
25 back to what I said before. Price is a component of

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1 **Q. Has that always been the case?**
2 A. To date, yes.
3 **Q. Why not? Why are you not interested in**
4 **working with GPOs?**
5 A. I view them as an intermediary somewhere
6 between us and our customers, and I want to always
7 have that direct relationship and communication and
8 contact with our customers. I'm not interested in
9 having anyone come between us and our customers.
10 **Q. Why does having an intermediary -- why do**
11 **you see that as a bad thing for you?**
12 A. I didn't say it was necessarily a bad
13 thing. I was saying it's not -- from what I know
14 about them, it's not something I'm interested in.
15 **Q. And why not?**
16 A. Again, I don't want anyone, another
17 intermediary between us and a customer. We will
18 work with our customers directly on their specific
19 issues within their practice and where price comes
20 into that overall proposition. We want to determine
21 that, not another party.
22 **Q. I see. So I'm just trying to understand.**
23 **You don't want the GPO to determine**
24 **pricing. You want to have a direct conversation**
25 **with the customers about pricing?**

1 value. We don't want that -- you know, I wouldn't
2 want one of our manufacturers to meet with the
3 customer specifically and only talk about CAD/CAM
4 and then have the manufacturer work with our
5 customer on here is what we will sell you the
6 CAD/CAM for. We have to do the service and
7 installation. So it's a component of everything and
8 all the value that we provide.
9 So I don't want an intermediary between
10 our company and our customers.
11 BY MS. KAHN:
12 **Q. Right. And I'm trying to understand why**
13 **you don't want an intermediary, and I'm trying to**
14 **understand -- strike that.**
15 **I'm trying to understand why you would not**
16 **want an intermediary between you and the customer.**
17 **And are you saying that an intermediary could**
18 **potentially just focus on one aspect of the entire**
19 **Schein value such as price and you wouldn't want to**
20 **talk about just one aspect, you want to talk about**
21 **the entire wheel with a customer?**
22 MR. McDONALD: Object to the form.
23 THE WITNESS: I don't know how else to
24 answer it than what I did. So I don't want to say
25 it the way you say. You said are you saying this;

30 (Pages 117 to 120)

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<p>1 no, I'm not saying this. I didn't say that. No, 2 no, I understand. I'm not trying to be picky 3 either. 4 Price is a component of our overall value 5 proposition, and our overall value proposition has a 6 lot of components to it, and we believe it's best 7 presented to a customer. We think it's actually 8 best for our customer if they understand the full 9 offering. And price is one; we're going to work 10 with them on price. But they need to understand 11 everything. 12 And if a piece of that is being discussed 13 by someone else, they're not going to present it in 14 a way that we would present it to understand the 15 full offering. 16 BY MS. KAHN: 17 Q. And that someone else you're referring to 18 is a GPO potentially? 19 A. In this instance, yes. 20 Q. And, you know, I was asking you earlier 21 about why you would not want an intermediary between 22 you and the customer, and you brought up price. 23 I'm just curious if you see GPOs as 24 wanting -- as being more focused on price alone 25 rather than the entire wheel.</p>	<p>1 market? 2 A. Yes. 3 Q. Can a buying group refer to a state dental 4 association that sets up a buying program for its 5 members? 6 MR. McDONALD: Object to the form. 7 THE WITNESS: Well, so historically the 8 state associations, their members are dentists who 9 are our customers, and the state associations have 10 always been this middle neutral party. We work 11 directly with the state associations in a 12 significant way. But recently some of them have 13 looked to add services such as buying group type 14 aspects. 15 So not all state associations are doing 16 that, but some are, yes. 17 BY MS. KAHN: 18 Q. How does Schein distinguish between a 19 buying group and a large group account such as a 20 DSO? 21 A. So it's primarily based on ownership. So, 22 for example, Heartland Dental, Aspen Dental, some of 23 these large, elite DSOs, they own all the locations 24 that they have. So they've got 2, 3, 4, 500 25 locations; they own those. And, therefore, they can</p>
122	124
<p>1 A. So I have not met with the GPOs, so I 2 don't know that to be the case, but we would -- I 3 have nothing else to add, sorry. 4 Q. I'm just curious why you brought up price. 5 I didn't ask you about price, and you brought up 6 price when we were discussing why you wouldn't want 7 an intermediary between Schein and the customer. 8 A. Well, I thought I said prior to that what 9 I understand about GPOs is they work directly with 10 manufacturers on their group and the prices and the 11 prices that a manufacturer will set with that group, 12 so that came up before that. 13 Q. Got it. 14 A. And that's how it fits into the overall 15 value proposition. 16 Q. Okay. Thank you for that. 17 A. Sure. 18 Q. You said you haven't met with any GPOs, 19 right? 20 A. Correct. 21 Q. Okay. Going back to -- strike that. 22 You said there are no GPOs in the dental 23 market today. Is that what you said? 24 A. None that I'm aware of. 25 Q. But there are buying groups in the dental</p>	<p>1 and do negotiate with us on overall volume, and no 2 decisions are made, you know, locally. 3 Typically buying groups are not owned 4 anywhere. They're just, you know, member dentists 5 from across the country. It could be four people in 6 that building right there. But they make their own 7 purchasing decisions; they still require a field 8 sales consultant calling on them. 9 So the buying group itself, there's no 10 mandate that once they're a member of this group you 11 have to now buy on what we've negotiated with 12 fill-in-the-blank dealer name. 13 Q. Is it fair to say that Schein would talk 14 to the group to figure out whether they're a buying 15 group or a corporate account DSO? 16 A. Yes. 17 Q. Do you recall when you first became aware 18 of dental buying groups? 19 A. I started in the industry 28 years ago, 20 and they were around then. 21 Q. 28 years ago? 22 A. Yes. 23 Q. Is that how long you've been -- okay. I 24 was wondering why it was so specific. 25 A. Yeah.</p>

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1 **Q. What do you recall about when you first**
2 **started learning about dental buying groups?**

3 A. They were primarily study clubs, so, you
4 know, I'm from Milwaukee so I'll just pick, you
5 know. There's a Milwaukee study club of five or ten
6 dentists, and they get together monthly or
7 quarterly. I don't know how often they get
8 together. Sometimes it's a golf outing. They get
9 together and talk about the practice of dentistry,
10 and we might go present to them, you know. They
11 invite us in to talk to their group. And then at
12 some point they'd say, oh, by the way, we will
13 commit all of our purchases to us if you give us ten
14 dentists a better price. And, you know, it never
15 follows because each person in that room has a
16 relationship whoever they have a relationship with,
17 and, you know, the buying group has really never
18 worked with the intention that they were -- you
19 know, that they bring us this additional volume.

20 **Q. When you said Schein would go in and**
21 **present, you're talking about as part of some sort**
22 **of continuing education for the study club, not for**
23 **the buying group component?**

24 A. Correct.

25 **Q. And I take it from your answer from time**

1 profitability, I'm sorry.

2 BY MS. KAHN:

3 **Q. And one way that dentists are looking to**
4 **do that is to join a buying group to try to get**
5 **savings through the supplies?**

6 A. Correct.

7 **Q. In the last ten years, when a buying group**
8 **approaches Schein, do you know who those**
9 **communications typically go to?**

10 MR. McDONALD: Object to the form, overly
11 broad.

12 THE WITNESS: It really depends on the
13 size. So if it's something like I mentioned before,
14 ten dentists around Milwaukee, our regional manager
15 is going to meet with them and decide if he wants to
16 put something together or not. We typically have
17 stayed away just because we have learned
18 historically that the volume never follows and then
19 we really have no control; there's no mandate.
20 There's nothing more than I'll call it just the
21 buying group.

22 The larger they become, the more across
23 state lines, across regions as we've set them up,
24 then our zone managers, Jake or Joe, are more likely
25 to get involved.

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1 **to time buying groups have approached Schein to see**
2 **if Schein would be interested in being a supplier?**

3 A. Correct.

4 **Q. Has the frequency of buying clubs --**
5 **strike that.**

6 **Has the frequency of buying groups**
7 **approaching Schein increased in the last five or ten**
8 **years?**

9 A. Yes.

10 **Q. And can you be a little bit more specific?**
11 **Is it ten years? Is it five years?**

12 MR. McDONALD: Object to the form.

13 THE WITNESS: The last ten years, but it
14 has definitely increased significantly in the last
15 five years.

16 BY MS. KAHN:

17 **Q. Why do you think that's the case?**

18 MR. McDONALD: Object to the form, lack of
19 foundation.

20 THE WITNESS: Going back to the pressures
21 that dentistry is under. As I mentioned before, the
22 rate, the reimbursement rate per procedure has come
23 down, general economics, and they're looking to
24 figure out how do they continue to earn more and
25 increase their revenues -- or increase their

1 BY MS. KAHN:

2 **Q. When you said "we typically have stayed**
3 **away," you're saying that Schein has typically**
4 **stayed away from buying groups?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: So I say typically because
7 we have some relationships with some buying groups,
8 and it will depend on how they're structured. And
9 if we believe that the, you know, volume of
10 purchases that they say that they can bring to us
11 they can actually follow through with will determine
12 whether or not we will, you know, try -- you know,
13 we will work with them.

14 BY MS. KAHN:

15 **Q. So is it fair to say that some buying**
16 **groups have committed to a certain volume? Is that**
17 **fair to say?**

18 A. Yes.

19 **Q. What buying groups are those?**

20 MR. McDONALD: Object to the form.

21 THE WITNESS: You know, I don't know the
22 names off the top of my head. So there's -- just in
23 general the ones that have committed to --
24 Smile Source is one example. It's one that we've
25 recently worked with. We worked with them in the

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1 early 2000s, and we realized during that period of
2 time that their members that they had at that time
3 really weren't -- there was no real incremental
4 volume that followed along once we put together a
5 program with them, and we mutually parted ways, and
6 they decided to work with another dealer. And part
7 of it was because they were just looking for bigger
8 discounts, and we said, well, the volume hasn't come
9 to warrant it.

10 They've changed their leadership there.
11 We've met with them in the last several years, and
12 we just recently became, you know, one of their key
13 suppliers, not sole, not exclusive, but, you know,
14 one of their key suppliers, and we just -- they have
15 changed their structure and their value proposition
16 to their members. Their members have now grown.
17 Their members have re-upped to be multiple-year
18 members of their group, and the statistics that they
19 showed us were that their members actually buy from
20 their suppliers that they have relationships with.

21 So we said in that case, on a multitude of
22 other factors, based on that, you know, we'd like to
23 join.

24 BY MS. KAHN:

25 **Q. You mentioned that they changed their**

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1 **structure, Smile Source.**

2 A. Yes.

3 **Q. What are you referring to when you say**
4 **that?**

5 A. I should say they changed their value
6 proposition to their members.

7 **Q. How so?**

8 A. They have now monthly meetings. They have
9 someone locally in each of their markets. They get
10 their members together and chat. They, you know,
11 have offers with labs so that, you know, they can
12 get a better value and service from -- if they use
13 the labs that they negotiated with.

14 So they've offered more services than just
15 simply join, you can get better pricing on supplies.
16 There's other things they do for the members'
17 practices.

18 **Q. Do these value propositions -- strike**
19 **that.**

20 **How long have these value propositions**
21 **been in place for Smile Source members?**

22 MR. McDONALD: Object to the form, lack of
23 foundation.

24 THE WITNESS: Yeah, just based on what
25 they've told us, you know, in the last four years is

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1 when they've really changed their structure or value
2 proposition.

3 BY MS. KAHN:

4 **Q. And I take it that Schein sees it as a**
5 **positive that Smile Source has these added value**
6 **propositions; is that right?**

7 A. Yes, because part of our -- their offering
8 matches more our entire practice care wheel as well.
9 And so, you know, on the business solutions side
10 they are very focused on helping their members grow
11 their practice. That aligns exactly with our
12 mission statement.

13 And so our missions and our purposes for
14 their members which are our customers are aligned,
15 and, therefore, we're going -- we're approaching
16 their members and our customers in a very similar
17 way with a similar story.

18 **Q. Okay. And is Schein offering sort of the**
19 **same services that Smile Source is offering its**
20 **members?**

21 A. Some. So there's no competing service,
22 but the members can choose, you know, if they want
23 to use one of our business solutions or one that
24 they get, you know, directly from Smile Source. But
25 they're aligned in the intent and the goal of, you

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1 know, what is important to that individual member.

2 **Q. Okay. And how does that alignment -- why**
3 **is that alignment a good thing?**

4 A. It's our -- it aligns with what our
5 strategic plan is and our go-to-market strategy with
6 our customers and here's a group that has the same
7 vision for their members. And price is a component
8 of their value. A member stays and joins
9 Smile Source, and price and supplies is a component
10 of why they joined because they pay I think it's
11 3 percent of their revenue to be a member of
12 Smile Source. If they're a million-dollar practice,
13 that's \$30,000 they pay into Smile Source to be a
14 member. They're doing it for more than a discount
15 on supplies. There's other values that they're
16 getting.

17 **Q. You mentioned that Smile Source showed you**
18 **statistics?**

19 A. Yes.

20 **Q. What are you referring to there?**

21 A. They showed us --

22 MR. McDONALD: Object to the form. And I
23 don't know if you have a nondisclosure with them or
24 not, but if you do, then we should talk before you
25 start disclosing what they told you.

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1 THE WITNESS: So we do. So I apologize, I
2 didn't know. I was in this environment it would
3 be -- that would come out.

4 MR. McDONALD: I don't want you to
5 disclose stuff that you've been instructed by
6 Smile Source to not reveal without us talking about
7 it.

8 BY MS. KAHN:

9 **Q. Is there any privileged information?**

10 MR. McDONALD: I don't care, Lin. If he
11 has got a nondisclosure agreement, the last thing I
12 want to do is get in a lawsuit with Smile Source
13 because he has revealed stuff to you that he has
14 been told not to. And I don't think you're asking
15 him to do that.

16 He can generally answer the question, but
17 I don't want him to give you specifics that are
18 protected from disclosure by a nondisclosure
19 agreement without he and I having a chance to visit
20 and me understanding the circumstances.

21 BY MS. KAHN:

22 **Q. Okay. Can you still answer my question,
23 please? Is there -- were you going to disclose
24 privileged information in response to my question?**

25 A. I don't know. This one particular

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1 statistic about the number of their members that
2 recommit and rejoin their member every single year,
3 I don't know if that would be something that they
4 would consider privileged. For sure pricing, you
5 know, whatever discounts that they're getting, so
6 that for sure would be part of their nondisclosure.
7 I don't know if this statistic that I was about
8 to -- I don't know if it's important, quite
9 honestly, it was to us, but I don't know if it's a
10 statistic that he would -- that they would consider
11 confidential.

12 **Q. Sure. And aside from the nondisclosure
13 agreement, I'm trying to understand if there was
14 some attorney/client privilege that covers what you
15 were going to testify to --**

16 A. I don't know.

17 **Q. -- that you know of.**

18 A. I don't know.

19 **Q. You're not aware of any --**

20 A. I'm not.

21 **Q. -- any attorneys being involved?**

22 A. Attorneys were absolutely involved --

23 **Q. In the statistics that I'm asking about.**

24 A. -- in the contract that we signed with
25 them, including mutual nondisclosure agreements.

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1 **Q. Sure.**

2 A. Absolutely they were involved.

3 **Q. So my question goes back to the statistics
4 that you're referring to.**

5 **Is there any attorney/client
6 communications specifically related to the
7 statistics?**

8 A. That is the piece I'm saying I don't know.

9 **Q. You don't know. You're not aware of any
10 attorneys being involved?**

11 MR. McDONALD: He just told you he doesn't
12 know.

13 THE WITNESS: I don't know if the
14 statistic I was about to give you would fall under
15 the NDA.

16 BY MS. KAHN:

17 **Q. Okay. And, you know, specifics aside of
18 the number that you were going to I guess share with
19 us, the statistics that you're referring to is
20 members purchasing through Smile Source vendors; is
21 that right?**

22 A. Correct.

23 **Q. And based on that statistic in part Schein
24 decided to enter into a deal with Smile Source; is
25 that right?**

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1 A. That's correct.

2 **Q. Is there any level of commitment by
3 Smile Source members to purchase through Schein?**

4 A. Not the -- excuse me, not the
5 individual -- I'm sorry, I don't know on the
6 individual member basis. I believe there is a
7 minimum threshold that we have for them also, but in
8 total there are targets that we have with
9 Smile Source that impacts the financial arrangement
10 that we have with them.

11 **Q. Is it fair to say that the more -- the
12 higher the target that they hit the better the
13 pricing that they get?**

14 A. Not the individual dentists but the
15 administration fee that goes back to Smile Source.

16 **Q. Got it. The individual dentist pricing
17 does not change regardless of purchase volume?**

18 A. That's correct.

19 **Q. In the last five to ten years, have you
20 been personally involved in discussions within
21 Schein about buying groups?**

22 A. Yes.

23 **Q. And has the frequency of those discussions
24 increased over time?**

25 A. Yes.

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1 **Q. Can you tell me generally how these**
 2 **discussions come about?**
 3 MR. McDONALD: Object to the form, overly
 4 broad, vague.
 5 THE WITNESS: Generally usually it comes
 6 up from the field in some way.
 7 BY MS. KAHN:
 8 **Q. How so?**
 9 A. From a regional manager that might have
 10 been approached by someone locally to one of our
 11 zone or area VPs.
 12 **Q. And then eventually you get involved?**
 13 A. Not in all cases, no.
 14 **Q. And how often have you been involved?**
 15 A. I don't have a number. Several times a
 16 year.
 17 **Q. And is there a group of individuals at**
 18 **Henry Schein corporate that's typically involved in**
 19 **discussions about buying groups if that topic comes**
 20 **up?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: So Henry Schein Dental
 23 corporate?
 24 BY MS. KAHN:
 25 **Q. Yes.**

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1 A. Yes.
 2 **Q. And who are those individuals?**
 3 A. Well, it depends. Again it's
 4 account-specific. It really depends on the size.
 5 It could be local; we're not involved. The bigger
 6 they get, as I mentioned before, then up to Jake and
 7 Joe to maybe even Dave and myself. And I know
 8 Smile Source I was involved with. That's the only
 9 one I've been directly involved with in a number of
 10 years.
 11 **Q. When there have been discussions about**
 12 **buying groups, what is typically discussed about**
 13 **them?**
 14 MR. McDONALD: Object to the form, overly
 15 broad.
 16 THE WITNESS: The structure, as I
 17 mentioned before, so how are they structured, do
 18 they -- is it mandated they have to, you know, buy
 19 from the suppliers that partner, how they're
 20 structured, you know, do they own the practices or
 21 not.
 22 BY MS. KAHN:
 23 **Q. If a buying group does not mandate**
 24 **purchases through the buying group, is it fair to**
 25 **say that Schein's practice has been to decline those**

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1 **buying groups?**
 2 MR. McDONALD: Object to the form, overly
 3 broad.
 4 THE WITNESS: Generally speaking, yes.
 5 BY MS. KAHN:
 6 **Q. And is it fair to say that if there's no**
 7 **common ownership Schein's practice has been to**
 8 **decline those groups?**
 9 MR. McDONALD: Object to the form, overly
 10 broad.
 11 THE WITNESS: Generally speaking, yes.
 12 BY MS. KAHN:
 13 **Q. Whose decision -- strike that.**
 14 **Would you say that there's a general**
 15 **company policy to not work with buying groups that**
 16 **cannot mandate purchases through the group?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I wouldn't call it a policy,
 19 per se. I mean, there's no written memo: Here's a
 20 policy on buying groups. But we have a general
 21 practice as you just outlined in your prior
 22 questions.
 23 BY MS. KAHN:
 24 **Q. And who set those general practices?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: In many cases ultimately I
 2 have, but we determined -- that's based on input
 3 from a multitude of executives.
 4 BY MS. KAHN:
 5 **Q. Have you ever looked specifically into**
 6 **what buying groups offer dental practices?**
 7 A. Well, again, it depends on -- you know,
 8 you've seen one buying group, you've seen one buying
 9 group. So it really depends on the individual
 10 buying group.
 11 **Q. Can you give me some examples of what**
 12 **buying groups offer dentists?**
 13 MR. McDONALD: Object to the form, overly
 14 broad.
 15 THE WITNESS: So back to Smile Source.
 16 They offer business solutions for them. They might
 17 offer, you know, overall combined insurance rates
 18 for them. They might try to combine cell phone.
 19 Anything -- you know, anything that might be helpful
 20 to the profitability of a practice, some buying
 21 groups get involved with that. Some talk that way
 22 but don't actually really do it. And several are
 23 just simply saying let's all get together and try to
 24 get a better price because we're a group.
 25

35 (Pages 137 to 140)

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1 BY MS. KAHN:

2 **Q. Do you have a general understanding --**
3 **strike that.**

4 **Has Schein conducted any sort of analysis**
5 **of buying group pricing as compared to Schein's**
6 **pricing?**

7 MR. McDONALD: Object to the form.

8 THE WITNESS: Not that I'm aware of.

9 BY MS. KAHN:

10 **Q. Who is Brian Brady?**

11 A. He is our director of group practices
12 or -- I think that's his title. He's responsible
13 for the mid-market segment.

14 **Q. And at some point did he get involved with**
15 **buying groups?**

16 A. Yes.

17 **Q. And when was that?**

18 A. In the last two to three years, maybe
19 sooner. I don't know, but it's more prevalent in
20 the last couple of years.

21 **Q. Do you recall him doing an analysis of**
22 **existing buying groups in the dental space?**

23 MR. McDONALD: Object to the form, vague.

24 THE WITNESS: I recall him doing it, but I
25 don't recall the specifics of the report, no.

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1 pricing program with us. If only ten of them are,
2 then the opportunity to grow our business with the
3 other 40, that's more appealing.

4 **Q. Have you ever characterized buying groups**
5 **as a threat to Schein?**

6 A. Yes.

7 **Q. And can you explain why?**

8 A. For the purposes of what I just outlined.
9 If a group of dentists do come together and let's
10 say 40 of those 50 are good customers of ours, and
11 we decide, well, we don't want to work with the
12 buying group, we already have the business, and now
13 the buying group aligns with someone else and the
14 business actually does flow, then we'd lose the
15 business of our 40 good customers.

16 **Q. Any other reasons that you would**
17 **characterize buying groups as a threat?**

18 MR. McDONALD: Object to the form.

19 THE WITNESS: That's the primary concern
20 is, you know, the amount of business we already have
21 with the customers that are in the group.

22 BY MS. KAHN:

23 **Q. Would you -- have you ever seen buying**
24 **groups as a threat to the dental industry as a**
25 **whole?**

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1 BY MS. KAHN:

2 **Q. Do you view selling to buying groups as a**
3 **good business opportunity for Schein?**

4 MR. McDONALD: Object to the form, vague.

5 THE WITNESS: It can be.

6 BY MS. KAHN:

7 **Q. Can you just tell me again under what**
8 **circumstances it can be?**

9 A. Under the circumstances I've been talking
10 about. So if they commit to the volume, they
11 mandated that they buy, the volume actually follows;
12 and there's incremental opportunity for us within
13 the group. We will work with them.

14 If it's owned, it's a much simpler
15 decision at the various locations. If it's just
16 members, it would be repeating everything I said in
17 the last 15 minutes on the subject.

18 **Q. You mentioned incremental opportunity.**
19 **What do you mean by that?**

20 A. So we will -- part of what we will
21 analyze, if there's, let's say, 50 dentists in this
22 group, we will ask for a list of those customers,
23 not what they do but where they're located; and we
24 can analyze if 40 of them are already Privileges
25 customers of ours, they're already in some type of

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1 A. Again, it could be a threat but they could
2 also be an opportunity. So they really could fall
3 in both, both, you know, squares of a SWOT analysis.

4 **Q. Let me just ask my question.**

5 **Have you ever seen buying groups as a**
6 **threat to the dental industry as a whole?**

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. Aside from losing, you know, the customers**
10 **to another dealer.**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: I only recall thinking of
13 them how they would have impacted under Schein. I
14 don't -- I haven't thought about what the industry
15 impact would be.

16 MS. KAHN: Now is a good time for a break
17 actually.

18 THE WITNESS: Sure.

19 MS. KAHN: Go off the record.

20 (Whereupon, a recess was taken
21 from 10:37 a.m. to 10:55 a.m.)

22 BY MS. KAHN:

23 **Q. I want to go back to Smile Source we were**
24 **talking about earlier.**

25 **Did you say that they, Smile Source, did**

145	<p>1 not commit to a volume?</p> <p>2 A. They have stated their members are</p> <p>3 mandated to purchase through their agreed-to</p> <p>4 channels; and if they don't, they put their</p> <p>5 membership at risk.</p> <p>6 Q. Got it. So Smile Source to your</p> <p>7 understanding monitors members' purchases?</p> <p>8 A. That's correct.</p> <p>9 Q. And your understanding is per</p> <p>10 Smile Source's agreements with its members that</p> <p>11 those members are obligated to purchase through the</p> <p>12 Smile Source vendors; is that right?</p> <p>13 A. That's correct.</p> <p>14 Q. And if the members don't, then the members</p> <p>15 could lose their membership with Smile Source?</p> <p>16 A. That's my understanding.</p> <p>17 Q. And what is that understanding based on?</p> <p>18 A. Discussions with Trevor Maurer, who is</p> <p>19 their president and CEO.</p> <p>20 Q. Have you reviewed their customer</p> <p>21 contracts?</p> <p>22 A. I have not.</p> <p>23 Q. Or rather member contracts I should say.</p> <p>24 A. I have not.</p> <p>25 Q. Have you seen other buying groups in the</p>	147	<p>1 buying group that does not offer any value-added</p> <p>2 services but is able to commit their members'</p> <p>3 volume?</p> <p>4 A. Let's say this: The market has been</p> <p>5 evolving. The market is evolving continuously and</p> <p>6 particularly in this space, so we have worked with</p> <p>7 buying groups in the past; we will work with buying</p> <p>8 groups going forward.</p> <p>9 So generally speaking there's -- there are</p> <p>10 a multitude of factors that we will consider whether</p> <p>11 or not we decide to work with a buying group. One</p> <p>12 of them will be what you just outlined, you know,</p> <p>13 will the volume actually follow. That's an</p> <p>14 important factor.</p> <p>15 Q. So even if a buying group doesn't have the</p> <p>16 value-added components that we talked about earlier,</p> <p>17 Schein would still be interested as long as the</p> <p>18 buying group is able to commit volume?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: Yeah, I'd be speculating. I</p> <p>21 don't know. It's possible.</p> <p>22 BY MS. KAHN:</p> <p>23 Q. What's your sense sitting here today of</p> <p>24 what Schein would be interested in dealing with?</p> <p>25 MR. McDONALD: Object to the form, overly</p>
146	<p>1 dental industry that have done something similar</p> <p>2 where they mandated purchase through the buying</p> <p>3 group vendor?</p> <p>4 A. The closest time is on the Smile Source</p> <p>5 one. I've heard of others, but I don't know</p> <p>6 specifically.</p> <p>7 Q. So does anything come to mind when you say</p> <p>8 you've heard of others?</p> <p>9 A. No.</p> <p>10 Q. But you're saying you are aware of other</p> <p>11 buying groups who have similarly mandated purchases</p> <p>12 through the buying group members?</p> <p>13 A. That's my understanding.</p> <p>14 Q. And do you know if Schein has worked with</p> <p>15 those buying groups?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. And you don't have any names?</p> <p>18 A. No.</p> <p>19 Q. Earlier you talked about being aligned</p> <p>20 with a buying group in terms of offering the</p> <p>21 value-added propositions and not just focusing on</p> <p>22 price.</p> <p>23 Do you recall that?</p> <p>24 A. I do.</p> <p>25 Q. If -- would Schein be interested in a</p>	148	<p>1 broad.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: My sense is it's possible.</p> <p>4 BY MS. KAHN:</p> <p>5 Q. So I'm still trying to understand.</p> <p>6 Earlier you talked about the value-added proposition</p> <p>7 of a buying group being important. I'm trying to</p> <p>8 understand why that's important to you.</p> <p>9 A. Well, using it as a specific example with</p> <p>10 Smile Source, that was one of the other compelling</p> <p>11 things. That was part of -- and in that particular</p> <p>12 instance I came to the, you know, conclusion with</p> <p>13 the team, that, yes, let's partner with this one, so</p> <p>14 that was a specific example.</p> <p>15 Q. Got it.</p> <p>16 A. There's a multitude of factors that we</p> <p>17 will think about, as I've outlined before, whether</p> <p>18 we will or we won't. We have historically worked</p> <p>19 with buying groups. Even how they're going to</p> <p>20 market is evolving. So we want to evolve with and</p> <p>21 in advance of how the market is evolving.</p> <p>22 Q. So the Smile Source specific example</p> <p>23 aside, is the value-added proposition that a buying</p> <p>24 group offers its members, is that an important</p> <p>25 component to Schein when you're considering whether</p>

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1 **to partner with a buying group?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: It can be.
 4 BY MS. KAHN:
 5 **Q. Why is that?**
 6 MR. McDONALD: Objection, asked and
 7 answered.
 8 THE WITNESS: I don't know how else to
 9 answer that. I mean, it can be important because it
 10 aligns with what we're doing with them with the
 11 value proposition we provide our customers. That's
 12 another reason why they're members of a group, and
 13 therefore we believe the likelihood of them, those
 14 individual dentists to want to work with us
 15 increases.
 16 BY MS. KAHN:
 17 **Q. The likelihood of the members wanting to**
 18 **work with Schein?**
 19 A. Yes.
 20 **Q. Got it. So I'm just -- sorry, I'm not**
 21 **trying to ask the same question again. I'm just**
 22 **trying to understand why it matters that Schein's**
 23 **value proposition is aligned with a buying group**
 24 **also having these value-added services.**
 25 **And are you saying that if a buying group**

1 BY MS. KAHN:
 2 **Q. The court reporter has handed you what has**
 3 **been marked as Exhibit 209. It has Bates number**
 4 **Henry Schein-000043081.**
 5 **Take a minute and let me know when you're**
 6 **ready.**
 7 A. Okay.
 8 Okay.
 9 **Q. Exhibit 209 is an e-mail chain. The**
 10 **latest in time is an e-mail from you to Mr. Muller**
 11 **on October 30th, 2014.**
 12 **Did you send this e-mail to Mr. Muller?**
 13 A. Oh, I'm sorry, it's at the top. Yes, I
 14 see that.
 15 **Q. And I'm going to focus you in on your**
 16 **e-mail to Jim -- is it Huether --**
 17 A. Yes.
 18 **Q. -- on October 28th, 2014, and the subject**
 19 **is RE: GD Exec Update with SB - Thursday-10/30.**
 20 **What does GD refer to there?**
 21 A. Global dental.
 22 **Q. And who is Jim Huether?**
 23 A. He's on Jim Breslawski's team. I don't
 24 know his exact title but helps in an administrative
 25 role.

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1 **offers value-added services, then the members are**
 2 **more likely to purchase from Schein if Schein is a**
 3 **vendor?**
 4 MR. McDONALD: Object to the form, asked
 5 and answered.
 6 THE WITNESS: As I stated before, we
 7 believe -- I'll use the word "stickiness." The
 8 stickiness with a customer is greater when the
 9 value-added services that we're providing align with
 10 that specific customer's need, and when part of that
 11 is also with the member, you know, the buying group
 12 membership provides, that's even another kind of,
 13 you know, helpful point, stickiness point.
 14 But, again, it's one of many things.
 15 There's a lot of things in a value-added offering.
 16 BY MS. KAHN:
 17 **Q. Why is -- why is there more stickiness if**
 18 **you're aligned with the buying group?**
 19 A. If the likelihood that the member joined
 20 that buying group and why they're working with us
 21 are similar, then they're not only going to enjoy
 22 their partnership with us but their partnership with
 23 their group as a member.
 24 (Exhibit 209 was marked for
 25 identification.)

1 **Q. Were you sending this e-mail to**
 2 **Mr. Huether to prepare for a dental executive update**
 3 **with Stanley Bergman?**
 4 A. No, it was actually for -- that's what the
 5 title says, but it was actually for an off-site
 6 meeting that we were having coming up in November, I
 7 believe.
 8 So initially it started out as the exec
 9 update, and we were pulling things from that for our
 10 off-site planning meeting.
 11 **Q. Got it. And what is this off-site**
 12 **planning meeting that you're referring to?**
 13 A. Once a year we go off-site, meaning just
 14 out of our building, as part of Jimmy's team, the
 15 global dental team to talk budgets, going-to-market
 16 strategies, that sort of thing.
 17 **Q. And you said that takes place in November?**
 18 A. It varies. Here it did, yes.
 19 **Q. Who attends these meetings?**
 20 A. Jimmy, who is the CEO of our global dental
 21 business, and his direct reports.
 22 **Q. So that would be yourself?**
 23 A. Uh-huh.
 24 **Q. And who else?**
 25 A. Bob Minowitz, Graham Stanley, Hal Muller.

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1 And then he will have -- it really depends. There's
2 other invites that might join for certain segments.
3 Some of them are the practice solutions team; the
4 president of that is Kevin Bunker. We might have
5 someone from finance come in, someone from IT come
6 in. There's -- it's based on the topic.

7 **Q. And how long are these meetings typically?**

8 A. A day and a half.

9 **Q. Do you recall sending this e-mail to**
10 **Jim Huether on October 28th, 2014?**

11 A. I do now.

12 **Q. Can you tell me what the purpose of your**
13 **e-mail to Mr. Huether was?**

14 A. Well, I titled it the Top 5 "Keeps Me Up
15 at Night." I believe one of the topics we were
16 going to discuss is everyone come to the meeting
17 with one of the top five keeps you up at night right
18 now.

19 **Q. That means top five things that you're**
20 **most worried about?**

21 A. Could be excited about too. If I'm going
22 on vacation tomorrow I might not sleep well because
23 I'm excited, but yes, it's the top five things that
24 are keeping you up at night.

25 **Q. Okay. So it could be a positive or a**

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1 **negative?**

2 A. Correct.

3 **Q. And under the heading Top 5 "Keeps Me Up**
4 **at Night," in this e-mail these are things that you**
5 **thought at the time were keeping you up at night?**

6 A. I mean, in the heading of things that are
7 on the top of my mind, yes.

8 **Q. And under Top 5 "Keeps Me Up at Night,"**
9 **you have -- you wrote Customer Trends to, and then**
10 **the second bullet under that is Buying Group**
11 **mentality.**

12 **Do you see that?**

13 A. I do.

14 **Q. What did you mean there?**

15 A. All the things we've been discussing about
16 the potential impact of the buying groups could
17 have. It could be positive; it could be negative.

18 **Q. And what did you mean when you said buying**
19 **group mentality?**

20 A. The thoughts of dentists, it's becoming
21 more and more prevalent. As we talked about, the
22 market is evolving. You're hearing more and more
23 about buying groups, and dentists are looking to
24 create or join buying groups, and so the mentality
25 of the want, the desire, the need to join a buying

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1 group.

2 **Q. And your testimony is you included that**
3 **under Top 5 "Keeps Me Up at Night" because you were**
4 **both excited about it and scared of it?**

5 MR. McDONALD: Object to the form,
6 mischaracterizes the testimony.

7 THE WITNESS: So there's the five main
8 headers are The New Normal, Customer Trends,
9 Supplier Relationships, Sales Team Structure, and
10 then the Meetings-R-U's, you know, where I'm spending
11 my time. Those are the top five. Within each of
12 those there are things that we're talking about.

13 So when it came to customer trends, it
14 was, you know, the shift from, you know, to -- or
15 from private practice to mid market and the elite
16 DSOs, and so how do we need to think about that and
17 structure ourselves to answer that market trend; and
18 then from a buying group perspective, mentality,
19 whatever, how do we structure ourselves to meet the
20 demands of our customers.

21 BY MS. KAHN:

22 **Q. And why was the buying group mentality on**
23 **the top of your mind at this time?**

24 MR. McDONALD: Object to the form,
25 misstates his testimony.

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1 THE WITNESS: It in and of itself was
2 customer trends in general or an understanding of
3 what the customer trends are. That was one of the
4 trends in understanding what our customers' needs
5 are or desires, and so how do we structure ourselves
6 to address that.

7 BY MS. KAHN:

8 **Q. There are two bullets under customer**
9 **trends; is that right?**

10 MR. McDONALD: Object to the form,
11 misstates or mischaracterizes the document.

12 THE WITNESS: There are.

13 BY MS. KAHN:

14 **Q. And the first is Mid Market and ultimately**
15 **Elite DSO model.**

16 **Do you see that?**

17 A. I do.

18 **Q. And why was the customer trend of mid**
19 **market and ultimately elite DSO model, why was that**
20 **keeping you up at night?**

21 A. The question is were we structured
22 ourselves to address that trend in the market.

23 **Q. Is it fair to say that in 2014 you**
24 **believed that the buying group mentality was a**
25 **customer trend?**

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1 A. I do.

2 **Q. What would you say are the negative,**
3 **possible negative impacts that the buying group**
4 **mentality can have on Schein?**

5 A. So as I discussed earlier, we -- if it's
6 in an area that a group that the customers are
7 already good customers of ours and if we decide not
8 to work with the group because we already work with
9 them individually but they do buy -- they do join a
10 group and then end up changing their supplies
11 because of that, that's a negative trend for us.

12 **Q. In that scenario, why wouldn't Schein just**
13 **offer a higher discount to retain those customers?**

14 MR. McDONALD: Object to the form.

15 THE WITNESS: That might be one of the
16 strategies.

17 BY MS. KAHN:

18 **Q. A customer can leave Schein at any time,**
19 **right?**

20 A. Absolutely.

21 **Q. So why is the buying group mentality**
22 **something that you were thinking about at this time?**

23 MR. McDONALD: Object to the form.

24 THE WITNESS: I don't know how else to
25 answer than I already have. I'm not trying to be

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1 difficult either. I think I've answered it. I
2 don't know how else to put it in another way.
3 BY MS. KAHN:

4 **Q. So the only possible negative impact of a**
5 **buying group on Schein is that they would leave,**
6 **they would go to another distributor?**

7 MR. McDONALD: Object to the form,
8 mischaracterizes testimony.

9 THE WITNESS: That's our leading concern
10 about that, and if we -- again, if we're already
11 working with these customers, we have a pricing
12 structure set up with them already based on their
13 volume and they decide to leave because they've
14 joined this other group and we decide not to work
15 with that group, that is the primary risk we have
16 with them.

17 BY MS. KAHN:

18 **Q. Is there any other reasons that a buying**
19 **group mentality could possibly have a negative**
20 **impact on Schein?**

21 A. There are cases where if we decide to work
22 with a group and offer better pricing than they're
23 maybe getting today with the expectation that the
24 other business is going to follow but the other
25 business doesn't follow and, therefore, all we have

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1 done is reduce margin on the existing business,
2 that's a risk.

3 **Q. Anything else?**

4 MR. McDONALD: Object to the form, overly
5 broad.

6 THE WITNESS: Those are the two key things
7 that come to mind right now.

8 BY MS. KAHN:

9 **Q. Okay. So going back to the answer that**
10 **you just gave, am I understanding you correctly that**
11 **the buying group mentality could lead to reduced**
12 **margins for Schein?**

13 A. The way I stated it was on our existing
14 business, and we're willing to take that risk, if
15 you would, for the opportunity to grow the accounts
16 that are not currently customers. If the business
17 doesn't follow, if they don't -- if the buying group
18 doesn't do in essence what historically they haven't
19 done, which is the volume followed, then the only
20 thing we've done is reduce our margin through the
21 existing members.

22 **Q. And that's why typically Schein has not**
23 **worked with buying groups, right?**

24 MR. McDONALD: Object to the form,
25 mischaracterizes testimony.

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1 THE WITNESS: Absolutely not why. That's
2 not -- I've never stated that.

3 BY MS. KAHN:

4 **Q. You've never stated what?**

5 A. That that was why.

6 **Q. Okay. Can you explain to me why**
7 **typically -- earlier you testified that typically**
8 **Schein has not worked with buying groups.**

9 **Can you explain why that's the case?**

10 MR. McDONALD: Object to the -- hang on.
11 Object to the form, mischaracterizes testimony.
12 Go ahead.

13 THE WITNESS: So let me clarify what I
14 think I said earlier. I want to make sure that
15 we're on the same page.

16 Generally speaking we have not worked
17 with -- we've worked with buying groups
18 historically. We have in a multitude of cases a
19 multitude of times. We've seen some that worked and
20 some that haven't.

21 As the market has evolved, we want to
22 continue to evolve how we go to market and work with
23 individual dentists that are part of the group,
24 they're a DSO to mid market and have an answer to
25 the trend in the market. So we've worked with

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1 buying groups in the past. We have. We won't work
 2 with all of them depending on all the criteria I've
 3 mentioned to you before.
 4 Now, will we have to adjust that as we go
 5 forward based on what's happening in the
 6 marketplace? It's possible. We were looking at
 7 what's happening within the trends in the
 8 marketplace, and we want to stay ahead of the curve.
 9 So we historically have worked with many,
 10 you know, groups, but there have been many more that
 11 have approached us than we've actually worked with.
 12 BY MS. KAHN:
 13 **Q. How many buying groups has Schein worked**
 14 **with?**
 15 A. I don't know.
 16 **Q. Do you have any ballpark estimate?**
 17 A. I'm not --
 18 MR. McDONALD: Object to the form. If you
 19 know, tell her, but don't guess.
 20 THE WITNESS: I'd be guessing.
 21 BY MS. KAHN:
 22 **Q. How many buying groups have approached**
 23 **Schein, if you have any estimate?**
 24 A. No.
 25 **Q. And can you name any buying groups that**

1 **evolves. Do you recall saying that?**
 2 A. Yes.
 3 **Q. What are you referring to when you say as**
 4 **the market evolves?**
 5 A. Well, what I'll refer to as customer
 6 trends, things that are happening within the market,
 7 the trends to mid market and elite DSOs, those types
 8 of trends. Those are happening in the industry.
 9 (Exhibit 210 was marked for
 10 identification.)
 11 BY MS. KAHN:
 12 **Q. The court reporter has handed you**
 13 **Exhibit 210, which has Bates number**
 14 **Henry Schein-000018481.**
 15 **Take a minute to look at that, and let me**
 16 **know when you're ready.**
 17 A. Okay.
 18 **Q. Exhibit 210 is an e-mail from**
 19 **Bruce Lieberthal on November 19th, 2015, to a number**
 20 **of individuals, and you are cc'd on it; is that**
 21 **right?**
 22 A. Correct.
 23 **Q. And the subject is Christensen**
 24 **International Study Club - Summary of Progress.**
 25 **Do you recall receiving this e-mail?**

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1 **Schein has worked with other than Smile Source?**
 2 A. Alpha Omega is one in particular.
 3 **Q. Can you tell me where Alpha Omega is**
 4 **based?**
 5 A. I don't know. I've not worked directly
 6 with them.
 7 **Q. What do you know about Alpha Omega?**
 8 A. That's about all I know about them, quite
 9 honestly. It's a group. I don't know.
 10 **Q. Is it a buying group?**
 11 A. That's my understanding, yes.
 12 **Q. And what's that understanding based on?**
 13 A. That the members that are part of
 14 Alpha Omega we've had a pricing structure
 15 arrangement. It's not been through HSD. It's part
 16 of the special markets, so I'm not directly involved
 17 with them. And I don't even know if it still
 18 exists, to tell you the truth, but it's one that
 19 we've historically worked with.
 20 **Q. Through special markets?**
 21 A. Correct.
 22 **Q. Any others aside from Alpha Omega that you**
 23 **can name that Schein has worked with?**
 24 A. Not that come to mind right now.
 25 **Q. Earlier you mentioned that as the market**

1 A. I do now.
 2 **Q. And do you recall Christensen**
 3 **International Study Club and what that is?**
 4 A. Yes.
 5 **Q. What is it?**
 6 A. So Gordon Christensen is considered one of
 7 the top KOL, key opinion leaders, in the industry,
 8 and he has been followed for many years, and he
 9 comes up with reports on products and value to
 10 dentists.
 11 He has recently also formed study clubs
 12 where he goes out and talks and teaches on various
 13 events and topics, and we support some of those
 14 groups, some of those events as a sponsor.
 15 **Q. Was Schein in discussions with Gordon**
 16 **Christensen on a potential partnership between the**
 17 **two companies?**
 18 A. From a sponsorship standpoint, yes; not
 19 acquire him in any way, no.
 20 **Q. And who is Bruce Lieberthal?**
 21 A. He is our vice president and chief
 22 innovation officer for Henry Schein, Inc.
 23 **Q. Do you know why he was sending this to you**
 24 **and others?**
 25 MR. McDONALD: Object to the form.

41 (Pages 161 to 164)

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1 THE WITNESS: Well, it was to Diana
 2 Friedman and Stan Bergman, so I was cc'd on it. But
 3 I believe it was a follow-up to a meeting that
 4 someone was at a Christensen event, and this is his
 5 notes coming out of that meeting, it looks like his,
 6 yeah, Bruce's.
 7 BY MS. KAHN:
 8 **Q. Do you know why you were cc'd?**
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: He's a key opinion leader in
 11 the dental industry.
 12 BY MS. KAHN:
 13 **Q. Mr. Lieberthal wrote -- do you see Our**
 14 **Goals? Do you see that heading?**
 15 A. I do.
 16 **Q. And a couple of bullets down, the fifth**
 17 **one down he wrote, "Have Christensen abandon his**
 18 **push for dentists to join buying groups, which is**
 19 **not in their interest and adverse to Henry Schein's**
 20 **interests and well-being."**
 21 **Do you see that?**
 22 A. I do.
 23 **Q. Why was one of Schein's goals to have**
 24 **Christensen abandon his push for dentists to join**
 25 **buying groups?**

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1 MR. McDONALD: Object to the form, lack of
 2 foundation.
 3 THE WITNESS: That wasn't one of Schein's
 4 goals to do that.
 5 BY MS. KAHN:
 6 **Q. Whose goal was it?**
 7 MR. McDONALD: Object to the form, lack of
 8 foundation.
 9 THE WITNESS: It looks like Bruce's.
 10 BY MS. KAHN:
 11 **Q. And why do you think it was Bruce's goal**
 12 **to have Christensen abandon his push for dentists to**
 13 **join buying groups?**
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I don't know. I'd be
 16 speculating.
 17 BY MS. KAHN:
 18 **Q. You've never talked to Mr. Lieberthal**
 19 **about buying groups?**
 20 A. I have not.
 21 **Q. Do you have an understanding of what he**
 22 **meant when he wrote the buying group is not in their**
 23 **interest and adverse to Henry Schein's interests and**
 24 **well-being?**
 25 MR. McDONALD: Object to the form.

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1 THE WITNESS: I do not.
 2 BY MS. KAHN:
 3 **Q. Can you think of any reason for**
 4 **Mr. Lieberthal to say that our goal was to have**
 5 **Christensen abandon his push for dentists to join**
 6 **buying groups?**
 7 MR. McDONALD: Object to the form, calls
 8 for speculation.
 9 THE WITNESS: I'd be speculating.
 10 BY MS. KAHN:
 11 **Q. Aside from what he was actually thinking**
 12 **in his head, can you think of any reason sitting**
 13 **here today why Mr. Lieberthal would write that?**
 14 MR. McDONALD: Object to the form, lack of
 15 foundation, calls for speculation.
 16 THE WITNESS: Not beyond anything I've
 17 already shared with you on why I would consider
 18 buying groups in general a risk.
 19 BY MS. KAHN:
 20 **Q. And do you agree that buying groups are**
 21 **adverse to Henry Schein's interests and well-being?**
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: Not beyond the two primary
 24 reasons why I view buying groups as risks.
 25

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1 BY MS. KAHN:
 2 **Q. And the first reason, just to clarify, is**
 3 **that a buying group can -- a buying group which**
 4 **consists of many Schein customers can leave and go**
 5 **to another distributor; is that right?**
 6 A. That's right.
 7 **Q. And the second is if Schein enters into an**
 8 **agreement with the buying group there's potential**
 9 **for margin reduction?**
 10 MR. McDONALD: Object to the form,
 11 mischaracterizes testimony.
 12 THE WITNESS: On the second one, what I
 13 said in the past and I'll just restate it is that on
 14 the second one if we -- if, it's not for sure that
 15 the prices that we would offer that group are any
 16 better or lower than where the individual customers
 17 are already, but there is risk that some of that
 18 could happen. If our margins go down in those
 19 specific accounts but the other accounts don't come
 20 over to offset that for the incremental opportunity,
 21 then yes, margin erosion in that customer segment
 22 would be a risk.
 23 BY MS. KAHN:
 24 **Q. You can put that document aside.**
 25 **Earlier this morning you testified that**

42 (Pages 165 to 168)

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1 **Schein Dental has the general practice not to work**
2 **with buying groups that cannot mandate purchases**
3 **through the group.**

4 **Do you recall that testimony?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Yes, I recall that as part
7 of our discussion, yes.

8 BY MS. KAHN:

9 **Q. And based on what you've said after the**
10 **break, I just want to make sure. You're not**
11 **changing that testimony, are you? You're still**
12 **testifying to that?**

13 A. Repeat --

14 MR. McDONALD: Object to the form.

15 THE WITNESS: Repeat that line again,
16 please.

17 BY MS. KAHN:

18 **Q. Sure. And just to be clear, I'll repeat**
19 **the question and answer so I'm not misstating it.**

20 MR. McDONALD: Could you state where
21 you're reading in the record?

22 MS. KAHN: Sure. It's I guess --

23 MR. McDONALD: The line and pages are on
24 the far left.
25

171

1 MR. McDONALD: Object to the form, asked
2 and answered.

3 THE WITNESS: Again, back to it's one of a
4 multitude of factors. Not on that basis alone would
5 that necessarily be the sole determining factor.
6 We've -- as I've said, we've worked with buying
7 groups in the past, and some of them mandated, some
8 have not -- some that have not. It may have worked.
9 I don't know. I don't have the specific examples.

10 And, again, the market is evolving in this
11 case, so we're going to evolve at or ahead of the
12 market to make sure we're addressing our customers'
13 needs.

14 If a group can actually commit that their
15 members are going to shift that business then to us,
16 that is for sure a helpful factor, but it's not the
17 sole determining factor.

18 BY MS. KAHN:

19 **Q. If a group, if a buying group cannot**
20 **mandate purchases, has there been a general practice**
21 **at Schein how to deal with such a group?**

22 A. No.

23 **Q. So sometimes Schein sells, sometimes**
24 **Schein doesn't?**

25 A. That's correct.

170

1 BY MS. KAHN:

2 **Q. 134/21. Actually 134/22.**

3 **"Would you say that there's a general**
4 **company policy to not work with buying groups**
5 **that cannot mandate purchases through the**
6 **group?"**

7 **And you said: "I wouldn't call it a**
8 **policy, per se. There's no written memo here's**
9 **a policy on buying groups, but we have a**
10 **general practice as you just outlined in your**
11 **prior questions."**

12 THE WITNESS: So, again, in the context of
13 the entire discussion, there's a multitude of things
14 that we will consider whether we're going to work
15 with a buying group or not. If they have a mandate
16 to purchase through their partners, that's one --
17 that's one of a multitude of things, right.

18 So in that instant, yes, that would help
19 us, you know, get across the goal line of wanting to
20 work with them. It's not the sole factor.

21 BY MS. KAHN:

22 **Q. Sorry to cut you off.**

23 **Has there been a general practice at**
24 **Schein to not work with buying groups that cannot**
25 **mandate purchases of its members?**

172

1 **Q. And what determines whether Schein sells**
2 **to a buying group that cannot mandate purchases?**

3 MR. McDONALD: Object to the form.

4 THE WITNESS: There's no one -- I mean,
5 there's no one magic formula that determines it.

6 BY MS. KAHN:

7 **Q. What would you say are the factors that go**
8 **into the decision of whether Schein sells to a**
9 **buying group that cannot mandate purchases?**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: So it could be low percent
13 of the members are doing business with us anyway,
14 you know. There's little risk there in that
15 regards, you know, much more if you have a great
16 opportunity. It could be a local relationship that
17 maybe our manager has, and he says I want to give it
18 a try, go for it, give it a shot. Who knows.

19 I mean, I don't know. I don't work
20 directly with all of them. We leave that up to
21 our -- a lot of the decision-making will happen
22 locally, and there's a lot of it is
23 relationship-driven based on who might be the
24 president of the group.
25

173

1 BY MS. KAHN:

2 **Q. And does Schein have any company policy on**
3 **how to deal with buying groups?**

4 A. Not that I'm aware of.

5 **Q. Has Schein ever had a division devoted to**
6 **going after buying group business?**

7 A. Not per se. It was more -- historically
8 more driven by our special markets team and Hal and
9 that group; but as the trend has been moving from
10 single office space practitioner into this
11 mid-market space, our local teams that are on the
12 HSD team have worked with buying groups in the past,
13 and we've continued to partner with them.

14 We've shifted the buying group decision
15 making for the most part to Brian Brady and our
16 mid-market group, but that doesn't stop special
17 markets from, you know, working with one of their
18 customers in that aspect as well.

19 **Q. And has Schein had rules and procedures**
20 **for how to go after buying group business?**

21 A. I think -- not that I'm aware of. I mean,
22 I think there's some general guidelines and
23 discussion points to look for, you know, in
24 determining the factors, some of the things I've
25 already outlined.

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1 the, you know, buying group business. It's a, you
2 know, as the teams are out there and as they're
3 presented with these opportunities, there's a
4 process to figure out so who does it come to and who
5 can make a decision, how much local is it versus,
6 you know, moving it up to someone like Jake or Joe.
7 It's not a written procedure guideline.

8 BY MS. KAHN:

9 **Q. Was there anything similar to what**
10 **Mr. Brady put together prior to him putting that**
11 **together?**

12 MR. McDONALD: Object to the form, lack of
13 foundation.

14 THE WITNESS: Not that I'm aware of.

15 BY MS. KAHN:

16 **Q. Has Schein ever had a pricing plan for**
17 **buying groups?**

18 MR. McDONALD: Object to the form, lack of
19 foundation.

20 THE WITNESS: Not -- again, each one could
21 be presented potentially a different plan, but it's
22 part of where maybe the P and the G and the PG, you
23 know, some of the groups might have presented that
24 type of plan; some have been presented something
25 different.

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1 **Q. Are those general guidelines communicated**
2 **in any way to others within Schein?**

3 MR. McDONALD: Objection to form, lack of
4 foundation.

5 THE WITNESS: Yeah, I believe at one point
6 Brian Brady put something together that talked
7 about, you know, how we will go to market with a
8 group and how we will set them up. It's not
9 necessarily this decision tree if we're going to do
10 one or not but if we do here are some of the things
11 that we're looking for.

12 BY MS. KAHN:

13 **Q. When did Mr. Brady do that?**

14 A. I don't recall, sometime in the last
15 couple years.

16 **Q. And prior to Mr. Brady putting that**
17 **together, were there general guidelines on how to go**
18 **after buying group business?**

19 MR. McDONALD: Object to the form, lack of
20 foundation.

21 THE WITNESS: I'm not saying -- don't hold
22 me to what this report is. I just recently reviewed
23 it again.

24 So it's -- I don't know what it is, if
25 it's a -- it's not a guideline on how to go after

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1 So it's not a written, you know, single
2 price plan for any group that we're talking to.

3 BY MS. KAHN:

4 **Q. Has Schein tracked sales to buying group**
5 **business?**

6 A. I believe so.

7 **Q. How so?**

8 A. I don't know. I mean, Brian has kept
9 track of that.

10 **Q. When did Brian start keeping track of**
11 **that?**

12 MR. McDONALD: Object to the form,
13 mischaracterizes his testimony --

14 THE WITNESS: I don't know.

15 MR. McDONALD: -- foundation.

16 THE WITNESS: I don't know. I haven't
17 seen it in quite some time.

18 BY MS. KAHN:

19 **Q. I think you testified that Mr. Brady**
20 **started getting involved in buying groups in the**
21 **last couple of years; is that fair?**

22 A. Correct.

23 **Q. Prior to that role what was his role at**
24 **Schein?**

25 A. He was a regional manager for us in

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1 southern Cal and then up in northern California, and
2 I believe that was his last role before moving to
3 New York to be part of the mid-market space.

4 **Q. So did his title change after the move?**

5 A. Yes.

6 **Q. What's his current title?**

7 A. I don't know for sure. It has something
8 to do with group practices.

9 **Q. Before Mr. Brady took on his current role
10 having to do with group practices, did Schein track
11 sales to buying groups?**

12 MR. McDONALD: Object to the form, lack of
13 foundation.

14 THE WITNESS: I don't know.

15 BY MS. KAHN:

16 **Q. Who would know?**

17 A. Probably Hal Muller because there's more
18 groups at the time probably in his space. Jake or
19 Joe might know.

20 **Q. Does Schein track business to DSOs?**

21 A. Yes.

22 **Q. Is there a DSO indicator in Schein's
23 databases?**

24 A. Well, that's the DSM indicator that we
25 talked about before, yes.

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1 **during meetings?**

2 A. It's been part of discussions in the
3 meetings. It hasn't been me leading the meeting,
4 per se.

5 **Q. And you said "not beyond what we've talked
6 about." I don't want to make you repeat what you've
7 said, but I just want a general sense of what types
8 of guidance or thoughts you've provided at meetings
9 about buying groups.**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: If the group would commit,
13 mandate the volume purchases, if they're aligned in
14 any way with the services that we're already doing
15 for the customers, if the percentage of the group is
16 a significant amount of customers are all the things
17 that I've -- those type of things that I was
18 referring to before.

19 BY MS. KAHN:

20 **Q. Got it. And if those things are true,
21 then what?**

22 A. It's possible that we would work with the
23 group.

24 **Q. Have you ever expressed a sentiment that
25 Schein should not work with buying groups?**

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1 **Q. Got it. The DSM and the D --**

2 A. -- SL --

3 **Q. DSL.**

4 A. -- is HSD.

5 **Q. Got it. Was there a similar acronym for
6 tracking purposes for buying group --**

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. -- business?**

10 MR. McDONALD: Object to the form, lack of
11 foundation.

12 THE WITNESS: Not that I'm aware of.

13 BY MS. KAHN:

14 **Q. Why not?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I don't know.

17 BY MS. KAHN:

18 **Q. Have you ever provided any guidance or
19 directive within Schein on whether the company
20 should try to sell to buying groups?**

21 A. Not beyond what we've talked about. I
22 mean, so not that I recall. I mean, anything -- you
23 know, just in general meetings about here's when we
24 want to work with a group or not.

25 **Q. And you've communicated those things**

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1 A. Not as a flat out across the board, no.

2 **Q. What about just a general sense --**

3 MR. McDONALD: Object to form.

4 BY MS. KAHN:

5 **Q. -- that's not a flat out across the board?**

6 MR. McDONALD: Object to the form, vague.

7 THE WITNESS: No.

8 BY MS. KAHN:

9 **Q. You've never said --**

10 A. Not that I recall.

11 **Q. Sorry.**

12 MR. McDONALD: Let her ask the question.

13 BY MS. KAHN:

14 **Q. You said you do not recall that?**

15 A. Can you repeat the question?

16 **Q. Yes. Let me go back a couple.**

17 **Have you ever expressed a sentiment that
18 Schein should not work with buying groups just as a
19 general statement?**

20 A. No.

21 **Q. Have you ever expressed a sentiment that
22 Schein should not align with buying groups?**

23 A. No.

24 **Q. So it's your testimony that you've always
25 expressed that Schein should work with buying groups**

45 (Pages 177 to 180)

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1 **if certain things are met?**

2 A. I never said the word "should," but we're
3 open to working with any customer.

4 **Q. So just to be clear, your testimony is**
5 **that you've also expressed within Schein that the**
6 **company is open to working with buying groups?**

7 A. Based on certain criteria, yes, and
8 history shows we've done that.

9 **Q. Did you ever personally get involved and**
10 **say yes, we should go after this buying group?**

11 A. Smile Source is the one example that I was
12 personally involved in. Beyond that, I have not,
13 that I recall, been involved in any specific group
14 in particular.

15 **Q. Have you ever been involved in, personally**
16 **involved in determining that yes, Schein should try**
17 **to bid on a particular corporate account or DSO?**

18 A. No. That's been determined by Hal.

19 **Q. Did you ever express to others within**
20 **Schein that it would be good to get buying group**
21 **business?**

22 A. Until -- most recently, yes, and
23 Smile Source is the classic example.

24 **Q. Okay. If we go back to pre 2016, did you**
25 **ever express to others within Schein that it would**

183

1 specific here's this moment in time I changed my
2 perspective, no.

3 BY MS. KAHN:

4 **Q. Let me -- I should rephrase my question.**

5 **You testified that you've always been --**
6 **you've been open to working with buying groups; not**
7 **a good or a bad, you're just open to it.**

8 **I'm wondering if that has always been the**
9 **case in the last ten years or if there has been a**
10 **shift in your thinking about buying groups ever.**

11 A. Well, the shift that has happened is the
12 shift in the market, so the more requests we're
13 getting for it; feels like there has been more and
14 more of a customer need for them, so being more open
15 to the concept of them and building and creating a
16 proposition for them has definitely increased over
17 time. But I've always been open to working with a
18 buying group if it made, you know, sense for the
19 company as well as its members.

20 (Exhibit 211 was marked for
21 identification.)

22 BY MS. KAHN:

23 **Q. You've been handed Exhibit 211. Take a**
24 **minute to review, and let me know when you are**
25 **ready.**

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1 **be good to get buying group business?**

2 A. Again, Smile Source we worked with even in
3 '04 and '06, and then for a lot of reasons it didn't
4 work out. We've worked with others, you know,
5 before then.

6 So I have not taken a firm position that
7 we should or we shouldn't. Depending on how the
8 group is structured, based on all the things we've
9 talked about, we're open to exploring whether or not
10 to work with a group.

11 So it's not a should or shouldn't
12 mentality. It's we're open and flexible based on
13 the market needs.

14 **Q. Do you have an opinion one way or the**
15 **other whether buying groups are good for the dental**
16 **distributor market?**

17 MR. McDONALD: Object to the form, vague.

18 THE WITNESS: I would only have thought
19 about the or concerned about the impact that would
20 have for Henry Schein.

21 BY MS. KAHN:

22 **Q. Do you recall ever having a change of mind**
23 **about buying groups?**

24 MR. McDONALD: Object to the form, vague.

25 THE WITNESS: No, I didn't. I mean, not

184

1 A. Okay.

2 **Q. Exhibit 211 is an e-mail chain, and the**
3 **top e-mail latest in time is from you to Mr. Mark**
4 **Mlotek and others on July 17th, 2011, and the**
5 **subject is Re: a GPO or possibly just a buying group**
6 **but could it cause a problem.**

7 **Do you see that?**

8 A. I do.

9 **Q. And did you send and receive the e-mails**
10 **in this chain?**

11 A. I did.

12 **Q. Do you recall this e-mail chain?**

13 A. I do now.

14 **Q. Earlier we talked about the terms "GPO"**
15 **and "buying group," and you mentioned that within**
16 **Schein those two terms have typically been used**
17 **interchangeably.**

18 **Do you recall that?**

19 A. Yes.

20 **Q. And this chain is talking about a group**
21 **called Synergy Dental Partners; is that right?**

22 A. That's correct.

23 **Q. And to your understanding was that really**
24 **just a buying group in the dental industry?**

25 A. I don't -- I didn't know them then and I

46 (Pages 181 to 184)

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1 don't know them now, so my assumption is that they
2 were a buying group based on what I'm reading here,
3 yes.

4 **Q. And at the bottom of the chain, Mr. Hal
5 Muller sent the original e-mail on July 17, and his
6 e-mail is suggesting that this Synergy Dental
7 Partners group could cause a problem.**

8 **Is that how you read it?**

9 MR. McDONALD: Object to the form, the
10 document speaks for itself.

11 THE WITNESS: Can you repeat that?

12 BY MS. KAHN:

13 **Q. Sure. Mr. Muller sent the original
14 e-mail, and do you read his e-mail to suggest that
15 he believed this Synergy Dental Partners buying
16 group could cause a problem?**

17 MR. McDONALD: Same objection.

18 THE WITNESS: I see him asking the
19 question "but could it cause a problem." It's not a
20 statement.

21 BY MS. KAHN:

22 **Q. Why do you think Mr. Muller was asking
23 that question?**

24 A. I don't know.

25 MR. McDONALD: Object to the form.

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1 anything I could see on their website, was anything
2 more than the traditional buying group that did any
3 more relative to the things that I've outlined
4 before as far as criteria that we would work with.

5 **Q. Meaning that you wouldn't work with a
6 buying group like this?**

7 MR. McDONALD: Object to the form.

8 THE WITNESS: No, I'm saying nothing new
9 here is what you're asking me. I didn't see
10 anything based on what I saw on the website that
11 provided other membership value, the members follow
12 what the -- you know, what the membership is
13 directing them to do. So it was nothing new in here
14 at that time.

15 BY MS. KAHN:

16 **Q. And you also said that in your e-mail,
17 "Founding partners are two dentists in NC. They
18 list Darby, Brassler, Orascoptic and Sonicare."**

19 **Do you see that?**

20 A. I do.

21 **Q. And that list at the end there, is that
22 the vendors that you believe the buying group was
23 getting supplies from?**

24 A. If I recall correctly, yes, that's who was
25 listed on their website as sponsors.

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1 THE WITNESS: I don't know.

2 BY MS. KAHN:

3 **Q. Can you think of any reason sitting here
4 today?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Not beyond the two examples
7 I've given you in the past about buying groups.

8 BY MS. KAHN:

9 **Q. You responded higher up on July 17th,
10 2011, at 8:50 a.m. with more information about the
11 group; is that right?**

12 A. What do you mean by with more information
13 from the group? Yes, I did respond. Oh, here, I'm
14 sorry, the top one.

15 **Q. Right. Let me strike --**

16 A. Yes, I see that here.

17 **Q. You were providing some information that
18 you found on the website about the group?**

19 A. Correct.

20 **Q. And you ended your e-mail with, "Nothing
21 new here."**

22 **Do you see that?**

23 A. I do.

24 **Q. And what did you mean there?**

25 A. That I didn't view what they were doing,

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1 **Q. And prior to this were you aware of Darby
2 supplying buying groups?**

3 A. I was not.

4 **Q. Prior to this did you have any
5 understanding of who was supplying buying groups?**

6 A. Well, we had some. I know we were working
7 with some. I don't know what others were doing.

8 **Q. And then I'm going to -- Mr. Mlotek
9 responds to you, and he wrote, "Darby distributing
10 the products, dot-dot-dot."**

11 **Do you see that?**

12 A. I do.

13 **Q. Why do you think he was pointing out Darby
14 there?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: Well, I listed Darby below.
17 I think he was confirming the fact that Darby is, in
18 fact, distributing the products for them.

19 BY MS. KAHN:

20 **Q. I realize that's all he said in his
21 e-mail, and I guess what I'm trying to understand
22 from you -- you have a history with Mr. Mlotek, you
23 understand the general discussions that the two of
24 you have had.**

25 **I'm trying to understand from you why he**

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1 **made that statement, why he was pointing that out**
 2 **with the dot-dot-dot after it.**
 3 MR. McDONALD: Object to the form, lack of
 4 foundation, calls for speculation.
 5 If you know, tell her.
 6 THE WITNESS: I don't know.
 7 BY MS. KAHN:
 8 **Q. I'm going to focus you on the top e-mail**
 9 **from you. You wrote, "That's where they belong. I**
 10 **don't think you will ever see a full-service dealer**
 11 **getting involved with GPOs."**
 12 **Do you see that?**
 13 A. I do.
 14 **Q. And focusing on the first sentence, when**
 15 **you said "that's where they belong," the "they,"**
 16 **were you referring to Synergy Dental Partners?**
 17 A. No, I was referring to Darby.
 18 **Q. Okay. And what did you mean when you said**
 19 **"that's where they belong"?**
 20 A. So Darby is one of the companies I
 21 mentioned before that they're not full service.
 22 They are, you know, kind of a telesales/mail order
 23 type of company solely that only distribute
 24 merchandise. They don't do the rest of the line.
 25 And if that's looked like what this group was

1 BY MS. KAHN:
 2 **Q. What do you mean -- go ahead.**
 3 A. So we had -- you asked the question had
 4 Henry Schein been working with buying groups. We
 5 have been. We have even prior to this, and we've
 6 had some since then.
 7 **Q. And were you aware of Henry Schein working**
 8 **with buying groups at the time you wrote this**
 9 **e-mail?**
 10 A. Yes.
 11 **Q. You said earlier there was a poor choice**
 12 **of words.**
 13 **What did you mean by that?**
 14 A. Well, I don't think you'll ever see a
 15 full-service dealer get involved with, you know,
 16 buying groups. Clearly we are already doing that.
 17 **Q. Did you not mean to write those words?**
 18 A. It was just a poor choice of words.
 19 **Q. And what were you meaning to say instead**
 20 **of what you wrote?**
 21 A. I don't recall. That was six years ago.
 22 **Q. Okay. Earlier you testified that you do**
 23 **recall this e-mail chain, right?**
 24 A. Well, I said I remember -- I now recall
 25 the chain now that I've seen it. I remember the

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1 interested in, I was saying that's where they
 2 belong.
 3 BY MS. KAHN:
 4 **Q. Darby belongs with this buying group?**
 5 A. I was saying that's where they belong,
 6 meaning the buying group belongs, you know, with
 7 Darby as their distribution partner.
 8 **Q. Got it, okay. And then you went on to say**
 9 **"I don't think you will ever see a full-service**
 10 **dealer getting involved with GPOs," but with the**
 11 **term "GPO" were you referring to buying groups**
 12 **there?**
 13 A. Correct, correct.
 14 **Q. Is it fair to say that at this time you**
 15 **did not believe that Henry Schein was involved with**
 16 **buying groups?**
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: No. As I mentioned before,
 19 we have -- we've already had some. We knew the
 20 market was trending that way. Clearly there's a
 21 poor choice of words on my part, but it was, you
 22 know, the direction that -- 2011 it wasn't as
 23 prevalent as it was today. We're talking about the
 24 last five years primarily.
 25

1 chain. I don't recall why I wrote that at the time.
 2 **Q. Okay. You have no recollection of**
 3 **writing -- of why you wrote "I don't think you will**
 4 **ever see a full-service dealer get involved with**
 5 **GPOs"?**
 6 A. I don't know what I was thinking at that
 7 time because we had been working with buying groups
 8 at the time.
 9 **Q. And the sentence earlier where you said**
 10 **that's where they belonged, you recall why you wrote**
 11 **that?**
 12 A. Yes.
 13 MR. McDONALD: Objection to the form.
 14 BY MS. KAHN:
 15 **Q. Can you help me understand why you're able**
 16 **to recall why you wrote the first sentence but not**
 17 **the second sentence?**
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I wish I could tell you the
 20 answer.
 21 BY MS. KAHN:
 22 **Q. I think I know the answer to this, but let**
 23 **me just ask it.**
 24 **Was it your understanding at the time you**
 25 **wrote this e-mail that full-service dealers were not**

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1 **involved with buying groups?**
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No.
 4 BY MS. KAHN:
 5 **Q. What was your understanding at the time**
 6 **that you wrote this e-mail?**
 7 A. In fact we were working -- had some buying
 8 groups that we were already working with.
 9 **Q. Were you aware of what other full-service**
 10 **dealers were doing with respect to buying groups?**
 11 A. I don't believe so, no.
 12 **Q. Do you have any reason sitting here today**
 13 **of why you would write you will never see -- you**
 14 **don't think you would ever see a full-service dealer**
 15 **get involved with a buying group?**
 16 MR. McDONALD: Object to the form, asked
 17 and answered multiple times.
 18 THE WITNESS: I still don't know.
 19 BY MS. KAHN:
 20 **Q. Did you have an understanding in July 2011**
 21 **that Patterson was not involved with buying groups?**
 22 A. I don't know.
 23 **Q. You don't recall or you don't know?**
 24 A. I don't know what Patterson's strategy is
 25 today much less six years ago what their approach

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1 was with buying groups.
 2 **Q. So you've never known?**
 3 A. I don't know what their strategy is with
 4 buying groups.
 5 **Q. And you didn't know back in 2011?**
 6 A. I don't know today and I didn't know six
 7 years ago.
 8 **Q. And what about with respect to Benco, did**
 9 **you know what Benco's practices or policies were**
 10 **with respect to buying groups in 2011?**
 11 A. I don't know what any other companies'
 12 strategies are other than our own.
 13 **Q. Were you ever aware that Benco had a**
 14 **policy against selling or offering discounts to**
 15 **buying groups?**
 16 MR. McDONALD: Object to the form, lack of
 17 foundation.
 18 THE WITNESS: I don't know.
 19 BY MS. KAHN:
 20 **Q. Nobody ever told you that?**
 21 A. Nobody ever told me what, I'm sorry?
 22 **Q. Nobody ever told you that Benco had a**
 23 **policy against selling or offering discounts to**
 24 **buying groups?**
 25 MR. McDONALD: Object to the form, lack of

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1 foundation.
 2 THE WITNESS: Not that I recall.
 3 BY MS. KAHN:
 4 **Q. Is it possible that somebody told you but**
 5 **you just don't recall?**
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: Not that I recall. I don't
 8 know. I don't know what their strategy is, so no.
 9 BY MS. KAHN:
 10 **Q. You mentioned that at the time of this**
 11 **e-mail Schein was involved with buying groups; is**
 12 **that right?**
 13 A. Yes.
 14 **Q. And that contradicts what you wrote in**
 15 **this e-mail, right?**
 16 A. It depends how you -- again, I don't know
 17 what I was thinking when I wrote it. It depends on
 18 how you read it. So I don't know how to answer
 19 that.
 20 **Q. Okay. Is there a way to read the second**
 21 **sentence so that it's consistent with the fact that**
 22 **Schein was selling -- was involved with buying**
 23 **groups at the time?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: We were working with the

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1 buying groups at the time, so clearly it was
 2 misstated.
 3 BY MS. KAHN:
 4 **Q. Can you name any buying groups that Schein**
 5 **was working with in July 2011?**
 6 A. I believe the one example I gave you
 7 earlier on, Alpha Omega is one of them; and there
 8 are others in Hal's group that we're -- that we had
 9 relationships with.
 10 **Q. And what about outside of Hal's group?**
 11 A. I don't know of any specifically, but I
 12 believe there were plenty of them throughout -- you
 13 know, maybe some were in Boston, some were in Utah.
 14 Our regional managers can take those decisions. If
 15 you call a study club a buying group, that's in
 16 essence -- you know, we do some of that already.
 17 So those are examples of things that I
 18 know we had in the past. I can't specifically tell
 19 you, you know, any of the names of them.
 20 **Q. And you had that knowledge at the time**
 21 **that you wrote this e-mail?**
 22 A. Correct.
 23 **Q. And at the time that you wrote this e-mail**
 24 **it was your understanding that Schein was working**
 25 **with plenty of buying groups?**

49 (Pages 193 to 196)

197

1 A. Yes.
 2 **Q. Okay. And you are unable to explain to me**
 3 **why you wrote something -- why you wrote the second**
 4 **sentence here; is that right?**
 5 MR. McDONALD: Object to form. Lin,
 6 you've asked him this about six times. I really
 7 respect -- I really ask you to respect this witness.
 8 He's the president of the company. Quit asking him
 9 the same thing over and over again, please.
 10 BY MS. KAHN:
 11 **Q. Mr. Sullivan, I'm entitled to an answer if**
 12 **you're able to answer it.**
 13 MR. McDONALD: He has answered the
 14 question multiple times. He can answer it again.
 15 The next time you ask him I'm going to instruct him
 16 not to answer it. It's abusive, okay.
 17 Ask the question so it's clear, the record
 18 is clear, please.
 19 BY MS. KAHN:
 20 **Q. I'm going to go back two questions so we**
 21 **have a clear record.**
 22 **At the time that you wrote this e-mail in**
 23 **July 2011, it was your understanding that Schein was**
 24 **working with plenty of buying groups?**
 25 A. Correct.

198

1 **Q. And are you able to explain to me why you**
 2 **wrote the second sentence where you said "I don't**
 3 **think you will ever see a full-service dealer get**
 4 **involved with buying groups"?**
 5 A. No.
 6 **Q. You can put that document aside.**
 7 **(Exhibit 212 was marked for**
 8 **identification.)**
 9 BY MS. KAHN:
 10 **Q. You've been handed Exhibit 212. Take a**
 11 **minute, and let me know when you are ready.**
 12 A. Okay, I'm ready.
 13 **Q. Exhibit 212 is an e-mail chain with Bates**
 14 **number Henry Schein-000043065. The top e-mail is**
 15 **from you to a number of individuals on October 29th,**
 16 **2014, and the subject is Dental Gator.**
 17 **Do you see that?**
 18 A. I do.
 19 **Q. And did you send this e-mail?**
 20 A. I did.
 21 **Q. Do you recall sending this e-mail?**
 22 A. I do.
 23 **Q. I'm going to turn you to the second page**
 24 **there that's an e-mail from Daniel Hobson on**
 25 **October 29th.**

199

1 **Do you see that?**
 2 A. I do.
 3 **Q. And who is Daniel Hobson?**
 4 A. He is a -- we called them SAMs at the
 5 time, but one of -- someone in Hal Muller's special
 6 markets team.
 7 **Q. Mr. Hobson was providing some information**
 8 **about Dental Gator.**
 9 **Do you see that?**
 10 A. I do.
 11 **Q. I'm going to read the first sentence of**
 12 **the first paragraph, and then I'm going to skip to**
 13 **the second paragraph there. He wrote, "Dental Gator**
 14 **is owned by our EDSO, MB2 Dental." And then he goes**
 15 **on in the second paragraph to say, "In our prime**
 16 **vendor agreement we spelled out specific terms and**
 17 **restrictions about these consulting offices to**
 18 **prevent Dental Gator from being a typical GPO."**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. And do you know why Schein included a**
 22 **specific term, specific terms and restrictions to**
 23 **prevent Dental Gator from becoming a typical GPO?**
 24 MR. McDONALD: Object to the form, lack of
 25 foundation.

200

1 THE WITNESS: Prime vendor agreements are
 2 something that our special markets team signs with
 3 our customers, so I'm not directly involved with
 4 them at all.
 5 BY MS. KAHN:
 6 **Q. And aside from special markets and, you**
 7 **know, putting this document aside, have you been --**
 8 **are you aware of any contractual restrictions that**
 9 **Henry Schein has entered to try to prevent an entity**
 10 **from becoming a GPO?**
 11 MR. McDONALD: Object to the form, lack of
 12 foundation, mischaracterizes his testimony.
 13 THE WITNESS: I am not aware.
 14 MS. KAHN: You can put that aside.
 15 (Exhibit 213 was marked for
 16 identification.)
 17 BY MS. KAHN:
 18 **Q. You have Exhibit 213 in front of you. Let**
 19 **me know when you are ready.**
 20 A. Okay.
 21 **Q. Exhibit 213 is an e-mail chain with Bates**
 22 **number Henry Schein-000090794.**
 23 **Do you recall receiving and sending the**
 24 **e-mails in this chain?**
 25 A. I do.

50 (Pages 197 to 200)

201

1 **Q. This is an e-mail chain about Dental Gator**
2 **again; is that right?**

3 A. Correct.

4 **Q. Is it accurate to say that there was a**
5 **debate within Schein on how to handle Dental Gator?**

6 A. Yes.

7 MR. McDONALD: Object to the form.

8 BY MS. KAHN:

9 **Q. Can you explain that debate to me a little**
10 **bit?**

11 A. So Dental Gator is an offshoot of -- you
12 saw an earlier e-mail -- MB2. MB2 is an elite DSO,
13 one of the customers of Hal's group. What they were
14 attempting to do is offer -- you know, expand to
15 practices that they don't own and those they don't
16 own, you know, try to get them the same pricing that
17 we were offering on the elite DSO contract, if you
18 would, the prime vendor agreement contract. That's
19 where the pricing is determined for those groups.

20 So the conflict was is they're expanding
21 to now just provide that pricing to others that want
22 to join this buying group that they are creating
23 called Dental Gator. Those are, again, existing
24 customers of ours. They weren't mandated that they
25 have to buy. They were not actually permitted to

202

1 use the pricing that they were offering for MB2 to
2 this offshoot of theirs called Dental Gator.

3 So the conflict in the field was we have
4 good customers of ours today and whatever pricing
5 strategy that we're using for them and the overall
6 value proposition; that the customer would say,
7 well, gee, I just met with this Dental Gator
8 company, and it looks like the pricing they're
9 getting is better. And they shouldn't be; they
10 don't have that agreement with us.

11 So that was the conflict that was creating
12 internally between HSD and our special markets
13 group.

14 **Q. And in trying to understand this, is it**
15 **fair to say that HSD or special markets was at the**
16 **time offering the same pricing to MB2 as to the**
17 **Dental Gator entities?**

18 MR. McDONALD: Object to forgot.

19 BY MS. KAHN:

20 **Q. That's what caused the issue?**

21 A. Well, not HSD. So, again, just to
22 clarify, so special markets, so special markets --

23 **Q. Sorry. HSM I meant to say.**

24 A. Yeah. So HSM had the agreement with MB2,
25 a lot of acronyms. They formed a separate group

203

1 called Dental Gator. That was in conflict with what
2 their contract allowed them to do from what I'm
3 understanding --

4 **Q. Sure.**

5 A. -- that was in that agreement.

6 If MB2 acquired another dental practice,
7 it would definitely fall into the MB2 contract, but
8 they were not allowed to just now create a buying
9 group based on that pricing. That was -- it's a
10 separate -- so now they're out there promoting it as
11 if it were a Henry Schein-supported program, and it
12 wasn't.

13 And the first couple times I heard about
14 it, you can see Joe's comment about, you know, it
15 used to be just annoyance. It's becoming more and
16 more prevalent, more of an issue; and therefore
17 we're asking her special markets team to address it
18 with them.

19 **Q. And Mr. Muller wrote on October 21st on**
20 **the second page there in response to Joe's request**
21 **for somebody to address this, he said, "I will" -- I**
22 **think that he meant to say I will let Randy address.**
23 **"At the moment we feel good at the point we are at**
24 **with them staying as they are."**

25 **Do you see that?**

204

1 A. I do.

2 **Q. And did you take that to mean that special**
3 **markets wanted to continue their existing practice**
4 **at this time?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Well, with MB2, yes, but not
7 with the extension to that over to Dental Gator.

8 BY MS. KAHN:

9 **Q. Okay. So special markets did not want**
10 **Dental Gator to get the MB2 pricing?**

11 A. That's my recollection, yes.

12 **Q. Okay. And is it fair to say that HSD also**
13 **did not want Dental Gator to get the MB2 pricing?**

14 A. Not just as a standalone if that was the
15 only part of an agreement with them, correct.

16 **Q. Mr. Cavaretta wrote to you on**
17 **October 21st, 2014, at 4:59 p.m.**

18 **Do you see that e-mail?**

19 A. Uh-huh. Yes.

20 **Q. He's responding to your question of what**
21 **would you suggest we do. He said, "Don't allow this**
22 **to be used any longer. This is a straight up GPO,**
23 **and if we allow I'm not sure how we say no to other**
24 **GPOs."**

25 **Do you see that?**

51 (Pages 201 to 204)

205

207

1 A. I do.
 2 **Q. Do you know what he meant there?**
 3 MR. McDONALD: Object to the form, lack of
 4 foundation.
 5 THE WITNESS: So, I mean, based on
 6 discussions that we've had, what I was doing with
 7 the how would you suggest -- what would you suggest
 8 we do, it's my way of challenging Joe just to, you
 9 know, think about it, what's your solution, you
 10 know, what do you want me to do, you know, what
 11 would you do; and his position was if we have a GPO
 12 or buying group that the only thing that they're
 13 doing is it's a price-only play, if it's only about,
 14 you know -- no other thinking, nothing else that
 15 we've talked about, other parameters, then in his
 16 mind if we do with one, we have to do it with all.
 17 And so that's been the internal date and the
 18 internal discussions.
 19 BY MS. KAHN:
 20 **Q. And was it his -- do you recall that his**
 21 **position was that Schein was, generally speaking,**
 22 **not selling to other GPOs at the time?**
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know what his -- I
 25 don't know what he was -- you're asking me what he

1 **You're having a dialogue with**
 2 **Mr. Cavaretta, is that right, in this e-mail chain;**
 3 **is that right?**
 4 A. Yes.
 5 **Q. Surely you had an understanding of what he**
 6 **wrote.**
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Well, again, my reply to him
 9 wasn't an agreement or disagreement with his
 10 statement, so I was actually challenging further.
 11 So do we close down other large groups, you know?
 12 Would Heartland be considered, you know? I was
 13 trying to say, you know, how do you define GPOs,
 14 what -- so I was challenging him in that because it
 15 wasn't clear to me what he was saying.
 16 So I don't want to speculate as to what
 17 his position is here.
 18 BY MS. KAHN:
 19 **Q. And he ended his e-mail with, "I don't**
 20 **think that is a consistent strategy with where we**
 21 **want to go per our last meeting with you and Dave."**
 22 **Do you see that?**
 23 A. I do see that.
 24 **Q. Do you know what meeting he's referring to**
 25 **here?**

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208

1 was thinking at the time? I don't know what his
 2 position was at this time.
 3 BY MS. KAHN:
 4 **Q. Well, what did he mean when he said "if we**
 5 **allow I'm not sure how we say no to other GPOs"?**
 6 **That implies to me that he was trying to say no to**
 7 **other GPOs.**
 8 MR. McDONALD: Object to the form, lack of
 9 foundation.
 10 Don't speculate. If you know, tell her.
 11 THE WITNESS: I was just going to say I'd
 12 be speculating what I think he means here, which I
 13 don't think I should do.
 14 BY MS. KAHN:
 15 **Q. Okay. Well, what's your understanding of**
 16 **what that means?**
 17 MR. McDONALD: Object to the form.
 18 Again, if you know tell her, but don't
 19 speculate.
 20 THE WITNESS: I really don't want to
 21 speculate.
 22 BY MS. KAHN:
 23 **Q. I'm not asking you to speculate about what**
 24 **Joe was thinking. I'm just trying to get your**
 25 **understanding.**

1 A. I don't. No, I don't.
 2 **Q. Do you know what strategy he's referring**
 3 **to here?**
 4 A. I don't specifically know.
 5 **Q. What about generally?**
 6 A. No.
 7 **Q. Did you ever discuss with Mr. Cavaretta a**
 8 **general strategy on buying groups?**
 9 A. Yes, as we've talked in the past about we
 10 have worked with them, where it's becoming more
 11 prevalent, how do we want to work with them going
 12 forward; and there were certain parameters that we
 13 were starting to discuss about what it would make
 14 sense to me so we're not -- and what we knew about
 15 Dental Gator didn't seem aligned with that strategy.
 16 **Q. And so in October 2014 was the strategy**
 17 **that you and Mr. Cavaretta discussed that Schein**
 18 **would be open to working with buying groups?**
 19 A. Yes, as we have in the past. We've worked
 20 with some in the past.
 21 **Q. You said in the next e-mail, "So also**
 22 **close down Heartland, Comfort, Mortenson,**
 23 **et cetera?"**
 24 **And are those DSO accounts?**
 25 A. They are.

52 (Pages 205 to 208)

209

1 **Q. And you said, "If these convert to**
2 **ownership office I would not put it -- I would not**
3 **put into the straight up GPO bucket."**

4 **Do you see that?**

5 A. I do.

6 **Q. What did you mean by "straight up GPO**
7 **bucket"?**

8 A. So I was repeating what he had said below
9 about this is a straight up GPO, so I was re quoting
10 his words there. And, again, it goes back to if
11 these accounts are owned, in Heartland's case they
12 own the accounts, it's not a GPO; again, it's not a
13 buying group. It's not -- it doesn't fall into
14 that. It's an individual -- it's an elite DSO.

15 Comfort Dental is an example, so here's
16 another one. When I said I don't recall some names,
17 here's one that historically they don't -- they own
18 some of their practices, and they're more of an MSO
19 to other practices. In other words, they provide
20 some management services. So they don't own, but
21 they fall underneath the Comfort contract, if you
22 would, and therefore they get the pricing.

23 And, again, but there's an example of they
24 don't own them; they don't necessarily mandate that
25 they have to buy, but all the Comfort locations do.

210

1 So I was challenging him saying there's a
2 mix of what's happening here, so we haven't actually
3 determined exactly what the strategy is going to be.
4 It's evolving. So I was challenging what would you
5 do, here is what he said; then what would you do
6 with the others, you know, we need to talk.

7 **Q. You said so we haven't actually determined**
8 **what the strategy is going to be.**

9 **In October 2014 did Schein not have a**
10 **strategy on buying groups?**

11 A. It was very open as I mentioned. We had
12 some relationships. We knew the trend was picking
13 up. How do you want to address this trend going
14 forward? Do we need to rethink how we've done
15 things in the past? Do the parameters change?

16 So it's an evolving strategy. It's
17 evolving as we sit here today.

18 **Q. Why do you say that?**

19 MR. McDONALD: Object to the form.

20 BY MS. KAHN:

21 **Q. What's evolving?**

22 A. Our -- how we're -- how we're evolving and
23 working with our customers based on trends that
24 we're seeing in the industry.

25 **Q. In October 2014 was Schein selling to,**

211

1 **quote, straight up GPOs?**

2 A. Well, again, not GPOs, the term being
3 buying groups. I don't know. I don't know what
4 he's referring to as a straight up GPO. I was just
5 reusing Joe's words for him.

6 **Q. You can put that document aside.**
7 **(Exhibit 214 was marked for**
8 **identification.)**

9 BY MS. KAHN:

10 **Q. You have Exhibit 214 in front of you. Let**
11 **me know when you are ready.**

12 A. Okay.

13 **Q. Exhibit 214 is another e-mail chain**
14 **discussing Dental Gator; is that correct?**

15 A. Correct.

16 **Q. And it looks like Mr. Muller was trying to**
17 **figure out an appropriate pricing plan for**
18 **Dental Gator; is that right?**

19 A. Correct.

20 **Q. I'm going to direct you to**
21 **Mr. Breslawski's e-mail in the middle on the first**
22 **page on January 28, 2015. He wrote, "Thanks. It is**
23 **important that while accommodating for unique**
24 **reasons here, we don't help open the floodgates on**
25 **buying groups, exclamation point."**

212

1 **Do you see that?**

2 A. I do.

3 **Q. What did you understand him to mean there?**

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I'd be speculating what he's
6 defining buying groups there, so I don't want to
7 speculate to that.

8 BY MS. KAHN:

9 **Q. Did you have any -- do you recall**
10 **receiving this e-mail?**

11 A. I do.

12 **Q. Did you have any understanding of what**
13 **Mr. Breslawski meant when you read it?**

14 A. I would have made assumptions about it,
15 but, again, I'd be speculating about it.

16 **Q. What was your understanding of what**
17 **Mr. Breslawski wrote?**

18 A. From it that what I would call the
19 traditional buying group, if it's only about their
20 purchases and nothing else, that we don't want to
21 open -- in this case he's saying we don't want to
22 open up floodgates to just that type of buying
23 group.

24 But, again, we've been working with buying
25 groups significantly in the past, and we will

213

1 continue to work with them here and into the future.

2 **Q. You worked with buying groups**
3 **significantly in the past. What do you mean by**
4 **"significantly"?**

5 A. We've had a number of relationships with
6 buying groups in the past, as I've already
7 testified.

8 **Q. So is it wrong to say that at the time of**
9 **this e-mail Schein was, generally speaking, not**
10 **working with buying groups?**

11 A. That would be wrong.

12 **Q. Do you have any understanding of why**
13 **Mr. Breslawski would not want to open the floodgates**
14 **on buying groups?**

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I'd be speculating what his
17 thoughts were there.

18 BY MS. KAHN:

19 **Q. Do you know if Mr. Breslawski thought that**
20 **Schein was not working with buying groups?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: I'm confident he knew that
23 we were already at this point.

24 BY MS. KAHN:

25 **Q. Why is that?**

214

1 A. He's the CEO of our dental business.

2 **Q. And he would know about the buying groups**
3 **that Schein was selling to?**

4 A. And he had been involved in these type of
5 discussions about, you know, we have in the past,
6 here is an example of one we're working with. And
7 so he knows Dental Gator is a buying group; we're
8 working with them. He's aware of that. Hal
9 supports in to Jimmy.

10 **Q. But I read Mr. Breslawski's e-mail to mean**
11 **that Dental Gator was a unique situation and that**
12 **Schein shouldn't do this on a regular basis.**

13 **Is that not how you read his e-mail?**

14 MR. McDONALD: Object to the form.

15 THE WITNESS: That's your -- you're
16 speculating what he's thinking?

17 MR. McDONALD: Yes, she is. She is not
18 going to testify.

19 MS. KAHN: If you have an objection,
20 please state it for the record.

21 MR. McDONALD: You know what, Lin, ask a
22 question that's not objectionable, okay. You're not
23 here to testify or give your understanding. You can
24 ask him a question. You've asked him three times if
25 he has an understanding, and he said no, he would be

215

1 speculating.

2 Ask another question, please.

3 BY MS. KAHN:

4 **Q. Mr. Sullivan, you understand that we**
5 **received this document as part of our investigation,**
6 **correct?**

7 A. Yes.

8 **Q. And our job in this investigation is to**
9 **review the documents and try to understand them.**

10 **Do you understand that?**

11 A. I do.

12 **Q. And I'm just trying to understand from you**
13 **what your interpretation of this document is.**

14 **Do you understand that?**

15 A. I understand that.

16 **Q. Okay. And aside from what we've already**
17 **talked about, is there any other information that**
18 **you have to share that would help us understand**
19 **Mr. Breslawski's statement here?**

20 A. No.

21 **Q. You can put that aside.**

22 **I can go on to the next document, or do**
23 **you guys want to take a break?**

24 MR. McDONALD: It's up to you.

25 THE WITNESS: I'm good.

216

1 MS. KAHN: Okay.

2 (Exhibit 215 was marked for
3 identification.)

4 BY MS. KAHN:

5 **Q. You have Exhibit 215 in front of you. Let**
6 **me know when you are ready.**

7 A. Okay.

8 **Q. Exhibit 215 is an e-mail from Graham**
9 **Stanley to Mr. Breslawski, you, Mr. Steck and a few**
10 **other individuals.**

11 **Do you see that?**

12 A. I do.

13 **Q. And the subject is Meeting notes:**
14 **November 2nd.**

15 **What meeting is he referring to?**

16 A. We -- I believe this is a meeting we had
17 in our office in West Allis, part of what we would
18 call our off-site planning meeting.

19 **Q. And who attended that meeting?**

20 A. This one was more my direct team, so it
21 was the focus on the U.S. end of it. It's not a
22 global dental analysis.

23 **Q. Was Mr. Breslawski present?**

24 A. I believe so.

25 **Q. Are the individuals on the To: line, those**

217

1 were the individuals at the meeting?
 2 A. That's my understanding, yes.
 3 **Q. And who is Graham Stanley?**
 4 A. He is the global chief financial officer.
 5 **Q. Was he present at the meeting?**
 6 A. I believe so, yes.
 7 **Q. And do you know why he was sending this**
 8 **e-mail?**
 9 A. I think it was summary notes from some of
 10 the key takeaways from the meeting on various
 11 topics.
 12 **Q. Had somebody asked him to send this?**
 13 A. Usually Jim Huether would be that
 14 individual -- you've seen some prior messages -- but
 15 Jim must not have been at the meeting. So Graham as
 16 the CFO would just -- decided to take the notes,
 17 summary notes.
 18 **Q. I'm going to turn to the second page.**
 19 **There's a section titled Buying Groups.**
 20 **Do you see that?**
 21 A. I do.
 22 **Q. Okay. And, again, these are notes, these**
 23 **are Mr. Stanley's notes of what took place during**
 24 **the November 2nd meeting?**
 25 A. Correct.

218

1 **Q. And this says, "Buying Groups, colon: Tim**
 2 **clearly set out that HS should not be first to**
 3 **cooperate with GPOs but also don't want to be last."**
 4 **Do you see that?**
 5 A. I do.
 6 **Q. And do you recall saying something to that**
 7 **effect at the November 2nd meeting?**
 8 A. I think this is poorly summarized, you
 9 know, his summary notes. The discussion was, again,
 10 how are we going to work with them, how have we done
 11 in the past, and how do we set a strategy for
 12 working with them in the future.
 13 If -- I think it's -- I believe it's
 14 poorly worded because the discussion was really
 15 about how do we want to work with them on whether --
 16 is it mandated purchases, is it, you know, all the
 17 things that we've been talking about.
 18 So I don't think it properly summarizes my
 19 position.
 20 **Q. So you did not, at this meeting, you did**
 21 **not clearly set out that Henry Schein should not be**
 22 **first to cooperate with GPOs?**
 23 A. Correct.
 24 **Q. Nor did you say that Henry Schein, that**
 25 **you don't want to be the last to cooperate with**

219

1 **GPOs?**
 2 A. That's correct.
 3 **Q. So Mr. Stanley got the notes wrong?**
 4 A. I think it's poorly worded.
 5 **Q. Well, I mean, when you say "poorly**
 6 **worded," I'm trying to understand.**
 7 **Is there another way to read what he wrote**
 8 **that would be consistent with what you expressed at**
 9 **the meeting?**
 10 A. Yes, I think the summary of the notes on
 11 this topic could have been drafted differently.
 12 **Q. And what he wrote you never said? What he**
 13 **said you clearly set out you did not clearly set**
 14 **out?**
 15 A. That's correct.
 16 **Q. Okay. Did you get a chance to review the**
 17 **rest of the notes here?**
 18 A. I did.
 19 **Q. Is there anything else in here that**
 20 **Mr. Stanley got wrong?**
 21 A. Let me review again.
 22 So his comment here, "Planmeca USA not
 23 fully behind the product," plan -- they absolutely
 24 were fully behind the product. They were struggling
 25 with certain support, but to say that they were not

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1 fully behind the product is not an accurate
 2 statement.
 3 **Q. Anything else?**
 4 A. Bob P. not participating in the meeting,
 5 his name is Bob Pienkowski, not
 6 participating/attending meetings, that's not
 7 accurate. He was attending meetings. He just
 8 wasn't attending all of them. So it's not clear.
 9 It's a generalization, but it's not clear.
 10 Confidence and quality of reps in
 11 marketing, they have some excellent reps, but
 12 they're struggling. They were losing some reps and
 13 replacing them with newer ones. So it wasn't that
 14 the quality was bad; they were having some turnover
 15 issues.
 16 That's one example.
 17 **Q. Okay. I appreciate that.**
 18 **So turning back to the buying group**
 19 **summary point, do you recall what you stated at the**
 20 **November 2nd meeting?**
 21 A. Not exactly, but it was along the lines of
 22 we have worked with buying groups in the past; it is
 23 definitely a market trend that's happening, you
 24 know. We don't want to -- maybe that's what he's
 25 thinking about, you know, we don't want to be the

55 (Pages 217 to 220)

221

1 first to cooperate. We're not going to lead the way
2 in creating a specific buying group strategy other
3 than when approached we want to understand what the
4 benefits could be, you know, and how it's aligned
5 with our strategy along with the group's strategies
6 and its members, so similar to what we have, you
7 know, been talking about here.

8 **Q. And why didn't you want to lead the way?**

9 A. Poor choice of words. We were -- it's the
10 trend happening in the marketplace, actually view us
11 as being the leader in everything we do relative to
12 our customers and the customers' needs, so we wanted
13 to work with our customers; those that believe they
14 need and want to join a buying group, understand the
15 reasons why and then create a program for -- either
16 through our own, which is why we're talking about
17 possible solutions, you know, work being done to
18 redefine our Privileges programs, address their
19 needs that way directly with us. Or if it's through
20 a group, then how we work with that group to make
21 sure that they're aligned and their members will
22 continue to buy.

23 **Q. So you did want to lead the way with
24 buying groups?**

25 MR. McDONALD: Object to the form.

223

1 **buying groups, but you're recanting that testimony;
2 is that right?**

3 A. I'm restating it. I think it was poorly
4 worded.

5 **Q. What's your restatement of that testimony?**

6 A. Can you read? I think I did.

7 **Q. I didn't get anything about leading.**

8 A. Okay. So we want to lead the way with our
9 customers in addressing their needs, so in that
10 regard absolutely we want to lead the way. And if
11 they're in a position where they want to join a
12 buying group, we want to understand why and address
13 their needs either through our own programs that we
14 already have for them or work with a buying group to
15 say does it make sense for us to work with them. So
16 in that respect I believe we're leading the way in
17 the industry and in the market.

18 So ...

19 **Q. Was there anything that you said that
20 would have given Mr. Stanley the impression that
21 Schein didn't want to be first to do something?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: Not that I recall.

24 BY MS. KAHN:

25 **Q. Was there anything that you said that**

222

1 THE WITNESS: If the strategy made sense
2 with a particular group, absolutely.

3 BY MS. KAHN:

4 **Q. Okay. I'm just trying to understand how
5 Mr. Stanley summarized -- strike that.**

6 **Did you respond to Mr. Stanley's e-mail?**

7 A. I don't recall. I'd have to -- see,
8 there's a lot of notes in here.

9 **Q. Do you recall reading this summary when
10 you received it?**

11 A. I recall seeing this. I don't recall, you
12 know, line-by-line detail, no.

13 **Q. And did you -- do you recall telling
14 Mr. Stanley that he got your position on buying
15 groups wrong in his summary?**

16 A. No, I do not.

17 **Q. Why not?**

18 MR. McDONALD: Object to the form.

19 THE WITNESS: Because we were going to
20 create -- we knew we had meetings coming up to
21 discuss it further, clarify it there.

22 BY MS. KAHN:

23 **Q. So I just wanted to be clear. Earlier you
24 said maybe what he was getting at was that you
25 didn't want to lead the way with a strategy on**

224

1 **would have made Mr. Stanley get the impression that
2 you didn't want to be last to do something?**

3 A. Not that I -- not that I recall.

4 **Q. Does it matter to Schein whether other
5 distributors are selling to buying groups?**

6 A. Only in the respect of, as I mentioned
7 before, if a buying group decides to work with
8 another dealer and then those members shift to those
9 dealers, to that program, to another dealer,
10 absolutely.

11 **Q. And that would be a risk if other dealers
12 were selling to buying groups, right?**

13 A. In that regard, yes.

14 **Q. All right. You can put that document
15 aside.**

16 **Why don't we take a break now.**

17 (Whereupon, a lunch recess was
18 taken from 12:34 p.m. to
19 1:18 p.m.)

20 BY MS. KAHN:

21 **Q. Welcome back, Mr. Sullivan.**

22 A. Thank you.

23 **Q. Would you say that buying groups have been
24 a high priority at Schein in the last ten years?**

25 A. The buying group initiative in and of

225

1 itself has not made our top five key priorities, but
2 it's been an important aspect of what we're doing
3 relative to the mid-market space, yes.

4 **Q. Are you referring to a specific initiative
5 when you say "the buying group initiative"?**

6 A. No, I'm saying the buying group segment.

7 **Q. It has not been one of the top five key
8 priorities you said; is that right?**

9 A. That's correct.

10 **Q. Do you have any sense of where it would
11 rank in the longer list of priorities?**

12 A. No.

13 **Q. Was it a top ten, one of the top ten
14 priorities?**

15 A. We don't rank the top ten.

16 **Q. What were the top five priorities?**

17 MR. McDONALD: Object to the form.

18 THE WITNESS: It's very -- it's been part
19 of our -- there's various different three-year
20 strat. plans.

21 MS. KAHN: Got it.

22 (Exhibit 216 was marked for
23 identification.)

24 BY MS. KAHN:

25 **Q. You've been handed Exhibit 216. Let me**

226

1 **know when you are ready.**

2 A. Okay.

3 **Q. Exhibit 216 is an e-mail chain entitled --
4 the subject is RE: Klear Impact Buying Group
5 question mark.**

6 Do you see that?

7 A. I do.

8 **Q. Do you recall this e-mail chain?**

9 A. I do.

10 **Q. Your bottom -- the earliest in time e-mail
11 is from you to Jake Meadows on November 3rd, 2015,
12 and you said, "You slid me a note about this group
13 during the SM budget meeting."**

14 Do you see that?

15 A. I do.

16 **Q. And you're referring to Mr. Jake Meadows
17 slipping you a note about Klear Impact buying group?**

18 A. That's correct.

19 **Q. And the SM budget meeting, is that part of
20 the November 2nd meeting that we were looking at in
21 Exhibit 215?**

22 A. I believe so, yes.

23 **Q. And you can look back at 215.**

24 A. I believe it is. The dates look right.

25 **Q. Got it. And is the SM budget meeting a**

227

1 **specific portion of the overall meeting?**

2 A. Correct.

3 **Q. And what --**

4 A. There's a segment of the meeting that we
5 talked about special markets, where there's
6 crossover, how do we structure our teams to, you
7 know, actually work closer together, that type of
8 thing.

9 **Q. Do you remember what Mr. Meadows wrote to
10 you on the note that he passed to you?**

11 A. That I do not.

12 **Q. Fair to say that it was about
13 Klear Impact?**

14 A. Yes.

15 **Q. And that Klear Impact was a buying group?**

16 A. I didn't know. I'm asking the question
17 who are they, where are they essentially. I didn't
18 know who they were.

19 **Q. You wrote to Mr. Meadows on the last page
20 there, "I had just informed Hal and team that we do
21 not have plans to open up new buying groups but have
22 a plan ready to roll if needed."**

23 Do you see that?

24 A. Yes.

25 **Q. And what were you referring to there when**

228

1 **you said "I just informed Hal and team that we do
2 not have plans to open up new buying groups"?"**

3 A. So I don't know what I wrote the Hal in
4 particular, but I'm highlighting the fact, you know,
5 a little bit of where Graham got his, you know,
6 comment from relative to, you know, we are not
7 looking to accelerate the buying group segment.
8 We've worked with them; we'll continue to work with
9 them. We don't have plans right now to open up new
10 ones. We don't know of new ones that are at the
11 table, but as they come up we will address them.

12 So we're not looking to accelerate the
13 plans, maybe, again, Jimmy's reference to opening
14 the floodgates. It's those type of analogies we're
15 using to say we're in the space; we've always been
16 in the space; we will continue to be in the space;
17 we're not looking to accelerate their growth.

18 I think our model is very good for our
19 customers, but as the market evolves we will look at
20 them on an individual basis. I was getting into
21 then so tell me more specifically about
22 Klear Impact, who are they, what are they; maybe we
23 can put something together for them.

24 **Q. At the time that you wrote this, were you
25 open to selling to a new buying group?**

229

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1 A. Yes.

2 **Q. And you mentioned that you were not**
3 **looking to accelerate the buying group segment.**
4 **Do you remember that?**

5 A. Yes.

6 **Q. Was that a change in strategy, or was that**
7 **always your strategy for the last ten years?**

8 A. It was -- it's always been -- let me make
9 sure I phrase this right. We've always worked with
10 buying groups. We've had numerous that we've worked
11 with in the past, continue to work with them, you
12 know, going forward as the market evolves and our
13 customers evolve, but we don't have plans to
14 necessarily, you know, accelerate it in a pace
15 faster than it may be already moving.

16 We believe our existing model, our current
17 model ten years ago was serving the market well,
18 five years ago well, and today it's moving well.
19 But our structure has evolved. How we have gone to
20 the market has evolved.

21 So we're evolving with the market, and
22 we'll continue to come up with submissions for
23 customers.

24 **Q. And I just want to clarify this. You were**
25 **talking about you didn't want to accelerate it any**

1 **you wouldn't want to see happen if buying groups**
2 **were to grow?**

3 A. So as I've testified prior, there are two
4 potential negative outcomes with, you know, buying
5 groups. So as I said, we don't think putting large
6 groups of our customers, you know, together, again,
7 it's nothing we want to accelerate, but if that's
8 where the market is going we are absolutely going to
9 address it. But the likelihood of customers
10 potentially as they're in large groups making
11 decisions to move their business, you could have a,
12 you know, positive impact if they come over to us or
13 a negative impact if they leave.

14 So that's the -- one of the potential
15 outcomes as I've talked about, and we don't think
16 accelerating getting those groups together is
17 necessarily a good thing for our customers or for
18 us.

19 **Q. Why not for your customers?**

20 A. We believe that our current go-to-market
21 strategy and understanding what really the customer
22 care wheel that I talked to you about can do for our
23 customer and address all of their needs.

24 **Q. Is it fair to say that you know customers**
25 **are better served by Henry Schein directly than by**

230

232

1 faster.

2 **Has that always been the thinking, or was**
3 **that a new thinking in 2015?**

4 A. I don't know that it changed dramatically
5 over the years. We, again, we addressed our needs
6 of our customers as it was at the time. It itself
7 has been accelerating, and we've talked about the
8 markets evolving and we get more and more approach
9 from more customers about buying groups, so,
10 therefore, we need to accelerate with the market.
11 But we ourselves didn't want to -- don't want to be
12 the ones that, you know, create that acceleration.
13 It's happening -- there are certain things happening
14 in the market that are going to happen with or
15 without us.

16 **Q. Why do you not want to accelerate the**
17 **growth of buying groups?**

18 A. We think our current strategy is really
19 good for our customers, and we can address their
20 needs, whatever they are. That's why we sit down,
21 have the business discovery meetings with them to
22 understand their needs and create a program that can
23 address it.

24 **Q. What's the -- strike that.**
25 **Is there an impact, a negative impact that**

1 **buying groups?**

2 A. Absolutely.

3 **Q. You talked about positives and negatives**
4 **as a result of buying groups; is that right?**

5 A. Yes.

6 **Q. I guess can you help me understand why**
7 **there are potential positives and potential**
8 **negatives, why Schein wouldn't want to accelerate**
9 **the growth of buying groups?**

10 MR. McDONALD: Object to the form, asked
11 and answered.

12 THE WITNESS: Yeah, I think I've addressed
13 it, but, again, it goes back to what I've said at
14 one point not looking for an intermediary between us
15 and our customer. So we want to work directly with
16 you, Dr. Lin, and what's going on in your practice,
17 not someone else, you know, determining one of the
18 factors that impact our customer care wheel.

19 BY MS. KAHN:

20 **Q. And during the November 2nd series of**
21 **meetings I guess, did you say anything about Schein**
22 **not having any buying group agreements?**

23 A. About not having -- you know, we had -- we
24 absolutely had buying group agreements at that time
25 already.

233

235

1 **Q. So you did not say that?**

2 A. I don't recall saying it. I don't know
3 why I would say that. I know we had agreements with
4 customers already that were buying groups, and I
5 know we were -- you know, would be adding more in
6 the future as they approach us. We didn't have any
7 current plans that I was aware of at this time that
8 we were working with. That's why I was asking about
9 Klear Impact; it was unknown, who is this, tell us
10 more about it.

11 **Q. I just want to be clear. You don't recall**
12 **saying it, or is your testimony that you did not say**
13 **that?**

14 A. Say what?

15 **Q. That Schein does not have any buying group**
16 **agreements.**

17 A. I don't know why -- I don't recall saying
18 it, so I don't know I would say it. I know we had
19 buying group agreements at that time.

20 **Q. And do you recall saying that Schein would**
21 **not do buying group agreements?**

22 A. No.

23 **Q. You can put that aside.**
24 **(Exhibit 217 was marked for**
25 **identification.)**

1 A. No.

2 **Q. Do you have any understanding of how**
3 **Mr. Meadows could have taken this away from that**
4 **meeting?**

5 A. I don't.

6 **Q. And do you know what Mr. Meadows meant**
7 **when he said -- well, strike that.**

8 **Sitting here today, reading what**
9 **Mr. Meadows wrote here, soapboxing about HSD and**
10 **buying groups, do you know what that means?**

11 A. I do not.

12 **Q. Have you in the past talked -- strike**
13 **that.**

14 **You can put that aside.**

15 **You talked about Schein working a lot with**
16 **buying groups in the past, right?**

17 A. Yes.

18 **Q. When did Schein start selling to buying**
19 **groups?**

20 MR. McDONALD: Objection to form, lack of
21 foundation.

22 THE WITNESS: I don't know. I've been
23 with the company 20 years. They could have been
24 doing it before that. I don't know.
25

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236

1 BY MS. KAHN:

2 **Q. You have Exhibit 217 in front of you. Let**
3 **me know when you are ready.**

4 A. Okay.

5 **Q. Exhibit 217 is an extension of**
6 **Exhibit 216, and I realize that you are not on the**
7 **later parts of the chain; is that right?**

8 A. Correct.

9 **Q. Okay. And this is also about Klear Impact**
10 **as well as the November 2nd meeting; is that right?**

11 A. That's right.

12 **Q. Mr. Meadows wrote to Mr. Cavaretta on**
13 **November 3rd -- strike that. Let me go back a chain**
14 **so the record is clear.**

15 **Mr. Cavaretta asked Mr. Meadows, "Did you**
16 **slide the note to Tim on this"; is that right?**

17 A. I see that.

18 **Q. And Mr. Meadows wrote back, "I had to,**
19 **sorry. He was going off about how we do not have**
20 **any buying group agreements and that we will not do**
21 **them, soapboxing about HSD and buying groups."**

22 **Do you see that?**

23 A. I do.

24 **Q. Is Mr. Meadows' characterization of what**
25 **you said at the November 2nd meeting accurate?**

1 BY MS. KAHN:

2 **Q. Do you recall the first time that you**
3 **learned that Schein was selling to a buying group?**

4 A. No, I do not.

5 **Q. Was it more than ten years ago?**

6 A. Yes.

7 **Q. And what group was that, do you know?**

8 A. I do not. It might have been the
9 Alpha Omega as an example.

10 **Q. Do you know when Schein started selling to**
11 **Alpha Omega?**

12 A. I do not.

13 **Q. And the buying groups that Schein has sold**
14 **to in the past, what division has it been out of?**

15 A. Through both -- the primary focus was
16 through Hal's special markets team before we
17 segmented between the elite and the DSOs and mid
18 markets, but we within HSD within the dental
19 business, as I mentioned, in the past study clubs,
20 you know, various state groups, you know, we had
21 worked with them on an HSD perspective in the past
22 too.

23 **Q. And the buying groups that Schein had sold**
24 **to in the past, again putting aside the Smile Source**
25 **recent agreement, were you personally involved in**

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1 **approving those sales?**
 2 A. No, not that I recall.
 3 **Q. Did anybody ask for your approval for**
 4 **those sales?**
 5 A. With a particular buying group?
 6 **Q. With the buying groups prior to**
 7 **Smile Source.**
 8 A. Not that I recall, not a specific example
 9 of a particular buying group, no. We talked about
 10 the concept of buying groups prior to that. But you
 11 just said -- you excluded Smile Source. I don't
 12 know another incident or specific group that I was
 13 involved in, no.
 14 **Q. Have you ever talked about buying groups**
 15 **with Hal Muller?**
 16 A. Yes.
 17 **Q. And do you have an understanding of how**
 18 **Mr. Muller sees buying groups?**
 19 A. We definitely -- we had a difference of
 20 opinion, as you saw in the Dental Gator example.
 21 **Q. What was that difference of opinion?**
 22 A. That he -- his approach would be
 23 different, and he was fine with the only thing that
 24 they were interested in price and nothing else
 25 mattered. It wasn't as big a concern for him. He

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1 deals with a different segment of the market, and
 2 whether they're owned or not owned, he didn't have
 3 the same opinion of myself where, you know, if it's
 4 owned that's one thing; if it's not, they're making
 5 individual purchasing decisions, it's another thing.
 6 **Q. Okay. And I just want to clarify the**
 7 **difference in thinking between you and Mr. Muller.**
 8 **I think you said that Mr. Muller was fine with the**
 9 **only thing that they were interested in is price.**
 10 **Can you explain that to me?**
 11 A. Well, as I said in the past, the way we
 12 want to work with buying groups is if -- you know,
 13 price is a component of the overall value
 14 proposition that we provide, and if part of that
 15 they can also convert the business, that's
 16 incremental volume, there's alignment of interests
 17 with our customers and those customers that are
 18 members of the group, that's how we want to work
 19 with the buying group.
 20 Hal's position historically has been
 21 different. His was let's take a shot at anything.
 22 We can get a ton of customers that sign up, and
 23 whether they buy or not, it wasn't that important to
 24 him. To us that creates challenges.
 25 **Q. And why do you think Mr. Hal -- Mr. Muller**

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1 **had a different view than you?**
 2 A. You'd have to ask him. I don't know.
 3 **Q. You guys never talked it further than just**
 4 **understanding the differences?**
 5 A. Correct.
 6 **Q. And did you make your views known to**
 7 **Mr. Hal Muller?**
 8 A. Yes.
 9 **Q. And did he tell you that he disagreed with**
 10 **you?**
 11 A. From time to time, yes.
 12 **Q. Did anybody else within Henry Schein**
 13 **Dental tell you that they disagreed with you on your**
 14 **approach to buying groups?**
 15 A. Not that I recall.
 16 **Q. What about other people in special**
 17 **markets?**
 18 A. I never really worked with them, so not
 19 that I recall, no.
 20 (Exhibit 218 was marked for
 21 identification.)
 22 BY MS. KAHN:
 23 **Q. You have Exhibit 218 in front of you. Let**
 24 **me know when you're ready.**
 25 A. Okay.

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1 **Q. Exhibit 218 is an e-mail chain, and I**
 2 **realize you're not on it.**
 3 **Is that right?**
 4 A. Correct.
 5 **Q. And you've never seen this document**
 6 **before?**
 7 A. Other than in preparation for this
 8 deposition.
 9 **Q. Did you review this document in**
 10 **preparation with your attorney?**
 11 A. I did.
 12 **Q. And -- okay.**
 13 **This Exhibit 218 is -- the top e-mail is**
 14 **from Jake Meadows to Patty Delikat on July 17, 2012.**
 15 **Do you see that?**
 16 A. I do.
 17 **Q. And this e-mail chain is about a Schein**
 18 **employee helping to put together a buying group.**
 19 **Is that your understanding?**
 20 A. Could you repeat the question?
 21 **Q. Sure. Is this e-mail chain about a buying**
 22 **group?**
 23 A. It is.
 24 **Q. Okay. And who is Ron and Dan who are**
 25 **referred to in that top e-mail?**

60 (Pages 237 to 240)

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1 A. The lead -- Ron Brown at the time was our
2 regional manager, and I believe Dan was our regional
3 operations manager in that market. I think this is
4 Washington State.

5 **Q. And from reading this, was Ron putting
6 together -- working on putting a buying group
7 together?**

8 MR. McDONALD: Object to the form.

9 THE WITNESS: I don't know that Ron was
10 working to put it together. I think they were
11 approached by this group to work with.

12 BY MS. KAHN:

13 **Q. And who is Patty Delikat?**

14 A. She is one of our field sales consultants.

15 **Q. And is it fair to say that Ms. Delikat was
16 saying here that Ron and Dan had approved some
17 discounts for this buying group?**

18 A. I think that's what I read, but I wasn't
19 involved with that. I see that statement, yes.

20 **Q. Okay. I just want to make sure that's how
21 you -- but that's your understanding as well from
22 reading this sitting here today?**

23 A. I'm saying I believe Ron had a discussion
24 with our field sales consultant approving it. I
25 don't know if anything was done with the customer at

1 A. I do.

2 **Q. And do you know why Mr. Meadows would have
3 gotten the impression that you directed him to not
4 support buying groups?**

5 MR. McDONALD: Object to the form.

6 THE WITNESS: I don't think that's what
7 he's -- that's not what I read here.

8 BY MS. KAHN:

9 **Q. Okay. What do you read here?**

10 A. Well, I don't know what happened between,
11 you know, the time that he received this e-mail and
12 the next day when he's responding to Patty, if he
13 spoke with Ron further and now he understood better.
14 I don't know.

15 But in general that's why he's asking the
16 questions down here, which supports what I was
17 saying before about how and why and when we will
18 work with buying groups; you know, who is the leader
19 of the group, is there a relationship there, how
20 many offices do they have, what's the average
21 purchase, has it been presented to them yet, what
22 discounts are we talking about, will each office
23 buy.

24 There's a series of questions that he
25 asked prior to that, and so I don't know what

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1 this point. The way I read it, this is from Patty,
2 our field sales consultant, to Jake after he had
3 asked a series of questions that align with what
4 we've been talking about relative to how and why and
5 when we work with a buying group. The discounts
6 were approved by Ron and Dan. He didn't answer the
7 question, you know, has it been presented, and she's
8 answering the question about were the discounts
9 approved and by who, and she's saying Ron and Dan.

10 **Q. Got it. It was approved at least
11 internally by Ron and Dan?**

12 A. That's correct.

13 **Q. So Ron and Dan had approved some sort of
14 discount for a buying group. Is that your
15 understanding?**

16 A. That's my understanding.

17 **Q. Okay. And then let me read Jake Meadows'
18 e-mail to Patty Delikat. "We can talk about this.
19 I have to tell you Ron and Dan made a decision that
20 is against what Tim Sullivan has directed us to do
21 in regards to supporting buying groups. We do not
22 want our customers organizing and creating what are
23 known as GPOs. It takes the value away from the
24 distributor."**

25 **Do you see that?**

1 happened between all of that and that response.

2 **Q. And have you ever directed anyone within
3 Schein that you do not want your customers
4 organizing and creating buying groups?**

5 A. Only in the spirit that I've outlined
6 before about it's a trend in the marketplace; we see
7 it's happening; we've worked with groups, buying
8 groups in the past; we will continue to work with
9 them in the future. It is accelerating. We don't
10 want to be the accelerator or the accelerator of it.
11 It's happening on its own, so we will work with the
12 market in that regard in that respect.

13 **Q. But you've never directed anyone within
14 Schein that you do not want your customers
15 organizing and creating buying groups?**

16 A. That's correct.

17 **Q. And do you -- have you ever had the
18 sentiment that buying groups take away -- takes the
19 value away from the distributor?**

20 A. I think it's a poor way of saying we don't
21 want anyone between us and our customer. We want
22 the value the customer sees and why they do business
23 with us, the value we want to be with Henry Schein.
24 We want the value that a customer sees or views as
25 why they're buying from Henry Schein, that value we

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1 want absolutely viewed as a value by doing business
 2 with Henry Schein.
 3 **Q. Not the buying group?**
 4 A. Not any form of intermediary.
 5 **Q. I guess I'm a little confused because**
 6 **earlier you said that you want to work with buying**
 7 **groups that offer value-added services, but doesn't**
 8 **that -- wouldn't that take away from the value that**
 9 **Henry Schein has?**
 10 A. No. I think you're reading into what I
 11 said because what I said is I want their values
 12 aligned with ours, and that value can still be
 13 viewed as a Henry Schein value.
 14 **Q. Got it.**
 15 A. When you work with those customers, they
 16 still buy from -- when they're in a buying group
 17 they still buy from Henry Schein Dental. We want
 18 them viewing the why they're buying is because of
 19 the value that we bring.
 20 **Q. And if a buying group is aligned, meaning**
 21 **they also want to provide additional value, the**
 22 **customer would view that as a Henry Schein value as**
 23 **well?**
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I don't know which value.

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1 Can you give me an example of what type of value
 2 that could be?
 3 MS. KAHN: It's okay. We don't have to go
 4 back.
 5 (Exhibit 219 was marked for
 6 identification.)
 7 BY MS. KAHN:
 8 **Q. You have Exhibit 219 in front of you.**
 9 A. Yes.
 10 **Q. Let me know when you're ready. And let me**
 11 **just represent that you're not on the top two**
 12 **e-mails, and I will not be asking you about those.**
 13 A. Okay.
 14 **Q. Starting at the bottom you're on there.**
 15 A. Okay.
 16 **Q. Are you ready?**
 17 A. I am.
 18 **Q. Exhibit 219 is an e-mail chain, but I'm**
 19 **only going to ask you about the portion which is an**
 20 **e-mail from Brian Brady to many individuals with a**
 21 **cc to you and others on September 9th, 2015, and I**
 22 **believe the subject line was Henry Schein Dental &**
 23 **Existing Buying Groups; is that correct?**
 24 A. Yes.
 25 **Q. Did you receive this e-mail from**

247

1 **Mr. Brady?**
 2 A. I did.
 3 **Q. And at this time in September 2015**
 4 **Mr. Brady had moved into his buying group position?**
 5 A. Responsibility was for the mid-market
 6 space including buying groups, yes.
 7 **Q. Okay. So he wasn't specifically**
 8 **responsible for buying groups and GPOs?**
 9 A. Not -- that wasn't his sole
 10 responsibility. That was in his realm of
 11 responsibility.
 12 **Q. Did anybody else within Schein have any**
 13 **responsibilities over buying groups and GPOs?**
 14 A. Not directly like Brian did.
 15 **Q. Was Mr. Brady tasked to deal with buying**
 16 **groups and GPOs?**
 17 A. To help us develop the strategy and, you
 18 know, any material that we would present. For
 19 example, he helped put together the presentation for
 20 Smile Source. He was involved in that one. So as
 21 they come up, he'd get involved working with our
 22 local teams on what to present and how to present
 23 it.
 24 **Q. Okay. Mr. Brady wrote on September 9,**
 25 **2015, in the third paragraph there, he wrote,**

248

1 **"Traditionally Schein has rarely engaged with these**
 2 **groups."**
 3 **Do you see that?**
 4 A. I do.
 5 **Q. And do you understand "these groups" to**
 6 **mean buying groups?**
 7 A. I do.
 8 **Q. And do you disagree with Mr. Brady's**
 9 **statement that traditionally Schein has rarely**
 10 **engaged with buying groups?**
 11 A. I mean, in a 2-plus-billion-dollar
 12 business, I don't know how much it represented, so I
 13 don't know if he's referring to the overall volume
 14 of the business that we're doing, the number of
 15 customers. We look at 90,000 customers across the
 16 country, so if 500 of them are in various different
 17 groups, maybe he's viewing that as rarely. I don't
 18 know. Don't quote me on the 500 number. I don't
 19 know that number.
 20 I'm just saying I'm not sure his view,
 21 what he means by rarely, so you'd have to ask him.
 22 But we've been -- there are a number of groups that
 23 we have worked with even at this time.
 24 **Q. And I just want to -- you know, aside from**
 25 **what Mr. Brady was thinking or how he was**

62 (Pages 245 to 248)

249

1 **quantifying rarely, sitting here today do you**
 2 **disagree with the statement that traditionally**
 3 **Schein has rarely engaged with buying groups?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Yeah, I would because I
 6 didn't -- even as my testimony earlier, I wasn't
 7 using the word "rarely," but often we worked with
 8 them. We had many different buying groups.
 9 BY MS. KAHN:
 10 **Q. Okay. So kind of the opposite of what you**
 11 **read here from Mr. Brady?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Correct.
 14 MS. KAHN: Okay. You can put that aside.
 15 (Exhibit 220 and Exhibit 221
 16 were marked for identification.)
 17 BY MS. KAHN:
 18 **Q. You have Exhibits 220 and 221 in front of**
 19 **you. Let me know when you are ready.**
 20 A. Okay.
 21 **Q. Okay. Exhibit 220 is an e-mail with an**
 22 **attachment, and the attachment is Medical-Dental GPO**
 23 **9-18-13, and Exhibit 221 is some sort of a calendar**
 24 **scheduler I believe for the meeting that's**
 25 **referenced in Exhibit 220.**

250

1 **Do I have that right?**
 2 A. You do.
 3 **Q. And from Exhibit 221 it looks like you**
 4 **attended that meeting --**
 5 A. That's correct.
 6 **Q. -- or were going to.**
 7 **Did you attend the meeting?**
 8 A. Yes, I did.
 9 **Q. Do you recall attending the meeting?**
 10 A. I do.
 11 **Q. Can you tell me the purpose of the meeting**
 12 **that was held on September 18, 2013?**
 13 A. So Brad Connett and Bill Barr are two
 14 gentleman in our medical division, and they were
 15 making a presentation about GPOs and how they viewed
 16 GPOs relative to the medical market.
 17 And then if I recall, again, I haven't
 18 looked at this since the meeting quite honestly,
 19 they have some things that they know about GPOs and
 20 where they're going to get their growth and that
 21 type of thing.
 22 **Q. And whose idea -- strike that.**
 23 **And were these two individuals Brad and**
 24 **Bill from medical, they were going to give this**
 25 **presentation about GPOs to some dental folks; is**

251

1 **that right?**
 2 A. Correct.
 3 **Q. Was it an education overview of GPOs for**
 4 **the dental side?**
 5 A. That's how I viewed it, yes.
 6 **Q. Whose idea was it to have this meeting?**
 7 A. I don't recall. It wasn't -- I didn't ask
 8 for the meeting.
 9 **Q. Was it Mr. Muller?**
 10 A. I don't know.
 11 **Q. And earlier we talked about Schein using**
 12 **the terms "GPO" and "buying groups" interchangeably.**
 13 **In this presentation there are only references to**
 14 **GPOs, I believe.**
 15 **Do you know if that was meant to be used**
 16 **interchangeably with buying group?**
 17 MR. McDONALD: Object to the form,
 18 mischaracterizes the testimony.
 19 THE WITNESS: As I reread this again now,
 20 I haven't read it since that meeting, it looks to be
 21 GPO focused, not buying groups, but GPOs as defined
 22 earlier.
 23 BY MS. KAHN:
 24 **Q. GPO where you said the entity would**
 25 **negotiate with the manufacturer for discounts?**

252

1 A. Correct.
 2 **Q. Okay. And, again, there are no GPOs in**
 3 **the dental industry?**
 4 A. None that I'm aware of.
 5 **Q. All right. Turning to Slide 8, the last**
 6 **bullet says, "We know that opening the door for them**
 7 **on their terms" -- strike that. Let me just set the**
 8 **stage.**
 9 **Slide 8 has the title What do we know**
 10 **about GPO's?**
 11 **Do you see that?**
 12 A. I do.
 13 **Q. And you take that GPOs to mean the type**
 14 **where -- an actual GPO, not synonymous with buying**
 15 **groups; is that right?**
 16 A. That's correct.
 17 **Q. And the last bullet says, "We know that**
 18 **opening the door for them on their terms is not a**
 19 **favorable approach."**
 20 **Do you see that?**
 21 A. I do.
 22 **Q. And do you know who drafted this**
 23 **presentation?**
 24 A. I believe it was Brad Connett and
 25 Bill Barr.

63 (Pages 249 to 252)

253

1 **Q. And were they making that statement for**
 2 **the dental industry?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I don't know. I don't
 5 recall.
 6 BY MS. KAHN:
 7 **Q. Medical was working with GPOs in 2013,**
 8 **right?**
 9 A. That's correct, yes.
 10 **Q. The second-to-last bullet says, "We know**
 11 **they have contacted dental competition."**
 12 **Do you see that?**
 13 A. I do.
 14 **Q. Do you believe that to mean that we know**
 15 **that GPOs have contacted dental competition?**
 16 A. That's how I read it, but I don't --
 17 again, that's not my presentation. I don't recall
 18 how he portrayed it in this meeting.
 19 **Q. Okay. That's what I was going to ask is**
 20 **do you recall the discussion around these bullets.**
 21 A. I do not.
 22 **Q. Do you have any information to share with**
 23 **us that would help us understand these two bullets?**
 24 A. I do not.
 25 **Q. Can you think of any reason why Schein**

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1 **would care whether a GPO has contacted your**
 2 **competitors?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: No.
 5 BY MS. KAHN:
 6 **Q. Can you think of any reason why Schein**
 7 **would care whether a buying group has contacted your**
 8 **competitors?**
 9 A. Well, I just go back to what I stated
 10 earlier, and maybe the GPOs fall under the same
 11 thing, but as it relates to buying groups, again, if
 12 we decide not to and the group decides to work with
 13 one of our competitors and now that puts our
 14 business at risk, yes, we want -- we would want to
 15 know that, and that does matter to us.
 16 **Q. Why?**
 17 A. As I just stated, if we decide not to work
 18 with the group and the group decided to work with
 19 one of our competitors, and then those customers
 20 that were already existing business of ours now are
 21 members of this group move their business, we lose
 22 the business.
 23 **Q. If you turn to Slide 13, this slide is**
 24 **titled What do we not know about GPO's, and the**
 25 **first bullet says, "Will they be successful in**

255

1 **baiting a dental company to work with them?"**
 2 **Do you see that?**
 3 A. I do.
 4 **Q. Do you recall the discussion around that**
 5 **point?**
 6 A. I do not.
 7 **Q. Is it your understanding that in 2013**
 8 **dental distributors were not generally working with**
 9 **GPOs?**
 10 A. That's my understanding.
 11 **Q. And what about buying groups?**
 12 A. I believe they were as -- I mean, I know
 13 we were for sure, and I know in working with some
 14 groups, you know, that we were up against, you know,
 15 competing with other potential distributors for
 16 their -- for the group.
 17 **Q. And so you talked about this concern of a**
 18 **buying group going to a competitor, right?**
 19 A. Yes.
 20 **Q. Can you tell me about any instances where**
 21 **a buying group has gone to a competitor?**
 22 A. I'll give you the example of Smile Source.
 23 We were partners with them in '04 to '06 I believe
 24 is the time frame. I don't know who they were
 25 working with prior, but when we got the business we

256

1 did well with the customers in that space that were
 2 members of the group, but they didn't have nearly
 3 the traction with gaining much incremental business
 4 from the group, and then eventually they switched
 5 over and joined Burkhart, so Burkhart became their
 6 supplier of choice. And in that case many members
 7 did shift their business to Burkhart, and we were
 8 able in some cases to go in and maintain as much of
 9 the business as we could on our own directly.
 10 There's one example.
 11 **Q. Can you think of any other examples that**
 12 **involved another distributor?**
 13 A. No, not offhand.
 14 **Q. And earlier we saw a document where Darby**
 15 **was selling to buying groups; is that correct?**
 16 A. Correct.
 17 **Q. Is it still your understanding today that**
 18 **Darby sells to buying groups?**
 19 A. Yes.
 20 **Q. And what about Safco, have you heard of**
 21 **Safco selling to buying groups?**
 22 A. I've heard of Safco. I know who they are.
 23 I don't know of any buying groups that they're
 24 working with.
 25 **Q. Have you heard of a buying group going to**

64 (Pages 253 to 256)

257

1 **Patterson?**
 2 A. No, not that I know of.
 3 **Q. Have you heard of a buying group going to**
 4 **Benco?**
 5 A. I have.
 6 **Q. Which buying group?**
 7 A. There's one in Virginia. I don't know if
 8 it's Dental Alliance, Atlantic Dental, with a name
 9 somewhere along that line.
 10 **Q. Is it the Atlantic Dental Care? Is that**
 11 **what you're thinking of?**
 12 A. No. ADC is a large DSO that Patterson
 13 does have. I think that's the one who -- that's the
 14 ADC I know of, but it's a large DSO. It's not a
 15 buying group, per se.
 16 **Q. Your understanding is Patterson has ADC?**
 17 A. Correct.
 18 **Q. And Benco never had ADC?**
 19 A. Not that I know of.
 20 **Q. Okay.**
 21 A. If it's the same. There might be another
 22 company with those initials. The one I'm thinking
 23 of is a large, large Patterson account.
 24 **Q. So the acronym -- I know ADC may be the**
 25 **same, but I'm talking about Atlantic Dental Care.**

258

1 **Is that familiar to you?**
 2 A. I don't know if that's the name. It's one
 3 in Virginia, I know.
 4 **Q. The ADC that you know is in Virginia?**
 5 A. I don't know if it's ADC. I'm saying --
 6 **Q. You're talking about the buying group now?**
 7 A. Right.
 8 **Q. Got it.**
 9 A. It's either Atlantic Dental, I don't know
 10 if they even call themselves -- if there's a C at
 11 the end of that or not, or if it's Dental Alliance.
 12 It's something, some name like that. I just don't
 13 recall the name.
 14 **Q. And that is a buying group to your**
 15 **understanding?**
 16 A. From what we know about them, yes.
 17 **Q. And you said that Benco supplies them?**
 18 A. That's correct.
 19 **Q. And how did you come to learn about that?**
 20 A. Our sales reps there today tell us all the
 21 time, you know, that they've lost accounts; they've
 22 lost some business due to the buying group that
 23 they're -- one of our customers became a member of
 24 and now are buying through Benco.
 25 **Q. Do you know how much you lost in sales to**

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1 **this buying group in Virginia?**
 2 A. I do not.
 3 **Q. Do you have any sense of if it was just**
 4 **one customer or if it was some significant amount?**
 5 A. I don't know.
 6 **Q. And it was brought to your personal**
 7 **attention?**
 8 A. Yes.
 9 **Q. By whom?**
 10 A. Well, a multitude of ways. In this
 11 particular case Chuck Cohen himself called me, which
 12 I thought was a crazy call.
 13 Then after that it just came through --
 14 once we knew that they did sign a deal with Benco,
 15 we were hearing from our regional manager and reps
 16 locally that customers had signed up.
 17 **Q. Which regional managers and reps?**
 18 A. The regional manager involved I believe
 19 was Bobby Anderson.
 20 **Q. Okay. It's your testimony that he called**
 21 **you after they lost customers to Benco?**
 22 A. I'm sorry, he didn't call me.
 23 **Q. Okay.**
 24 A. So I heard it through Jake Meadows, who
 25 was the area manager at the time.

260

1 **Q. And why did -- how did that conversation**
 2 **come about?**
 3 A. I don't know, just in discussion,
 4 conversation that either -- again, I don't remember
 5 if we actually bid on them or what, decided not to.
 6 Whatever the scenario was, we either decided not to
 7 and then Benco did, or we bid on it and Benco won
 8 it. I don't know which way it -- which series of
 9 events happened.
 10 But at some point Jake did update me that
 11 Benco did end up signing with them, and, you know,
 12 some of our reps were saying this is why some of
 13 their business has been lost.
 14 **Q. And do you have an understanding that this**
 15 **Virginia buying group somehow mandates purchases**
 16 **through the buying group?**
 17 A. Not that I'm aware of.
 18 **Q. They do not mandate?**
 19 A. I don't know that they do. I've never met
 20 with them. I don't know their strategy.
 21 **Q. Okay. And you don't know if Schein bid on**
 22 **them?**
 23 A. I don't know.
 24 **Q. Did you -- okay. Strike that.**
 25 **Can you tell me about the call from**

65 (Pages 257 to 260)

261

263

1 **Chuck Cohen that you mentioned?**
 2 A. It -- I forget the date. At some point he
 3 had called me. Again, I don't know if it was a text
 4 first or not or how the series of events went; asked
 5 me if I had heard of them. I had not.
 6 And he basically said to me that they
 7 don't plan to, you know, bid on their -- on this
 8 group, to which I immediately said that, Chuck, I
 9 don't know why you're telling me this; this is not
 10 something you and I should be talking about. And I
 11 don't know who they are; I've not met them; I'm
 12 really not aware of what their strategy is.
 13 **Q. And then what did he say in response?**
 14 A. Something to the effect of, oh, I know, I
 15 was just, you know, calling to let you know that
 16 we're, you know, we're not interested. Okay,
 17 thanks, Chuck.
 18 **Q. How did the conversation end?**
 19 A. Pretty much like that, thanks, Chuck.
 20 And, you know, with Chuck, I don't know if you've
 21 met him yet, he's a very unique character, and you
 22 could have a 20-minute discussion and actually talk
 23 about -- absolutely talk about nothing, and --
 24 **Q. Why do you say that?**
 25 A. He's a very just Chatty Cathy, you know,

1 **Q. And after this call did you receive any**
 2 **follow-up from Mr. Cohen?**
 3 A. I did.
 4 **Q. Okay. And what follow-up did you receive?**
 5 A. I believe he sent me a text, something to
 6 the effect of we decided to bid on the Dental
 7 Alliance or Alliance, whatever the name of the
 8 company was. It was in the text. I don't remember
 9 the name.
 10 **Q. And during the call, I can go back, but**
 11 **during the call you said he told you about Atlantic**
 12 **Dental Care and that it was a buying group?**
 13 A. Yes.
 14 **Q. And that he wasn't going to bid on it?**
 15 A. Correct.
 16 **Q. And he texted you to say that he had**
 17 **essentially changed his mind?**
 18 A. Correct.
 19 **Q. And that it was not a buying group?**
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I don't think that he -- I
 22 don't know. He just said that they're going to bid
 23 on it. I don't think he changed the position on
 24 whether they were a buying group or not.
 25

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264

1 talk about the weather, Packers/Philadelphia Eagles
 2 conflicts, bets, you know. There's just small talk,
 3 how's the family.
 4 So it's -- you know, he's just a very
 5 unique character.
 6 **Q. Was there -- did you ask for any**
 7 **follow-up --**
 8 A. No.
 9 **Q. -- after the call?**
 10 **Did he say he was going to provide any**
 11 **follow-up after the call?**
 12 A. He did not say anything, no.
 13 **Q. Did you ever ask him about Atlantic Dental**
 14 **Care?**
 15 A. No.
 16 **Q. How long would you say you guys talked**
 17 **for?**
 18 A. I don't know. Sometimes it was two
 19 minutes; sometimes it was ten; it might have been
 20 twenty. It really depends on the topic.
 21 **Q. Sure. I'm specifically --**
 22 A. Specifically to this topic, very brief.
 23 **Q. All right. Can you quantify that at all?**
 24 A. I would say on this topic it couldn't have
 25 been a minute or two.

1 BY MS. KAHN:
 2 **Q. Got it. And did you respond to that?**
 3 A. I don't believe so.
 4 **Q. Did you have any -- did you try to call**
 5 **him on the day that you received that text?**
 6 A. I don't believe so.
 7 **Q. Did you speak to him -- excuse me.**
 8 **Did you speak to him again shortly**
 9 **thereafter?**
 10 A. You have the records. I'd have to look.
 11 I don't recall. We can look at the records.
 12 **Q. Did you ever speak to him again about this**
 13 **buying group?**
 14 A. I don't believe so, no.
 15 **Q. Did you do anything with the information**
 16 **that he shared with you?**
 17 A. No.
 18 **Q. Did you tell anybody about it?**
 19 A. I don't know if I communicated with our
 20 in-house legal counsel or not. I typically would,
 21 and I just don't recall if I did in this case or
 22 not.
 23 **Q. What do you mean when you say "I typically**
 24 **would"?**
 25 MR. McDONALD: Well, let me just give you

265

1 some instruction here. On answering this question I
 2 don't want you to reveal the actual communications
 3 you've had with counsel.
 4 THE WITNESS: That's where I was going.
 5 So I've had a lot of communications with
 6 counsel relative to how and how not to communicate
 7 with Chuck, and I'll leave it at that.
 8 BY MS. KAHN:
 9 **Q. And was this prior to the Source One**
 10 **litigation?**
 11 A. Yes.
 12 **Q. So prior to -- was it prior to the Texas**
 13 **AG investigation?**
 14 A. Yes.
 15 **Q. How did -- strike that.**
 16 **When you said you typically would, were**
 17 **you suggesting that you had previously reported to**
 18 **Schein's legal counsel about other communications**
 19 **from Mr. Cohen?**
 20 A. I need to ask if I can answer that.
 21 MR. McDONALD: You can answer that yes or
 22 no.
 23 THE WITNESS: Yes.
 24 BY MS. KAHN:
 25 **Q. How many times?**

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1 A. I don't know.
 2 **Q. Can you quantify, more than ten, less than**
 3 **five?**
 4 A. Communications with counsel about --
 5 **Q. How many times have you reported a**
 6 **communication that you were having that you received**
 7 **from Chuck to legal counsel?**
 8 A. I don't know. I'd be completely guessing.
 9 More than five.
 10 **Q. More than five.**
 11 **More than twenty?**
 12 A. I don't know.
 13 **Q. Do you know what Schein did with the**
 14 **buying group that Chuck was communicating to you**
 15 **about?**
 16 MR. McDONALD: Object to the form, asked
 17 and answered.
 18 THE WITNESS: I don't. I don't know if we
 19 bid on it or not. I don't recall.
 20 BY MS. KAHN:
 21 **Q. You didn't look into it after you got the**
 22 **call from Chuck Cohen?**
 23 A. No.
 24 **Q. Nor did you look into it after you got the**
 25 **text message from Chuck Cohen?**

267

1 A. No.
 2 **Q. Earlier you said that the call from Chuck**
 3 **was crazy.**
 4 **Do you recall that?**
 5 A. I do.
 6 **Q. And why did you say it was crazy?**
 7 A. It was a call I would never make to him,
 8 and I was in shock that he had actually made the
 9 call to me.
 10 **Q. Why would you never make that call?**
 11 A. Based on antitrust training that I've
 12 received throughout the years.
 13 **Q. Why do you think Mr. Cohen called you with**
 14 **that information?**
 15 MR. McDONALD: Object to form.
 16 THE WITNESS: That would be a good
 17 question for him.
 18 BY MS. KAHN:
 19 **Q. Why do you think Mr. Cohen called you with**
 20 **that information?**
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't know.
 23 BY MS. KAHN:
 24 **Q. You never tried to think about why he**
 25 **called you with this information?**

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1 A. I thought it was -- as I said, I told you
 2 what I thought about it. I thought it was crazy
 3 that he called, and I would never have made that
 4 call.
 5 **Q. I guess my question is going to you didn't**
 6 **try to think about the motive behind the call?**
 7 A. No.
 8 **Q. Did you get the sense that Mr. Cohen was**
 9 **trying to reach some general understanding with you?**
 10 A. No.
 11 **Q. Why not?**
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I didn't get the sense. I
 14 can't tell you why not. No, I didn't. We never
 15 would come to an understanding with them to begin
 16 with. We didn't engage in that type of discussion
 17 with him at all. So if he even attempted to go down
 18 that road I would have cut him off immediately.
 19 BY MS. KAHN:
 20 **Q. Can you think of any reason for Mr. Cohen**
 21 **to communicate what he did with you?**
 22 MR. McDONALD: Object to the form, asked
 23 and answered.
 24 THE WITNESS: I cannot.
 25

67 (Pages 265 to 268)

269

1 BY MS. KAHN:

2 **Q. Was that the only -- so there was a call**
3 **from Chuck to you and then a text message from Chuck**
4 **to you, right?**

5 A. Correct.

6 **Q. Both about the same buying group**
7 **situation; is that right?**

8 A. That's right.

9 **Q. And that time aside, has Mr. Cohen tried**
10 **to reach out to you about buying groups in any other**
11 **instances?**

12 A. Not that I recall.

13 **Q. Is it possible but you just don't recall?**

14 MR. McDONALD: Object to the form.

15 THE WITNESS: It's not that -- I just
16 don't recall any specific incident about another
17 buying group that Chuck ever reached out to me
18 about.

19 BY MS. KAHN:

20 **Q. What about buying groups in general?**

21 A. I've never had that discussion with Chuck
22 about our strategy, their strategy on buying groups.

23 **Q. Has Mr. Cohen ever shared with you his**
24 **general thoughts on buying groups?**

25 A. No.

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1 **Q. And I just want to confirm, Mr. Cohen**
2 **never shared with you that Benco had a policy of not**
3 **selling or offering discounts to buying groups?**

4 A. That's correct.

5 **Q. Have you known Mr. Cohen to lie?**

6 A. I know him as an odd personality but to
7 flat out lie, no. I don't communicate that much
8 with him to tell you the truth, but it's -- I don't
9 know him to have lied.

10 **Q. Why do you say he's odd?**

11 MR. McDONALD: Object to the form.

12 THE WITNESS: I just asked you I don't
13 know if you've met him yet. I probably shouldn't
14 even go down that road. No, I don't know him as --
15 to be a liar.

16 BY MS. KAHN:

17 **Q. My question was, why do you say he's odd?**

18 A. I find him odd.

19 **Q. Why is that?**

20 A. He's a close talker. He's -- he's just --
21 I don't know. How do you define odd? He's just not
22 my cup of tea.

23 **Q. Do you consider him a friend?**

24 A. I consider him not a friend by any means,
25 no, but we're -- our families know each other.

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1 **Q. Have you ever shared with Mr. Cohen your**
2 **general thoughts about buying groups?**

3 A. No.

4 **Q. And earlier we talked about buying groups**
5 **not being able to mandate purchases through the**
6 **vendor contracts.**

7 **Do you recall those questions and answers?**

8 MR. McDONALD: Object to the form. We've
9 had many questions and answers on that.

10 THE WITNESS: I'm not sure.

11 BY MS. KAHN:

12 **Q. Strike that. Let me ask a different**
13 **question.**

14 **Have you and Mr. Cohen ever discussed**
15 **whether buying groups can mandate purchases through**
16 **buying group vendors?**

17 A. No.

18 **Q. Have you and Mr. Cohen ever discussed**
19 **rationale for not wanting to work with buying**
20 **groups?**

21 A. No.

22 **Q. So aside from this one instance you don't**
23 **recall any other discussions with Mr. Cohen about**
24 **buying groups?**

25 A. That's correct.

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1 We've been in the business a long time. We're
2 friendly but not friends.

3 **Q. And do you respect Mr. Cohen?**

4 A. I do.

5 **Q. In the last ten years how often had you**
6 **seen Mr. Cohen in person?**

7 A. Boy, ten, twelve, fifteen. I'd see him at
8 least once a year at a DTA event. We were both on
9 the board for a period of time. I usually see him
10 at at least one major trade show or convention.

11 **Q. What are the other trade shows and**
12 **conventions that you're referring to?**

13 A. There's a Chicago Midwinter meeting in
14 February, the Greater New York meeting in November.
15 Those are two of the biggest ones. Wherever the ADA
16 moves their meeting around to a different city every
17 year, we might see each other at those meetings.

18 **Q. So Chicago Midwinter, Greater New York and**
19 **the ADA meeting, those are three meetings that you**
20 **have seen Mr. Cohen at throughout the years?**

21 A. Examples of meetings, you know. I don't
22 know if -- I've been to the Boston meeting and that
23 could be in January. I don't know if I ran into him
24 there or not.

25 I attend five to six meetings a year

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1 myself, and in most cases Benco is also showing at
2 those meetings. Sometimes Chuck is there. I don't
3 know. I don't go looking for him. We don't have
4 meetings scheduled.

5 So it's just -- it's more by happenstance
6 if we see each other at the meetings.

7 **Q. Do you ever -- have you ever texted each
8 other to try to catch each other at a trade show or
9 convention?**

10 A. There was one meeting in particular that
11 he wanted to get together I'm thinking with someone
12 from Patterson to talk about how do we from a DTA
13 perspective bring more value to the members relative
14 to training service technicians.

15 **Q. Aside from that, any other instances where
16 you've tried to catch one another at a trade show or
17 convention?**

18 A. I mean, you have the -- not that I recall,
19 but I know you have the record, so I'd be happy to
20 address any specific examples you have.

21 **Q. Have you ever had drinks or a meal or food
22 with Mr. Cohen?**

23 A. Yes.

24 **Q. How many times?**

25 A. Drinks, maybe three or four times, you

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1 know, post a DTA board meeting, not him and I one on
2 one. It's the whole board coming out and getting
3 together and just socializing with the other members
4 of the board.

5 I've had dinner with him twice, both times
6 in a discussion about potentially merging our
7 companies together in some way. Whether we would
8 acquire Benco is the obvious -- not obvious but one
9 of the paths that we wanted to explore, just dream,
10 you know, some day could it happen.

11 **Q. Any other times that you've had drinks or
12 a meal?**

13 A. Not that I recall.

14 **Q. What about any meetings one-on-one in
15 person that didn't involve drinks or food?**

16 A. We had phone conversations.

17 **Q. So I'll get to that. I just wanted to
18 stick with in person first.**

19 A. Okay. Outside of what I just outlined, I
20 don't believe so.

21 **Q. And when you run into him at a trade show,
22 do you stop and say hello?**

23 A. Yes.

24 **Q. Anything beyond that?**

25 A. That's -- typically how's it going, how's

275

1 the family, Packers just beat the Eagles again, how
2 are you feeling, that type of stuff.

3 **Q. Let's move on to the phone conversations.**

4 **How many phone calls would you say you've
5 had with Mr. Cohen in the last ten years?**

6 A. More than five, less than ten I'm
7 guessing. I'm guessing somewhere in that range.

8 **Q. Have you ever called him from your home
9 line?**

10 A. I don't think we even have a home line
11 anymore. No.

12 **Q. Have you ever called him from anything
13 other than your cell phone or your work line?**

14 A. No.

15 **Q. Has -- strike that.**

16 **Do you have Mr. Cohen's home phone number?**

17 A. I might. I don't know. I don't recall
18 ever calling him at home.

19 **Q. Okay. That was my question. Thank you.**

20 **And the phone calls that you do recall
21 having with Mr. Cohen, aside from the one where we
22 called you about the buying group, what were the
23 other calls about?**

24 A. The majority of them had to do with the
25 employment agreement that we had between our two

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1 organizations. Going back to the late '90s and
2 early 2000s, when we were going through our merger
3 mania years, Benco was expanding west, and so we
4 ended up in a lot of legal challenges with them,
5 whether -- if they hired one of our employees that
6 had a noncompete, you know, how we -- depending on
7 the state laws, we ended up spending a lot of money
8 on attorneys, and we almost always would end up
9 settling with something less than a 12-month period
10 that was on the employment agreement with our
11 employee.

12 We decided to save ourselves a lot of
13 money and decided if that happens everyone is free
14 to go work where they want to work provided that
15 they live within the confines of the contract, if
16 they had a contract with us primarily, and to make
17 sure that, you know, we cut that period down from
18 12 months to let's say there's a period of 90 days,
19 there's a period of 120 days. So it was actually
20 good for the employee that was leaving because their
21 noncompete time would be reduced.

22 Anyway, so it was those type of
23 discussions on, you know, come to that agreement.
24 And then any time a particular situation happened,
25 usually the lawyers talked, but every now and then

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1 Chuck and I would talk directly about it also.

2 **Q. Any other topics aside from that?**

3 A. He made a call to me one time relative to
4 him seeing a Henry Schein brand product on Amazon.

5 **Q. And what did he say?**

6 A. Tim, are you aware, something to the
7 effect, it wasn't the exact quote, that there's a
8 Henry Schein brand product available on Amazon? And
9 I was surprised to hear it because we don't sell
10 directly to Amazon, and so I said, you know, thanks
11 for the information, I wasn't aware of that,
12 appreciate the heads up.

13 And I did call him back, I think it was
14 two days later, saying thanks for bringing that to
15 my attention. It was happening through a different
16 channel, our medical division, and but I appreciated
17 him letting me know.

18 **Q. And what did you find out about that
19 product appearing on Amazon?**

20 A. So through our medical division, they work
21 with a company called Buy Direct Now or dotcom.
22 It's some dotcom organization, which there's no
23 problem on the medical side who they want to sell
24 to, but there's agreements that we have with our end
25 users that they cannot use Henry Schein brand in

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1 particular and then use it -- resell it to other
2 channels for distribution.

3 And so when that came to our attention,
4 medical saw that as well. They weren't aware,
5 medical, that that particular group is now selling
6 through Amazon themselves, and they took action on
7 that to make sure that BuyDirectNow.com, they can
8 continue to buy but they can't sell it through
9 Amazon.

10 **Q. So is it fair to say that Schein medical I
11 guess stopped the practice?**

12 A. No, didn't stop the practice. It enforced
13 its already-existing rules of we sell to our end
14 user, not end user to another sales channel.

15 So they were selling it to a company
16 called BuyDirect.com. They can then use that
17 product to sell to, you know, other physicians in
18 their case. It could not be used to sell.

19 So it was an agreement they already have.
20 It was enforcing an existing agreement. It wasn't
21 stopping anything other than enforcing the existing
22 agreements.

23 **Q. Why do you think Mr. Cohen called you
24 about this?**

25 MR. McDONALD: Object to the form.

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1 THE WITNESS: Same thing as the prior
2 example. I don't know.

3 BY MS. KAHN:

4 **Q. You have no idea. Okay.**

5 **Had you and Mr. Cohen talked about Amazon
6 prior to that?**

7 A. Not directly, no.

8 **Q. What about indirectly?**

9 A. We both sat on the board of the DTA, and
10 when Amazon was coming into the dental industry
11 there was discussion at the board about can they be
12 members of DTA or not, and ultimately they did.
13 They came onboard while I was the chair of the DTA.
14 And so there was discussion about Amazon at the
15 board of the DTA.

16 **Q. In the last ten years you've also
17 communicated with Mr. Cohen -- well, strike that.**

18 **Let me just make sure. Aside from what
19 you've already told me about, any other calls, any
20 other subjects?**

21 MR. McDONALD: Object to the form.

22 THE WITNESS: None that come to mind right
23 now.

24 BY MS. KAHN:

25 **Q. In the last ten years you've communicated**

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1 **with Mr. Cohen by e-mail from time to time?**

2 A. Correct.

3 **Q. And how often would you say that has
4 occurred?**

5 A. I really don't know.

6 **Q. And you've also communicated with
7 Mr. Cohen by text from time to time?**

8 A. Correct.

9 **Q. How often would you say that has occurred
10 in the last ten years?**

11 A. I really don't know.

12 **Q. Have you ever deleted a text message from
13 Mr. Cohen?**

14 A. No.

15 **Q. Have you ever deleted an e-mail from
16 Mr. Cohen?**

17 A. Just through my normal, you know, like hit
18 delete so it's not in my in box but it's still in my
19 deleted. So I don't do anything to completely clear
20 out anything from Chuck in my system, no.

21 **Q. In the last ten years has Mr. Cohen sent
22 you notes in the mail?**

23 A. Yes.

24 **Q. Can you tell me about those?**

25 A. Usually fun little, you know, notes about

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1 I saw your father's name listed, you know, in Dental
 2 Impressions magazine for, you know -- I forget the
 3 award that he received. He said, hey,
 4 congratulations. So it's congratulatory, nothing
 5 business related; social, you know, a little hey
 6 Packers beat the Eagles. We had a little bet;
 7 here's ten bucks he sent, or he had to send some
 8 cheesesteak or something along that line.
 9 **Q. You guys had a bet going?**
 10 A. We did at one point, yes. And if you
 11 could collect for me when you see him, that would be
 12 great.
 13 **Q. Has Mr. Cohen ever sent you anything in**
 14 **the mail regarding Smile Source?**
 15 A. About Smile Source, no.
 16 **Q. Has he sent you anything in the mail about**
 17 **buying groups in general?**
 18 A. No.
 19 **Q. Have you communicated with Mr. Cohen by**
 20 **any other means aside from what we've already talked**
 21 **about in the last ten years?**
 22 A. No.
 23 **Q. Have you and Mr. Cohen ever communicated**
 24 **about price?**
 25 A. No.

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1 **Q. Have you and Mr. Cohen ever communicated**
 2 **about manufacturers?**
 3 A. There was a communication he sent me about
 4 Dentsply at one point and Hu-Friedy relative to the
 5 Dentsply agreement that all suppliers have to sign
 6 with Dentsply per their rules, and we shared data
 7 and whatnot; and he had sent a message about, you
 8 know, looks like Hu-Friedy is looking to do
 9 something similar.
 10 **Q. And why was he reaching out to you?**
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I don't know.
 13 BY MS. KAHN:
 14 **Q. Was there an ask in there somewhere? What**
 15 **was he asking you to do?**
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I'd have to read the e-mail
 18 again. I don't know what the -- I do remember that
 19 is one of the communications I mentioned I forwarded
 20 on to counsel.
 21 BY MS. KAHN:
 22 **Q. And aside from that communication, have**
 23 **you communicated with Mr. Cohen about manufacturers**
 24 **in any other instances?**
 25 A. Not that comes to mind right now.

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1 **Q. Have you and Mr. Cohen ever communicated**
 2 **about a private practice account?**
 3 A. Not that I recall.
 4 **Q. Have you and Mr. Cohen ever communicated**
 5 **about a DSO?**
 6 A. Not that I recall.
 7 **Q. Or a corporate account?**
 8 A. Not that I recall.
 9 **Q. Have you and Mr. Cohen ever communicated**
 10 **about Patterson?**
 11 A. I'm sure from time to time, you know, if
 12 we're meeting he might make a joke about Patterson
 13 or vice versa, but not -- nothing, nothing of any
 14 significance, no.
 15 **Q. What do you mean when you say "might make**
 16 **a joke about Patterson or vice versa"?**
 17 A. As I said, Chuck is a funny guy. He may
 18 have referred to Patterson in some way, in some type
 19 of funny way. Nothing comes to mind, so, again, I'm
 20 a little bit speculating here, but I just don't know
 21 if he -- if there's any type of communication that
 22 he might have said something about, you know, where
 23 Patterson, the name, came up. It's not like we --
 24 you know, that it would not have come up at any
 25 point, but we don't talk about Patterson and in

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1 particular how we're going to go to market, you
 2 know, against them, what their strategy is, nothing
 3 of any significant importance.
 4 Are we done with this?
 5 **Q. Yes, thank you.**
 6 **(Exhibit 222 was marked for**
 7 **identification.)**
 8 BY MS. KAHN:
 9 **Q. You have Exhibit 222 in front of you?**
 10 A. I do.
 11 **Q. Let me know when you're ready.**
 12 A. Okay.
 13 **Q. Is this an example of a communication**
 14 **between you and Mr. Cohen involving a joke about**
 15 **Patterson?**
 16 A. Correct.
 17 **Q. And the first text message is from you to**
 18 **Mr. Cohen, correct?**
 19 A. That's correct.
 20 **Q. On June 13, 2012, you wrote, "Creative**
 21 **annual report this year. Nice job and congrats on**
 22 **successful year. Too many former Team Schein**
 23 **Members included though, smiley face."**
 24 **Do you see that?**
 25 A. Yes.

71 (Pages 281 to 284)

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1 **Q. Why did you send that?**

2 A. So they sent out a thing to -- you know,
3 their customers, many of their customers are our
4 customers. It was a deck of cards, and the deck of
5 cards had pictures of team members on it, had stats
6 on the company, how they did. So they were sharing
7 publicly with their customers information about
8 Benco's year and thanking customers, you know, for
9 their success.

10 So I thought it was creative, kind of
11 funny, and I was, you know, sending a joke about,
12 hey, too many of your team members are former, you
13 know, Team Schein members, ha-ha.

14 **Q. How did you come to get the deck of cards?**

15 A. I don't recall specifically. I think one
16 of our reps sent it in saying they were just in
17 Dr. Smith's office and look what I saw.

18 **Q. And Mr. Cohen responded to you, "Listen,
19 if it weren't for us, Patterson would smoke you
20 guys. You're lucky to have us."**

21 **Do you see that?**

22 A. I do.

23 **Q. Do you know what he meant when he said
24 "Patterson would smoke you guys"?**

25 A. It's his way of joking around, thinking

1 **Q. Do you ever see him in person at events?**

2 A. Occasionally. Again, Chicago Midwinter,
3 there's, again, this Oral Health America is a big
4 dinner that the trade industry puts on on Wednesday
5 night. I might see him there.

6 He comes from California, so if I would
7 attend one of the CDAs, he typically was at that
8 meeting and I might see him there.

9 **Q. What about Mr. Anderson?**

10 A. Most often I'd see him was at the DTA
11 board meetings. Since he left the board I don't see
12 him that often.

13 **Q. How often would you say you've
14 communicated with Mr. Anderson either in person or
15 via some other form in the last ten years?**

16 MR. McDONALD: Object to the form.

17 THE WITNESS: Out -- well, again, the DTA
18 board meetings, we had at least two meetings a year;
19 maybe one other, you know, meeting in Washington,
20 D.C., when we're lobbying as an industry.

21 So I'd see him as many as two to four
22 times a year at various trade events or industry
23 events I should say.

24 BY MS. KAHN:

25 **Q. And in the times that you have**

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1 that, you know, Patterson would be beating us in the
2 market and this is his way of saying instead it's
3 him, I think. I didn't communicate back with him on
4 this.

5 **Q. You can put that aside.**

6 **Have you communicated -- do you guys want
7 to take a break?**

8 MR. McDONALD: Fine. It's up to you.

9 THE WITNESS: I'm fine either way.

10 BY MS. KAHN:

11 **Q. Have you communicated with Mr. Guggenheim,
12 Paul Guggenheim of Patterson from time to time?**

13 A. Very rarely. I don't know Paul Guggenheim
14 nearly very well, but I have had communications with
15 him.

16 **Q. And what about Scott Anderson of
17 Patterson?**

18 A. Yes, I have met with Scott. Scott and I
19 worked on the -- we both were on the DTA board of
20 directors together during the same period of time.

21 **Q. Can you quantify in any way how often
22 you've communicated with Mr. Guggenheim in the last
23 ten years?**

24 A. I'd be surprised if it's more than two or
25 three.

1 **communicated, what have you discussed with
2 Mr. Anderson?**

3 A. The only business-related things we really
4 ever talked about was at one point I expressed an
5 interest or wanted to let him know that if he'd like
6 to talk to us about the medical division, we
7 believed they're struggling with the medical, if
8 they wanted to sell that I could connect him with
9 Mark Mlotek and, you know, maybe have some dialogue
10 on if they wanted to spin off medical we could take
11 that over. But most of it had to do with industry
12 DTA-related topics.

13 **Q. Has the DTA -- strike that.**

14 **The DTA has board meetings from time to
15 time?**

16 A. Correct.

17 **Q. And at one of these DTA board meetings are
18 you aware of any discussions about buying groups?**

19 A. I really don't -- I don't recall buying
20 groups specifically coming up as an agenda topic.
21 It's possible, but, again it doesn't come to mind.

22 **Q. You said specifically as an agenda item,
23 so I just wanted to make sure I broaden up my
24 question.**

25 **What about any discussions through DTA**

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1 about buying groups, do you recall anything like
2 that?

3 A. Not, sorry, no, not that I recall.

4 Q. Have you ever communicated with
5 Mr. Guggenheim about buying groups?

6 A. No.

7 Q. Have you ever communicated with
8 Mr. Anderson about buying groups?

9 A. No.

10 Q. Have you communicated with anybody
11 outside -- strike that.

12 Have you communicated with any of your
13 competitors about buying groups other than the
14 instance that you already talked about with
15 Mr. Cohen?

16 A. I don't believe so.
17 (Exhibit 223 was marked for
18 identification.)

19 BY MS. KAHN:

20 Q. Do you have Exhibit 223 in front of you?

21 A. Yes.

22 Q. Let me know when you're ready.

23 A. Should I go from the top down or the
24 bottom up, do you know?

25 Q. Top down.

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1 A. Okay.

2 Q. Exhibit 223 are various text message
3 exchanges; is that right?

4 A. Yes.

5 Q. I'm going to take you through the first
6 three pages of Exhibit 223.

7 The first one appears to be a text message
8 from Chuck Cohen's cell phone to your cell phone on
9 March 25th, 2013; is that correct?

10 A. Yes.

11 Q. And Mr. Cohen said to you, "You around?
12 Available to talk?"

13 A. Yes.

14 Q. And you responded shortly thereafter, "In
15 meeting right now. Scheduled til 5:00 p.m. Eastern.
16 Wide open thereafter. What's best for you?"

17 And then he responded, "You go to
18 meetings? I stopped years ago. Smiley face.
19 Great. Please call on my cell when meeting ends."

20 Did I read that correctly?

21 A. Yes.

22 Q. And those were communications between you
23 and Mr. Chuck Cohen, right?

24 A. Correct.

25 Q. And the reason that I ask is on the second

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1 page there I see that it's from you and your phone
2 number, but the To: line, there's no indication of
3 who that's to, so I wanted to confirm that was to
4 Mr. Cohen.

5 A. I believe so, yeah. Yes.

6 Q. Do you recall this text stream?

7 A. Yes.

8 Q. Is this what predated or is this what took
9 place right before the call from Mr. Cohen about the
10 buying group that you referenced?

11 A. Yes. It's that series I referred to
12 earlier. I didn't recall the order things happened,
13 but yes.

14 Q. Sure.

15 A. Yeah.

16 (Exhibit 224 was marked for
17 identification.)

18 BY MS. KAHN:

19 Q. And the court reporter just handed you
20 Exhibit 224, which is a short excerpt from your
21 phone records from AT&T.

22 Do you have that in front of you?

23 A. I do.

24 Q. Okay. And I just want to kind of walk you
25 through both Exhibit 223 and 224 in conjunction with

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1 each other so we can understand the timing of the
2 communications.

3 If you turn to the second page of
4 Exhibit 224, you'll see line item 3082 on
5 March 25th, 2013, from your cell phone to
6 Chuck Cohen's cell phone.

7 Do you see that?

8 A. I do.

9 Q. And that's the same day as these text
10 messages. It looks like you guys talked for
11 8 minutes and 35 seconds.

12 Were you there calling Mr. Cohen as a
13 response to his text messages to you?

14 A. Correct.

15 Q. And it looks like, as I stated, you guys
16 talked for 8 minutes and 35 seconds.

17 Aside from what you've already told us,
18 did you guys talk about anything else?

19 A. Again, with Chuck there's typically some
20 small talk, how's the fam., where are you at, some
21 jokes around, you know, being in meetings, you know,
22 that type of stuff, but nothing else
23 business-related, no.

24 Q. Did you guys discuss any terms relating to
25 anything?

73 (Pages 289 to 292)

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1 A. No.
 2 **Q. Did you guys discuss -- strike that.**
 3 **I think you testified that you didn't**
 4 **recall exactly the buying group's name, right?**
 5 A. Correct.
 6 **Q. That you talked about?**
 7 A. Correct. Sorry.
 8 **Q. Okay. I'm going to turn to the next page**
 9 **of Exhibit 223, the text messages, and that is from**
 10 **you to Mr. Cohen on the same day, March 25th, 2013.**
 11 **And you said, "Hi Chuck. Thanks for the call. Yes,**
 12 **I am good with the terms we discussed, and I look**
 13 **forward to joining Team Benco. PS. Want to confirm**
 14 **that the Benco tooth logo will include a picture of**
 15 **me. Smiley face."**
 16 **Do you see that?**
 17 A. I do.
 18 **Q. What did you mean -- well, strike that.**
 19 **Here you were thanking him for the call;**
 20 **is that right?**
 21 A. Yes.
 22 **Q. And why were you thanking him for the**
 23 **call?**
 24 A. Again, I was surprised that he called
 25 about the topic that he did, but I was really more

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1 setting up the joke about him calling, you know,
 2 thanks for the terms we discussed on my employment
 3 as if I was going to go to work for him, as if the
 4 call was him trying to recruit me. So I was being
 5 cute, nothing more than that.
 6 **Q. You were trying to -- I'm sorry, I don't**
 7 **quite understand. You were --**
 8 A. I was saying, "Hi, Chuck. Thanks for the
 9 call. Yes, I am good with the terms we discussed
 10 and I look forward to joining Team Benco," as if he
 11 was calling to recruit me, but he wasn't. I was
 12 just being cute. I have a dry sense of humor
 13 myself, and so I was trying to be cute and be funny
 14 with him and as a matter of fact, you know, make
 15 sure a picture of me is in your logo.
 16 **Q. And why did you send this text message**
 17 **with the joke in it?**
 18 A. I thought it was going to be funny.
 19 **Q. And this was right after a call that you**
 20 **were surprised by; is that right?**
 21 A. The actual --
 22 **Q. The topic.**
 23 A. The intent, ultimately what the purpose of
 24 this call was, yes, I was surprised about that.
 25 **Q. And you were surprised by it because --**

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1 **strike that.**
 2 **You were surprised by it from an antitrust**
 3 **perspective; is that right?**
 4 A. That's correct.
 5 **Q. Can you explain to me why you sent a joke**
 6 **after such a call?**
 7 A. I thought it would be funny.
 8 **Q. On the same day a few hours later,**
 9 **Mr. Cohen followed up with another text; isn't that**
 10 **right? And he said, "Here's a link to the press**
 11 **release we discussed," and there's a link, and in**
 12 **the link you can see the name Atlantic Dental Care**
 13 **PLC.**
 14 **Do you see that?**
 15 A. I do.
 16 **Q. Does this refresh your recollection that**
 17 **the group that you and Mr. Cohen were discussing was**
 18 **called Atlantic Dental Care?**
 19 A. It does.
 20 **Q. And is that the buying group that you guys**
 21 **were discussing?**
 22 A. I believe so, yes.
 23 **Q. Okay. So I guess I just want to clarify.**
 24 **Earlier when you said ADC is a Patterson customer,**
 25 **that's a different ADC?**

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1 A. Correct, yes, thank you.
 2 **Q. And just going back to the joke you made,**
 3 **did that stem from something you guys talked about**
 4 **during the call?**
 5 A. No.
 6 **Q. Why do you think Mr. Cohen sent you the**
 7 **press release?**
 8 A. I don't know.
 9 **Q. Did you guys talk about a press release**
 10 **regarding Atlantic Dental Care during the call?**
 11 A. I don't -- I don't recall that coming up.
 12 **Q. You didn't ask him for any follow-up**
 13 **information such as a press release?**
 14 A. No.
 15 **Q. Did you read the press release?**
 16 A. I don't believe so. I don't remember
 17 clicking on it and reading anything about them.
 18 **Q. Were you surprised when you received this**
 19 **text from Mr. Cohen?**
 20 A. It takes -- after the phone call I
 21 received, I don't know that I would say this
 22 surprised me like the call itself did, but I did
 23 tell him clearly on our call this is not the type of
 24 stuff you and I should be discussing, Chuck. So
 25 from that standpoint, yeah, that surprised me, but,

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1 again, some things about Chuck don't surprise me.

2 **Q. Do you have any -- can you think of any**
3 **reason why he would send this to you, the press**
4 **release?**

5 MR. McDONALD: Object to the form, asked
6 and answered.

7 THE WITNESS: No.

8 BY MS. KAHN:

9 **Q. Mr. Cohen then said to you, I think**
10 **responding to your joke, "Problem with this joke is**
11 **if Stan says 'Great.' It's a risk."**

12 **And you responded, "Ouch. Didn't think**
13 **about that response from Stan. Maybe Scott would**
14 **hire me. Thanks for the follow-up on the article.**
15 **Unusual."**

16 **Do you see that?**

17 A. I do.

18 **Q. And the Scott there is referring to**
19 **Scott Anderson of Patterson?**

20 A. That's correct.

21 **Q. Okay. Had you guys talked about**
22 **Mr. Anderson prior to this text?**

23 A. No.

24 **Q. Why did you thank him for the Atlantic**
25 **Dental Care article?**

298

1 A. That's a good question. I don't know.

2 **Q. Do you recall thanking him?**

3 A. Until reading this, no.

4 **Q. Can you think of any reason for you to**
5 **thank him?**

6 A. No.

7 **Q. And would you say that's inconsistent with**
8 **the way you responded to him during the call when he**
9 **brought up Atlantic Dental Care?**

10 A. It was -- I was clear with him on the call
11 that this is not the type of stuff you and I should
12 be talking about.

13 **Q. And you didn't write that down anywhere?**

14 A. No.

15 **Q. You didn't communicate in writing to him**
16 **that he should not be talking to you about this**
17 **subject?**

18 A. Not that I recall.

19 **Q. And why did you say "unusual"?**

20 A. Again, I don't even remember, recall
21 writing this line, so unusual that he sent it to me
22 maybe. I don't know.

23 **Q. But you don't recall writing this?**

24 A. I actually remember the exchange around
25 Stan and Scott and the hiring and that type of

299

1 stuff. Me actually at one point thanking him for
2 the follow-up on that article is something I don't
3 remember. I'm surprised myself to read it.

4 **Q. Why are you surprised?**

5 A. Because, as I stated, I was clear with him
6 that this is not anything we should be talking
7 about. I don't talk to him about prices; I don't
8 talk to him about strategy. And so I don't know
9 what I was thinking when I said, "Thanks for the
10 follow-up on the article. Usual."

11 **Q. Did Mr. Cohen try to understand from you**
12 **whether Schein was going to try to sell to Atlantic**
13 **Dental Care?**

14 A. I don't remember him asking me anything
15 about that. I told him I wasn't aware of who the
16 group was, which is maybe why he sent me the
17 article; I don't know. Maybe that's why I said, you
18 know, thanks for the follow-up on the article
19 because now I know who they are. I mean, I'm
20 guessing that's -- because I didn't know anything.
21 I didn't know anything about them.

22 **Q. During the call Mr. Cohen indicated to you**
23 **that they were not going to bid on Atlantic Dental**
24 **Care because it was a buying group; is that right?**

25 A. I don't recall him saying why, just that

300

1 he was -- they were not going to go to bid on it.

2 **Q. Did you guys -- you guys talked about a**
3 **buying group, right? That was your testimony before**
4 **about a buying group?**

5 A. Well, the fact that they were a buying
6 group. I don't -- again, there's a very brief
7 discussion once he got to the point of what he
8 wanted to talk about, to which I said, you know,
9 Chuck, this is not anything you and I should be
10 talking about, and we pretty much ended the call
11 after that with a little joking around about I think
12 he said something about no, no, I'm really calling
13 to recruit you. That's the thing that led me to do
14 some of that funny recruiting stuff.

15 **Q. So the joke did stem from something on the**
16 **call?**

17 A. I believe, again, something on that call
18 he joked about, you know, looking -- I'm calling you
19 to recruit you.

20 **Q. So your memory got refreshed because**
21 **earlier you said the joke didn't stem from the call?**

22 A. Yeah. Now it's coming back to me. I
23 think that's why it went back to me. I had that
24 thanks for the call, for joining the team, and, you
25 know, non -- well, maybe Scott will hire me if not

75 (Pages 297 to 300)

301

303

1 you, and then thanks for your follow-up on that
2 article, it was a group I wasn't aware of.

3 **Q. So going back, during the call you said**
4 **Mr. Cohen told you that they were going to -- they**
5 **were not going to bid, but I guess I wasn't clear on**
6 **whether you guys talked about it being a buying**
7 **group.**

8 A. I don't remember him specifically calling
9 them referring to them as a buying group or not on
10 the call. I know later he clarifies what he says on
11 it, but I don't remember he and I talking about that
12 specifically on the call, no.

13 **Q. Okay. Because earlier, before I started**
14 **showing you the documents, you testified that**
15 **Mr. Cohen called you about a buying group. And I**
16 **guess I'm just trying to understand, was that your**
17 **understanding at the time you got the call?**

18 A. At the time I got the call, I didn't know
19 why he wanted to call -- talk. In retrospect I knew
20 he wanted to talk about this ADC group, who is a
21 buying group.

22 All I'm saying is that -- so when I
23 testified earlier that is what he called me about,
24 he called it a buying group, not that he said those
25 words to me on the call.

1 A. Yeah, the timing.

2 **Q. Yeah, I can help you with that because I**
3 **spent a little time with this.**

4 So the time zone of the text messages
5 appeared to be UTC-5, and the time zone of these
6 three phone records are UTC.

7 A. I'm sorry, what's UTC?

8 **Q. UTC is a standard coordinated universal**
9 **time. It's a time zone that we do not live in.**

10 A. Okay.

11 **Q. And so by my calculations you called**
12 **Mr. Cohen on March 27th before he sent you the text**
13 **message on March 27th that said, "Tim, did some**
14 **additional research."**

15 A. Yeah.

16 **Q. So that's why I'm asking you about that**
17 **call before I move on to the next text message.**

18 A. Got it. No, I don't recall why I was
19 reaching out to him.

20 **Q. Okay. Can you think of any reasons?**

21 A. I cannot.

22 **Q. Okay. All right. And then moving to the**
23 **text message then that followed that call, on**
24 **March 27, 2013, Chuck wrote you to you, "Tim: Did**
25 **some additional research on the Atlantic Care deal.**

302

304

1 MS. KAHN: Got it. Can we take a short
2 break. I'm going to need a little break before we
3 go to the next part.

4 THE WITNESS: Sure.

5 (Whereupon, a recess was taken
6 from 2:53 p.m. to 3:04 p.m.)

7 MS. KAHN: We are back on the record.

8 BY MS. KAHN:

9 **Q. I'm going to go back to Exhibit 223 and**
10 **224.**

11 A. Okay.

12 **Q. If you look at Exhibit 224, line item**
13 **3089, do you see that?**

14 A. I do.

15 **Q. Do you want a piece of paper so that it**
16 **makes it easier for you to --**

17 A. Sure. Thank you.

18 **Q. So that's on March 27th, 2013. You tried**
19 **to call Mr. Cohen, and it looks like no answer**
20 **because the call is for just six seconds.**

21 **Do you see that?**

22 A. I do.

23 **Q. And do you know why you were calling**
24 **Mr. Cohen? I see you're trying to look at the text**
25 **messages to sort of match up the time.**

1 **Seems like they have actually merged ownership of**
2 **all the practices. So it's not a buying group, it's**
3 **a big group. We're going to bid. Thanks."**

4 **Do you see that?**

5 A. I do.

6 **Q. And does this refresh your memory of**
7 **whether the two of you talked -- whether the term**
8 **"buying group" came up during the call?**

9 A. I still don't believe it did.

10 **Q. Okay. Your testimony is that the term**
11 **"buying group" never came up?**

12 A. I'm saying I don't recall it. I don't
13 believe it did, so I don't recall that it came up
14 during our discussions, no.

15 **Q. You don't recall one way or the other, or**
16 **you don't --**

17 A. Correct.

18 **Q. -- believe it came up?**

19 A. I don't recall one way or the other.

20 **Q. Okay. Thank you. Were you surprised to**
21 **receive this text message from Mr. Cohen?**

22 A. Yes.

23 **Q. And earlier you testified that you had, in**
24 **fact, told him to stop communicating about Atlantic**
25 **Dental Care; is that right?**

305

1 A. I told him that we should -- he and I
2 should not be talking about these type of topics,
3 correct.
4 **Q. Okay. Did you tell him to stop
5 communicating to you about this topic?**
6 A. I don't know exactly what my words were,
7 whether it was stop or we shouldn't be, you know,
8 don't. Something along the lines of I'll send him
9 the message, Chuck, this is not a conversation that
10 you and I should be having.
11 **Q. Can you think of any reason why he would
12 have sent you this text message after you delivered
13 the message that you two should not be having a
14 conversation about this?**
15 A. I cannot.
16 **Q. Okay. Following Chuck's message to you,
17 he then says a few minutes later, "Also, noticed you
18 rang me this a.m. No message. Call later?"
19 Do you see that?**
20 A. I do.
21 **Q. And there by my lining up the record with
22 the text messages, I take that to refer to the time
23 that you tried to call his cell earlier on March 27;
24 is that right?**
25 A. That's -- that's what 3089 is?

306

1 **Q. Yes.**
2 A. I see that, yes.
3 **Q. And does this refresh your memory about
4 why you tried to call him?**
5 A. No.
6 **Q. And looking back on the phone records, I'm
7 going to move you to line 8 -- sorry, 3091. It
8 looks like on March 27, that day, you tried to call
9 Mr. Cohen again.
10 Do you see that?**
11 A. I do.
12 **Q. And do you know why you tried to call him
13 again?**
14 A. I do not.
15 **Q. Do you know if it had anything to do with
16 Atlantic Dental Care?**
17 A. No.
18 **Q. Is it possible that you were trying to
19 reach out to him about Atlantic Dental Care?**
20 A. I don't believe so, no.
21 **Q. Can you think of any reason why you were
22 trying to reach out to him on March 27th?**
23 A. I cannot.
24 **Q. Okay. He then -- moving on to the text
25 messages, he then looks like saw your call and said,**

307

1 **"Out for dinner, talk tomorrow?"
2 Do you see that?**
3 A. I do.
4 **Q. And you responded, "Sure. Call cell.
5 Bon appétit."
6 Do you see that?**
7 A. Yes.
8 **Q. And just so I have the record clear, do
9 these further text messages refresh your memory
10 about why you were trying to call Mr. Cohen?**
11 A. No.
12 **Q. Actually I skipped two text messages. If
13 you could go back to Henry Schein, it ends in 332
14 and 333.**
15 A. Okay.
16 **Q. So on March 26, 2013, Mr. Cohen sent you a
17 message saying, "As per my guy in Raleigh: Dental
18 Alliance, they apparently get 7 percent off of
19 catalog pricing just for joining. Dr. Ben Koren is
20 the doctor [sic] involved. A guy named Sam
21 contacted me about a year ago and asked if Benco was
22 interested. Told him he was out of his tree."
23 Do you see that?**
24 A. I do.
25 **Q. And then he goes on to say, "Could be a**

308

1 **rumor, sometimes stories go around. Thanks."
2 What's your understanding of what these
3 two text messages are about?**
4 A. Well, the first one is Chuck telling me
5 what he has learned about Dental Alliance. I'm not
6 sure what "Could be a rumor, sometimes stories go
7 around," I don't know what that's referring to.
8 **Q. Is your testimony that Dental Alliance is
9 the same thing as Atlantic Dental Care?**
10 A. I -- you know what? I assume so. I don't
11 know.
12 **Q. Do you recall receiving this text message
13 about Dental Alliance?**
14 A. I do now after seeing it again, but I
15 never spoke to him about Dental Alliance. That's
16 why I say earlier for some reason I was thinking
17 they're one and the same. I don't know if they are
18 one and the same or not.
19 **Q. So you have -- you don't know Dental
20 Alliance to be something separate from Atlantic
21 Dental Care?**
22 A. I don't know if they're one and the
23 same --
24 **Q. Okay.**
25 A. -- or not.

77 (Pages 305 to 308)

309

1 **Q. Sorry. Aside from what he wrote, you**
 2 **don't know why Mr. Cohen was sending you what he**
 3 **did --**
 4 A. Correct.
 5 **Q. -- about Dental Alliance?**
 6 A. That's correct.
 7 **Q. Nor do you understand when he said, "Could**
 8 **be a rumor, sometimes stories go around"?**
 9 A. Correct.
 10 **Q. And after these two text messages, did you**
 11 **guys have any further discussions about specifically**
 12 **a group called Dental Alliance?**
 13 A. Not that I recall.
 14 **Q. Okay. So moving on to the phone records,**
 15 **it looks like on March 28th, which is a day after**
 16 **the text message exchanges that we've looked at,**
 17 **Mr. Cohen tried to call you on two occasions, and**
 18 **those are line items 3097 and 3098.**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. And do you know why he was trying to call**
 22 **you?**
 23 A. I do not.
 24 **Q. Okay. Was it to return your call, as we**
 25 **had seen in the end of the text messages?**

310

1 A. Possibly. I don't know.
 2 **Q. And, again, you don't recall why you were**
 3 **trying to reach him?**
 4 A. No.
 5 **Q. And if you'd turn to the next page of the**
 6 **phone records, on March 3rd, 2013, line item 3120,**
 7 **you tried to call Mr. Cohen, and it says that the**
 8 **elapsed time is 37 seconds.**
 9 **Do you recall calling him on April 3rd,**
 10 **2013?**
 11 A. I do not.
 12 **Q. Do you know what that could have been**
 13 **about?**
 14 A. No.
 15 **Q. And if you skip a line and go to item**
 16 **3122, it looks like Mr. Cohen called you back, and**
 17 **you guys spoke for 5 minutes and 36 seconds.**
 18 **Do you see that?**
 19 A. I do.
 20 **Q. Do you know what that call was about?**
 21 A. I do not.
 22 **Q. Is it possible that you guys talked about**
 23 **Atlantic Dental Care?**
 24 MR. McDONALD: Object to form.
 25 THE WITNESS: I don't believe so, no.

311

1 BY MS. KAHN:
 2 **Q. And why? Why not?**
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I had one discussion with
 5 Chuck when he first called me. I don't recall
 6 talking to him again about that ever again.
 7 BY MS. KAHN:
 8 **Q. Could you guys have been talking about --**
 9 **is it possible that you guys talked about Dental**
 10 **Alliance?**
 11 A. I don't believe so.
 12 **Q. Can you think of any other reasons that**
 13 **you guys were talking on March 3rd, 2013?**
 14 A. I cannot.
 15 **Q. Sorry, April 3rd, 2013.**
 16 A. No.
 17 **Q. Okay. We can put that aside, both of**
 18 **those.**
 19 **(Exhibit 225 was marked for**
 20 **identification.)**
 21 BY MS. KAHN:
 22 **Q. You have Exhibit 225 in front of you, and**
 23 **let me know when you're ready.**
 24 A. Okay.
 25 **Q. Exhibit 225 is a pretty long e-mail**

312

1 **chain --**
 2 A. Yeah.
 3 **Q. -- about Atlantic Dental Care; is that**
 4 **right?**
 5 A. Yes.
 6 **Q. Okay. Do you recall this e-mail chain?**
 7 A. I do now, yes.
 8 **Q. I'm going to turn you to the very first**
 9 **e-mail from Michael Porro to you on March 31st,**
 10 **2013.**
 11 **Do you see that?**
 12 A. I do. Is that 164453?
 13 **Q. Yes, it's Bates number Henry**
 14 **Schein-000164453.**
 15 **Who is Michael Porro?**
 16 A. He is our zone general manager in this
 17 market.
 18 **Q. And Mr. Porro wrote, "Tim," I'm going to**
 19 **skip the next parenthetical, he said, "Tim,**
 20 **following up on the chat we had about the Atlantic**
 21 **Dental Care group in Virginia."**
 22 **Do you see that?**
 23 A. I do.
 24 **Q. Did you chat with Mr. Porro about Atlantic**
 25 **Dental Care?**

313

315

1 A. I don't recall the conversation, but
 2 apparently I did here.
 3 **Q. Okay. So you have no recollection of the**
 4 **conversation?**
 5 A. This e-mail is bringing back the whole
 6 discussion via e-mail back, but I don't recall a
 7 discussion with Michael in particular at all.
 8 **Q. Got it. And do you know if you reached**
 9 **out to Mr. Porro?**
 10 A. No. I'm sure he reached out to me.
 11 **Q. And why is that?**
 12 A. I would have no reason to reach out to
 13 Michael as it relates to this group.
 14 **Q. This is the group that you were texting**
 15 **with Mr. Chuck Cohen about; is that right?**
 16 A. Apparently.
 17 **Q. And do you see that this is just a few**
 18 **days after the text messages and the phone call**
 19 **between you and Mr. Cohen about Atlantic Dental**
 20 **Care?**
 21 A. The initial call that was about Dental
 22 Care Alliance [sic]. I don't know that he and I
 23 ever had a call about Atlantic Dental Care.
 24 **Q. Okay. Let's go back to the text messages.**
 25 **That's Exhibit 223. You have that back there, if**

1 **Michael Porro based -- strike that.**
 2 **Is it possible that you reached out to**
 3 **Michael Porro after getting the call and text from**
 4 **Mr. Cohen?**
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I would not have reached out
 7 to Michael Porro to tell him anything about a
 8 discussion I had with Chuck.
 9 BY MS. KAHN:
 10 **Q. Okay. Well, okay. Would you have reached**
 11 **out to Michael Porro -- aside from telling him about**
 12 **any discussion with Chuck Cohen, is it possible that**
 13 **you reached out to Michael Porro about Atlantic**
 14 **Dental Care after discussing it with Mr. Cohen?**
 15 A. I don't believe so.
 16 **Q. And Mr. Porro is a zone manager; is that**
 17 **right?**
 18 A. I believe that's correct at this time.
 19 Yes, zone manager.
 20 **Q. Do zone managers typically reach out to**
 21 **you directly?**
 22 A. They can from time to time.
 23 **Q. And do you recall the circumstances under**
 24 **which Mr. Porro may have reached out to you?**
 25 A. Well, you did skip the parenthetical,

314

316

1 **you can grab it.**
 2 **So the first three are Mr. Cohen trying to**
 3 **reach out to you, and you guys talked on March 25th,**
 4 **2013, for 8 minutes and 35 seconds. Thereafter,**
 5 **Mr. Cohen on March 25th sent you a link to Atlantic**
 6 **Dental Care.**
 7 A. I apologize, you're correct. The first
 8 one was that, yeah, yeah.
 9 **Q. Okay.**
 10 A. Like I said, I don't know that -- at one
 11 point he refers to I think the same group as Dental
 12 Alliance. I don't know. But, anyway, so that's --
 13 they may be one and the same is all I'm thinking. I
 14 don't know.
 15 **Q. The Dental Alliance?**
 16 A. Right.
 17 **Q. Okay. But in Exhibit 225 you're having a**
 18 **conversation with Michael Porro about Atlantic**
 19 **Dental Care in Virginia; is that right?**
 20 A. An e-mail exchange, yes.
 21 **Q. And it's your understanding that this is**
 22 **the same group as the group that Mr. Cohen called**
 23 **and texted you about?**
 24 A. Yes.
 25 **Q. Is it possible that you reached out to**

1 which it does say, Dave, you were out. That gives
 2 me the impression that he reached out to Dave first;
 3 since Dave wasn't in, then I'm reading this as
 4 that's why he reached out to me.
 5 **Q. So do zone managers reach out to you if --**
 6 **strike that.**
 7 **Zone managers report to the area manager,**
 8 **right?**
 9 A. Correct.
 10 **Q. Mr. -- and the area manager for Mr. Porro**
 11 **would have been Jake Meadows; is that right?**
 12 A. That's correct.
 13 MR. McDONALD: Object to the form. That's
 14 an incorrect statement.
 15 BY MS. KAHN:
 16 **Q. Is your understanding that -- well, who**
 17 **does Mr. Porro report to directly?**
 18 MR. McDONALD: Currently?
 19 MS. KAHN: At the time of this e-mail.
 20 THE WITNESS: I believe Jake Meadows. It
 21 might have been -- I don't know for sure that he had
 22 the area structure set up at this time. Let me look
 23 through this. I don't see Jake on any of these.
 24 At this time I don't believe we had the
 25 area structure. Jake was our zone general manager

317

1 of the west.
 2 BY MS. KAHN:
 3 **Q. Okay. So did Mr. Porro report to who,**
 4 **Dave Steck?**
 5 A. Dave Steck.
 6 **Q. Okay, got it. And do you recall**
 7 **anything -- can you think of any reason why**
 8 **Mr. Porro would have reached out to you about**
 9 **Atlantic Dental Care?**
 10 A. I believe he reached -- the way I read
 11 this, he reached out to Dave first; you were out,
 12 this is the first you're seeing this, following up
 13 with the chats. I believe he then reached out to me
 14 because as I'm reading through the rest of his
 15 exchange it looked like they were looking to turn
 16 something around pretty quickly.
 17 **Q. So he wrote to you and Mr. Dave Steck,**
 18 **"Bobby, let me know. We were invited to bid on the**
 19 **business of this group. See attached. They gave us**
 20 **a list of products they want us to bid on. At first**
 21 **this looks like just a buying group, which led me to**
 22 **initially believe we could do more harm if we bid**
 23 **versus not submitting a bid."**
 24 **Do you see that?**
 25 A. I do.

318

1 **Q. Is it your understanding that prior to**
 2 **March 31st Schein was not planning to bid on**
 3 **Atlantic Dental Care?**
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I don't know.
 6 BY MS. KAHN:
 7 **Q. And Mr. Porro goes on to say, "I talked to**
 8 **Joe and Jake and we talked as well, Tim."**
 9 **Do you see that?**
 10 A. I do.
 11 **Q. Do you know why he would have talked to**
 12 **Joe and Jake?**
 13 A. They were involved in our working with,
 14 you know, figuring out our go-to-market strategy on
 15 buying groups as we had our prior discussions about.
 16 **Q. And he said, "The thinking is that Benco,**
 17 **a decent player in the market and always hungry,**
 18 **will put in a bid."**
 19 **Do you see that?**
 20 A. I do.
 21 **Q. You did have a direct conversation with**
 22 **Mr. Porro aside from this e-mail discussion; is that**
 23 **right?**
 24 A. Again, I don't recall a discussion. Just
 25 based on the one line, following up on the chart,

319

1 apparently we had.
 2 **Q. Okay. And would that have been by**
 3 **telephone?**
 4 A. I would assume so when he says it's a
 5 follow-up from the chat. I mean, that's -- I don't
 6 know how else you chat with someone.
 7 **Q. Mr. Porro is not in your -- is he in your**
 8 **office?**
 9 A. No, correct, he's out east.
 10 **Q. Okay. And you're not aware of any sales**
 11 **meetings around this time where you would have been**
 12 **in person with each other?**
 13 A. That's correct.
 14 **Q. Okay. So most likely if there was a chat**
 15 **it would have been by phone?**
 16 A. Correct.
 17 **Q. And he said, "The thinking is that Benco,**
 18 **a decent player in the market and always hungry,**
 19 **will put in a bid."**
 20 **Did you tell Mr. Porro that Benco was**
 21 **going to bid on Atlantic Dental Care?**
 22 A. No.
 23 **Q. How are you -- how do you know?**
 24 A. I never had a discussion with Michael
 25 Porro about anything to do with Benco.

320

1 **Q. But you don't recall the chat, right, that**
 2 **we were just referring to --**
 3 A. That's correct.
 4 **Q. -- between you and Mr. Porro?**
 5 A. Sorry. That's correct.
 6 **Q. So is it possible that during that chat**
 7 **you brought up Benco?**
 8 A. I would not have brought up Benco, no.
 9 **Q. Why not?**
 10 A. I wouldn't have.
 11 **Q. Why not?**
 12 A. I just wouldn't have.
 13 **Q. Benco is one of your top competitors,**
 14 **right?**
 15 A. That's correct.
 16 **Q. Okay. Why is it unusual for you to bring**
 17 **up one of your competitors?**
 18 A. I don't believe I would have.
 19 **Q. Why not?**
 20 A. I don't believe I would -- I don't know
 21 how else to answer. I don't believe I would have.
 22 **Q. Did you ask Mr. Porro to do some research**
 23 **on Atlantic Dental Care?**
 24 A. As I said, I don't recall having a
 25 discussion with Michael Porro.

321

323

1 **Q. And the next e-mail is from you to Michael**
 2 **Porro, John Chatham, Dave Steck and others in**
 3 **response, and in that second line you said, "I think**
 4 **we should take a shot at this."**

5 **Do you see that? It's ending --**

6 A. Yes.

7 **Q. Do you see that? Okay.**

8 A. Yes.

9 **Q. Why did you -- there were you saying that**
 10 **you think Schein should take a shot at bidding on**
 11 **Atlantic Dental Care?**

12 A. Yes.

13 **Q. Why?**

14 A. Well, based on the lengthy e-mail from
 15 Michael where he's talking about the group, the size
 16 of the group that's already doing business with us,
 17 you know, the other details that are in here, and he
 18 says that he's hearing from them that they're not a
 19 co-op or a buying group, that they have one
 20 corporate structure, a unified group of mature
 21 practices, so they were fitting into some of the
 22 things I would say, you know, here's one that we
 23 would work with. I think it shows that I am open to
 24 working with buying groups exactly as we've been
 25 talking about.

1 **involved in Atlantic Dental Care?**

2 A. So Comfort Dental seems to be very
 3 similar. It's in our special markets group already.
 4 If there's 53 locations and they are going to be
 5 more of an organized structure, there's some things
 6 that we should be working with special markets.

7 Again, this is before we were -- we had
 8 the segments split up, right, so that we were doing
 9 our best to really work together with special
 10 markets in certain areas and that. And based on the
 11 size of this potential group, their go-to-market
 12 strategy and the number of dentists that were
 13 potentially involved, it felt like it could fit
 14 maybe better special markets at that time than in
 15 our group.

16 **Q. And you said to various individuals on**
 17 **April 4th, "Our first reaction to this was it was**
 18 **simply a buying group and we were going to walk**
 19 **away."**

20 **Do you see that?**

21 A. Yes.

22 **Q. Is it fair to say that if a group was**
 23 **simply a buying -- well, strike that.**

24 **What did you mean "simply a buying group"?**

25 A. Meaning, again, the only thing that they

322

324

1 **Q. There was no volume commitment or mandate**
 2 **with this buying group; is that right?**

3 A. What they were saying in here, they did
 4 mention the merch. spent for the group was probably
 5 two and a half million, not the three and a half
 6 million in the letter. I'm not sure what the letter
 7 is referring to. If we win, the upside is the other
 8 business we don't currently get, so a combination of
 9 all those things.

10 **Q. Okay. I'm going to turn you to the e-mail**
 11 **that's on page ending in Bates number 164444.**

12 A. Okay.

13 **Q. And here you are roping in special**
 14 **markets; is that right?**

15 A. Roping in? Did I say roping in?

16 **Q. Here you are looping in special markets;**
 17 **is that right?**

18 A. Oh, okay. Yes, I was saying we should
 19 have brought special markets in this much sooner,
 20 although this seems to have snuck up on us rather
 21 quickly. Our first reaction was simply it was a
 22 buying group and we were going to walk away, and the
 23 more that Michael dug into this, it was more of a
 24 Comfort Dental type group.

25 **Q. Why were you getting special markets**

1 were offering members was some type of, you know,
 2 price negotiation. Nothing else aligned with, you
 3 know, all the things we've talked about that seemed
 4 to be outlined in Michael's lengthy e-mail, that
 5 that's all it was. We are happy with how we're
 6 approaching customers already in that market, so we
 7 would not work with them in that regard.

8 **Q. Okay. Was that Schein's general practice,**
 9 **that if a group -- if the buying group was simply a**
 10 **buying group, to use your terms, that Schein would**
 11 **not deal with them?**

12 MR. McDONALD: Object to the form.

13 THE WITNESS: I think I've gone through
 14 this multiple times. So if -- we've worked with a
 15 number of group practices or group -- buying groups
 16 in the past. We've continued to analyze them one by
 17 one, and depending on if our values are lined up
 18 with theirs and how they approach the market, can
 19 they commit to the volume, there's a multitude of
 20 factors.

21 So no, our practice was not to not work
 22 with them, and depending on the size, a local
 23 manager could, you know, make a decision. This was
 24 a pretty big group, which is why Bobby was bubbling
 25 it up and working with Michael on it, and Michael

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1 wanted to confirm with us that is this something we
 2 want to do or not.
 3 **Q. Is it fair to say that prior to these**
 4 **e-mail exchanges Schein was not going to bid on**
 5 **Atlantic Dental Care?**
 6 A. I have no idea.
 7 **Q. Well, you said here, "Our first reaction**
 8 **to this was it was simply a buying group and we were**
 9 **going to walk away."**
 10 **Do you see that?**
 11 A. I do.
 12 **Q. What did you mean there?**
 13 A. Well, it was based on Michael's e-mail to
 14 me. Bobby let me know we were invited to bid on
 15 this, see attached. They gave us a list of
 16 products. At first this looked just like a buying
 17 group, which led me initially to believe that we
 18 could do more harm if we bid versus not bidding, and
 19 he went on to say there's a lot more he learned
 20 about.
 21 So I was going based off of what Michael
 22 was -- I never met with this group. I don't know
 23 them. It was based on our local manager's input.
 24 **Q. Sure. So based on your local manager's**
 25 **input, prior to this e-mail exchange which started**

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1 **on March 31st, 2013, Schein was not going to bid for**
 2 **Atlantic Dental Care; is that right?**
 3 MR. McDONALD: Objection to form.
 4 THE WITNESS: I don't know that to be the
 5 case.
 6 BY MS. KAHN:
 7 **Q. Because you didn't independently verify**
 8 **it, or why not?**
 9 A. I know when we got the invite and when he
 10 says, Bobby, we were invited to bid on the business
 11 group, he could have got that a month ago. I don't
 12 know when he got that. So we could have been
 13 invited a month ago, and for whatever reason I'm
 14 saying we should have brought special markets into
 15 this sooner, and based on what -- you know, now that
 16 you guys have learned more about them, it seems to
 17 me it would be a better fit in special markets, but
 18 at this point let's roll forward, which is why I
 19 then included Hal to make sure that we didn't create
 20 an internal conflict.
 21 **Q. Okay. But at a certain point Schein was**
 22 **not going to bid on Atlantic Dental Care; is that**
 23 **fair to say?**
 24 MR. McDONALD: Object to form.
 25 THE WITNESS: I don't know that to be the

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1 case.
 2 BY MS. KAHN:
 3 **Q. Isn't that what Mr. Porro is telling you?**
 4 A. Where did you see that?
 5 **Q. He said, "At first this looked like just a**
 6 **buying group, which led me initially to believe we**
 7 **would do more harm if we bid versus not submitting a**
 8 **bid."**
 9 A. Doesn't that say that -- I'm sorry, what
 10 I'm saying I don't know when that occurred, when we
 11 were invited; was that a month prior, was it more
 12 recently, when did they learn about -- you know,
 13 more about them. I don't know.
 14 **Q. Sure. And timing aside, is it fair to say**
 15 **at some point in time Schein's inclination was that**
 16 **it was not going to bid? It was going to walk away**
 17 **from Atlantic Dental Care?**
 18 MR. McDONALD: Object to the form, asked
 19 and answered.
 20 THE WITNESS: I don't know how else to
 21 respond in the way I already have. I don't know
 22 when they had first meetings if they were initially
 23 going to or not. The way I read it, when they first
 24 heard about it, it was perceived to be just a buying
 25 group and then when they learned more about it they

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1 would do more.
 2 So I don't know that anyone came to the
 3 conclusion at any point that we were not or was
 4 walking away. If we just walked away I don't think
 5 we would have had these meetings and continued to
 6 learn more about them.
 7 **Q. Why did you say our first reaction to this**
 8 **was it was simply a buying group and we were going**
 9 **to walk away?**
 10 MR. McDONALD: Object to the form, asked
 11 and answered.
 12 Please move on, Lin, please.
 13 MS. KAHN: You can answer, unless you're
 14 instructing him not to answer.
 15 MR. McDONALD: He can answer it, but I'm
 16 asking you to please move on. You've asked him this
 17 question three times now.
 18 MS. KAHN: With all due respect --
 19 MR. McDONALD: Yes, you have, at least
 20 multiple times.
 21 MS. KAHN: I haven't gotten an answer.
 22 MR. McDONALD: Multiple times you've
 23 asked.
 24 MS. KAHN: I've asked, but I haven't
 25 gotten an answer.

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1 THE WITNESS: I don't know how else to
2 answer you.
3 BY MS. KAHN:
4 **Q. I'm just asking at a certain point in**
5 **time, you know, putting aside when the timing was,**
6 **was it a month before, was it two months, putting**
7 **aside when this actually occurred, at a certain**
8 **point in time was Schein's inclination to walk away**
9 **from Atlantic Dental Care?**
10 MR. McDONALD: Object to the form, asked
11 and answered.
12 THE WITNESS: And I'm telling you I'm now
13 copying Hal and Randy in special markets. They
14 haven't been involved in this chain prior. So what
15 I'm updating them on is our first reaction based on
16 what I've seen, I don't know when that was, what the
17 timing was, as I've said many times, was to walk
18 away because it looked like it was just a simple --
19 BY MS. KAHN:
20 **Q. Okay.**
21 A. All right. So this is where Hal, for the
22 first time, I'm bringing him into the loop on that.
23 **Q. Got it. So when you say walk away, it**
24 **means not bid; is that right?**
25 MR. McDONALD: Object to the form.

1 he was on an earlier exchange. Yes, he was on the
2 one that John Chatham sent.
3 **Q. Okay. Well, I'm referring to your e-mail**
4 **where you said, "We should have brought SM team into**
5 **this much sooner."**
6 **Do you see that?**
7 A. I do.
8 **Q. Okay. So was there a certain point in**
9 **time when the SM team was not brought in?**
10 A. I don't know when they were or when they
11 weren't. I'm now bringing up -- Hal Muller is the
12 president of the special markets group. I'm now
13 bringing him and his right-hand man Randy Foley into
14 the loop. He wasn't copied before.
15 I don't know what, if anything, Colan
16 Rogers was communicating with them prior.
17 **Q. At this point -- strike that.**
18 **Was your understanding that Atlantic**
19 **Dental Care was a buying group?**
20 A. As we've defined them, a form of, yes.
21 **Q. Is Comfort Dental a buying group?**
22 A. As I explained when their name came up in
23 that earlier exchange, they've always been a part of
24 special markets. They have -- they're structured
25 different where they own some of their practices.

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1 THE WITNESS: Possibly.
2 BY MS. KAHN:
3 **Q. Okay.**
4 A. It possibly could be that. It could be,
5 you know, maybe see, wait if they're going to come
6 back. I mean, it really is up to the local team
7 what we're going to do there.
8 **Q. Okay. At a certain point Schein was going**
9 **to walk away, and then there was a change in**
10 **thinking. Is that fair to say?**
11 A. No, that's not what I'm saying.
12 **Q. Can you explain to me why that's not fair**
13 **to say?**
14 MR. McDONALD: Object to the form.
15 THE WITNESS: I don't know how to answer
16 that.
17 BY MS. KAHN:
18 **Q. You don't know how to answer that**
19 **question?**
20 A. I do not.
21 **Q. Special markets wasn't roped in**
22 **previously, right, wasn't looped in previously,**
23 **right?**
24 A. Colan Rogers was part of the special
25 markets team at this point, I believe, and I believe

1 They don't own all of them. But those that do join
2 consider themselves a part of Comfort Dental, and
3 every one of the locations buys everything -- well,
4 there's a significant majority of the purchases
5 through Henry Schein.
6 **Q. And what made you think that Atlantic**
7 **Dental Care was similar to Comfort Dental?**
8 A. I didn't know for sure that they were. I
9 was just using that as an example. And the way
10 Michael was outlining in his meeting with whoever he
11 met with that they were positioning themselves not
12 to be -- not a co-op, not a buying group, one
13 corporate structure, unified group of mature
14 practices, that to me sounds a little bit like how
15 Comfort Dental positions themselves.
16 **Q. And was part of the reason that Schein**
17 **decided to bid because it believed Benco would bid?**
18 A. No.
19 **Q. Okay. So Benco's -- let me just turn back**
20 **to Mr. Porro's e-mail, the Bates number ending in**
21 **164454. At the top he said, "The thinking is that**
22 **Benco, a decent player in the market and always**
23 **hungry, will put in a bid."**
24 **Do you see that?**
25 A. I do.

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1 **Q. Did that -- go ahead.**

2 A. So it's possible from, you know, not
3 reading that, you know, Michael is -- knowing that,
4 maybe he wanted to -- that was another influence for
5 him to want to get involved.

6 **Q. Prior to this chain had you seen Benco do
7 any deals with a buying group?**

8 A. Not that I -- I would assume so, but I
9 don't know that for sure for a fact.

10 **Q. And why do you assume so?**

11 A. I believe that they've worked with groups
12 in the past.

13 **Q. What groups?**

14 A. I don't know.

15 **Q. Why do you believe they've worked with
16 groups in the past?**

17 A. Just an exchange with our leadership team.

18 **Q. Who in your leadership team?**

19 A. Jake and Joe primarily.

20 **Q. That they indicated to you that Benco was
21 selling to buying groups?**

22 A. That they had relationships with other
23 large groups, whether they're buying groups, they
24 have some DSOs. How they structure them, I have no
25 idea how they structure their segments. I know how

1 BY MS. KAHN:

2 **Q. You've been handed Exhibit 226, which is
3 an e-mail chain around February of 2012, and the
4 subject is Smile Source customer list; is that
5 right?**

6 A. That's correct.

7 **Q. Do you recall this e-mail chain?**

8 A. I do now, yes.

9 **Q. Is it fair to say that February 2012 was
10 right after the time that Schein's relationship with
11 Smile Source ended?**

12 A. I have to tell you I thought -- because
13 I'd referred to the '04-'06 period for a period of
14 time, I didn't think that we had any -- did much
15 with them again until just recently.

16 So I think my prior testimony about those
17 dates must have been off. It must have been more in
18 this '10 to '12 time period.

19 So yes, it looks like around this time is
20 when we severed ties.

21 **Q. And in the earliest e-mail from you ending
22 in Bates number 178391, the earliest in time, you
23 were sending an e-mail on January 31st, 2012, to
24 Kevin Burniston and John Chatham with a cc to a
25 couple of people saying, "How are we doing with**

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1 we segment ours. And based on that, we -- through,
2 you know, the field leadership team, we believed
3 that Benco has also been involved in bidding on our
4 projects or on other groups.

5 **Q. Okay. So just to be clear, Jake Meadows
6 and Joe Cavaretta have informed you in the past that
7 Benco was selling to buying groups?**

8 A. I don't remember the -- the answer is yes,
9 but I don't know the specific group other than that
10 they're in the market as well.

11 **Q. And what about Patterson, did you have an
12 understanding of whether Patterson was in the
13 market?**

14 A. I don't recall.

15 **Q. Did you recall hearing anything from Jake
16 or Joe about Patterson and buying groups?**

17 A. I do not.

18 **Q. And do you know why it is that you would
19 have heard about Benco but not about Patterson?**

20 A. No.

21 **Q. You can put that aside.
22 (Exhibit 226 was marked for
23 identification.)**

24 THE WITNESS: Okay.
25

1 them?"

2 **I assume that means Smile Source
3 customers?**

4 A. Yes, the members as customers, yeah.

5 **Q. And then you said, "What tracking
6 mechanism do we have in place to track performance
7 going forward?"**

8 **Do you see that?**

9 A. I do.

10 **Q. Why were you asking that question?**

11 A. I really -- I don't recall other than, you
12 know, we'd want to know -- it seems to me at this
13 point we either knew we were being terminated or it
14 was going out to bid, and so how are we doing with
15 the customers that were in the group.

16 **Q. And do you have a sense of what you were
17 trying to track specifically?**

18 A. Yeah, how much volume did we have at risk
19 here.

20 **Q. Got it. How much are the -- are the
21 Smile Source members currently purchasing from
22 Schein?**

23 A. Correct.

24 **Q. Let me turn you to the latest e-mail from
25 you on February 2nd, 2012, on the first page there.**

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1 A. Yes.

2 **Q. And you said, starting that third sentence**
 3 **on February 2nd, 2012, "I am really interested to**
 4 **see how and what we can do to retain these customers**
 5 **and judge how effective they're buying group model**
 6 **is. Let's really take this serious and get after**
 7 **it. I'm really less concerned about the actual**
 8 **revenues, although very important too, rather more**
 9 **about what we can do to kill the buying group model,**
 10 **exclamation point, exclamation point."**

11 **Do you see that?**

12 A. I do.

13 **Q. Why did you want to kill the buying group**
 14 **model?**

15 A. I probably should have meant -- put -- the
 16 word should be their instead of the because I was
 17 referring to their buying group model. And it
 18 sounds like they had just terminated us, so kill is
 19 probably a strong word, but we wanted to make sure
 20 that we were as successful in retaining those
 21 customers and not allowing their model to survive.

22 **Q. Why is that?**

23 A. Because we wanted -- again, we don't want
 24 anyone between us and our customers. So if those
 25 customers are now -- this is a classic example of if

1 we have at risk that potentially goes out the door.

2 **Q. Why did the relationship end with**
 3 **Smile Source?**

4 A. I don't recall specifically, but, again,
 5 originally they were -- really they didn't add --
 6 they didn't have any of the additional business
 7 solution type things that attracted and actually
 8 retained their members. There were things in their
 9 contracts with members at the time that I understand
 10 that mandated that they purchase from the group, you
 11 know. And I'm sure that they were coming back to us
 12 at this point saying, okay, we've been together a
 13 year or two, we're going out to bid again, so
 14 so-and-so is going to give a bigger discount. Well,
 15 is that all that this is about? That changes our
 16 relationship.

17 **Q. Your testimony is that Smile Source was**
 18 **asking for a bigger discount, and that's why the**
 19 **relationship ended?**

20 A. That's actually not what I said.

21 **Q. Okay.**

22 A. What I said is I don't recall specifically
 23 why. I believe there were a multitude of factors.

24 One of them was they were looking for a bigger
 25 discount, or, you know, going out to bid, you know,

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1 they left to now go to Burkhart, if Burkhart is
 2 their new supplier, we don't want to lose those
 3 members as customers. So we would want to do
 4 whatever we could to not allow their particular
 5 model, however they structured it at that time, to
 6 work. We wanted to make sure that those customers
 7 stayed with us.

8 **Q. So instead of "the" you meant to write**
 9 **"their"?**

10 A. I referred to them as their buying group
 11 model is above. I was talking about their buying
 12 group model.

13 **Q. And why did you put kill in all caps?**

14 A. Just to emphasize. Poor choice of words.

15 **Q. Is it fair to say that you saw**
 16 **Smile Source's buying group model as a negative**
 17 **thing in February of 2012?**

18 A. So two things. That's what I was trying
 19 to understand how are we doing with them to begin
 20 with, you know; did we -- how were those customers
 21 doing anyway, you know, prior to -- did anyone --
 22 the fact that we were partners with them, were they
 23 growing with us, were we gaining any, you know,
 24 incremental revenue or not, so to understand that,
 25 and then clearly if they leave how much business do

1 for better pricing programs.

2 They didn't have a mandate for their
 3 members to purchase; they didn't have the other
 4 business solution things and go-to-market strategy
 5 like we had. So there was a multitude of reasons.

6 **Q. Was special markets, was Schein's special**
 7 **markets selling to Smile Source at some point in**
 8 **time in the past?**

9 A. I don't know when it was, but that's how
 10 the original relationship started, yes.

11 **Q. And then Smile Source got moved to HSD; is**
 12 **that correct?**

13 A. That's correct.

14 **Q. And why did that move come about?**

15 A. For the reasons that we've outlined.

16 From -- all the different locations make their
 17 independent decisions on purchasing. They weren't
 18 required to buy.

19 So our field sales consultants were still
 20 very actively involved with their members who are
 21 our customers, and it was creating a conflict. They
 22 were going to market; they were advertising, you
 23 know, join Smile Source, get a better price from
 24 Henry Schein. We tell -- we were telling them that
 25 we don't want you -- you can't do it that way.

341	<p>1 That's not how we want your go-to-market to be 2 because that's not how we market. We don't market 3 to our customers based on price. 4 So it's that they don't tell our value 5 proposition, our total value story the way they were 6 structured then. 7 Q. Whose -- strike that. 8 Were you involved in special markets 9 selling to Smile Source in the initial iteration of 10 the relationship? 11 A. No. 12 Q. Whose -- who was involved? 13 A. I don't know if it was Hal directly or if 14 it was someone on Hal's team. 15 Q. And at some point when it got moved to 16 Henry Schein Dental, whose decision was it to move 17 Smile Source? 18 A. Collectively Hal and I together. 19 Q. Did something prompt that decision to come 20 about? 21 A. The noise it was creating in the field 22 relative to how they were going to market and 23 marketing to the general -- the general 24 practitioners as to why to join, it was only about 25 saving discounts on supplies. That's not our total</p>	343	<p>1 Q. And why do you say that? 2 A. He'd flip-flop on it. I mean, one week he 3 was for, one week he's not. It was -- by the time 4 we did it he knew it made sense; and then once they 5 were still with us we were doing, I believe, okay 6 with them. 7 Once they left, it was Hal's opinion that 8 he could have held -- you know, hung onto them if, 9 you know, we didn't try doing all the other 10 value-added service type things. I don't think he's 11 right, but that was his opinion. 12 Q. I don't understand. What do you mean he 13 could have hung onto them if we didn't do all the 14 other value-added services? 15 A. Hal, that was just Hal's opinion, that he 16 didn't think -- you know, to this day he doesn't 17 believe in the value of a sales rep, and that's what 18 was driving the relationship with the specific 19 customers which are members of Smile Source. 20 Q. So what's your understanding of why Hal 21 thought not having the value-added services, why 22 that would help Schein keep Smile Source? 23 A. What I'm saying, I don't understand why he 24 believes that. 25</p>
342	<p>1 value story. And they weren't owning the practices. 2 It wasn't -- it didn't fit the model. They 3 weren't -- it wasn't like a Comfort Dental where 4 everyone -- once they joined they all buy. It was 5 very sporadic. 6 And so Hal even was of the opinion from 7 his perspective, you know, don't want to create that 8 conflict. It was also that wasn't working from his 9 perspective the way he had thought it was going to 10 go, so let us take it over and see if we can help 11 drive more volume and have our field sales 12 consultants working with their members to help them 13 grow their revenue and therefore their purchases and 14 buy more from us. And it worked for the accounts 15 that we already had a relationship with, and it 16 didn't change the relationship for those that we 17 didn't already. 18 Q. And how did the pricing for Smile Source 19 change after the move from special markets to HSD? 20 A. I don't think it did. We honored the 21 pricing that they had at the time. 22 Q. And just so I understand, was Hal Muller 23 in favor or against keeping Smile Source in special 24 markets? 25 A. It depends which week you talked to him.</p>	344	<p>1 (Exhibit 227 was marked for 2 identification.) 3 BY MS. KAHN: 4 Q. You have Exhibit 227 in front of you. 5 A. I do. 6 Q. Let me know when you're ready. 7 A. Okay. 8 Q. Exhibit 227 is an e-mail chain, and the 9 subject is Smile Source dated October 3rd, 2014. 10 Do you recall this e-mail chain? 11 A. I do. 12 Q. There's an e-mail from you to 13 Hal Muller -- strike that. Let me start from the 14 earliest e-mail. 15 Mr. Muller wrote to you, "Are we sure we 16 don't want to let SM to try to get this business 17 back under SM rules of play?" 18 And was SM special markets? 19 A. Yes. 20 Q. And was Hal here asking about 21 Smile Source? 22 A. Yes. 23 Q. Is it fair to say that he wanted to -- he 24 was asking whether Schein should try to get 25 Smile Source back under special markets?</p>

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1 A. Well, again, at this point they're no
2 longer -- their members are no longer customers of
3 ours. So he's saying -- I think he cut and pasted
4 this in some type of notice somewhere that they
5 opened up 58 new offices during the month of
6 September. He's saying they're growing, should we
7 go after them again; and if so, should we approach
8 it via special markets versus through HSD.

9 **Q. And your response was, "What's the
10 difference between now and then? What do we do when
11 a private customer joins their GPO?" Is that --**

12 A. That's a Privileges customer. Privileges
13 is the name of our customer loyalty program.

14 **Q. Got it. So you said what do we do when a
15 Privileges customer joins their GPO.**

16 **What did you mean when you said what's the
17 difference between now and then?**

18 A. So what's the difference, what's the
19 difference between how they're structured now versus
20 then? I mean, are we just going to head down the
21 same road where we had it for a year or two,
22 everything goes back out for bid? So you bring them
23 all on, you lose them, you bring them all on; it's
24 not a model we want to work in.

25 So I was asking what's the difference

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1 between now and then with Smile Source.

2 **Q. Meaning you could lose them if you brought
3 them back on?**

4 A. Well, meaning if we'd lost them a year
5 ago, what's changed between now and then that they
6 would want to come in.

7 **Q. Okay. And what did you mean when you said
8 what do we do when a Privileges customer joins their
9 GPO?**

10 A. So we have -- a Privileges customer is one
11 of our -- call it our better customers. Again, it's
12 our customer loyalty program, so they do more
13 business with us. So what do we do with that
14 customer when they join, which this is what was
15 creating our conflict before in the field was that
16 if they were, again, only a price play and that's
17 all that they were doing, adding for their members,
18 that does not fit with what we're doing for our good
19 customers, our Privileges customers.

20 And so if they've changed their model and
21 maybe they're doing more than just -- this is not
22 just a, quote-unquote, price play, it's all they
23 have for members, I was asking what's the
24 difference. And then what do we do if that's all
25 they still are? Isn't the conflict the same today

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1 that it was two years ago when we lost them?

2 **Q. Why would something that's only a price
3 player, why would that not fit with what you're
4 doing with the good customers, the Privileges
5 customers?**

6 A. It goes back to before. We have this
7 customer care wheel. There's a lot we provide our
8 customers. Price is a component of it. But we
9 don't -- we feel if you win a customer only on
10 price, you know, that's the way you'll lose a
11 customer is only a price. If they don't understand
12 the full value of all that we bring and all that we
13 do, then they don't understand the Henry Schein
14 value proposition.

15 **Q. And then Mr. Muller wrote to you, "They
16 are all private customers. What do we do when they
17 have over 1,000 offices? Just throwing it out
18 there."**

19 **And you wrote, "Then we wave flag and
20 commit."**

21 **Do you see that?**

22 A. I do.

23 **Q. What did you mean when you said "then we
24 wave flag and commit"?**

25 A. If at that point they grew to be 1,000

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1 members, then obviously creating value for their
2 members in our mind beyond just a price play. So if
3 that's the case, then we would -- if they really --
4 to me that would mean they have changed their model;
5 they've grown significantly. Their members see
6 value in what they're providing, and we would want
7 to be a part of that because then we can help add to
8 that value.

9 **Q. So when you said "wave flag and commit,"
10 you were referring to supplying Source One or trying
11 to go after that business?**

12 A. It's not -- Smile Source.

13 **Q. Smile Source, sorry.**

14 A. Correct.

15 **Q. Okay. And why does if they -- if they get
16 to over 1,000 offices, why does that indicate to you
17 an entity that you would want to supply?**

18 A. Well, he threw out the number --

19 **Q. Sure.**

20 A. -- so I was just responding to that.
21 There's no magic number.

22 **Q. Yeah, but I'm just trying to understand
23 why does the number of offices indicate something to
24 you?**

25 A. Well, it indicates they're not only

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1 attracting but they're retaining members.
2 **Q. You're familiar with the Dental Trade**
3 **Alliance?**
4 A. I am.
5 **Q. And you were on the board at some point,**
6 **right?**
7 A. Correct.
8 **Q. What years were you on the board?**
9 A. Well, I don't know the exact years. There
10 was a year in the late 2000s I was on. Then the
11 current chair of the board was -- became a
12 Henry Schein employee. So we can't have two members
13 on the board so I went off for about a year and a
14 half; he went back off the board and I went back on.
15 So between 2007 and 2014 I was on and off
16 the board, kind of that window at that time frame.
17 **Q. And after 2014 have you continued to play**
18 **some role with respect to DTA?**
19 A. I attend the annual meeting.
20 I'm sorry, let me be clear. So I was the
21 chair from '13 to '14; then I was the immediate past
22 chair from '14 to '15; and then I went off the board
23 in 2015.
24 **Q. Got it. You're familiar with the**
25 **exhibitors' committee of DTA?**

1 down.
2 **Q. And what was the exhibitors' committee**
3 **going to do about that?**
4 A. Work with --
5 MR. McDONALD: Object to form.
6 THE WITNESS: Sorry.
7 MR. McDONALD: Go ahead.
8 THE WITNESS: Work with the various trade
9 associations, you know. For example the Yankee
10 Dental meeting, it's a great meeting. It's in
11 Boston in January of every year. They have a person
12 that's responsible for the exhibitor relationships.
13 She does a marvelous job in listening to exhibitors
14 as to how to bring more value.
15 The ADA is, quite honestly, just the
16 opposite.
17 BY MS. KAHN:
18 **Q. So I just want to be clear. The**
19 **exhibitors' committee of DTA goes to the**
20 **associations to talk about value of the trade shows?**
21 A. And how to make them -- so, again, their
22 members are our customers. And so when they come to
23 the trade show floor -- so we pay the trade
24 associations to exhibit. There's expenses,
25 significant expenses outside of that, but that's

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1 A. Yes.
2 **Q. And what is that?**
3 A. So the board trade has committees to
4 address certain industry challenges or opportunities
5 or trends, and one had to do with exhibits, that
6 there was a decreasing value in showing up at trade
7 shows. And so what we wanted to do is create an
8 exhibits committee to start working with the various
9 trade associations on bringing up the value of the
10 meetings.
11 **Q. Why did DTA want to create an exhibits**
12 **committee, why at the DTA level?**
13 A. Well, the DTA, its core purpose is to
14 bring more value to its members, and the members are
15 dealers and manufacturers. And there's multiple
16 ways that that can happen, whether it's, you know,
17 lobbying on particular, you know, laws that we think
18 would impact our customers; you know, we want to
19 help our customers grow and how can we as an
20 industry help that happen.
21 One of the issues that we were having as
22 an association as its members was the decreasing
23 value of exhibiting at trade shows. We all exhibit
24 at trade shows, and it costs a lot of money to
25 exhibit, and the value of those had been coming

1 part of what we do is we pay the trade association
2 to exhibit. We want to make sure that the members
3 that are -- the members of the trade association
4 that are our customers, when they come to the trade
5 shows, that they actually come to the exhibit floor
6 and purchase and listen to our story.
7 If they come but, you know, they show up
8 but their attractions are outside or off the exhibit
9 floor and they're not coming onto the exhibit floor,
10 that's where we're challenged as the exhibitor to
11 get the mind share of the customers.
12 So we work with them to say, you know, why
13 not create more activity instead of outside of the
14 trade -- the convention hall than we have inside the
15 convention hall to attract the members in.
16 **Q. And who -- is there -- strike that.**
17 **How many people are on the exhibitors'**
18 **committee?**
19 A. I really don't know.
20 **Q. Is there a Schein representative on the**
21 **committee?**
22 MR. McDONALD: Currently, is that your
23 question?
24 BY MS. KAHN:
25 **Q. Let's start with currently.**

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1 A. I don't know. I would assume -- I would
2 assume so, but I don't know for sure.

3 **Q. What about in the past, do you know?**

4 A. I know there have been, but I don't know,
5 you know, who has been.

6 **Q. What about Patterson and Benco, do you
7 know if their representatives --**

8 A. Again, I would assume so, but I don't
9 know. There's other manufacturers and other
10 members.

11 **Q. You're familiar with the Texas Dental
12 Association?**

13 A. Yes.

14 **Q. And you're familiar with TDA's endorsement
15 of Source One?**

16 A. Well, the TDA Perks Program that is
17 supplied by Source One, yes.

18 **Q. Got it. And following the creation of the
19 TDA Perks Program that was supplied by Source One,
20 Henry Schein pulled out from the following TDA trade
21 show; is that right?**

22 A. That's correct.

23 **Q. And was that in 2014 that TDA -- that
24 Schein pulled out of the trade show?**

25 A. That sounds correct.

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1 **Q. Did Schein attend 2015?**

2 A. No.

3 **Q. Did Schein attend in 2016?**

4 A. Yes.

5 **Q. And did you make the decision to attend in
6 2016?**

7 A. Yes.

8 **Q. Why did you make that decision?**

9 A. Because we were hearing from our customers
10 that they missed us there and they wanted us to
11 attend.

12 **Q. What specifically were you hearing?**

13 A. That they missed us there and they wanted
14 us to attend.

15 **Q. Okay. How did you come to hear that?**

16 A. Through our sales team.

17 **Q. Do you recall who told you that
18 information?**

19 A. No.

20 **Q. Anybody at all? You have no recollection?**

21 A. Well, between our regional manager and
22 zone general manager down there, Randall McLemore,
23 he was hearing from the reps; so I was hearing it,
24 you know, more so from Joe via what was happening
25 with Randall.

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1 Stanley Bergman himself, our chairman and
2 CEO, was at an event where he was speaking when the
3 ADA was in San Antonio, I believe, and he had
4 customers approach him and say we really miss you
5 guys at our trade show. And so Stanley was, you
6 know, a strong push with me saying, you know, he was
7 hearing it from customers there; I really think we
8 should go back there.

9 So it was a multitude of channels like
10 that.

11 **Q. Why would a customer miss Schein? What
12 are they missing exactly?**

13 A. We have great relationships with our
14 customers, and the fact that we didn't go really
15 didn't impact our sales in the market, and so -- but
16 when our customers say, you know, we miss you, we
17 want you at the show, we decided to join -- I'm
18 sorry, to go back.

19 **Q. I'm just trying to understand what it is
20 that customers missed. Just not seeing the Schein
21 faces during the TDA trade show?**

22 MR. McDONALD: Object to the form.

23 THE WITNESS: Or whatever we're
24 exhibiting, we might have a show special going on at
25 the time; there might be -- we might sponsor an

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1 event. We went back in '16; we sponsored a luncheon
2 and invited customers to come to it.

3 You'll have to ask the customers, you
4 know, why they see value with that. The fact that
5 they were telling us that they missed us and they
6 wanted us to come back led to our decision to go
7 back.

8 BY MS. KAHN:

9 **Q. What's the show specials that you're
10 referring to?**

11 A. Just, you know, if a -- we have various
12 marketing promotions that are going on all the time,
13 even right now.

14 **Q. Like a discount of some sort?**

15 A. Possibly, or it could be, you know, if a
16 manufacturer has got something going on,
17 manufacturers might have a buy three/get four type
18 thing, and they can place that order anywhere on the
19 floor, we want to make sure we get that order, that
20 type of thing.

21 **Q. So prior -- strike that.
22 So your understanding is that customers in
23 part were missing these show specials that Schein
24 would offer at the TDA trade show?**

25 MR. McDONALD: Object to the form.

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1 THE WITNESS: No, I was using that as an
2 example. When you asked what were they missing, I
3 said I don't know; it could be this, it could be
4 that.
5 BY MS. KAHN:
6 **Q. Sure.**
7 A. They were telling us that they wanted us,
8 so I don't know, you know.
9 **Q. Okay.**
10 A. I didn't specifically talk to a customer
11 about it.
12 **Q. Okay. But you have a general**
13 **understanding of what your customers like and what**
14 **they need --**
15 A. Uh-huh.
16 **Q. -- and want, right?**
17 A. Yes.
18 **Q. So I'm just trying to understand what it**
19 **is about Schein that your customers were missing.**
20 MR. McDONALD: Object to the form.
21 THE WITNESS: I don't know. That's why,
22 you know, we've said we're trying to ourselves
23 understand the value of trade shows, and even by the
24 two years that we didn't go our sales were not
25 impacted.

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1 So we didn't -- we don't see -- we see a
2 dying value or declining value I should say in
3 exhibiting and showing at trade shows. In some
4 cases we've reduced our footprint.
5 When it came to the TDA, for a multitude
6 reasons we decided not to go at all. But once we
7 made that decision, we didn't know for a couple of
8 years; we were hearing from customers we'd really
9 like to have you back. We said okay.
10 BY MS. KAHN:
11 **Q. And what was the reason that Schein pulled**
12 **out of the TDA trade show in 2014?**
13 A. It goes back to we paid to be at the show.
14 We work with our trade associations. We view them
15 as an independent party, a neutral party, if you
16 would. They help put the floor together, to bring
17 the exhibit together. They -- you know, they
18 bring -- they track members that come into the trade
19 show, including continuing education courses, and we
20 pay them for us to show an exhibit.
21 What they started to do then was to say,
22 okay, well, thank you, exhibitors, come pay us, but
23 once customers start showing up on the floor they
24 were actually saying, okay, but now go buy your
25 supplies through our own program called TDA Perks.

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1 So we're paying to be at the trade show to
2 sell our goods, but their members, who are our
3 customers, are coming onboard and they're saying
4 bypass those booths, place your orders here. That,
5 to us, they lost their neutrality as a neutral party
6 when it came to their trade show.
7 **Q. The TDA Perks Program that's being**
8 **supplied by Source One is still going on today,**
9 **right?**
10 A. That's my understanding, yes.
11 **Q. And why is it that that is no longer**
12 **reason enough for Schein not to attend the TDA trade**
13 **show?**
14 A. It showed in the two years that we didn't
15 go we realized it did not affect our volume, did not
16 affect our relationship with customers, and but the
17 fact that they were asking us to come back, we
18 decided to go back.
19 **Q. Even though TDA is no longer a neutral**
20 **platform?**
21 A. That's correct.
22 **Q. So had you not anticipated that your**
23 **customers would miss you at the trade show?**
24 A. Didn't know for sure.
25 **Q. Prior to Schein's decision to pull out of**

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1 **the 2014 TDA trade show, you've come to be aware of**
2 **communications between Schein employees and Benco**
3 **employees about the TDA trade show; is that right?**
4 A. Yes.
5 **Q. And have you also come to be aware of**
6 **communications between Schein employees and**
7 **Patterson employees about the TDA trade show?**
8 A. Yes.
9 **Q. Do you have any understanding of why those**
10 **communications were taking place?**
11 A. No.
12 **Q. You cannot think of any reason sitting**
13 **here today?**
14 A. Well, no.
15 **Q. Did anybody say anything about why those**
16 **communications were taking place?**
17 A. No, I mean, other than people generally
18 wanted to understand and know who was going to the
19 show or not.
20 **Q. Why would people want to generally**
21 **understand that?**
22 A. It would be good to know what's happening
23 at a trade show.
24 **Q. Why is that?**
25 A. It's important. I mean, it's -- if --

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1 we're going to make our decision solely based on
2 what we believe is good for us and for our
3 customers. We find it interesting to understand
4 what's happening with others, but it was not a
5 determining factor on anything that we were deciding
6 to do.

7 **Q. Why was it interesting?**

8 A. We just find it interesting.

9 **Q. Why?**

10 A. I don't know. I find you interesting.

11 **Q. Why? You don't have to answer that.**

12 MR. McDONALD: I don't know. But you're
13 at seven hours, so if you'll try to move it along,
14 that would be great.

15 BY MS. KAHN:

16 **Q. Are you aware of similar communications
17 between Schein employees and Patterson or Benco
18 employees on subjects other than TDA trade show
19 attendance that you're now aware of?**

20 A. Can you give me an example? I mean, I
21 don't -- nothing comes -- you mean the TDA mind set,
22 so no, I don't.

23 **Q. I don't have any examples.**

24 A. Nothing comes to mind.

25 **Q. Okay. And I guess what I'm trying to**

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1 that's a good idea for the TDA and TDA Perks to do
2 that to their exhibitors. And us in particular,
3 we're not going to attend if, in fact, that's what
4 they were going to do.

5 **Q. And, in fact, Joe Cavaretta and others who
6 were in communications with TDA tried for several
7 months to set up a meeting with TDA; is that right?**

8 A. That's correct.

9 **Q. Can you help me understand why Schein
10 didn't just pull out and why Schein spent a lot of
11 effort trying to talk the TDA into changing its
12 mind?**

13 A. Absolutely. It's made up of our
14 customers, so we don't want to fight with our
15 customers, right.

16 And so this is -- you know, the members of
17 the TDA board are dentists, and they're doing what
18 they believe is in the best interests of their
19 members; and we were trying to highlight the fact
20 that, well, by not treating their exhibitors
21 properly at the trade show itself, which we're
22 paying to be at, to then point their -- to start the
23 relationship and our purchases somewhere else other
24 than us, then they're no longer a neutral party. We
25 wanted to talk to them about why we don't think

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1 understand is why there was communications, why
2 there were communications between Schein employees
3 and Patterson and Benco employees on TDA but not
4 with respect to other issues.

5 A. I don't know.

6 **Q. Is it fair to say that Schein -- Schein
7 met with TDA, right, to talk about the TDA Perks
8 Program and Source One?**

9 A. Yes, we did.

10 **Q. And from your perspective what was the
11 point of that meeting?**

12 A. We wanted to let them know that we believe
13 that they're crossing the line of neutrality; that
14 they shouldn't expect us to continue to pay them to
15 exhibit when the moment their members walk on the
16 floor they are pointing them somewhere else. We
17 viewed that as that's our role at the trade shows
18 and that -- you know, so we're trying to convince
19 them, you know, if you're going to go down this
20 road, we think you should choose us, and let me show
21 you why.

22 But even in part of those presentations
23 from what I understand it wasn't -- between
24 Dean Kyle and Joe Cavaretta who met with them, we
25 were trying to show them why we don't think that

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1 that's a good strategy for them and in particular us
2 as a paying exhibitor.

3 **Q. You said that you don't want to fight with
4 your customers.**

5 **Did you view pulling out of the trade show
6 as in some way a fight with your customers?**

7 A. Not our customers in general, but, you
8 know, there's ten -- I don't know how many members
9 are on the board. Let's say five of them might have
10 been customers of ours. Some from my understanding
11 were actually supporting our position and trying to
12 convince the TDA not to do this; some were saying
13 they should do this.

14 So those are the ones we didn't want to be
15 arguing with and fighting with.

16 **Q. Just the board members?**

17 A. Correct.

18 **Q. And was your decision to pull out of TDA?**

19 A. Ultimately, yes.

20 **Q. Did anybody at Schein disagree with your
21 decision?**

22 A. Not at the time that I recall. In
23 retrospect I think we would like to have done things
24 different, but at the time no.

25 **Q. Why do you say in retrospect you would**

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1 **have liked to do things different?**
 2 A. We would not have had the opportunity to
 3 meet.
 4 **Q. I'm sorry?**
 5 A. I'm trying to be facetious.
 6 **Q. Oh.**
 7 A. We wouldn't be sitting here right now.
 8 **Q. Got it.**
 9 A. And we think that it's -- yeah.
 10 **Q. Did Mr. Breslawski or Mr. Stanley Bergman**
 11 **indicate that they were not in favor of pulling out**
 12 **of TDA when you made the decision?**
 13 A. Jimmy was ultimately supportive of it with
 14 challenging along the way. Stanley, you know, is
 15 always looking for, always looking for, you know,
 16 ways to make amends with anyone or, you know, to
 17 come to, you know, a mutual understanding versus,
 18 you know, not working together.
 19 So, I mean, at the time I think he
 20 understood it, but I can't tell you that he
 21 necessarily wholeheartedly agreed, but he
 22 understands that my responsibility is the U.S.
 23 dental market. I trusted our local teams to come to
 24 their recommendation and -- but it was ultimately my
 25 decision to say, you know what, let's not go.

1 **Q. Are you aware of anyone within Schein that**
 2 **took the position that it would actually be**
 3 **advantageous for Schein to attend if Patterson was**
 4 **not going to attend?**
 5 A. Not that I recall, no.
 6 **Q. Does that argument or position make sense**
 7 **to you at all?**
 8 A. It could.
 9 **Q. How so?**
 10 A. If for some reason others backed out but
 11 we went, would the membership there, you know, do
 12 anything to say, look, you know, Schein is
 13 supporting us, even though any others didn't? It's
 14 possible; I don't know. We'd be speculating on what
 15 some potential scenarios are.
 16 MS. KAHN: All right. Let's go off the
 17 record, and I'll wrap it up after that.
 18 (Whereupon, a recess was taken
 19 from 4:23 p.m. to 4:28 p.m.)
 20 MS. KAHN: Back on the record.
 21 BY MS. KAHN:
 22 **Q. Did you want to clarify something?**
 23 A. Yes. I think earlier you had asked the
 24 question about when we decided to pull out. The way
 25 things actually flowed is we had a meeting, so Jake

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1 **Q. And at the time that you made the**
 2 **decision, you were aware that Patterson had already**
 3 **decided to withdraw, right?**
 4 A. We never know for sure until you actually
 5 get to a convention floor.
 6 **Q. You had market intelligence at the time**
 7 **that you decided that Patterson was likely not**
 8 **going; is that right?**
 9 A. Again, I did not know for sure. What we
 10 do know is you can go right now and go to their
 11 website and see who has registered or not. I don't
 12 know at that time if Patterson was already off the
 13 registration or not; I don't recall. But their
 14 decision to show or not show had no bearing on our
 15 decision whether we were going or not.
 16 **Q. I know counsel has indicated he wants to**
 17 **get you out of here as early as possible, so I want**
 18 **to avoid marking a bunch of documents.**
 19 **But do you recall in communications**
 20 **discussing Patterson having either decided or was**
 21 **going to pull out of the meeting?**
 22 A. Yes.
 23 **Q. Okay. And did it matter to you that**
 24 **Patterson had already pulled out?**
 25 A. No.

1 and Joe had -- sorry, Joe and Dean had that meeting
 2 with the folks at the TDA, gave a presentation.
 3 There were parts of the meeting we thought went
 4 well, some parts of it didn't think went so well;
 5 but later one of the people on the board had called
 6 Joe, said you know what, actually you've got us
 7 thinking about some stuff, we think that, you know,
 8 some of what you said made sense. So we started to
 9 get the sense, you know what, we might be able to
 10 make this work. Then he even said can you delay
 11 your decision for a few months to Joe. We said you
 12 know what, as long as you're committing that we will
 13 continue discussing and talking about this, yes.
 14 It was later then one of our managers down
 15 there, Kyle Steck, was working our events team on
 16 our booth when we realized on the website they had
 17 actually taken us off the site. So we got -- we
 18 actually feel we were uninvited to the show, and
 19 then that's what snowballed to ultimately the
 20 decision for us not to go.
 21 **Q. Okay. I appreciate that. I just have a**
 22 **few more questions and I'll be done.**
 23 **I think I got this from you earlier, but**
 24 **you do have a general sense of what the FTC's**
 25 **investigation of Schein is about?**

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1 A. Yes.
 2 **Q. Okay. And with that in mind, aside from**
 3 **what we've already talked about today, is there**
 4 **anything else that you would like to share with us**
 5 **to help us determine how to move the investigation**
 6 **forward?**
 7 A. No.
 8 MS. KAHN: All right. With that, I have
 9 no further questions.
 10 MR. McDONALD: Okay. Thanks.
 11 MS. KAHN: Do you have anything?
 12 MR. McDONALD: No.
 13 MS. KAHN: Off the record.
 14 (Whereupon, the deposition was
 15 concluded at 4:30 p.m.)
 16
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1 CORRECTION PAGE
 2
 3 CASE NAME: In re: Henry Schein, Inc.
 4 DEPOSITION OF: Tim Sullivan
 5 DATE TAKEN: May 25th, 2017
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 7 PAGE LINE CHANGE
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 24 DATE: _____
 25 SIGNATURE: _____

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1 In re: Henry Schein, Inc.
 2 Matter No. 151090
 3
 4 I hereby certify that I have read the
 5 foregoing transcript of my deposition, given on
 6 May 25th, 2017, at the place aforesaid, consisting
 7 of pages 1 through 369, inclusive, and I do again
 8 subscribe and make oath that the same is a true,
 9 correct, and complete transcript of my deposition so
 10 given as aforesaid, as it now appears.
 11 Please check one:
 12 _____ I made no corrections
 13 _____ Number of errata sheets submitted
 14
 15 (signed) _____
 16 TIM SULLIVAN
 17
 18 ALSO PRESENT: _____
 19
 20 SUBSCRIBED AND SWORN TO
 21 before me this ____ day
 22 of _____ 2017.
 23
 24 _____
 25 Notary Public

1 CERTIFICATE
 2 The within and foregoing deposition of the
 3 witness, TIM SULLIVAN, was taken before GREG S.
 4 WEILAND, CSR, RMR, CRR, at Suite 1825, 55 West
 5 Monroe Street, in the City of Chicago, Cook County,
 6 Illinois, commencing at 7:53 o'clock a.m., on the
 7 25th day of May, 2017.
 8 The said witness was first duly sworn and
 9 was then examined upon oral interrogatories; the
 10 questions and answers were taken down in shorthand
 11 by the undersigned, acting as stenographer; and the
 12 within and foregoing is a true, accurate and
 13 complete record of all the questions asked of and
 14 answers made by the aforementioned witness at the
 15 time and place hereinabove referred to.
 16 The signature of the witness was not
 17 waived and the deposition was submitted to the
 18 deponent as per copy of the attached letter.
 19 The undersigned is not interested in the
 20 within case, nor of kin or counsel to any of the
 21 parties.
 22 Witness my signature on this 1st day of
 23 June, 2017.
 24
 25 _____
 GREG S. WEILAND, CSR, RMR, CRR

A				
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ERRATA SHEET

DEPOSITION OF: Tim Sullivan

DATE DEPOSITION: May 25, 2017

CASE NAME: In the Matter of Henry Schein, Inc., et al, No. 1510190

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
14	12	Change "It's 5 percent" to "It was 5 percent"	Typographical error/clarification
17	21	Change "sit in in each others' meetings" to "sit in on each other's meetings"	Typographical error
18	5	Change "Correct." to "No."	Misspoke
22	16	Change "We don't have to and we do" to "We don't have to but we do"	Typographical error/clarification
25	20	Change "to make sure we're aligned how we approach" to "to make sure we're aligned with how we approach"	Clarification
26	7	Change "it's no different than how we do in dental" to "it is different than how we do it in dental"	Misspoke
33	6	Change "The only time I really get involved, if there's a customer complaint" to "The only time I really get involved is if there's a customer complaint"	Clarification
50	9-10	Change "so you have our gross margin, which is the cost of goods" to "so you have our gross margin, which is the sales price less the cost of goods"	Clarification
59	24	Change "practice management company" to "practice management software company"	Clarification
77	5	Change "complete" to "compete"	Typographical error
78	24	Change "understanding how we can perform better with them" to "understanding how we can perform better with our suppliers"	Clarification

80	16	Change "cull" to "call"	Typographical error
88	16	Change "select" to "elite"	Misspoke
102	15	Delete "the pressures"	Misspoke
112	2	Change "manufacture-driven" to "manufacturer-driven"	Typographical error
116	14	Change "is more on buying groups" to "is more of buying groups"	Typographical error
160	16-17	Delete "we have not worked with"	Clarification/misspoke
175	20	Change "Not" to "No"	Typographical error
182	19	Change "about the or concerned about the impact" to "about or been concerned about the impact"	Clarification
190	23	Change "was" to "is"	Typographical error/clarification
201	15-16	Change "and those they don't own" to "and those they do own"	Misspoke
203	2-3	Change "from what I'm understanding" to "from my understanding"	Misspoke/clarification
204	7	Change "with the extension to that over to Dental Gator" to "with the extension of that over to Dental Gator"	Typographical error/clarification
205	17	Change "date" to "debate"	Typographical error
208	13	Change "about what it would" to "about when it would"	Typographical error/clarification
221	9-10	Change "it's the trend happening in the marketplace, actually view us" to "it's the trend happening in the marketplace, others actually view us"	Clarification
224	6	Change "respect" to "aspect"	Typographical error
230	8-9	Change "and we get more and more approach from more customers about buying groups" to "and we get approached more from our customers about buying groups"	Misspoke/clarification
248	15	Change "We look at 90,000 customers" to "We work with 90,000 customers"	Typographical error
249	6	Change "even as my testimony earlier" to "even as I testified earlier"	Misspoke/clarification
271	24	Change "I consider him not a friend by any means" to "I do not consider him a	Clarification

		friend by any means"	
277	21	Delete "or"	Typographical error
286	14	Delete "nearly"	Clarification
299	10	Change "usual" to "unusual"	Typographical error
308	16	Change "say" to "said"	Typographical error
317	11	Change "you were out" to "Dave was out"	Misspoke/clarification
328	1	Change "would do more" to "wanted to do more"	Clarification
335	16-18	Delete "So I think my prior testimony about those dates must have been off. It must have been more in this '10 to '12 time period."	Misspoke
337	16	Change "should be their instead of the" to "should be 'their' instead of the"	Clarification
363	23	Change "and our purchases somewhere else" to "and to point purchases somewhere else"	Clarification
365	14	Change "with challenging" to "while challenging"	Typographical error/clarification
368	15	Change "was working our events team" to "was working with our events team"	Typographical error/clarification

I, Timothy J. Sullivan, do hereby acknowledge that I have read the above-referenced deposition transcript, that I have made any corrections, additions or deletions that I was desirous of making; and that the transcript contains my true and correct testimony.

EXECUTED this 28th day of June, 2017.

at West Allis, Wisconsin
(City) (State)

[Signature]
Signature of Witness

Subscribed and sworn to and before me this 28 day of June, 2017.

[Signature]
Notary Public
Sara Adams

SEAL:



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Redacted in Entirety

CX0315

Redacted in Entirety

CX0316

Redacted in Entirety

CX0317

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CX0319

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CX0320

Redacted in Entirety

CX0321

In the Matter of:

Henry Schein, Inc., et al.

July 26, 2017
John C. Kois, Jr.

Condensed Transcript with Word Index



For The Record, Inc.
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1

1 FEDERAL TRADE COMMISSION
2
3)
4 HENRY SCHEIN, INC., PATTERSON)
5 COMPANIES, INC., and BENCO DENTAL) MATTER No. 1510190
6 SUPPLY COMPANY,)
7)
8
9 INVESTIGATIONAL HEARING OF JOHN C. KOIS, JR.
10
11 July 26, 2017
12
13 Seattle, Washington
14
15
16
17
18 Investigational Hearing of JOHN C. KOIS,
19 JR., at the Law Offices of Byrnes Keller Cromwell, 1000
20 Second Avenue, 38th Floor, Seattle, Washington, 98104,
21 commencing at 8:56 a.m., Wednesday, July 26, 2017,
22 before Terilynn Simons, Certified Shorthand Reporter
23 No. 2047, pursuant to Notice.
24
25

3

1 EXAMINATION INDEX
2 EXAMINATION BY: PAGE NO.
3 MS. GOFF 4
4
5 EXHIBIT INDEX
6 EXHIBIT NO. DESCRIPTION PAGE NO.
7 Exhibit No. 325 1-page "Johnny's Buyers Group 56
8 business tip of the month,"
9 KOIS001605.
10 Exhibit No. 326 1-page "Johnny's Buyers Group 85
11 tip of the month,"
12 KOIS001607.
13 Exhibit No. 327 4-page exclusive supplier 119
14 agreement, KOIS001622-25.
15 Exhibit No. 328 2-page "Julie Radzynski: 146
16 Added blog post in @[Benco
17 Buzz]," Bates number
18 redacted.
19 Exhibit No. 329 2-page e-mail chain, 151
20 "Subject: Thank you!"
21 KOIS001133-34.
22 Exhibit No. 330 4-page e-mail and cover page 165
23 "Subject: Kois Tribe
24 membership program launch,"
25 dated 10/8/14.

2

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4

1 Seattle, Washington
2 Wednesday, July 26, 2017
3 JOHN C. KOIS, JR.,
4 having been first duly sworn by the reporter, was
5 examined and testified as follows:
6 EXAMINATION
7 BY MS. GOFF:
8 Q Good morning, Mr. Kois. Thank you very much for being
9 here today. My name is Karen Goff. We met off the
10 record. I'm an attorney with the Federal Trade
11 Commission.
12 Today's proceeding is called an investigational
13 hearing, and it is just a way to formalize the interview
14 process.
15 It is conducted pursuant to the Federal Trade
16 Commission's rules, and it's being conducted as part of
17 the Commission's investigation in Matter No. 1510190.
18 MS. GOFF: For the record, would
19 Counsel please state his appearance?
20 MR. RYAN-LANG: Nicholas Ryan-Lang of
21 Byrnes Keller Cromwell.
22 Q (By Ms. Goff) Mr. Kois, for the record, would you
23 please state your name and the city and state you live
24 in?
25 A Sure. Mr. John C. Kois, Junior.

5

1 I live in Seattle, Washington.
 2 **Q I wanted to state for the record today that we actually**
 3 **had sent a subpoena to your father, Dr. John Kois, for**
 4 **his testimony today, and I spoke with your counsel, and**
 5 **I understand there was some confusion about whether the**
 6 **subpoena was for you or for Dr. John Kois, and we agreed**
 7 **that we would conduct the investigational hearing of you**
 8 **today, and we would reserve our rights to conduct an**
 9 **investigational hearing of your father, Dr. John Kois,**
 10 **at a later time, if it's necessary.**
 11 Thank you very much for making yourself available
 12 today, and I am hoping that you will be able to answer
 13 most of our questions and it will be unnecessary to take
 14 an investigational hearing of your father.
 15 MS. GOFF: Did you have anything to
 16 add, Counsel?
 17 MR. RYAN-LANG: Sounds right.
 18 **Q (By Ms. Goff) Have you ever given sworn testimony**
 19 **before?**
 20 A Yes.
 21 **Q When have you done that?**
 22 A It was three or four years ago.
 23 **Q Was it related to your work at Kois-- the Kois Center,**
 24 **or any of the Kois companies?**
 25 A No. It was with IsoFusion.

6

1 **Q Is that a former company that you used to work for?**
 2 A Yes.
 3 **Q I am just going to go over a few ground rules.**
 4 **I will be asking you a series of questions, and you**
 5 **will tell me the answers.**
 6 **The court reporter is recording everything that we**
 7 **say, and because she can only record our words, please**
 8 **be sure to answer each question with a verbal response.**
 9 **Please don't shake your head or nod your head.**
 10 **It is helpful if you let me finish my question**
 11 **before you answer, and I will try to not interrupt you**
 12 **as well.**
 13 **That's just so the court reporter can take down**
 14 **everything that we both say, since she can't record both**
 15 **of us at the same time.**
 16 **If at any time you don't understand a question,**
 17 **feel free to ask me to rephrase, and I will do my best**
 18 **to do so.**
 19 **Do you understand?**
 20 A I understand.
 21 **Q If you need a break at any time, please let me know, and**
 22 **we can take one.**
 23 **If there's a question pending, I may ask you to**
 24 **answer the question before we take a break, but**
 25 **otherwise I can accommodate you for any breaks.**

7

1 A I understand.
 2 **Q Is there any reason why you cannot provide complete and**
 3 **truthful testimony today?**
 4 A No.
 5 **Q Are you currently the CEO of Kois Center?**
 6 A Yes.
 7 **Q Do you also work for a company called Kois Buyers Group?**
 8 A No.
 9 To correct, it's Kois Tribal Management.
 10 **Q First let me talk about Kois Center, and then we can**
 11 **discuss Kois Buyers Group or Kois Tribal Management.**
 12 **What is the Kois Center?**
 13 A Kois Center is a teaching facility.
 14 We conduct continuing education courses for
 15 dentists, usually general dentists.
 16 **Q What do you mean by "general dentists"?**
 17 A It's geared towards nonspecialty oriented dentists.
 18 We do have prosthodontists that come, periodontists
 19 that come, but the majority of our students are general
 20 dentists.
 21 **Q Did your father, Dr. John Kois, found the Kois Center?**
 22 A Yes.
 23 **Q And when was that, approximately? Do you know?**
 24 A Approximately 1994.
 25 **Q What are your day-to-day responsibilities, generally, as**

8

1 **it relates to being the CEO of Kois Center?**
 2 A I oversee all the operations of the company, the
 3 financials of the company, scheduling of courses, all
 4 day-to-day operations.
 5 **Q Do you oversee any employees?**
 6 A Yes.
 7 **Q How many?**
 8 A 15.
 9 **Q Generally what do those employees do?**
 10 **I don't need to know every task that every employee**
 11 **does, but I'm trying to get a sense for what work the**
 12 **employees that you oversee do.**
 13 A I understand.
 14 Some of their jobs are directly related to when we
 15 have courses.
 16 They make sure the participants are comfortable,
 17 shelves are restocked, supplies are available, they find
 18 their seat, those kind of tasks.
 19 Other employees are responsible for the
 20 presentations that go up on the screen, graphics. We
 21 have a digital manual that they produce for every
 22 course.
 23 **Q Thank you. That's helpful.**
 24 **Do you report to anyone at Kois Center?**
 25 A No.

9	<p>1 Q And does your father, Dr. John Kois, have any role at</p> <p>2 Kois Center?</p> <p>3 A Yes. He is the main instructor.</p> <p>4 Q Is he an employee of Kois Center?</p> <p>5 A Yes.</p> <p>6 Q And then going back to Kois Buyers Group, is that a</p> <p>7 company that exists?</p> <p>8 A Yes.</p> <p>9 Q Okay. What is Kois Buyers Group?</p> <p>10 A Kois Buyers Group is owned by Kois Tribal Management,</p> <p>11 which is the official company.</p> <p>12 Q Did you say "Tribal Management"?</p> <p>13 A Yes.</p> <p>14 Q What is Kois Tribal Management?</p> <p>15 A It is a company that was formed to administer the Kois</p> <p>16 Buyers Group, which is a collection of dentists</p> <p>17 organized by myself and my father through the</p> <p>18 participants at the Kois Center to get more favorable</p> <p>19 pricing for supplies.</p> <p>20 Q And what role do you have at Kois Tribal Management?</p> <p>21 A I run that as well.</p> <p>22 Q Are you the CEO? Do you have a title?</p> <p>23 A The official title is "manager."</p> <p>24 Q And then what are your day-to-day responsibilities</p> <p>25 related to Kois Tribal Management?</p>	11	<p>1 them what kind of discounts are available if they were a</p> <p>2 member of the buyers group.</p> <p>3 Q Are you involved in recruiting new members?</p> <p>4 A Yes.</p> <p>5 Q When was Kois Tribal Management founded?</p> <p>6 A Approximately October 2014.</p> <p>7 Q And who founded it?</p> <p>8 A My father, Dr. John C. Kois.</p> <p>9 Q Okay. Have you worked for Kois Tribal Management since</p> <p>10 it was founded in October 2014?</p> <p>11 A No.</p> <p>12 Q When did you start working at Kois Tribal Management?</p> <p>13 A October 2015.</p> <p>14 Q So from October 2014 to October 2015, who ran Kois</p> <p>15 Tribal Management?</p> <p>16 A There was a consultant firm, ProCare Services.</p> <p>17 Q ProCare Services?</p> <p>18 A Yes.</p> <p>19 Q And ProCare Services ran Kois Tribal Management during</p> <p>20 that time period?</p> <p>21 A They administered all of the vendor relationships, and</p> <p>22 there was only, I think, one or two at the time, for</p> <p>23 vendors.</p> <p>24 Kois Center managed the sign-ups for members and</p> <p>25 sent those contacts to ProCare.</p>
10	<p>1 A I interface with all vendors, all members, and manage</p> <p>2 all the finances for the company.</p> <p>3 I'm the sole employee.</p> <p>4 Q Thank you.</p> <p>5 So you don t have any direct reports at Kois Tribal</p> <p>6 Management?</p> <p>7 A I'm sorry?</p> <p>8 Q Do you have any direct reports at Kois Tribal</p> <p>9 Management?</p> <p>10 A I'm sorry, I don't understand what you mean.</p> <p>11 Q Does anyone report to you at Kois Tribal Management?</p> <p>12 A No.</p> <p>13 Q So you said that you interface with all members and</p> <p>14 vendors; is that correct?</p> <p>15 A Yes.</p> <p>16 Q What does interfacing with the vendors entail?</p> <p>17 A I'm responsible for establishing the relationships with</p> <p>18 all vendors, so discussing any kind of discounts given</p> <p>19 to the members of the group, making sure that they have</p> <p>20 the contact information of the members, field any</p> <p>21 complaints from the members to the vendors, vice versa.</p> <p>22 Q That's helpful. Thank you.</p> <p>23 And then with regard to your interfacing with</p> <p>24 members, what, generally, does that involve?</p> <p>25 A I make sure their memberships are current and telling</p>	12	<p>1 I don't know how ProCare managed the list with the</p> <p>2 vendor that they had.</p> <p>3 Q And was there any particular individual at ProCare</p> <p>4 Services who was responsible for handling Kois Tribal</p> <p>5 Management work?</p> <p>6 A That would be Qadeer Ahmed.</p> <p>7 Q Would you mind spelling his name, if you know?</p> <p>8 A Q-A-D-E-E-R A-H-M-E-D.</p> <p>9 Q Thank you.</p> <p>10 A There was another person, Michael. I don't know his</p> <p>11 last name.</p> <p>12 Q Michael worked with Qadeer?</p> <p>13 A Yes.</p> <p>14 Qadeer went by "Q" in correspondence.</p> <p>15 Q Thank you.</p> <p>16 How did you come to get involved with Kois Tribal</p> <p>17 Management in October 2015?</p> <p>18 A The buyers group was not successful. We didn't have a</p> <p>19 lot of interest.</p> <p>20 Burkhart was the only known supply company I was</p> <p>21 familiar with that was a part of it, and they weren't</p> <p>22 getting a lot of communication, and there wasn't a lot</p> <p>23 of clarity of what the buyers group was doing in their</p> <p>24 direction, so I stepped in and assumed responsibility.</p> <p>25 Q Okay. Did your father ask you to do that?</p>

13	<p>1 A Yes.</p> <p>2 Q Have you managed Kois Tribal Management ever since</p> <p>3 October 015?</p> <p>4 A Yes.</p> <p>5 Q With regard to the Kois Center, how long have you been</p> <p>6 the CEO of the Kois Center?</p> <p>7 A Since March 16th, 2015.</p> <p>8 Q Did you have any other roles at Kois Center before</p> <p>9 becoming CEO?</p> <p>10 A Yes.</p> <p>11 Q What were your roles?</p> <p>12 A I was a youth counselor in their annual symposium youth</p> <p>13 program.</p> <p>14 Q When were you a youth counselor in their annual</p> <p>15 symposium youth program? What years, approximately?</p> <p>16 A It is an annual event, the third week of July.</p> <p>17 I have done that for the past ten or 15 years.</p> <p>18 Q Before you became the CEO of Kois Center, did you have</p> <p>19 any jobs outside of the Kois companies?</p> <p>20 A Yes.</p> <p>21 Q What was your job?</p> <p>22 A I was a CFO of IsoFusion.</p> <p>23 Q What is IsoFusion?</p> <p>24 A It is a company that manages a collection of different</p> <p>25 businesses, data centers, broadband connectivity for</p>	15	<p>1 Q How long were you in that position?</p> <p>2 A About eight months.</p> <p>3 Q Were you able to save the company?</p> <p>4 A No.</p> <p>5 Q Why did it fail?</p> <p>6 A Competitors came out with similar products for free.</p> <p>7 Q And so what was the business model for Dentscape, it was</p> <p>8 surveys of dental office staff?</p> <p>9 A Yeah, so you give a survey on an iPad to a patient in</p> <p>10 the chair, and they could rate how good the staff was</p> <p>11 doing, front desk, hygienists, dental assistants, and</p> <p>12 then the doctor could know how good their staff was and</p> <p>13 if they needed to make a change somewhere with somebody.</p> <p>14 The staff didn't want to give a survey on</p> <p>15 themselves.</p> <p>16 Q That makes sense.</p> <p>17 A And then Salesforce offers it for free.</p> <p>18 Q Thank you.</p> <p>19 Do you regularly attend any dental industry</p> <p>20 conferences or trade shows?</p> <p>21 A What would be "regular"?</p> <p>22 Q Yearly or even occasionally.</p> <p>23 Why don't I rephrase the question.</p> <p>24 Do you ever attend dental industry conferences or</p> <p>25 trade shows?</p>
14	<p>1 businesses and homes, technical support, and</p> <p>2 construction.</p> <p>3 Q Okay. And how long were you the CEO for IsoFusion?</p> <p>4 A IsoFusion for about six months prior to me leaving.</p> <p>5 Prior to that, that company was merged between two</p> <p>6 companies to create IsoFusion, and I was part of Optic</p> <p>7 Fusion, and for that I was a CFO for 15 years.</p> <p>8 Q Thank you.</p> <p>9 Prior to becoming involved with the Kois Center and</p> <p>10 the Kois Tribal Management, did you have any jobs that</p> <p>11 involved the dental industry?</p> <p>12 A Besides the youth counselor position?</p> <p>13 Q Yes.</p> <p>14 A No.</p> <p>15 Q Okay.</p> <p>16 A Sorry, my dad had a company that failed, Dentscape, and</p> <p>17 the goal of that was to do surveys on office staff,</p> <p>18 dental office staff, and that was approximately 2013</p> <p>19 that my dad asked me to help him try to save that</p> <p>20 company.</p> <p>21 Q And did you help him work at Dentscape to try to save</p> <p>22 the company?</p> <p>23 A Yes.</p> <p>24 Q What was your role?</p> <p>25 A I was the acting CEO.</p>	16	<p>1 A Yes.</p> <p>2 Q How frequently?</p> <p>3 A I attend the American Academy of Restorative Dentistry</p> <p>4 annually as a guest, and occasionally the American</p> <p>5 Academy of Aesthetic Dentistry as a guest.</p> <p>6 I have been to other ones sporadically if there's a</p> <p>7 reason to go.</p> <p>8 Q What other ones have you been do?</p> <p>9 A The Chicago Midwinter.</p> <p>10 Q Any others?</p> <p>11 A The Washington State Dental Association.</p> <p>12 That's it for conferences.</p> <p>13 Q Okay. And you said that you attend others sporadically</p> <p>14 if there's a reason to go, and you mentioned the Chicago</p> <p>15 Midwinter.</p> <p>16 What was the reason you went to the Chicago</p> <p>17 Midwinter?</p> <p>18 A In February of 2017-- we have had now quite a few</p> <p>19 vendors that have signed up to be members of the buyers</p> <p>20 group, and I thought it was a good opportunity to see</p> <p>21 everybody at one place.</p> <p>22 I don't travel much for business.</p> <p>23 Q When you said "it's a good opportunity to see people in</p> <p>24 one place," did you mean members or what kind of people?</p> <p>25 A Vendors.</p>

17	<p>1 Q And what prompted you to go to the Washington State</p> <p>2 Dental Association conference?</p> <p>3 A About 16, 17 years ago I had a web design company, and</p> <p>4 we put a booth at the Washington State Dental</p> <p>5 Association meeting to try to solicit business.</p> <p>6 Q Have you been to the Washington State Dental Association</p> <p>7 meeting since that one time?</p> <p>8 A No.</p> <p>9 Q Okay. And for Chicago Midwinter, did you only attend</p> <p>10 that one time in February of this year, 2017?</p> <p>11 A Yes.</p> <p>12 Q Going back to your work at Kois Center and Kois Tribal</p> <p>13 Management, how much of your time is spent working on</p> <p>14 Kois Tribal Management work as opposed to Kois Center?</p> <p>15 A In terms of a week, a month--</p> <p>16 Q Sure.</p> <p>17 A week?</p> <p>18 A Depending if there are new vendors, which take more</p> <p>19 time.</p> <p>20 I would say in general five percent or less.</p> <p>21 Q So most of your time is doing Kois Center work?</p> <p>22 A Correct.</p> <p>23 Q I would like to ask you just a few questions about your</p> <p>24 father's background.</p> <p>25 A Yes.</p>	19	<p>1 A Dental assistant, front desk, patient comfort/patient</p> <p>2 awareness, somebody in-between.</p> <p>3 Q Thank you.</p> <p>4 What about for the Seattle office? Does he have</p> <p>5 any employees in Seattle?</p> <p>6 A No.</p> <p>7 Q What is the name of his dental practice?</p> <p>8 A John C. Kois, DMD, MSD.</p> <p>9 Q I think we talked a little bit about your father's role</p> <p>10 at Kois Center, but does Dr. Kois have any role at Kois</p> <p>11 Tribal Management?</p> <p>12 A No.</p> <p>13 Q Is his role at Kois Center limited to being an</p> <p>14 instructor?</p> <p>15 A Can you rephrase?</p> <p>16 Q What is your father's role at Kois Center?</p> <p>17 A He is a primary instructor and also is-- also</p> <p>18 participates in any major decisions for the company</p> <p>19 going forward.</p> <p>20 Q Does he have a formal title at Kois Center?</p> <p>21 A Director.</p> <p>22 Q Does he participate in any major decisions related to</p> <p>23 Kois Tribal Management?</p> <p>24 A No.</p> <p>25 Q How did Kois Tribal Management come to be formed, if you</p>
18	<p>1 Q If you know the answers, that would be great. If you</p> <p>2 don't, that's understandable.</p> <p>3 Is your father a practicing dentist?</p> <p>4 A Yes.</p> <p>5 Q How long has he been a dentist? Do you know?</p> <p>6 A Approximately 40 years.</p> <p>7 Q Does he have any specialties?</p> <p>8 A Yes.</p> <p>9 Q What are they?</p> <p>10 A He is a perio/prosthodontist.</p> <p>11 Q Does he have an office in Seattle?</p> <p>12 A Yes.</p> <p>13 Q Does he also have an office in Tacoma?</p> <p>14 A Yes.</p> <p>15 Q Does he have any employees at his dental practice?</p> <p>16 A Which office?</p> <p>17 Q Either one.</p> <p>18 A Yes.</p> <p>19 Q What about Tacoma? Does he have any employees there?</p> <p>20 A Yes. Tacoma is his primary practice.</p> <p>21 Q Okay. How many employees, do you know, approximately?</p> <p>22 A Three.</p> <p>23 Q Are any of them dentists?</p> <p>24 A No.</p> <p>25 Q What are their job duties, generally?</p>	20	<p>1 know?</p> <p>2 A I do.</p> <p>3 Through the courses at the center, we see a lot of</p> <p>4 dentists from all over, and we had heard complaints from</p> <p>5 dentists that they have a difficult time competing with</p> <p>6 larger companies that have the ability to purchase</p> <p>7 products at a cheaper price than them because of the</p> <p>8 bulk that they purchase.</p> <p>9 The idea was formed to get a group of dentists that</p> <p>10 are like-minded, people that come to the center, to get</p> <p>11 together and say, "This is a group of people that are</p> <p>12 buying products that are recommended at the center."</p> <p>13 My dad has products that he recommends, and he is</p> <p>14 not paid a sponsorship, so the products he recommends</p> <p>15 are usually popular with the dentists because they know</p> <p>16 it comes from something he actually likes instead of</p> <p>17 something he's paid for.</p> <p>18 The idea was to go to these companies and say, "The</p> <p>19 products that we are recommending are going to be</p> <p>20 popular. Would you consider giving a discount to people</p> <p>21 as part of our group for buying one of something, no</p> <p>22 quantity, no obligation, no exclusivity? We would like</p> <p>23 the best price for one of something."</p> <p>24 Q Okay. Thank you. That s very helpful.</p> <p>25 You said that through the Kois Center you have seen</p>

21	<p>1 dentists and heard complaints that they have a difficult</p> <p>2 time competing with larger companies.</p> <p>3 Are you referring to independent dentists?</p> <p>4 A Possibly.</p> <p>5 Some dentists have several practices.</p> <p>6 Some dentists are part of corporations that have</p> <p>7 hundreds of practices.</p> <p>8 A lot of those practices will direct their members</p> <p>9 to buy certain products, and then they have the buying</p> <p>10 power to negotiate directly with manufacturers or</p> <p>11 distribution companies in general for a larger commit on</p> <p>12 something, which we don't have the option to do.</p> <p>13 Q When you say "we," what do you mean?</p> <p>14 A The members of the buyers group, smaller dentists,</p> <p>15 independent practices.</p> <p>16 If you're buying one of something, you have</p> <p>17 significantly less buying power than if you're buying</p> <p>18 10,000.</p> <p>19 Q So the complaints that you heard from dentists, that</p> <p>20 they were having a difficult time competing with larger</p> <p>21 companies, those were complaints from the smaller,</p> <p>22 independent dentists?</p> <p>23 A Yes. They said their percentage of overhead for</p> <p>24 supplies was higher because their costs were higher per</p> <p>25 product than the bigger companies.</p>	23	<p>1 It's a separate company, and there s a separate</p> <p>2 membership fee to gain access to some of the discounts.</p> <p>3 Q Okay. Thank you.</p> <p>4 A You're welcome.</p> <p>5 Q So members of the Kois Buyers Group, they obtain</p> <p>6 discounts on supplies; is that right?</p> <p>7 A Correct.</p> <p>8 Q And are there any other services that Kois Buyers Group</p> <p>9 offers to its members?</p> <p>10 A Besides supplies?</p> <p>11 Q Yeah, besides discounts on supplies.</p> <p>12 A Any other discount advantages that people get are</p> <p>13 through vendors of the buyers group.</p> <p>14 The only product the buyers group has is a</p> <p>15 membership.</p> <p>16 Does that answer your question?</p> <p>17 Q Yes.</p> <p>18 I may ask some follow-up questions.</p> <p>19 Does Kois Buyers Group offer other services, like</p> <p>20 marketing or financing or website design for members of</p> <p>21 the Kois Buyers Group?</p> <p>22 A No.</p> <p>23 Q Does Kois Buyers Group offer member benefits or</p> <p>24 discounts relating to dental equipment or is it solely</p> <p>25 related to supplies?</p>
22	<p>1 Q And so what are the benefits of Kois Tribal Management</p> <p>2 membership?</p> <p>3 A Members of the Kois Buyers Group have an option--</p> <p>4 opportunity for discounted prices without buying in</p> <p>5 larger quantities.</p> <p>6 Q Okay. So that was a good clarification.</p> <p>7 The members are members of Kois Buyers Group, not</p> <p>8 Kois Tribal Management; is that correct?</p> <p>9 A Correct.</p> <p>10 Kois Tribal Management is the company that manages</p> <p>11 Kois Buyers Group.</p> <p>12 Q Okay. And do you have a sense or an understanding for</p> <p>13 why it's broken out like that, why Kois Tribal</p> <p>14 Management is the company that manages Kois Buyers</p> <p>15 Group?</p> <p>16 A Kois Buyers Group was something we renamed because there</p> <p>17 was a lot of confusion that Kois Tribal Management-- if</p> <p>18 I remember correctly, was because the people that come</p> <p>19 to the Kois Center consider themselves part of a tribe,</p> <p>20 which is-- as a group, everyone is in tight, close</p> <p>21 relationships, and the relationship between Kois Tribal</p> <p>22 Management and the tribe as a whole was a bit confusing,</p> <p>23 so we separated it to Kois Buyers Group to differentiate</p> <p>24 that these are-- this is a membership that's separate</p> <p>25 from the Kois Center, even though we have close ties.</p>	24	<p>1 A Some equipment, depending on the vendor, but that's</p> <p>2 vendor dependent.</p> <p>3 Q So some vendors might offer discounts on equipment?</p> <p>4 A Correct.</p> <p>5 Q And I think you have already mentioned this, but just to</p> <p>6 make sure I have it correct, must a dentist be a member</p> <p>7 of Kois Buyers Group to access the discounted pricing on</p> <p>8 merchandise, supplies, and equipment?</p> <p>9 A Yes.</p> <p>10 Q Is there a membership fee?</p> <p>11 A Yes.</p> <p>12 Q How much is it?</p> <p>13 A \$299 a year.</p> <p>14 Q And that's collected by Kois Buyers Group?</p> <p>15 A Yes.</p> <p>16 Q And what does Kois Buyers Group do with the membership</p> <p>17 fees?</p> <p>18 A That money pays for travel for myself to go to these</p> <p>19 conferences.</p> <p>20 We also pay the Kois Center for marketing.</p> <p>21 Also for website development.</p> <p>22 Q So paying the Kois Center for marketing, is that</p> <p>23 marketing the Kois Buyers Group through the Kois Center?</p> <p>24 A Yes.</p> <p>25 Q And then website development, is that just related to</p>

25	<p>1 the Kois Buyers Group website?</p> <p>2 A Correct.</p> <p>3 Q I think I know the answer to this, but who are Kois</p> <p>4 Buyers Group members, generally?</p> <p>5 A Generally-- well, they have to hit a certain threshold</p> <p>6 to be able to have access.</p> <p>7 You had to have come to at least one course at the</p> <p>8 Kois Center.</p> <p>9 To answer your question fully, buyers group members</p> <p>10 are dentists who have attended at least one course at</p> <p>11 the Kois Center and have signed up for membership.</p> <p>12 Q Are they typically dentists who own solo or private</p> <p>13 practices?</p> <p>14 A I can't tell you definitively.</p> <p>15 I could tell you what I think on average, if that's</p> <p>16 acceptable.</p> <p>17 Q That would be helpful, yes.</p> <p>18 A Generally, yes.</p> <p>19 Q Do you think there are any dentists from larger groups,</p> <p>20 like corporate accounts or dental service organizations,</p> <p>21 that are members?</p> <p>22 A Not that I've heard of.</p> <p>23 I think I've heard of a few that had more than one</p> <p>24 practice location, but not, you know, dozens or-- not</p> <p>25 the large, large.</p>	27	<p>1 A Yes.</p> <p>2 Q Does it also have members that are located in Canada?</p> <p>3 A Yes.</p> <p>4 Q Do you know which state has the most members, most Kois</p> <p>5 Buyers Group members?</p> <p>6 A I could guess.</p> <p>7 Q What would your guess be?</p> <p>8 A Washington.</p> <p>9 Q What is your guess based on?</p> <p>10 A Based on the number of members that have been to the</p> <p>11 Kois.</p> <p>12 There is more in Washington because our center is</p> <p>13 in Washington.</p> <p>14 Q Approximately how many members does the Kois Buyers</p> <p>15 Group have today?</p> <p>16 A Approximately 515.</p> <p>17 Q And then what about when you first started at Kois</p> <p>18 Buyers Group in October of 2015? Do you have a</p> <p>19 recollection of how many members, approximately--</p> <p>20 A It was approximately 170.</p> <p>21 Q So generally today I want to ask you questions about the</p> <p>22 Kois Buyers Group, so if I use the word "Kois," I am</p> <p>23 referring to Kois Buyers Group unless I state otherwise.</p> <p>24 A Okay.</p> <p>25 Q Do you understand?</p>
26	<p>1 Q Okay. Is there a word that you use for dentists that</p> <p>2 have more than one practice location?</p> <p>3 A No.</p> <p>4 Q Okay. There's not like a term in the industry that you</p> <p>5 would use for those types of dentists?</p> <p>6 A For more than one practice location?</p> <p>7 Q Yeah.</p> <p>8 A There's no industry standard word.</p> <p>9 There's terms that you can use as practices get</p> <p>10 bigger, but that has to do with the organizational</p> <p>11 structure of the practice.</p> <p>12 I could say that a practice-- somebody has multiple</p> <p>13 locations, would be about as standard as you get until</p> <p>14 you get to some of the very large groups.</p> <p>15 Q And what do you refer to the large groups as?</p> <p>16 A Those would be DSOs. That's a dental service</p> <p>17 organization, I believe is what they're calling</p> <p>18 themselves now.</p> <p>19 I am not familiar with what their business model</p> <p>20 is, but generally they have anything from-- from what</p> <p>21 I've seen, as small as three practices and as large as</p> <p>22 several hundred.</p> <p>23 Q Thank you.</p> <p>24 Does Kois Buyers Group have members throughout the</p> <p>25 country?</p>	28	<p>1 A Yes.</p> <p>2 Q Thank you.</p> <p>3 So it sounds like Kois's membership increased from</p> <p>4 170 to approximately 515 today, since you joined in</p> <p>5 2015.</p> <p>6 How did you get more members to join Kois?</p> <p>7 A We rebuilt the website-- created a website -- there</p> <p>8 wasn't one -- with information on the members.</p> <p>9 We developed an informational handout that the Kois</p> <p>10 Center has allowed us to provide to attendees at the</p> <p>11 courses.</p> <p>12 We do e-mail newsletters.</p> <p>13 We started adding additional vendors, besides just</p> <p>14 a dental supply company.</p> <p>15 Q You mentioned e-mail newsletters.</p> <p>16 A Yes.</p> <p>17 Q Are those e-mail newsletters sent to-- who are they sent</p> <p>18 to?</p> <p>19 A They are sent to members of the buyers group to announce</p> <p>20 new members.</p> <p>21 We also send updates through the Kois Center</p> <p>22 newsletters for updated new vendors and on Kois Center's</p> <p>23 social media.</p> <p>24 Q Are you responsible for sending these updates?</p> <p>25 A Yes.</p>

29	<p>1 Q Do you send the e-mail newsletters?</p> <p>2 A Yes.</p> <p>3 Q So how would you characterize Kois Buyers Group's growth</p> <p>4 in membership over the past two years or so?</p> <p>5 A Slow.</p> <p>6 Q Do you have an understanding of why it has been slow?</p> <p>7 A I could make an assumption.</p> <p>8 Q Sure.</p> <p>9 A That a lot of dentists have a rep that they're happy</p> <p>10 with, that is not part of the dental supply company that</p> <p>11 is part of the buyers group, and they would prefer not</p> <p>12 to change reps.</p> <p>13 It's more true on the East Coast where the dental</p> <p>14 supply company we use does not have a rep. Everything</p> <p>15 is online distribution.</p> <p>16 Also, some dentists are lazy.</p> <p>17 Q Okay. Let me take the last one first.</p> <p>18 How would a dentist being lazy relate to slow</p> <p>19 growth?</p> <p>20 A Sure.</p> <p>21 They're current members of some of the vendors in</p> <p>22 the buyers group, and by signing up, they could save not</p> <p>23 only their membership fee but additional income, a</p> <p>24 definite cost, but they just choose not to sign up.</p> <p>25 Q So which-- you said that the dental supply company that</p>	31	<p>1 Burkhart members who would have access to a rep?</p> <p>2 A Where there's full-service representation, there s</p> <p>3 usually a distribution warehouse where products can come</p> <p>4 same day, where that's not an option -- at no charge --</p> <p>5 for people without representation.</p> <p>6 Q Where does Burkhart have full-service representation?</p> <p>7 What part of the country?</p> <p>8 A Mostly the West Coast.</p> <p>9 I don't know how far east they go.</p> <p>10 Q For members that are in an area where Burkhart has</p> <p>11 full-service representation, those members would be</p> <p>12 likely to get supplies faster; is that correct?</p> <p>13 A If needed, faster, yes.</p> <p>14 I am not familiar with all the shipping options for</p> <p>15 Burkhart and if overnight shipping is available for</p> <p>16 people on the East Coast.</p> <p>17 It depends on if you need it faster or not.</p> <p>18 Usually two to three days with proper inventory</p> <p>19 management isn't an issue to get supplies in time.</p> <p>20 It's the model they set up.</p> <p>21 Q It's the model who set up?</p> <p>22 A Burkhart.</p> <p>23 The bigger piece is having the rep in the office.</p> <p>24 That is a detractor for people on the East Coast.</p> <p>25 Q Having a rep in the office is helpful for inventory</p>
30	<p>1 you use does not have a rep on the East Coast.</p> <p>2 Which company is that?</p> <p>3 A Burkhart.</p> <p>4 Q So do Kois Buyers Group members on the East Coast not</p> <p>5 have access to Burkhart supplies?</p> <p>6 A They do.</p> <p>7 It's through online purchasing.</p> <p>8 They don't have a rep that comes to their practice,</p> <p>9 and they have to wait for their products to be shipped.</p> <p>10 That is not the most popular option for a lot of</p> <p>11 dentists.</p> <p>12 Q Do you have an understanding of why?</p> <p>13 A Inventory management is a big piece.</p> <p>14 A lot of the reps of these companies will come in</p> <p>15 and manage the inventory for the dentist and tell them</p> <p>16 when products are low, when they need to order.</p> <p>17 If they don't have one of those reps, the staff has</p> <p>18 to do that.</p> <p>19 Depending on how good their staff is, that can</p> <p>20 either be a plus or a minus.</p> <p>21 Q And then you said that these members that have to do</p> <p>22 online purchasing, they have to wait for the products to</p> <p>23 be shipped?</p> <p>24 A Yes.</p> <p>25 Q Is that somehow different from the members-- the</p>	32	<p>1 management, you said?</p> <p>2 A Also just a personal relationship.</p> <p>3 Some of these practices have known their reps for</p> <p>4 many years, and cheaper price or not, they're not</p> <p>5 willing to move. There's a loyalty factor.</p> <p>6 Some of the other vendors that we have in the</p> <p>7 buyers group don't have reps, everything is direct</p> <p>8 online sales anyway, so that has helped increase the</p> <p>9 membership of the buyers group.</p> <p>10 Some members don't purchase at all from the supply</p> <p>11 company.</p> <p>12 Q How has that increased the membership of the buyers</p> <p>13 group?</p> <p>14 A Buyers are willing to purchase from vendors other than</p> <p>15 the dental supply company in the buyers group, so they</p> <p>16 don't have to change their dental supply company, which</p> <p>17 they didn't have to anyway, but they feel better about</p> <p>18 keeping a rep in their office, and there's no tension</p> <p>19 with having this other option, but they can buy from</p> <p>20 another vendor in the buyers group and still save.</p> <p>21 Q Okay. I see.</p> <p>22 Are the vendors you're talking about manufacturers</p> <p>23 instead of dental distributors?</p> <p>24 A Yes.</p> <p>25 Q So would you consider Burkhart to be a dental</p>

33	<p>1 distributor?</p> <p>2 A Yes.</p> <p>3 Q Or you mentioned "dental supply company."</p> <p>4 Is that another word for "Burkhart"?</p> <p>5 A Yes.</p> <p>6 Q So buyers or members could maintain their relationship</p> <p>7 with the rep in the office but still get a discount by</p> <p>8 purchasing through the Kois Buyers Group direct from the</p> <p>9 manufacturer?</p> <p>10 A From those particular vendors.</p> <p>11 They can also purchase from Burkhart and keep their</p> <p>12 Schein rep, their Patterson rep.</p> <p>13 There is no obligation to purchase everything from</p> <p>14 one person.</p> <p>15 They can purchase all or nothing from them or</p> <p>16 everything in-between.</p> <p>17 Q Understood.</p> <p>18 You said that having other vendors, like</p> <p>19 manufacturer vendors, has increased the membership of</p> <p>20 the buyers group?</p> <p>21 A Yes.</p> <p>22 Q And that's because those members might be able to keep</p> <p>23 their representative and not switch to Burkhart?</p> <p>24 A If Burkhart is the only company that's a vendor in the</p> <p>25 buyers group, and you have no interest in purchasing</p>	35	<p>1 Q Too high for dentists?</p> <p>2 A Yes.</p> <p>3 Q Did you hear complaints?</p> <p>4 A No.</p> <p>5 Q How did you know that the costs were too high?</p> <p>6 A Personal preference.</p> <p>7 Q Whose personal preference?</p> <p>8 A Mine.</p> <p>9 Q Okay.</p> <p>10 A My preference is to provide the dentists as much value</p> <p>11 as possible with charging the least amount of money to</p> <p>12 keep the program going.</p> <p>13 It is not intended to be a profitable business.</p> <p>14 Q If it's not intended to be a profitable business, why do</p> <p>15 you have Kois Buyers Group?</p> <p>16 A There's a cost associated with managing the buyers</p> <p>17 group. That's what the purpose of the charge is.</p> <p>18 Does that answer your question?</p> <p>19 Q Well, I guess, why did you or your father start Kois</p> <p>20 Buyers Group, if not to make profit?</p> <p>21 A Sure.</p> <p>22 It's a way to allow the smaller dentists an option</p> <p>23 to compete with the larger companies, by reducing some</p> <p>24 of their overhead.</p> <p>25 Q So it was basically just to help the smaller dentists?</p>
34	<p>1 anything from Burkhart, then there's not a lot of</p> <p>2 incentive to join the buyers group, but with the</p> <p>3 addition of additional companies, there's more incentive</p> <p>4 of becoming a member, even though you have no intention</p> <p>5 of purchasing from Burkhart.</p> <p>6 Q Thank you.</p> <p>7 Going back to Kois membership, has the \$299 per</p> <p>8 year fee, the fee structure we discussed earlier, has</p> <p>9 that been in place since Kois Buyers Group was founded,</p> <p>10 if you know?</p> <p>11 A No.</p> <p>12 Originally there was a tiered approach, before I</p> <p>13 came onboard, where dentists were charged monthly based</p> <p>14 on the amount of product that they purchased, so a</p> <p>15 percentage of their supplies.</p> <p>16 There were three tiers.</p> <p>17 I think it was-- the tallest, highest one was, I</p> <p>18 think, \$500 a month.</p> <p>19 The second tier was approximately \$300 a month.</p> <p>20 The final tier was approximately \$200 a month.</p> <p>21 Q And were you responsible for changing that membership</p> <p>22 fee structure?</p> <p>23 A Yes.</p> <p>24 Q Why did you change it?</p> <p>25 A The costs were too high.</p>	36	<p>1 A Yes.</p> <p>2 The overall goal is to save the dentists enough</p> <p>3 money, that it can pay for their education at the Kois</p> <p>4 Center.</p> <p>5 Q You mentioned that members are required to take one</p> <p>6 course at the Kois Center; is that right?</p> <p>7 A Correct.</p> <p>8 Q How much would a class typically run?</p> <p>9 A A typical three-day class is \$5,395.</p> <p>10 Q Is it your goal to save dentists at least that much,</p> <p>11 \$5,395, through the Kois Buyers Group?</p> <p>12 A It is my goal to save them the total cost of taking all</p> <p>13 the courses at the center, which is approximately</p> <p>14 50,000.</p> <p>15 Q Okay. Wow, so \$50,000 a year?</p> <p>16 A No. That's a one-time-- if you have taken all the</p> <p>17 courses, that is the total cost.</p> <p>18 If they were to save that over the lifetime, that</p> <p>19 would be great.</p> <p>20 If they can save that every year, that's even</p> <p>21 better.</p> <p>22 Q So has the \$299 fee been in place since October 2015</p> <p>23 when you started?</p> <p>24 A No. The fee was in place, but we didn't start charging</p> <p>25 people until March of 2016.</p>

37	<p>1 Q Why didn't you start charging people until then?</p> <p>2 A Because the program wasn't structured. There was a lot</p> <p>3 of confusion.</p> <p>4 Before that month, any charges were a deposit on</p> <p>5 future payments, so anyone that paid \$500 or \$300</p> <p>6 previously, we pushed all that forward.</p> <p>7 If they paid \$300, they paid for a year of</p> <p>8 membership, and they wouldn't be charged until the</p> <p>9 following year.</p> <p>10 If they paid 500, we rounded that to two years, and</p> <p>11 they didn't pay for two years.</p> <p>12 We have current members that haven't paid more than</p> <p>13 their deposit when they started in 2014.</p> <p>14 Q So you said prior to March 2016 you weren't charging</p> <p>15 people because the program wasn't structured.</p> <p>16 What did you mean by that?</p> <p>17 A Right.</p> <p>18 There wasn't a platform in place to charge them.</p> <p>19 Everything was manual.</p> <p>20 There was no easy place for information to be</p> <p>21 stored, no organized fashion of displaying the discounts</p> <p>22 from the particular vendors.</p> <p>23 It was a very disorganized group.</p> <p>24 Q But then as of March 2016, it became more organized?</p> <p>25 A By March 2016 we had a website in place that listed all</p>	39	<p>1 have in the program, complaints.</p> <p>2 Q And there's-- am I correct that there's no requirement</p> <p>3 to purchase through Kois Buyers Group vendors?</p> <p>4 A Correct.</p> <p>5 It's clearly stated on the website, that there's no</p> <p>6 obligation.</p> <p>7 It is also listed in all newsletters that I send</p> <p>8 out.</p> <p>9 Q And even if there's no requirement, are there any</p> <p>10 incentives to purchase through the Kois vendors?</p> <p>11 A There would be discounts.</p> <p>12 Q Purchasing through the Kois vendors gives access to</p> <p>13 discounts, correct?</p> <p>14 A Correct.</p> <p>15 Q And there are no requirements for the dentists to change</p> <p>16 their practice in any way?</p> <p>17 A No.</p> <p>18 Q And Kois Buyers Group does not take any ownership</p> <p>19 interest in the member dental practices, correct?</p> <p>20 A Correct.</p> <p>21 Q And does Kois Buyers Group play any role in management</p> <p>22 decisions of the member dental practices?</p> <p>23 A No.</p> <p>24 Q So as part of your job duties, do you interact with Kois</p> <p>25 Buyers Group members?</p>
38	<p>1 the vendors.</p> <p>2 It was also a place for members to sign up for the</p> <p>3 buyers group.</p> <p>4 The website also does renewals for memberships, to</p> <p>5 make things more efficient, which is why it takes so</p> <p>6 little time for me to administer currently.</p> <p>7 Q Thank you.</p> <p>8 Are Kois members required to sign an agreement with</p> <p>9 Kois Buyers Group to access the benefits?</p> <p>10 A No.</p> <p>11 Q So I have heard of something called the Tribal</p> <p>12 Membership Program.</p> <p>13 Do you know what that is?</p> <p>14 A Yes.</p> <p>15 Q What is that?</p> <p>16 A That is what was originally called-- that's what the</p> <p>17 buyers group was originally called.</p> <p>18 Q And are there rules that-- are there Tribal Membership</p> <p>19 Program rules that members must abide by?</p> <p>20 A They have to have taken at least one course.</p> <p>21 Q Other than that, no rules, that you are aware of?</p> <p>22 A No. No.</p> <p>23 They are free to tell anybody they like whatever</p> <p>24 discounts they get from any members.</p> <p>25 They're free to tell anybody about any success they</p>	40	<p>1 A Yes.</p> <p>2 Q How frequently?</p> <p>3 A It's at the members' discrepancy, so when they choose to</p> <p>4 reach out to me.</p> <p>5 That's an interaction I will have with them.</p> <p>6 Other than them engaging the conversation, the only</p> <p>7 interaction I have is the newsletters and the social</p> <p>8 media posts that we do.</p> <p>9 Q Okay. How frequently, approximately, do members reach</p> <p>10 out to you?</p> <p>11 A Two or three times a month.</p> <p>12 Q Two or three times a month you get a member reaching out</p> <p>13 to you, approximately?</p> <p>14 A Mm-hm.</p> <p>15 Q For what purpose do they typically reach out?</p> <p>16 A Some of them have questions about the buyers group that</p> <p>17 could be answered on the website. They just choose not</p> <p>18 to log in and find the answers themselves.</p> <p>19 Some of them are compliments of the success that</p> <p>20 they've had with the vendors of the group.</p> <p>21 Some of them are complaints from the vendors not</p> <p>22 giving them the discounts that they were supposed to</p> <p>23 receive.</p> <p>24 Q Do you usually receive communications from members via</p> <p>25 e-mail?</p>

41	<p>1 A More than likely. 2 Occasionally phone calls. 3 Occasionally, if the people are at courses, they'll 4 tell me in-person. 5 Q Do you attend courses yourself? 6 A What do you mean by "attend"? 7 Q You said "occasionally if people are at courses, they 8 will tell me in-person," so I was wondering if you 9 generally attend courses. 10 A I don't have a seat in the room, so I am not a general 11 participant in the course, but at breaks I will come out 12 and introduce myself and socialize with the members, 13 make sure they're comfortable, they're enjoying their 14 course. 15 Q Am I correct that dentists can take courses at Kois 16 Center without being a member of the Kois Buyers Group? 17 A Yes. 18 Q How frequently does the Kois Center host courses? 19 A Approximately 30 courses taught specifically by Dr. Kois 20 per year, and approximately five additional adjunctive 21 courses per year. 22 Q And the courses can run more than one day? 23 A Correct. 24 Q Do they typically run more than one day? 25 A Yes.</p>	43	<p>1 It's voluntary, so it's whatever they feel 2 compelled to share their experience. 3 Q Do you have a sense for how much money that dentists, 4 who are members of Kois Buyers Group, are saving in a 5 year? 6 A It depends on vendors that they are saving the money on. 7 We ask vendors to give us an update in whether some 8 of the members are successful in saving money. 9 Q How frequently do you receive that update? 10 A Annually. 11 We ask all the vendors, and it is voluntary whether 12 or not they choose to send any updates on that. 13 Q For those that do send an update, how would they send 14 that to you? 15 A As an e-mail generally. 16 Q Do you recall receiving any e-mails from vendors about 17 how members have been saving money? 18 A Yeah. We received one last year and this year from 19 Burkhart. 20 We asked them to remove any identifiable 21 information from the customers, their name, practice, 22 and give us an idea of anybody that's a member of the 23 buyers group, pre and post membership, if they saved any 24 money. 25 Q What were the results?</p>
42	<p>1 Q What do they typically run? 2 A Typically for a course, a core course, a Kois course, 3 there is either a three-day course or a five-day course. 4 Course days are anywhere from ten hours a day for a 5 three-day and 11 hours a day for a five-day. 6 Q Where are the Kois classes held? 7 A At the Kois Center in South Lake Union. 8 Q You mentioned that some dentists have reached out with 9 compliments about Kois Buyers Group? 10 A Yes. 11 Q What type of compliments have you heard? 12 A They're saving a lot of money. 13 Q Anything else? 14 A They love the website. 15 Q Anything else? 16 A They appreciate my efforts. 17 Q Okay. So you have heard from dentists that they've 18 saving a lot of money? 19 A Yeah. 20 Q How frequently do you hear that? 21 A Every-- it depends on the time of year. 22 I would say quarterly. 23 Q Quarterly you will hear from one dentist saying that 24 they're saving a lot of money? 25 A Sure.</p>	44	<p>1 A Some members were saving on an average of 20,000 to 2 30,000 a year in their supplies, as compared to their 3 previous relationships. 4 Some were previous Burkhart members but not Kois 5 Buyers Group members. 6 Some were various dental supply-- they order from 7 lots of different people. 8 Some were from Schein, Patterson-- it just depends 9 on who they were with. 10 Burkhart has a very structured, stringent way of 11 determining that, where it's only if there is an 12 agreement that they are taking all of their business, so 13 they have some sort of a guarantee program where they 14 match up the invoices and compare things line by line. 15 Q So Burkhart has a guarantee program. 16 Is that for Kois Buyers Group members? 17 A No. It's company-wide. 18 I believe it's called a supply side guarantee. 19 They guarantee savings compared to some other 20 competitors if they're purchasing all through them. 21 Q So Kois Buyers Group members would have access to that 22 program? 23 A Anybody would have access to that. 24 You don't have to be a Kois Buyers Group member to 25 have access.</p>

45	<p>1 Q Understood.</p> <p>2 MR. RYAN-LANG: I think we have been</p> <p>3 going a little over an hour.</p> <p>4 Do you need to take a break?</p> <p>5 MS. GOFF: This is a great time for a</p> <p>6 break, if you want.</p> <p>7 MR. RYAN-LANG: I would like to take</p> <p>8 a five-minute or ten-minute break.</p> <p>9 MS. GOFF: Sure.</p> <p>10 (Recess 9:56 to 10:07 a.m.)</p> <p>11</p> <p>12 Q (By Ms. Goff) Mr. Kois, from your experience in the</p> <p>13 dental industry, do you believe that dentists are</p> <p>14 interested in joining Kois Buyers Group or groups like</p> <p>15 Kois Buyers Group?</p> <p>16 A I can't speak to what their interest is.</p> <p>17 I can tell you that there's a lot of buyers groups</p> <p>18 starting. We are certainly not the only ones. I'm sure</p> <p>19 there's a reason for that.</p> <p>20 If there's that many starting, there has to be an</p> <p>21 interest, but I can't tell you for sure.</p> <p>22 Q Thank you.</p> <p>23 Do you have any understanding of why dentists who</p> <p>24 are members of Kois Buyers Group join?</p> <p>25 A They join to get a discount on products, mostly products</p>	47	<p>1 Q Any sources.</p> <p>2 A I don't have any.</p> <p>3 Q Have you heard of any challenges in the dental market</p> <p>4 specifically related to private practice dentists?</p> <p>5 A The larger group practices are providing a lot of</p> <p>6 services that are cheaper, and they're trying to compete</p> <p>7 on price, and for a dentist that focuses with competing</p> <p>8 on value, that's a hard market to be in.</p> <p>9 Q And so when you re referring to the group practices</p> <p>10 providing services that are cheaper, what kind of</p> <p>11 services do you mean?</p> <p>12 A You know, a crown can be-- there's no set fee, unless</p> <p>13 you're dealing with an insurance company, in which case</p> <p>14 they set a fee for how much a crown is, but a dentist</p> <p>15 has a lot of latitude to decide on how much profit they</p> <p>16 want to make, whether there's a higher lab bill, a</p> <p>17 higher supply-- if you want to make a crown that looks</p> <p>18 exactly like the tooth they had or a brick in a person's</p> <p>19 mouth, that's the choice of the dentist and the patient</p> <p>20 to make an agreement on that.</p> <p>21 Q So the larger group practices are providing services to</p> <p>22 customers, the people that are getting dental work done</p> <p>23 that's cheaper?</p> <p>24 A Well, private practices do as well.</p> <p>25 A private practice can choose to use cheaper</p>
46	<p>1 that they already purchase.</p> <p>2 Q What do you mean by "products they already purchase"?</p> <p>3 A Many of the buyers group members have told me that to</p> <p>4 join the buyers group, the vendors that are part of the</p> <p>5 group are vendors that they buy from anyway, so to join</p> <p>6 and save money on products-- they don't have to do any</p> <p>7 product changes.</p> <p>8 You know, to buy a membership fee, you make that up</p> <p>9 on a couple of orders, depending on how big your orders</p> <p>10 are. It's a no-brainer for a lot of dentists. It's</p> <p>11 really simple.</p> <p>12 Q Has Kois Center or Kois Buyers Group done any analysis</p> <p>13 or study of whether dentists are interested in joining</p> <p>14 buyers groups?</p> <p>15 A No.</p> <p>16 Q Do you have any understanding of-- nevermind. Strike</p> <p>17 that.</p> <p>18 Do you have any understanding of whether in the</p> <p>19 last few years there has been increasing pressure on</p> <p>20 private dental practices' ability to thrive?</p> <p>21 A I don't understand what you mean by "thrive."</p> <p>22 Q Do you have any understanding of whether in the past few</p> <p>23 years there has been increasing pressure on private</p> <p>24 dental practices' ability to make money?</p> <p>25 A Pressure from where?</p>	48	<p>1 materials, do something quicker, cut some corners,</p> <p>2 reduce their own margins.</p> <p>3 That's a choice of the dental office.</p> <p>4 It's not necessarily a group practice.</p> <p>5 Q So are there any challenges related to individual</p> <p>6 dentists or small practices that you see, due to an</p> <p>7 increase in growth in large group practices?</p> <p>8 A I don't have anything concrete.</p> <p>9 I could tell you what dentists feel like, but I</p> <p>10 don't have anything to prove that, nothing to</p> <p>11 substantiate that.</p> <p>12 Q Well, what can you tell me about what dentists feel?</p> <p>13 A Dentists have told me that they feel like the group</p> <p>14 practices do dentistry differently, and their business</p> <p>15 model focuses more on revenue than patient care.</p> <p>16 Q Have dentists ever told you that the high price of</p> <p>17 supplies has been a challenge for them?</p> <p>18 A I don't understand what you mean by "challenge."</p> <p>19 Q Has been a-- have dentists ever informed you that the</p> <p>20 high price of supplies has led to lower profit margins</p> <p>21 for dentists?</p> <p>22 A I would say that "high" is a subjective term, so</p> <p>23 dentists always appreciate lower costs, but if the costs</p> <p>24 they're spending is the costs they've always spent, they</p> <p>25 don't have an idea of what "high" is until they've</p>

49	<p>1 saved.</p> <p>2 Q Okay. We talked a little bit about this earlier, but</p> <p>3 how do you attract new members to your Kois Buyers</p> <p>4 Group?</p> <p>5 A We send out social media updates through the Kois Center</p> <p>6 social media.</p> <p>7 We also provide an informational sheet for all</p> <p>8 participants at the Kois Center, that lists every vendor</p> <p>9 and all the discounts that are available, plus a</p> <p>10 reminder that there s no obligation, no exclusivity for</p> <p>11 any of the vendors.</p> <p>12 Q Any other ways to recruit new members?</p> <p>13 A The only other way we ve had is word of mouth.</p> <p>14 Vendors are telling their-- the dentists that they</p> <p>15 work with, that they have an option to give them</p> <p>16 additional savings if they were a buyers group member.</p> <p>17 Q Do you have an understanding of whether vendors do tell</p> <p>18 dentists that they could get additional savings if they</p> <p>19 were a buyers group member?</p> <p>20 A No, I haven't heard anything from the vendor.</p> <p>21 They tell me their reps are saying that, but I have</p> <p>22 no way to substantiate that.</p> <p>23 Q Thank you.</p> <p>24 You mentioned that there are other competitor</p> <p>25 groups like Kois, is that right, other buyers group that</p>	51	<p>1 Ivoclar is a distributor. They re popular with</p> <p>2 labs.</p> <p>3 We don't have a lot of lab members.</p> <p>4 Ultradent.</p> <p>5 Both of those companies said no.</p> <p>6 Q What is Ultradent?</p> <p>7 A They re a direct-to-consumer supply company.</p> <p>8 Q Is it like an online ordering system?</p> <p>9 A I'm not familiar with how they do their sales.</p> <p>10 Q But you said they are a distributor, not a manufacturer?</p> <p>11 A I believe they re a manufacturer.</p> <p>12 Q Thank you.</p> <p>13 Have you ever heard from any members that they</p> <p>14 would like to see Schein, Patterson, or Benco as a</p> <p>15 member?</p> <p>16 A Yes.</p> <p>17 Q How frequently does that occur?</p> <p>18 A How many in a year?</p> <p>19 Q Sure.</p> <p>20 A Maybe one or two times a year total.</p> <p>21 Q What about for individuals that are on the East Coast,</p> <p>22 are those the individuals that are most likely to</p> <p>23 request a Schein, Patterson, or Benco?</p> <p>24 A I would say yes.</p> <p>25 Q And that's because Burkhart doesn't offer full services</p>
50	<p>1 are similar to Kois that are out there?</p> <p>2 A Yes.</p> <p>3 Q Can members be both a member of the Kois Buyers Group</p> <p>4 and another buyers group?</p> <p>5 A That's a question between-- if both buyers groups are</p> <p>6 accepting of that.</p> <p>7 The Kois Buyers Group is accepting-- you can be a</p> <p>8 member of multiple buyers groups. There's no problem,</p> <p>9 as far as we re concerned.</p> <p>10 Q Has Kois Buyers Group ever conducted any type of survey</p> <p>11 of its members?</p> <p>12 A Regarding any kind of survey?</p> <p>13 Q Yes.</p> <p>14 A No.</p> <p>15 Q Okay. So Kois has not surveyed members to determine</p> <p>16 whether-- like which types of distributors or</p> <p>17 manufacturers or vendors that they would like to see</p> <p>18 work with Kois Buyers Group?</p> <p>19 A There's been no surveys, but if people-- people will</p> <p>20 recommend vendors that they use, that they say they</p> <p>21 would appreciate in the buyers group.</p> <p>22 Q And what have you heard from members? What type of</p> <p>23 vendors do they recommend?</p> <p>24 A Lately there are vendors that we talk about in the</p> <p>25 courses but aren't members of the buyers group.</p>	52	<p>1 on the East Coast?</p> <p>2 A Correct.</p> <p>3 Q And we have talked about the full-service distributor.</p> <p>4 Would you contribute Burkhart to be a full-service</p> <p>5 distributor?</p> <p>6 A Depending on what location you are in.</p> <p>7 Q What is a full-service distributor?</p> <p>8 A They have a rep that can come to the office to do your</p> <p>9 sales.</p> <p>10 They have a closer distribution center.</p> <p>11 That the non full service, to my understanding, is</p> <p>12 Internet only or infrequent salesmen calls on the</p> <p>13 office.</p> <p>14 Q Thank you.</p> <p>15 Are Schein, Patterson, Benco, to your</p> <p>16 understanding, full-service distributors?</p> <p>17 A Yes.</p> <p>18 They have full-service reps. I am not familiar</p> <p>19 with what their territories are.</p> <p>20 Q Thank you.</p> <p>21 Has Kois Buyers Group ever done any research into</p> <p>22 why its members joined Kois Buyers Group?</p> <p>23 A Is that formal research like a survey or asking people,</p> <p>24 tabulating results--</p> <p>25 Q Either informal or formal research?</p>

53	<p>1 A Informal.</p> <p>2 We ask people.</p> <p>3 If they say they're a member and they're happy, we</p> <p>4 ask them why they decided to join the buyers group.</p> <p>5 Q And generally what have you heard?</p> <p>6 A For discounts.</p> <p>7 Q Any other reasons that members have given for why they</p> <p>8 have joined Kois Buyers Group?</p> <p>9 A Some of the early members, before my time, they joined</p> <p>10 for the hope of discounts.</p> <p>11 When the initial members first started, there was</p> <p>12 no vendors, just the hope of discounts to come, so they</p> <p>13 weren't joining for the discounts, they were joining for</p> <p>14 the hope of discounts.</p> <p>15 Q Thank you.</p> <p>16 Is it fair to say that obtaining discounts on</p> <p>17 dental supplies is an important part of Kois buyers</p> <p>18 group's offering to dentists?</p> <p>19 A Yes.</p> <p>20 Q And do you have a sense for what percentage of supplies</p> <p>21 a typical member buys through Kois Buyers Group?</p> <p>22 A No.</p> <p>23 Q Kois has not done-- you or Kois has not done any</p> <p>24 analysis on that?</p> <p>25 A No.</p>	55	<p>1 Q Did you give an idea of how much members saved at that</p> <p>2 symposium?</p> <p>3 A Yes.</p> <p>4 Q And what did you say?</p> <p>5 A I only received an update from Burkhart, with three</p> <p>6 members, and the average savings was approximately</p> <p>7 \$23,000.</p> <p>8 Q Do you have an understanding of how Burkhart chose those</p> <p>9 three members to provide to you?</p> <p>10 A Yes. They were ones that they had invoices from the</p> <p>11 practice from pre membership to post membership, and</p> <p>12 they could compare the prices.</p> <p>13 Q Okay. So do you have any understanding of whether that</p> <p>14 23,000 is a norm or is typical for buying group members,</p> <p>15 for Kois Buyers Group members?</p> <p>16 A I don't have an understanding because I don't know how</p> <p>17 much they were spending with a previous company and what</p> <p>18 they're spending now, if it's consolidated, if it's</p> <p>19 something else.</p> <p>20 Q Okay. What is the annual symposium that you mentioned?</p> <p>21 A It is our large course every year.</p> <p>22 The Kois Center does a course providing all the</p> <p>23 updated scientific research from the last 12 months, and</p> <p>24 it's presented to-- anyone who has been a graduate, has</p> <p>25 gone through the program, is invited to come back.</p>
54	<p>1 Q And do you have an understanding of whether dentists</p> <p>2 save money by joining Kois Buyers Group?</p> <p>3 A Yes.</p> <p>4 Q And what is your understanding?</p> <p>5 A The dentists tell me they're saving money through the</p> <p>6 Kois Buyers Group, the dental members.</p> <p>7 Q Do you know what percentage of members save money by</p> <p>8 joining Kois Buyers Group?</p> <p>9 A No.</p> <p>10 We don't know what people purchase, if anything,</p> <p>11 from the vendors.</p> <p>12 Q Okay. So you don't receive any reports from your</p> <p>13 vendors regarding how much the members are purchasing?</p> <p>14 A We have, and it's voluntary.</p> <p>15 Q Voluntary from the vendors?</p> <p>16 A Correct.</p> <p>17 Q Is that something that Kois seeks out?</p> <p>18 A We request.</p> <p>19 Q And why do you request that information?</p> <p>20 A At our annual symposium in July, I give an update, to</p> <p>21 anyone who is in the room, of how the buyers group is</p> <p>22 doing, and I like to give people an idea of how much</p> <p>23 members have saved.</p> <p>24 Q Have you had your annual symposium this July?</p> <p>25 A Yes.</p>	56	<p>1 It's generally about 400 people.</p> <p>2 Q I have a document I would like to show you.</p> <p>3 (Exhibit No. 325 marked</p> <p>4 for identification.)</p> <p>5</p> <p>6 Q (By Ms. Goff) I am handing you what's been marked as</p> <p>7 Exhibit No. 325.</p> <p>8 This is a document that was produced to us by your</p> <p>9 counsel.</p> <p>10 A Yes.</p> <p>11 Q It says, "Johnny's Buyers Group business tip of the</p> <p>12 month," and then there's some text.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Is this something that comes from you?</p> <p>16 A Yes.</p> <p>17 Q What is it?</p> <p>18 A So we started in October of last year trying to do a</p> <p>19 monthly tip for people, to give them, that was hopefully</p> <p>20 more than just an announcement of a new vendor or just a</p> <p>21 discount, something they could take back to their</p> <p>22 practice to use to save money, and we did them through,</p> <p>23 I believe, May of this year.</p> <p>24 The one you have in front-- that you have given me</p> <p>25 as Exhibit No. 325, is the tip that we did for February.</p>

<p style="text-align: right;">57</p> <p>1 Q How do you know that? 2 A Because I know what month this went out. 3 Q So these tips of the month ran from approximately 4 October 2016 to May of 2017? 5 A Correct. 6 Q And was it an e-mail that you sent out? 7 A Yes, it was an e-mail and also posted on our social 8 media, for the Kois Center social media. 9 Q It just went to members? 10 A This was a public e-mail. 11 The e-mail went to members, but anyone with access 12 to Internet and our social media could view this. 13 Q And who has access to Kois social media? 14 A I do. 15 Q Who could access it? 16 Do you keep your social media-- 17 A Open, totally open. 18 Q What social media are you referring to? 19 A Facebook, Twitter, LinkedIn, Tumblr, WordPress, 20 Instagram. 21 Q So do these monthly tips go out on all of those social 22 media mediums you just mentioned? 23 A Yes. 24 Q Thank you. 25 Okay. So it says here, "The Kois Buyers Group was</p>	<p style="text-align: right;">59</p> <p>1 become a member of the buyers group? 2 Q Yes. 3 A We have had requests from people to ask vendors to be 4 part of the buyers group, and we tell them that "These 5 are products that my dad uses in his lectures, that he 6 likes and promotes, and that we don't receive any 7 compensation for that, but this is a big group of people 8 that are purchasing. Would you consider offering them a 9 discount?" 10 We ask them to provide-- if they do a special sale 11 at a trade show or something at a bulk price, "If you 12 could take that price for one product and offer that as 13 the discount for every day to the members." 14 Q Thank you. 15 The next sentence says, "Because of your 16 participation, Burkhart will begin to roll out lower 17 pricing starting February 1st, 2017." 18 Do you see that? 19 A Yes. 20 Q What does that mean? 21 I am particularly interested in understanding how 22 the participation of the members relates to Burkhart's 23 rolling out lower pricing. 24 A So Burkhart tracks how much supply is purchased from the 25 buyers group.</p>
<p style="text-align: right;">58</p> <p>1 created with one purpose, get the best price possible 2 for the individual dentist without having to wait for a 3 'trade show' price or purchase in bulk." 4 Do you see that? 5 A Yes. 6 Q Is that the Kois Buyers Group's sort of purpose? 7 A Yes. 8 Q Is there a mission statement somewhere for the Kois 9 Buyers Group? 10 A Yes. It's on the Kois Buyers Group website. 11 Q Are the words that are in here, that I just read, the 12 mission? 13 A Mostly. 14 The mission statement is this and a reminder that 15 there's no obligation, no exclusivity to purchase from 16 any of the vendors. 17 Q Okay. Thank you. 18 A You're welcome. 19 Q Moving down to the next paragraph, it says, "We ask the 20 participating vendors to look at our membership and 21 purchasing power as a whole and take into consideration 22 when offering discounts to our members." 23 Is that how Kois Buyers Group sort of pitches 24 itself to vendors? 25 A Are you asking how we open the dialogue for a vendor to</p>	<p style="text-align: right;">60</p> <p>1 When I negotiated the contract in December of 2015, 2 the current agreement, they said that if there wasn't a 3 certain amount of participation, that they would be 4 increasing their pricing to members, and I asked them to 5 then lower them if there was a certain purchasing amount 6 by the members. 7 In January they told me that those numbers had been 8 met for the previous year, and that they would be 9 lowering their margins by two percent, and that was a 10 figure that they came up to on their own. 11 That's not two percent from the previous year's 12 pricing. That was two percent based on their current 13 year pricing. 14 If they raise their pricing three percent and then 15 lowered it two percent, it is still a one percent 16 increase. 17 Q Do you know what the numbers that were met-- strike 18 that. 19 You mentioned that the members bought a certain 20 number of product from Burkhart? 21 A Dollar amount? 22 I don't know number of products. 23 Q Okay. Is it a dollar amount that was met? 24 A Yes. 25 Q Okay. And what was the dollar amount?</p>

61	<p>1 A I believe it was approximately 6 million.</p> <p>2 Q And then the next-- two sentences below that it says,</p> <p>3 "Our members are seeing real results. Some have saved</p> <p>4 well over \$50,000."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And so is this indicating that some individual dentists</p> <p>8 saved over \$50,000 in discounts?</p> <p>9 A Yes.</p> <p>10 Q And how do you know that some individual--</p> <p>11 A We had a dentist that came to us in a course and said</p> <p>12 they saved over \$50,000.</p> <p>13 Q Was that just one dentist?</p> <p>14 A Yes.</p> <p>15 Q Have you heard of any other dentists that have saved</p> <p>16 that much money?</p> <p>17 A No.</p> <p>18 Q And did you have an understanding of whether that</p> <p>19 dentist saved the \$50,000 over a period of a year or was</p> <p>20 it total since he had been a member?</p> <p>21 A He didn't give a timeline.</p> <p>22 Q And then in the next sentence it says, "This means that</p> <p>23 a Kois Buyers Group member can fund his or her entire</p> <p>24 Kois Center curriculum by using whatever products he or</p> <p>25 she chooses."</p>	63	<p>1 Buyers Group member saves on dental supplies in a given</p> <p>2 year?</p> <p>3 A It depends on what they were buying before.</p> <p>4 If you are buying additional products, it is</p> <p>5 difficult to account for the supply savings.</p> <p>6 I can tell you what dentists have told me that</p> <p>7 they've saved, and it is a percentage based on their</p> <p>8 practice, so on average dentists tell me they save</p> <p>9 somewhere between three and 15 percent.</p> <p>10 Some dentists watch that more closely than others.</p> <p>11 Q They watch the savings-- they track the savings?</p> <p>12 A Their inventory in general.</p> <p>13 A lot of dentists don't have a handle on how much</p> <p>14 they spend in any category, including supplies.</p> <p>15 Q For those that you have spoken to, on average, those</p> <p>16 dentists have told you they've saved three to 15</p> <p>17 percent?</p> <p>18 A On average-- on average the dentists have told me</p> <p>19 they've saved, and those dentists, on average, are three</p> <p>20 to 15 percent.</p> <p>21 There are dentists that tell me they're a buyers</p> <p>22 group member and they're not saving any money.</p> <p>23 Q Do you do anything to help those members save more</p> <p>24 money?</p> <p>25 A No. If they're unhappy with their membership, I offer</p>
62	<p>1 Is this a reference to the Kois Center curriculum</p> <p>2 being somewhere around \$50,000?</p> <p>3 A Yes.</p> <p>4 Q Thank you.</p> <p>5 We talked today several times about how Kois Buyers</p> <p>6 Group does not have an obligation to members to purchase</p> <p>7 from the vendors, Kois Buyers Group vendors.</p> <p>8 A Yes.</p> <p>9 Q Why is it that Kois Buyers Group does not require</p> <p>10 members to purchase from certain vendors?</p> <p>11 A We don't have a financial interest in any company.</p> <p>12 The Kois Center is wholly independent from</p> <p>13 sponsorships.</p> <p>14 To direct people to a particular vendor would--</p> <p>15 real or not, should make the appearance that had</p> <p>16 changed, that we did have some sort of financial gain</p> <p>17 from any of these companies, and we don't.</p> <p>18 It was an effort to stay as impartial as possible.</p> <p>19 Q Okay.</p> <p>20 A We also don't have a strong opinion either way, where</p> <p>21 people purchase their products.</p> <p>22 We make a recommendation, but ultimately they can</p> <p>23 choose whatever they'd like.</p> <p>24 Q I think you may have already answered this, but do you</p> <p>25 have any understanding of the average amount that a Kois</p>	64	<p>1 them a refund.</p> <p>2 Q How frequently does that happen?</p> <p>3 A It's happened once.</p> <p>4 Q I would like to talk a little bit about Kois Buyers</p> <p>5 Group vendors.</p> <p>6 A Sure.</p> <p>7 Q So how does a vendor relationship start?</p> <p>8 A Generally I'll reach out to a sales rep, and they will</p> <p>9 reach out to their headquarters and get me in touch with</p> <p>10 the right person.</p> <p>11 Q And how do you decide which sales reps or which</p> <p>12 companies to reach out to?</p> <p>13 A They're products that are generally listed in the</p> <p>14 courses taught by the Kois Center, so if my dad has a</p> <p>15 vendor that he likes, he will ask me to see about if</p> <p>16 they're interested in joining the buyers group as a</p> <p>17 vendor.</p> <p>18 We also have members that will recommend products.</p> <p>19 Q Okay. And what types of vendors does Kois Buyers Group</p> <p>20 approach?</p> <p>21 Is it distributors and manufacturers?</p> <p>22 A Manufacturers mostly.</p> <p>23 Q Is Burkhardt the only distributor that Kois Buyers Group</p> <p>24 has a relationship with?</p> <p>25 A No.</p>

65	<p>1 Q What other ones?</p> <p>2 A Sinclair Dental.</p> <p>3 Q Any others?</p> <p>4 A No.</p> <p>5 Q Is Sinclair Dental a Canadian-based company?</p> <p>6 A Yes.</p> <p>7 Q Do they only sell in Canada?</p> <p>8 A Yes.</p> <p>9 Q So within the United States the only distributor that</p> <p>10 Kois Buyers Group has a relationship with is Burkhart?</p> <p>11 A As a distribution company, yes.</p> <p>12 Brasseler is a manufacturer, but they were</p> <p>13 purchased by Schein.</p> <p>14 Q Do you know how many manufacturer vendors Kois Buyers</p> <p>15 Group has?</p> <p>16 A Manufacturer only?</p> <p>17 Q Yes.</p> <p>18 A I believe it's 28.</p> <p>19 Q Is there a list of those vendors somewhere?</p> <p>20 A Yes.</p> <p>21 Q Where?</p> <p>22 A It is on an informational handout that we give to all of</p> <p>23 the participants to the courses.</p> <p>24 It is also on the Kois Buyers Group website.</p> <p>25 Q Is the Kois Buyers Group website open to anyone or is</p>	67	<p>1 A We can ask them to negotiate with them a better price</p> <p>2 for our members, but ultimately we don't have any</p> <p>3 control over that.</p> <p>4 3M doesn't distribute directly to our members.</p> <p>5 Q Have you reached out to 3M about distributing directly</p> <p>6 to members?</p> <p>7 A Yes.</p> <p>8 Q And did they say that they were not interested?</p> <p>9 A Yes.</p> <p>10 Q Did they give you a reason?</p> <p>11 A They said that the members already purchase from 3M--</p> <p>12 well, they already purchase 3M products, so a discount</p> <p>13 is just eroding their profits.</p> <p>14 Q Have you heard that sentiment from any other vendors</p> <p>15 that you have reached out to?</p> <p>16 A We heard that-- for any vendors? It's always a concern.</p> <p>17 It has never been the main reason to not be-- to</p> <p>18 not participate in the buyers group.</p> <p>19 Q But it was the main reason for 3M?</p> <p>20 A Correct.</p> <p>21 That was what Burkhart told us. I didn't have any</p> <p>22 direct communication with 3M stating as such.</p> <p>23 Q Thank you.</p> <p>24 For the 28 manufacturers that Kois Buyers Group</p> <p>25 partners with, did you have direct negotiations with all</p>
66	<p>1 there a password--</p> <p>2 A There's a password.</p> <p>3 Q So it is really only for members to log in?</p> <p>4 A You're able to log on without being a Kois Buyers Group</p> <p>5 member and see all the available discounts.</p> <p>6 Your membership is dictated on if you've been-- if</p> <p>7 you qualify to become a member, so if you've been to at</p> <p>8 least one course, you have access to the vendors.</p> <p>9 Q So I am not going to ask you to list all 28</p> <p>10 manufacturers, but are there a top-five manufacturers</p> <p>11 that Kois Buyers Group works with?</p> <p>12 A What would qualify as the top five?</p> <p>13 Q I don't know, the top five that you understand dentists</p> <p>14 purchase from.</p> <p>15 A That would be Burkhart, Sinclair, Brasseler, Straumann,</p> <p>16 Dentsply, and I'm going to guess CariFree.</p> <p>17 Q Does Kois Buyers Group work with 3M?</p> <p>18 A Through Burkhart.</p> <p>19 Q Okay. So what is the distinction you are making there?</p> <p>20 A We can't purchase directly through 3M, so if it's a</p> <p>21 product that is distributed through Burkhart, Burkhart</p> <p>22 negotiates the discounts.</p> <p>23 We don't have any opinion, any kind of a sway in</p> <p>24 those conversations.</p> <p>25 Q Okay.</p>	68	<p>1 of those?</p> <p>2 A Yes.</p> <p>3 Q And does Kois Buyers Group have some sort of contract</p> <p>4 with those 28 manufacturers?</p> <p>5 A No.</p> <p>6 Q Okay. What is the relationship then?</p> <p>7 A We asked them to provide a discount to the members.</p> <p>8 We sent them a member list, and they agreed to give</p> <p>9 a discount to the members.</p> <p>10 Q But it is an informal agreement?</p> <p>11 A Yes.</p> <p>12 Q In other words, it is not written in a contract?</p> <p>13 A Correct.</p> <p>14 Q But your agreement with Burkhart and Sinclair, that is</p> <p>15 written in a contract, correct?</p> <p>16 A Correct. They are the only two contracts that we have.</p> <p>17 Q And why did you do a contract with Burkhart and Sinclair</p> <p>18 but not with the other manufacturers?</p> <p>19 A It is vendor preference.</p> <p>20 Q So "vendor" meaning the Burkhart and Sinclair?</p> <p>21 A Correct.</p> <p>22 Q And did-- do Burkhart and Sinclair have any type of</p> <p>23 relationship with each other?</p> <p>24 A What kind of relationship?</p> <p>25 Q I don't know.</p>

69	71
<p>1 I just wasn't sure if they were related at all,</p> <p>2 like maybe subsidiaries or something like that.</p> <p>3 A No.</p> <p>4 Q Does Kois have any minimum discounts that it requires</p> <p>5 vendors to offer in order to be a part of the Kois</p> <p>6 Buyers Group program?</p> <p>7 A No.</p> <p>8 Q Would you consider Kois Buyers Group to be selective</p> <p>9 about what vendor partners they work with?</p> <p>10 A Yes.</p> <p>11 Q And you mentioned earlier that it's based on your</p> <p>12 father's sort of recommendations on products?</p> <p>13 A Partly.</p> <p>14 Q What else is it based on?</p> <p>15 A Member requests.</p> <p>16 We have some vendors that aren't listed in any of</p> <p>17 our lectures, but the members have requested they be</p> <p>18 available as a vendor in the discount.</p> <p>19 We also try not to have too many of the same type</p> <p>20 of vendor in the same-- as a part of it.</p> <p>21 Q What do you mean by "the same type of vendor"?</p> <p>22 A We have four different implant companies as part of it.</p> <p>23 If the implant company knows they're competing</p> <p>24 against nobody, they have more incentive to give a</p> <p>25 larger discount. They have less of an incentive when</p>	<p>1 more expensive than a vendor in the buyers group is not</p> <p>2 an incentive for them to switch to a different implant</p> <p>3 company.</p> <p>4 For implants in particular, it was better to have</p> <p>5 more options for people, because we're finding that</p> <p>6 implants is a very inflexible product. People will take</p> <p>7 a discount on the product they use, but they won't</p> <p>8 necessarily move to another brand, is our experience.</p> <p>9 Q Okay. Are there any other types of supplies that fall</p> <p>10 into that category?</p> <p>11 A Sure.</p> <p>12 Some people have personal preferences, some people</p> <p>13 don't.</p> <p>14 Some people like a particular glove brand, some</p> <p>15 people don't.</p> <p>16 Some people have a type.</p> <p>17 Some people have a certain type of composite that</p> <p>18 they like.</p> <p>19 It's really dependent on what the dentist likes.</p> <p>20 Q Other than implants, which you said was a pretty</p> <p>21 inflexible product, have you come across any products</p> <p>22 that you've noted are particularly inflexible?</p> <p>23 A My dad recommends 3M's Unicem, which is a bonding agent.</p> <p>24 His opinion is it's a superior product, so people</p> <p>25 are willing to spend more for that product than a</p>
<p>1 they have more than one competitor giving a discount.</p> <p>2 We also elect for less of a discount and more</p> <p>3 vendors, if possible.</p> <p>4 Q And why is that?</p> <p>5 A Give people more options.</p> <p>6 Q Have dentists expressed an interest in having more</p> <p>7 options?</p> <p>8 A In what category?</p> <p>9 Q Any category.</p> <p>10 A Not for particular supplies. They just ask for</p> <p>11 particular products, so that would be a personal</p> <p>12 preference.</p> <p>13 Q When you say they ask for particular products, are you</p> <p>14 referring to a particular brand name?</p> <p>15 A Occasionally.</p> <p>16 Q What else could it be?</p> <p>17 A That's all I've heard.</p> <p>18 Q Okay. So you said "not for particular supplies,"</p> <p>19 meaning like gloves or-- I don't know, fillings or</p> <p>20 something like that, but for particular products,</p> <p>21 meaning brands--</p> <p>22 A Some people-- right.</p> <p>23 We have, for instance-- implants, people have a</p> <p>24 very strong opinion one way or the other which implant</p> <p>25 they choose to use, and whether or not that vendor is</p>	<p>1 competitor, which is why people continue to buy a 3M</p> <p>2 product, even though they can get cheaper versions, as</p> <p>3 far as our members are concerned.</p> <p>4 Q Does Kois Buyers Group impose any requirements on the</p> <p>5 vendors that it partners with?</p> <p>6 A Yes.</p> <p>7 Q What?</p> <p>8 A We ask that they not e-mail too frequently with</p> <p>9 discounts for the members.</p> <p>10 We ask them to limit their e-mail newsletters to</p> <p>11 quarterly.</p> <p>12 Q Any other requirements?</p> <p>13 A We ask them to tell people that they re part of the Kois</p> <p>14 Buyers Group and not a member-- and not related to the</p> <p>15 Kois Center.</p> <p>16 Q Any other requirements?</p> <p>17 A No.</p> <p>18 Q And why do you ask vendors to tell people that they re</p> <p>19 part of Kois Buyers Group and not related to Kois</p> <p>20 Center?</p> <p>21 A We don't want people to get the opinion that there is a</p> <p>22 sponsorship with the Kois Center.</p> <p>23 It is a separate company, and we like to make that</p> <p>24 very clear.</p> <p>25 Q And why is that?</p>

<p style="text-align: right;">73</p> <p>1 A Because having no sponsorship and be part of a 2 continuing education center is not-- is not something 3 that happens a lot, so that uniqueness gives us a lot of 4 traction in any opinions we give as far as what products 5 are. 6 The idea that we are paid for those endorsements 7 cheapens the opinions. 8 Q Does Kois Buyers Group advertise or let members know 9 that they're not paid for the endorsements? 10 A The Kois Buyers Group doesn't. 11 The Kois Center does. 12 Q Okay. What are the range of discounts that the 13 manufacturer vendor partners provide? 14 A I think the smallest is approximately three percent and 15 the highest is approximately 40 percent. 16 Q And so if there's no formal contract with the 17 manufacturers, are the discounts written down somewhere, 18 the discounts that are offered to Kois Buyers Group 19 members? 20 A We ask the vendors to fill out an informational sheet 21 that lists what kind of discount they intend to give to 22 the members, but we have no way of tracking that. 23 Q And when you said you have no way of tracking that, do 24 you mean you have no way of confirming or verifying if 25 those are the discounts that are actually offered to</p>	<p style="text-align: right;">75</p> <p>1 Q Any other ways? 2 A No. 3 Q Is Kois interested in partnering with a variety of 4 vendors? 5 In other words, is it important to have as many 6 vendors as possible? 7 A No. 8 Q Has Kois reached out to any distributors, other than 9 Burkhart? 10 A To be a part of the buyers group? 11 Q Yes. 12 A Yes. 13 Q Which ones? 14 A I reached out to Benco in 2015 when I was negotiating 15 the agreement with Burkhart. 16 Q Have you reached out to any other distributors? 17 A Schein Canada reached out to us last year and expressed 18 an interest in being part of the-- of being a 19 distributor in Canada. 20 Q Okay. Has Schein in the United States reached out to 21 Kois Buyers Group about being a distributor? 22 A No. 23 Q Have you or anyone else from Kois Buyers Group reached 24 out to Schein? 25 A No.</p>
<p style="text-align: right;">74</p> <p>1 members? 2 A Correct. 3 Q Is there any requirement that vendors offer discounts on 4 all of their products as opposed to just certain 5 products? 6 A No. 7 Q Do some vendors only offer discounts on certain 8 products? 9 A Yes. 10 Q Are there any that offer discounts across the board on 11 all the products that they sell? 12 A Yes. 13 Q So you mentioned that the first step in bringing in a 14 new vendor partner is to reach out to a sales rep. 15 Do you usually reach out via e-mail or on the 16 telephone? 17 A Either, whatever contact I have. 18 That's usually all I have for contacting the 19 company, and usually that's the first place to start. 20 Q E-mail, that is? 21 A Or phone. 22 Q Okay. 23 A Many times it's phone. 24 Q How do you determine which vendors to reach out to? 25 A Recommendations from either Dr. Kois or current members.</p>	<p style="text-align: right;">76</p> <p>1 Q And what about prior to your arrival at Kois Buyers 2 Group, do you have an understanding of whether there 3 were any conversations between Kois Buyers Group and 4 Schein? 5 A My understanding is that Schein was approached prior to 6 the agreement with Burkhart, and their response was no. 7 Q How did you come to have that understanding? 8 A That's what my dad told me, based on a conversation with 9 Qadeer. 10 Q Did your dad tell you whether Schein gave a reason for 11 saying no? 12 A No. 13 Q So do you have any understanding of why Schein said no? 14 A No. 15 Q What about Patterson? Did Kois Buyers Group ever 16 approach Patterson to be a distributor? 17 A Neither of these would have been the Kois Buyers Group. 18 This was ProCare Services that did the negotiation, and 19 it is my understanding that they also reached out to 20 Patterson. 21 Q Okay. Just to be clear, ProCare Services was doing the 22 negotiation on behalf of Kois Buyers Group, correct? 23 A Correct. 24 Q And what is your understanding of what Patterson's 25 response was?</p>

77	<p>1 A My understanding is their response was no.</p> <p>2 Q How did you come to have that understanding?</p> <p>3 A Burkhart was already a vendor, and my understanding was</p> <p>4 Burkhart was a member because Schein and Patterson both</p> <p>5 said no.</p> <p>6 Q Did your father tell you that or--</p> <p>7 A Yes.</p> <p>8 Q Okay. Was your father interested in having Schein</p> <p>9 and/or Patterson be a vendor?</p> <p>10 A I don't understand by "interested" what you mean.</p> <p>11 Q Did your father direct ProCare Services to reach out to</p> <p>12 Schein and Patterson?</p> <p>13 A No.</p> <p>14 Q And what is your understanding of why ProCare Services</p> <p>15 approached Schein and Patterson?</p> <p>16 A I don't have an understanding of why they started with</p> <p>17 them.</p> <p>18 Q And how do you know that your father did not direct</p> <p>19 ProCare Services to reach out to Schein and Patterson?</p> <p>20 A I don't have any opinion-- I can give you an opinion of</p> <p>21 why, if that's--</p> <p>22 Q Sure.</p> <p>23 A We have a better relationship with Burkhart, so if the</p> <p>24 direction came from us, we would have started with</p> <p>25 Burkhart.</p>	79	<p>1 potential vendor partner, what's the next step?</p> <p>2 A I create a page on the website with their information.</p> <p>3 Q What is the next step after that?</p> <p>4 A We add them to the newsletter.</p> <p>5 Q Anything else after that?</p> <p>6 A Then we add them to a mailing list that gets an updated</p> <p>7 member list every time a new member gets added.</p> <p>8 Q Okay.</p> <p>9 A Finally, we announce on our social media and newsletters</p> <p>10 that we have an additional vendor.</p> <p>11 Q Thank you.</p> <p>12 Any other steps in that process?</p> <p>13 A No.</p> <p>14 Q So for the mailing list, you provide a list of all</p> <p>15 members to the vendors?</p> <p>16 A All vendors.</p> <p>17 Q Okay. And then you send updates whenever there's a new</p> <p>18 member?</p> <p>19 A No. We send a full list every time.</p> <p>20 The full list has a notice for any that have been</p> <p>21 added or been removed, but it's still the full list.</p> <p>22 Q Okay. And then how do the members themselves receive</p> <p>23 the discounts?</p> <p>24 A They contact the vendors.</p> <p>25 Q And then they place an order with the vendor?</p>
78	<p>1 Q When you say "we have a better relationship," what do</p> <p>2 you mean by "we"?</p> <p>3 A The Kois Center, and my dad, for his practice, purchase</p> <p>4 from Benco and Schein, Patterson, and Burkhart.</p> <p>5 We just happened to purchase a majority of our</p> <p>6 supplies from Burkhart.</p> <p>7 We like our relationship with Burkhart better. We</p> <p>8 like the way that-- we hear comments from our members.</p> <p>9 They're always positive for Burkhart reps.</p> <p>10 Q So other than Burkhart, Benco, and Schein Canada, have</p> <p>11 you personally spoken to any distributors about becoming</p> <p>12 a part of Kois Buyers Group?</p> <p>13 A Larrs is a Canadian company.</p> <p>14 Q Any others?</p> <p>15 A No.</p> <p>16 Q After you reach out to a vendor, what is the next step</p> <p>17 in the process?</p> <p>18 A We wait to receive their information back.</p> <p>19 We ask them for their discount, some information</p> <p>20 about their company, and how somebody could contact</p> <p>21 them.</p> <p>22 Q Does Kois Buyers Group ever have a bidding process,</p> <p>23 whereby it solicits bids from potential vendor partners?</p> <p>24 A No.</p> <p>25 Q And then once you receive the information back from the</p>	80	<p>1 A Correct.</p> <p>2 Q And have you been the person in charge of maintaining</p> <p>3 relationships with vendor partners since you started at</p> <p>4 Kois Buyers Group?</p> <p>5 A Yes.</p> <p>6 Q So how do the manufacturer discounts work?</p> <p>7 Is it correct that a member would place an order</p> <p>8 directly with that manufacturer?</p> <p>9 A Which manufacturer?</p> <p>10 Q Any manufacturer.</p> <p>11 A Some manufacturers are offering exclusive discounts</p> <p>12 through Burkhart as their distribution company, so it</p> <p>13 depends on which manufacturer you are referring to.</p> <p>14 Q Okay. Do you have an understanding of-- well, let me</p> <p>15 clarify.</p> <p>16 The manufacturer vendors that you've negotiated the</p> <p>17 discounts for, are those manufacturer vendors offering</p> <p>18 discounts for orders placed directly with them?</p> <p>19 A Yes.</p> <p>20 Q Okay. And are any of those manufacturers also</p> <p>21 manufacturers that Burkhart distributes?</p> <p>22 A I don't know.</p> <p>23 Q Are you aware of whether a member might get two</p> <p>24 discounts for the same order, one for ordering through</p> <p>25 Burkhart and then the same order get a discount from the</p>

81	<p>1 manufacturer?</p> <p>2 A I'm not aware of any that work out like that.</p> <p>3 Q For the manufacturers that offer discounts through</p> <p>4 Burkhart, do you have an understanding of which</p> <p>5 manufacturers those are?</p> <p>6 A Some.</p> <p>7 I didn't negotiate any of the discounts if the</p> <p>8 manufacturers offered it direct through Burkhart.</p> <p>9 Q Which ones are you aware of?</p> <p>10 A Hu-Friedy.</p> <p>11 Q How do you spell that?</p> <p>12 A H-U-F-R-I-E-D-Y.</p> <p>13 Q Any others?</p> <p>14 A Halyard, H-A-L-Y-A-R-D, Butler, Coltene, and I think</p> <p>15 DMG.</p> <p>16 Q Thank you.</p> <p>17 Just to be clear, none of the ones you just</p> <p>18 mentioned are vendors that offer discounts that you have</p> <p>19 negotiated?</p> <p>20 A Correct.</p> <p>21 MS. GOFF: Is now an okay time for</p> <p>22 another break?</p> <p>23 MR. RYAN-LANG: It has been about an</p> <p>24 hour. Sure.</p> <p>25 (Recess 11:06 to 11:14 a.m.)</p>	83	<p>1 have a company that does Internet connection that</p> <p>2 offered a discount, and one that does merchant services.</p> <p>3 Q What are merchant services?</p> <p>4 A Credit card transactions, discount on the fee that the</p> <p>5 practice would receive for processing credit cards.</p> <p>6 Q Just for the record, what is the Internet connection</p> <p>7 company called?</p> <p>8 A IsoFusion.</p> <p>9 Q And what about the merchant service--</p> <p>10 A True Data Merchant Services.</p> <p>11 Q How did Kois Buyers Group come to partner with those two</p> <p>12 companies?</p> <p>13 A IsoFusion is a company I used to work for.</p> <p>14 True Data Merchant Services is a credit card</p> <p>15 company we were interested in partnering with the Kois</p> <p>16 Center for processing our credit cards.</p> <p>17 Q Do you have an understanding of whether the members take</p> <p>18 advantage of the discounts for those two types of</p> <p>19 companies, Internet connection and merchant services?</p> <p>20 A My understanding is that some have for the credit card,</p> <p>21 the merchant services.</p> <p>22 I don't have an exact figure.</p> <p>23 And I don't have an exact figure for the IsoFusion.</p> <p>24 My understanding is the number is zero.</p> <p>25 Q Are there any other vendor partners or types of vendor</p>
82	<p>1 Q (By Ms. Goff) So going back to our discussion about</p> <p>2 manufacturer vendor partners, are there advantages to</p> <p>3 partners with a manufacturer directly as opposed to a</p> <p>4 dental supply company or a dental distributor?</p> <p>5 A Yes.</p> <p>6 Q What are the advantages?</p> <p>7 A They don't go through a distribution company.</p> <p>8 Q The manufacturers don't go through--</p> <p>9 A Correct.</p> <p>10 Q And why is that an advantage?</p> <p>11 A We wouldn't be able to get any discount with them unless</p> <p>12 we deal with them directly.</p> <p>13 Q Oh, the manufacturers don't sell through a distribution</p> <p>14 company?</p> <p>15 A Correct.</p> <p>16 Q I see.</p> <p>17 So the manufacturers that you have agreements with</p> <p>18 do not sell through distribution companies?</p> <p>19 A That's my understanding.</p> <p>20 Q We have talked about the two distribution companies that</p> <p>21 Kois Buyers Group partners with, and then you mentioned</p> <p>22 there are 28 manufacturers.</p> <p>23 Are there any other categories of vendor partners</p> <p>24 that Kois partners with?</p> <p>25 A I guess another category would be like a service, so we</p>	84	<p>1 partners that we have not discussed today?</p> <p>2 A No.</p> <p>3 Q And why does Kois Buyers Group partner with dental</p> <p>4 distributors, like Burkhart and Sinclair, as opposed to</p> <p>5 partnering solely with manufacturers?</p> <p>6 A There are a number of products that distributors sell</p> <p>7 that are not available unless you go through a</p> <p>8 distribution company.</p> <p>9 Q When you say "products," what do you mean?</p> <p>10 A Products that are used in the dental practice, anything</p> <p>11 from disposables, such as gauze, to equipment, mixing</p> <p>12 bowls, et cetera.</p> <p>13 Q Okay.</p> <p>14 A The primary source of supplies for a dental practice is</p> <p>15 typically a supply company, a distribution company.</p> <p>16 Q Thank you.</p> <p>17 Does Kois Buyers Group charge a fee to its vendor</p> <p>18 partners?</p> <p>19 A No.</p> <p>20 Q Do you know-- nevermind. Strike that.</p> <p>21 Does Kois Buyers Group publish anywhere the</p> <p>22 specific prices that it offers to members on dental</p> <p>23 supplies or the specific discounts?</p> <p>24 A We don't offer any supplies.</p> <p>25 Q What do you mean by that?</p>

85	<p>1 A Kois Buyers Group does not offer any supplies. 2 All supplies and purchases are through the vendors. 3 Q So does Kois Buyers Group publish the specific discounts 4 that the vendors offer to Kois Buyers Group members? 5 A Yes. 6 Q Where are those published? 7 A Those are on the website and the informational handout 8 that is given to all participants at the Kois Center. 9 Q And are all of the discounts located on the website and 10 the informational handout? 11 A Yes. 12 Q How frequently do you update the website and 13 informational handout? 14 A There are two ways that we update it: When a vendor asks 15 us to update their information, and if we have a new 16 vendor. 17 Q How frequently do the discounts that are offered by 18 vendors change? 19 A It is vendor dependent. 20 Sometimes some are annually. Some are not at all. 21 (Exhibit No. 326 marked 22 for identification.) 23 24 Q (By Ms. Goff) The court reporter handed you what has 25 been marked as Exhibit No. 326, which is a document with</p>	87	<p>1 The other one was gauze, and that was a bit more 2 sporadic. 3 Gauze comes in lots of different sizes, quantities. 4 Q And then how did you determine the savings identified 5 here, "If you only purchased gloves from Burkhart, you 6 would save anywhere from \$450 to over \$3,000 annually"? 7 A We took all the manufacturers that Burkhart supplies for 8 gloves and asked Burkhart what the buyers group savings 9 would be times by 425, and that gave us the range of 10 products. 11 Q And then there's a chart below the paragraph listing a 12 series of manufacturers, categories, and member savings. 13 Do you see that? 14 A Yes. 15 Q Are these discounts offered by Burkhart? 16 A Yes. 17 If you notice, the last line in the paragraph, 18 "Burkhart has negotiated exclusive pricing from the 19 following companies," that was on their behalf. They 20 did that. 21 Q Are any of these manufacturers, manufacturers that you 22 have negotiated a contract with or an agreement with? 23 A No. 24 Q Where did you get the information for this chart? 25 A Burkhart.</p>
86	<p>1 the Bates stamp Kois 001607. 2 Do you recognize this document? 3 A Yes. 4 Q What is it? 5 A This is one of the buyers group tips that I sent out. 6 Q Do you have an idea or sense of when you sent this out? 7 A Within the last six months. 8 Q So in the second paragraph it states, "The average 9 practice purchases about 425 boxes of gloves annually 10 from a dental supply company. 11 "If you only purchased gloves from Burkhart, our 12 U.S. dental supply company partner, you would save 13 anywhere from \$450 to over \$3,000 annually, depending on 14 the brand." 15 How did you obtain the information, and let's take 16 the first sentence first, about the average practice 17 purchasing about 425 boxes of gloves annually? 18 A We asked Burkhart what the average number of glove 19 purchases was for our members. 20 Q Did you ask Burkhart about the average number of 21 purchases for any other types of products? 22 A For this newsletter? No. 23 Q Or just in general, have you ever? 24 A Yes, in relation to what came out for this document, we 25 looked at a couple different products.</p>	88	<p>1 Q And so does Kois Buyers Group provide these member 2 savings to-- sorry. Strike that. 3 Does Kois Buyers Group provide the information to 4 its members about the member savings that are offered by 5 Burkhart? 6 A Yes. 7 Q And is that included in the informational pamphlet and 8 the e-mails? 9 A No. This would be the specific information that we 10 provided, this particular notice. 11 Q Okay. So in the member savings category it says, "Up 12 to," and then there's a variety of percentages. 13 Do you have an understanding of what "up to" means 14 in this context? 15 A Yes. 16 Q What? 17 A There are several different products listed in the 18 categories. 19 They range in discounts, so the member savings is 20 up to, as in the large discount available from that list 21 of categories. 22 Q Other than in this buyers group tip of the month, are 23 the discounts for Burkhart printed somewhere for Kois 24 members to see? 25 A If they are, they re through Burkhart directly.</p>

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<p>1 Q With regard to Burkhart, do you know the range of</p> <p>2 discounts that Kois members receive from Burkhart?</p> <p>3 A A discount compared to what?</p> <p>4 Q What do you mean by that?</p> <p>5 A A discount compared to a different supply company is</p> <p>6 different than discounts compared to nonmembers that are</p> <p>7 also Burkhart supply customers.</p> <p>8 Q Okay. Understood.</p> <p>9 Do you know the range of discounts that Kois</p> <p>10 members receive from Burkhart as compared to Burkhart's</p> <p>11 nonmember prices?</p> <p>12 A No, and I'll explain.</p> <p>13 Burkhart has their own savings guarantees for</p> <p>14 members, so they offer different pricing based on</p> <p>15 quantities that people provide.</p> <p>16 I don't know where those thresholds are.</p> <p>17 Q Okay. Do you have an understanding of the discounts</p> <p>18 compared to different supply companies?</p> <p>19 A My understanding is that these discounts are lower.</p> <p>20 I don't know how much per product.</p> <p>21 Burkhart isn't descriptive in how they do their</p> <p>22 discounts.</p> <p>23 Q What do you mean the discounts are lower?</p> <p>24 A That's what I've heard from members when they say</p> <p>25 they re purchasing products from Burkhart and the</p>	<p>1 A Correct.</p> <p>2 Q Approximately when, in the year, do you receive it?</p> <p>3 A Approximately June, July.</p> <p>4 Q For how many customers does Burkhart typically provide</p> <p>5 this information?</p> <p>6 A It's at their discretion.</p> <p>7 This past year was three.</p> <p>8 Q Those were the three that you provided at your annual</p> <p>9 conference?</p> <p>10 A Yes.</p> <p>11 Q Do you recall receiving one last June, July?</p> <p>12 A Yes.</p> <p>13 Q Do you recall how many members?</p> <p>14 A I think it was five or six.</p> <p>15 Q So you are not able to provide me sort of the range of</p> <p>16 discounts that Kois Buyers Group members receive from</p> <p>17 Burkhart as compared to Burkhart's own pricing, its</p> <p>18 typical pricing?</p> <p>19 A No.</p> <p>20 Q Who do you think would know the answer to that?</p> <p>21 A That would be Burkhart.</p> <p>22 Q The contract with Burkhart doesn't call for any</p> <p>23 specific-- the contract between Kois Buyers Group and</p> <p>24 Burkhart doesn't call for any specific discount to be</p> <p>25 offered?</p>
<p>90</p> <p>1 pricing is cheaper than other distribution companies.</p> <p>2 I don't know if-- what the basis is of "cheaper."</p> <p>3 I don't have the numbers in front of me.</p> <p>4 Q So you have heard from members that Burkhart pricing is</p> <p>5 cheaper than other distribution companies?</p> <p>6 A Some, depending on where they are.</p> <p>7 It is my understanding that all distribution</p> <p>8 companies have different pricing based on where they are</p> <p>9 nationally.</p> <p>10 The only concrete evidence I get is on our annual</p> <p>11 requests where we can get-- when they tell us</p> <p>12 specifically, "This particular member saved a certain</p> <p>13 amount of money," and they'll tell us-- sometimes they</p> <p>14 tell us who that vendor-- who they came from, or if it</p> <p>15 was themselves.</p> <p>16 Q So Burkhart will tell you specifically how much a</p> <p>17 particular member saved?</p> <p>18 A No. They will tell us-- we don't have any personal</p> <p>19 identification information about that person.</p> <p>20 They will tell us a customer has saved a certain</p> <p>21 amount of money over the last year.</p> <p>22 Q Okay. Right.</p> <p>23 How frequently-- you said you receive those yearly,</p> <p>24 these updates from Burkhart, about how much customers</p> <p>25 have saved?</p>	<p>92</p> <p>1 A It does.</p> <p>2 It calls for a specific margin that they assess on</p> <p>3 their product, but I don't know what it is normally and</p> <p>4 what it is in their particular other buying programs.</p> <p>5 Q So how did you come up with that margin?</p> <p>6 A They came up with it, and they told us this was a good</p> <p>7 deal compared to their other programs.</p> <p>8 Q Did you do anything to verify whether it was a good</p> <p>9 deal?</p> <p>10 A Once it was in place, I asked members if they thought</p> <p>11 the pricing was better, and they said yes.</p> <p>12 Q And would those have been members that previously</p> <p>13 purchased from Burkhart not through the Kois Buyers</p> <p>14 Group?</p> <p>15 A Correct.</p> <p>16 Q But do you have a sense for the range of discounts that</p> <p>17 Kois Buyers Group members received from manufacturers?</p> <p>18 A For the ones that are vendors for the buyers group or</p> <p>19 manufacturers through the distribution company?</p> <p>20 Q No, manufacturers that are vendors for the buyers group.</p> <p>21 A Sort of.</p> <p>22 I know what the percentage is based off of</p> <p>23 suggested retail pricing.</p> <p>24 I don't know if suggested retail pricing is the</p> <p>25 pricing they offer to practices in general.</p>

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- 1 **Q What is the range of discount off the suggested retail**
 2 **pricing?**
 3 A The range is between three percent and 40 percent.
 4 **Q Do Kois Buyers Group members ever receive-- strike that.**
 5 **Are you aware of the term "manufacturer rebates"?**
 6 A Yes.
 7 **Q What does that mean to you?**
 8 A It means a rebate that is given from the manufacturer to
 9 the purchaser after the purchase is made.
 10 **Q Do Kois Buyers Group members receive any manufacturer**
 11 **rebates as part of their membership with Kois?**
 12 A Directly?
 13 **Q Yes, directly.**
 14 A Specifically the manufacturers that are direct to
 15 customer or distributors-- through the distribution
 16 company.
 17 **Q Let's start with specifically the manufacturers that are**
 18 **direct to customer.**
 19 A I don't know. My understanding is no.
 20 **Q What is your understanding based on?**
 21 A We didn't negotiate any special rebates with them.
 22 We asked for no rebates, just a discount upfront.
 23 If they negotiated something separate with the
 24 practice, that was not something I was privy to.
 25 **Q Why did you ask for just a discount upfront instead of**

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- 1 **rebates?**
 2 A Because people aren't always good about mailing in their
 3 rebates.
 4 **Q You thought it would be better for the dentist to get**
 5 **the discount upfront?**
 6 A Yes.
 7 **Q And then do you have an understanding of whether Kois**
 8 **Buyers Group members receive manufacturer rebates**
 9 **through distributors?**
 10 A Some.
 11 I don't have a complete understanding.
 12 It is my understanding that through distribution
 13 companies, manufacturers offer rebates, and depending on
 14 the supply company, those rebates are processed for the
 15 practice-- by Burkhart on behalf of the practice.
 16 In this case, Burkhart processes the rebates.
 17 With other distribution companies, it's my
 18 understanding that they don't always do that on behalf
 19 of the practice.
 20 **Q But for Burkhart, which is your Kois Buyers Group vendor**
 21 **in the United States, you understand that Burkhart**
 22 **processes the rebates on behalf of the members?**
 23 A I don't know if they do that for all members or just
 24 full-service members or supply-side guarantee members.
 25 They have different levels, and I don't know if

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- 1 it's offered for all of them.
 2 **Q Do you have an understanding of whether there are some**
 3 **manufacturers that offer manufacturer rebates to Kois**
 4 **Buyers Group members who purchase through Burkhart?**
 5 A I believe there are.
 6 I don't know which ones.
 7 My understanding is based on the fact that rebates
 8 happen with lots of different manufacturers, and we have
 9 a lot of different manufacturers that distribute through
 10 the-- Burkhart.
 11 **Q But you are not aware of any specific ones?**
 12 A No.
 13 **Q Does Kois maintain any records reflecting whether its**
 14 **members are purchasing from Kois Buyers Group members or**
 15 **not?**
 16 A Only the information submitted from the vendors.
 17 **Q And that's the yearly information that you get?**
 18 A The annual request.
 19 **Q Does Kois Buyers Group advertise to-- strike that.**
 20 **Does Kois Buyers Group advertise, other than to the**
 21 **Kois Center dentists, not just that come to the Kois**
 22 **Center?**
 23 A Yes.
 24 **Q Where?**
 25 A On the Internet.

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- 1 **Q Where on the Internet?**
 2 A Google.
 3 The Kois Buyers Group does AdWords.
 4 **Q What do you mean by "AdWords"?**
 5 A So if people type in particular phrases, certain sites
 6 can come up on the site to be clicked on.
 7 We tried-- they are no longer running.
 8 We were, last year, doing them for "discount buying
 9 group."
 10 **Q So if a person searched "discount buying group"--**
 11 **A Or "dental discount buying group," our hope was that it**
 12 **would come up and they would find our website and either**
 13 **be a Kois member or be motivated enough to sign up for a**
 14 **class to be a Kois Buyers Group member.**
 15 **Q And how come you stopped doing that?**
 16 A I changed credit cards, and they stopped producing the
 17 ads when we stopped putting money on the account.
 18 **Q Did you find this type of advertisement was useful?**
 19 A No.
 20 **Q It was not?**
 21 A Useful for traffic, not for sign-ups.
 22 **Q Do you have any goals in terms of how many members you**
 23 **would like to get to sign up in the next year?**
 24 A I would like to see a couple hundred sign-ups.
 25 My overall goal is a thousand members as part of

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<p>1 the buyers group.</p> <p>2 Q Do you think if you get up to a thousand members, then</p> <p>3 you would be able to negotiate more-- better discounts</p> <p>4 for the members?</p> <p>5 A With the current layout of the buyers group now, no.</p> <p>6 Q Why not?</p> <p>7 A Because we don't obligate any of the members to purchase</p> <p>8 particular products.</p> <p>9 We don't have any real buying power.</p> <p>10 We have nothing forward looking. Everything is</p> <p>11 past-- previous purchases.</p> <p>12 I don't believe that manufacturers would be-- or</p> <p>13 any kind of vendor would be willing to discount further</p> <p>14 without any hope of any additional purchases going</p> <p>15 forward.</p> <p>16 Q So does Kois Buyers Group guarantee any level of</p> <p>17 purchases for any particular vendor?</p> <p>18 A No.</p> <p>19 Q Other than membership fees from customers, does Kois</p> <p>20 Buyers Group bring in money in any other way?</p> <p>21 A No.</p> <p>22 Q You mentioned earlier that there are competitors to Kois</p> <p>23 Buyers Group popping up.</p> <p>24 Is that true?</p> <p>25 A Yes.</p>	<p>1 DSOs?</p> <p>2 A I don't know the motivation behind the other dental</p> <p>3 supply buyers groups.</p> <p>4 I can just tell you what motivated us.</p> <p>5 Q And what motivated Kois--</p> <p>6 A To provide better pricing for the smaller practices.</p> <p>7 Q And was it, in part, to be able to allow the smaller</p> <p>8 practices to compete with the larger DSOs?</p> <p>9 A Not specifically DSOs, just other practices.</p> <p>10 Q Larger group practices that are able to negotiate</p> <p>11 discounts based on volume?</p> <p>12 A I'm sure that's a byproduct, but anybody, any other</p> <p>13 practice is potentially a competitor to them, so if it</p> <p>14 gives them an advantage, like getting a deeper discount,</p> <p>15 it doesn't necessarily have to be another group</p> <p>16 practice.</p> <p>17 Q But the focus of Kois Buyers Group was on the</p> <p>18 independent dentist?</p> <p>19 A Yes.</p> <p>20 Q Do you consider-- well, does Kois attempt to compete</p> <p>21 with those other buying groups, like SmileSource or the</p> <p>22 state dental organizations or Benco--</p> <p>23 A What do you mean by "compete"?</p> <p>24 Q To obtain members and get members to come to Kois Buyers</p> <p>25 Group as opposed to any of those other buying groups.</p>
<p>1 Q Which ones have you heard of?</p> <p>2 A SmileSource is one that we've heard of.</p> <p>3 Q Any others?</p> <p>4 A It is my understanding that Benco has started their own</p> <p>5 buying group.</p> <p>6 They had asked us to be a member of it, the Kois</p> <p>7 Center, not the Kois Buyers Group.</p> <p>8 Q Benco asked the Kois Center to be a member of Benco's</p> <p>9 buying group?</p> <p>10 A Correct.</p> <p>11 Q Any other buying groups that you've heard of?</p> <p>12 A I know there's others out there.</p> <p>13 I don't recall any of the names specifically.</p> <p>14 Q Do you have an understanding of why buyers groups are</p> <p>15 popping up?</p> <p>16 A For a discount on products.</p> <p>17 I'm sorry, it is my understanding that some of the</p> <p>18 state dental organizations are trying to establish their</p> <p>19 own buying groups.</p> <p>20 Q Okay. So it is your understanding that buying groups</p> <p>21 are popping up in order for dentists to obtain discounts</p> <p>22 on products?</p> <p>23 A Yes.</p> <p>24 Q Is part of the reason why buying groups are popping up,</p> <p>25 to allow independent dentists to compete with the larger</p>	<p>1 A No.</p> <p>2 We don't have a-- it is not an exclusive buying</p> <p>3 group.</p> <p>4 Members are free to join additional buyers groups.</p> <p>5 If they choose one buyers group over the other, it</p> <p>6 is my understanding that other buyers groups have those</p> <p>7 exclusivity provisions, but that's not something that we</p> <p>8 have.</p> <p>9 Q When you say "exclusivity provisions," what do you mean?</p> <p>10 A I was told by a member that SmileSource does not allow</p> <p>11 you to join another buyers group if you are a part of</p> <p>12 their buyers group.</p> <p>13 Q I see. Thank you.</p> <p>14 Why is it that Kois does not have exclusivity</p> <p>15 provisions?</p> <p>16 A We didn't want to limit any of the options for people to</p> <p>17 find better deals.</p> <p>18 If you can find a better price on a product through</p> <p>19 another buyers group, we think you should take it.</p> <p>20 Q Do you consider Kois Buyers Group to be a customer of</p> <p>21 Burkhart, for example?</p> <p>22 A No.</p> <p>23 Q Do you consider Kois Buyers Group to be a competitor of</p> <p>24 Burkhart?</p> <p>25 A No.</p>

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<p>1 Q What do you consider the relationship to be?</p> <p>2 A A relationship.</p> <p>3 I mean, the members specifically purchase from</p> <p>4 Burkhart.</p> <p>5 We don't purchase directly from Burkhart, so we are</p> <p>6 not a customer of Burkhart.</p> <p>7 We also don't compete with them or any other</p> <p>8 vendors.</p> <p>9 We have an opportunity to provide discounts on both</p> <p>10 sides, so if Burkhart gets additional customers because</p> <p>11 they re a part of the buyers group, and if buyers group</p> <p>12 members get a better price for things, it's a good deal</p> <p>13 for everybody.</p> <p>14 Q Do you have an understanding of whether Burkhart has</p> <p>15 obtained additional customers because they're part of</p> <p>16 the buyers group?</p> <p>17 A My understanding is they have.</p> <p>18 Q What is that understanding based on?</p> <p>19 A We do an annual review-- a quarterly review.</p> <p>20 Burkhart sits down with me and goes over whether or</p> <p>21 not they re happy with the progress of the buyers group.</p> <p>22 The understanding is if members aren't buying from</p> <p>23 them, they would no longer be willing to give discounts.</p> <p>24 Q Okay. And in the quarterly reviews, what has Burkhart</p> <p>25 said to you about the progress?</p>	<p>1 Q Was that that one person?</p> <p>2 A One person.</p> <p>3 None of their vendors-- they were a laboratory</p> <p>4 technician, and there were no discounts available for</p> <p>5 the laboratory technicians.</p> <p>6 Q Any other individuals that you ve heard of losing--</p> <p>7 A The person didn't actually lose money. We refunded</p> <p>8 their membership.</p> <p>9 Q Understood.</p> <p>10 Other than that one person, have there been any</p> <p>11 other individuals who said that they have not made up at</p> <p>12 least the annual membership fee in savings?</p> <p>13 A Not that I've heard of.</p> <p>14 Q And to what do you attribute Kois Buying Group s</p> <p>15 success?</p> <p>16 A Promoting the buying group as part of the Kois Center,</p> <p>17 its flexibility. There is no exclusivity, no</p> <p>18 obligation, and a variety of vendors.</p> <p>19 Q Is the variety of vendors-- why is that important?</p> <p>20 A Not everyone purchases through Burkhart. They re not</p> <p>21 obligated to purchase through Burkhart, so additional</p> <p>22 supply companies-- the more supply companies-- well, not</p> <p>23 supply, but the more vendors that you have, the more</p> <p>24 likely you are to find somebody who purchases from one</p> <p>25 of those vendors and would be motivated to join a buyers</p>
<p>102</p> <p>1 A They said existing members-- they've lost profit on</p> <p>2 existing members that have become buyers group members,</p> <p>3 but they've gained revenue in new members that are</p> <p>4 outside of their full-service territory or members that</p> <p>5 are in their territory that otherwise hadn't looked at</p> <p>6 Burkhart.</p> <p>7 Q Okay. And who do you meet with at Burkhart on a</p> <p>8 quarterly basis?</p> <p>9 A Dave Anderson.</p> <p>10 Q Are these meetings in-person?</p> <p>11 A Yes.</p> <p>12 Q Here in Seattle?</p> <p>13 A Depends.</p> <p>14 Either here or in Tacoma.</p> <p>15 Q How successful has Kois Buyers Group been, in your</p> <p>16 opinion?</p> <p>17 A What would be a benchmark of being successful?</p> <p>18 Q I am curious about your opinion of how Kois Buyers Group</p> <p>19 is doing.</p> <p>20 A My opinion is it's successful.</p> <p>21 Q And what is your benchmark?</p> <p>22 A People are at least saving their annual fee, so at worst</p> <p>23 I am hoping that nobody is losing money.</p> <p>24 Q Have you heard of anyone losing money?</p> <p>25 A Yes.</p>	<p>104</p> <p>1 group.</p> <p>2 Q Have you considered adding additional distributor</p> <p>3 vendors, other than Burkhart?</p> <p>4 A Yes.</p> <p>5 Q And why haven t you added any others?</p> <p>6 I'm referring specifically to in the United States.</p> <p>7 A We talked to Benco when we first renewed our agreement</p> <p>8 with Burkhart, and we talked with Burkhart about having</p> <p>9 both of them as part of the buyers group.</p> <p>10 Both of them indicated a lack of interest in being</p> <p>11 one of two dental supply companies in a buyers group.</p> <p>12 Q Why were they not interested?</p> <p>13 Let's talk specifically-- we will do both.</p> <p>14 First, why did Benco say they were not interested?</p> <p>15 A They didn t want to lower their prices and continue to</p> <p>16 compete with another supply company within the buyers</p> <p>17 group.</p> <p>18 Q And what about Burkhart?</p> <p>19 A They didn t want to lower their fees and continue to</p> <p>20 compete with another supply company.</p> <p>21 Q So how did you end up going with Burkhart?</p> <p>22 A They were the original supply company, and we didn't</p> <p>23 have any reason to change.</p> <p>24 We just explored the option of adding an additional</p> <p>25 buyers group-- another supply company, and ultimately we</p>

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<p>1 just chose to stick with the relationship that was</p> <p>2 working.</p> <p>3 Q Now, Benco is a national distributor, right?</p> <p>4 A Mm-hm-- I don't know what their foothold is in the</p> <p>5 United States, but my assumption is they're in most, if</p> <p>6 not all, states.</p> <p>7 Q What is that assumption based on?</p> <p>8 A What they've said.</p> <p>9 Q Did you see any advantage of working with a national</p> <p>10 distributor or a company like Benco that has a foothold</p> <p>11 in most of the United States as opposed to Burkhart?</p> <p>12 A I don't work with the supply companies on the level of a</p> <p>13 practice, so it didn't-- to me, they're all about the</p> <p>14 same, supply company-wise.</p> <p>15 Q Yeah, I meant advantages to your members.</p> <p>16 Did you see that members would prefer to work with</p> <p>17 a national distributor, like Benco, as opposed to</p> <p>18 Burkhart?</p> <p>19 A We didn't have that sense from the members.</p> <p>20 When we did the negotiation, Burkhart did not have</p> <p>21 any reps in the Washington state area, and we have a lot</p> <p>22 of members in the Washington state area, so switching</p> <p>23 supply companies would be a big change for a large</p> <p>24 percentage of our members.</p> <p>25 Q You said "Burkhart did not have any reps in the</p>	<p>1 A I would say-- it's a subjective term, but I would say</p> <p>2 "easy."</p> <p>3 Q You found that dentists are interested in joining?</p> <p>4 A No, that the costs for new members is low.</p> <p>5 Q Have you found it relatively easy in terms of interest</p> <p>6 to obtain new members?</p> <p>7 A No.</p> <p>8 Q You mentioned earlier that you noticed that growth has</p> <p>9 been slow.</p> <p>10 What was the reason for that?</p> <p>11 A I think with the vendors that are available, it's pretty</p> <p>12 easy to save at least the membership fee and plus some</p> <p>13 from all the vendors that are available, and still</p> <p>14 there's not the larger interest that we think would</p> <p>15 come. You can say that regardless of the dental supply</p> <p>16 company you use.</p> <p>17 Q Do you have an understanding for why there's been less</p> <p>18 interest than you would have expected?</p> <p>19 A I could tell you some-- what some of the dentists have</p> <p>20 told me, but I don't have anything to collaborate that</p> <p>21 or any proof of it.</p> <p>22 I have had dentists tell me that their current</p> <p>23 reps, that are not Burkhart, tell them that they can't</p> <p>24 sell to them anymore if they're a buyers group member.</p> <p>25 Our response is "That's not our choice. That would</p>
<p>106</p> <p>1 Washington state"--</p> <p>2 A Sorry. "Benco."</p> <p>3 Sorry for that.</p> <p>4 Q Have you heard complaints about-- from individuals on</p> <p>5 the East Coast that don't have access to a full-service</p> <p>6 distributor through Kois Buyers Group?</p> <p>7 A Yes.</p> <p>8 Q And would having a Benco kind of solve that problem?</p> <p>9 A I don't know who the rep is now and if they're willing</p> <p>10 to change.</p> <p>11 Q Okay. So is this one particular individual that you are</p> <p>12 thinking of?</p> <p>13 A No.</p> <p>14 When people say they want a full-service rep, what</p> <p>15 they usually mean is they want the full-service rep that</p> <p>16 they're currently using to be their full-service rep,</p> <p>17 with an additional discount.</p> <p>18 Q How do you know that that's what they usually mean?</p> <p>19 A Because they say they want their rep to be part of the</p> <p>20 buyers group.</p> <p>21 Q And how many people have indicated that they want their</p> <p>22 rep to be part of the buyers group, approximately?</p> <p>23 A Five.</p> <p>24 Q Have you found it relatively easy or difficult to obtain</p> <p>25 new members?</p>	<p>108</p> <p>1 be the choice of whoever your supply company is."</p> <p>2 Q So you have heard from dentists that their current reps</p> <p>3 have told them that they would no longer sell to them if</p> <p>4 they become a buying group member?</p> <p>5 A Yes.</p> <p>6 They didn't say they would no longer sell. They</p> <p>7 said they were not allowed to.</p> <p>8 We are not sure if that's a miscommunication that</p> <p>9 they assume that you are obligated to purchase from</p> <p>10 Burkhart, so if they're not sure what the buyers group</p> <p>11 setup is-- that's what we feel it is, so we try hard to</p> <p>12 educate everybody.</p> <p>13 Q To educate--</p> <p>14 A The dentists.</p> <p>15 Q To educate the dentists to understand that they're not</p> <p>16 required to purchase through the buyers group or through</p> <p>17 Burkhart, for example, to get the discounts?</p> <p>18 A We tell everybody that they're free to keep their reps.</p> <p>19 Q But you have heard from some dentists that their current</p> <p>20 reps have told them that they would not sell to them if</p> <p>21 they become buyers group members?</p> <p>22 A Yes.</p> <p>23 Q Approximately how many dentists have told you that?</p> <p>24 A I have heard from two.</p> <p>25 Q And do you know what the current-- where the reps work--</p>

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<p>1 for those two, which companies were they with?</p> <p>2 A One, I don't know.</p> <p>3 The other one, I believe, was Schein.</p> <p>4 Q So we've been talking a lot about buying groups, and</p> <p>5 Kois refers to itself as Kois Buyers Group, right?</p> <p>6 A Right.</p> <p>7 Q What do you understand the word "buying group" to mean?</p> <p>8 A A group of members that use their buying power as a</p> <p>9 whole to receive discounts for the members.</p> <p>10 Q And have you ever heard the term "group purchasing</p> <p>11 organization"?</p> <p>12 A Yes.</p> <p>13 Q Do you have an understanding of what that means?</p> <p>14 A It is my understanding that that means that the group</p> <p>15 agrees to purchase a certain product or a certain amount</p> <p>16 of a product for a larger discount.</p> <p>17 Q Is there a distinction in your mind between a buying</p> <p>18 group and a group purchasing organization?</p> <p>19 A Depends on how they're set up.</p> <p>20 Some are, I'm sure, interchangeable in terms of</p> <p>21 ours don't have any agreements to purchase a certain</p> <p>22 quantity or any particular products, and if I had to</p> <p>23 guess, I would say some of the other buyers groups</p> <p>24 probably do.</p> <p>25 Q So in your understanding, if a buyers group does have an</p>	<p>1 term?</p> <p>2 A Nuh-uh.</p> <p>3 Q Going back to "group purchasing organization," would you</p> <p>4 consider Kois Buyers Group to be a group purchasing</p> <p>5 organization?</p> <p>6 A No.</p> <p>7 MS. GOFF: I am a good breaking point</p> <p>8 if you think now is a good time to take lunch.</p> <p>9 MR. RYAN-LANG: If you want to.</p> <p>10 (Discussion off the record.)</p> <p>11</p> <p>12 Q (By Ms. Goff) I would like to talk more in detail about</p> <p>13 Kois's relationship with Burkhart.</p> <p>14 A Sure.</p> <p>15 Q When did Kois first partner with Burkhart?</p> <p>16 A In relation to-- I just want to be clear on the entity.</p> <p>17 Q Sorry--</p> <p>18 A So the three I would think of would be my father's</p> <p>19 practice or the Kois Center or the Kois Buyers Group.</p> <p>20 Q Understood.</p> <p>21 When did Kois Buyers Group first partner with</p> <p>22 Burkhart?</p> <p>23 A October 2014 at the inception of the buyers group.</p> <p>24 Q And was there a contract that Kois Buyers Group entered</p> <p>25 into with Burkhart at that time?</p>
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<p>1 agreement to purchase a certain quantity of product,</p> <p>2 then it's a group purchasing organization?</p> <p>3 A My opinion?</p> <p>4 Q Yes, your--</p> <p>5 A That would be my opinion.</p> <p>6 Q So do you use the word "buying group" and "group</p> <p>7 purchasing organization" interchangeably or no?</p> <p>8 A When-- who are we referring to?</p> <p>9 Q Just in general.</p> <p>10 If you're speaking to other dentists, would you use</p> <p>11 those two words interchangeably?</p> <p>12 A I don't use "group purchasing organization."</p> <p>13 As far as I'm concerned, a buyers group is a buyers</p> <p>14 group, and how they're set up is up to them.</p> <p>15 Q Have you heard of the word "buying club"?</p> <p>16 A Yes.</p> <p>17 Q What do you understand that to mean?</p> <p>18 A Similar to a buyers group.</p> <p>19 My understanding is a buying club might have a</p> <p>20 monthly fee whether you purchase things or not, or you</p> <p>21 have certain products that get delivered every month for</p> <p>22 a set fee, something like that.</p> <p>23 I hear of a buying club mostly for clothes,</p> <p>24 something outside the dental world.</p> <p>25 Q What about "buying cooperative," have you heard that</p>	<p>1 A No.</p> <p>2 Q So what was the nature of the relationship at that time?</p> <p>3 A There was a contract from ProCare with Burkhart and Kois</p> <p>4 Tribal Management as additional listed agents in the</p> <p>5 agreement.</p> <p>6 Q Okay. And who from the Kois Buyers Group side</p> <p>7 negotiated that contract?</p> <p>8 A The initial contract was from ProCare.</p> <p>9 My understanding is Q.</p> <p>10 Q Qadeer?</p> <p>11 A Qadeer.</p> <p>12 Q And how long was that initial contract in place?</p> <p>13 A For two years.</p> <p>14 Q Until October 2016?</p> <p>15 A Until-- yes.</p> <p>16 Q And then did you negotiate a second contract after that?</p> <p>17 A Yes.</p> <p>18 Q And is that the current contract that Kois Buyers Group</p> <p>19 has with Burkhart?</p> <p>20 A Correct.</p> <p>21 Q Is the current contract different in any significant way</p> <p>22 from the previous contract with Burkhart?</p> <p>23 A Yes.</p> <p>24 Q How is it different?</p> <p>25 A The original contract was an agreement between ProCare</p>

113	<p>1 and Burkhart and the Kois Center, to provide-- for</p> <p>2 Burkhart to provide discounts to Kois Center</p> <p>3 participants, and for ProCare to manage the membership</p> <p>4 and to negotiate with the manufacturers on behalf of</p> <p>5 Burkhart.</p> <p>6 Q And how has that changed?</p> <p>7 A The new contract is an agreement between Burkhart and</p> <p>8 Kois Tribal Management where Burkhart will negotiate</p> <p>9 with their manufacturers as they see fit, and the Kois</p> <p>10 Tribal Management will manage the membership group, and</p> <p>11 that Burkhart is the exclusive supply company to be a</p> <p>12 distributor in the buyers group.</p> <p>13 Q So under the previous contract, ProCare was responsible</p> <p>14 for negotiating with manufacturers on behalf of</p> <p>15 Burkhart?</p> <p>16 A For the buyers group.</p> <p>17 Q So in other words, are you referring to manufacturers</p> <p>18 that sell through Burkhart as a distributor?</p> <p>19 A Yes.</p> <p>20 Q So ProCare would go to those manufacturers and negotiate</p> <p>21 some kind of discount on behalf of--</p> <p>22 A That was their intent.</p> <p>23 Q Did that ever actually happen?</p> <p>24 A I don't believe so.</p> <p>25 Q Why did that change in the current contract?</p>	115	<p>1 A Yes.</p> <p>2 Q And that's from those quarterly meetings?</p> <p>3 A Yes.</p> <p>4 Q And have they been happy?</p> <p>5 A My understanding is they've been happy.</p> <p>6 Q Burkhart-- would you consider Burkhart to be a regional</p> <p>7 distributor?</p> <p>8 A As opposed to--</p> <p>9 Q As opposed to a national distributor.</p> <p>10 A What would be a determining factor?</p> <p>11 Q Let me rephrase the question.</p> <p>12 Would you consider Burkhart to be a regional</p> <p>13 full-service distributor as opposed to a national</p> <p>14 full-service distributor?</p> <p>15 A Yes.</p> <p>16 Q I think I know the answer to this question, but I want</p> <p>17 to make sure.</p> <p>18 Do Kois members ever take possession of any of the</p> <p>19 products that its members purchase at all?</p> <p>20 In other words, does Kois ever ship products to its</p> <p>21 members or is that all done by the distributors or</p> <p>22 manufacturers or other vendors?</p> <p>23 A Occasionally the distribution companies will ship to the</p> <p>24 Kois Center when participants are there for courses.</p> <p>25 Q Okay. Other than that, is all of the shipment done from</p>
114	<p>1 A Because Burkhart works with these manufacturers every</p> <p>2 day. They have a better relationship.</p> <p>3 I think that would make more sense.</p> <p>4 Q Did you ask for that change?</p> <p>5 A Yes.</p> <p>6 Q And was Burkhart receptive?</p> <p>7 A Yes.</p> <p>8 The three-way contract was confusing, so a contract</p> <p>9 directly between Kois Tribal Management and Burkhart,</p> <p>10 showing the discounts to members, made more sense.</p> <p>11 Q Okay. Just to be clear, for the October 2014 contract</p> <p>12 with Burkhart, you were not involved with that contract</p> <p>13 at all?</p> <p>14 A Correct.</p> <p>15 Q Do you have an understanding of whether your father was</p> <p>16 involved in negotiating that contract at all?</p> <p>17 A It is my understanding he was not.</p> <p>18 Q For the contract that you negotiated, who was your</p> <p>19 contact at Burkhart?</p> <p>20 A Dave Anderson.</p> <p>21 Q What is his role?</p> <p>22 A I don't remember his title.</p> <p>23 He works with special groups.</p> <p>24 Q Do you have an understanding of whether Burkhart has</p> <p>25 been happy with its relationship with Kois Buyers Group?</p>	116	<p>1 Kois Buyers Group vendors directly to the members?</p> <p>2 A Yes.</p> <p>3 Occasionally we have international participants</p> <p>4 that can't get products in their country that are sold</p> <p>5 from Burkhart, so they will send us products for them,</p> <p>6 so in that case we occasionally will ship something to</p> <p>7 somebody's country at the request of the participant.</p> <p>8 Q Do you have an understanding of whether members have</p> <p>9 been happy with Burkhart as a distributor?</p> <p>10 A Yes.</p> <p>11 Q Have you heard of any members that have been unhappy</p> <p>12 with Burkhart?</p> <p>13 A Yes.</p> <p>14 Q I think we talked about a few earlier, but could you</p> <p>15 just, for the record, refresh my memory of what members</p> <p>16 have said that they've been unhappy about?</p> <p>17 A Some members have said they haven't received any</p> <p>18 discounts when they switched.</p> <p>19 Q Any other complaints?</p> <p>20 A They don't have a full-service rep in their area.</p> <p>21 Q Any others?</p> <p>22 A Shipping is long.</p> <p>23 Q Any others?</p> <p>24 A That's all that I've heard.</p> <p>25 Q And is it your-- is it part of your job to respond to</p>

117	<p>1 unhappy Kois Buyers Group members?</p> <p>2 A Yes.</p> <p>3 Q How frequently do you receive complaints?</p> <p>4 A Sporadic.</p> <p>5 I would say, on average, one every other month.</p> <p>6 Most common complaint is they re not getting their</p> <p>7 discount.</p> <p>8 Q And in those cases what do you do? How do you handle--</p> <p>9 A I call the vendor and ask them to verify that that</p> <p>10 customer is receiving their discount.</p> <p>11 Q Okay. With regard to Burkhart in particular, what is</p> <p>12 the most common complaint that you receive?</p> <p>13 A They don't have a full-service rep in their area.</p> <p>14 Q And then how do you respond to those complaints?</p> <p>15 A Which ones specifically?</p> <p>16 Q Complaints that they don't have a full-service rep in</p> <p>17 their area?</p> <p>18 A "I'm sorry."</p> <p>19 Q How do you respond to--</p> <p>20 A That's what I respond with, "I'm sorry they don't have a</p> <p>21 full-service rep in your area."</p> <p>22 Q Have you ever indicated that you would try to get a</p> <p>23 full-service rep in their area?</p> <p>24 A I have.</p> <p>25 I don't have any way to help with that, other than</p>	119	<p>1 discounts from other distributors to what Burkhart is</p> <p>2 offering to Kois Buyers Group?</p> <p>3 A Yes. I have heard of-- and the direct market is what</p> <p>4 they consider their non full-service areas.</p> <p>5 I have heard of dentists printing out the pricing</p> <p>6 online that they get pricing for, and giving that to</p> <p>7 their local rep from another company, and that rep</p> <p>8 matches the prices for them.</p> <p>9 Q How frequently have you heard that?</p> <p>10 A A couple times.</p> <p>11 MS. GOFF: Is now a good time?</p> <p>12 MR. RYAN-LANG: Sure.</p> <p>13 (Lunch recess 12:11 to 12:51 p.m.)</p> <p>14 (Exhibit No. 327 marked</p> <p>15 for identification.)</p> <p>16</p> <p>17 Q (By Ms. Goff) Mr. Kois, I am handing you what has been</p> <p>18 marked as Exhibit No. 327, which is a document bearing</p> <p>19 the Bates stamp Kois 001622 through 1625.</p> <p>20 This is an exclusive supplier agreement between</p> <p>21 Burkhart Dental Supply Company and Kois Tribal</p> <p>22 Management; is that correct?</p> <p>23 A Yes.</p> <p>24 Q Is this the contract that you negotiated with Burkhart?</p> <p>25 A Yes.</p>
118	<p>1 request it from Burkhart.</p> <p>2 Q But could you bring in another vendor that does have a</p> <p>3 full-service rep in that area?</p> <p>4 A Not with the current contract.</p> <p>5 Q What do you mean by that?</p> <p>6 A The current contract says it's an exclusive-- they are</p> <p>7 the exclusive supply company in the buyers group, so</p> <p>8 that's not an option, unless the contract is rewritten.</p> <p>9 Q Would you consider rewriting the contract so that you</p> <p>10 could have a full-service rep for members across the</p> <p>11 country?</p> <p>12 A It depends on what discounts are offered to members.</p> <p>13 Right now they're still free to use whatever rep</p> <p>14 they want, so if having a full-service rep is that</p> <p>15 important to them, they can take all the pricing they</p> <p>16 have at Burkhart and take it to the other company and</p> <p>17 see if they'll match the pricing, so it's not like</p> <p>18 they re without options.</p> <p>19 Q Sure, but if they want to get discounts from Kois Buyers</p> <p>20 Group--</p> <p>21 A Directly from Burkhart as the manufacturer-- because a</p> <p>22 lot of these people are getting similar discounts from</p> <p>23 their full-service reps, even if they're in the direct</p> <p>24 area.</p> <p>25 Q So have you heard of dentists that have received similar</p>	120	<p>1 Q I just want to go through a few of the clauses here and</p> <p>2 make sure I understand what they mean.</p> <p>3 A Sure.</p> <p>4 Q So first, there's definitions and then Paragraph No. 1</p> <p>5 is "Exclusivity."</p> <p>6 It says, "Buyers group agrees that Burkhart will be</p> <p>7 the exclusive supplier for dental supplies in the United</p> <p>8 States."</p> <p>9 Am I correct that this clause means that within the</p> <p>10 United States, Kois members can only access discounts</p> <p>11 from Burkhart?</p> <p>12 My question is really-- I will strike that.</p> <p>13 It says that Burkhart will be the exclusive</p> <p>14 supplier for dental supplies in the United States.</p> <p>15 What does that mean?</p> <p>16 A As a dental supply company.</p> <p>17 Q Because manufacturers also supply dental supplies in the</p> <p>18 United States?</p> <p>19 A Correct.</p> <p>20 Q I know we talked a little bit about this before, but why</p> <p>21 did Kois Buyers Group agree to this clause?</p> <p>22 A Which part of it?</p> <p>23 There's two parts.</p> <p>24 Q 1.1, the one I just read, that the buyers group agrees</p> <p>25 that Burkhart will be the exclusive supplier for dental</p>

<p style="text-align: right;">121</p> <p>1 supplies in the United States.</p> <p>2 A That was what Burkhart wanted to move forward on the</p> <p>3 agreement.</p> <p>4 Q Okay. So Burkhart would not enter into an agreement</p> <p>5 with Kois Buyers Group unless they were the exclusive</p> <p>6 supplier?</p> <p>7 A They would.</p> <p>8 They said they wouldn't do as aggressive of a</p> <p>9 discount.</p> <p>10 Q So how come-- why did Kois Buyers Group agree to do the</p> <p>11 exclusivity instead of dispensing with the exclusivity</p> <p>12 and doing a lower discount?</p> <p>13 A Because we ultimately agreed that they would be the</p> <p>14 exclusive dental supply company, but there was no</p> <p>15 exclusivity-- there is no obligation for members to use</p> <p>16 them exclusively.</p> <p>17 Q Understood.</p> <p>18 Did you feel that there was value in getting the</p> <p>19 most aggressive discount that you could possibly get</p> <p>20 from Burkhart?</p> <p>21 A From a dental supply company.</p> <p>22 Q I think you said earlier that with regard to</p> <p>23 manufacturers, you would rather have more vendors, even</p> <p>24 if the discount is lower; is that correct?</p> <p>25 A Yes, because people are very particular about the</p>	<p style="text-align: right;">123</p> <p>1 Q Any other examples?</p> <p>2 A I don't have any other examples.</p> <p>3 Q Do you see any value at all in offering your members the</p> <p>4 option to purchase from more than one supply company?</p> <p>5 A Value for who?</p> <p>6 Q For the members.</p> <p>7 A I am not sure where the value would come from.</p> <p>8 I could see a benefit for the dental supply</p> <p>9 companies where they have a group of members that they</p> <p>10 can compete for back and forth, for membership, but as</p> <p>11 far as discounts, I'm not sure how much more of a</p> <p>12 discount they'd get to have more than one discount</p> <p>13 company in the buyers group.</p> <p>14 Q But they would have more options from whom to purchase</p> <p>15 through, right?</p> <p>16 A Well, they have options now, but do you mean</p> <p>17 specifically through--</p> <p>18 Q Through Kois Buyers Group, yeah.</p> <p>19 A Right.</p> <p>20 Q And do you see value in allowing the dentists to have</p> <p>21 options for which supply company to buy from and still</p> <p>22 get that Kois Buyers Group discount?</p> <p>23 A I don't know if the value would be as great if you had</p> <p>24 more than one supply company.</p> <p>25 Q And is that because you don't think the discount would</p>
<p style="text-align: right;">122</p> <p>1 products they want.</p> <p>2 There's not that many supply companies out there.</p> <p>3 Q So my next question was going to be:</p> <p>4 Why wouldn't that same principle apply to supply</p> <p>5 companies?</p> <p>6 A A lot of supply companies are partners with other buyers</p> <p>7 groups and give substantial discounts, so if the</p> <p>8 discounts from a supply company-- dental supply company</p> <p>9 wasn't at least as good as other buyers groups or as</p> <p>10 good as they offer members without the buyers group,</p> <p>11 there wasn't a lot of incentive for people to purchase</p> <p>12 products from Burkhart as a buyers group member.</p> <p>13 Q Is it your understanding that a lot of supply companies</p> <p>14 are partners with other buyers groups?</p> <p>15 A What would be "a lot"?</p> <p>16 Q I am just reading back what you had mentioned.</p> <p>17 A I don't know how many supply companies.</p> <p>18 I know that dental supply companies are exclusive</p> <p>19 distributors for other buyers groups.</p> <p>20 Q Can you give me some examples?</p> <p>21 A Burkhart is the exclusive distributor for SmileSource,</p> <p>22 for their buyers group.</p> <p>23 Q Any other examples?</p> <p>24 A Benco has a buyers group where they're the exclusive</p> <p>25 distributor for their buyers group.</p>	<p style="text-align: right;">124</p> <p>1 be as aggressive?</p> <p>2 A Which is what the supply companies told me.</p> <p>3 Q Going down to Paragraph No. 2, "Service levels," it</p> <p>4 says, "Burkhart agrees to provide full service dental</p> <p>5 supply and equipment distribution sales and support with</p> <p>6 account managers, equipment specialists, equipment</p> <p>7 service technicians, and branch support associates to</p> <p>8 members with offices in support areas designated as full</p> <p>9 service on Burkhart's website."</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Do you know what areas generally are designated as full</p> <p>13 service on Burkhart's website?</p> <p>14 A I would have to go to their website.</p> <p>15 Q Do you know if their website is open? In other words,</p> <p>16 could I go on their website and find out which companies</p> <p>17 are designated as full service?</p> <p>18 A I believe it is.</p> <p>19 Q And these are geographic areas that we are talking</p> <p>20 about, right?</p> <p>21 A Yes.</p> <p>22 Q And then the "Limited service areas," "Burkhart agrees</p> <p>23 to provide limited service dental supply and equipment</p> <p>24 distribution sales, phone support to members with</p> <p>25 offices in support areas designated as limited service</p>

125	<p>1 on Burkhart's website," I understand that "limited</p> <p>2 service" is a defined term in this contract, but can you</p> <p>3 just tell me what your understanding of "limited</p> <p>4 service" means in this context?</p> <p>5 A In this context they don't have account managers,</p> <p>6 equipment specialists, or equipment service technicians</p> <p>7 or a branch support to the members.</p> <p>8 Q Do you have an understanding of what percentage,</p> <p>9 roughly, of the United States would be within the</p> <p>10 limited service area for Burkhart?</p> <p>11 A That would depend on what their service area map is.</p> <p>12 Q Understood.</p> <p>13 Do you have an understanding of what that--</p> <p>14 A I think it's approximately half of the country has</p> <p>15 full-service reps.</p> <p>16 Q So it is, approximately, in your understanding, 50</p> <p>17 percent of the country is full service and 50 percent is</p> <p>18 limited service?</p> <p>19 A I believe so.</p> <p>20 Q Have you ever heard of any prospective members who</p> <p>21 indicate that they would prefer full-service</p> <p>22 distribution, but they are in a part of the country that</p> <p>23 is not serviced by Burkhart's full service?</p> <p>24 A Yes.</p> <p>25 Q How frequently does that occur?</p>	127	<p>1 percent on all brand dental supplies and 39 percent on</p> <p>2 Burkhart private label dental supplies.</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q We talked about the margin earlier, but I just wanted to</p> <p>6 make sure I understood.</p> <p>7 So this 28 percent margin, was that something that</p> <p>8 Burkhart proposed?</p> <p>9 A Yes.</p> <p>10 Q And Burkhart indicated that that was a good deal for</p> <p>11 Kois Buyers Group members?</p> <p>12 A They didn't say whether it was a good deal or a bad</p> <p>13 deal.</p> <p>14 They said this was the margin they're willing to do</p> <p>15 as part of the buyers group.</p> <p>16 Q Do you have a sense for what their usual margin is for</p> <p>17 customers that don't have access to discounts?</p> <p>18 A I don't have a sense of their margin.</p> <p>19 I can say my sense is it is a good deal, based on</p> <p>20 the savings that I hear from people.</p> <p>21 Q That's what you have heard from dentists?</p> <p>22 A Yes.</p> <p>23 Q And do you have an understanding for why the margin is</p> <p>24 39 percent for private label, which is higher than the</p> <p>25 28 percent for other brand dental supplies?</p>
126	<p>1 A Maybe once a month, every other month.</p> <p>2 Q And in those cases did the prospective members say that</p> <p>3 they were not going to join because of that?</p> <p>4 A No.</p> <p>5 Q And what did they say?</p> <p>6 A They said they'd prefer to have a full-service rep in</p> <p>7 their area.</p> <p>8 Q Okay. And did some of those members join Kois Buyers</p> <p>9 Group in spite of not having a full-service rep in their</p> <p>10 area?</p> <p>11 A I know some did because I have heard stories of people</p> <p>12 adjusting to shipments as opposed to having a rep bring</p> <p>13 their products in.</p> <p>14 Q So for full service, at least with regard to Burkhart's</p> <p>15 offering of full service, do they typically have their</p> <p>16 reps bring in the supplies as opposed to shipping them?</p> <p>17 A I don't know what the workout is for the full-service</p> <p>18 areas.</p> <p>19 Sometimes reps bring products, sometimes they're</p> <p>20 delivered.</p> <p>21 A lot of times the reps do the ordering on behalf</p> <p>22 of the practice.</p> <p>23 Q Then moving down to Paragraph No. 3, which sets forth</p> <p>24 the dental supply margin that Burkhart agrees to, and it</p> <p>25 says that Burkhart agreed to limit its margin to 28</p>	128	<p>1 A I could guess.</p> <p>2 Q What is your guess?</p> <p>3 A If it's a white-label product, they have a lower cost</p> <p>4 associated with it.</p> <p>5 Q Did you say "white-label"?</p> <p>6 A Yes.</p> <p>7 Q What does that mean?</p> <p>8 A They have private label dental supplies, so they are</p> <p>9 branding their own-- so somebody is making it for them,</p> <p>10 and they are putting their label on it.</p> <p>11 My assumption is the cost to procure private label</p> <p>12 supplies is cheaper than name brand supplies, so they</p> <p>13 are giving it at a discount, but not at the same margin</p> <p>14 level, so they can increase-- dollar-wise it's a</p> <p>15 discount, but percentage-wise, they get a higher profit.</p> <p>16 Q Understood.</p> <p>17 Do you have an understanding of whether 28 percent</p> <p>18 is relatively low for a dental supply company like</p> <p>19 Burkhart?</p> <p>20 A Compared to another dental supply company? I don't know</p> <p>21 what other people's supply costs are or what their</p> <p>22 margin is on their products.</p> <p>23 What I've heard is that-- from manufacturers, is</p> <p>24 that most manufacturers tend to sell about the same</p> <p>25 price to the supply companies, and the difference in</p>

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<p>1 price to the consumer is based on the margin.</p> <p>2 Q So manufacturers tend to sell at about the same price to</p> <p>3 the various supply companies, and then any difference in</p> <p>4 price between the various supply companies is based on</p> <p>5 that individual supply company s margin?</p> <p>6 A That's my understanding.</p> <p>7 Q So you don't have any-- just to make sure I have an</p> <p>8 answer to my other question, do you have an</p> <p>9 understanding of whether 28 percent is relatively low</p> <p>10 for a supply company?</p> <p>11 A I don't know what their pricing structure is at other</p> <p>12 companies.</p> <p>13 I know Burkhart is a 28 percent flat across the</p> <p>14 board.</p> <p>15 I don't know what it is at the other supply</p> <p>16 companies.</p> <p>17 They could be higher on some products and lower on</p> <p>18 other ones.</p> <p>19 I don't have any way to track that.</p> <p>20 Q Okay. But Burkhart is offering only Kois members a 28</p> <p>21 percent margin, right?</p> <p>22 Like for individuals that are buying from Burkhart</p> <p>23 that are not a member of Kois Buyers Group, the margins</p> <p>24 could be higher than 28 percent?</p> <p>25 A Sure.</p>	<p>1 Q And that resulted in Burkhart giving that additional two</p> <p>2 percent discount?</p> <p>3 A Yes, per this agreement.</p> <p>4 Q Turning to Paragraph No. 5, "Manufacturer discounts,"</p> <p>5 this says that "Burkhart will negotiate manufacturer</p> <p>6 discounts for buyers groups with manufacturers."</p> <p>7 This is saying that Burkhart would go to the</p> <p>8 manufacturers that they worked with and try to obtain</p> <p>9 discounts for Kois Buyers Group members?</p> <p>10 A Correct.</p> <p>11 Q Do you know whether any manufacturers agreed to give</p> <p>12 discounts for the Kois Buyers Group members?</p> <p>13 A That list you have is Exhibit No. 326.</p> <p>14 Q And is that a complete list of all of the manufacturers</p> <p>15 that you understand give discounts through Burkhart to</p> <p>16 Kois Buyers Group members?</p> <p>17 A That's my understanding.</p> <p>18 I don't know if they re working with others.</p> <p>19 Sorry, there is at least one other I can think of</p> <p>20 that's not on this list that was brought out after this</p> <p>21 list came out.</p> <p>22 Q Okay. So you are saying after Exhibit No. 326--</p> <p>23 A There was an additional--</p> <p>24 Q --published?</p> <p>25 A Correct.</p>
130	132
<p>1 Q Okay.</p> <p>2 A I don't know what their different pricing models are.</p> <p>3 Q But it is your understanding that Burkhart is offering</p> <p>4 Kois Buyers Group a discount from Burkhart's usual</p> <p>5 prices?</p> <p>6 A Yes.</p> <p>7 Q And then we have the-- the last clause that says,</p> <p>8 "Provided that the volume of purchases exceeds the</p> <p>9 current pace of 5.3 million annually"-- do you see that?</p> <p>10 A Yes.</p> <p>11 Q When it says "the current pace," what does that mean?</p> <p>12 A So the amount of buying is determined by how much people</p> <p>13 buy on a given basis.</p> <p>14 If the pace of buying at Burkhart slows, the annual</p> <p>15 dollar amount that Burkhart is getting for the members</p> <p>16 would slow as well.</p> <p>17 Q Where did the current pace number of 5.3 million come</p> <p>18 from?</p> <p>19 Was that based on their prior contract?</p> <p>20 A That was 2015 purchasing levels, so since there's no</p> <p>21 guarantee that people will continue to purchase, it's</p> <p>22 based on previous--</p> <p>23 Q Okay. But then did it turn out that for 2016 members</p> <p>24 purchased more than 5.3 million?</p> <p>25 A Yes.</p>	<p>1 Q What was that one?</p> <p>2 A It was an x-ray sensor by Acteon.</p> <p>3 Q In the same Paragraph No. 5, Burkhart agreed to apply</p> <p>4 all manufacturer discounts to members by lowering the</p> <p>5 price of products sold to members.</p> <p>6 Does that just mean that Burkhart would pass on any</p> <p>7 manufacturer discounts to members?</p> <p>8 A That was our hope.</p> <p>9 Q Okay. And it says that "Burkhart agrees to be</p> <p>10 transparent about how manufacturer discounts are</p> <p>11 applied."</p> <p>12 What does that clause mean?</p> <p>13 A That means if it's a rebate, they would tell us it was</p> <p>14 in the form of rebate.</p> <p>15 If it's a general lower cost for the product, they</p> <p>16 would tell us that.</p> <p>17 Q Okay. When they said "they would tell us," did you mean</p> <p>18 the Kois Buyers Group members?</p> <p>19 A No. They would tell the Kois Buyers Group how those</p> <p>20 discounts came about.</p> <p>21 Q Have they provided that information to you?</p> <p>22 A That is evidenced in Exhibit No. 326.</p> <p>23 Any information that they provide to us, as far as</p> <p>24 discounts, we ask them to provide us in a form that we</p> <p>25 are free to distribute to the public, that there's no</p>

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1 proprietary information.

2 **Q Looking at Exhibit No. 326, do you have an understanding**

3 **of whether these discounts offered by the manufacturers**

4 **are lower costs for supplies or rebates?**

5 A I don't have an understanding of that.

6 **Q Okay. So it could be either one?**

7 A Or both.

8 **Q Other than the information in Exhibit No. 326, and I**

9 **know you mentioned there is an additional manufacturer,**

10 **do you have any other information for us to understand**

11 **whether the discounts being offered by these**

12 **manufacturers are in the form of rebates or lower**

13 **prices?**

14 A I don't have any information that determines how the

15 discounts are calculated.

16 **Q Burkhart would have that information?**

17 A Yes.

18 **Q One more quick question:**

19 **Paragraph No. 6 talks about new member incentives.**

20 **It says that Burkhart will provide a merchandise**

21 **credit of 299 to new Kois members.**

22 **Then it goes on to say the credit will be applied**

23 **to their account once they have become a tribe member**

24 **and they have completed a meeting with their Burkhart**

25 **account manager.**

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1 **What is your understanding of this?**

2 **I am particularly interested in the meeting with a**

3 **Burkhart account manager.**

4 A So to clarify, the rest of that statement is a customer

5 service agent introducing them to the Kois Buyers Group

6 program, Kois select manufacturers' benefits, Burkhart

7 Dental Supply benefits, and better value program.

8 The reason to be specific is it's a program open to

9 both full service and direct service markets, and there

10 are no account managers in the direct service.

11 To answer your question, the 30-minute meeting or

12 phone call or in-person, depending on what's available,

13 is to-- to give Burkhart an opportunity to explain what

14 services and products they offer.

15 It is an introductory meeting.

16 **Q So if you're in the full-service region of the United**

17 **States, that meeting would be with a Burkhart account**

18 **manager, and if you're in a limited-service region, it**

19 **would be with a customer service agent?**

20 A Most of the time.

21 I am told sometimes it's by phone, regardless of

22 the area that you're in.

23 **Q Okay. We have talked a fair bit about complaints that**

24 **you have heard from members.**

25 **Have you ever heard that deliveries have been slow**

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1 **when ordering through Burkhart?**

2 A "Slow" is a relative term.

3 Slower than people would like was an earlier

4 complaint.

5 Now shipping is two days as opposed to three days

6 to five days.

7 **Q At one point was Burkhart shipping three to five days?**

8 A At no charge.

9 In this contract it stipulates a two-day business

10 shipping for orders over \$750.

11 **Q So currently for orders under \$750, is it still a**

12 **three-day to five-day shipping?**

13 A Shipping can be any way you like, depending on how much

14 you're willing to pay, but free shipping for two-day, if

15 it's over \$750.

16 **Q Have complaints regarding delivery time decreased in**

17 **recent months?**

18 A Yes.

19 **Q And is that because Burkhart is shipping things faster**

20 **than they were before?**

21 A Yes.

22 They also-- East Coast dentists tend to use

23 different types of products, so they started to house

24 different things in the distribution centers that

25 service the direct markets, so that speeds some of the

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1 delivery, where they're not waiting for things to get

2 delivered.

3 **Q Have you ever heard from Kois Buyers Group members that**

4 **deliveries with other supply companies are much faster**

5 **than Burkhart?**

6 A No.

7 **Q Have you ever heard of members cancelling membership or**

8 **complaining because another supplier matched the**

9 **discount offered by Kois?**

10 A Cancelling? No.

11 Complaining? Yes.

12 **Q What has been the nature of the complaint?**

13 A That other supply companies are matching the price given

14 to the buyers group members.

15 **Q And why would that be a complaint?**

16 A They don't feel like it's the same value if they can get

17 the same pricing outside of the buyers group if they're

18 a member of the buyers group.

19 **Q And have you heard of specific supply companies that**

20 **have matched prices given to buyers group members?**

21 A I have heard of Schein and Patterson matching prices.

22 **Q What about Benco?**

23 A I haven't heard specifically.

24 I asked Burkhart about that.

25 They said price matches like that is at the

34 (Pages 133 to 136)

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1 discretion of the sales rep.
 2 **Q The sales rep--**
 3 A For that particular practice, for Schein or Patterson.
 4 **Q Is there an individual who works for you who processes**
 5 **cancellations?**
 6 A Right now? No. I handle all the memberships.
 7 **Q Who is Scott Heyamoto?**
 8 A He was a former employee of the Kois Center.
 9 Prior to me taking over the buyers group, he
 10 managed the requests that came in for membership at the
 11 Kois Center and sent those names off to ProCare.
 12 **Q Okay. Was he also responsible for processing**
 13 **cancellations?**
 14 A If people cancelled.
 15 I wasn't quite familiar with the process, but I
 16 believe so.
 17 **Q And you said you started at Kois Buyers Group in October**
 18 **2015?**
 19 A Yes.
 20 **Q Was there a period of time where-- a transition period**
 21 **where Qadeer was still sort of working with you?**
 22 A I don't know how much he was working with the buyers
 23 group.
 24 I heard updates between March and October that--
 25 from Scott when he would converse with ProCare, but with

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1 me directly, there was-- I can't think of any-- there
 2 might have been one or two e-mails.
 3 He wasn't very good about contacting people.
 4 **Q Who is "he"?**
 5 A Q, Qadeer.
 6 **Q And you said you heard updates between March and**
 7 **October--**
 8 A So in July Qadeer spoke at our symposium, and I sat with
 9 him for about three hours and asked him some specific
 10 questions about the buyers group, and that's where I got
 11 the majority of my information.
 12 **Q Okay. Was that July of 2015?**
 13 A Yes.
 14 **Q And then did you sit with him and speak with him**
 15 **understanding that you were going to be taking over the**
 16 **buyers group in the future?**
 17 A I sent him an e-mail towards the end of the year that I
 18 would be negotiating with Burkhart and managing the
 19 buyers group going forward.
 20 **Q And then does Kois Buyers Group have any relationship**
 21 **with ProCare or Qadeer today?**
 22 A No.
 23 **Q When did that relationship end?**
 24 A When this exclusive supplier agreement was in place.
 25 **Q When you said that you heard updates between March and**

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1 **October from Scott, what year were you talking about?**
 2 A 2015.
 3 **Q Okay. So as of March 2015, what was your role at Kois**
 4 **Buyers Group?**
 5 A I didn't have one.
 6 **Q But you were receiving e-mails?**
 7 A I would get updates from Scott, as far as how many
 8 members were part of the buyers group.
 9 **Q Did you have a role at Kois Center at that point?**
 10 A Yes.
 11 **Q You were CEO?**
 12 A Yes.
 13 **Q Why were you receiving updates from Scott?**
 14 A I asked for them.
 15 **Q Why did you ask?**
 16 A Because I didn't know anything about the buyers group,
 17 and I didn't have any documentation anywhere.
 18 I was trying to get some insight on what the
 19 program was.
 20 **Q So do you have an understanding of whether the Kois**
 21 **partnership has allowed Burkhart to bring in new**
 22 **customers?**
 23 A My understanding is it has.
 24 **Q Do you have an understanding of how many new customers?**
 25 A I could take a guess.

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1 It would be-- is-- would that be--
 2 **Q Sure.**
 3 A Because I can't speak to any full-service areas.
 4 I would say there's probably a good indication that
 5 anyone that's in the direct market would not have gone
 6 with Burkhart if they weren't part of the buyers group.
 7 **Q When you say "anyone in the direct market," what do you**
 8 **mean by that?**
 9 A People that get shipments via online shipments, they
 10 don't have a full-service rep in their area.
 11 Full-service area, I can't speak to whether or not
 12 it was the prowess of the Burkhart sales rep that caused
 13 them to move over and whether or not that would have
 14 happened anywhere.
 15 **Q Do you have an understanding of how many new customers**
 16 **Burkhart has obtained through its relationship with the**
 17 **Kois Buyers Group?**
 18 A It's part of their presentations they do quarterly.
 19 I can find that information. I don't have it off
 20 the top of my head.
 21 **Q Do you have any recollection off the top of your head?**
 22 A I would say it's probably around 100.
 23 **Q Total?**
 24 A Mm-hm.
 25 **Q Thank you.**

35 (Pages 137 to 140)

141	<p>1 Let's talk a little bit more about Kois's history</p> <p>2 with Benco.</p> <p>3 A Sure.</p> <p>4 Q So you mentioned that you have spoken to Benco about</p> <p>5 doing business with the Kois Buyers Group; is that</p> <p>6 right?</p> <p>7 A Mm-hm.</p> <p>8 Q When did you have those conversations?</p> <p>9 A It was in-- probably fall of 2015.</p> <p>10 Q Did you reach out to Benco or did they reach out to you?</p> <p>11 A I reached out to them.</p> <p>12 Q Who did you reach out to?</p> <p>13 A I don't remember if it was Julie Rasmussen or-- I don't</p> <p>14 remember the other person's-- Kathleen, I think.</p> <p>15 Kois Center had an ongoing relationship with Benco</p> <p>16 separate from the buyers group for speaking for my dad,</p> <p>17 so he would do a couple lectures a year at Benco, so I</p> <p>18 already had a relationship with them, but specifically</p> <p>19 for the Kois Buyers Group, that didn't start until the</p> <p>20 fall.</p> <p>21 Q Until the fall of 2015?</p> <p>22 A Yes.</p> <p>23 Q Okay. When you said Kathleen at Benco, would that be</p> <p>24 Kathleen Bird?</p> <p>25 A Yes.</p>	143	<p>1 Q Okay. How many meetings did you have?</p> <p>2 A Probably one, and I would say probably one or two phone</p> <p>3 calls.</p> <p>4 Q And for the in-person meeting, where did it take place?</p> <p>5 A That would be at the Kois Center in Seattle, Washington.</p> <p>6 Q And who from Benco was there?</p> <p>7 A That would have been Julie, and I don't think Kathleen</p> <p>8 was there. I think just Julie.</p> <p>9 Q Have you ever met with Chuck Cowen?</p> <p>10 A Yes.</p> <p>11 Q Have you ever met with Chuck Cowen with regard to the</p> <p>12 Kois Buyers Group specifically?</p> <p>13 A Not for the Kois Buyers Group.</p> <p>14 They asked about their own buyers group.</p> <p>15 Q So the meeting with Julie at Kois Center in the fall of</p> <p>16 2015, what was that meeting related to?</p> <p>17 A Two parts:</p> <p>18 One was my dad's speaking engagements for the</p> <p>19 following year with Benco, and that's the Kois Center</p> <p>20 side.</p> <p>21 On the Kois Buyers Group side, exploring an option</p> <p>22 to have them as part of the buyers group.</p> <p>23 Q Were they receptive to that?</p> <p>24 A Yes.</p> <p>25 Q What did Julie say to you about the possibility of</p>
142	<p>1 Q And then Julie-- is it "Radzyminski"?</p> <p>2 A I think so.</p> <p>3 Q So in the fall of 2015 you reached out to either Julie</p> <p>4 or Kathleen at Benco?</p> <p>5 A Correct.</p> <p>6 Q And why did you reach out to them?</p> <p>7 A I was starting to negotiate the contract with Burkhart,</p> <p>8 and I wanted to keep some options open.</p> <p>9 My intention originally was to explore having two</p> <p>10 supply companies as part of the buyers group.</p> <p>11 Q Did you think it would be beneficial, at that time, to</p> <p>12 have two supply companies as part of the buyers group?</p> <p>13 A I didn't know if it would be beneficial to the members.</p> <p>14 I just wanted to explore the option.</p> <p>15 My first step was to see if both supply companies</p> <p>16 would be receptive to that.</p> <p>17 Q And you mentioned earlier that neither were receptive;</p> <p>18 is that right?</p> <p>19 A Correct.</p> <p>20 Q And did you have any in-person meetings with people at</p> <p>21 Benco to discuss joining the Kois Buyers Group as a</p> <p>22 vendor?</p> <p>23 A Yes.</p> <p>24 Q When were those meetings?</p> <p>25 A Approximately that time of year, fall of 2015.</p>	144	<p>1 becoming a member for Kois Buyers Group?</p> <p>2 A They were interested.</p> <p>3 Q What were the next steps after that?</p> <p>4 A I asked both Burkhart and Benco if they would be willing</p> <p>5 to be part of the buyers group together.</p> <p>6 Q Okay. And so focusing on Benco, what did Benco say?</p> <p>7 A They said they would rather not.</p> <p>8 Q And what reason did they give?</p> <p>9 A They would rather not have another supply company in the</p> <p>10 same buyers group as them.</p> <p>11 Q Did they give any other explanation for why they didn't</p> <p>12 want to have another supply company in the same buyers</p> <p>13 group as them?</p> <p>14 A No.</p> <p>15 Q Were you surprised at that response?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A It was the same response Burkhart gave.</p> <p>19 Q Were you surprised by either of their responses?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A Because they could do what they liked.</p> <p>23 There was no-- I mean, they could choose to work</p> <p>24 with us or not.</p> <p>25 Q Were there any other further discussions with Benco</p>

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1 regarding Benco being a supplier for Kois Buyers Group?
 2 A Yes.
 3 **Q What were those?**
 4 A We told them we decided to go with Burkhart for the
 5 supply company in the buyers group.
 6 **Q Did you have any negotiations with Benco about like what**
 7 **type of discounts they would be able to offer or**
 8 **anything like that?**
 9 A We didn't get that far.
 10 **Q So when Benco said, "We don't want to be one of two**
 11 **suppliers for Kois Buyers Group," that was pretty much**
 12 **the end of the conversation?**
 13 A Yes.
 14 **Q And then prior to the meeting in the fall of 2015, did**
 15 **you have any understanding of whether ProCare had any**
 16 **negotiations with Benco regarding Kois Buyers Group, or**
 17 **conversations with Benco?**
 18 A Prior to-- so-- as far back as where?
 19 **Q So the Kois Buyers Group was founded in October 2014,**
 20 **right?**
 21 A Mm-hm.
 22 **Q So around that time or sometime between then and the**
 23 **fall of 2015, when you came on and were involved, were**
 24 **there any conversations between ProCare and Benco about**
 25 **Kois Buyers Group?**

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1 A I don't believe so.
 2 I believe once the initial contract with Burkhart
 3 was in place, that was the extent of any supplier
 4 company negotiations.
 5 **Q Okay. What is your understanding based on?**
 6 A I hadn't heard anything to the contrary.
 7 **Q Okay. But would Qadeer have more information about**
 8 **that?**
 9 A It's possible.
 10 **Q Would your father have more information about that?**
 11 A I doubt it.
 12 (Exhibit No. 328 marked
 13 for identification.)
 14
 15 **Q (By Ms. Goff) Mr. Kois, the court reporter has handed**
 16 **you what has been marked as Exhibit No. 328.**
 17 **This is a document that we received from another**
 18 **party, so I don't expect that you would have necessarily**
 19 **seen it before, but I have a couple questions, and this**
 20 **would be useful to facilitate the discussion.**
 21 A Mm-hm.
 22 **Q Go ahead and take a minute to read it, and let me know**
 23 **when you're finished.**
 24 **Have you had a chance to review it?**
 25 A Yes.

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1 **Q So this is what appears to be a blog post.**
 2 **At the top it says, "Julie Radzynski: Added blog**
 3 **post in @[Benco buzz]."**
 4 **The date at the end of the document is 12/3/2014.**
 5 **In the second paragraph it says that "Dr. Kois came**
 6 **to us a few months ago and asked if we would be**
 7 **interested in participating in his Tribal Management**
 8 **Buying Group."**
 9 **Skipping forward it says, "After hearing all of the**
 10 **details, we decided we did not want to participate."**
 11 **Do you see that?**
 12 A Yes.
 13 **Q I just want to ask you whether you have an understanding**
 14 **of whether your father, Dr. Kois, talked to Benco at all**
 15 **about participating in a buyers group.**
 16 A You mean between him and me? It certainly wasn't me.
 17 This says him, so my assumption would be it was
 18 during one of his lectures with them, if he was out
 19 there.
 20 **Q But you haven't discussed with your father him speaking**
 21 **with Benco about participating in his buyers group?**
 22 A No.
 23 **Q Okay. So then the last thing I wanted to ask you about**
 24 **this document is:**
 25 **There are two bullet points. One says, "Minimal**

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1 **impact," and the last sentence says, "Additionally, many**
 2 **of the tribal members will not be able to participate**
 3 **due to Burkhart's limited geographic distribution**
 4 **capabilities."**
 5 **Do you see that?**
 6 A Yes.
 7 **Q Did this turn out to be correct?**
 8 **Do you agree with this statement that many tribal**
 9 **members would not be able to participate due to**
 10 **Burkhart's limited geographic distribution capabilities?**
 11 A I don't know how many impacted as far as Benco
 12 customers.
 13 I believe the Internet shipping for products was
 14 new, that Burkhart was rolling out, and that was partly
 15 due to their association with the buyers group.
 16 **Q Okay. You can put that one to the side. Thank you.**
 17 **You mentioned that you've had conversations with**
 18 **Chuck Cowen?**
 19 A Yes.
 20 **Q And those conversations, did they relate to Benco's**
 21 **buying group? Is that what you said?**
 22 A Yes.
 23 **Q What did Chuck Cowen-- how did those conversations go?**
 24 A The Kois Center was one of the success partners for
 25 Benco up until, I believe, the end of 2016, is my

37 (Pages 145 to 148)

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1 assumption, or sometime around there. Sometime last
 2 year we ended that relationship with them.
 3 What they did was they asked their success partners
 4 to be part of their buyers group, and that was in-- the
 5 capacity that they were looking for, for the Kois
 6 Center, was to get a discount on courses offered at the
 7 Kois Center for members of Benco's buyers group.
 8 **Q So did Benco ever ask for the Kois Buyers Group to**
 9 **somehow be merged with Benco's buyers group?**
 10 A No. They were separate.
 11 **Q What do you mean "they were separate"?**
 12 A It is a separate company that-- Kois Buyers Group.
 13 We never got that far in discussions with Benco as
 14 far as their buyers group.
 15 Our conversations stopped with us not being
 16 interested in giving a discount to their members for our
 17 courses.
 18 **Q So there was never any conversation about Kois Buyers**
 19 **Group and Benco Buyers Group merging?**
 20 A I'm sure there was a conversation with that, but it
 21 didn't go very far.
 22 **Q And why was the Kois Center not interested in giving a**
 23 **discount to Benco Buyers Group members?**
 24 A The purpose of the discount was to increase demand for
 25 the Kois Center courses, but our courses are generally

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1 full, so we didn't see an incentive to discount our
 2 already-full courses.
 3 **Q And have you ever had any other conversations with Chuck**
 4 **Cowen?**
 5 A Yes.
 6 **Q And what are the nature of those conversations?**
 7 A I went to Texas in-- it might have been that time, about
 8 fall of 2015, I believe, to speak at one of their--
 9 their summit meeting, which was a collection of all of
 10 their reps, to-- in the capacity of the Kois Center CEO,
 11 because we were a success partner of theirs.
 12 While there, I had conversations with Chuck as well
 13 as Julie and Kathleen.
 14 **Q What is a success partner?**
 15 A They have several partners that they offer some sort of
 16 incentive for people to go to.
 17 For Benco, if someone asks for continuing
 18 education, they would recommend the Kois Center.
 19 If people wanted a study group, they would offer a
 20 different vendor.
 21 If people wanted financial advice-- a way to extend
 22 their reach of services without having those services
 23 in-house.
 24 **Q Okay. And at some point the relationship between Kois**
 25 **Center and Benco ended?**

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1 A Yes.
 2 **Q And why did it end?**
 3 A My dad didn't want to lecture for Benco for their
 4 courses anymore.
 5 We didn't feel we got a return for us.
 6 **Q Is that the reason why your dad didn't want to lecture**
 7 **at the courses anymore?**
 8 A He's pulling back from out-of-state lectures in general.
 9 This was part of that plan.
 10 (Exhibit No. 329 marked
 11 for identification.)
 12 **Q (By Ms. Goff) So the court reporter handed you what has**
 13 **been marked as Exhibit No. 329.**
 14 **It is an e-mail chain bearing the Bates stamp Kois**
 15 **001133 through 1134.**
 16 **Have you had a chance to review it?**
 17 A Yes.
 18 **Q Okay. So is this an e-mail chain between you and Julie**
 19 **Radzynski of Benco, and Kathleen Bird is on here as**
 20 **well?**
 21 A Yes.
 22 **Q Is this in reference to the meeting you had in the fall**
 23 **of 2015 with Julie?**
 24 A Yes.
 25

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1 Specifically this was for-- yes, this was when
 2 Julie came to visit.
 3 **Q And then the top e-mail in the chain, it's from you, and**
 4 **it says, in the second paragraph, "Regarding the buyers**
 5 **group, I am interested in hearing what type of deal you**
 6 **would like to see in a perfect world, and we can work**
 7 **towards that. For me, I would love to give dentists an**
 8 **opportunity to choose between Burkhart and Benco, based**
 9 **on their needs and relationships."**
 10 **Do you see that?**
 11 A Yes.
 12 **Q At this time were you interested in giving dentists the**
 13 **opportunity to choose between either Burkhart or Benco?**
 14 A Yes.
 15 **Q And why were you interested in that?**
 16 A To have another supply company in the buyers group that
 17 gave the same kind of discounts, and one with reps
 18 closer to people, which I thought would be beneficial.
 19 **Q Would that help solve the complaints or the issues that**
 20 **some members had on the East Coast with not having a**
 21 **full-service distributor nearby?**
 22 A I don't know if it would have solved.
 23 That would be assuming that their rep was Benco.
 24 There are other supply companies that have local
 25 representation.

38 (Pages 149 to 152)

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1 I thought it would help.
 2 **Q But there is always the possibility for Kois Buyers**
 3 **Group members to leave their former supply companies and**
 4 **switch to Kois Buying Group's supply company, right?**
 5 A Oh, sure, and switch back.
 6 **Q So just to make sure I understood, you said you thought**
 7 **it would help address some of the complaints that you**
 8 **had heard about members on the East Coast not having a**
 9 **full-service distributor nearby?**
 10 A I did think it would help.
 11 **Q Have you ever received any feedback from dentists that**
 12 **they would be interested in having Benco as a vendor?**
 13 A No.
 14 **Q You haven't heard that specifically?**
 15 A No.
 16 **Q But you have heard it with regard to Schein and**
 17 **Patterson specifically?**
 18 A Yes.
 19 **Q So Benco was never a supplier for Kois Buyers Group,**
 20 **correct?**
 21 A Correct.
 22 **Q By the way, turning back to Exhibit No. 329, it looks**
 23 **like your e-mail is Johnny@KoisCenter.com?**
 24 A Correct.
 25 **Q And is that your e-mail for Kois Center and Kois Buyers**

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1 **Group?**
 2 A Yes.
 3 **Q So do you do Kois Buyers Group business through this**
 4 **e-mail address, Johnny@KoisCenter.com?**
 5 A I do. I send out newsletters at
 6 Info@KoisBuyersGroup.com.
 7 **Q When you say "info," do you mean like those monthly**
 8 **updates or--**
 9 A "Info" as in that's the e-mail address that the
 10 newsletters come from, and I will have, occasionally,
 11 dentists that will respond to those e-mails.
 12 **Q When you said "newsletters," is Exhibit No. 325 an**
 13 **example of a newsletter?**
 14 A Yes.
 15 **Q For Schein, and I know we discussed Schein earlier, but**
 16 **just to make sure I have it correct, is it your**
 17 **understanding that Qadeer at ProCare approached Schein**
 18 **on behalf of the Kois Buyers Group?**
 19 A Yes.
 20 **Q And Schein responded that they were not interested in**
 21 **working with the Kois Buyers Group?**
 22 A Correct.
 23 **Q And do you have an understanding of why Schein said no**
 24 **to working with Kois Buyers Group?**
 25 A I don't.

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1 **Q If not for the exclusivity clause in the Burkhart**
 2 **contract, would you be interested in partnering with**
 3 **Schein?**
 4 A No.
 5 **Q Why not?**
 6 A I have heard less than favorable things about their
 7 reps.
 8 **Q Okay. So is it fair to say you have not approached**
 9 **Schein, since you have been managing Kois Buyers Group,**
 10 **to form a relationship with them?**
 11 A In the United States?
 12 **Q Yes, in the United States.**
 13 A Correct.
 14 **Q So you said you have heard less than favorable things**
 15 **about their reps.**
 16 **Generally, what types of things have you heard?**
 17 A Generally, I never hear anything-- any kind of complaint
 18 from the Burkhart reps.
 19 I will occasionally hear complaints from a Schein
 20 rep or a Patterson rep where they're aggressive, said
 21 they would get one price and another-- nothing I can
 22 prove, but it's just what dentists say when I see them.
 23 **Q And you said you would occasionally hear complaints from**
 24 **a Schein rep or a Patterson rep.**
 25 **Did you mean "about a Schein"--**

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1 A "About."
 2 **Q "Yes," right?**
 3 A Yes.
 4 **Q Thank you.**
 5 **Have you ever had any e-mail communications with**
 6 **individuals at Schein regarding Kois Buyers Group?**
 7 A Schein in which country?
 8 **Q The United States.**
 9 A No.
 10 **Q And whatever happened-- I know you mentioned that Schein**
 11 **Canada approached Kois?**
 12 A They did.
 13 **Q And what was the result of that?**
 14 A I told them we were happy with our relationship with
 15 Sinclair, and if they wanted to follow up with us in a
 16 couple of years, they were welcome to.
 17 **Q Who approached you from Schein Canada?**
 18 A A Schein rep in Canada.
 19 I don't remember his name.
 20 **Q Do you know that individual's title?**
 21 **Were they just a representative?**
 22 A I thought-- I got the thought that they were more than a
 23 rep, somebody more of a regional representation in
 24 Canada, but because we weren't planning to move forward
 25 with them, I didn't take too much time with it.

39 (Pages 153 to 156)

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- 1 **Q Have you ever talked to Tim Sullivan with Schein?**
 2 A Is he Canada?
 3 **Q Have you ever spoken with--**
 4 A The name doesn't ring a bell to me.
 5 **Q Thank you.**
 6 **Then same questions for Patterson:**
 7 **Is it your understanding that ProCare approached**
 8 **Patterson to work with Kois Buyers Group prior to your**
 9 **arrival at Kois Buyers Group?**
 10 A Yes.
 11 **Q And that was Qadeer that spoke with Patterson?**
 12 A Yes.
 13 **Q And it is your understanding that Patterson said no?**
 14 A Correct.
 15 **Q And do you have an understanding of why Patterson said**
 16 **no?**
 17 A No.
 18 **Q Do you have any understanding of the reason why**
 19 **Patterson was not interested in working with Kois Buyers**
 20 **Group?**
 21 A I can guess. I can speculate.
 22 **Q Okay.**
 23 A At the time-- there were no members, so there wasn't
 24 anything to offer them.
 25 It was the idea that we would put a group together

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- 1 to give a discount to, but when the group started, there
 2 were no members.
 3 **Q So when the group started, is that true, there were no**
 4 **members?**
 5 **I thought there were 174 members.**
 6 A They came at the same time.
 7 Once we established a supply company, we requested
 8 any interest from the members, so there were no members
 9 when we first started.
 10 **Q Okay. Understood.**
 11 **But similarly, there were no members when you first**
 12 **approached Burkhart and they agreed to do business with**
 13 **Kois Buyers Group?**
 14 A That's correct.
 15 **Q So that fact did not turn off Burkhart, right?**
 16 A Correct.
 17 **Q So why do you think that it turned off Patterson when it**
 18 **didn't turn off Burkhart?**
 19 A I don't know what the reasoning was behind the
 20 motivation of the cancel.
 21 **Q Behind the--**
 22 A The decision for Patterson and Schein to not move
 23 forward.
 24 I don't know what the reason was, other than that
 25 they decided not to move forward.

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- 1 **Q Okay. Thank you.**
 2 **And if not for the exclusivity clause with**
 3 **Burkhart, would you be interested in having Kois Buyers**
 4 **Group partner with Patterson?**
 5 A Personally?
 6 **Q Yes.**
 7 A No.
 8 **Q Why not?**
 9 A I don't know much about the company. I don't have a
 10 relationship with them.
 11 **Q Okay. So have you reached out to Patterson at all about**
 12 **doing business with Kois Buyers Group?**
 13 A No.
 14 **Q And have you ever had any e-mail communications or other**
 15 **communications with individuals at Patterson regarding**
 16 **Kois Buyers Group?**
 17 A No.
 18 **Q Do you think that not working with Schein, Patterson, or**
 19 **Benco has impacted Kois Buyers Group's success in any**
 20 **way?**
 21 A I would say no.
 22 **Q Why not?**
 23 A Because we have quite a few members signed on.
 24 The members that we have are happy.
 25 I can't speculate as to why other members haven't

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- 1 joined, just what people tell me.
 2 **Q Okay. But you have heard from some members that they**
 3 **wished that there was full-service distribution in their**
 4 **area, correct?**
 5 A Yes.
 6 They also say that they would rather have a cheaper
 7 price than a full-service rep.
 8 **Q Understood.**
 9 **Would you consider buying groups to be prevalent in**
 10 **the dental industry today?**
 11 A What would you determine "prevalent"--
 12 **Q Not being in the dental industry myself, I am just**
 13 **curious if buying groups are common, if they re out**
 14 **there for people to join--**
 15 A It's a familiar idea.
 16 As far as a percentage of practices that are buyers
 17 group members and not buyers group, I don't have any
 18 data on that.
 19 **Q When you first started working at Kois Buyers Group, did**
 20 **you notice any barriers to entry into the dental**
 21 **industry?**
 22 A Can you rephrase?
 23 **Q Have you noticed any barriers to entry in terms of**
 24 **getting customers, getting members, or getting vendors**
 25 **for Kois Buyers Group?**

40 (Pages 157 to 160)

161	<p>1 A No.</p> <p>2 The decisions for companies to come into the buyers</p> <p>3 group or pass is based on that company, you know,</p> <p>4 whether or not they find it of benefit to be part of our</p> <p>5 buyers group.</p> <p>6 Q Have you heard from any vendors that they don't find it</p> <p>7 to be beneficial to work with Kois Buyers Group?</p> <p>8 A I haven't heard of any.</p> <p>9 Q So most vendors that you've approached have decided to</p> <p>10 do business with Kois Buyers Group?</p> <p>11 A Yes-- I'm sorry, I should back up.</p> <p>12 Zimmer is an implant company. They offer discounts</p> <p>13 for U.S. and Canadian practices, the same discounts, and</p> <p>14 the pricing models are different in Canada and the</p> <p>15 United States.</p> <p>16 The representatives in Canada asked for a different</p> <p>17 pricing structure.</p> <p>18 Q So have you heard of any vendors that don't find it</p> <p>19 beneficial to work with Kois Buyers Group that have</p> <p>20 informed you that they don't find it beneficial?</p> <p>21 A That was the only one.</p> <p>22 Q So Zimmer is an example?</p> <p>23 A Zimmer in Canada.</p> <p>24 Zimmer in U.S. is very happy.</p> <p>25 Q Have you ever heard of rumors in the dental industry</p>	163	<p>1 sort of gray market product.</p> <p>2 Q Okay. Was that tied to a buyers group or no?</p> <p>3 A No.</p> <p>4 Q So just going back to buying groups in particular, have</p> <p>5 you heard any rumors in the dental industry that buyers</p> <p>6 groups sell gray market products or partner with</p> <p>7 companies that sell gray market products?</p> <p>8 A I haven't heard anything specific.</p> <p>9 Q Have you heard anything generally?</p> <p>10 A No.</p> <p>11 Q Do you have an understanding of the term "manufacturer"</p> <p>12 or "vendor chargeback" as it's used in the dental</p> <p>13 industry?</p> <p>14 A No.</p> <p>15 Q You have never heard the term "chargeback"?</p> <p>16 A I don't have a good understanding of it.</p> <p>17 Q So do you have any understanding of it?</p> <p>18 A I have heard the term. I am not familiar with what it</p> <p>19 really means.</p> <p>20 Q Do you have an understanding of how manufacturers view</p> <p>21 buying groups in general?</p> <p>22 A No.</p> <p>23 Q Have manufacturers ever told you that they would not</p> <p>24 work with Kois Buyers Group because it was a buying</p> <p>25 group?</p>
162	<p>1 that buyers group sell gray market products?</p> <p>2 A Rumors? Nothing that I can substantiate.</p> <p>3 Q But have you heard of rumors to that effect?</p> <p>4 A I have.</p> <p>5 Q Have dentists informed you of that?</p> <p>6 A Yes.</p> <p>7 Q And have dentists told you where they've heard that</p> <p>8 information?</p> <p>9 A No.</p> <p>10 It's the-- but their thought was if there's a</p> <p>11 product-- it's not so much in the dental community.</p> <p>12 It's a special one-time offer on a particular product,</p> <p>13 and the products might be past expiration but still</p> <p>14 good, that kind of gray market.</p> <p>15 Is that what you're referring to?</p> <p>16 Q Why don't we define what you understand "gray market" to</p> <p>17 be.</p> <p>18 A "Gray market" is not direct from the original seller to</p> <p>19 the original supplier.</p> <p>20 Q And so have dentists told you that they've heard that</p> <p>21 buyers groups sell gray market products?</p> <p>22 A I haven't heard specifically for a buyers group.</p> <p>23 I have heard of dentists getting offered products</p> <p>24 that were below what would be considered even a</p> <p>25 discounted price, and ultimately those were usually some</p>	164	<p>1 A No.</p> <p>2 Q Has any manufacturer told you they have a policy of not</p> <p>3 working with buying groups?</p> <p>4 A Yes.</p> <p>5 Q Was that 3M?</p> <p>6 A No.</p> <p>7 Q Which one was that?</p> <p>8 A Ultradent.</p> <p>9 They said they had a bad experience with a buyers</p> <p>10 group, and going forward they're not going to be</p> <p>11 partnering with any other buyers groups.</p> <p>12 Q Did they tell you which buyers group that was?</p> <p>13 A No.</p> <p>14 Q And what about 3M?</p> <p>15 3M said that they would not sell direct to Kois</p> <p>16 Buyers Group members; is that right?</p> <p>17 A No.</p> <p>18 They never sell direct to Kois Buyers Group</p> <p>19 members. It would be through Burkhart, and they said</p> <p>20 that they weren't willing to give a discount to buyers</p> <p>21 group members.</p> <p>22 Q And you heard that through Burkhart?</p> <p>23 A Yes.</p> <p>24 MR. RYAN-LANG: So we are just past</p> <p>25 2:00 now. Can you give me a sense of how much more</p>

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1 you've got?
2 Some of this ground I feel like we have covered a
3 little bit.

4 MS. GOFF: Sure. Why don't we take a
5 break right now, and I will try to wrap up. I have one
6 more topic that I don't think will take too long, and
7 then we can wrap up.

8 (Recess 2:02 to 2:11 p.m.)
9 (Exhibit No. 330 marked
10 for identification.)
11

12 **Q (By Ms. Goff) The court reporter handed you what has**
13 **been marked as Exhibit No. 330.**

14 **This is another document that was produced by**
15 **another company, so I've redacted some of it, and there**
16 **are no Bates stamps or-- I guess I've redacted the Bates**
17 **stamps.**

18 **Take a moment to look at it, and let me know when**
19 **you're finished.**

20 **I am really just focused on who this e-mail came**
21 **from.**

22 **You are welcome to read as much of this as you**
23 **would like, but my main question is:**

24 **The "From" says, "KoisTribe@KoisCenter.com."**
25 **Is that your e-mail or the e-mail address of your**

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1 **father's?**

2 A It is neither.

3 This would appear to be a newsletter that went out.

4 **Q And who sent this newsletter?**

5 A Probably based on the date this came out, I would say
6 that Scott was the person who ultimately sent it out.

7 **Q And that's Scott--**

8 A Heyamoto.

9 **Q The letter says, "Warmest always, John C. Kois."**

10 A This looks like the original setup of the buyers group,
11 so the language in it looks more like something that
12 Qadeer wrote rather than something that my dad wrote.

13 **Q In the salutation, "John C. Kois," is that a reference**
14 **to your father, to your understanding?**

15 A Yes.

16 **Q And what makes you say that this is something that you**
17 **think Qadeer wrote and not your father?**

18 A The "ProCare Dental Services," just the type of-- the
19 layout of how the discounts are offered and the language
20 in it.

21 **Q So the first-- well, the second paragraph says, "I have**
22 **been working on this plan from partners with ProCare**
23 **Dental Services."**

24 **Is that what you were referring to when you said**
25 **"ProCare Dental Services"?**

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1 A Yes.

2 **Q And then "the layout of the discounts," what did you**
3 **mean by that?**

4 A This was what the original idea of the buyers group was,
5 was this plan.

6 This wasn't the reality.

7 This was before they even had a group signed up.

8 This was before we had any members signed up.

9 This looks like the original announcement letter
10 that went out.

11 **Q As soon as members signed up, did the pricing structure**
12 **go to that 299 per year--**

13 A No. It went that way when I took over.

14 **Q That's what I thought. Okay.**

15 A Where it says here the deposit, first month, last month,
16 initial deposit-- on Page 3, that was the initial
17 deposit that was taken from people based on whatever
18 category they signed up for.

19 **Q Okay.**

20 A When I took over, I pushed all these forward for
21 everybody.

22 Based on 299 a year, if they spent an initial
23 deposit of \$400, they got two years worth of services
24 going forward as their membership.

25 **Q Okay. You can put that one aside. Thank you.**

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1 **Do you agree or disagree with the statement that**
2 **dentists, for the most part, are not interested in**
3 **purchasing from buying groups?**

4 A That's a very direct statement. I am trying to decide
5 the best way to-- can you say it again?

6 **Q Well, do you agree or disagree that dentists are not**
7 **interested in purchasing from buying groups?**

8 **MR. RYAN-LANG: He s not a dentist--**

9 MS. GOFF: I understand, but he is in
10 the dental industry, and he has--

11 THE WITNESS: I have to make sure I
12 get all my double negatives here.

13 I would disagree that dentists are not interested
14 in purchasing from buyers groups.

15 **Q (By Ms. Goff) And that's based on your experience**
16 **working at a buyers group and speaking with dentists?**

17 A Yes.

18 **Q Do you believe that buying groups provide value to**
19 **dentists?**

20 A I can't speak for other buying groups.

21 I believe that the Kois Buyers Group provides value
22 to members.

23 **Q Okay. And do you believe that the Kois Buyers Group has**
24 **brought down the price for supplies for its members?**

25 A I do.

42 (Pages 165 to 168)

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1 **Q And is that understanding-- what is that understanding**
2 **based on?**

3 A The discounts offered are off of retail pricing.

4 I don't know what dentists would have paid
5 otherwise, but the responses I get from dentists is that
6 they re saving money on those invoices.

7 **Q Okay. Thank you.**

8 **Does your father have an e-mail address?**

9 A Yes.

10 **Q What is it?**

11 A It's JohnKois@Hotmail.com.

12 **Q For you personally, I know we mentioned the**
13 **Johnny@KoisCenter, and you told me that there is another**
14 **one, Info--**

15 A Info@KoisBuyersGroup.com.

16 **Q Other than those two, do you conduct any other business**
17 **for Kois Buyers Group in any other e-mail addresses?**

18 A No.

19 MS. GOFF: Thank you very much for
20 coming in today. Those are all my questions, but I
21 really appreciate your time.

22 With that, we can close the transcript, unless your
23 counsel has anything else.

24 MR. RYAN-LANG: I m good.

25 (Hearing concluded at 2:20 p.m.) (Signature reserved.)

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1 STATE OF WASHINGTON) I, Terilynn Simons, RMR, CRR,
2) ss CLR, a certified court reporter
3 County of Pierce) in the State of Washington, do
4 hereby certify:

5 That the foregoing investigational hearing of JOHN C.
6 KOIS, JR. Was taken before me and completed on
7 July 26, 2017, and thereafter was transcribed under my
8 direction; that the transcript is a full, true and complete
9 transcript of the testimony of said witness, including all
10 questions, answers, objections, motions and exceptions;

11 That the witness, before examination, was by me duly
12 sworn to testify the truth, the whole truth, and nothing but
13 the truth, and that the witness reserved the right of
14 signature;

15 That I am not a relative, employee, attorney or counsel
16 of any party to this action or relative or employee of any
17 such attorney or counsel and that I am not financially
18 interested in the said action or the outcome thereof;

19 That I am herewith securely sealing the said transcript
20 and promptly delivering the same to Attorney Karen V. Goff.

21 IN WITNESS WHEREOF, I have hereunto set my signature on
22 the 30th day of July, 2017.

23 Terilynn Simons, CCR, RMR, CRR, CLR
24 Certified Court Reporter No. 2047.
25 (Certification expires 07/07/2018)

43 (Pages 169 to 170)

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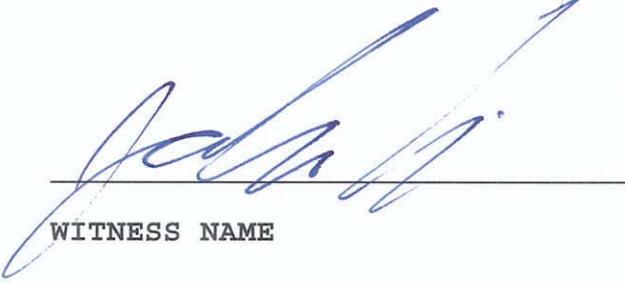
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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.



WITNESS NAME

For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

CX0322

Redacted in Entirety

CX1000

Redacted in Entirety

CX1037

From: Pat Ryan
Sent: Sunday, September 13, 2015 2:07 PM
To: capaldo@gadental.org
Cc: vanzandi@gadental.org; mcclatchey@gadental.org
Subject: RFP request
Attachments: COOP - GDA Request for Proposal (7-17-15).docx

Good morning Mr Capaldo,

Thank you for the opportunity on your RFP, we appreciate being considered.

However, Benco will respectfully decline to respond

Benco, as a matter of policy, does not participate in GPOs

Thank you again for the consideration, and if you have any questions I can be reached at the number below

Patrick Ryan
Director of Sales, Special Markets
Benco Dental Company
295 CenterPoint Boulevard
Pittston, PA 18640
570-602-6816

GEORGIA DENTAL ASSOCIATION (“GDA”) REQUEST FOR PROPOSAL

1. INTRODUCTION

Thank you for your interest in becoming the Provider for the group purchasing program currently being formed by Integrity Dental Buyers Group, LLC (“Integrity Dental Buyers Group”) for the benefit of current and future members of the Georgia Dental Association (“Purchasing Program”). We have been diligently working with multiple well-recognized industry providers and advisors to present our members with a streamlined and centralized purchasing vehicle for equipment, supplies and related services important to our members’ dental practices. At the heart of these efforts is Georgia Dental Association’s desire to present its members with the opportunity to purchase the items they need to run their practices at a sustainable and efficient price. The Georgia Dental Association represents 3500 Dentist members and over 5000 practices in the state of Georgia.

GENERAL PURPOSE INFORMATION

Listed below are the requirements for the request for proposal (“RFP”). Please use them as guide as you prepare your proposal.

Your response to the RFP (“Proposal Response”) must be sent to Lisa A. VanZandt, COO, vanzandt@gadental.org via e-mail and hard copy in the mail Georgia Dental Association, 700 Peachtree Dunwoody Rd, NE, Bldg. 17, Atlanta, GA 30328 no later than August 20, 2015 (“Proposal Due Date”).

2. SCOPE

The Georgia Dental Association (“GDA”) desires to provide its members who elect to participate in GDA’s member purchasing program (each a “**Purchasing Member**”) the opportunity to order certain products, equipment, supplies and related services (“**Products**”) at a discounted and sustainable price (“**Product Pricing**”) from qualified suppliers participating in Provider’ purchasing programs (“**GDA Purchasing Program**”).

3. TERMS OF GPO SERVICES AGREEMENT

A key terms summary of the GPO Services Agreement is attached hereto as Attachment 1.

4. SELECTION

Provider will be selected on the following criteria:

- Compliance with RFP Procedure
- Acceptance and Performance of the Key Terms
- Recognized Experience and Reputation consistent with superior GPOs
- Relationships with Major Recognized Dental or Relevant Related Suppliers

- Existing Infrastructure for Group Purchasing

5. **PROVIDER REPRESENTATIONS**

Each Proposal Response must contain a written statement confirming the following:

- Provider has read and understands the RFP documents, including commercial terms and conditions;
- Provider's response is duly authorized by Provider's owner, partner, or corporate officer;
- Provider's Proposal Response has been prepared independently without collusion, agreement, understanding, or planned common course of action with any other provider or supplier of the services;
- Provider's Proposal Response is effective for 180 calendar days following the Proposal Due Date.

6. **RFP MANAGEMENT AND SUPPORT**

Provider is responsible for assigning a program manager for this project, to act as a single point of contact for GDA ("Program Manager"). The Program Manager is responsible for the effective communication of the Provider's Proposal Response and responding to any questions GDA may have.

7. **RFP PARTICIPATION**

Nothing in this RFP or any related activity may be construed as a commitment by GDA to either award a contract to or enter into a relationship with any Provider. Participation in this activity is strictly on a voluntary basis, and GDA reserves the right to reject any response submitted to this RFP for any reason at any time.

All submissions in response to this RFP will be considered GDA's Confidential Information (as defined in Attachment 2) and will not be returned to Provider.

8. **EXCEPTIONS TO RFP**

All assumptions and exceptions to the requirements set forth in this RFP and the Attachments must be clearly stated in the Provider's Proposal Response in writing. Unless assumptions and/or exceptions are noted in the written response, Provider's submission of its Proposal Response is acceptance of the Key Terms.

9. **ERRORS, OMISSIONS, AND DISCREPANCIES**

If Provider discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, it will immediately notify GDA of such error in writing and request modification or clarification. Provider is responsible for clarifying any ambiguity, conflict, discrepancy,

omission, or other error in the RFP prior to submitting its Proposal Response or it will be waived.

10. PROPOSAL CONSIDERATIONS

Any and all costs incurred in the preparation of a Proposal Response will be the sole responsibility of Provider.

11. CANCELLATION OF RFP

GDA reserves the right to withdraw the RFP at any time and for any reason.

12. CONFIDENTIAL INFORMATION

GDA requires that all information contained herein and all other information concerning this RFP remain confidential. Provider will not transmit or further disclose such Confidential Information (as defined in Attachment 2) to any third party, including parent organizations, sister organizations, subsidiaries, consultants or subcontractors, without first obtaining GDA's prior written approval. Any disclosure of such Confidential Information will immediately disqualify Provider for this and any future RFPs.

Please sign and return the attached Confidentiality and Non-Disclosure Agreement in Attachment 2.

13. TRADEMARKS

Provider will not have the right to use the names, trade names, trademarks or other designations of GDA (or its affiliates) directly or indirectly, in connection with any Products or the Purchasing Program without the prior written approval of GDA.

14. RFP TIMELINE

The table below outlines the schedule associated with this RFP. GDA reserves the right to alter this schedule at its sole option.

Milestones	Dates / Details
Phone Conferences: Q&A on Process Lisa A. VanZandt	404-636-7553 EXT 105
Release RFP	July 20, 2015
Return Confidentiality Agreement	July 27, 2015
Phone Conferences: Q&A on RFP Content	404-636-7553 EXT 105

Lisa A. VanZandt	
Face to Face meetings	By Request
RFP Responses due with Qualifications To: Lisa A. VanZandt, COO	VanZandt@gadental.org August 20, 2015
RFP analysis complete	September 10, 2015
Close Negotiations	September 28, 2015
Award Contract	October 1, 2015

15. GDA will provide answers to all questions and clarification required for the effective completion of Proposal Response. Depending on the nature and scope of the question, GDA reserves the right to provide any/all answers to all the potential Providers.

[SIGNATURE PAGE FOLLOWS]

By executing below, Provider acknowledges it has read and understands the RFP and will provide a Proposal Response no later than August 20, 2015 to Lisa A. VanZandt, COO at vanzandt@gadental.org in accordance with its terms.

PROVIDER:

By: _____

Name: _____

Title: _____

Effective date: _____

ATTACHMENT 1

KEY TERMS SUMMARY

The following sets forth a summary of the key terms and conditions (“**Summary**”) of a proposed relationship between the Georgia Dental Association or a related entity and a selected procurement provider (“**Provider**”).

This Summary is not intended to be, and do not constitute, a legally binding obligation or commitment of either Georgia Dental Association or Provider, express or implied.

Overview of Relationship

The Georgia Dental Association (“**GDA**”) desires to provide its members who elect to participate in GDA’s member purchasing program (each a “**Purchasing Member**”) the opportunity to order certain products, equipment, supplies and related services (“**Products**”) at a discounted and sustainable price (“**Product Pricing**”) from qualified suppliers participating in Provider’s purchasing programs (“**GDA Purchasing Program**”).

Each supplier will be required to agree to provide to Purchasing Members the highest level of customer, installation, repair (including warranty repair) services each supplier makes available to any of its customers (“**Suppliers**”). The foregoing would also apply to certain existing Products and equipment Purchasing Members may be using as of the effective date of the GPO agreement (“**GPO Agreement**”). Suppliers will include suppliers currently providing Products to Purchasing Members (outside of the GPO Agreement).

The initial Products and pricing for such initial Products to be provided by Provider is described in Schedule A (“**Core Products**”). The description of the Core Products and related pricing will be modified by GDA and Provider as needed and, at minimum, on an annual basis; provided that in all cases the Products will be subject to approval by GDA.

Each Purchasing Member will order Products directly from a Supplier through a portal administered by Provider (the “**Portal**”). In addition to the Products, the Portal will include Provider’s full catalog of other products and equipment typically used by medical and dental practices which Provider would make available to Purchasing Members at the same prices offered to Provider’s other members (which would be at least 20% off the prices offered by the applicable suppliers to customers who are not members of Provider’s purchasing programs.) Each Purchasing Member will be solely responsible for payment for any products ordered or services received from a Supplier. GDA will have no responsibility to Provider or any Supplier for such payments or the actions of any Purchasing Member.

The initial term of the GPO Agreement would commence as of the date that the Core Products are available for purchase by Purchasing Members via the Portal at the prices and in the manner set forth in the GPO Agreement (“**Trigger Event**”), and continue for 24 consecutive months from the Trigger Event (“**Initial Term**”). The Initial Term may be renewed for two consecutive twelve months periods (“**Renewal Term**”), unless either GDA or the Provider notifies the other of its non-renewal in writing at least 60 days prior to the expiration of the Initial Term or any separate twelve month period during the Renewal Term (collectively the “**Term**”). Each

consecutive twelve month period during the Initial Term and each subsequent separate consecutive twelve month period during the Renewal Term will be referred to as a “**Separate Twelve Month Period**”.

During the Term GDA intends to maintain participation by no less than 300 Purchasing Members regardless of any individual Purchasing Member’s date of commitment to participate in the Purchasing Program or withdrawal from such Program (“**Minimum Member Participation Level**”).

Provider will provide the services described in the statement of work, which will be attached to the GPO Agreement (“**Statement of Work**”). Performance of the services by the Provider will be subject to certain minimum performance standards. Examples of such standards are described in Schedule B to this Summary (“**Key Performance Indicators**” or “**KPIs**”). Provider’s performance and the performance of the Suppliers will be reviewed and measured periodically by the parties during the Term (through a performance scorecard for both Provider and each Supplier (including results of customer surveys conducted by Provider with Purchasing Members) and adjusted as needed to properly address the needs of the Purchasing Members. Failure to satisfy all or certain of the KPIs may result in an event of default by Provider under the GPO Agreement entitling GDA to terminate the GPO Agreement or exercise certain other remedies such as reducing or suspending the Minimum Member Participation Level until such event of default is cured, if curable. The KPIs set forth in the GPO Agreement as of its effective date (“**Baseline KPIs**”) will be reviewed periodically during the initial six months of the Initial Term by GDA and the Provider to confirm the appropriate KPIs applicable to Provider’s services and the Suppliers’ services during the remainder of the Initial Term (“**Review Period**”). During such Review Period, Provider will not be subject to termination for failure to satisfy all or any KPIs. The Baseline KPIs must be confirmed by GDA and the Provider in writing no later than 30 days after the expiration of the Review Period.

If the parties fail to confirm the KPIs by such date, the Baseline KPIs will be deemed effective as to Provider and each Supplier for the Initial Term. Prior to the expiration of the Initial Term and the following Separate Twelve Month Period, as a condition of renewal, GDA and the Provider will evaluate and agree on KPIs applicable to the any Separate Twelve Month Period during the Renewal Term.

GDA may present information about the potential GDA Purchasing Program to its members and obtain such members’ commitment to participate in the GDA Purchasing Program in advance of the execution of the GPO Agreement, which commitment will be subject to a GPO Agreement being executed by Provider and GDA as described herein.

Provider will also provide such information, data and materials as requested by GDA including, but limited to, FAQs, Provider’s forecasted financial savings information for Purchasing Members and Provider strategic plan for accomplishing the forecasted financial savings and service goals of the GDA Purchasing Program during the Term for GDA’s use and presentation to GDA’s board of directors, advisors, user group and any other members GDA selects.

Reporting

Provider will provide GDA access to purchasing data of the Purchasing Members and performance data of Suppliers in the form, manner and times agreed upon by GDA and the Provider in writing. At a minimum, Provider will provide GDA a summary of such data via an electronic dashboard initially within 30 days after the effective date of the GPO Agreement and thereafter, update data on a weekly basis. GDA will have the right to inspect and audit purchasing data of Purchasing Members upon written notice to Provider. GDA may provide the purchasing data or any portion thereof to Purchasing Members as it deems appropriate.

Financial Terms

Provider will receive a monthly administrative fee from the Suppliers based on the Net Sales of any and all Products made by the Suppliers to Purchasing Members. For the purpose of the GPO Agreement, “**Net Sales**” means each Supplier’s gross sales from purchases of the Products by Purchasing Members (or by a Purchasing Member’s representatives, including affiliates, subcontractors, contractors, agents or other representatives), made or received directly or indirectly, net of any discounts and return credits within the applicable monthly reporting period.

GDA will invest funds and incur expenses to administer the Purchasing Program for its Purchasing Members. Provider will pay GDA an administrative fee to be agreed upon by GDA and Provider which will be a percentage of the monthly administrative fees Provider receives from all of the Suppliers, provided that the total amount of such fees will not be less than ___% of the annual Net Sales (“**Annual Aggregate Amount**”). At least 30 days prior to the expiration of any Separate Twelve Month Period, GDA and the Provider will determine whether or not GDA has received administrative fees equivalent to at least the Annual Aggregate Amount and if not, Provider will pay GDA an amount necessary for GDA to have received the greater of the Annual Aggregate Amount or the monthly administrative fees required under the GPO Agreement.

Provider/Supplier Services to Purchasing Members

Provider will enter into agreements with Suppliers to produce and sell products in amounts sufficient to meet each Purchasing Member’s purchasing requirements for the Products (“**Supply Agreements**”). GDA and each Purchasing Member will be an express intended third party beneficiary of such Supply Agreements. Certain terms and conditions in the GPO Agreement applicable to Suppliers will be incorporated into and made part of any terms and conditions applicable to the Suppliers under the Supply Agreements. Such terms and conditions will also be made part of any Participation Agreement that each Purchasing Member will be required to sign with GDA. The Participation Agreement will authorize GDA to contract with Provider to negotiate such Supply Agreements for the Purchasing Members’ benefit.

Provider will provide to GDA and the Purchasing Members a designated Provider employee to act as a single point of contact for issues related to or arising out of the GPO Agreement.

GDA or its designated affiliate or agent will establish and operate a call center to address Purchasing Members' complaints regarding the Purchasing Program. Purchasing Members will be instructed to initially contact the applicable Supplier directly, and if the complaint remains unresolved or is resolved unsatisfactorily to the Purchasing Member in accordance with the complaint escalation policy prescribed by GDA, the Purchasing Member will be instructed to contact the call center. If requested by GDA, Provider will use its best efforts to resolve a Purchasing Member's complaint regarding the Purchasing Program in a timely and professional manner.

Exclusivity During and After GPO Agreement

During the Term, Provider, its affiliates or any Suppliers (as a condition to participating in the Purchasing Program) will not solicit or make available any products or services, including the Products, to Purchasing Members except under the GPO Agreement; provided that if any Suppliers are providing products or services to Purchasing Members as of the effective date of the GPO Agreement, such Suppliers may continue to provide such products and services at the request of the Purchasing Member and if such products and services are, or in the future become, part of the Products, such arrangement will be subject to the terms of the GPO Agreement.

During the Term, Provider and its affiliates must refer any contact, whether express or oral, directly or indirectly made or received, from or regarding any individual dentist, dental school, dental service or management organization, dental practice, dental association or any other individual or organization affiliated with dentistry that has an interest in any purchasing program administered by Provider or any of its affiliates to GDA for potential participation in the GDA Purchasing Program.

During the Term and for 12 months after the date of expiration of the GPO Agreement or the earlier termination thereof, neither Provider nor any of its affiliates will solicit, respond to or negotiate a purchasing agreement that is the same or substantially similar to the GDA Purchasing Program or the GPO Agreement for any dental business. The foregoing restriction will also apply to Provider and its affiliates for 12 months after the expiration or earlier termination of the GPO Agreement.

Allocation of Responsibility and Liability

Each Supplier will be required to defend, hold harmless and indemnify GDA and each Purchasing Member for any claims related to or arising from the Products it provides. Provider and its affiliates will defend, hold harmless and indemnify GDA for any claims related to or arising from Provider or its affiliate's performance under the GPO Agreement or the Supply Agreements. GDA and certain affiliates will be additional insureds under insurance coverage agreed upon and maintained by the Provider.

Confidentiality

GDA and Provider will protect each other's Confidential Information (as defined below or further described in the GPO Agreement), using at least the same care that each uses to protect its own Confidential Information, but no less than reasonable care. Consistent with the terms herein, GDA and Provider will use any Confidential Information received in connection with this

Summary or the GPO Agreement solely for the purposes of documenting and negotiating a GPO Agreement and communicating with GDA members and for no other purpose. Except as noted in this Summary or the GPO Agreement or required by law, neither GDA nor Provider will disclose, publish or disseminate the Confidential Information without each of the other party's prior written consent to anyone other than (a) their personnel who have a need to know the Confidential Information and are bound by written agreements that prohibit unauthorized use or disclosure of the Confidential Information; and (b) their professional advisors, including accountants and attorneys. GDA and Provider will promptly return any Confidential Information of the other party obtained in connection with the matters contemplated by the Summary and the GPO Agreement upon the cessation of negotiations related to the GPO Agreement and upon the expiration of the GPO Agreement or the earlier termination thereof.

“**Confidential Information**” means any information that, by its nature, would be recognized or treated by the other party as confidential or proprietary, including, but not limited to: (a) the terms of this Summary; (b) any Product Pricing, information, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how related to the GPO Agreement; (c) any information related to designs and manufacturing processes for the Products or to the provision of services; and (d) the identity, terms and conditions and existence of agreements with suppliers or any Purchasing Member. Confidential Information does not include any information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) the receiving party can demonstrate that it independently developed without the use of the disclosing party's Confidential Information; or (iii) is lawfully obtained from a third party who has the right to make such disclosure.

Marketing & Advertising

GDA will manage, execute and pay for marketing plans and other promotional activities for the GDA Purchasing Program, including media placement, creation and production of marketing and promotional events and materials and for public relations. GDA will consult with Provider in connection with such activities. Provider and its affiliates will not use the name, trademark, service mark, logo or other indicia of origin of GDA, its affiliates or any Purchasing Member, past or present, in any marketing, advertising or promotional activities without the prior written approval of GDA.

Schedule A
Product Schedule and Pricing

Dental Supplies

Adhesive/Etch (bonding agent), e.g. phosphoric acid/Optibond
Lidocaine HCl 2% Epinephrine
Septocaine
Derma Dam 6 x 6
Disposable Prophy Angles
Gloves
Composites
Amalgam
Impression Material (alginate and PVS)
Etching Tips
Burs
Implants
Sterilization supplies (including pouches, wraps, tapes, ultrasonic solution)

Office Supplies:

1. Chair Covers
2. Tray Covers
3. Bibs (self-adhering and clip-on)
4. Ink and toner and printer paper
5. Paper products (such as paper towels and tissue)
6. Masks
7. Scrubs/uniforms
8. Computers

Note:

1. The specifications (ex. SKU's, model numbers and other identifying information) for each of the Products listed in this Schedule A will be finalized and agreed to by the parties prior to execution of the GPO Agreement.
2. Provider must secure pricing for the Products from Suppliers at a price equal to at least 35% off the price normally extended by suppliers for the Products to non-members of Provider' purchasing programs, including without limitation, to dental practices and members of the dental community in general.

Schedule B

Key Performance Indicators for Provider and Suppliers

The following Tables 1(a) and (b) define the manner in which each KPI is measured, and the weight assigned to each KPI.

Table 1(a): Provider KPI Measurement and Weighting

<u>KPI</u>	<u>Measurement</u>	<u>Weighting</u>
Cost Savings	TBD	__ points
Purchasing Member Surveys	(number of Purchasing Members' responses to customer service rating survey as either "highly satisfied" or "satisfied" with GPO program) / (total number of Purchasing Members)	__ points
Purchasing Member Complaints	(number of complaints received from Purchasing Members at call center or otherwise) / (total number of Purchasing Members)	__ points

Table 1(b): Supplier KPI Measurement and Weighting

<u>KPI</u>	<u>Measurement</u>	<u>Weighting</u>
Order Acknowledgement	(number of orders for which Supplier gives Purchasing Member e-mail notification of Supplier's receipt of the order no later than the date and time specified in Statement of Work) / (total number of orders submitted by Purchasing Members)	__ points
On-Time Shipment	(number of orders shipped on time) / (total number of orders submitted by Purchasing Members)	__ points
Order Accuracy	(number of line items in orders with discrepancies between the quantity ordered and the quantity shipped) / (total number of line items for which Products are shipped)	__ points
Packing Slip Accuracy	(number of packing slips containing discrepancies) / (total number of packing slips)	__ points

Quality Defects	1 - [(number of units of Product failing to comply with Purchasing Member's specifications) / (total number of units of Products received by Purchasing Member)]	__ points
Invoice Accuracy	1 - [(number of invoices received containing errors or discrepancies) / (total number of invoices received)]	__ points

Based on the KPI formulas defined above, Provider will (a) track and measure the quality metrics listed above on a daily basis, and (b) report their performance (and each Supplier's performance as part of Provider's Scorecard) monthly to GDA using the Scorecards set forth below in Tables 2(a) and (b) as applicable. Tables 2(a) and (b) contain numerical examples illustrating the calculation of the total score.

Table 2(a): Provider KPI Scorecard

<u>KPI</u>	<u>Weighting</u>	<u>Attainment</u>	<u>Score</u>
Cost Savings	__ points	__%	__
Purchasing Member Surveys	__ points	__%	__
Purchasing Member Complaints	__ points	__%	__
Total Possible Score/Total Score	__ points	__%	__
Overall Attainment			____%

Table 2(b): Supplier KPI Scorecard

<u>KPI</u>	<u>Weighting</u>	<u>Attainment</u>	<u>Score</u>
Order Acknowledgement	__ points	__%	__
On Time Shipment	__ points	__%	__
Order Accuracy	__ points	__%	__
Packing Slip Accuracy	__ points	__%	__
Quality Defects	__ points	__%	__
Invoice Accuracy	__ points	__%	__
Total Possible Score/Total Score	__ points	__%	__
Overall Attainment			____%

Weighting: For each individual KPI, the weight assigned to such KPI, as defined in Table 1.

Attainment: For each individual KPI, Provider' or the Supplier's actual performance during the applicable month, as defined in Table 2.

Score: For each individual KPI, the number obtained by multiplying the Weighting by the Attainment during the applicable month.

Total Possible Score: The sum of all of the individual KPI Weightings.

Total Score: The sum of all Scores for the individual KPIs during the applicable month.

Overall Attainment: The quotient obtained by dividing the Total Score by the Total Possible Score during the applicable month.

ATTACHMENT 2
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
(Unless Previously Executed)

CX1043

From: Chuck Cohen
Sent: Thursday, October 06, 2011 6:31 PM
To: Pampel, Carol
Subject: Re: Accepted: 9:15 Your time - Meet with Tim Sullivan at the Las Vegas airport for Coffee before Flights.

Sensitivity: Private

Thanks, looking forward to it.

cfc

Charles F. Cohen
Managing Director, Benco Dental Company
295 Centerpoint Boulevard
Pittston, PA 18640
Phone: 570-602-6811
Email: ccoehen@benco.com

On Oct 6, 2011, at 2:21 PM, "Pampel, Carol" <Carol.Pampel@henryschein.com> wrote:

> Tim will meet you at 9:15 PDT. Thank you

>

>

> Please consider the environment before printing this email.

>

>

> E-mail messages may contain viruses, worms, or other malicious code. By reading the message and opening any attachments, the recipient accepts full responsibility for taking protective action against such code. Henry Schein is not liable for any loss or damage arising from this message.

>

> The information in this email is confidential and may be legally privileged. It is intended solely for the addressee(s). Access to this e-mail by anyone else is unauthorized.

> <meeting.ics>

CX1044

From: Chuck Cohen
Sent: Wednesday, October 12, 2011 1:29 PM
To: Pampel, Carol
Subject: Re: Canceling meeting with Tim Sullivan

Carol...

Thanks for asking, I saw Tim yesterday @ the GC party, he knows about the change beware going to talk this week on the phone. Thanks!

cfc

Charles F. Cohen
Managing Director, Benco Dental Company
295 Centerpoint Boulevard
Pittston, PA 18640
Phone: 570-602-6811
Email: ccoehen@benco.com

On Oct 12, 2011, at 6:11 AM, "Pampel, Carol" <Carol.Pampel@henryschein.com> wrote:

I received a cancellation for your meeting at 9:15 a.m. PDT at the airport with Tim Sullivan. Before I let him know, I want to confirm that you will not be able to meet him at Starbucks this morning.

Carol Pampel

Executive Assistant to Tim Sullivan

President, Henry Schein Dental

10920 W. Lincoln Avenue

West Allis, WI 53227

(414) 290-2588

Please consider the environment before printing this email.

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responsibility for taking protective action against such code. Henry Schein is not liable for any loss or damage arising from this message.

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CX1049

From: Chuck Cohen
Sent: Monday, December 12, 2011 1:27 AM
To: Sullivan, Tim
Subject: RE: Quick P&G Issue

No worries, glad to help...

Thanks.

cfc

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

From: Sullivan, Tim [<mailto:Tim.Sullivan@henryschein.com>]
Sent: Sunday, December 11, 2011 7:38 PM
To: Chuck Cohen
Subject: Re: FYI: Quick P&G Issue

Thanks Chuck. I will ask team to check this out. I don't think we included that in our analysis. I appreciate you binging to my attention.

I'll be in touch.

Tim

On Dec 10, 2011, at 3:42 PM, "Chuck Cohen" <ccoehen@benco.com<<mailto:ccoehen@benco.com>>> wrote:

Tim...

Great to see you a few weeks ago in NYC!

I wanted to bring a quick P&G issue to your attention. In their effort to 'un-do' their 'epic fail' on the annual plans a few years ago, our friends at P&G have decided to come out with three new packages for customers who are interested in buying combo packs of brushes, floss & cavity rinse. The put-ups include (I think) a half-gross of brushes, floss, and cavity rinse. The price is cheap (\$72), and the margin is about 20% (actually, it ranges from 15-20%, depending on the customer's volume). Anyway, the issue is that the package weighs about 25 pounds, because the cavity rinse is a liquid.

When we did a quick back-of-the-envelope calculation, it looks like this..

Selling price: \$72
Gross margin (20%): \$14
Commission @ 25% of GM: \$3.50
Shipping a 25 lb box two UPS zones: ~\$9

I think you see the issue: we (all of us) are going to lose money on every box we sell (I guess they figure we can make it up in volume...). When we at Benco called this issue to the attention of P&G management, they replied that no one else (i.e. you, Schein, Burkhardt) seemed concerned about it, so they're not going to make any changes. Our feeling is that we distributors either need more margin, or P&G needs to take out the cavity rinse.

I'm not telling you whether or not Schein should sell the product, that's your call. But I am giving you the heads up in the hopes that you'll make someone on your Marketing team aware of the issue, and then maybe bring it to the attention of P&G management. But please don't

mention this e-mail to your team, I'd rather it not get back to Amy Moorman that I put this issue on your radar.

Thanks, all the best for a strong end-of-year push!

cfc

cfc

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

Please consider the environment before printing this email.

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CX1052

Message

From: Chuck Cohen [/O=BENCO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CHUCK COHEN]
Sent: 1/13/2012 1:30:40 PM
To: Patrick Ryan [/O=BENCO/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Patrick Ryan]
Subject: RE: Unified Smiles

Talking this AM...

cfc

From: Patrick Ryan
Sent: Wednesday, January 11, 2012 5:12 PM
To: Chuck Cohen
Subject: Fw: Unified Smiles

For Timmy conversation.

From: Michael Paquette
Sent: Wednesday, January 11, 2012 04:51 PM
To: Patrick Ryan; John Klavon; Mitchell Huber; Todd Mears; Chuck Cohen
Subject: Unified Smiles

Gent

Take a look at this attachment, the Dean of UDM gave it to me. Dr Aksu's take on it was they were starting a buying consortium by leveraging great Expressions purchasing power.

Let me know what you know about this. Also if Benco will be participating in this buying program. Dr. Aksu thought that Schein would be.

Michael J Paquette

Michael J Paquette
Territory Representative-Great Lakes

Don't keep me a secret!

((248)361-4607 cell
((248) 347-9752 home
((248) 347-1118 fax
* mpaquette@benco.com



CX1061

Redacted in Entirety

CX1076

Redacted in Entirety

CX1084

Redacted in Entirety

CX1088

Redacted in Entirety

CX1125

From: Chuck Cohen
Sent: Monday, October 27, 2014 5:38 PM
To: Qadeer Ahmed
Subject: Re: Group Purchase

Thanks, best of luck in your venture...

cfc

Charles F. Cohen
Managing Director
Benco Dental Company
295 Centerpoint Boulevard
Pittston, PA 18640
Phone: 570-602-6811
Email: ccohen@benco.com
Assistant: Noel Blasso (nblasso@benco.com)

On Oct 27, 2014, at 2:30 PM, Qadeer Ahmed <qadeer.ahmed@equalizerproservices.com> wrote:

Chuck

Honestly I wasn't writing as part of a marketing tactic, simply correcting a misunderstanding as I know you meet a variety of people in the industry.

Between my first note to you and your reply, we have introduced our plan and have received, or are about to receive, written offers from various parties.

I believe in respecting those offers and submitting them to the Kois students for consideration before pursuing a new relationship, out of respect to the others and to you.

From what I've read and heard, sounds like you run a fantastic business and I hope we'll find something in the future we can do together.

Best,
Qadeer

Chief Executive Officer
Equalizer ProServices
Tel. 416.580-5164

From: ccohen@benco.com
To: qadeer.ahmed@equalizerproservices.com
Subject: Re: Group Purchase
Date: Sun, 26 Oct 2014 22:16:02 +0000

Ok, you have my attention. Please help me understand how your plan for a buying group is different. Thanks.

cfc

Charles F. Cohen
Managing Director
Benco Dental Company
295 Centerpoint Boulevard
Pittston, PA 18640
Phone: 570-602-6811
Email: ccohen@benco.com
Assistant: Noel Blasso (nblasso@benco.com)

On Oct 26, 2014, at 5:54 PM, "qadeer.ahmed@equalizerproservices.com" <qadeer.ahmed@equalizerproservices.com> wrote:

Chuck

Its not a buying group in the sense that you would be familiar with the term because we'll end up paying you more, not less, margin for your products over time.

The recovered margin comes from revenue we deliver to dentists which conventional buying groups are not organized or able to deliver.

That's why other distributors are pretty intrigued by what we are doing.

Having said that, I wish you success in your business and thank you for your reply.

Qadeer

Chief Executive Officer
Equalizer ProServices
Tel. 416.580-5164
Sent wirelessly from my BlackBerry device on the Bell network.
Envoyé sans fil par mon terminal mobile BlackBerry sur le réseau de Bell.

From: Chuck Cohen <ccohen@benco.com>
Date: Sun, 26 Oct 2014 17:37:12 +0000
To: qadeer.ahmed@equalizerproservices.com<qadeer.ahmed@equalizerproservices.com>; Dr. John Kois<johnkois@hotmail.com>
Subject: RE: Group Purchase

Qadeer...

Thanks for reaching out, much appreciated...

At Benco, our policy is that we don't support, or work with, buying groups, so we'll decline your request.

Thanks.

cfc

From: gadeer.ahmed@equalizerproservices.com
[mailto:gadeer.ahmed@equalizerproservices.com]
Sent: Tuesday, October 21, 2014 3:17 PM
To: Dr. John Kois; Chuck Cohen; Qadeer Ahmed
Subject: Re: Group Purchase

Chuck

John made a slight typo - my email is above, there is a "." between first and last name.

Feel free to let me know if you have any interest in a conversation.

Thanks - q

Chief Executive Officer
Equalizer ProServices
Tel. 416.580-5164

Sent wirelessly from my BlackBerry device on the Bell network.
Envoyé sans fil par mon terminal mobile BlackBerry sur le réseau de Bell.

From: John Kois <johnkois@hotmail.com>
Date: Tue, 21 Oct 2014 12:06:32 -0700
To: Chuck Cohen<ccohen@benco.com>
Cc: Qadeer Ahmed<gadeer.ahmed@equalizerproservices.com>
Subject: Group Purchase

Hi Chuck,

I have been approached by a company to organize our members for group purchase opportunities. I know we tried this before but I wanted you to talk to him to see if there would be an opportunity to work with your company. His name is Mr. Qadeer Ahmed and his e-mail is:
qadeerahmed@equalizerproservices.com

Best

John

John C. Kois, D.M.D, M.S.D
Founder and Director
Kois Center, LLC
1001 Fairview Ave N
Suite 2200
Seattle, WA 98109
+1 206 621 5310
info@koiscenter.com

CX1149

From: Bob Cunningham <DailyDigest@benco.com>
Sent: Sunday, February 24, 2013 3:38 AM
To: Bob Cunningham
Subject: Daily Activity Stream Summary: 2/23/2013 10:38:16 PM

Community Activity



Benco Buzz

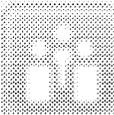


[Chuck Cohen](#): [@\[Benco Buzz\]](#) Busy days at Chicago Mid-Winter meeting. Showed our CAD-CAM milling solution for the first time. Lots of buzz!



2/23/2013 12:21 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- [Brian Evans](#) likes this.
- [Van Huynh](#) likes this.
- [Matt Lewinson](#) likes this.
- [Joe Balady](#) likes this.
- [Michele DiFilippo](#) likes this.
- [Stephanie Starer](#) likes this.



Sales



[Gerald Barto](#): [@\[Sales\]](#): there has to be some program that we have (even if made up) for what just happened to me. I had two separate offices. One was owned by Dr.. He was partial owner of the other one along with another Dr. I tried to get 6 other offices under partner sharing but I couldn't because it was mixed with different owners. It worked in reverse because Patterson gave my two offices same deal that the 6 offices had. Confused? Well I'm frustrated and just wanted to get off my chest. One Dr. was fighting for me to get all, instead I lost two. You would think there would be something for me to (and Benco) to get 8 offices but billed to one office blah blah blah

2/22/2013 5:40 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- [Jeff McAdoo](#): Do all six offices have common ownership? I know that there are different owners associated with each office, but is there one Doctor or corporation who owns a piece of all six? If so, I would think you should be able to set up a single account with six

different ship-tos.
(2/22/2013 10:33 PM)

- Gerald Barto: No Jeff. That's the problem. It's all intermixed (is that a word:). You just said it. Has to be one owner. It's confusing to say in print. Thank you for your reply. Sometimes programs should be able to be tweaked to get large quantity of supply business
(2/23/2013 12:59 AM)
- Patrick Ryan: To be recognized as one customer, one of the following three situations must be happening.
 1. All of the offices are owned by the same entity and everyone is an employee
 2. A single entity owns the hard assets of the practice (building, lease, equipment, etc) and a doc or multiple docs own each "practice" (the charts essentially)
 3. A single entity has a minimum of a 51% stake in all the practices but may have multiple minority partners

Anything other than the scenarios above is a "buying club" or GPO (group purchasing organization). Benco does not recognize GPOs as a single customer. GPOs are what runned the medical supply business and why they work on single digit margins. If this door is ever opened in dental, its all over for all of us. It may seem like "oh, why not? Let's get a bunch of cotton rolls", but picture a day when every single customer of yours is in some kind of buying club and all margins are now 12% over cost and its a race to the bottom. It doesn't catch on here, because so far,
(2/23/2013 12:13 PM)

- Patrick Ryan: all of the major dental companies have said, "NO", and that's the stance we will continue to take. If this doesn't make sense to anyone, call me and I will explain in detail
(2/23/2013 12:14 PM)



Sean Rokita: @[Sales]: I am currently working with a Dr. who has Cerac, EagleSoft, Schick and the XG3. Patterson came back to him and basically "offered" more competitive pricing and support with Patterson Stuff mentioned above! Any suggestions on how to combat this? Thanks and Go FLYERS

2/22/2013 4:00 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Gari Calvert: yeah - why didn't they offer that in the first place? I've always brought that to a cusotmers' attention when in a competitive situation and I always say "if they are willing to give you that now, why were they not giving it to you before?" I've lost a few on this conversation but won MANY. Not much more they can do with CEREC/Eaglesoft/Schick/XG3 anyway. They are probably on the monthly service contract with all of them and there is nothing that they can do more than that. Hope that helps!
(2/22/2013 6:39 PM)

- Stephanie Starer likes this.

- Donald Ellerton: Very sage advice Gari

(2/23/2013 3:56 AM)



Matt Hogan: @[Sales]: I just called the manufacturer, Sota, to request a demo on the ebite illumination system (similar to Isolite). Sota said they no longer sell that product and directed me to some website of a company from overseas who now sells it?? What is that about? This is stuff we need to know before i tell a customer we have an option and then embarass myself when we dont. Who can get me some info on whats going on here? Thanks mjh

2/21/2013 8:54 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Stephanie Starer likes this.
- Jason Sturm: Funny. It's still on their website, though. It is true, the website is always the last to know.

(2/22/2013 3:49 AM)

- Derek Dreyer: Matt they actually gave me a name and number to a rep who I called and text and left voice mails over and over.....finally gave up. Never heard back.

(2/22/2013 9:05 PM)

- Analiz Aquino: Matt when you get an answer let me know because I also wanted an Ebite demo. Thx

(2/23/2013 3:22 AM)

- Matt Hogan: Here is the reply from marketing- I am at the Chicago Dental Show. I saw your post on SharePoint, so I stopped by the Sota booth to ask them about Ebite. As of Jan 1, they stopped distributing the product. Now that company who does, only sells direct...

(2/23/2013 12:51 PM)

- o Stephanie Starer likes this.
- Shawn Angell: matt, just get the mr thirsty with zirc thats the closest we have for isolite and they actually have a intro kit its the old airbug

(2/24/2013 1:31 AM)



Service Community



Mark Reed: @[Service Community]: Does anyone have an alignment kit for a Planmeca Proline EC with ceph, that i can borrow?

2/6/2013 6:18 PM | [Like](#) | [Comment](#) | [Follow-up](#) | [View](#)

- Aaron Taddei: Yes, where do you want it shipped?

(2/7/2013 4:11 PM)

- Mark Reed: 550 Elwood park blvd. Harahan,La 70123. Thanks bud
(2/12/2013 1:15 PM)
 - Aaron Taddej: Cool, I'll have it out in the next couple of days...
(2/13/2013 4:44 PM)
 - Aaron Taddej: It's on it's way...
(2/23/2013 10:10 PM)
-

CX1156

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 7:23 PM
To: He Zhao
Subject: Re: Riverside...

Exactly the same. But on the medical side they are common and recognized.

Sent from my iPhone

On Aug 27, 2013, at 3:21 PM, "He Zhao" <hzhao@benco.com> wrote:

Understood. Sounds similar to buying groups.

Thanks and enjoy the week

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 3:20 PM
To: He Zhao
Subject: Re: Riverside...

Group Purchasing Organizations.

They aggregate the purchase volume of unrelated entities in order to leverage price. We do not recognize them. GPOs are why medical works at the margins they do.

My suspicion is, that if Schein's prices are that high, then there is a kickback back to Premier, which we are not going to do. There also probably is a membership "fee".

Also, it obligates us to all their terms and conditions and obligates us to that and pricing to EVERY entity that is in their system.

No thanks.

Sent from my iPhone

On Aug 27, 2013, at 3:03 PM, "He Zhao" <hzhao@benco.com> wrote:

Pat
What are GPOs?

Brandon's wife works there and got them to switch from Schein to us, but if we can't sell to them, I will ask her to hold off.

Thanks

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Patrick Ryan
Sent: Tuesday, August 27, 2013 2:59 PM
To: Brandon Pargoe
Cc: Amanda Pelak; Brandon Pargoe; Denise Nagle; He Zhao; Patricia Landry
Subject: Re: Riverside...

No GPOs.

Sent from my iPhone

On Aug 27, 2013, at 2:01 PM, "Brandon Pargoe" <bpargoe@benco.com> wrote:

Pat,

This hospital is where my wife works. The ordering has been going through Schein, however, they will start ordering with Benco.

I am meeting with the ordering person tomorrow and have a merchandise order that needs to be placed.

Please let me know if and how we are able to assist the hospital.

Btw, this order is for dental supplies, the hospital has general dentists there a few times a week, when patients need heavy sedation.

Brandon

Sent from my iPhone

On Aug 27, 2013, at 1:05 PM, "Amanda Pelak" <apelak@benco.com> wrote:

Hi Pat,

I was speaking with Brandon the equipment specialist on an account, Riverside Medical. We needed to become an approved vendor on their website before they can order. The link to the site is below and I called Premier Inc. and they said they were the GPO company. In reviewing the website it does appear to be a GPO set up.

I know in previous circumstances we do not do anything with GPO's. However I don't know if this would work differently with equipment sales.

Would you mind taking a quick look at the site to see if you agree?

Any help is appreciated.

Thank you,

Amanda Pelak
Institutions Department
Benco Dental
apelak@benco.com
1-800-462-3626 ext. 82121

From: Greenlaw, Yolanda
[<mailto:YOLANDA.GREENLAW@rivhs.com>]
Sent: Tuesday, August 27, 2013 12:28 PM
To: Amanda Pelak
Subject: RE: Riverside...

It is www.premierinc.com. If you have any questions, please call supply chain 757-534-6500. That is where I go to find out if a vendor is approved.

From: Amanda Pelak [<mailto:apelak@benco.com>]
Sent: Tuesday, August 27, 2013 8:14 AM
To: Greenlaw, Yolanda; Brandon Pargoe
Cc: Amanda Pelak
Subject: RE: Riverside...

Do you have a website?

What is Premiere GPO? Benco does not do anything with GPO's.....

Thank you,

Amanda Pelak

Institutions Department

Benco Dental

apelak@benco.com

1-800-462-3626 ext. 82121

From: Greenlaw, Yolanda
[mailto:YOLANDA.GREENLAW@rivhs.com]
Sent: Tuesday, August 27, 2013 7:54 AM
To: Amanda Pelak; Brandon Pargoe
Subject: RE: Riverside...

Hello Amanda,

You need to go to Supply Chain Management.
Contact Kitty Williams. You also have be on
Premiere GPO. You can go through
Premiereinc.com to register. Then contact Kitty.

From: Amanda Pelak [mailto:apelak@benco.com]
Sent: Monday, August 26, 2013 3:36 PM
To: Greenlaw, Yolanda; Brandon Pargoe
Cc: Amanda Pelak
Subject: Riverside...

Hello Yolanda,

I was speaking with Brandon on becoming an
approved vendor. Do you have any information
from the hospital as to how we go about this?

Is there a hospital website?

Can you provide me with the exact name and address? I will see what I can find as well.

Thank you,

Amanda Pelak

Institutions Department

Benco Dental

apelak@benco.com

1-800-462-3626 ext. 82121

Congratulations Natural Extensions Ultra! nitrile gloves for being nominated for Dental Product Shopper Product of the Year 2013! Please read Dental Product Shopper's report at www.naturalextensions.com, and ask me for a FREE sample!

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CX1158

From: Brian Evans
Sent: Tuesday, September 24, 2013 11:01 PM
To: Patrick Ryan
Subject: RE: SmileSource

Thought that was odd as well...

Brian Evans

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

We deliver success *smile after smile.*

From: Patrick Ryan
Sent: Tuesday, September 24, 2013 4:00 PM
To: Brian Evans
Subject: Re: SmileSource

I don't believe Adec for a minute.

Sent from my iPhone

On Sep 24, 2013, at 6:59 PM, "Brian Evans" <bevans@benco.com> wrote:

From what I understand at this point, Adec and Midmark

Allegedly....I do not have proof other than Don's word

Brian Evans

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

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From: Patrick Ryan
Sent: Tuesday, September 24, 2013 3:58 PM
To: Brian Evans
Subject: Re: SmileSource

I know exactly who they are. We've had 2 run ins with them. Who are vendor partners and is it going through HSI?

Sent from my iPhone

On Sep 24, 2013, at 6:51 PM, "Brian Evans" <bevans@benco.com> wrote:

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

www.smilesource.com

Brian Evans

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

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CX1237

Redacted in Entirety

CX1239

Redacted in Entirety

CX1253

From: Patrick Ryan
Sent: Monday, March 25, 2013 4:46 PM
To: He Zhao
Cc: Kevin Dillon
Subject: RE: RFP for ADC, PLC

Hi all,

After going through this with legal and Chuck, the determination is that this is a buying group.

The fact that they created an LLC (it's not a PLC) and put \$50K in it is meaningless. The practices are still all independently owned and operated, and the LLC has no ownership whatsoever of the practices (even the hard assets)

We're out.

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

From: He Zhao
Sent: Monday, March 25, 2013 10:22 AM
To: Patrick Ryan
Cc: Kevin Dillon
Subject: FW: RFP for ADC, PLC

Pat

Attached is the opportunity I picked your brain about. They claim to not be a buying group. The bid deadline is 4/5. Please let me know if this is something I can pursue.

I have 2 local reps covering the area and suspect some of their customers may fall under this; we don't want to risk losing them. The list is not that big and we can do the bid locally if time and resources is an issue.

Thanks for your feedback.

Zhao
Regional Manager
Benco Dental
Mobile: 443-691-9751
Email: hzhao@benco.com

From: Eric Hosek [<mailto:atlanticdentalcareplc@gmail.com>]
Sent: Friday, March 22, 2013 10:53 PM
To: He Zhao
Subject: RFP for ADC, PLC

Dear Zhao,

We, the members of Atlantic Dental Care, PLC, are formally submitting a Request For Proposal (RFP) to you in electronic form. This is for your review, completion, and submission back to us in electronic form. Please explore the guidelines specified in the attached RFP as this will facilitate comparison between vendors. The contact information and email address you are to use are specified in the attached RFP. The second attachment is an Excel spreadsheet listing highly specific common products our members routinely use. It is important that you note columns D and E. We are asking for your "Catalog Price" in column D and the "Extended ADC Price" in column E.

Our goal is to secure a one year contract that allows our 53+ dentists members to benefit from significant savings, while all parties enjoy a solid trusting business relationship and steady predictable volume. ADC, PLC is composed of 32 select practices that display high standards, solid business management, and is currently in a controlled growth phase. A recent review found our members' supply orders were in excess of \$3.5 million.

We will be comparing the multiple vendors' responses April 5, 2013 and are hoping you will give us the privilege of adding your figures to this process.

Respectfully,

ADC, PLC Procurement Board

Atlantic Dental Care, PLC
"32 locations and growing"

CX1278

Redacted in Entirety

CX1288

Custodian: Chuck Cohen

Record Type: Chat

Timestamp: 10/07/2014 03:31 PM

Chat Start: 10/07/2014 03:31 PM

Chat Last Activity: 10/07/2014 03:31 PM

Chat Participants: 15704071340 Charles Cohen (owner); 13306204977 Pat Ryan

Chat From: 13306204977 Pat Ryan

Message Source: 15704071340

Attachment(s):

MESSAGE BODY:

Schein just dumped the last GPO they had. In Utah.

CX1289

From: Ron Fernandez
Sent: Wednesday, December 11, 2013 4:53 PM
To: Mark Rowe; Rick Dunn
Subject: RE: TDA

I will call the Patterson manager right now. Last time I spoke with him, about three weeks ago, they were out, but considering options.

From: Mark Rowe
Sent: Wednesday, December 11, 2013 10:50 AM
To: Rick Dunn
Cc: Ron Fernandez
Subject: Re: TDA

C if u can verify that

Mark Rowe
Director of Sales
South District
601-201-4336

“We make a living by what we get; we make a life by what we give”

On Dec 11, 2013, at 10:31 AM, "Rick Dunn" <rdunn@benco.com> wrote:

Ron....I heard from the ex TDA president, that Patterson pulled out of the meeting, what did we decide ?.

From: Pat Stella
Sent: Tuesday, October 15, 2013 7:55 AM
To: Ken Lee
Cc: Mark Rowe; Rick Dunn; Ron Fernandez
Subject: RE: TDA

Good Morning Ken,

Redacted

Patricia Stella
Exhibit Coordinator
Benco Dental
We deliver success *smile after smile*

295 Centerpoint Blvd
Pittston, PA 18640
570.602.6874 (office)
570.602-4920 (fax)

From: Ron Fernandez
Sent: Tuesday, October 15, 2013 8:29 AM
To: Pat Stella
Cc: Mark Rowe; Rick Dunn
Subject: RE: TDA

Thank you for the info Pat. We will let you know this week what our plans are.

Redacted

From: Pat Stella
Sent: Tuesday, October 15, 2013 6:28 AM
To: Ron Fernandez
Cc: Mark Rowe; Rick Dunn
Subject: RE: TDA

Good Morning Ron,
I sent in the contract and deposit of \$1000.00 on 7-19-13 per your request. Benco was assigned space 757 (20'x30' island) and I sent in the balance of \$8200.00.

Cancellation of Exhibit Space
All booth cancellations must be submitted to the TDA Exhibits Manager in writing. After TDA has been given a written cancellation notice, TDA reserves the right to re-assign the booth space.
Refund schedule is as follows:
50% refund of monies paid to TDA if cancelled by October 26, 2013
No refund after October 26, 2013

Patricia Stella
Exhibit Coordinator
Benco Dental
We deliver success *smile after smile*

295 Centerpoint Blvd
Pittston, PA 18640
570.602.6874 (office)
570.602-4920 (fax)

From: Ron Fernandez
Sent: Monday, October 14, 2013 3:29 PM
To: Pat Stella
Cc: Mark Rowe; Rick Dunn
Subject: TDA

Hello Pat,

Will you let me know what our financial contribution is to attend the Texas Dental Association meeting and when we pay? We may not want to attend this year after all. Just need to find out the details.

CX1297

From: Chuck Cohen
Sent: Monday, January 02, 2012 9:14 PM
To: Sullivan, Tim
Subject: RE: Another Note?!?!

Consider them love notes. Don't you get them from Kay regularly? ☺

Best wishes for the new year.

cfc

From: Sullivan, Tim [<mailto:Tim.Sullivan@henryschein.com>]
Sent: Monday, January 02, 2012 12:25 PM
To: Chuck Cohen
Subject: Another Note?!?!

You like writing those don't you? J

Thanks again . . I look forward to furthering the discussions we had in NY . . yes, they are a fast crowd, but also effective and we have a lot of fun along the way!!

All the best to you in 2012 (except on your expansion plans!! J),

Tim

Please consider the environment before printing this email.

E-mail messages may contain viruses, worms, or other malicious code. By reading the message and opening any attachments, the recipient accepts full responsibility for taking protective action against such code. Henry Schein is not liable for any loss or damage arising from this message.

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee(s). Access to this e-mail by anyone else is unauthorized.

CX1331

From: Mike Wade
Sent: Wednesday, July 30, 2014 11:11 PM
To: Goslee, Brian (Brian.Goslee@dentsply.com)
Subject: FW: We know you're curious - Find out how much you could save
Attachments: image001.jpg

Brian,

Following up on my vmail. I hope you are doing well. Wanted to keep you apprised of our newest competition in AZ. AZDA! They have partnered with Source One Dental to provide dental supplies.

Can you let me know if Source One is an authorized dealer of Dentsply?

I have communicated with our competition at Schein and Patterson and we are all of the same mind that we will not be supporting a competitor's meeting next year.

Let me know your thoughts.

Best,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
Tempe Showroom | 1602 S Priest Dr Ste 101 Tempe AZ 85281
Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

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From: Christine Bennett
Sent: Wednesday, July 16, 2014 5:47 PM
To: Mike Wade
Subject: Fwd: We know you're curious - Find out how much you could save

Here you go

Christine Bennett
Sales Representative
602-740-5615

Begin forwarded message:

From: John Harman <johniv11@hotmail.com>
Date: July 16, 2014 at 5:35:55 PM MST
To: Christine Bennett <cbennett@benco.com>
Subject: Fwd: We know you're curious - Find out how much you could save

Sent from my iPhone

Begin forwarded message:

From: "AzDA Members" <azda-members@azda.org>
Date: July 16, 2014 at 3:27:20 PM MST
To: johniv11@hotmail.com
Subject: We know you're curious - Find out how much you could save
Reply-To: AzDA <azda@azda.org>

It's up—it's running, and AzDA member dentists are saving BIG TIME!

Several orders have already been placed. In fact, one member dentist placed an order last night for \$592.76 (free standard shipping, as always). The savings was \$195.61!! That's 20% of their 2014 AzDA + ADA dues recouped in just one order!

Get your ADA number and check out how much you can save right now at

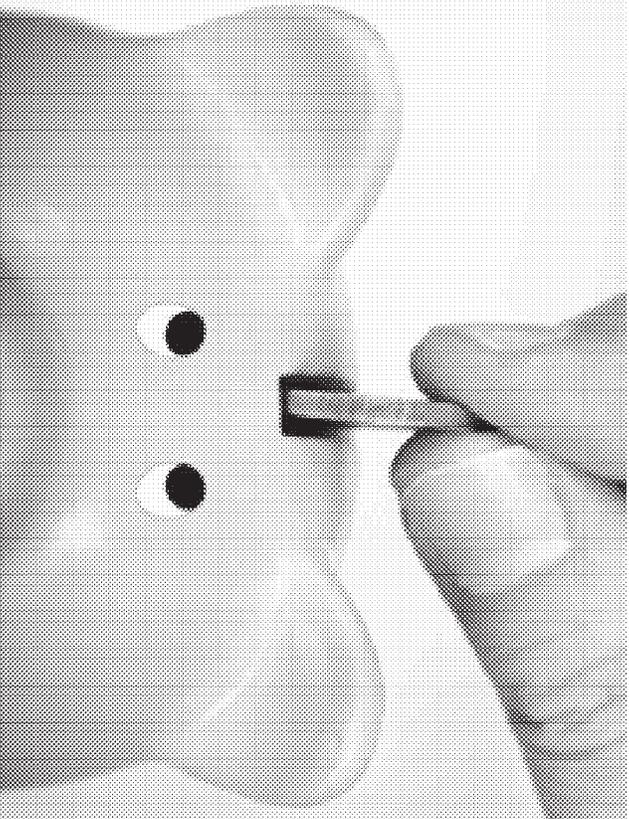
<http://azda.SourceOneDental.com>

AzDA Membership...don't you owe it to yourself?

Copyright © Arizona Dental Association
3193 N Drinkwater Blvd, Scottsdale, AZ 85251 • 480.344.5777

Proof your colleagues are already getting great deals

We know you're curious — find out how much you could save



CX1332

From: Mark Rowe
Sent: Tuesday, October 15, 2013 2:29 AM
To: Chuck Cohen
Cc: Ron Fernandez
Subject: Re: TDA Perks Program

Yep, about four years ago the MS Dental Assc. tried a similar program with Darby and it fizzled after a couple of years.

Mark Rowe
Director of Sales
South District
601-201-4336

“We make a living by what we get; we make a life by what we give”

On Oct 14, 2013, at 9:18 PM, "Chuck Cohen" <ccohen@benco.com> wrote:

FYI: Arnold Dental is one of the suppliers.

Suggest that we make it clear to the TDA that we will be cutting back our support of their meetings & programs, but that's your call. Also, give a heads up to our friends from Patterson, Schein, Midwest, etc.; they can/should/will make their own decision on how to respond, but they should at least understand what's going on here.

Let me know if you'd like me to get involved.

Thanks, good luck. Other similar programs haven't lasted long, I bet this one will pass quickly as well.

cfc

From: Ron Fernandez
Sent: Monday, October 14, 2013 3:45 PM
To: Mark Rowe; Chuck Cohen
Subject: TDA Perks Program

Gentlemen,

We had one of our offices use an old Schein invoice to get a comparison. Here is the response from the TDA distributor.....

CX1333

From: Patrick Ryan
Sent: Tuesday, September 27, 2011 1:02 PM
To: Institutions; Sam Jaoude
Cc: Institutions
Subject: Re: Group Sales

Sam, I got this.

From: Institutions [<mailto:institutions@benco.com>]
Sent: Tuesday, September 27, 2011 08:28 AM
To: Sam Jaoude
Cc: Patrick Ryan; Institutions
Subject: Fw: Group Sales

Good Morning,

We received this email today, not sure if this will end up being a large group account. Sam can you maybe reach out to Dr. Goldsmith?

Smile Source, LP

North American Headquarters
1849 Kingwood Drive
Suite 101
Kingwood, Tx
Phone 281-312-4219
contactus@smilesource.com

Please advise

Thank you
Helen Calabrese

----- Forwarded by Helen Calabrese/Benco Dental on 09/27/2011 08:18 AM -----

"Dr. Andrew Goldsmith"
<agoldsmith@smilesource.com>
09/26/2011 05:41 PM
To: <institutions@benco.com>
cc
Subject: Group Sales

Hello-

My name is Andrew Goldsmith, I am President of a group called Smile Source. We are currently in 8 states and have 40 practices. We currently use Henry Schein for our services, but, want to see what sort of relationship could be established with Benco.

Please contact me and we can talk more.

My cell# 719-201-0705

W# 281-359-2344

agoldsmith@smileSource.com

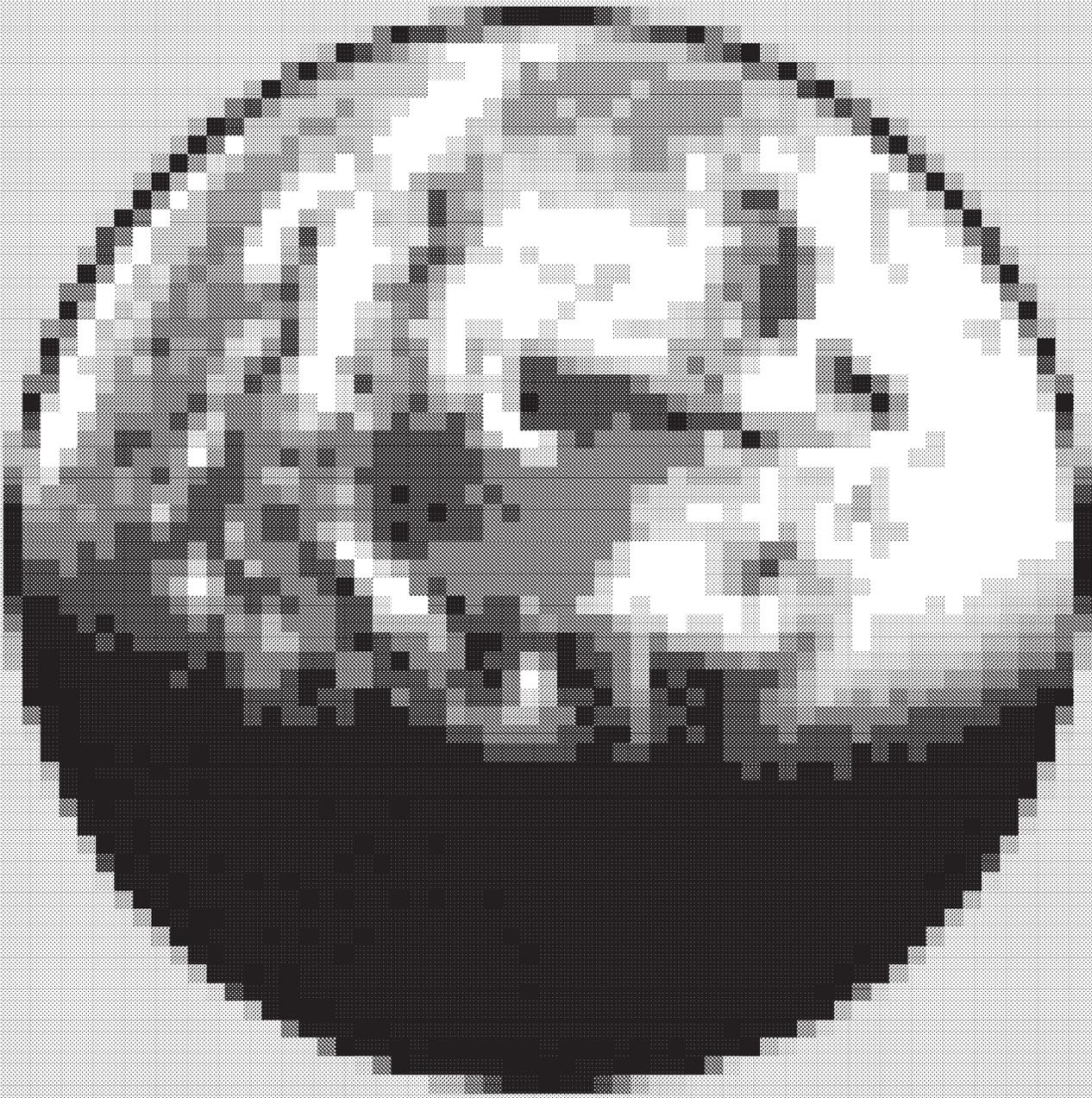
Thanks!

Andy

Andrew M. Goldsmith, DDS, DICOI, FIALD

President – Smile Source

A Vision Source Company



CX1345

From: Rick Cohen
Sent: Friday, August 29, 2014 3:12 PM
To: Chuck Cohen
Subject: RE: Lost Customers. Eq Sale

I had the same thought and asked Kirk if I asked him the same question 2 years ago, would he have given me the same answer. He said no, that the pace of things getting difficult has accelerated greatly in the past 2 years.

But in reality, it's hard to know what he might have said if asked the question 2 years ago. Everything was better in the past.

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

From: Chuck Cohen
Sent: Friday, August 29, 2014 10:34 AM
To: Rick Cohen
Subject: RE: Lost Customers. Eq Sale

Interesting squared.

Re: Kirk's comments...

He may be right, that things are more different today than ever before. But his comments seem similar to comments that every sales rep makes as he/she ages. I think Joe Dellarte said the same thing 20 years ago. It's a function of (1) the TR getting older, (2) the TRs customers getting older and retiring, and (3) the older TR having trouble making relationships with the new, younger customers.

The one TR that I think is the exception to this rule is Dave Jacobs: I've worked with him, and young dentists LOVE him. It's amazing...

cfc

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

From: Rick Cohen
Sent: Friday, August 29, 2014 10:31 AM
To: Chuck Cohen
Subject: RE: Lost Customers. Eq Sale

Interesting. Meanwhile, I just got off the phone with Kirk Jansce, one of my favorite Benco TRs, who called me with an idea.

After we got done with the idea, I asked him about things, and he said in 35 years it's never been as difficult as the past 2 years. He said there's more competition and less loyalty than ever before, and that younger dentists have no loyalty whatsoever.

He also reads dentaltown and noticed tremendous backlash against traditional distributors. I have not been keeping up on Dentaltown but I will go there for another look.

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

From: Chuck Cohen
Sent: Friday, August 29, 2014 5:55 AM
To: Rick Dunn
Cc: Mark Rowe; Mike McElaney; Paul Jackson; Rick Cohen
Subject: RE: Lost Customers. Eq Sale

Rick...

If you're looking for brilliance here, I'm not sure that I can help. The good news is that, historically, these dental association-led buying groups start with a bang and run out of steam pretty quickly, because the value just isn't there for the customers who sign up: delivery is slower, prices aren't much better, they don't have the infrastructure (Painless, etc.) to make the ordering easy.

Here's one idea, though it's a little risky: right now, you're competing with an unknown, so it's hard to figure out what to say. You might try encouraging one solid customer to sign up for the program and use it for a month or two, and share the experience and invoices with you. The risk is that the customer is happy, and you lose the customer. The upside though - - - even if you do lose the customer - - - is that you'll gain real insight into how the program actually works, day-to-day, and be able to craft a response that's based on a real customer's experience, rather than the pitch from the TDA.

I can't tell you that I've tried this idea, and it has worked. But I can tell you that it should work.

Happy to discuss in a phone call, if you'd like...

Thanks.

cfc

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

From: Rick Dunn
Sent: Thursday, August 28, 2014 8:14 PM
To: Chuck Cohen
Cc: Mark Rowe; Mike McElaney; Paul Jackson; Rick Cohen
Subject: Re: Lost Customers. Eq Sale

TDA Perks....Dr Tad Morgan.

The Dr that told my rep about Wed meeting was Dr Chris Freeman, another Benco Customer.

Sent from my iPhone

> On Aug 28, 2014, at 7:09 PM, "Chuck Cohen" <ccohen@benco.com> wrote:
>
> Rick...
>
> What's the name of the buying group? What customer is spearheading?
>
> Thanks.
>
> cfc
>
> -----
> Charles F. Cohen

> Benco Dental Company
> 'We deliver success, smile after smile.'
> 295 Centerpoint Boulevard
> Pittston, PA. 18640
> Phone: 570.602.6811
> Cell: 570.407.1340
> E-mail: ccohen@benco.com
> Administrative Assistant: Kathy Granko (kgranko@benco.com)

>
>> On Aug 28, 2014, at 7:47 PM, "Rick Dunn" <rdunn@benco.com> wrote:

>>
>> Mark.... I wanted to bring to your attention an epidemic we're facing here in Texas. I had a rep call me yesterday, that stated an account pulled them aside to say he attended a recent dinner with 10 other Dentist that were being recruited to join this buying program. The head of this meeting is/was a Benco Customer.

>>
>> I can provide more details about the meeting if needed, but needless to say, I don't believe it's good for Business.

>>
>> We also recently lost a Trudef sale that was ready for delivery...due to a Customer being offered a free scanner, if he joined this buying group. He also attended a Dinner and got the same sales pitch, regarding the savings and benefits of being a member of the group.

>>
>> To date I know of several Benco customers in the Dallas Region, that have joined this group, they are aggressive, holding regular meetings all over the state. I could use some advise on how to combat this issue, I believe they have acquired a local full service...privately owned dealer to meet their supply needs, moving forward.

>>
>>
>>
>> Sent from my iPhone

CX1351

Redacted in Entirety

CX1353

From: Chuck Cohen
Sent: Tuesday, August 23, 2011 10:39 AM
To: Sullivan, Tim
Subject: RE: Go Brewers!!

Hey, I grew up about 100 miles from both Philadelphia & NYC, so our area is about equally split between Yankees & Phillies fans.

For about 100 years, rooting for the Phillies has been like rooting for the Cubs, decades of frustration. So I chose the Yankees. It's only in the last few years that the Phillies have started to win. It won't last...

Thanks.

cfc

From: Sullivan, Tim [<mailto:Tim.Sullivan@henryschein.com>]
Sent: Monday, August 22, 2011 6:11 PM
To: Chuck Cohen
Subject: Go Brewers!!

A lot to cheer for these days in Wisconsin and football is only getting started!!

Thanks for the note . . I'll hold off on any wagering for a little while though. however, what is a PA guy doing offering up a bet in support of the Yankee's?!?!

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CX1356

Subject: Chuck Cohen and Tim Sullivan Discussion (3:30 pm CDT)
Location: Tim to call Chuck at (570) 407-1340

Start: Fri 10/14/2011 8:30 PM
End: Fri 10/14/2011 8:45 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Pampel, Carol

When: Friday, October 14, 2011 3:30 PM-3:45 PM (GMT-06:00) Central Time (US & Canada).
Where: Tim to call Chuck at (570) 407-1340

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

Tim is in a meeting that is going long, please accept if 4:30 p.m. ET will work. Tim will now call Chuck on his cell phone.

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CX1376

From: Brian Evans
Sent: Wednesday, November 26, 2014 4:43 PM
To: Julie Radzynski
Subject: RE: Seminars CPW

Yes 3 customers so far...and I am working with the reps regarding the conversations surrounding the Kois offering vs ours and I agree, we are coming up better BUT they are trying it and the TR's are getting upset and concerned.

We can talk more, I'll keep you posted...

Brian Evans, West Director of Sales
Benco Dental Company | www.Benco.com
CenterPoint West | 3590 Harbor Gateway N. Costa Mesa, CA 92626
480-335-5516: c | 480-323-2422: f | 800-Go-Benco Ext. 3348
West District Sales Support: Carolyn Hoyt | CHoyt@Benco.com

We deliver success *smile after smile*.

From: Julie Radzynski
Sent: Wednesday, November 26, 2014 3:51 AM
To: Brian Evans
Subject: RE: Seminars CPW

Yes, Chuck and I had a conversation with Kois. Chuck and I are meeting today and will get a communication out today.

In the end, it's more noise than anything, but I realize the perception sucks!

So, we are actually losing customers? Meaning they are not buying from us? We have a better overall package vs. Burkhart.

More to come...sorry for the delay.

Julie

From: Brian Evans
Sent: Tuesday, November 25, 2014 5:40 PM
To: Julie Radzynski
Subject: FW: Seminars CPW

Any update from the Kois conversation about the buying group? We have lost a handful of accounts at this point, a few of the TR's are looking for answers. Anything come of the conversation?

Brian Evans, West Director of Sales
Benco Dental Company | www.Benco.com
CenterPoint West | 3590 Harbor Gateway N. Costa Mesa, CA 92626

480-335-5516: c | 480-323-2422: f | 800-Go-Benco Ext. 3348
West District Sales Support: Carolyn Hoyt | CHoyt@Benco.com

We deliver success *smile after smile*.

From: Kathleen Bird
Sent: Tuesday, November 25, 2014 11:20 AM
To: Brian Evans; Irene Acuesta-Miranda
Cc: Matthew Grogan
Subject: Seminars CPW

Good afternoon Brian & Irene- hope all is well and you are gearing up for a lovely Thanksgiving! Snow is supposed to start here tomorrow at 7:00 AM

We are reviewing dates for 2015 seminars and I want to confirm that we have September 11, 2015 booked for Dr. Kois @ CenterPoint West.

I also want to see if June 24, 2015 is available to bring in Gordon Christensen?

So please let me know availability of 6/24 and confirmation on 9/11 ASAP>

Once we get marketing material together for Kois I will send out to the RM's and TR's. If you want to have a discussion prior to let me know. Pricing will probably be a bit higher this year over last year- but not by much.

Thanks for your help, talk to you soon. Have a great holiday.

Kathleen Bird
Business Innovation Strategist
Benco Dental
We deliver success *smile after smile*

295 CenterPoint Boulevard
Pittston, PA 18640
Phone: 570-602-6829
Cell: 570-877-3214



CX2061

From: Hight, Andrea
Sent: Monday, June 06, 2011 2:29 PM
To: Foley, Randy
Subject: RE: Just a reminder: Advantage Dental

Are we sure that is not too hard and fast? We have big customers, PDS being an example, where they do not own anywhere near this percent of their practices but have all the buying decisions and authority.

A

Andrea Hight

Regional Mgr/Community Health Liaison

Special Markets

Ph: 801-829-3146

Cell: 801-317-7148

Fax: 800-664-4832

From: Foley, Randy
Sent: Monday, June 06, 2011 11:14 AM
To: Hight, Andrea
Subject: RE: Just a reminder: Advantage Dental

Regarding partial ownership, they would need at least 51% ownership for us to provide supplies at a discounted rate to their practices. This % is in some of our other customer contracts (such as Heartland). Not sure if they can make the 51%. Anything short of this amount, especially a very minor ownership equates to a buying group, and you know how we can't do buying groups.

Randy Foley

Director of Sales

Special Markets

randy.foley@henryschein.com

248-582-1529 office

CX2061-001

248-990-5653 mobile

From: Hight, Andrea
Sent: Thursday, June 02, 2011 12:05 PM
To: Foley, Randy
Subject: Just a reminder: Advantage Dental

Thelma,

I just wanted to drop you a reminder note on the two Advantage issues:

1. Can we get Dentrix at NC for them or close to it?
2. Need a definition of 'partial ownership' and what documentation we would require for them to add offices. This is important because they have 900 offices that they provide consultation services to and could find ways on paper to make it look like they have some ownership so we need to tie down a definition that represent real ownership and real proof.

Louise

Andrea Hight

Regional Mgr/Community Health Liaison

Special Markets

Ph: 801-829-3146

Cell: 801-317-7148

Fax: 800-664-4832

CX2062

From: Foley, Randy
Sent: Wednesday, December 21, 2011 1:33 PM
To: Durante, Rhonda
Subject: FW: Request for Meeting - Dec 12 - 22 - Janet Knysz
Attachments: Unified Smiles DSO criteria.docx

FYI

Randy Foley

Director of Sales

Special Markets

randy.foley@henryschein.com

248-582-1529 office

248-990-5653 mobile

From: Foley, Randy
Sent: Wednesday, December 21, 2011 1:52 PM
To: Janet Knysz
Subject: RE: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. It was great meeting you last week and reviewing your plans for Unified Smiles.

Unfortunately, unless you have some "ownership" of your practices Henry Schein considers your business model as a Buying Group, and we no longer participate in Buying Groups. Buying Groups cause a lot of friction within our private dentist segment as it leads to unwarranted lower pricing for EXISTING customers.

If you can show ownership, then Unified can qualify as a Special Markets DSO, just like Great Expressions. We'd be happy to work with you under this type of arrangement. However, initially we cannot offer a plan as aggressive as GEDC's. That plan is based on \$5M + of business with negotiated pricing from our vendor/suppliers based on GEDC's proven volume. Special Markets does offer some starter plans, such as our P-10 plan. This plan consists of approximately 4,000 deeply discounted items and with discounts of 10% off Schein's catalog for all items outside of these 4,000 items. As Unified expands we can move you from a P-10 to a P-15, P-18, P-20, and eventually to a customized formulary. As an owner/partner you could drive compliance to achieve the best plan.

I've attached our minimal requirements for ownership as we are not talking 100% ownership. I'm at my desk all week if you'd like to discuss.

Happy Holidays!

Randy Foley

Director of Sales

Special Markets

randy.foley@henryschein.com <mailto:randy.foley@henryschein.com>

248-582-1529 office

248-990-5653 mobile

From: Janet Knysz [mailto:janet.knysz@yahoo.com]
Sent: Sunday, December 11, 2011 3:07 PM
To: Foley, Randy
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Actually tomorrow is better for me, could you stop by around 4pm our meeting should not take more than 1 hour. Please however keep our meeting confidential, I don't want to get anyone at GEDC stirred up.

Thank you,
Jan

From: "Foley, Randy" <KeithRandy.Foley@henryschein.com>
To: Janet Knysz <janet.knysz@yahoo.com>
Sent: Sunday, December 11, 2011 12:26 PM
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. The 22nd works out fine with me. However, I have a meeting with GEDC tomorrow, the 12th at 5PM. Would you like to meet a 3:30 or 4 tomorrow? If not, the 22nd is fine as you are right up the street from me! Thanks, Randy Foley
Director of Sales Special Markets
(248) 582-1529 Main
(248) 990-5653 Cell

From: Janet Knysz <janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Reply-To: Janet Knysz <janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Date: Fri, 9 Dec 2011 10:58:14 -0500
To: "Foley, Randy" <KeithRandy.Foley@henryschein.com<mailto:KeithRandy.Foley@henryschein.com>>
Subject: Re: Request for Meeting - Dec 12 - 22 - Janet Knysz

Randy,

Thank you so much for reaching out, I too am available the week of December 19th and look forward to meeting with you. I propose Monday, December 19th @ 1:30 in our offices. We are in the same building as GEDC, first floor, Suite 145. Please let me know if this time works with your schedule, if not you can reach me in my office on Monday @ 248-633-2455 to arrange a date that is good for both.

Best Regards,
Jan

From: "Foley, Randy" <KeithRandy.Foley@henryschein.com<mailto:KeithRandy.Foley@henryschein.com>>
To: "janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>"
<janet.knysz@yahoo.com<mailto:janet.knysz@yahoo.com>>
Cc: "Levandowski, JoAnn" <JoAnn.Levandowski@henryschein.com<mailto:JoAnn.Levandowski@henryschein.com>>
Sent: Friday, December 9, 2011 10:11 AM
Subject: FW: Request for Meeting - Dec 12 - 22 - Janet Knysz

Jan. Hi! I'm Randy Foley, the Director of Sales for our Special Markets division at Henry Schein. It is very nice to hear that your long term relationship with Henry Schein as been a good one, including that with JoAnn. We are very fortunate to have JoAnn on our team!

I'm open the week of 12/19 and I based out of Royal Oak. Are you still in the Detroit area? If so, we could meet at my place or a dinner or lunch to discuss your new plans. Whatever is most convenient for you.

Today I have a hectic traveling scheduling (I'm in IL) but will be at my desk most of the day on Monday. We could talk then to set something up, or you can simply respond to this email with some dates.

Thanks, and Happy Holidays!

Randy Foley
Director of Sales
Special Markets
randy.foley@henryschein.com<mailto:randy.foley@henryschein.com>
248-582-1529 office
248-990-5653 mobile

From: Jan Knysz [mailto:janet.knysz@yahoo.com]
Sent: Thursday, December 08, 2011 2:05 PM
To: Levandowski, JoAnn

Subject: Re: Request for Meeting

Let's say we will have a significant number of general and specialty practices. We will administer operations the same way as GEDC with all purchases running through our corporate office.

Thank you do much for your quick reply I sincerely look forward to meeting with you Or a member of your team.

Sincerely
Jan

Sent from my iPhone

On Dec 8, 2011, at 11:50 AM, "Levandowski, JoAnn"
<JoAnn.Levandowski@henryschein.com<mailto:JoAnn.Levandowski@henryschein.com>> wrote:

Hello Jan,

Of course, I definitely remember you. :) It's so wonderful to reconnect with you again!

We certainly welcome the opportunity to meet with you and review the services we have available for your dental practice. Would you be willing to tell me a bit about your practice needs so I can direct you to the appropriate Schein team members? Do you have one location (private practice) or multiple locations with a Corporate Office? (Dental Service Organization)

Thank you,

Jo Ann Levandowski
Special Markets Division
Direct: 330.721.7987
Fax: 330.723.8739
Web Support: 1-800-711-6032
Special Markets: 1-800-851-0400

Visit our website: www.henryschein.com/sm<<http://www.henryschein.com/sm>>

From: Janet Knysz [mailto:janet.knysz@yahoo.com]
Sent: Thursday, December 08, 2011 9:54 AM
To: Levandowski, JoAnn
Subject: Request for Meeting

Hello JoAnn,

I am not sure if you remember me but we were introduced many years ago when my husband and I owned the majority stake in Great Expressions Dental Centers. That was many years ago and things have certainly evolved and changed. As I am sure you are aware we sold all of our remaining interest in GEDC in October this year. We are very appreciative of

all the excellent services that was delivered by Henry Schein and the wonderful team that serviced our account, you all were certainly a significant part of the success we realized.

Well, the reality of the matter is we have moved on and we are currently in the process of developing a new relationship in the dental industry. We would like to discuss this business development and Schein's potential role. I would like to schedule a meeting to further discuss opportunities in person. Would you be available to meet sometime between Dec 12th and the 22nd? I look forward to seeing you again.

Thank you,
Jan Knysz

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2.1 Owned by Unified Smiles: The practice that is owned by Unified Smiles or its subsidiaries and affiliates.

- 2.1.1 The clinic support staff is employed by Unified Smiles or its subsidiaries or affiliates.
- 2.1.2 The dentists working in the practice are employed by and/or independent contractors of Unified Smiles or its subsidiaries or affiliates.
- 2.1.3 The business and operational decisions of the practice are made by Unified Smiles.

2.2 Owned In Part by Unified Smiles: A dentist-owned practice is owned in part by Unified Smiles.

- 2.2.1 The dentists working in the practice may be employed by and/or independent contractors of Unified Smiles or its subsidiaries or affiliates and/or the dentist-owner may provide services as an owner of the practice.
- 2.2.2 The clinic support staff is employed by Unified Smiles or its subsidiaries or affiliates.
- 2.2.3 The dentist-owner and Unified Smiles make the strategic business and financial management decisions, but Unified Smiles makes the day-to-day operational and administrative decisions under a management contract.

CX2066

From: Foley, Randy
Sent: Thursday, March 15, 2012 11:11 AM
To: Meadows, Jake
Subject: Terms not to be a Buying Group

2.1 Owned by Advantage Dental: The practice that is owned by Advantage Dental Clinics, LLC or its subsidiaries and affiliates.

2.1.1 The clinic support staff is employed by Advantage Dental Support Group, LLC or its subsidiaries or affiliates.

2.1.2 The dentists working in the practice are employed by and/or independent contractors of Advantage Dental Group, P.C. or its subsidiaries or affiliates.

2.1.3 The business and operational decisions of the practice are made by Advantage Dental.

2.2 Owned In Part by Advantage Dental: A dentist-owned practice is owned in part by Advantage Dental.

2.2.1 The dentists working in the practice may be employed by and/or independent contractors of Advantage Dental Group, P.C. or its subsidiaries or affiliates and/or the dentist-owner may provide services as an owner of the practice.

2.2.2 The clinic support staff is employed by Advantage Dental Support Group, LLC or its subsidiaries or affiliates.

2.2.3 The dentist-owner and Advantage Dental make the strategic business and financial management decisions, but Advantage Dental makes the day-to-day operational and administrative decisions under a management contract.

2.3 Managed by Advantage Dental: A dentist-owned practice that has Advantage Dental manage its day-to-day operations.

2.3.1 The dentists working in the practice may be employees and/or independent contractors of Advantage Dental Group, P.C. or its subsidiaries or affiliates and/or the dentist-owner may provide services as an owner of the practice.

2.3.2 The clinic support staff is employed by Advantage Dental Support Group, LLC or its subsidiaries or affiliates.

2.3.3 The dentist-owner makes the strategic business and financial management decisions, but Advantage Dental makes the day-to-day operational and administrative decisions under a management contract.

2.4 For dental practices not under complete ownership of Advantage Dental, Schein may require Advantage Dental to supply documentation supporting a dentist's employment by Advantage Dental or Advantage Dental Group, P.C. and/or agreements demonstrating that the dental practice is management by Advantage Dental Clinics, LLC, Advantage Professional Management, LLC and/or by one of Advantage Dental's subsidiaries or affiliates.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 Direct

248-990-5653 Mobile

randy.foley@henryschein.com

CX2071

From: Foley, Randy
Sent: Friday, April 05, 2013 9:56 AM
To: 'Thompson, Chad'
Subject: RE: Do you know this group in VA

Thanks for checking. This is going to be a group of dentists trying to get a discount on supplies—which we don't do. Have a great weekend. Opening day here in DTW, but some of us have to work L

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Thompson, Chad [<mailto:chad.thompson@heartlanddentalcare.com>]
Sent: Friday, April 05, 2013 9:45 AM
To: Foley, Randy
Subject: RE: Do you know this group in VA

Yes, thanks for dinner. We had a great time. As for this group, I have checked with Pat, John Slack, Justin Wendling and even our Recruiter from Neibauer. No one has heard of them plus they don't even show up on a google search. Chad

Chad L. Thompson

Vice President of Administration/Corporate Compliance Officer

phone 217.540.5100 fax 877.452.0703

email cthompson@heartlanddentalcare.com <<mailto:LLyall@heartlanddentalcare.com>>

www.HeartlandDentalCare.com

<cid:image001.jpg@01CC2203.248E65E0> <<http://www.heartlanddentalcare.com/>>

From: Foley, Randy [<mailto:KeithRandy.Foley@henryschein.com>]
Sent: Friday, April 05, 2013 7:40 AM
To: Thompson, Chad
Subject: Do you know this group in VA

Chad. It was great seeing you this week. Thanks for not running us over on the walk home!

Do you know who this is? They are asking our private division to bid and it looks like a buying group and not a DSO:

Atlantic Dental Group out of VA

>

> o He comes from 20 years in medical, practice management and working to merge practices into supergroups

>

> o 53 Dentists in the group in 32 separate practices

>

> o Jan 1 all combined legally

>

> o "we are not a co-op or a buying group...1 corporate structure...unified group of mature practices"

>

> · I asked about the bid process and criteria

>

> o He did mention the merch spent for the group was probably \$2.5m not the \$3.5 on the letter (that was real high for 53 offices)

>

>

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

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randy.foley@henryschein.com

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CX2106

From: Foley, Randy
Sent: Wednesday, March 05, 2014 3:04 PM
To: 'Thompson, Chad'
Subject: RE:

Thanks. The good thing here is that PDCO, Benco and us are on the same page regarding these buying groups/consortiums. Checking to see if we should join the TDA boycott.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Thompson, Chad [<mailto:cthompson@heartland.com>]
Sent: Wednesday, March 05, 2014 1:45 PM
To: Foley, Randy
Subject: RE:

Interesting, we heard Patterson was boycotting their TDA annual meeting because of this so I thought Schein must have worked with them on it.

Chad Thompson

Vice President of Administration

Corporate Compliance Officer

office 217-540-5100 fax 877-452-0703

email cthompson@heartland.com

www.HeartlandDentalCare.com <<http://www.heartlanddentalcare.com/>>

From: Foley, Randy [<mailto:KeithRandy.Foley@henryschein.com>]
Sent: Wednesday, March 05, 2014 12:26 PM
To: Thompson, Chad
Subject: RE:

Here's the scoop from our branch manager, Randall:

Hi,

Here is Randall's response;

No, they had reached out in the past but we never did anything with them. They have subsequently developed a relationship with other entities and are selling supplies under the "TDA PERKS" banner. While they don't have many of the major players they have an extensive # of products our clients can purchase.

Randy Foley

Director of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Thompson, Chad [<mailto:cthompson@heartland.com>]
Sent: Wednesday, March 05, 2014 9:30 AM
To: Foley, Randy
Subject:

Hey Randy

Have you heard about the Texas Dental Association offering supplies to members at discount prices? Are they working through Schein on this?

Just wondering,

Chad

Chad Thompson

Vice President of Administration

Corporate Compliance Officer

office 217-540-5100 fax 877-452-0703

email cthompson@heartland.com

www.HeartlandDentalCare.com <<http://www.heartlanddentalcare.com/>>

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<http://heartland.com/sites/all/themes/heartland/images/external-files/HeartlandDentalLogo.png>

CX2107

From: Muller, Hal <hal.muller@henryschein.com>
Sent: Friday, July 11, 2014 8:30 AM
To: Foley, Randy
Subject: MB2 Dinner

And I guess that is why we don't sell smile source--

The flyer with DENT from Burkhardt?

Sos I guess the question is, if we hard line this, do they leave us and go to, whom?
Hal

HENRY SCHEIN SPECIAL MARKETS
Hal S Muller
President
(631) 390-8150

From: <Foley>, Randy <KeithRandy.Foley@henryschein.com>
Date: Friday, July 11, 2014 8:45 AM
To: HAL MULLER <hal.muller@henryschein.com>
Subject: FW: MB2 Dinner

Daniel had his meetings yesterday with MB2 and bkfast will be taking place shortly. They're resisting the rebate issue as well as the new plan. They stated that Smile Source gets supplier support. I know this is true because I saw a Denstply flyer for SS customers showing different pricing based on volume. The flyer was for each of the SS customers—not for SS it its entirety.

Randy Foley

Vice President of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com <<mailto:randy.foley@henryschein.com>>

From: Foley, Randy
Sent: Friday, July 11, 2014 8:41 AM
To: Hobson, Daniel
Subject: RE: MB2 Dinner

A couple of issues. 1. Two of our vendor partners have approached us about DG, one while meeting out in Melville. They too will not support this AT THE SAME LEVEL that they support our DSO's, like MB2 itself. Thus we cannot cover the DG practices under the MB2 plan. Even having the name DG instead of MB2 is a huge red flag for a GPO. So far we have been able to calm our FSCs who may lose margin when a customer moves to DG. Patrick Gill of all people should understand this FSC issue. What we don't have control over is when DG converts a competitor's customers. Those sales reps are the ones that are running back to the supplier partners. Again, this should be no surprise to Patrick.

2. New pricing plan is still very aggressive and similar to what we once provided Smile Source. We ended the Smile Source relationship when they became more of a GPO than a 'management company'.

3. Yes, some suppliers are offering special pricing (but not at the level of MB2 and other DSO) to SmileSource customer. It's more of buy \$x amount and we will offer this discount or rebate.

In their PVA we state "that practices not owned in whole or part by MB2 must have a formal affiliate agreement in place with MB2.the primary relationship will comprise of business management services and shall include the ability to require offices to comply with the purchasing commitment and payment terms in this agreement.". Can they show us their formal agreement? Do they have a list of business management services offered to these affiliates—is it in their agreement?

Also, "this agreement may not be used to grow any GPO type relationship which is defined as a relationship whose purpose is to generate revenue for the parent company by allowing others to benefit from the terms of our PV relationship".

If the DG practices are really receiving only GPO benefits, then they are in violation of the agreement and we obviously won't pay rebates

based on the DG practices. If the DG practices have formal business management agreement then they may have an argument here for rebates. Even in this situation, for Schein customers that move to DG, their historical sales numbers would be added to the base year to calculate any rebates. So, we would adjust the baseline for 2013 and then DG would only be paid on actual growth.

They know what they are up to and we are not shutting them down. We're making adjustments as they push the envelope. OK?

Randy Foley

Vice President of Sales-Special Markets

Henry Schein, Inc

248-582-1529 (main)

248-990-5653 (mobile)

randy.foley@henryschein.com

From: Hobson, Daniel
Sent: Friday, July 11, 2014 12:25 AM
To: Foley, Randy
Subject: MB2 Dinner

Randy,

Meeting went as well as it could. They are frustrated and say others are doing it. I told them about the new plan. They did say that there understanding was that the agreement covered a rebate on Dental Gator sales. I told them that was not my understanding and they wanted me to check on it. They said that it was very clear in the negotiations of the PVA. I will call you in the morning. We are having breakfast in the morning I will call before.

Daniel

Daniel Hobson

Strategic Account Manager

Henry Schein Special Markets

(949) 378-4548

CX2113

From: Sullivan, Tim
Sent: Wednesday, September 15, 2010 9:15 PM
To: Breslawski, Jim; Muller, Hal
Cc: McHugh, Lynne; Peterson, Chris
Subject: Smile Source

JB,

Hal and I met this morning. He didn't even thank me for the coffee!! :)

I think we agreed on the following, Hal please confirm:

- neither of us support concept of buying groups. Whereas it may benefit SM to some extent, the risk to overall HSI (due to having 40% share in market) for margin erosion, image, as well as other competitors then following suit and huge price war breaks out.
- neither of us want to lose SS as an account. They are \$1 million and growing.

- Hal is still gathering details and having discussions with SS corp about how to manage expectations and risks to our core business. This is risky as they want to push forward, but we need time with them to create a win-win plan going forward.

- I will send a message to Scott S letting him know that we are still working with SS on a mutually beneficial plan. Ask that he continue to hang tight while this is being resolved.

- I am inclined to "allow" this account to join (not that its up to me/us) and see what happens. Afterall, Scott and HSD (per Hal) only get about 30% of this accounts business today. So, if theory works we would get 100% at lower margins, but all parties win in overall GP \$'s.

Thoughts?

Tim

CX2115

From: hal muller <halmul1@yahoo.com>
Sent: Wednesday, October 13, 2010 6:21 PM
To: RandyFoley
Subject: RE: Smile source

i am leaning towards giving this account to HSD and do it in the budget period

--- On Wed, 10/13/10, Foley, Randy <KeithRandy.Foley@henryschein.com> wrote:

From: Foley, Randy <KeithRandy.Foley@henryschein.com>
Subject: RE: Smile source
To: "Hal" <halmul1@yahoo.com>
Date: Wednesday, October 13, 2010, 7:04 PM

It was good seeing you. On my flight home, got on an earlier one. I really do appreciate how you give me exposure to Stan, Jimmie..... I am feeling a little stressed as John is in high gear, and I have a lot of customer issues that have piled up.

Regarding Smile Source, I do like how they can promote hi-tech to their customers but don't have to worry about the investment. Unlike our DPM's who have a tough time coughing up their dime on technology, the Smile Source private practice takes the risk based on SS's advice/support. Almost ready to land.

Randy Foley
National Director, Sales
Special Markets
randy.foley@henryschein.com
<<http://us.mc452.mail.yahoo.com/mc/compose?to=randy.foley@henryschein.com>>
248-582-1529 main
248-990-5653 mobile

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

From: Hal [<mailto:halmul1@yahoo.com>]
<<http://us.mc452.mail.yahoo.com/mc/compose?to=halmul1@yahoo.com>>]
Sent: Wednesday, October 13, 2010 3:45 PM
To: Sullivan, Tim; Breslawski, Jim; Foley, Randy
Subject: Smile source

I think they are and can be a great partner. Here is the issue the way I see it. If they take on an HSD account that volume plus the new growth moves to HSSM. Not good

If the account is not a Schein account, than it winding up in HSSM not a big deal.

If dentistry follows the vision model, than as the DPMs continue to grow, the private office is going to look for something like this to compete in the areas where DPMs are advertising

This is one of those cases where HSSM weds to act as a national account role, where we manage the relationship and the local area gets credit. Trying to figure this out, because we want to be able to get the lower costs from the manufactures which is hard if the group doesn't fall in our group. I'm thinking something like how about if this stays in HSD, but somehow (don't know how yet) we do the chargeback through HSSM and HSSM keeps the chargeback for managing the account??

Something to think about. But I did learn that this is no buying group.

Hal

Hal S. Muller
(631) 390-8150

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CX2141

Hoff, Theresa

From: Muller, Hal
Sent: Wednesday, January 07, 2015 1:39 PM
To: Breslawski, Jim; Sullivan, Tim; Hoff, Theresa
Subject: for 3:00 -- 2:00 CDT
Attachments: JB-TS-HM, 1-7-15.docx

Just my thoughts for discussion
Be Safe and Have Fun

Hal

HENRY SCHEIN SPECIAL MARKETS
Hal S. Muller
President

631-390-8150

Jim- Tim- Hal
Afternoon Tea
(These are just my thoughts for the meeting)

I had two topics- Mid-Market & Buying Groups

MM:

From Hal's view:

The definition for us:

Elite – groups of 20 or more offices doing \$1M+

Choice – groups of 10-19 doing over \$500k (SM-MM)

MGP- groups of 2-9 offices doing over \$150k (HSD-MM)

Sir Dentist—the majority of the business—HSD

Non-Groups-

CHC- community health and the buying groups that sell to them (SM-MM)

Other- Mostly schools, trade and hygiene (SM-MM)

For now the SM coded accounts are being dealt with by SM inside sales and SM terms of sale. HSD MGPs are therefore under HSD inside sales and terms of sale.

The Good-

the business is growing, mostly in current accounts
the team is up and running

Open issues:

Confusion over who is doing what

(need to spell out a few more rules of engagement)

Confusion over cost centers

Alignment of MGP team and equipment teams

Resistance of MGP team to move leads up to SAMs

Coding and Pricing (again need to put some rules out there)

What does WA do / what does Melville do

Brian will help with guiding the 3- especially Jason

What does shared service really mean.

How much is Hal and Randy really needed here?

Buying Groups:

Do we keep saying no?

What do we do with Dental Gator, Smile Source, others?

On Gator, we have backed them off social,, the last group they identified we took direct--- MB2- enterprise issues

Burkhart is getting in with them, is this hurting the west coast?

CX2150

Pampel, Carol

From: Foley, Randy
Sent: Monday, February 21, 2011 9:24 AM
To: Chatham, John; Sullivan, Tim; Pampel, Carol; Steck, Dave; Boresi, John
Subject: RE: Smile Source
Attachments: Smile Source Presentation Oct 2010.pdf

Guys. I'm presently stuck in Detroit as we got hit with just under a foot of snow last night, and ice is on its way. Doing my best to make it to tomorrow's meeting. (can't get out of my neighborhood).

I scanned in Smile Source's presentation to Hal, Tim and I back in October. Per my notes from that meeting:

- Members sign a 5 year franchise agreement
- They target the best practices in an area. Their current members avg. \$1.7M
- Provide cooperative/shared marketing for their members.
- Hold monthly meetings for their members where we can introduce products/equipment.
- John Wallitschek, DDS works closely with their members in introducing the latest technology (E4D, ICAT) and merchandise (Camlog/Ace, Ortho Organizers).
- As per slide 10, 14 of 23 members were not previously Schein customers
- They can increase Schein's % of business with new members who are currently Schein customers (eliminate cherry picking from other distributors-direct companies)
- Regarding pricing, they will show a prospect their potential savings in supplies by moving to Smile Source (they do all the work). They then call us when they've signed on a new member, we enroll them in our pricing plan, assign an FSC.

Rick Heysquierdo on my team was their main contact. All Rick would do is have our Inside team assign a new SS customer to our P20 plan and then assign an FSC.

Hope this helps.

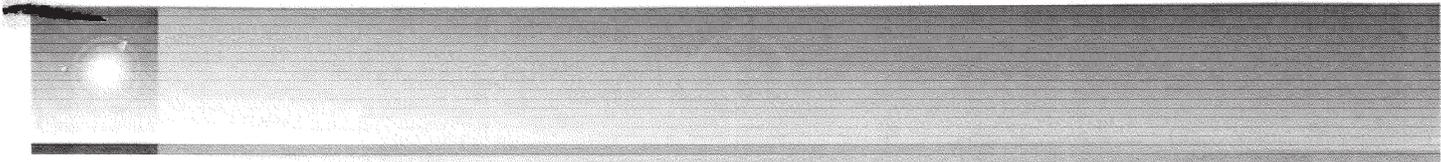
Randy Foley
 Director of Sales
 Special Markets
randy.foley@henryschein.com
 248-582-1529 office
 248-990-5653 mobile

From: Chatham, John
Sent: Monday, February 21, 2011 9:08 AM
To: Sullivan, Tim; Pampel, Carol; Steck, Dave; Foley, Randy; Boresi, John
Subject: RE: Smile Source

Business casual. I will send it to them

From: Sullivan, Tim
Sent: Monday, February 21, 2011 7:45 AM
To: Pampel, Carol; Chatham, John; Steck, Dave; Foley, Randy; Boresi, John
Subject: Smile Source

Do we want to send message about "Business Casual" attire or would you prefer we are in tie's?



Smile Source!SM

2010 Business Review Meeting

 **HENRY SCHEIN**[®]
SPECIAL MARKETS

Vision Source!

CONFIDENTIAL TREATMENT REQUESTED

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Henry Schein-000130322

Company Overview

- Founded in Houston, Texas in 1991
- North America's largest and most prestigious network of over 2,200 independent optometric franchises
- Membership includes over 4,400 independent doctors of optometry (including current and past officers of national, state and local optometric associations)
- Currently have franchises in all 50 states in the U.S. and Canada

→ Lens Crafters
#192
→ Walmart

Focused on creating a national network of private practitioners who are philosophically and ethically aligned and provide them with competitive advantages that offer the opportunity for continued growth, profitability and ongoing practice success

Attractive Value Proposition for Franchises

Unmatched Purchasing Power

- Average discount of 30% from list pricing on a broad variety of optical products for franchises
- Contracts for optometry lab services at average discount of 40%
- Maintains discounts through exclusive vendor partnerships with leading optical firms

Professional and Staff Development

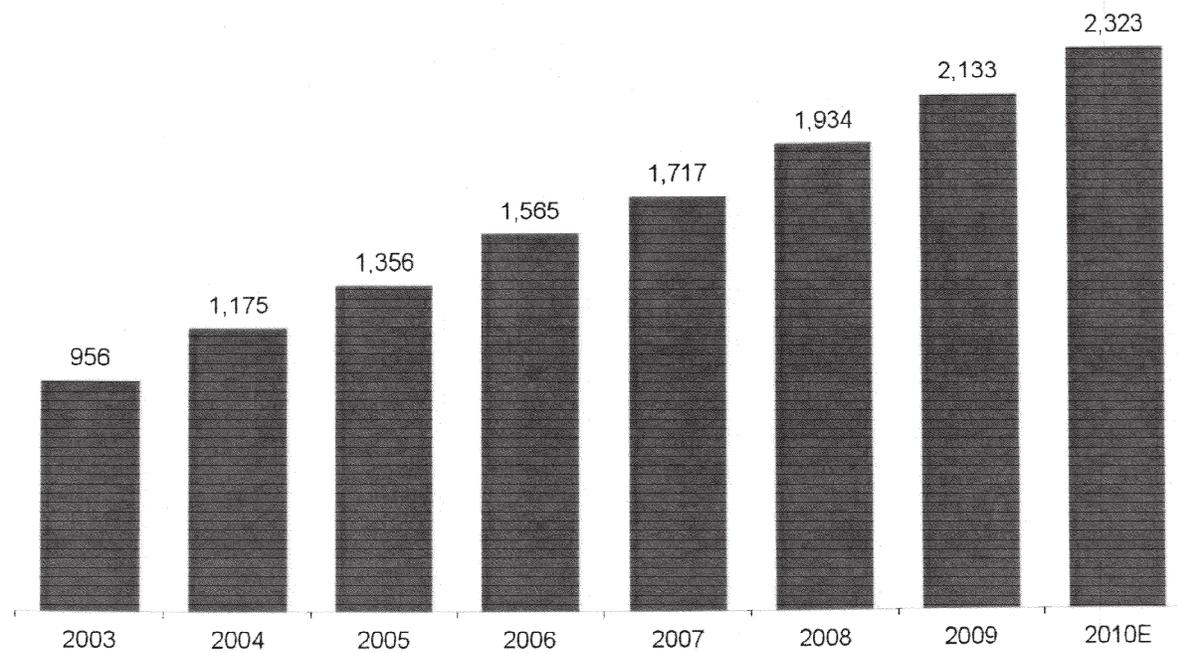
- Model allows for the sharing of ideas and best practices on local, regional, national levels
- Work with 160 Administrators (who are independent optometrists, leaders in the industry and franchise members), to promote the Company
- Professional development programs and variety of workshops

Practice Development

- National and office websites
- Cooperative marketing programs for regional franchise groups
- Promotional eye health awareness materials and customizable office materials

Consistent Growth in Franchises

Annual Total Franchises



Note: Includes Vision Source and Smile Source franchises.

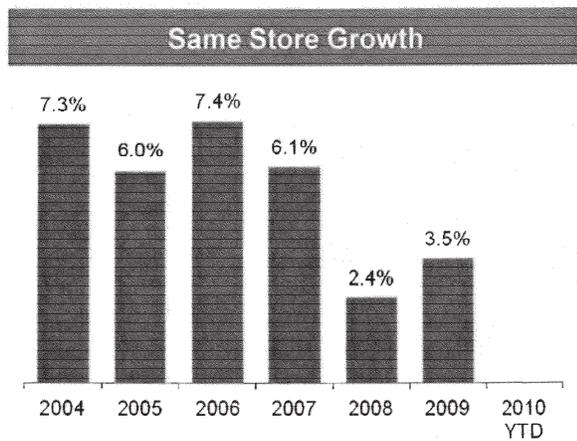
Vision Source!

CONFIDENTIAL TREATMENT REQUESTED

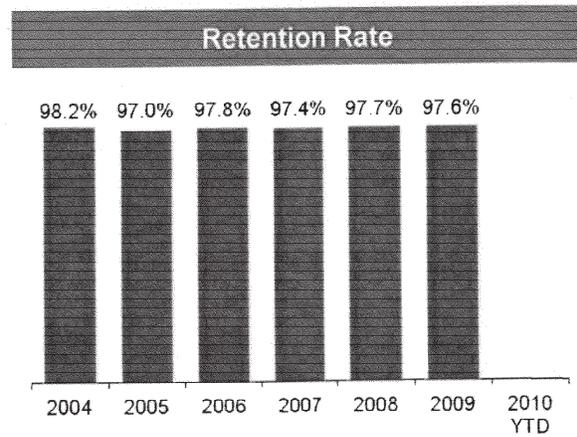
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Henry Schein-000130325

Outstanding Franchise Results



- Franchises have averaged 5.5% same store growth since 2004
- Optical retail average over same period has been 2.5%



- The Company has experienced retention rates of ~98% since 2004
- Over a third of cancellations are due to passive behavior (office closure/sale, merger, etc.)

Smile Source Expansion

Dentistry vs. Optometry

Knowing how Vision Source provided an opportunity for the private practice Optometrist to compete successfully with the large, Corporate Entity.....

And recognizing the similar challenges currently facing private practice Fee For Service Dentistry.....

Vision Source created Smile Source!

Smile Source Current Franchises 6 States – 22 Locations

District Name	Office Address	Office City	State	Office Phone	Cell Phone	Email	Member	Previous Distributor
Wallischek, John	7100 West Arrowhead Town Center Drive, Suite 2000	Denver	AZ	303-937-6433		john@smile.com	Yes	Burkhart
Wallischek, John	5037 West Northern	Phoenix	AZ	602-968-2410		john@smile.com	Yes	Burkhart
Williams, Jarrod	858 East Brown Rd., Suite 2	Mesa	AZ	480-962-1561		jarrod@smile.com	Yes	Burkhart
Wickmore, William	274 South Meadow Street	Fryson	AZ	208-474-5231		wickmore@smile.com	Yes	Burkhart
Territory Administrator - Gerald Ritter								
Ritter, Gerald	990 Saratoga Ave.	San Jose	CA	408-247-8080	408-205-8897	g.ritter@smile.com	Yes	Henry Schein
McKenna, David	3091 El Camino Real, Suite 300	Palo Alto	CA	650-321-4544		dmckenna@smile.com	Yes	Henry Schein
Shah, Naveed	390 Mowry Ave., Ste. 202	Fremont	CA	910-791-0600		nshah@smile.com	Yes	Burkhart
Kalish, Sam	230P St	Chula Vista	CA	619-427-0810	619-970-7376	skalish@smile.com	Yes	Henry Schein
Territory Administrator - Doug Miller								
Miller, Doug	411 East Palm Ave.	Barbark	CA	918-846-7928	918-261-4619	doug@smile.com	Yes	Henry Schein
Territory Administrator - Richard Abrams								
Abrams, Richard	2205 S. Parker Road, Suite F (Crayton Dental)	Denver	CO	303-782-3777		rich@smile.com	10/10/10	Smile Dental
Abrams, Richard	810 Mountain View Ave (Ortho-Bestech Podiatric)	Longmont	CO	303-651-3733		rich@smile.com	10/10/10	Smile Dental
Abrams, Richard	71 Erie Parkway, 103 (Little Bricks Podiatric)	Englewood	CO	303-626-1361		rich@smile.com	10/10/10	Smile Dental
Zakemich, Andrew	949 Chapel Hill Dr., Ste. 105	Colorado Springs	CO	719-528-0977		andy@smile.com	Yes	Henry Schein
Jewess, Robert	8778 Briarwood Blvd, Suite A	Colorado Springs	CO	719-874-1706	304-040-3367	rob1732@gmail.com	Yes	Henry Schein
Territory Administrator - Mark Lewis								
Lewis, Mark	8471 Professional Court	Las Vegas	NV	702-556-5363	702-524-6847	ml_lewis@smile.com	Yes	Henry Schein
Territory Administrator - James Choy								
Choy, James Joseph	38-712 Kamehameha Highway	Honolulu	HI	808-438-7865	808-384-2530	jameschoy@yahoo.com	Yes	Palmerco
Choy, James Joseph	370 North Kalanooa Ave., Ste. A 101	Kailua	HI	808-254-3339	808-254-3339	jameschoy@yahoo.com	Yes	Palmerco
Territory Administrator - Greg Drummond								
Drummond, Gregory	260 West Pioneer Blvd., Suite 3	Merigute	NV	702-546-3800	702-528-8273	gdrummond@smile.com	Yes	Henry Schein
Territory Administrator - Daniel Walter								
Walter, Daniel	4340 W. Indian Road	Goodyear	AZ	623-530-6789		dwalter@smile.com	10/8/10	Burkhart
Territory Administrator - Emily Graham								
Graham, Emily	91301 Kuykendahl, Suite D	Spring	TX	281-391-0091	282-997-9459	emilygraham@smile.com	Yes	Henry Schein
Territory Administrator - Jason Baston								
Baston, Jason	302 North Main St.	Kearville	UT	801-544-3983	801-870-5967	jbaston@smile.com	Yes	Palmerco
Baston, Jason	828 East 100 South, Suite E	Salt Lake City	UT	801-355-5657	801-870-5967	jbaston@smile.com	Yes	Palmerco

Smile Source Programs

- Practice management support and techniques
- Co-Operative Marketing strategies and implementation
- Key Vendor Programs:
 - Performance Dental Lab
 - WCPA Insurance (WC, Group Medical, Office and Property Liability)
 - Discus Dental
 - Henry Schein
 - Sybron Dental Implants
 - Lancer Orthodontics
 - Funding Well Capital Patient Financing
 - TNT Dental Website – Includes Hosting
 - Credit Card and Electric Payment Processing
 - Dentist Associate Recruitment
 - FedEx and Kinko's
 - Office Depot

Smile Source 5 Year Plan

Where do we go from here:

- 2010 – 32 total locations
- 2011 – 50 additional locations
- 2012 – 75 additional locations
- 2013 – 150 additional locations
- 2014 – 225 additional locations
- 2015 – 250 additional locations

Total Growth of 772 locations End of Year 2015

CX2216

From: Cavaretta, Joe
Sent: Tuesday, June 10, 2014 7:07 PM
To: Titus, Kathleen; Meadows, Jake; Gantos, Kam; Kyle, Dean; Khoury, George; Reichardt, Jeff; Upchurch, Kevin
Subject: RE: Steadfast Medical GPO

Thanks for leading the charge on this KT. GPO's are popping up like crazy so it is nice when we can shut one down and still keep the business from the individual customers. Nice job!

Joe

From: Titus, Kathleen
Sent: Tuesday, June 10, 2014 5:46 PM
To: Cavaretta, Joe; Meadows, Jake; Gantos, Kam; Kyle, Dean; Khoury, George; Reichardt, Jeff; Upchurch, Kevin
Subject: Steadfast Medical GPO

Greetings Folks,

Please see the email below... bottom line, Steadfast Medical is a double whammy; a GPO that is also a 100% procurement service. They are set up under SM, but when we examined their business practices, it became clear that they were cannibalizing existing business and reallocating HS orders to our competitors.

Since this GPO HQ's is based in Dallas, RAM, Kip Rowling will be taking the lead on field follow up. Kip will be sending RM's and FSC's a list of accounts in their area that were ordering supplies under the Steadfast Medical parent account. Their members are virtually all OS & Perio offices/groups. We collaborated on an FSC call to action, which includes advice on professionalism (got to be a bit careful here), utilizing our SSC's, and presenting their docs with the OS/Perio formulary.

Thanks and let me know if you have any questions.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: Titus, Kathleen

Sent: Tuesday, June 10, 2014 3:01 PM

To: 'Jon Staples'

Subject: FW: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then... Follow to my email of 4/22/14

Greetings Jon,

After examination of your GPO business model we have concluded that continuation of our current relationship is counter to our business practices. Unfortunately, it is my duty to inform you that effective this Friday; 06/13/14, Henry Schein will no longer support the fulfillment of Steadfast Medical supply orders.

If at some future date you are interested in exploring an exclusive relationship with Henry Schein, we would welcome revisiting a mutually beneficial partnership. In fact, in the event I have overlooked or misunderstood some aspect of your business, may I invite you to discuss our guidelines for our Managed Support Organization/Dental Support Organization (MSO/DSO) customers?

I wish you all the best, Jon. Know I am available to you at any time.

Warm Regards,

Kathleen Titus, Area Director Managed Group Practice

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: Titus, Kathleen

Sent: Tuesday, April 22, 2014 1:19 PM

To: 'Jon Staples'

Subject: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then...

Hi Jon,

Hope your week is going well. Recall we were discussing a live meeting with you and your team? I spoke with Joe Cavaretta today and he tells me he will be in Dallas on May 8,9. Would you be available to meet with Joe? I have given Joe a recap of Steadfast Medical, updated him on our call and provided him with the necessary reporting to understand the impact to our (mutual) business. Joe and I agree, in order to continue to support your growth, we'll need to have a better understanding of how you allocate to the distribution network and discover if there is way to create a better collaboration that provides prosperity to all the stakeholders.

Would you kindly let me know what your schedule looks like and I will coordinate with Joe's Admin. I would think 45 min would be adequate. I know you will find Joe to be extremely open minded and anxious to learn more about your model and relationship with our mutual clients.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

CX2219

From: Titus, Kathleen
Sent: Wednesday, July 16, 2014 7:17 PM
To: Showgren, Glenn; Brady, Brian
Cc: Lena, Nicole; Cavaretta, Joe
Subject: FW: Our meeting today PGMS

Hello Guys,

I s/w Joe today about the agreement. Tim was not in favor of it. I get that. We all had similar reservations. I s/w both Kathy and Juan.

They both said they were blown away by Schein and stated we really opened their eyes to what an incredible company we are. Both said exactly the same thing... they want to keep the door open. Dr. Luque is already engaged with Maritza Alford, so hopefully that will blossom.

As for the build out, I suggested a compromise (see email thread below for detail). Dr. Luque said he is pursuing a back-up plan with our competitor. If that relationship solidifies, I would guess we are out.

I'm sorry, folks. I hope, like me, you see this as a learning experience and have a better feel for these consulting groups and GPO's that are popping up. If nothing else, we are starting to establish some real policies that will guide us well into the future. I'm so proud of you and how you presented our org. We blew them away and gave them cause to question anything less.

kt

Warm Regards,

Kathleen Titus, Area Director

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: Titus, Kathleen
Sent: Wednesday, July 16, 2014 11:06 AM
To: Cavaretta, Joe
Subject: FW: Our meeting today PGMS

Tagging this email on to an inquiry for status from PGMS just this morning...

Just delivered the news moments ago to Kathy Khalik. She was absolutely gracious, but clearly devastated. I explained if there was a time in the future they become an MSO that could demonstrate compliance, we would be pleased to revisit. I offered her the compromise Tim suggested to enroll the fully owned locations in a SM program. She is going to discuss it with her team and wants to circle back this afternoon. For what it's worth, I am completely comfortable with yours and Tim's decision. In fact, it's the first time we have had the opportunity of having Tim's input on something of this nature. I'm so glad to have our leader make thoughtful decisions that affect our future.

All good, Joe. Thanks for all you do to support me. I will let you know if there are an updates. I will also let Brian and Glenn know what's up.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com

Direct Line: 916 765-2778

From: drluque@facesofthemission.com
[mailto:drluque@facesofthemission.com]
Sent: Wednesday, July 16, 2014 10:00 AM
To: Titus, Kathleen
Cc: kathy.khalik@pacificgroupmanagementservices.com
Subject: RE: Our meeting today

Hi Katleen, I hope every thing is going well with you. We had a meeting yesterday with our existing practices and also with some possible investors for infinity. We need to have an answer from you ASAP because we need to find about equipment and future supplies for our offices and management group. As you know we had a solid proposal from another company and I would like to put this together and start soon. Please let me know what is happening with your proposal. Best

Juan Fernando Luque, DDS, MD

Faces of the Mission Oral and Maxillofacial Surgery

2480 Mission ST San Francisco, Ca 94110

drluque@facesofthemission.com <<mailto:drluque@facesofthemission.com>>

415 285 0526

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

Subject: RE: Our meeting today

From: "Titus, Kathleen" <kathleen.titus@henryschein.com <mailto:kathleen.titus@henryschein.com> >

Date: Fri, July 11, 2014 4:28 pm

To: "Titus, Kathleen" <kathleen.titus@henryschein.com <mailto:kathleen.titus@henryschein.com> > ,

"kathy.khalik@pacificgroupmanagementservices.com"

<kathy.khalik@pacificgroupmanagementservices.com

<mailto:kathy.khalik@pacificgroupmanagementservices.com> > , 'theresa neuhauser'

<tneuhauser@gmail.com <mailto:tneuhauser@gmail.com> > , "Dr.

Luque" <drluque@facesofthemission.com

<mailto:drluque@facesofthemission.com> > ,

'Barry' <bjohal777@gmail.com <mailto:bjohal777@gmail.com> >

Cc: "Lena, Nicole" <Nicole.Lena@henryschein.com <mailto:Nicole.Lena@henryschein.com> > , "Brady, Brian"

<Brian.Brady@henryschein.com

<mailto:Brian.Brady@henryschein.com> > , "Showgren, Glenn"

<Glenn.Showgren@henryschein.com

<mailto:Glenn.Showgren@henryschein.com> >

Hello Folks,

I was hoping to have an agreement in your hands before 5pm today. Unfortunately, I'm writing to ask for grace for a few more days.

I am hopeful, we'll have final approval by our executive team so we can submit to you for review on Monday.

I know you have people anxiously awaiting the agreement. I promise you this is high on our priority list as well. Thank you in advance for your patience. I believe the result will be worth the wait! Hope you all have a fantastic weekend!

Warm Regards,

Kathleen Titus, Area Director

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com
<mailto:kathleen.titus@henryschein.com>

Direct Line: 916 765-2778

From: Titus, Kathleen
Sent: Friday, June 27, 2014 2:27 PM
To: 'kathy.khalik@pacificgroupmanagementservices.com'; theresa neuhauser; Dr. Luque; Barry
Cc: Lena, Nicole; Brady, Brian; Showgren, Glenn
Subject: RE: Our meeting today

Hello Team PGMS!

What a class act you are indeed! A special thank you for making the trip to our center. We felt it was very productive and are also excited. We envision wonderful opportunities to align our organizations and enhance the business of dentistry.

The consensus of the team is to move forward with a proposal. My goal will be to have a draft to you after the holiday. There are some novel aspects as it applies to Barry's mention of the affiliation with Zahn Dental. My intention is to reach out to Rita Acquafredda in the next few days to inquire about collaboration. Regarding our condition of exclusivity, we will make this as comprehensive an offer as possible, with the codicil that there are unique product and services that Henry Schein does not provide. Per our discussion the agreement will include, but not be restricted to the following;

- * Dedicated Executive Management/Field Sales Support/Inside Sales Support
- * Business intelligence (Dental Practice Analysis), corp business reviews
- * Leveraged pricing across multiple verticals, equip/technology/software/supplies/lab(tbd)
- * Preventive Maintenance and Service Agreement
- * Access to Henry Schein Business Solutions and continuing education
- * Marketing incentive to PGMS

If I have missed something, please let me know. Enjoy the lovely summer weekend and upcoming holiday!

Warm Regards,

Kathleen Titus, Area Director

Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com
<<mailto:kathleen.titus@henryschein.com>>

Direct Line: 916 765-2778

From: kathy.khalik@pacificgroupmanagementservices.com
<<mailto:kathy.khalik@pacificgroupmanagementservices.com>>
[<mailto:kathy.khalik@pacificgroupmanagementservices.com>
<<mailto:kathy.khalik@pacificgroupmanagementservices.com>>]
Sent: Thursday, June 26, 2014 3:58 PM
To: Titus, Kathleen; Lena, Nicole; Brady, Brian; Showgren, Glenn
Cc: [theresa neuhauser](mailto:theresa.neuhauser); [Dr. Luque](mailto:Dr.Luque); Barry
Subject: Our meeting today

Dear Kathleen, Glenn, Brian and Nicole-

It was a pleasure meeting you all today. Kathleen, it was especially nice to place your voice with a face!

Thank you all very much for meeting with us and discussing our potential partnership. We are excited about the possibilities for both our companies and look forward to receiving your proposal after the holiday. If there is anything further you need, please do not hesitate to contact me.

Best Regards, Kathy

Kathy Khalik

Director of Business Operations

Pacific Group Management Services

350 Rhode Island St., South Tower, Ste. 240

San Francisco, CA 94103

(Office) 415-926-8175

(Cell) 925-783-8994

kathy.khalik@pacificgroupmanagementservices.com
<mailto:kathy.khalik@pacificgroupmanagementservices.com>

www.PacificGroupManagementServices.com
<http://www.pacificgroupmanagementservices.com/>

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CX2235

Redacted in Entirety

CX2287

Redacted in Entirety

CX2292

Message

From: Cavaretta, Joe [/O=HSI/OU=NYME/CN=RECIPIENTS/CN=JOE.CAVARETTA]
Sent: 1/30/2017 10:56:51 AM
To: Brady, Brian [/O=HSI/OU=NYME/cn=Recipients/cn=bbrady]; Meadows, Jake
 [/o=HSI/ou=NYME/cn=Recipients/cn=jason.meadows]
Subject: RE: FIRST CALL NOTES re: Dental

Great response.

From: Brady, Brian
Sent: Monday, January 30, 2017 10:55 AM
To: Cavaretta, Joe <Joe.Cavaretta@henryschein.com>; Meadows, Jake <JAKE.MEADOWS@henryschein.com>
Subject: FW: FIRST CALL NOTES re: Dental

fyi

From: Brady, Brian
Sent: Monday, January 30, 2017 11:55 AM
To: Bergman, Stanley <StanleyM.Bergman@henryschein.com>; Muller, Hal <Hal.Muller@henryschein.com>
Cc: Breslawski, Jim <Jim.Breslawski@henryschein.com>; Caffentzis, AJ <AJ.Caffentzis@henryschein.com>; Sullivan, Tim
 <Tim.Sullivan@henryschein.com>; Tamas, Ciprian <Ciprian.Tamas@henryschein.com>; Stanley, Graham
 <Graham.Stanley@henryschein.com>; Rosenbaum, Eileen <Eileen.Rosenbaum@henryschein.com>; Paladino, Steve
 <Steve.Paladino@henryschein.com>; Borders, Carolynne <Carolynne.Borders@henryschein.com>; Steck, Dave
 <Dave.Steck@henryschein.com>
Subject: RE: FIRST CALL NOTES re: Dental

Hi Stan,

My first thought is that their survey / sample was only 72 GP's. They wrote "survey was randomized and we believe captures a good reflection of the dental market." 72 to me is not all that compelling, but regardless...

We refer to our buying groups as APC's (Alternate Purchasing Channels). Not GPO's as they are referred to in medical and in this report, as GPO's negotiate with suppliers (not really happening in our APC's.... Yet). I disagree with the statement "curtailing future growth." For Schein, engaging with groups in the next year / two years will not curtail us but help us as we will pick up incremental growth, particularly from legacy groups that we capture. The proof is in our current #'s. See chart below. We have 667 private practice dentists in APC's (up from 542 in 2015). This is about .7% of our overall private practice customer base that spends at least \$1 a year with us. We saw merch growth of 18.87% last year from customers in APC's. We have two APC's in Community Health Centers and these customers grew merch by 12.21%. and membership there increased by 17 CHC's YOY.

We're doing some in depth analysis now on margin effect, but currently (and for next year to two years) any negative effect to margin (mostly caused by admin fee's to group leadership) is offset by the incremental wins of customers that have not purchased from us before. Individual members GP often rises also, as they purchase on formulary and price adjustment requests to FSC's goes down. In summary, these APC's will have a positive effect on us during the next couple of years. As things continue to pick up steam in years thereafter, and more of our existing private practice customers begin enrolling in APC's, we will see negative effects on margin and higher activity with distributors competing for the APC entities (as we're seeing with EDSO's right now).

Thanks,
 Brian

Alternate Purchasing Channel (APC) Info	Members	Yea
---	---------	-----

Group Name	BG Code	Year Enrolled	Members 2015	Members 2016	Merch Sales 2015	M
Advantage Dental Group	BGADVTG	2015	98	99	\$2,712,056.56	
Corydon Palmer	BGCORYDON	2015	145	146	\$1,808,695.56	
Dentists For A Better Huntington	BGHUNTDENT	2009	21	21	\$357,904.95	
KlearImpakt	BGKLEAR	2015	0	79	\$2,348,630.43	
Long Island Dental Society	BGLIDENTAL	2006	20	19	\$580,189.62	
Stark County Dental Society Group	BGSTARK	2004	130	130	\$1,958,940.38	
Tralongo LLC	BGTRALONGO	2016	43	45	\$121,000.00	
Breakaway Practice	BGBREAK	2015	85	128	\$2,185,957.06	
All Private Practice APC's			542	667	\$12,073,374.56	
Commonwealth Group	MLC01	Legacy Group	405	415	\$14,168,791.29	
Council Connections	CCN01	Legacy Group	489	496	\$16,766,087.30	
All CHC Buying Groups			894	911	\$30,934,878.59	

From: Bergman, Stanley

Sent: Monday, January 30, 2017 8:48 AM

To: Muller, Hal <Hal.Muller@henryschein.com>

Cc: Breslawski, Jim <Jim.Breslawski@henryschein.com>; Caffentzis, AJ <AJ.Caffentzis@henryschein.com>; Sullivan, Tim <Tim.Sullivan@henryschein.com>; Tamas, Ciprian <Ciprian.Tamas@henryschein.com>; Stanley, Graham <Graham.Stanley@henryschein.com>; Rosenbaum, Eileen <Eileen.Rosenbaum@henryschein.com>; Paladino, Steve <Steve.Paladino@henryschein.com>; Borders, Carolynne <Carolynne.Borders@henryschein.com>; Brady, Brian <Brian.Brady@henryschein.com>

Subject: Re: FIRST CALL NOTES re: Dental

Thanks Hal. Brian your thoughts?

On Jan 30, 2017, at 5:45 AM, Muller, Hal <Hal.Muller@henryschein.com> wrote:

We have not seen any effect of GPOs in the space yet. I am not sure if they mean buying groups, which are becoming more prevalent in the Private Practice/mid- market area.

Hal

HENRY SCHEIN SPECIAL MARKETS

Hal S. Muller

President

631-390-8150

From: "Bergman, Stanley" <StanleyM.Bergman@henryschein.com>

Date: Monday, January 30, 2017 at 8:42 AM

To: "Breslawski, Jim" <Jim.Breslawski@henryschein.com>, "Caffentzis, AJ"

<AJ.Caffentzis@henryschein.com>, Tim Sullivan <Tim.Sullivan@henryschein.com>, "Tamas, Ciprian" <Ciprian.Tamas@henryschein.com>, "Stanley, Graham" <Graham.Stanley@henryschein.com>, hals Pro <hal.muller@henryschein.com>, Eileen Rosenbaum <Eileen.Rosenbaum@henryschein.com>
Cc: Steve Paladino <Steve.Paladino@henryschein.com>, "Borders, Carolynne" <Carolynne.Borders@henryschein.com>
Subject: Fwd: FIRST CALL NOTES re: Dental

Hi team

Thoughts on "the prominence of GPOs seems likely to increase, which in short, could curtail future growth."?

Begin forwarded message:

From: "Rosso, Trisha" <Trisha.Rosso@henryschein.com>
Subject: FIRST CALL NOTES re: Dental

Good morning

Please find attached research issued regarding the Dental Industry.

INCLUDES REFERENCE TO HSIC THROUGHT REPORT

STIFEL

Stifel Survey Diligence: Dental Distributor Deep Dive

Henry Schein's (HSIC, \$159.65, Hold) and Patterson's (PDCO, \$41.50, Hold) stocks are 10% off their recent lows but still trading below their 3-year averages relative to the S&P based on second-twelve-month (STM) EPS. With this in mind, we took a fresh look at the dental market with a focus on the practice's current trends, future expectations, market share dynamics between the established distributor players (HSIC, PDCO), as well as potential disruption from online suppliers (AMZN) or Group Purchasing Organizations (GPO). For patient volumes, our diligence identified modest improvement from the recent challenges experienced in the Summer / Fall 2016. This would arguably be a positive for both the distributors and dental manufacturers. However, for the distributors, we believe the landscape is slowly changing. Pressure from online / AMZN is creeping into the equation and the prominence of GPOs seems likely to increase, which in short, could curtail future growth. Additionally, competition for large DSO contracts is heating up as evidenced by the recent Patterson / Heartland deal. While Dental and Veterinary end markets remain compelling, the distributor headwinds we discuss below are enough to keep us on the sidelines with the belief that the lower multiples recently ascribed to these businesses may become the new normal. We reiterate our Hold rating on HSIC (TP remains \$172). For Patterson, we reiterate our Hold rating but lower TP to \$39 (from \$41).

Comparing Our Market Share to HSIC & PDCO Consumable Sales

- Our checks suggest HSIC's N.A. consumables business is roughly 1.6x the size of PDCO, which we believe is a good representation of each company's TTM sales
- PDCO reported \$1.35 billion of TTM N.A. dental consumable sales
- HSIC reports total N.A. dental revenue, but in 2012 stopped providing the equipment/consumables split
- However, management's quarterly commentary on growth rates by product category allows us to arrive at estimates for N.A. consumable revenue, which we believe was \$2.64 billion on a TTM basis
- While there are likely several differences in how each company defines consumables, we make one notable adjustment below to account for Henry Schein's approximately \$600 million of WW dental specialty sales, which we assume is 2/3 N.A.
- Our findings on HSIC's market share outperformance relative to PDCO also seem to support an analysis of the two companies' TTM N.A. consumable growth rates

- We estimate HSIC's TTM internal sales growth has exceeded PDCO's by an average of 120 bps over the past 8 quarters

Trisha Rosso

Henry Schein, Inc.

Assistant to Ron South, VP, Corporate Finance & Chief Accounting Officer
and Corporate Finance Team

Mail Stop: E-320

P: 631.843.5638

F: 631.777.3596

trisha.rosso@henryschein.com

CX2306

From: Cavaretta, Joe
Sent: Wednesday, April 09, 2014 2:52 PM
To: Breslawski, Jim; Sullivan, Tim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

I just spoke to Allsop and he understands and agrees with the direction. He is going to talk to Kevin but believes they can use the money they would spend at the TDA and use towards a special promotion.

To be clear we are out of the meeting.

From: Breslawski, Jim
Sent: Wednesday, April 09, 2014 2:11 PM
To: Cavaretta, Joe; Sullivan, Tim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

Hi Guys,

So, I am unclear as to whether or not we have in fact pulled out of the meeting or have reached our decision as HSD to pull out and now bring in HSPS to discuss how this affects them? So, its possible H S I is there but not HSD?

A call for me is tough right now but could do one in the morning??

jb

From: Cavaretta, Joe
Sent: Wednesday, April 09, 2014 1:29 PM
To: Sullivan, Tim; Breslawski, Jim
Cc: Steck, Dave
Subject: RE: 2014 TDA - booth strategy call

Hey Tim,

Considering that we didn't have a final decision until yesterday we haven't discussed with HSPS yet. We have also been very careful about talking to other partners as we didn't want the perception out there that we were trying to turn others away from the TDA. I can discuss with the HSPS team today if you would like...

The other Schein entities have not been alerted yet as again we just found out the decision by the TDA FROM our CONVENTIONS team. We will send out an email to the division heads so they are aware.

It is important to note that we approached the TDA with other options to help them grow their business using HSPAs, business solutions, membership drive, etc. They appreciated this approach because it was different than PDCOs but we still couldn't sway them to change their minds.

Jimmy – I will send an email to you from last week with the a recap of the TDA meeting. After you receive please feel free to send me any questions you may have. Thanks.

Joe

From: Sullivan, Tim
Sent: Wednesday, April 09, 2014 12:02 PM
To: Breslawski, Jim
Cc: Cavaretta, Joe; Steck, Dave
Subject: Re: 2014 TDA - booth strategy call

All good questions. Maybe we schedule call to discuss live?

I have not discussed with HSPS. Dave, Joe?

I don't believe other Schein entities show, but need to confirm. Also, not sure about Events Team. Not sure their role in these smaller meetings though either.

We don't think customer response will be negative other than those who are board members. Even then, not sure they will "punish" their FSC once we have opportunity to explain the why. We know PDCO and Sirona have also pulled out. Not sure about others.

In retrospect, I have not managed this well beyond the HSD team. We can't think in a silo like this and I'll manage the fallout. That said, I absolutely believe we came to the right conclusion. This is hot topic at DTA as well. CDA is next on the list to discuss . . . Not for pulling out this year, but possible in the future. They are actually attempting to create a buying group. Really not good. Other state societies as well. The bulk of their revenue comes from their state meetings. Without exhibitors though, they have no meeting and lose huge revenue generator. E and Dean gave TDA a very compelling story that we should use with others.

Tim

On Apr 9, 2014, at 11:22 AM, "Breslawski, Jim"
<Jim.Breslawski@henryschein.com> wrote:

Thanks for the update Tim. So we have officially withdrawn and HSPS doesn't know anything yet? Are there other Schein entities taking a booth there? Has the Events team been involved along the way?

It would be an easier call with Kevin, Steve Klis and Jim Harding if we were not confirmed out yet.

You referenced the general support of the local team for action, what about the customers? What is the thinking about their reaction?
Do we have any evidence one way or the other about customers support for the concept of TDA Parks?

jb

From: Sullivan, Tim
Sent: Wednesday, April 09, 2014 11:05 AM
To: Breslawski, Jim
Cc: Cavaretta, Joe; Steck, Dave
Subject: Fwd: 2014 TDA - booth strategy call

JB,

As you know, the team had a very professional yet candid discussion with TDA Board about their TDA Parks program that competes directly with dealers. After the meeting Dr. Duncan reached out to Joe thanking him for the candid discussion, his support of wanting to work towards a resolution and a little time to work this thru with the board. It appears he was either playing us a bit or he just couldn't get the board to change their position. So, we are officially withdrawn from the TDA Annual Meeting in May. Dean is communicating with the local TSMs who generally support this decision (I saw Tony and a few other FSCs on Sunday at GKAS race day who absolutely support this) and will put together some sort of "No-Show Special" to present with customer prior to the meeting.

The issue or question at hand now is what to ask of HSPS. They currently have a separate booth space that would otherwise be next to us with a similar look and feel. Without our FSCs, DTSSs, ETSSs, etc present I think we should ask HSPS to also withdraw from meeting. Not just to send additional message to TDA, but it will cause confusion for customers looking for help or their FSC. Quite honestly, I didn't think this through well enough to consider them and they should have been included in this decision. TDA Perks does not compete in the PM space (yet anyway) so I could understand why HSPS may feel differently about this. I have not yet discussed with Steve Klis or Kevin Bunker yet either. I will do that directly today, but was hoping to get your insight prior if possible.

Thoughts?

Tim

Begin forwarded message:

From: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Date: April 8, 2014 at 4:55:10 PM EDT
To: "Sullivan, Tim" <Tim.Sullivan@henryschein.com>, "Steck, Dave" <Dave.Steck@henryschein.com>
Subject: FW: 2014 TDA - booth strategy call

Gotta love it...not only did Dr. Duncan contact me to try and work something out and then not call me back after i tried to call him twice...we found out from our conventions team that they already sold our booth space.

We are officially out...

From: Kyle, Dean
Sent: Tuesday, April 08, 2014 3:47 PM
To: Cavaretta, Joe
Cc: Steck, Kyle
Subject: Re: 2014 TDA - booth strategy call

On it. Email will go out today.

On Apr 8, 2014, at 3:20 PM, "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com> wrote:

We are out then. If this is true I'm really upset that Duncan didn't have the decency to call back after he called me to work something out.

Dean – unless you have additional concerns let's communicate to the team in Texas.

From: Steck, Kyle
Sent: Tuesday, April 08, 2014 2:30 PM
To: Cavaretta, Joe; Kyle, Dean
Subject: FW: 2014 TDA - booth strategy call

For TDA, we aren't listed or shown on this most updated map.

It actually appears they subdivided our space and gave it away already?

I've been stemming all the rumors until I heard something officially, but wanted to check in and see if a decision was made on the meeting.

Kyle

Kyle Steck

Regional Manager – South Texas

Phone: (210) 545-3147

Email: kyle.steck@henryschein.com

<image001.png>

From: <Pryor>, Julianna
<Julianna.Pryor@henryschein.com>
Date: Tuesday, April 8, 2014 at 2:24 PM
To: Kyle Steck <kyle.steck@henryschein.com>, William Dunning
<William.Dunning@henryschein.com>
Subject: RE: 2014 TDA - booth strategy call

<http://fp37.a2zinc.net/clients/fptda/TDA14/Public/eventmap.aspx?shmode=E>

From: Pryor, Julianna
Sent: Tuesday, April 08, 2014 3:12 PM
To: Steck, Kyle; Dunning, William
Subject: RE: 2014 TDA - booth strategy call

<< File: 20-20 regional booth property oregon 13.jpg >>

-----Original Appointment-----

From: Pryor, Julianna
Sent: Wednesday, April 02, 2014 4:56 PM
To: Pryor, Julianna; Steck, Kyle; Dunning, William
Subject: 2014 TDA - booth strategy call
When: Tuesday, April 08, 2014 3:00 PM-4:00 PM
(UTC-05:00) Eastern Time (US & Canada).
Where: conference call

Please let me know if this date/time work for you to review the 2014 Texas Meeting HSD booth plan.

Here is the 2013 show kit for reference during the call:

Here is the 2014 literature request order form:

Please let me know if anyone else needs to be added to the call.

Dial in: 877-530-1760

Conference code: 711-417-0416

Password: 2156

Leader: Julianna

Have a great night,
Julianna

<< File: 2013 Texas Show Kit.pptx >> << File:
2014 Dental Literature Request Form - REGIONALS.xlsx >>

CX2349

From: Meadows, Jake
Sent: Thursday, January 26, 2012 11:02 AM
To: Porro, Michael
Subject: Re: Smile Source

That's if we want the Smile source group? John Nathan was working closely on this and it was more our choice I believe to stop doing business with the group. It's closer to a GPO. What we have is a group of customers that don't want to go to Burkhart but still want the benefits of a high volume Buying power. I can organize the FSCs together to make an offer on the same day.

Jake Meadows
Zone General Manager
Henry Schein Dental
414-290-2591

On Jan 26, 2012, at 4:39 AM, "Porro, Michael" <Michael.Porro@henryschein.com> wrote:

> I am guessing there is more to this then just supply discounts. What rubbed them the wrong way?
>
> Also guessing you/HSD will need to meet with them, discuss how we will meet their needs and present this new program to them.
> Do we have the right service discounts in place for them? Usually its service or an install that ticks off a customer.
> How many locations? What can we add to this package? Do we designate (give them) and extra M11 or compressor so when one goes down they always have one?
> Do we offer a CE class at no charge for their assistants/Hyg to help with their CE?
> Maybe we also offer free enrollment into Demandforce and a special price - - - get them free coding books....
> All random thoughts but just thinking of putting a package together.
>
> I will try to get some insight on a discount plan - this is hitting us a bit early as we are in the stages to get these plans set up.
>
>
>
>
> Michael Porro
> Henry Schein Dental
> Director of Sales
> West Allis Office 414.290.2526
> Cell Phone 978.761.3064
> michael.porro@henryschein.com
>
>
>
>
> -----Original Message-----
> From: Meadows, Jake
> Sent: Wednesday, January 25, 2012 9:01 PM
> To: Porro, Michael

ATTORNEYS' EYES ONLY
CONFIDENTIAL TREATMENT REQUESTED
CONFIDENTIAL - FTC Docket No. 9379

HS-00283470
Henry Schein-000530282

CX2349-001

> Subject: Fw: Smile Source
>
> FYI. Let's talk this on Friday or tomorrow.

>
>
> Jake Meadows
> Henry Schein Dental
> Northwest Zone General Manager
> 414-290-2591

>
> ----- Original Message -----
> From: SCHERMERHORN, DAVID
> Sent: Wednesday, January 25, 2012 09:57 PM
> To: Meadows, Jake; Aaron, Steve
> Subject: Smile Source

>
> Hi Jake and Steve, just wanted to share with you some of the content of the conversation I had with our customer Dr. Gerald Bittner Jr. (JDE 2232996) about the change in our relationship with Smile Source of which he is a member and a Smile Source Administrator for the South Bay. He was unaware of most of the details for the decision to terminate our relationship with Smile Source however he did hear that some of the expectations of Smile Source from us were not being met. He has spoken with Burkharts management about pricing and their assurance that their offer will be comparable to our offering if not better. He reassured me how much he has valued our relationship over the past 25 plus years and if he could influence the powers in charge to remain in our partnership, he would. Unfortunately him being a Administrator and having signed a 5 year contract with Smile Source he is bound to the decisions of his organization. As I mention above he has not been informed of the details of the change in our relationship but on Friday he will be in contact with his management team and will share with me what he can. It is his understanding that Smile Sources new relationship with Burkhart has not been formally etched in stone, but is still being negotiated. Obviously my goal is to the best of my ability find some way to maintain all or part of our relationship with Dr. Bittner the question now, is how. I welcome any thoughts you may have in this regard. Lastly we talked about Vision Source with some 4,500 members who is the parent company of Smile Source and how much business they bring to Henry Schein. That's about it and when Dr. Bittner shares more with me I'll let you both know. Warmest regards, David S.

CX2351

From: Meadows, Jake
Sent: Tuesday, September 10, 2013 3:07 PM
To: Ross, Dan
Subject: RE: smile source and arrestin

Very Familiar with them, its GPO group purchasing organization. The goal a GPO is unionize buyers and get better pricing, Darby went lower than we willing to. Continue the battle locally

Jake Meadows | Northwest Zone General Manager | Henry Schein Dental
10920 West Lincoln Ave West Allis, WI 53227 | 414.290.2591

P Please consider the environment before printing this e-mail

From: Ross, Dan
Sent: Tuesday, September 10, 2013 3:04 PM
To: Meadows, Jake
Subject: RE: smile source and arrestin

I did share this with Dave. They are all regular accounts, not special markets. I have 3 that I know of but probably have at least a couple more in Moscow/Lewiston.

I don't understand why some of the better offices in Spokane are going to Smile source. From what I know of Smile Source, it doesn't make sense to pay 1% of your GP to get a deal on supplies and other areas of your business. I have tried talking to girls in 2 of these offices but they really don't know much or wont share.

Thanks,

Dan

From: Meadows, Jake
Sent: Tuesday, September 10, 2013 12:53 PM

To: Ross, Dan
Subject: RE: smile source and arrestin

Did you communicate this to Dave Jacklin as well? Dan as I've said before your time is best spent with regular GPS not special markets accounts. How many Smile source accounts do you call on?

Jake Meadows | Northwest Zone General Manager | Henry Schein Dental
10920 West Lincoln Ave West Allis, WI 53227 | 414.290.2591

P Please consider the environment before printing this e-mail

From: Ross, Dan
Sent: Tuesday, September 10, 2013 9:25 AM
To: Meadows, Jake
Subject: smile source and arrestin

Jake,

I hope you are having a good day. Curious if you know that smile source has a special markets account with Arrestin. Basically, Burkhart clients are getting a 15% discount from us then they can get up to a 35% rebate at the end of the year. Below is the August Smile Source Newsletter.

I heard Spokane is the #1 growth area for Smile Source. I think it is mostly their current clients from what I see.

Thanks,

Dan

Smile Source Monthly Newsletter

August 2013 Edition

Hit the brakes. Put down your phone. It's time to slow down while driving through school zones. School is back in session. As our children get ready to begin a new school year, we at Smile Source are anything but slowing down. We recently crossed over the hundred mark. Simply put, we now have over 100 Smile Source affiliated locations. As a matter of fact, Smile Source is now the fastest growing Dental alliance in the United States. Honestly, in my opinion, we are just getting started as the momentum continues to increase. As an example of that, please help me welcome the following members who have joined in the last 45 days:

Stacey Harris

Joseph Narde

Richard Abrams - New location

Jawanna Wilkins Click here to see her Practice Welcome Video <http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vHDz00nSZB-C_OmtjAG4Z8gsYlbwRTPaL8z400p1Bkejx2CHR1VB5gkvcseKZPwlia7_tZxSMqFWtloQ7f4RRnOWcNMu6WOzbGhXzDcBWYTPe2ixJWt8AMMsMHFJNaaLaOEud-FpocAuA==>>

Graham Locke

Jordan Brunson Click here to see his Practice Welcome Video <http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vH5s3beHp9yW54O3B8RC1aOMeUi4jDi5ZU1NNklgC2U4UYeuKI3OmUdOMOmrfwjl3L0Gjs1WmBzbUn9KV3GuPxSaREVxN4t1pvbCj-_9hz_cVGnXEJfAswkIJCdLntP6nrTy8KNU0zTw==>>

Anne Lyon

Sonya Gill

Joseph Otterpohl

Jack Fletcher

Douglas Holliday

Michael Bell

Eric Jackson

Bernee Dunson

Frederic Slete

Trent Jones

Gannon Stahl

Furthermore, We have added a new member to our Smile Source team. Tom Allmon is our new district manager for the Pacific Northwest. Tom brings many years of dental experience to the field with him. Tom has extensive knowledge and dental implants and restorative dentistry. He is also passionate about preserving independent practice dentistry. When you meet Tom, you will be struck with his Integrity, his energy and his love for Smile Source.

Also new this month are some new partners that will help you and your practice to thrive. In the same way that the warriors of antiquity banded together and acted as one unit, we also must band together, act as one unit, and support our vendor partners. The following is a list and contact information of all of our new vendor partners. Please help me in supporting these partnerships. The success of our partnerships will help us gain new partnerships that will not only help us to survive but thrive in a changing marketplace.

Arestin- Our new partnership with Arestin is a rich deal. You will continue to order Arestin as you normally would either through Henry Schein or through your Arestin rep.

Are Smile Source discount is 15%. For some of you that may be less than the discount you already receive now. But wait- there's more... The total volume that we purchase as a group will further determine our rebate that we receive as an organization. The rebates that we receive will be an additional 35% of total purchases. Effectively after rebates we will be paying almost 50% less on Arestin. All rebates will be paid to members based on their personal usage on an annual basis. So, order Arestin, serve your patients, and watch your practice grow. An Arestin representative will be reaching out to you soon so please take the call so you can hear about all they have to offer.

Biolase- smile Source members have an opportunity to purchase the new iLase at a \$21,500 savings!! This remarkable laser has the ability to cut hard tissue, soft tissue and much more. This includes 2 training sessions, warranty and service plus a rebate of \$2,000 for the first 20 and then a rebate of \$5,000 after 20. Also included is the Epic Diode laser for a savings of \$200 and a buy 5 get 2 Free special on laser whitening gel. Biolase is going to be sponsoring all the member meetings in the coming months and they are eager to be a valuable partner to us.

They have even committed to being a diamond sponsor at the Exchange in Boston. A local representative will be reaching out to you but if you need a local contact, please reach out to your administrator.

Ultradent- All Ultradent products are available to Smile Source members. Our program is purely rebate based and will only run till December 31st.

Potentially we can obtain an additional 10% back in rebates. Ultradent has all of your names, so order as you normally would and we will send the rebates to you when we receive them. Ultradent offers clinicians a variety of ways to earn CEs, including destination seminars, regional courses and online webinars. Available course topics include dental photography, bleaching, endodontics, tissue management and much more.

Click here

<http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vHclOzqmI2JN7grQLz70x5e3BYd5zjdIcA4c0KczfBJld0GrM9zHG14actLTMwofD3OzdxF-kY1H2TeYv8kysSUUQjYCTW8s0dv585cwJoluvRQ212Hu0Wf0_EJXmdK6cPsCvIODAQnb4RRdJXuOjo5OWvCQDsDfQRYCvUxsCTJTMP> to access a variety of free online CE courses.

Click here for Smile Source Exclusive Whitening Bundles <http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vF5clbOYcHLInMQWrrKy72N0yXVMiHkL4VkkD8c3yQ8YuunwPb27ADksgT1MIHQ_xBp0iGhus8ucksR8OYM4j0JEVdgKm4Pc-3s0kV1xOnlaTaa62Arv-tkGs3t8T_9WkzLacmiuWmv9kFB0B2MzQA3z3pnhQW04Ru8DNrRHkNwH7K9PdTyU07CXfp2Rj9GlpBJ_6-xqvMAw==>>

NatLabs-\$50 crown special to new customers! Yes, you read that right, \$50 PFZ crowns and \$55 eMax crowns to new customers till December 31st. This opportunity alone will cover your Smile Source royalty payment, so, you would be remiss if you did not take advantage of this opportunity.
www.natlabs.com
<http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vFqVuIRO_1_mL86w4clhOEmx2AMnsJPOy9oYot0NeEAG3moJjgqA3UOYiWzzRVF08GiFATe4ET9eN5q9jdmUyf60XdKFdnOUynQ9dsrXaGRQ==>>

Viva Cards- An Awesome way to promote your practice. We have preferred pricing and an additional 10% discount. Talk to your local administrator they have created some awesome new programs co-op opportunities with our partners such as Phillips and Biolase. These cards can increase the new patient flow into your office And especially if combined with a cross referral system utilizing the Signature Eye and Dental Care program that we have set up with Vision Source.
Contact: Keith Rodbell -President Viva-Concepts Direct office. 818.839.7803

null

Trevor Maurer VP Business Development.

View from the Offices!

Smile Source has emerged as the 8th Largest Dental Group in the country. Like minded Independent Dentists working together will soon be the largest

Force in the Industry, we are growing faster than any other group!!!

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We are becoming more powerful every day because we are growing as a group. As we continue to grow with the right type of practices, we get better discounts, CE, Marketing, and Staff Training. We need to continue to grow faster than our corporate competitors to remain beneficial to our Members. Growth must be with the right kind of practices though, with great Independent practices that meet our two criteria.

1. You would refer to them (great Dentist)
2. They're collaborative (Share and Learn, and good to be around!)

Speaking of Collaborative, that's a HUGE piece of the puzzle here. Local Member Meetings drive the performance of each of our practices to new heights. You can see the minutes of this month's Nashville, Denver, Atlanta, and Seattle meetings on the

Smile Source Portal here

<<http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vE3veGWtJOBSTlxJ0-yNjDgQazGx4B1SbxPm8LJNF58Be6jpn3E7xsxu0mJmYvnGQwsnhFG5cbSh0sAcFkYcEyjytyPYT4wbeG2Fe0XigNdq4eeRNlw3XmBuVYDq9rZBtQZvsbq7XIUzg==>> .

On an exciting Marketing note, have you seen our Smile Source TV Commercial

<http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vEJplaRvMEKDIQnkJ-skuKrfmMgjBy_M_dpqEa-0mC7tjoWX_GI76OleSzN1UmWP7rqhp09jtAO8RbA63vx_k3sPC9WGGEmdPAqJh20i1vAsasyTtZwbi8O> ? Call me to find out how to get it in your market.

In additional exciting Marketing news, there are two great new resources for your practice Marketing. Custom Smile Source Marketing at Fedex click here <http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vFLO4pi-c96BaFdPZRY1uQ446A_KReZRgNp0W8-rI2dljxblcdR5ssN29BGg0hPyKF1IWyeR88qsVUx-SY5adDCI9mETubi5EUVab9E2PGrCLIRT8mznAcoP0IXuqgc0fc> to see many of the valuable tools at your fingertips. If you're in the market for a leads list, Click on Leads Please, our recommendation for the best lists and best pricing around.

<http://r20.rs6.net/tn.jsp?e=001T6amo0P2-vH_IDnQtuKHkBqWSwisMk81I7wbwPibmMMVUpLNGHdiTzxcfv3Gt6SfzvrnoJ1mbFLd9KK1NlyW9OVoj5DVNjhQ2aKK4h9Ca2-slzqtqbo35JimUHZNpBY>

As Andy mentioned earlier, we have some great new practices in our Alliance now, please take a moment to welcome them. The best place to do that is on our new Enterprise Social Network called Yammer! Below are some great insights from Yammer this past month. Please try to be active on it; there is some great sharing on it. Call us if you need help getting started!

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null

Thank You!

Dan Ross

Field Sales Consultant – Spokane and North Idaho

HS 80th

<<http://www.henryschein.com/us-en/dental/Default.aspx?did=dental>>

Dan.Ross@HenrySchein.com <<mailto:Josh.Swearingen@HenrySchein.com>>

509.710.9786 Cell

888.272.9402 Fax

wdt_logo <<http://www.henryschein.com/us-en/sites/wedothat/index.html>>

Coding | Recare | Social Media | Team Harmony | OSHA | Periodontal Mgmt.

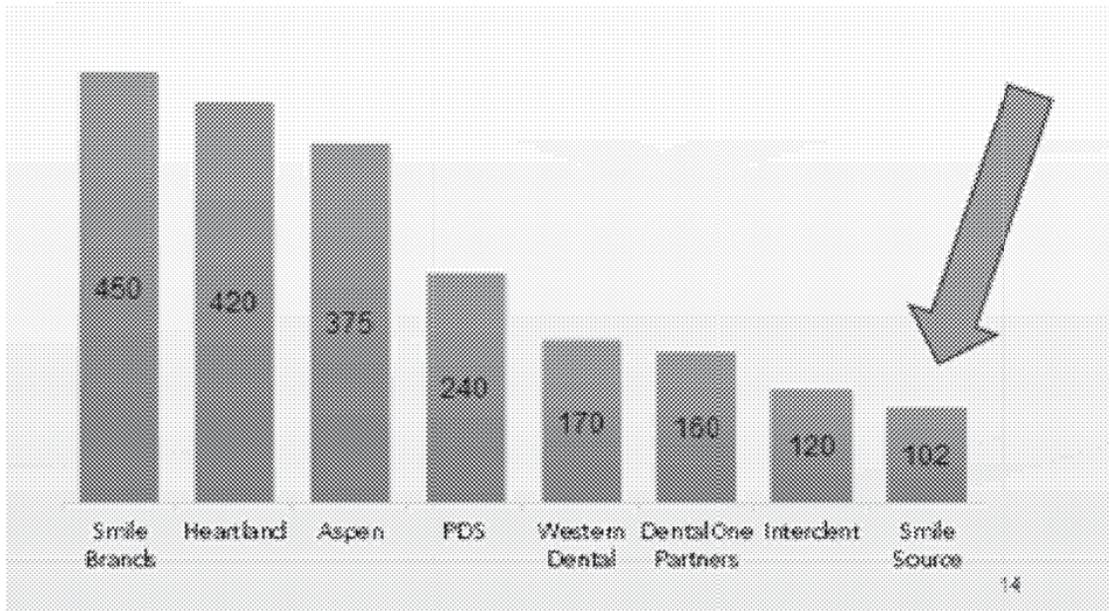
Transition Planning | Total Health | Practice Analysis





Smile Source

Group locations



Smile Source

51 New Offices this year.

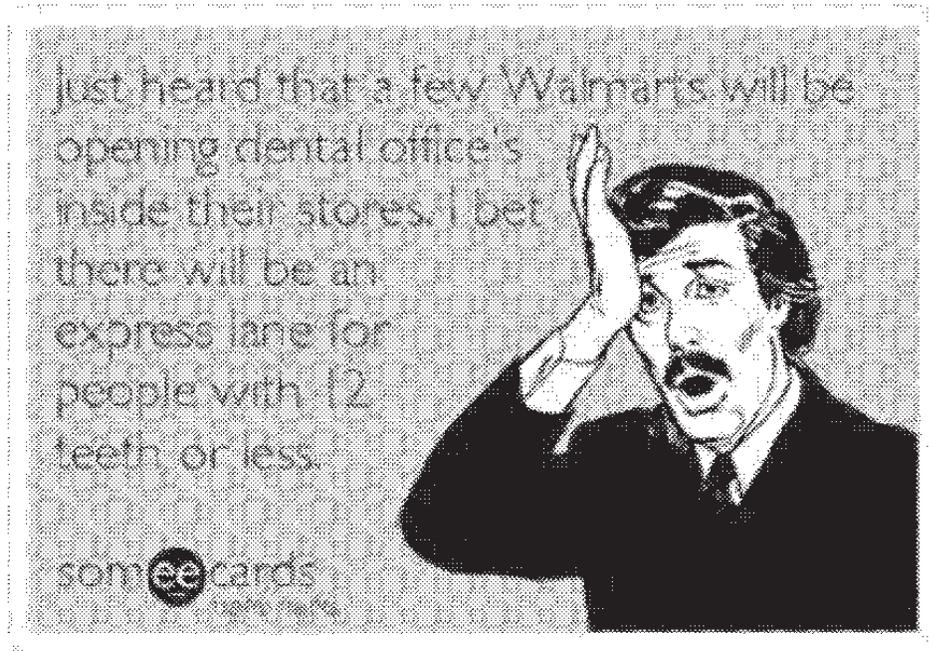




Todd Nickerson

to All Network

Good Saturday morning laugh!!!!





Andrew Goldsmith

to All Network



How many people would be interested in a Diode Laser special to drive new patients in the door?

Similar to the offer you have heard about for Sonicare this would be for laser whitening. Here are the highlights:

- The patient's perceived value is about \$500
- Cost to you - \$40 per procedure
- Procedure is 30 minutes.
- Cost of Epic diode laser with \$200 off \$6,295 - Can be used for much more too...
- Procedure kits treat 5 patients each – the offer is buy 5 kits get 2 free – So, it's good for 35 patients at about \$40 per patient
- They may COOP too so if you could let me know how many units we could move and how we would market these procedures, we could get some firm details on marketing COOP \$\$.
- How many of you would be interested in this?



Scott White

to All Network



Just wanted to share this w/ you all for cost savings - We were getting charged around \$20 from Performance lab for shipping when we used their labels to ship cases to the lab. We've started sending cases to Performance through our FedEx account (2 day shipping) using the Smile Source discount and it only costs \$9 one way. Performance pays for return shipping, so we don't see any shipping charges on invoice now. Also, we ship multiple cases at a time, so we've brought shipping down even more (~\$4.50/case). It adds up over time.

I haven't tried Micro Dental or NatLabs, but those of you that do may want to look into this w/ those labs, too.



Janet Kirkpatrick

to All Network

Single Source Marketing Call First Wednesday of Every Month at
2:00PM CST

First call will be September 4, 2013 - Please join us. See details for
call below.



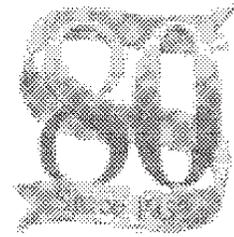
Ford Gatgens

to All Network



I thought I would share this today as I am sitting in a TN ACD meeting with Dr. Baldwin Marchack. On the home page for the AACD, My Social Media has a free downloadable White Paper "Dental Social Media Marketing Success" on the bottom right corner. Jack Hadley from their company had a great presentation last Saturday at our Administrator meeting in Houston. Smile Source made the photo for the final page with the author Jack Hadley! Awesome! Hopefully this amazing social media company will soon be a partnership with Smile Source to offer incredible benefits for our members!

 HENRY SCHEIN®
DENTAL



We do that!™

CX2377

From: Cavaretta, Joe
Sent: Monday, July 13, 2015 8:57 AM
To: Meadows, Jake
Subject: RE: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?

LOL...this is almost exactly what I had.

I had Talent mgmt. as an opportunity though and in weakness I did include too many internal P&Ls.

Do you want me to work with Betty on getting this on a slide?

Last thing...Dave also mentioned our individual OBH groups we are working on. I know you are doing HR...anything else?

Thanks.

Joe

From: Meadows, Jake
Sent: Monday, July 13, 2015 8:35 AM
To: Cavaretta, Joe
Subject: RE: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?

S:Merchandise, Adec, MidMarket, Talent Management, Recruiting,

W:HSPS results, PlanScan, Profitability, SSC model

O:3-Shape, Loyalty, Customer Experience, BPO

T:Buying Groups, Sirona, Margin Decline/Pricing Pressure

From: Cavaretta, Joe
Sent: Sunday, July 12, 2015 7:52 PM
To: Meadows, Jake
Subject: Fwd: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?

FYI. Just so you are aware of the exchange.

I'm not going to put anything elaborate together. Think we should have the same flow though so it is consistent.

Sent from my iPhone

Begin forwarded message:

From: "Steck, Dave" <Dave.Steck@henryschein.com>
Date: July 12, 2015 at 7:11:58 PM CDT
To: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>
Cc: "Steck, Dave" <Dave.Steck@henryschein.com>
Subject: Re: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?

I think he is interested in how you view your respective teams abilities and what you are doing to improve them.

You don't really need headcount, but should have YTD recruiting numbers and how you see the competitors weaknesses and our opportunities.

Honestly wherever you want to go with that is fine.

Sent from my iPhone

On Jul 12, 2015, at 6:31 PM, Cavaretta, Joe <Joe.Cavaretta@henryschein.com> wrote:

Does he want headcount? Should Jake and I just show the companies results instead of East vs West?

We could also give the same initiatives and competitive Intel to show him how aligned we are as a company.

The only component that would be different would be the committees.

If not we will just do our own updates.

Thanks.

Joe

Sent from my iPhone

On Jul 12, 2015, at 6:28 PM, Steck, Dave <Dave.Steck@henryschein.com> wrote:

I couldn't believe it when I got that email!
This was supposed to be fun and now we have to really work!

You and Jake have the part I used to have to do every month...I'd use Marcys latest report for the headcount numbers.
If you want to mention the other committees you serve on, feel free.

Sorry for the very late notice!

Sent from my iPhone

On Jul 12, 2015, at 6:11 PM, Cavaretta, Joe <Joe.Cavaretta@henryschein.com> wrote:

This sounds like it is going to be a really exciting and relaxing dinner☺

Sent from my iPhone

On Jul 11, 2015, at 10:01 PM, Steck, Dave <Dave.Steck@henryschein.com> wrote:

Team, please see the email below from Stan. It's Saturday night as I write this and we have one whole day to put together a deck to present at Tuesday nights dinner. I'm asking everyone to stay very high level and have 1 or 2 slides MAX for the topics listed in my email to him.

I would suggest you each have the following information:

- Sales Growth 1st Half 2015
- Key Drivers of Growth In 1st Half
- Expectations of 2nd Half 2015
- Key Activities for 2nd Half
- Other Important Notes: Competitive Info, Suppliers, Marketing Programs, etc...

Please get these to Linda by 1:00 pm CST Monday. She can then put them together and either print copies or send to NY and they can print them.

Sorry for the late notice....I know you all understand how this works :)

See you all Tuesday!

Sent from Outlook
<<http://taps.io/outlookmobile>>

----- Forwarded message -----
From: "Bergman, Stanley"
<StanleyM.Bergman@henryschein.com>
Date: Sat, Jul 11, 2015 at 7:49 PM -0700
Subject: Re: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?
To: "Steck, Dave"
<Dave.Steck@henryschein.com>
Cc: "Sullivan, Tim"
<Tim.Sullivan@henryschein.com>, "Breslawski, Jim"
<Jim.Breslawski@henryschein.com>

Summary deck Dave always helpful. Thanks
From: Steck, Dave
Sent: Saturday, July 11, 2015 10:46 PM

To: Bergman, Stanley; Steck, Dave
Cc: Sullivan, Tim; Breslawski, Jim
Subject: Re: Hi Dave- looking forward to dinner on Tuesday. In order to make the dinner productive it may be good idea to have an agenda and have team present?

Thanks Stan....would be happy to put that together. Key Topics that come to mind quickly are:

Equipment and Technology (Don and Kim)

Digital Dentistry (John and Jon)

Talent Management and Recruiting (Joe and Jake)

Mid Market (Brian)

Business Solutions (Eric)

Would you like us to have a deck, or just some prepared discussion points?

Really appreciate you taking the time with the team. It means a great deal to them!

Dave

Sent from Outlook
<<http://taps.io/outlookmobile>>

On Sat, Jul 11, 2015 at 7:19 PM -0700, "Bergman, Stanley"
<StanleyM.Bergman@henryschein.com> wrote:

CX2454

Redacted in Entirety

CX2456

From: Sullivan, Tim
Sent: Wednesday, December 07, 2011 8:37 AM
To: Kess, Steve; Naftolin, Josh
Cc: Steck, Dave; Hinsch, Paul; Chatham, John
Subject: RE: Follow up on Dental GPO

Very timely. we have meeting next week to discuss Strategic Plan. this topic is on agenda. I am still of position that we do NOT want to lead in getting this initiative started in dental. I think that it is a very slippery slope.

At end of day, we provide package discount "deals" to those that control buying. Simply being a "member" has historically provided little value or incentive to drive change in purchasing loyalty at the local GP practice level, yet causes all sorts of issues for those members and local area non-members who then expect the same. They will change (ie. Away from us) out of frustration that their business is viewed as "not worthy".

From: Kess, Steve
Sent: Wednesday, December 07, 2011 8:25 AM
To: Naftolin, Josh
Cc: Sullivan, Tim; Steck, Dave; Hinsch, Paul
Subject: RE: Follow up on Dental GPO

Thanks. By cc of this email and chain I have shared it with HSD Leadership.

It is certainly timely !!!!

Thanks for your thoughts.

swk

From: Naftolin, Josh
Sent: Wednesday, December 07, 2011 9:10 AM
To: Kess, Steve
Subject: RE: Follow up on Dental GPO

Mr. Kess,

I would appreciate it if you would share this information with the team.

I would love to be involved but understand that there is a line between dental and medical. I do just want to say again that while this looks somewhat as a losing proposition on the dental side, I see it only as a win and I think would be a great direction for HSI to seriously consider as a company.

I will follow up with Dr. Curro and let him know that you will be forwarding my ideas to the team to see if this is indeed the time to start taking a closer look at this.

Thank you so much!

Josh

Josh Naftolin

Regional Sales Manager, North Carolina

cid:image001.jpg@01CC5102.49CE8F00

josh.naftolin@henryschein.com <<http://www.henryschein.com/footandankle>>

Cell: 919-410-4783

E-Fax: 919-800-3701

From: Kess, Steve
Sent: Wednesday, December 07, 2011 9:04 AM
To: Naftolin, Josh
Subject: RE: Follow up on Dental GPO

Agree with your concept but the world of dentistry is very different than that of medical ... especially with the mnfg rebates etc. GPO are beginning to spring up at the State Dental Society level.

The brand and market position of HSD and HSM are very different and a proactive GPO would result in a national demand. With almost 40 % market share this could be a disaster to our pricing and gp structure.

Clearly it will come ... when is the challenge as is whether HSI leads it or follows.

With your permission I will share your thoughts with leadership on the dental team that are involved in this issue.

Finally I wanted to let you know that we are working with Dr Curro on other PEARL Network opportunities and very involved in all aspects of NYU.

Please advise.

swk

From: Naftolin, Josh
Sent: Wednesday, December 07, 2011 8:58 AM
To: Kess, Steve
Subject: RE: Follow up on Dental GPO

Mr. Kess,

My father is Dr Frederick Naftolin and he is Professor of Obstetrics and Gynecology, Director of Reproductive Biology Research , Co-Director, Interdisciplinary Program in Menopausal Medicine and Medical Director, PEARL Network. He is good friends and a colleague of Dr. Curro. He introduced me to him about a year ago. The reason was, I use to work for GroupSource, an affiliate of MedAssets and my father approached Dr. Curro about speaking with me in reference to my expertise on GPO's.

I think this makes sense for HSI because it would put us in a proactive position when the changes start to happen within the dental industry.

It has worked very well on the medical side and with the rebates back from the manufacturers, we can be successful and not lose huge margin across the board. The savings is there and I know the dental industry would embrace a large organization, like HSI for having the guts to start a program which not only saves money on dental supplies but also in many other areas. The PEARL network is perfect because it would be a controlled space and it is high profile, so it would look good for the company. Also, we would have support of the PEARL network and could track the success.

I would be more than happy to speak with Hal Muller (President of Special Markets). I reached out to you because Dr. Curro had expressed that you and he had previously spoken about this challenge. I have a great working relationship with the dental folks and would be more than happy to speak to anyone you feel would be able to help work through this.

I appreciate your time as I know you are a very busy man but I am passionate about this! I love HSI and feel this is a great opportunity for us to show again how HSI CARES about the public needs out there.

Thank you

Josh

Josh Naftolin

Regional Sales Manager, North Carolina

cid:image001.jpg@01CC5102.49CE8F00

josh.naftolin@henryschein.com <<http://www.henryschein.com/footandankle>>

Cell: 919-410-4783

E-Fax: 919-800-3701

From: Kess, Steve
Sent: Wednesday, December 07, 2011 8:11 AM
To: Naftolin, Josh
Subject: RE: Follow up on Dental GPO

Not certain your connection with NYU and Dr Curro. Please remind me.

The idea for HSI to do a GPO in dental is a very challenging and unlike medical market not in the plans at this point in time although many state dental societies are looking at value added services for their members.

Let me know why you think this makes sense and why with NYU and the PEARL network.

Have you spoken with anyone in the dental group who would make all of these decisions ???
swk

From: Naftolin, Josh
Sent: Tuesday, December 06, 2011 11:17 PM
To: Kess, Steve
Subject: Follow up on Dental GPO

Good Evening Mr. Kess,

I wanted to follow up with you since we have not spoken in a while. I wanted to see if you had gotten a chance to think about creating a dental GPO with Schein as the anchor. I have had continued interest and conversations with Dr. Curro at NYU and I would love to see if we could hammer some ideas out. I think this is a great opportunity for Schein to use the PEARL program as a pilot and be ahead of the curve when the cost containment issue becomes a factor next year for dental groups.

Since NYU is the largest and most highly regarded institution when it comes to dental, this would be a great combination. We would be able to offer the total package medical and dental to a high profile organization at a discounted rate. We would be setting the standard... actually I know we would become the standard.

I would love the opportunity to discuss this further and see if we could meet next quarter in NY with Dr. Curro to see if we can move forward.

Please let me know your thoughts.

Thank you

Josh

Josh Naftolin

Regional Sales Manager, North Carolina

cid:image001.jpg@01CC5102.49CE8F00

josh.naftolin@henryschein.com <<http://www.henryschein.com/footandankle>>

Cell: 919-410-4783

E-Fax: 919-800-3701



CX2458

From: Cavaretta, Joe
Sent: Thursday, December 22, 2011 11:05 AM
To: Dutson, Steve; Zurko, Diane
Subject: Merit Dent

Hey Steve and Diane,

I just met with Tim, Dave and John about the Merit Dent group. As you can imagine they feel the same as we do that we don't want to be the first company to open the floodgates to the dangerous world of GPOs. Based on the fact that they will not guarantee that all of their business will come to Schein they will not fall into the CAG world either. This is what I propose we do and I would like your thoughts;

- 1) I will explain again to Dr. Balle that the one price fits all strategy doesn't translate well in our world.
- 2) We will present the value added services that we are willing to provide
 - a. Free DPATs
 - b. Free DRC? (help with OSHA...huge value)
 - c. Service discounts
 - d. Etc
- 3) Sponsor (we pay for) 2 events per year for the Merit Dent group only
- 4) Offer to donate 2500 – 5k back to Merit Dent for every customer buying from Schein

I know this is clearly not the huge discount they were looking for but I'm hoping after I explain everything to Dr. Balle he will understand. If not we will just have to take the docs that may leave us for a different company on a case by case basis. Please let me know your thoughts. Thanks.

Joe

CX2482

From: Cavaretta, Joe
Sent: Tuesday, August 18, 2015 3:46 PM
To: Sullivan, Tim
Cc: Meadows, Jake; Brady, Brian; Steck, Dave
Subject: Re: Watchdog Report

Break away is a DSO/MSO combo with complete control of the check book.

DG is a recruiting arm for MB2 with little control over what the offices are doing. One of our former FSCs left us to work for DG and is begging to come back.

Smile Source is a flat out buying group. If we are going to do business with BGs now then we should meet with them and bring the business over the HSD ASAP.

Does this help?

Joe

Sent from my iPhone

On Aug 18, 2015, at 3:27 PM, Sullivan, Tim <Tim.Sullivan@henryschein.com> wrote:

What is the answer to Breakaway? I know Joe has been trying to get me to visit them and I look forward to doing so, but why can we do Breakaway and not the others?

Begin forwarded message:

From: "Muller, Hal" <Hal.Muller@henryschein.com>
Date: August 18, 2015 at 3:17:44 PM CDT
To: "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com>, "Meadows, Jake" <JAKE.MEADOWS@henryschein.com>, "Brady, Brian" <Brian.Brady@henryschein.com>
Cc: "Sullivan, Tim" <Tim.Sullivan@henryschein.com>, "Steck, Dave" <Dave.Steck@henryschein.com>, "Foley, Randy" <KeithRandy.Foley@henryschein.com>, "Harrison, Bill" <Bill.Harrison@henryschein.com>
Subject: Watchdog Report

As most of role this year in SM is based on getting pricing to the RAM team for LGPs a couple of things to note:

1) our merchandise team is maxed out , not sure we budgeted to have all these PARs when we did the manpower budget- please let your teams know that nothing gets turned around quickly, the PTO rules have also had an impact this month. Some help has come from the team approach to our merchandise group, however we are starting our year end reviews for the Elite customers and that "help" will be gone soon.

2) Need to continue to watch that small group pricing is not lower than the big groups- our approach to the LGPs was not to lead with price, however it sure appears that we are from this side- as you know we are still FIGHTING over giving low pricing to people that might be breaking away from larger groups.

3) GPOs- we need to agree to the strategy for private groups (not he CDA type)- for instance Breakaway is on a P20 with a 5% rebate to the home office, meanwhile we have told Smile Source "no" to these kind of programs and backed off Dental Gator- the question on my desk right now is why can we not offer Dental Gator a program as good as Breakaway?

Thanks

Hal

HENRY SCHEIN SPECIAL MARKETS
Hal S. Muller
President

631-390-8150

CX2536

Redacted in Entirety

CX2579

From: Porro, Michael
Sent: Wednesday, May 15, 2013 10:53 AM
To: Steck, Dave; Sullivan, Tim
Subject: RE:

yes

Michael Porro
Henry Schein Dental
Atlantic Coast Zone General Manager
West Allis Office 414.290.2526
Cell Phone 978.761.3064

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

From: Steck, Dave
Sent: Wednesday, May 15, 2013 10:52 AM
To: Porro, Michael; Sullivan, Tim
Subject: RE:

This is the buying group?

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

From: Porro, Michael
Sent: Wednesday, May 15, 2013 10:13 AM
To: Sullivan, Tim; Steck, Dave
Subject:

When can I get you for 5 mins. I don't know officially but I believe we lost the bid to Benco in Virginia

Sent from my iPhone

CX2585

Redacted in Entirety

CX2602

From: Krause, Jason
Sent: Tuesday, April 19, 2016 12:39 PM
To: Gantos, Kam
Subject: Re: Notes and Thoughts following today's ZGM call

Sorry I was on a plane. In Florida for two days but will be back on Thursday.

Let's chat then.

Jason

Sent from Krause's iPhone

On Apr 19, 2016, at 1:28 PM, Gantos, Kam <KAM.GANTOS@henryschein.com> wrote:

Hello everyone,

What follows are some comments on Q1 as well as notes from my ZGM call earlier today. We will discuss in more detail on our Zone call next week but thought that some of these should be on your radar ASAP.

Ø Kudos on a very good start to 2016! Overall sales growth is strong, primarily due to Traditional Equipment, Parts and Labor Sales. Excellent new rookie hires, Sirney's competitive recruits and ESS competitive recruits across the Great Lakes region. Of primary concern is our merchandise sales with Private Practice accounts. Our Zone call next week will be focused on what we are doing on a region by region basis to address this concern and reverse this trend. Are you all as surprised as I am that Double your Commission has done little to move the needle on Planscan sales??? While Equipment Sales are Outstanding, are you as disappointed as I am with your teams lack of engagement in our Equipment Planner initiative??? Where's the uptick in Dentrax sales following our center training? How can we improve our traction??? I am receiving positive feedback from many of you on your study clubs. Thanks to those of you who have really adopted this as a way to better educate and support our team on increasing their knowledge on the business of dentistry and increased utilization of the Henry Schein tools and programs.

Ø Henry Schein Connection- please be sure that your Sales Specialists are familiar with the Henry Schein Connection. It is OKAY for them to leverage certificates offered with this program without the doctor making a commitment to merchandise. The expectation on our SS part is that the doctor would meet with the FSC and or RM to learn more about our "Value Offering" or "Wheel"

Ø Buying Groups-just like special markets and mid-market, they have arrived and we do have a strategy to compete in this space. While I am sure that we will hear much more at the upcoming NSM, I can tell you that these accounts are field assigned. We have found that they often pull over significant business from doctors who in the past considered PDCO or Benco as their primary distributor. Any inquiry from a Buying Group about HSD's participation should be directed to Jake and me. We are very selective on who we partner with.

Ø Sale Efficiency Report- I just received our first report. I will be pushing your region out to you in the next week and schedule a call to review. IT SHOULD NOT BE SHARED OR REVIEWED WITH OUR TEAM AT THIS TIME. The current plan is for us to get comfortable with the data. If all goes to plan we will share with FSC's after the NSM. My guess is that it will be after the close of Q2.

Ø Planscan Double Commission incentive will end April 30th. NO EXCEPTIONS!!!! Orders must be signed and in the system by April 30 AND installed by no later than end of Q2 which I believe is June 24th to qualify for double commission. RM's are responsible for following up with FSC's on digital scanner leads. Where are the FSC's in the process?

Be sure that they are driving this activity. It does not end with them turning the lead over to the CCS. Our FSC's remind us all of the time that they hold the primary relationship with their / our doctors.

Therefore, they must lead the doctor through this sales process. You must have continuous dialogue with your FSC's throughout the entire process. DOC are there to guide and support our CCS's training in addition to demo and implementation of sale.

Ø Adec will be launching a new line of furniture at CDS South.

Don Hobbs will be forwarding to us information on additional discounts Adec is extending to us to move our floor displays to make room for their new line of furniture. You will be receiving a request for time at an upcoming BDM from your Adec TR. Please be sure to allocate necessary time for our team to learn about latest advancements in the new line of Adec furniture.

Ø Planmeca/Acteon digital imaging. Both of these companies are working with our sales teams to help us fill gaps in our declining digital imaging market. Please be receptive to requests by your DTS/ETS for demo sensors. Planmeca answers the multi size sensor request while Acteon fills the bill for those price sensitive doctors.

Ø Outstanding Equipment, Parts and Service growth in Q1 has placed a greater focus on our need to run our Technical Service team at full throttle. Please be sure to work with your ROM and Jack to make fulfillment of EST req.'s a priority. If you have an EST on STD we may be able to replace that open spot if the business warrants. If there is a key competitive tech in your market we will consider recruiting that tech, again if business warrants that move. Please continue to coach your team to solicit technical service. A routine service call is much easier to manage than a 911. Please be sure to always support the Hub with open communication.

Ø Sales Headcount-we are always looking to expand our team.

Declining headcount is not a good thing.....it often justifies a decline in management. J Please look at areas of opportunity and projected needs within your region. Always be recruiting both rookie and competitive hires. Every RM should always have a pipeline of new hire candidates.

Ø Performance Appraisals-Thank you all for responding in the positive on meeting our June 1st deadline for completing and presenting all Performance Appraisals to Sales TSM's. To stay on track by now you should have begun scheduling reviews with your team. Please provide me with a minimum of 24 hours notice to approve and return to your inbox.

Again, thanks for your continued support and good work. We are well positioned to have a tremendous year. The Key to Success is to execute on the Activities that drive our Key Initiatives.

Lastly, I apologize for the length of this message. L

Kam

<RM Memo 4192016.docx>

CX2616

From: Cavaretta, Joe </o=HSI/ou=NYME/cn=Recipients/cn=joe.cavaretta>
Sent: Friday, October 18, 2013 4:00 PM
To: Sanders, Scott <scott.sanders@henryschein.com>; Sullivan, Tim
 <tim.sullivan@henryschein.com>
Cc: Steck, Dave <dave.steck@henryschein.com>
Subject: RE: TDA Perks **Please read entire email**

Great. Can you talk now?

From: Sanders, Scott
Sent: Friday, October 18, 2013 4:00 PM
To: Cavaretta, Joe; Sullivan, Tim
Cc: Steck, Dave
Subject: RE: TDA Perks **Please read entire email**

I'm happy to ask Frank. Joe, why don't you and I talk for 5 minutes first so I make sure I understand fully and position properly. Thanks.

From: Cavaretta, Joe
Sent: Friday, October 18, 2013 4:51 PM
To: Sullivan, Tim
Cc: Steck, Dave; Sanders, Scott
Subject: RE: TDA Perks **Please read entire email**

Scott,

Are you comfortable asking about this or would you like me to do it? Thanks.

Joe

From: Sullivan, Tim
Sent: Wednesday, October 16, 2013 10:20 PM
To: Cavaretta, Joe
Cc: Steck, Dave; Sanders, Scott
Subject: Re: TDA Perks **Please read entire email**

Great message from area Randall. Let's discuss who and how to contact Arnold's.

On Oct 16, 2013, at 7:26 PM, "Cavaretta, Joe" <Joe.Cavaretta@henryschein.com> wrote:

I didn't send this to you from last week.

Should I follow up with Scott so he can ask the Arnold team if they are part of this?

Joe

From: McLemore, Randall
Sent: Friday, October 11, 2013 9:09 AM
To: Barajas, Blake; BEECH, ANDREW; Beech, Scott; Bevenue, Chris; Biddix, John; Chinn, Geoff; Copeland, Leslie; Foster, Robert; Gill, Patrick; Graham, Jeramy; Green, Cindy; Grilz, Ryan; Harris, John David; Haseloff, Jeremy; Herrin, Michael; Hibbs, Jeffrey; Hickman, Brian; Hood, Cindy; Hudson, Nathan; HULL, Charles (Randy); Kirk, Jason; LOYD, RON; Luft, Keith; Oehlschlager, Andrea; Phillips, Jamie; Phillips, Mark (Dallas);

Saueressig, Paul; Scruggs, Jarret; Starnes, Tony; SUTTON, ROD; Tomlinson-Edstrom, Kristi; Violette, Chris; WILSON, TODD; WRIGHT, DAVID (James D)(FSC); Zolfo, Matt; Barras, Mike; Florczykowski, Dan; KNIGHT, Thomas; Rogers, Scott; Wiggins, James

Cc: Kyle, Dean; Cavaretta, Joe; Showgren, Glenn; Herrin, Michael

Subject: TDA Perks ****Please read entire email****

Importance: High

Team,

Several of you have been asking for more details around this offering from the TDA. I have been working to get as much information possible prior to sending this email.

For those who are not aware, as of Oct. 1st the TDA now has a website where a "member" can fill many of their supply needs. I have browsed their site and there are some vendors missing so it is not a one stop shop. This is the information I have been able to collect thus far.

The General Manager for the TDA Perks is Donovan Osia. They are using a company called Sourceonedental.com, their group purchasing discounts website for their members. SourceOne Dental are going through a couple of different smaller dealers Arnold Dental and one other one that I was not given that name. The manager of SourceOne is Ahmad Shahms and they are out of Gilbert, Arizona. Arnold Dental, who they purchase some of their products through is on the east coast. They negotiate best pricing with these dealers and do not have the same products come from two different vendors.

- Although you are only able to access the TDA perks site if you are a TDA member you can go on to Sourceone and access their list of products and pricing.
- After comparing several items their pricing fell just below our "best rate" pricing. The claim they are saving the customer 35% is **false**.
- How much of a kick back the TDA is getting from their members ordering is unknown
- With all these products going through so many hands how was it managed? Can our client feel confident it was handled in a responsible manner?
- What kind of back order situations can our client expect?
- Is overnight delivery consistent?
- What value does the TDA bring to their membership?

This is exactly what we have been discussing for months, if not years. If we are simply a dental supply company we lose. Our value is so far greater than this but we have to make sure our clients are aware of this value! **WHAT ARE YOU DOING TO MAKE SURE OUR CUSTOMERS ARE AWARE OF OUR FULL OFFERING?** What are you doing to help your customers be more efficient and in turn be more profitable? Have you completed a CBS with each customer, have you completed a DPAT and had a business discussion with your client to determine which one of our tools we can use to help these customers?

Folks, the time is **NOW** and if you **CHOOSE** to ignore the evolution of our market we will fall victim to the change!

It is time to go on offense! Read the "Challenger Sale". Attend the Study Club! Accept the fact that doing business the "old fashion way" is no longer acceptable!!

We have to go to market in a more focused and deliberate manner, have a plan, show your value.

When our clients start to feel the squeeze their immediate reaction has to be "I need to talk to my HSD rep because I know they have some ideas and tools that can help"! (is this what all of your customers would think today?)

Thanks!

Randall McLemore

Regional Manager
Dallas / Ft. Worth Center
Ph: (214) 966-7632
Fx: (817) 251-8116
randall.mclemore@henryschein.com
<image001.jpg>

~WHAT HAVE YOU DONE TO HELP OUR CLIENTS GROW THEIR
BUSINESS TODAY???

Visit these websites for the latest in dental:

<http://www.henryschein.com/us-en/sites/wedothat/index.html>
<http://www.henryschein.com/us-en/dental/Default.aspx?did=dental>
<http://www.dexis.com>
<http://e4dsky.com>
http://www.demandforce.com/df_dental.shtml
<http://www.tda.org/displaycommon.cfm?an=1&subarticlenbr=112>
<http://arestin.com/>
<http://www.colgate.com/app/Colgate/US/OC/Products/FromTheDentist/Name.cvsp>
<http://drcdental.com/>
<http://www.dentrix.com/>
<http://www.i-CAT3D.com>
www.henryschein.com/hsfs
www.camlogimplants.com
www.henryscheintechcentral.com

CX2618

From: Sullivan, Tim
Sent: Thursday, February 27, 2014 11:07 AM
To: Breslawski, Jim; Cavaretta, Joe
Cc: Steck, Dave; Miranda, Rich; Stanley, Graham; Rozin, Rodi
Subject: RE:

I scrubbed their website and there is nothing on there, which I wouldn't think they'd advertise that anyway. Joe, any local input from TSMs that compete with them?

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

From: Breslawski, Jim
Sent: Thursday, February 27, 2014 10:41 AM
To: Sullivan, Tim; Cavaretta, Joe
Cc: Steck, Dave; Miranda, Rich; Stanley, Graham; Rozin, Rodi
Subject: RE:

Thanks Tim... Didn't Burkhart in fact align with a GPO? Was in the dental press.

jb

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

From: Sullivan, Tim
Sent: Thursday, February 27, 2014 10:45 AM
To: Breslawski, Jim; Cavaretta, Joe
Cc: Steck, Dave; Miranda, Rich; Stanley, Graham; Rozin, Rodi
Subject: RE:

We did not include anything in current draft about GPOs, but may be worth adding as a potential threat or industry dynamic. They are really non-existent today in NA Dental market, but they continue to request time/meetings with us and I'm sure our competitors. Other than Smile Source, who claims to be more than GPO, I am not aware of any that have made any real inroads in Dental yet.

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

From: Breslawski, Jim
Sent: Thursday, February 27, 2014 6:27 AM
To: Cavaretta, Joe
Cc: Sullivan, Tim; Steck, Dave; Miranda, Rich; Stanley, Graham
Subject: Re:

Thanks Joe. I have some info I will dig up and send your way. The GPO I am thinking of is someone else. It is a more traditional medical GPO that I believe Burkhart has aligned with. Not sure what categories it includes (certain products or specific services only).

Copying Tim and Dave also Rich and Graham.

I attended a meeting with our medical guys and a different GPO and it reminded me to understand more about what is happening now.

Tim, for the strategic plan situation analysis do we have the GPO dynamic and status included in competitor section?

JB

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

From: Cavaretta, Joe

Sent: Wednesday, February 26, 2014 10:17 PM

To: Breslawski, Jim

Subject: Re:

Smile Source was the main one. I haven't heard of others but I will do some digging.

Sent from my iPhone

> On Feb 26, 2014, at 8:05 PM, "Breslawski, Jim" <Jim.Breslawski@henryschein.com> wrote:

>

> Hey Joe... You hear much about Burkhart working with a GPO??

>

> JB

CX2624

From: Showgren, Glenn
Sent: Wednesday, February 27, 2013 10:08 AM
To: Alguire, Todd
Subject: Re: Smile Source?

Too long of a story to email. Basically we invited them to find a new distributor.

Glenn Showgren
Regional Manager
Henry Schein Dental South Texas

From: Alguire, Todd
Sent: Wednesday, February 27, 2013 11:07 AM
To: Showgren, Glenn
Subject: Smile Source?

Glenn,

Just had a conversation with Dr Kral. After being denied a breakfast meeting with you, I went by to find out why. (this is the office that has been down in the dumps and very very slow) I found out that they have joined up with a outfit named smile source? They said it is just like vision source where Dr's buy into the program/ union and pool their numbers to get better rates from insurance, marketing, supplies, Labs etc.

Dr Kral is sending me the contact number & name of the main guy out of Houston? They are linked up with Burkhart, and getting some crazy discount from them? Dr Kral said he is 1 of 3 dentist here in SA that are part of this smile source.....

Have you heard about these guys? Dr Kral said Smile source was originally linked up with HSD but moved to Burkhart b/c we acted like the fortune 300 that we are.....

Blessings,

Todd Alguire

Description: untitled

Field Sales Consultant

OSHA / HIPAA Certified Trainer

CONFIDENTIAL TREATMENT REQUESTED

Henry Schein-000008166

CONFIDENTIAL - FTC Docket No. 9379

CX2624-001

San Antonio, TX

(512) 970-6942

Fax: (866) 496-3946

todd.alguire@henryschein.com <<mailto:todd.alguire@henryschein.com>>

Description: [cid:image003.png@01CD0E8B.272E6F50](#)

Description: [cid:image004.png@01CD0E72.EF867740](#)

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CX2624-002



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Henry Schein-000008168

CONFIDENTIAL - FTC Docket No. 9379

CX2624-003





CONFIDENTIAL TREATMENT REQUESTED

Henry Schein-000008170

CONFIDENTIAL - FTC Docket No. 9379

CX2624-005

CX2653

From: McGarry, Janet
Sent: Wednesday, June 11, 2014 10:12 AM
To: Levandowski, JoAnn; Harrison, Bill; Foley, Randy; Berkey, Paul
Subject: RE: Steadfast - bill to jde 2194779

I've notified my team

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

From: Levandowski, JoAnn
Sent: Wednesday, June 11, 2014 11:06 AM
To: McGarry, Janet; Harrison, Bill; Foley, Randy; Berkey, Paul
Subject: FW: Steadfast - bill to jde 2194779

Hi -- See trail RE: Steadfast -- bill to jde 2194779

If we were sending any PH Reports , MFG Reports, or other correspondence to/for this account, we can cease doing so as it appears we are ending our relationship with this account as of this Friday.

From: Levandowski, JoAnn
Sent: Wednesday, June 11, 2014 10:59 AM
To: Kerr, Emily
Cc: Titus, Kathleen; Rowland, Kip
Subject: Steadfast - bill to jde 2194779

Hello Emily,

The way the website works is when you close the ship-to JDEs, all web access is also automatically shut down. So as long as the JDE#s are closed properly, the users will not have access to their accounts online. If you have any difficulty closing the accounts, I will need to know A/S/A/P. (Such as if credit cannot close for some reason?) However, if I remember correctly, we do have a way to close the accounts to stop further business from occurring.

Thank you,

Jo Ann Levandowski
Henry Schein Special Markets ~ Sales Support Specialist / Web Trainer | Direct Phone: 330-721-7987 | Fax: 330-723-8739
| | Web Support: 1-800-711-6032 | Special Markets Sales Team: 1-800-851-0400 | Visit our website:
www.henryschein.com/sm

From: Kerr, Emily
Sent: Tuesday, June 10, 2014 6:33 PM
To: Levandowski, JoAnn
Cc: Titus, Kathleen; Rowland, Kip
Subject: FW: Joe Cavaretta will be in Dallas May 8,9 and is hoping to meet with you then... Follow to my email of 4/22/14

Hi JoAnn,

Effective Friday 6/13 we will no longer be doing business with Steadfast and we need to make sure all access to the Henry Schein web is deactivated as of Friday 6/13. The customers are set up under bill to jde 2194779. If you need all the ship to JDE's please let me know and I will be happy to send you the information.

User names:
Kathleen Vaughn
Paige McAfee
April Emerson

Thank you
Emily

From: Titus, Kathleen
Sent: Tuesday, June 10, 2014 3:17 PM
To: Rowland, Kip; Kerr, Emily
Subject: FW: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then... Follow to my email of 4/22/14

Ladies,

SEE BELOW

This almost makes me sick to my stomach but clearly this is a one way relationship. Steadfast has become bolder and more predatory daily-- throwing the Schein name around like fodder. So, sadly, this email went out moments ago. That means that we need to shut down the web access on Thursday night or Friday morning.

Kip has a follow up action plan ready to engage our FSC's and RM's. May I ask that the web access be shut down on schedule, please? Also notes on the Steadfast accounts would be good in case they try to call in. We definitely need to close the Steadfast accounts, but I'm not sure if credit will want to leave them open until their A/R is clean. If one of you can check that would be great!

Thx and sorry Emily. I don't know if this hurts your territory, but I promise we'll make it up to you.

Warm Regards,
Kathleen Titus, Strategic Account Manager Western Zone Henry Schein Special Markets/Corporate Account Group
Email: kathleen.titus@henryschein.com<mailto:kathleen.titus@henryschein.com>
Direct Line: 916 765-2778

From: Titus, Kathleen
Sent: Tuesday, June 10, 2014 3:01 PM
To: 'Jon Staples'
Subject: FW: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then... Follow to my email of 4/22/14

Greetings Jon,

After examination of your GPO business model we have concluded that continuation of our current relationship is counter to our business practices. Unfortunately, it is my duty to inform you that effective this Friday; 06/13/14, Henry Schein will no longer support the fulfillment of Steadfast Medical supply orders.

If at some future date you are interested in exploring an exclusive relationship with Henry Schein, we would welcome revisiting a mutually beneficial partnership. In fact, in the event I have overlooked or misunderstood some aspect of

your business, may I invite you to discuss our guidelines for our Managed Support Organization/Dental Support Organization (MSO/DSO) customers?

I wish you all the best, Jon. Know I am available to you at any time.

Warm Regards,

Kathleen Titus, Area Director Managed Group Practice Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com<<mailto:kathleen.titus@henryschein.com>>

Direct Line: 916 765-2778

From: Titus, Kathleen

Sent: Tuesday, April 22, 2014 1:19 PM

To: 'Jon Staples'

Subject: Joe Cavaretta will be in Dalls May 8,9 and is hoping to meet with you then...

Hi Jon,

Hope your week is going well. Recall we were discussing a live meeting with you and your team? I spoke with Joe Cavaretta today and he tells me he will be in Dallas on May 8,9. Would you be available to meet with Joe? I have given Joe a recap of Steadfast Medical, updated him on our call and provided him with the necessary reporting to understand the impact to our (mutual) business. Joe and I agree, in order to continue to support your growth, we'll need to have a better understanding of how you allocate to the distribution network and discover if there is way to create a better collaboration that provides prosperity to all the stakeholders.

Would you kindly let me know what your schedule looks like and I will coordinate with Joe's Admin. I would think 45 min would be adequate. I know you will find Joe to be extremely open minded and anxious to learn more about your model and relationship with our mutual clients.

Warm Regards,

Kathleen Titus, Strategic Account Manager Western Zone Henry Schein Special Markets/Corporate Account Group

Email: kathleen.titus@henryschein.com<<mailto:kathleen.titus@henryschein.com>>

Direct Line: 916 765-2778

CX2742



Situational Analysis: Competitors
Henry Schein, Inc.
2011-2013 Strategic Plan

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Henry Schein-000067286

Agenda

- **Team**
- **Mission**
- **Guiding Questions**
- **Approach**
- **Summary of Key Insights**
- **Global Dental – Key Insights**
- **Global Medical – Key Insights**
- **Global Animal Health – Key Insights**
- **Appendix**
 - **Global Dental – Market Overview**
 - **Global Medical – Market Overview**
 - **Global Animal Health – Market Overview**



Our Team: *Rival Rousers*

- **Situation Analysis Area:** Competitors
- **EMC Sponsor:** Jim Breslawski
- **Team Leader:** Tim Sullivan
- **Sub Groups:**

Sub Groups:	Dental	Medical	Animal Health
Leaders:	Tim Sullivan	Brad Connett	John Cooper
Members:	George Guttroff	John Orr	Ben Coe
	Dave Steck	Steve Roberts	Lorelei McGlynn
	JP Peyron	Jeff Waldman	
	Rodi Rozin		

Mission

Our mission is:

- ***To gain insights into our competitors' business models and value proposition***
- ***To understand current and future threats posed by our competitors***
- ***To learn what is and what is not working for our competitors and what opportunities may exist for HSI as a result***

3

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Henry Schein-000067289

CX2742-004

Guiding Questions

- **In what distinctive ways are our traditional competitors serving the market?**
 - How does their effectiveness compare with ours in the eyes of the customer?
 - What are our market share trends, by global customer segment and geography?

- **Who are our non-traditional competitors and what unique benefits are they offering?**
 - Who is most dangerous and why?
 - What can we learn from them?

- **What do we learn from looking broadly at benchmarking best practices and metrics?**

Approach

- **Defined broad global markets and split into respective sub-committees:**
 - Dental
 - Medical
 - Animal Health
- **Considered Guiding Questions**
- **Identified all major competitors and developed profiles for each competitor**
- **Developed insights at the country level based on the knowledge of individual team members and looked for commonalities to draw global insights**
- **Used outside resources, such as public company filings and research reports to support findings**
- **Held bi-weekly calls to assess progress and exchange ideas**

5

 HENRY SCHEIN®

Summary of Key Insights

- **Blurring of lines between vendors, distributors and customers due to vertical integration**
 - Manufacturers going direct
 - Distributors acquiring or investing in manufacturing companies
 - Specialty products continue to be sold primarily direct
 - HSI's entry into specialty segments putting us in direct competition with certain vendors
 - Distributors expanding their private label portfolios
 - Distributors acquiring providers
 - Health Systems pursuing direct sourcing and building distribution infrastructure

- **Globalization of competition**
 - Manufacturers continuing to pursue cross-border acquisitions
 - Distributors engaged in global sourcing
 - Distributors starting to copy HSI's strategy of expanding into international markets

- **Growth of non-traditional competitors**
 - "Virtual" distributors, logistics providers, specialized distributors, retail chains, distributors from adjacent markets

6

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Summary of Key Insights

- **Shrinking of HSI's traditional customer base of small, private practitioners**
 - Acquisitions by hospitals and corporate groups
 - Customer consolidation
 - Formation of buying groups

- **Growing margin pressure from:**
 - Vendor consolidation
 - Non-traditional competitors
 - Customer consolidation
 - Availability of pricing information

- **Traditional distributors are being challenged to better demonstrate full value to customers who have many options for lower pricing**
 - Quality, trained salespeople are becoming even more critical than in the past
 - Technology Sales/Support and Business Advice will be the key differentiating factors

7

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CONFIDENTIAL TREATMENT REQUESTED

CONFIDENTIAL - FTC Docket No. 9379

Henry Schein-000067293

CX2742-008

Summary of Key Insights

- **Increasingly sophisticated technologies require a different approach from distributors**
 - Computer software and hardware, CAD/CAM, specialty products
 - Need specialized training and dedicated sales forces
 - Longer and more complex sales process

- **Consumers are becoming more educated about healthcare options available to them and their pets**
 - Using online resources that are mostly free
 - Deciding which procedures and products they want
 - Buying products online

- **Increasing government influence**
 - New regulations and healthcare reform
 - Stimulus spending

- **Growing importance of government relations**
 - Competitors are much more focused on going after government business, lobbying, and building relationships with key decision makers within the government

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Global Dental - Key Insights

- **Vertical integration and expansion into specialty areas is blurring the line between manufacturers and distributors**
 - HSI made investments in manufacturers like Camlog, D4D Technologies, Ortho Organizers, and Ace Surgical
 - Some market participants may wrongly assume that Brasseler USA is a direct manufacturer rather than a distributor, and, as a result, view this recent investment by HSI as another move into manufacturing
 - Key vendors increasingly view HSI as a competitor in certain segments

- **Dental equipment manufacturers abandoning direct sales in favor of distributors**
 - High fixed costs and limited customer reach driving a shift toward distributors
 - CEFLA sold its distribution subsidiary in Italy to Henry Schein
 - Sirona sold its distribution subsidiary in Spain to Henry Schein
 - Planmeca considering going through distributors in Europe
 - Kodak aligning with Benco in the US
 - Vatech looking for distribution partners in the US
 - Biolase chose to go direct again in the US, which is an exception to this trend

Global Dental - Key Insights

■ Specialty products continue to be sold primarily direct

- Market leaders historically have enjoyed a strong market position due to high brand recognition/loyalty, dependence on “high touch” sales methods and high switching costs
- Competitors have been willing to incur significant losses over long periods to develop their brands and build market share
- Increasing competition from low price “generic” or “clone” products
- General practitioners becoming more engaged in specialty procedures
- Advancements in digital technology helping to drive/expand specialty markets

■ Private label products gaining market share against branded products

- Driven by customers’ increased focus on price
- The share of private label sales in the US has increased from 15.5% to 18.0% in the last 3 years
- HSI is still the largest player with 46% of all private label sales in the US, but it’s share has declined by 2% over the same period
- Private label sales represent only 10% of HSI’s overall consumable and small equipment sales in the US
- Vendors are voicing their concerns about private label growth to HSI despite the fact that growth has come from competition

Global Dental - Key Insights

■ Emerging or non-traditional competitors

- “Virtual” distributors
 - Provide an online marketplace where customers can compare prices and purchase products from multiple manufacturers and distributors
 - Don't hold inventory, since orders are drop shipped by participating vendors
 - Collect service fees from vendors based on sales volume
- Logistics providers
 - DHL is the only logistics company currently involved in dental distribution due to its unique relationship with the National Health Service in the UK
 - DHL has a 10-year, multi-billion dollar contract with the NHS to provide medical and dental supplies
 - DHL physically distributes medical supplies, but acts as a “virtual” distributor in the dental market by partnering with Dental Directory to fulfill orders
- Hospital supplies distributors
 - Able to offer much lower prices to dentists in certain product categories such as gloves, masks, disinfectants, and other disposables
- Specialized distributors
 - Focus on one particular product category (i.e. Glove Club)
 - Provide unmatched expertise, service and value
 - Hi-tech equipment segment is also susceptible to such competitors

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Global Dental - Key Insights

- **Traditional distributors are being challenged to better demonstrate full value to customers who have many options for lower pricing**
 - Quality, trained salespeople are becoming even more critical than in the past
 - Technology Sales/Support and Business Advice will be the key differentiating factors
- **Emergence of MAC and Cloud Computing platforms in the Practice Management Software space**
 - Popularity of these platforms is growing
- **Growth in Mobile Device applications for the dental practice**
- **Adoption of digital restoration technologies**
 - 3D imaging
 - Orthodontic imaging technology
 - CAD-CAM

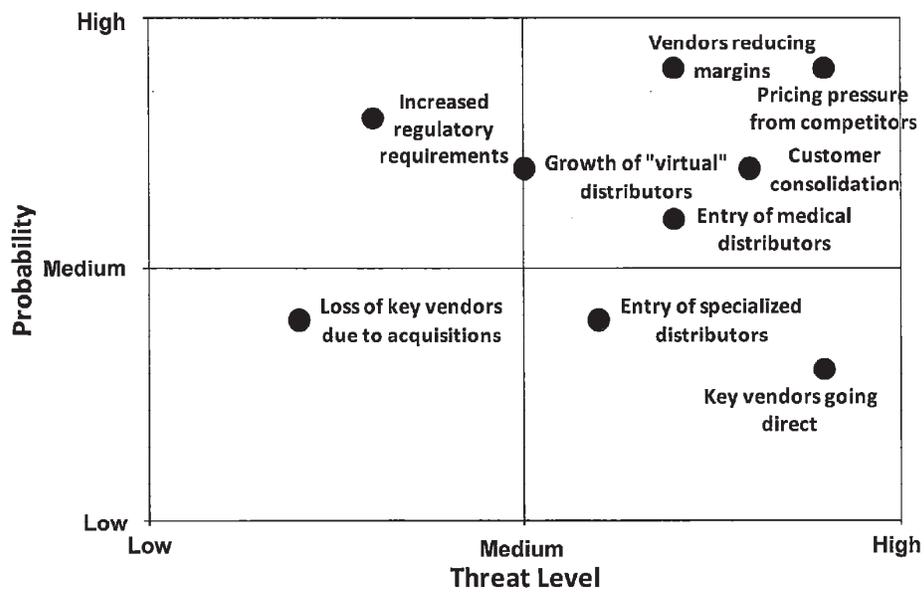
Global Dental - Key Insights

- **Consolidation of dental practices**
 - Looking to leverage their size and buy cheaper
 - May look to source directly from manufacturers

- **Customer profile is becoming more diverse requiring more focused approached by distributors**
 - No true “majority” of ethnic dentist composition
 - Higher proportion of female dentists, who are less likely to go into private practice

Global Dental - Key Insights

Competitive Threats



Global Dental - Key Implications



- 
- 
- HSI must continue to invest in career development and training to ensure customers are getting valued advice and are less likely to turn to low-price competitors

 - HSI must re-evaluate how to approach corporate accounts and how to compensate sales reps as Special Markets becomes a bigger part of the business

 - As general practitioners become more engaged in specialty procedures, competitors will shift resources to address this growing segment

 - HSI must position itself as a leader in specialty products for GP's
 - Offer a total procedure solution (product + equipment + software/technology + education) that can outweigh product specific features and benefits
 - Invest or partner with companies that have innovative, disruptive technologies (e.g. Invisalign, Endovations, etc.) to penetrate established specialty segments

Global Dental - Key Implications

- As market leaders in the specialty segment become vulnerable to lower priced competitors via “low touch” sales methods, HSI should look into online and catalog selling models for specialty products
- Significant organic penetration into the specialist segment may require substantial investments (potentially dilutive) over several years
- Inorganic opportunities may provide an accretive method for accelerated growth in the specialist segment

Global Dental - Key Implications



- **HSI will need to further explore the Ortho market place**
 - Imaging services
 - Case design
 - Surgical guides

- **HSI needs to reaffirm rollout plan for digital restoration solutions for practices and laboratories**
 - Sales channel
 - Pricing model
 - Improve E4D product
 - Lab partners

- **HSI must continue to connect manufacturers, software, and mobile devices as an integrated platform**

- **HSI must have a CHC / REC focus across all business segments**

Global Medical – Key Insights



■ Vertical Integration

- **Manufacturers continuing or increasing their direct sales channel (no distribution), such as Johnson & Johnson**
- **Distributors becoming vertical through self manufacturing, sourcing, and ownership, such as McKesson**
- **Distributors acquiring providers to control their spend on pharmaceuticals and med surg**
 - **McKesson's recent acquisition of US Oncology**

■ Healthcare IT Deal Activity

- **The HCIT industry has seen robust consolidation over the past several years**
- **Larger players have acquired smaller firms to increase their market presence and strengthen their firm's service offering**
- **Consolidation continues in 2010 as vendors are responding with both reactive and proactive acquisitions**

Global Medical – Key Insights

- **Shrinking of HSI's traditional customer base of small, private practices**
 - **Hospitals and Health Systems acquiring private practices**
 - Controlling patient flow and spend
 - Creating infrastructure to handle distribution
 - Contracting directly with manufacturers
 - **Consolidation of private practices**
 - Looking to leverage their size and buy cheaper

- **Technology**
 - **Sophistication of inventory management systems**
 - **Transactional efficiencies**
 - **Pricing transparency**
 - **HL7 / HIPAA / DICOM and other standards are creating a foundation for interoperability**
 - **Security cost/function improvements help overcome key barriers**
 - **Storage/processing cost reductions broaden HCIT accessibility**
 - **Remote hosting and wireless IT enhance scale economies and enable necessary ubiquity**

Global Medical – Key Insights

■ Emerging or Non-Traditional Competitors

- Low barriers of entry
- Small regional distributors selling nationally through the internet
- Acute care distributors, such as Owens & Minor and Medline
- Logistic Providers – DHL, UPS, FedEx, GPO's
- "Virtual" distributors are not a big threat because margins are already low

■ Formation of online portals connecting patients, providers, pharmacies, payors and financial institutions

- Examples include:
 - American Well
 - Hello Health
 - Patients Like me
 - Relay Health (owned by McKesson)
- Telemedicine reduces the need for physical visits to the doctor
- A portal provides a new sales channel for in-home devices, such as diabetes monitors
- Competitors who own these portals are able to sell products directly to patients and spot industry trends quicker through data mining

Global Medical – Key Insights

- **Increasing government influence**
 - Government controlled or owned health delivery systems, such as Beverage, Bismark, Universal, and Pay-for-service
 - US healthcare reform - Public payor and private pay/insurance implications
 - Governments providing stimulus dollars for healthcare industry, including expansion of Community Health Centers and automation of medical practices

- **Strong government relations are an advantage for competitors**
 - Competitors have dedicated resources that focus on lobbying and sales activities
 - Selling to government facilities and programs (vaccines for children)
 - Receive advance notice on upcoming opportunities

- **Government / Regulatory around HCIT**
 - Increased discussion across Capital Hill
 - Nationwide Health Information Network - NHIN – Endorsing Interoperability
 - Certification Commission for Health Information Technology – CCHIT – establishing credibility
 - ICD-10/ICD-9 codes are used by healthcare organizations to classify health diagnoses
 - HIPAA: HIPAA was enacted to ensure the privacy of healthcare information
 - American Recovery and Reinvestment

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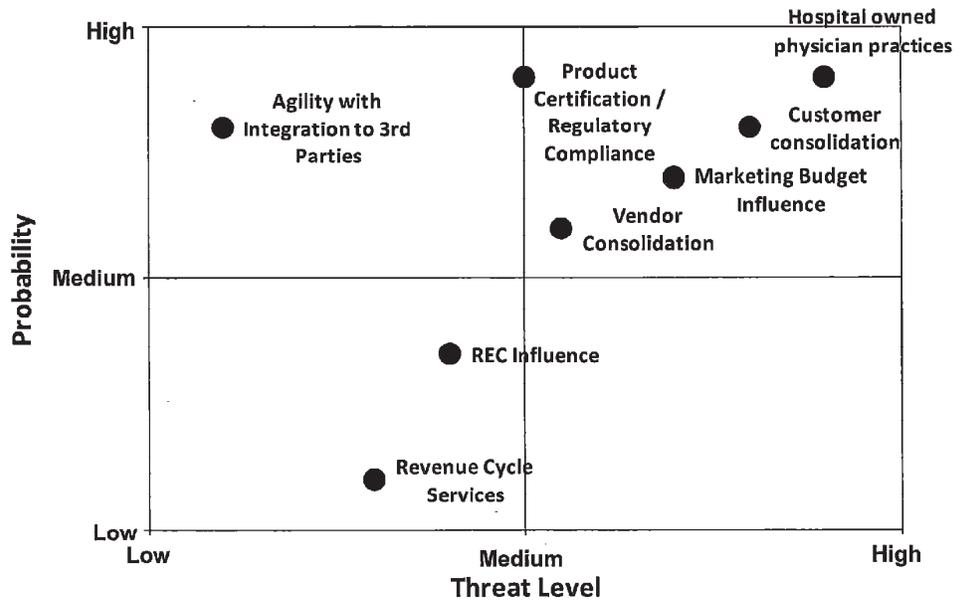
Global Medical – Key Insights

■ Consumerism Effect

- Increased patient knowledge due to availability of medical information online
- Patients demanding specific procedures or products based on their personal research
- Personal health management

Global Medical – Key Insights

Competitive Threats



Global Medical – Key Implications

- HSI must continue to invest in career development and training to ensure customers are getting valued advice and are less likely to turn to low-price competitors
- HSI should acquire or partner with high margin, specialized manufacturers to address vertical integration threat
- HSI should pursue strategic alliances with acute care distributors to address the trend toward hospital owned physician practices
- HSI needs to expand its private label portfolio to counteract margin pressure
- HSI must have a CHC / REC focus across all business segments
- HSI partnered or owned PM/EMR software must be meaningful use certified to remain viable in the industry
- HSI must continue to connect manufacturers, software, and mobile devices as an integrated platform – Connect Health
- HSI must allocate resources to focus on winning government contracts and developing relationships with decision makers within the government

Global Animal Health – Key Insights

- **Key distributors struggling to differentiate themselves and leverage those differentiators**
- **Smaller distributors continue to operate, but their numbers are shrinking**
 - Acquisitions by larger competitors
 - Retirement of owners
 - Bankruptcy
 - Loss of lines from manufacturers
- **Distributor consolidation likely to continue although some regional and specialty type distributors will continue to exist**
- **Cross-border acquisitions by competitors**
 - MWI entering the European market with acquisition of Centaur in UK
- **Loss of product lines in certain markets as vendors consolidate**
 - Pfizer acquisition of Wyeth impacting Germany and Switzerland

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CONFIDENTIAL - FTC Docket No. 9379

Henry Schein-000067311

CX2742-026

Global Animal Health – Key Insights

- **Manufacturer and vendor consolidation likely to continue**
 - Potential threat of losing key product lines if existing vendors are acquired by direct competitors

- **Emerging or non-traditional competitors**
 - Large medical distributors
 - Retail & Internet distributors
 - Short line distributors, focusing primarily on consumables, but also pharmaceuticals

- **Corporate Groups continue to grow**
 - Offer an exit strategy for large hospital owners
 - Typically work exclusively with one distributor
 - Not interested in value added services

- **Rise in buying groups**
 - Not as influential as Corporate Groups, but still focusing primarily on price

Global Animal Health – Key Insights

- **Rise in private label pharmaceutical products among distributors**
 - Dechra, AUV, Richter, WDT have all developed a range of private brand pharmaceutical products to compete with vendors
 - HSI does not have private label pharmaceuticals

- **Change in licensing of pharmaceuticals to be sold through non traditional channels such as pet shops and pharmacists**
 - Will increase the size of the pie, but will cannibalize sales through clinics

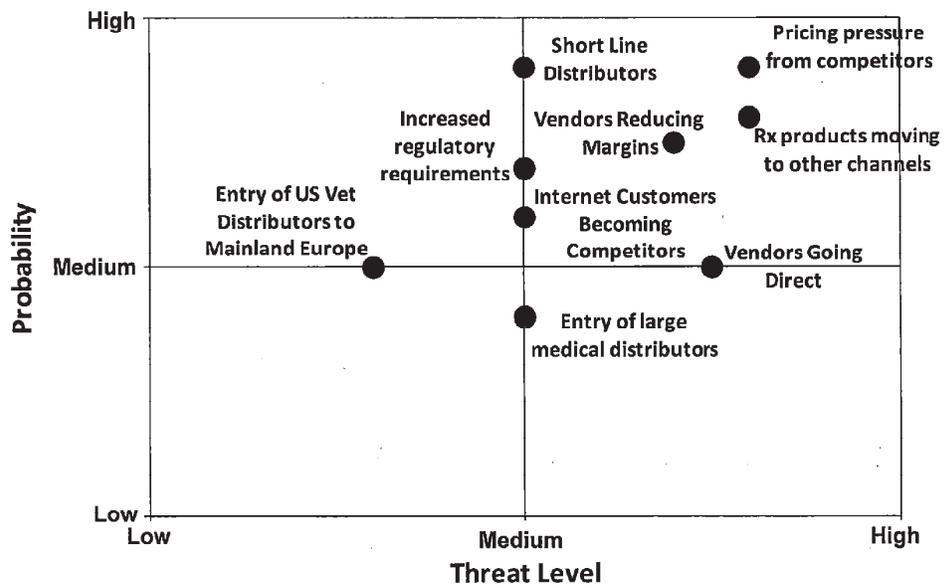
- **Pet owners are looking to the internet more and more for long term meds**

- **Clients are also looking at “big box” Pharmacy promos and specialty retail for lower pricing**

- **Increasing number of clients are setting a ceiling on what they will spend on medical care for their pets**
 - Euthanasia more prevalent
 - A high percentage of Americans do not have Pet Insurance

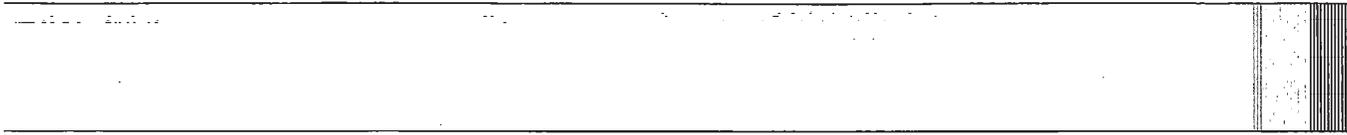
Global Animal Health – Key Insights

Competitive Threats



Global Animal Health – Key Implications

- Own the desktop through major software acquisitions. Integrate and interface to assist Vets business and drive down mutual costs. This makes us stickier to customer and increases switching costs.
- Expand Private Label Globally
- Apply HS Dental model for business assistance to Vet side
- Leverage size and global supply chain for preferential costs and pricing
- Major push as internet supply solution for Vets and their clients
- Continue to expand current market segments such as large animal and institutional
- Expand into new market segments such as retail pet supply
- Buy a manufacturer/supplier
- Leverage differentiators such as financial services, dental, to gain market share. etc. (Pet Insurance?)



APPENDIX

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Henry Schein-000067316

Dental - Market Overview

- **Global dental market is estimated at \$20 billion**
 - Includes dental supplies and equipment, dental specialties products, dental lab supplies and equipment, and dental software and services segments
 - Competition is fragmented on a global basis with top 10 competitors accounting for less than 55% of the market
 - Competition is concentrated in certain markets like the US where top 3 distributors have combined market share of over 80% in the dental supplies and equipment market

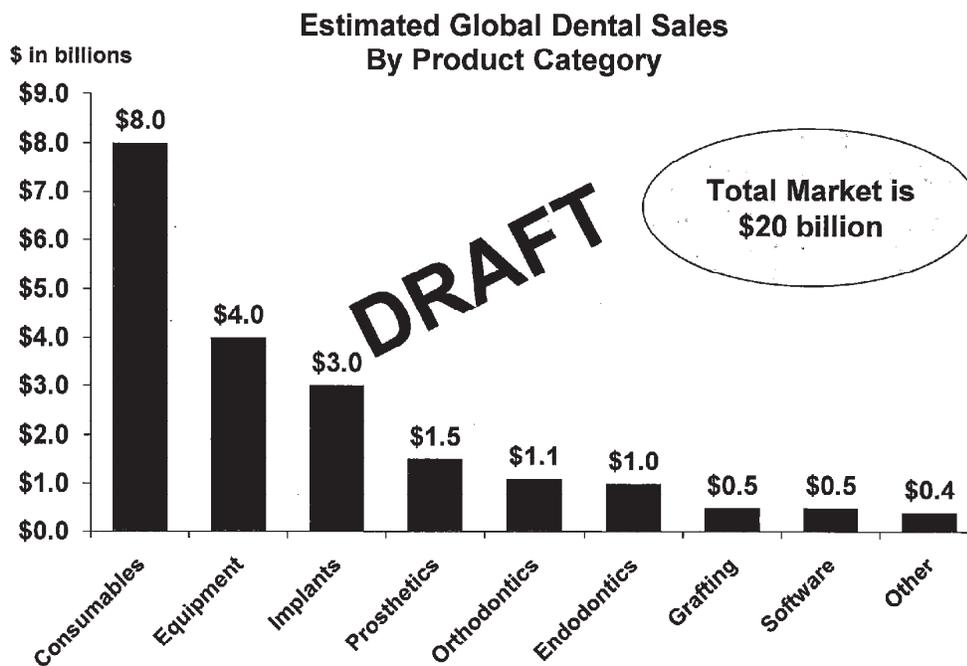
- **Specialty segments are dominated by large direct sellers**
 - Ortho: Ormco/Sybron, 3M/Unitek, American Ortho, GAC/Dentsply
 - Implants: Nobel, Straumann, 3i, Astra, Zimmer
 - Grafting: Geistlich, RTI, Dentsply
 - Endo: Dentsply/Tulsa, Sybron Endo

Global Dental - Market Overview

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 - Grafting: Geistlich, RTI, Dentsply
 - Endo: Dentsply/Tulsa, Sybron Endo

Global Dental - Market Overview



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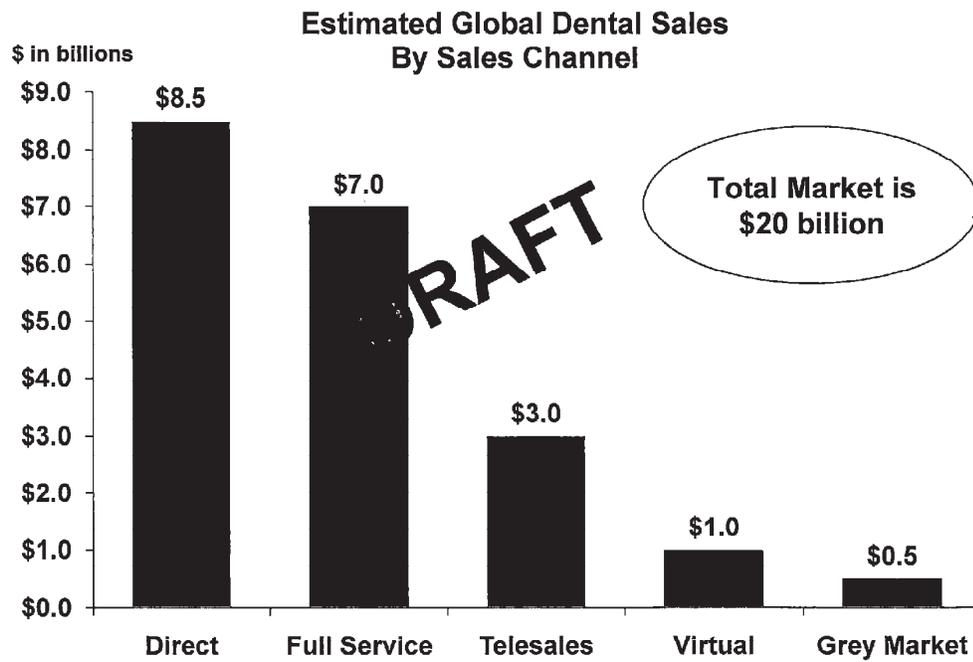
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Henry Schein-000067319

CX2742-034

Global Dental - Market Overview



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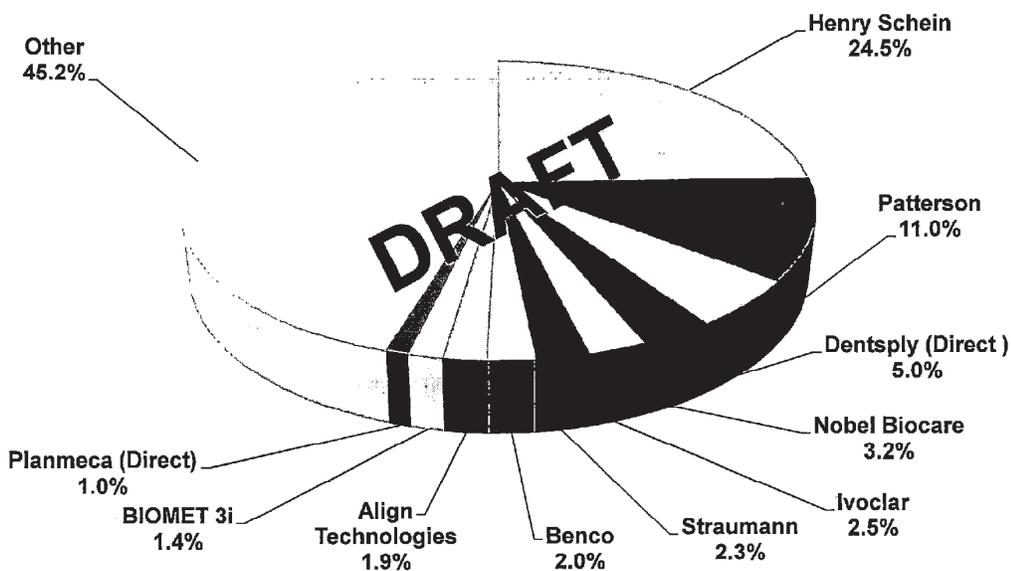
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Henry Schein-000067320

CX2742-035

Global Dental - Market Overview

Estimated Global Market Share
(Total Dental Market is \$20 billion)



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Henry Schein-000067321

Global Medical - Market Overview

- Global medical market is estimated at \$21.7 billion

- Market segments:
 - Pharmaceuticals (excluding pharmacies)
 - Healthcare IT
 - Med Surg
 - Equipment
 - *Excluding Hospitals*

- Competition is fragmented on a global basis with top 10 competitors accounting for less than 55% of the market
 - In the US, the top 4 distributors have combined market share of over 60% within the Alternate Care market

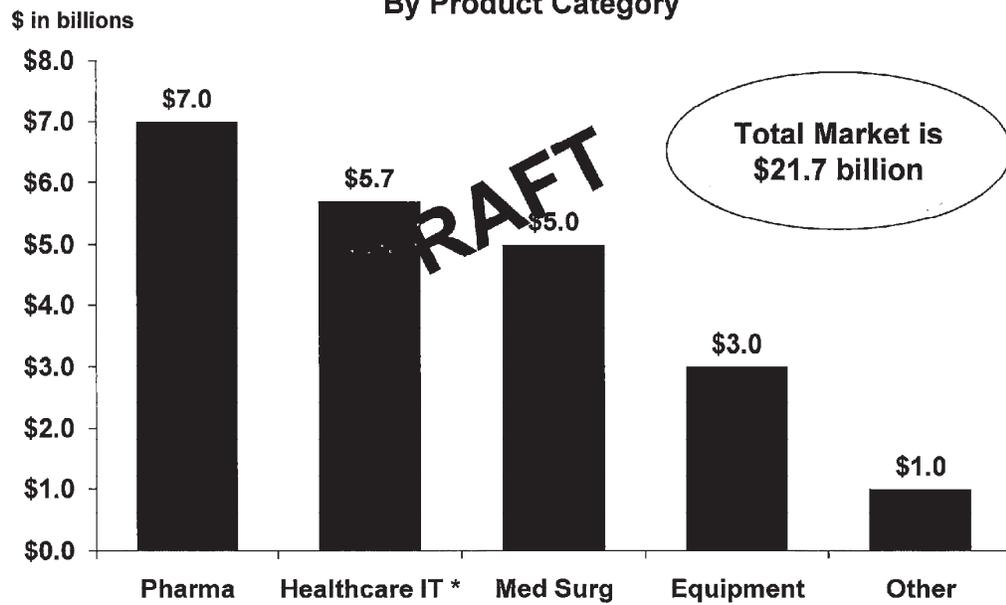
Global Medical - Market Overview

■ US Ambulatory PM+EMR Market

- Over 400 vendors compete in this market, various shapes/sizes
- Regulatory compliance with ARRA HITECH Certification for vendors is driving force for 2010-2012
- Major, multi-faceted organizations with multiple business verticals (McKesson, Allscripts/Eclipsys, Meditech, Siemens, GE, Cerner, Henry Schein, Sage)
- Focused Ambulatory Specific vendors with primary market on PMS software (eClinicalworks, NextGen, Greenway, athenahealth, AdvancedMD, Amazing Charts) – public vs. private status
- Industry Vendor Consolidation continues, creates dominating players
 - Allscripts/Eclipsys (Ambulatory+Acute)
 - McKesson/US Oncology (Full HIS + Specialty)
 - EDI vendors - RealMed acquires Availity
 - Intuit acquires MedFusion (Portal)
- Strategic Partnerships increasing, reach more providers with joint ventures or strategic promotions of solutions (HSMS/GPO's and private labeling)

Global Medical - Market Overview

Estimated Global Medical Sales
By Product Category

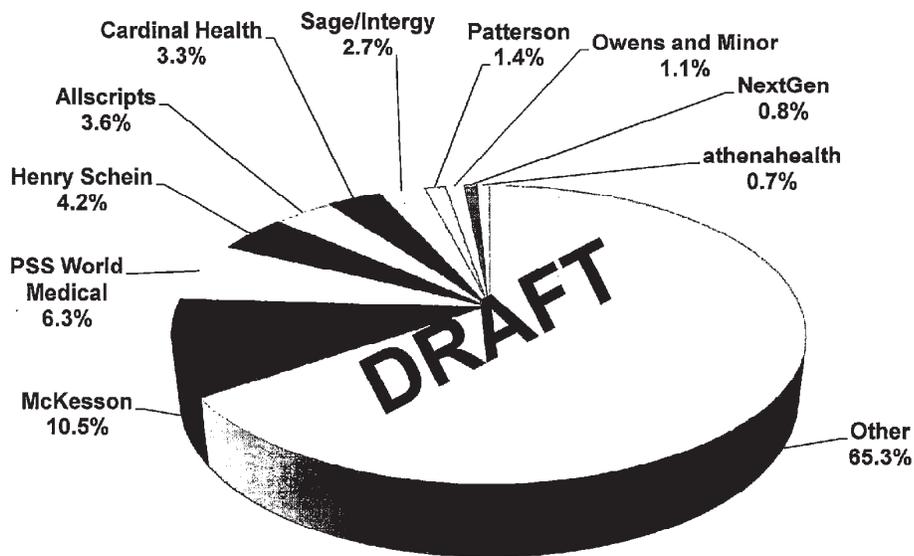


* Practice Management and EMR Software only



Global Medical - Market Overview

Estimated Global Market Share
(Total Medical Market is \$21.7 billion)



Global Animal Health - Market Overview

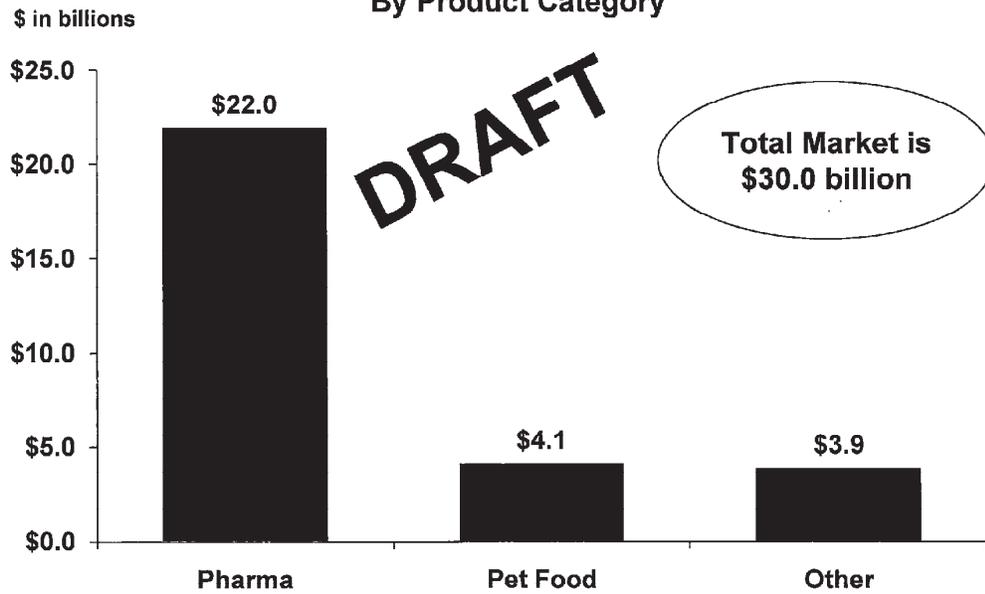
- **Global animal health market is estimated at \$30.0 billion**

- **US Market**
 - 4 players are public (MWIV, HSIC, PDCO, AHII)
 - 3 players dominate the US ethical Veterinary market with over [75%+] market share (Butler Schein AH, MWI, Webster)
 - The top 3 distributors all claim to be “value added” but have failed in large part to leverage their differentiators. The bottom line, in the current market, is availability, price, and relationship.

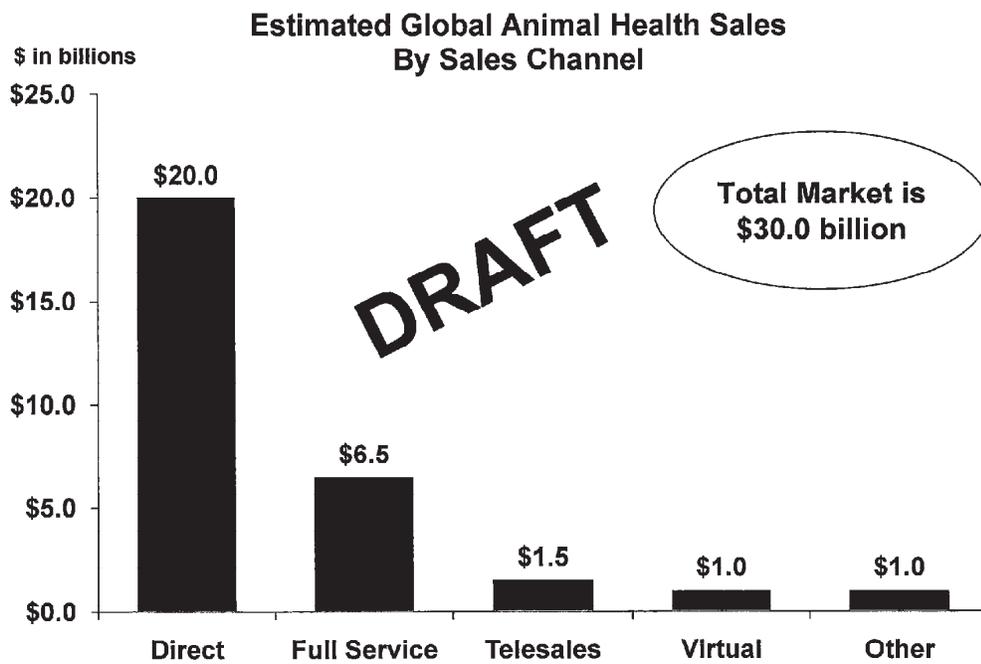
- **European Market (essentially 3 different models)**
 - Wholesale: UK, France and Czech Republic
 - Distributor: Spain and Germany
 - Agency: Switzerland

Global Animal Health - Market Overview

Estimated Global Animal Health Sales
By Product Category



Global Animal Health - Market Overview



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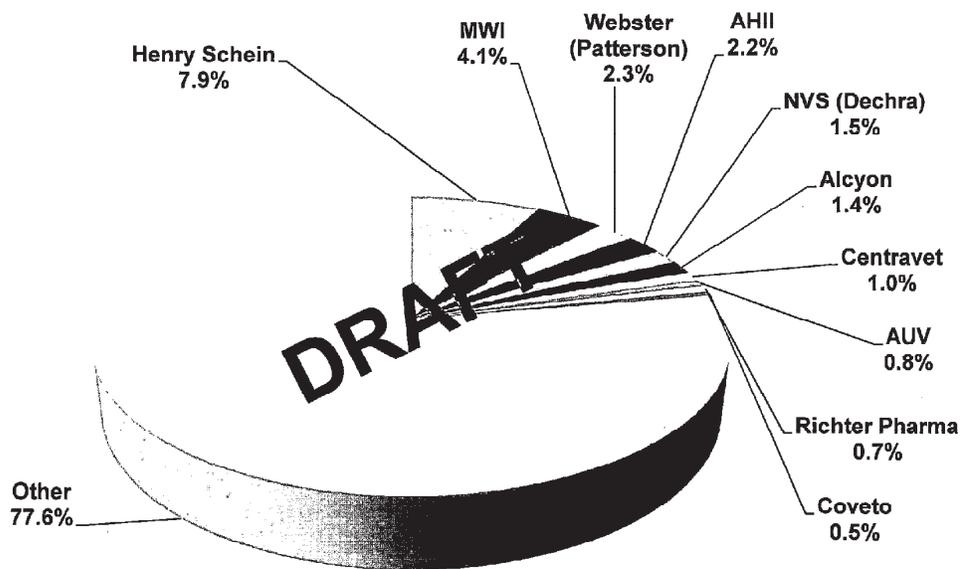
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Henry Schein-000067328

CX2742-043

Global Animal Health - Market Overview

Estimated Global Market Share
(Total Animal Health Market is \$30.0 billion)



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CX2757

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 4:45 PM
To: Upchurch, Kevin
Subject: Re: BigNews

We will cancel too but keep in my mind we cannot collaborate with them.
If they tell us they are not going that is their call.

I can tell you that Burkhart will attend the meeting as they did this in Texas. They have win some business but lost respect of the sales community.

Sent from my iPhone

On Jul 18, 2014, at 4:43 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

Benco is ready to cancel their involvement in the State meeting and from my past conversations with PDCO I would not be surprised if they also decided not to attend. It could make for an interesting state meeting if no distributors were present.

Wm. Kevin Upchurch
Zone General Manager
Western Pacific Zone
Henry Schein Dental
Cell (480) 215.5409
Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 2:41 PM
To: Upchurch, Kevin
Subject: Re: BigNews

Thanks. Same pattern we had with the TDA. They make this announcement and then go run and hide.

Sent from my iPhone

On Jul 18, 2014, at 4:40 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

I sent Terry an email asking him to set aside some time for the two of you to talk when you are in town, he has not responded to my email request.

Wm. Kevin Upchurch
Zone General Manager
Western Pacific Zone
Henry Schein Dental
Cell (480) 215.5409
Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 1:51 PM
To: Upchurch, Kevin
Subject: Re: BigNews

Thanks. I know that will try and avoid us so we have to figure out what type of Monetary support we have given them in addition to the state meeting.

Sent from my iPhone

On Jul 18, 2014, at 3:03 PM, "Upchurch, Kevin"
<Kevin.Upchurch@henryschein.com> wrote:

I have left two messages with the Manager of Business Development for AZDA Terry Xelowski asking him if we could set up a meeting to come talk about what they are doing. I will try again later today.

Terry Xelowski
480-344-5777 ext 313

Wm. Kevin Upchurch
Zone General Manager

Western Pacific Zone

Henry Schein Dental

Cell (480) 215.5409

Office (602) 414.9705

From: Cavaretta, Joe
Sent: Friday, July 18, 2014 11:42 AM
To: Upchurch, Kevin
Subject: Fwd: BigNews

Were you able to secure a meeting while I'm in town? We didn't get a chance to discuss live this week.

Sent from my iPhone

Begin forwarded message:

From: "KELLY, JAMES"
<JAMES.KELLY@henryschein.com>
Date: July 18, 2014 at 1:15:01 PM CDT
To: "Cavaretta, Joe"
<Joe.Cavaretta@henryschein.com>
Subject: BigNews

You probably already have gotten 50 emails on this.

<http://www.azda.org/bignews>

James Kelly
Sent from my iPhone

CX2838

From: Hibbs, Jeffrey
Sent: Tuesday, November 03, 2015 4:05 PM
To: McLemore, Randall; Koulouris, Alex; Haseloff, Jeremy; Ashford, Jimmy
Subject: West TX

Randall

Jeremy filled me in on the "DSO" Andy Edmister started in Lubbock.

Did HSD actually contract with Andy for discounted pricing or is Jay Knight giving the offices the discounts?

Any office that can pay \$300 a month and save 20% and keep getting their Henry Schein products is going to sign. Jeremy will lose a lot of big accounts as word gets out. It will only be a matter of time until I start losing accounts as well.

Kois GPO and SmileSource have already taken several offices from me but I am still battling in out because the doctors can't get everything from Burkhart/Darby.

If Andy Edmister/Jay Knight can get offices all of the Schein supplies and save money, then Jeremy and I won't have much to fight back with.

Schein will lose GP Dollars from existing customers. Jeremy and I could lose our biggest accounts. Andy and Jay will be the only ones that benefit.

God Bless

Jeffrey Hibbs, MBA
Henry Schein Dental
325-428-8275

CX2842

From: Anderson III, Robert (Reg Mgr.)
Sent: Wednesday, December 16, 2015 8:17 AM
To: Chatham, Jeff

Good morning Jeff

3 Things accomplished in 2015

- 1) BDM sales meeting, better content. Relevant to FSC growth. Lead FSC in the right direction.
- 2) Better communication with Rookie FSC. Weekly/Monthly calls. Helping FSC with growth accounts/ equipment goals.
- 3) Dpats goal, FSC engagement. I'm not presenting every Dpat. Team working together to educate/understand how to present and be effective.
- 4) Equipment Pods/ ½ success. Need to more activate in monthly planning session. Training with key vendors. JAN equipment prospecting/Planners. BIG Goals for each FSC.

3 Things disappointed in 2015 goals. Not accomplished

- 1) Total engagement on the importance of Dpat, still have Veteran FSC not engaged.
- 2) FSC MGO goals on equipment 30% mix. May achieve 3 out 10, need higher percent to be successful in 2016.
- 3) More quality FSC cotravel, day needs to be planned to win business. Not just a meet a greet.
 - A) Will have day sheets FSC in 2016, I will pick cotravel days. Not just best/easy accounts
 - B) Get out of office/ more cotravel. Call night before to cotravel.
- 4) Cad/Cam Sales, better planning with FSC/CCS team. Schedule more study group events. Work Dallas trips with FSC/Doctors

- 1) Thing I can do better in 2016. Address how we are going to win in

a Buying Group/ Corporate Dentistry world.

A) Can not continue business as we have in the past. Just excepting losing accounts to buying group is not exceptable. Need to replace vs Owell.

B) Get out of the office/ stay in front of FSC & their Goals. BE a leader not a friend everyday. What is your goal & help them get there in 2016

C) To much money left with Henry Schein in FSC bonus. 3%

Bobby Anderson

Southern Virginia Regional Manager

452 Southlake Boulevard

Richmond, Va 23236

Cell: 804.334.0871

Fax: 804.379.9464



CX2845

From: Porro, Michael
Sent: Tuesday, October 08, 2013 9:03 AM
To: Anderson III, Robert (Reg Mgr.)
Subject: RE: SSC

Leave it with Lisa then...can she grow it?

Michael Porro

Henry Schein Dental

Atlantic Coast Zone General Manager

Charlotte Office / Cell 978.761.3064

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From: Anderson III, Robert (Reg Mgr.)
Sent: Tuesday, October 08, 2013 10:02 AM
To: Porro, Michael
Subject: RE: SSC

We both went through the list. I think so came up with about 30 account.
Some may be duplicates. Some are above \$8000 that I'm going to call the fSC today to ask for their help with transfer.

There is one large perio account in Va Beach area that is Lisa Pearson.

Albert Konikoff 3 office combine they buy over \$10000. We have sold equipment. I sure it could be a large account. She lost \$500,000 to buying group. Thoughts on this?

Most of the Zero purchase accounts are Duplicated,retired, a/r issues.

Thanks

Bobby

From: Porro, Michael
Sent: Tuesday, October 08, 2013 9:33 AM
To: Anderson III, Robert (Reg Mgr.)
Subject:

How did it go getting more accounts for Tyler? Unassigned and assigned buying less than 3-8k

Thanks

Michael Porro

Henry Schein Dental

Atlantic Coast Zone General Manager

Charlotte Office / Cell 978.761.3064

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CX2878

Redacted in Entirety

CX3009

From: McFadden, Neal
Sent: Thursday, March 26, 2015 10:35 AM
To: Smurr, Michael
Cc: Fehling, Christian;Reinhardt, Daniel;Counts, Tony
Subject: Re: BWTP Accounting Firm Supporting a Buying Club

Christian, we have said no to smile source. It is a direct competition to our sales reps. They are buying club and have agreements with study clubs, state institutions, and everybody they can connect with. Thanks

Neal McFadden
President Special Markets
Patterson Dental
Cell 864-346-7209

Sent from my iPhone

On Mar 26, 2015, at 11:32 AM, Smurr, Michael <mike.smurr@pattersondental.com> wrote:

Hi Christian,
I'm not familiar with Smile Source, in particular. I've heard of these buying groups cropping up but the subject falls into our Special Markets area. I'm forwarding this to Neal for his insight.

Mike

Mike Smurr
Director of Marketing, Merchandise
Patterson Dental
P: 651.686.1678 | F: 651.686.0288
www.pattersondental.com

Patient Experience, Practice LifestyleSM
<image001.png>
<image002.png> <image003.png> <image004.png> <image005.png> <image006.png> <image007.png>

From: Fehling, Christian
Sent: Thursday, March 26, 2015 7:41 AM
To: Smurr, Michael
Cc: Reinhardt, Daniel; Counts, Tony
Subject: FW: BWTP Accounting Firm Supporting a Buying Club

Mike,

Have you heard of Smilesource.com? It seems the largest Dental CPA firm, BWTP and Assoc. is promoting this group in the St. Louis and Kansas City area. I was wondering if you had any feedback on the company.

Thank you,

Christian Fehling
Branch Manager

Patterson Dental
St. Louis, MO

Christian.fehling@pattersondental.com

O:314-5951301
C:314-330-4670

From: Evans, Brian
Sent: Thursday, March 26, 2015 6:25 AM
To: Fehling, Christian
Subject: BWTP Accounting Firm Supporting a Buying Club

Christian,
I just wanted to forward you information I got from an office yesterday regarding BWTP supporting a buying club. They're holding a meeting this Friday morning and I know at least one of our customers is going to be there to learn more, which I hope to get additional info.
Have you heard of this before: Smile Source Buying Club
See attachments..
Thanks,
Brian

Brian Evans
cell 314-306-0436

CX3010

From: McFadden, M
Sent: Monday, December 02, 2013 4:32 PM
To: Beckler, Shelley
Cc: Hannon, Jennifer;Rogan, Tim
Subject: Re: Patterson Cross Reference

Thanks. And yes, as of now we are not working with GPO's.

Sent from my iPhone

On Dec 2, 2013, at 5:28 PM, "Shelley Beckler" <Shelley.Beckler@pattersondental.com> wrote:

Jennifer & Tim,

I finally got an answer on this one, which I figured it was a GPO.

To fill Neal in they contacted me with a large amount of products which didn't have Patterson item numbers on and wanted me to add Patterson item numbers on all the products. They didn't say who they really were or why they need them, see below.

In the past we have **not** done business with GPO's just because we don't have the resources or the systems to manage them properly. Let me know how to proceed with this one.

Thanks!

Shelley Beckler CDA, LDA
Account Specialist
Patterson Dental Supply, Inc.,
1031 Mendota Heights Road
St. Paul, MN 55120
(800)328-5536 ext 3235
(651)-905-3235
Fax-(651)-686-0288
shelley.beckler@pattersondental.com

----- Forwarded by Shelley Beckler/PDCO/PDCO on 12/02/2013 04:24 PM -----

From: "Nicholls, Denise" <Denise.Nicholls@ascensionhealth.org>
To: "Shelley.Beckler@pattersondental.com" <Shelley.Beckler@pattersondental.com>,
Cc: "Khan, Taimur" <Taimur.Khan@ascension.org>, "McClay, Michelle" <Michelle.McClay@ascension.org>
Date: 12/02/2013 03:53 PM
Subject: RE: Patterson Cross Reference

Good afternoon Shelley,

I don't have a specific account number to provide, but the intent is that the agreement we put in place would be handled by The Resource Management Group and available to all of our ministries and Participants through incorporating our GPO. The current listing of participants can be found at this website:

<http://www.ascensionhealth.org/communication/vendorparticipants.xls> and is subject to frequent updates.

The cross over reference list should be applicable to all locations.

If you have further questions, please let me know.

Regards,

Denise

Denise A. Nicholls
Manager, Sourcing & Supplier Management
The Resource Group, LLC
Integrating Excellence and Stewardship

An Ascension Subsidiary

Office: 314.733.8552

Customer Care Representatives
314.733.8500

From: Shelley.Beckler@pattersondental.com
[mailto:Shelley.Beckler@pattersondental.com]

Sent: Tuesday, November 26, 2013 9:19 AM

To: Nicholls, Denise

Cc: Khan, Taimur

Subject: Re: Patterson Cross Reference

Denise,

Do you have an account number for the accounts that want to order from us? We don't have the resources to do this here at Corporate, with an account number I can forward this to the Branch involved.

Thanks!

Shelley Beckler CDA, LDA
Account Specialist
Patterson Dental Supply, Inc.,
1031 Mendota Heights Road

St. Paul, MN 55120
(800)328-5536 ext 3235
(651)-905-3235
Fax-(651)-686-0288
shelley.beckler@pattersondental.com

From: "Nicholls, Denise" <Denise.Nicholls@ascensionhealth.org>
To: "Shelley.Beckler@pattersondental.com" <Shelley.Beckler@pattersondental.com>,
Cc: "Khan, Taimur" <Taimur.Khan@ascension.org>
Date: 11/20/2013 12:02 PM
Subject: Patterson Cross Reference

Good morning Shelley,

I am a new Sourcing Manager in the Resource Management Group of Ascension Health. One of my latest projects is to put dental consumables on our Resource Group paper.

I was provided your contact information as a supplier that could potentially quote on our dental consumables and would be willing to work with our terms and conditions.

I am in the beginning stages of gathering data and also waiting on Decision team input to provide direction on where we wish to go from here.

In the meantime, if you could provide Patterson materials that cross to dental materials on the spreadsheet that Taimur Khan provided, under separate cover, that would be appreciated. We will then use that information later when we prepare to go out for on line bids.

If you have any questions, please feel free to contact me.

Regards,

Denise

Denise A. Nicholls
Manager, Sourcing & Supplier Management
The Resource Group, LLC
Integrating Excellence and Stewardship

An Ascension Subsidiary

Office: 314.733.8552

Customer Care Representatives
314.733.8500

From: Shelley.Beckler@pattersondental.com
[<mailto:Shelley.Beckler@pattersondental.com>]
Sent: Wednesday, November 20, 2013 10:54 AM
To: Khan, Taimur
Cc: Nicholls, Denise
Subject: Re: Patterson Cross Reference

Taimur,

I'm not familiar with what this is for or why you need these item numbers. I have sent it to our Marketing Department.

Thanks!

Shelley Beckler CDA, LDA
Account Specialist
Patterson Dental Supply, Inc.,
1031 Mendota Heights Road
St. Paul, MN 55120
(800)328-5536 ext 3235
(651)-905-3235
Fax-(651)-686-0288
shelley.beckler@pattersondental.com

From: "Khan, Taimur" <Taimur.Khan@ascension.org>
To: "shelley.beckler@pattersondental.com" <shelley.beckler@pattersondental.com>,
Cc: "Nicholls, Denise" <Denise.Nicholls@ascensionhealth.org>
Date: 11/20/2013 09:59 AM
Subject: Patterson Cross Reference

Shelley,

My name is Taimur Khan and I am working with Denise Nicholls to obtain Patterson's cross reference to the attached items. The first tab has brief reminders about the data collection and we hope that the template on the second page is functional for your use. Please let us know if we can help in any way and we'll be sure to oblige.

Regards,

Taimur

Taimur Khan

Senior Business Analyst
The Resource Group, LLC
Integrating Excellence and Stewardship

An Ascension Health Alliance Subsidiary

Office: 314.733.8660

Customer Care Representatives
314.733.8500

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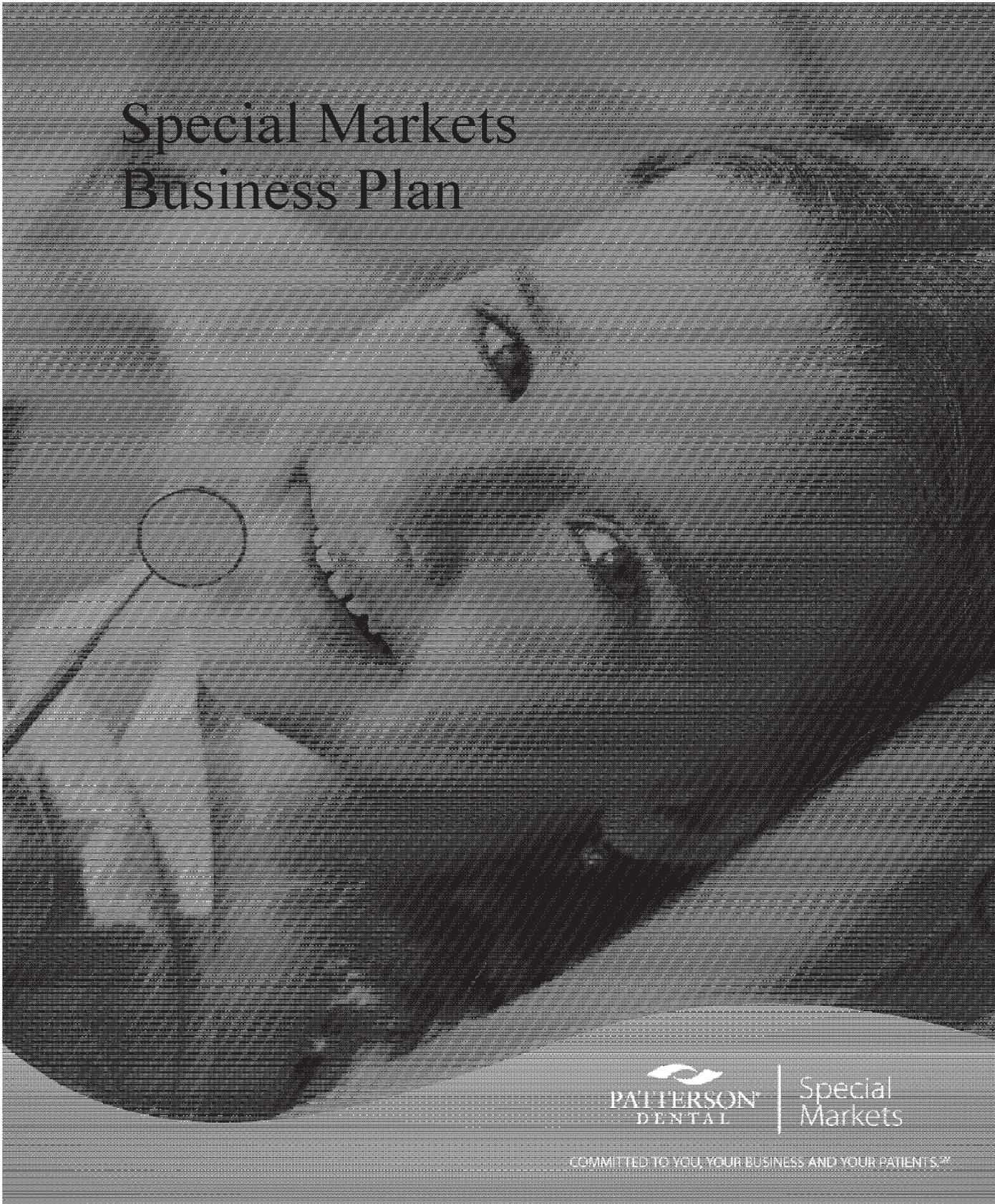
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CX3014

Special Markets Business Plan




PATTERSON
DENTAL

Special
Markets

COMMITTED TO YOU, YOUR BUSINESS AND YOUR PATIENTS.™

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Summary

The growth of corporate dentistry has caused Patterson Dental to look more closely at this new Special Markets segment. The growth is primarily caused by the following:

- Indebtedness of recent graduates
- Lifestyle choices, such as work/life balance and attitudes toward practice ownership
- High cost of acquiring a practice and low return on investment of the sole practitioner model
- Traditional practices are not absorbing as many new graduates as in the past
- Dental Practice Management (DPM) companies or Dental Support Organizations (DSOs) are hiring and have available capital for expansion – mostly through Private Equity investment
- Perceived benefits of practicing in a group practice

DPMs and DSOs are continually growing. In order to achieve their objectives, they are focused on the following:

- Retaining a high patient standard of care through:
 - staff retention
 - clinical continuing education
 - products and technology
- Maintaining procedural fees
- Continuously improving productivity both clinically and operationally
- Protecting themselves from regulatory intervention

DPMs and DSOs are seeking supplier partnerships to assist in overcoming their perceived growth challenges. As a market segment, DSOs seek the following from their supplier of choice:

- Dedication to service
- Willingness to partner
- Ease of doing business

A most recent Patterson Dental commissioned report on the rise of the DSO model stated the following revenue opportunity and growth projections:

Total supply business:

2012 \$580 million

2015 \$952 million

2020 \$1.91 Billion

Michelle Perpich, October 23, 2012

Patterson Dental is estimated to have total revenue of ~\$90 million, including ~\$45 million in supplies annually for fiscal 2014.

The ideal Patterson Special Markets client:

- Needs a partner to help them grow and become more operationally efficient
- Understands and respects technology

- Is forward thinking
- Is clinically focused
- Provides an above-average patient experience
- Wants to differentiate themselves from the “corporate dentistry norm”
- Is not deeply committed to our competitor: low switching costs

Patterson Special Markets

Patterson Dental Special Markets will focus on large group practices with 15 or more locations and/or potential annual merchandise of \$600,000. PSM will also cater to federal customers, including government, military, community and Indian health, schools and institutions. Our target customer mix is 70% DSO/DSM and 30% federal.

Patterson Special Markets has segmented the DSO market into three categories:

- Emerging: Organizations with fewer than 15 locations AND less than \$600,000 of annual merchandise potential
- Established: Organizations with 15-49 locations and/or annual merchandise potential between \$600,000 and \$2 million
- Elite: Organizations with 50 or more locations and/or annual merchandise potential in excess of \$2 million

Organizations with fewer than 15 locations and less than \$600,000 of annual merchandise potential will continue to be managed by the sales branches with support from the VP of Sales as needed. We will develop a strategy to identify and migrate those offices with 10-15 locations to ensure we have a proper “hand off” into Special Markets.

Patterson Special Markets’ initial target audience is the **established** DSOs due to:

- Lower switching costs from current supplier
- Customer need for unique value proposition and other tailor-made solutions to their problems
- These mid-sized customers will give us valuable experience as we ramp up and continue to build out the Special Markets division

All current business designated as “Special Markets” will continue to be managed at the branch level, and the branch will continue to receive the revenue from these customers, both DSO and federal. The Special Markets division will continue to offer centralized support of these accounts where applicable until it may be necessary to centralize (timing TBD). While these customers are being managed at the branch their financials will be included in the branch P&L AND the Special Markets P&L. When these customers become centralized in the future, the branch will no longer have revenue from these customers on their P&Ls.**

All new business generated by and through the Special Markets division will reside solely on the Special Markets P&L and will not impact the branches.

**See segment on Migration for further details.

Vision

To become the partner of choice by assisting our clients in delivering the most cost effective and favorable clinical outcomes for their patients and exceptional practice lifestyle for their dentists

Mission

To reinvent the Special Markets space by partnering with our clients through growth initiatives, innovative services and technology solutions that make a memorable difference in the lives of their patients, while providing an exceptional practice lifestyle for their dentists.

Competitor Analysis

There are primarily two major competitors in the Special Markets space: Henry Schein and Benco. There are many small competitors in the federal space. Schein has and gets business based on longevity in the space. Benco receives business based on price alone. Patterson is known as the distributor that has historically ignored the space and is looked upon as a high priced entry.

Henry Schein

Currently, Henry Schein's Special Markets Division is the dental supplier of choice for over 80 percent of the DSOs. According to the Perpich report, and adjusted for 2014, merchandise revenue for Henry Schein's Special Markets Division from the DSO segment is estimated above \$550 million with an average gross margin of 22 percent. We estimate their overall business in the space to be in excess of \$650 million.

The overall consensus is that Henry Schein has set the bar on centralized support but also has a sense of entitlement and arrogance with the manufacturers and clients. They are the only game in town with 14 years of experience supporting this space. They also have become extremely contentious with their core business sales force, creating an antagonistic culture between the two.

Benco Dental

They have approached the market segment with a "transparent" pricing strategy. They present a proposal of cost plus 16-20%. They have some fairly large regional clients: Affordable Care, Great Expressions and Kool Smiles. Their clients chose them over Henry Schein due to being the only other player in the field or simply due to cheaper supplies. Benco currently offers no unique value proposition in the space other than price.

Amazon

Amazon could become a formidable competitor in this space, where huge volume and price sensitivity is the norm.

Current Situation

Patterson Dental's current decentralized model has been attractive to the DSO's that we have historically done business with. They appreciate the local branch support and territory rep

relationships. The new business of Special Markets desires centralized support with no territory representative and everyday low prices. The current format creates inconsistencies in service, support and pricing when a client crosses branch boundaries. This is frustrating for DSO's.

Pricing

The customer wants everyday low prices. They do not want to receive their discount after the fact or in the form of a loyalty program or free product. This requires working with the manufacturers to give Patterson lower prices when their products are sold to DSOs. Typically this is negotiated by line item, by customer, with the manufacturer at the time the contract is being created. These wholesale discounts vary depending on the size of the customer. By negotiating these discounts with the manufacturer ahead of time, Patterson can offer everyday low prices to the customer. We refer to this model as "net down" pricing. An additional component to this new pricing model is the importance of analytical reporting. In order for Patterson to get reimbursed for net down pricing, essential and accurate reports must be generated on each account each month or quarter.

Current Model Operation/Finance Structure

Structure

- Revenue, cost of goods sold, and commissions for **ALL** business passes through the branches and is invoiced, scheduled, etc. at the branch level. This includes all large group accounts.
- A Special Markets P&L has been created that identifies the revenues, cost of goods sold, and commissions related to Established & Elite accounts, though they are also shown at the branch level.
- Beginning in FY15, any new business that Special Markets acquires will post directly to Special Markets, and will not be duplicated at the branch level. These will be included on the same P&L mentioned in the bullet above.

Issues

- Many branches have created their own unique discount structure to include additional Advantage Dollars and other methods to secure the business; this is not consistent from branch to branch or based on customer size.
- In most situations, the vendors have not been asked to participate in the discounts passed on to group customers that are managed by the branches.
- Branches receive all the revenue and commissions from group accounts, including those customers that are managed by corporate where the branch and/or sales rep have little involvement.

- Clients, or our own Special Markets inside team on their behalf, have to work with the individual branches to purchase equipment or request technical service. This breeds inefficiency, delays and visible inconsistency in pricing.
- New customers must be set up at the branch level, creating a back-and-forth with the SM inside team that often takes several days.
- Branch personnel typically do not have the financial acumen to keep the accounts receivable records for these customers with multiple locations accurate and up to date.

■ Updates in Progress

The IT department is building out the necessary foundational needs to give the Special Markets team tools to centrally manage customers. Phase 1 of this project goes live with fiscal 2015. The Special Markets team needs full branch functions to manage all new business without the need of a local branch. Tasks included in this phase include:

- Setting up account
- Billing and crediting and rebilling
- Scheduling and/or requesting service calls

In addition to the above, behind-the-scenes plumbing is being built that will become functional at the start of FY15. This will allow centralized customers to be flagged so their revenue and cost of goods sold post directly to the Special Markets P&L, bypassing the branches. This flag will also “lock out” the branch from making adjustments to customer information, etc. This essential IT work will be the basis for additional IT work that will take place prior to the ERP SAP implementation.

■ Migration of Current Business

As mentioned in the definition, the Special Markets division will focus solely on those practices with 15 or more locations. Current business that meets the definition will continue to reside at the branch level until the customer requests centralization or at which time it is strategically decided to migrate the account. Once that request has been made, the following will transpire:

- The official transition plan will be initiated
- Patterson Special Markets will handle all day-to-day business with said account.
 - Special Markets will administer the account information and this functionality will be “locked down” so the branch cannot make changes in CSS (Phase 1 – May FY15)
 - Accounts receivable will be centralized (this ability already exists)
 - Customer returns will be centralized – Call Tags distributed from Special Markets inside team (we currently have the ability to do this) or Self Service Returns (Piloting in FY15)
 - Remove the ability of the branch to place orders or process credits for merchandise in CSS (Phase 2 – TBD)
 - Special Markets will request to schedule service for the customer in CSS (Phase 1 – May FY15) – the branch will see the request and schedule a technician
 - Details for Clearview protocol to follow
 - Special Markets will schedule and bill for service calls (Phase 2 – TBD)
- The revenue and cost of goods sold will post directly to the Special Markets group and will no longer post to the branch.

- Launch the Special Markets web experience. A seamless transition to the client that excludes items that DSO's cannot use, such as Advantage \$, Free goods, and other pricing promotions.
- It will be determined by management (President of Special Markets and VP Sales for Dental) whether or not a territory representative will remain assigned to the said account.
- Territory and CEREC sales representatives will no longer receive commissions for sales to the customer. IF it is strategically determined (see bullet above) that a territory representative is needed for the client relationship we will pay the representative a "Special Markets commission" of 10% on merchandise ONLY to be paid manually and quarterly. CEREC representatives will not be paid on Special Markets sales.
- In many circumstances, equipment sales representatives will stop receiving commissions for "commodity" sales to the customer *(see below). In the case where the equipment specialist is needed to assist with a large order/ new office, Special Markets will request their assistance and they will be paid through commission adjustments at a rate that is 20% less than the normal commission rate. The expense for these commission adjustments will be manually submitted and paid by Special Markets.
- Special Markets will "contract" the service technicians to perform technical service for said account (see technical service section for details).
- The branch budget will be adjusted to reflect the sales that have been removed from their P&L

* Examples of equipment commodities: Single items ordered through equipment or service such as:

Compressor
 Vacuum
 Sterilizer
 Intra-Oral x-ray replacement
 Light
 Small equipment such as cavitron, etc

Special Markets believes that all current branch "Special Markets" accounts will migrate into the centralized system over time. Meanwhile, our main focus and priority is on new incremental business.

Below is a listing of the accounts that make up the Special Markets P&L to date:

American Dental Partners
 AppleWhite Dental
 Aspen Dental Management
 Christie Dental
 Church Street (FORBA)
 CMS
 Corizon
 Dental Care Alliance
 Dental One Partners
 East Carolina University
 Famila Dental
 Family 1st Management
 Health Partners

Heartland Dental
ImmediaDent Management,
LLC
Jefferson Dental
Kaplan Higher Education
Mayo Foundation
Medical Teams International
MI Community Dental Clinics
Midwest Dental
Military – ECAT ACCOUNTS
National Dentex
Orthosynetics
Other
Pacific Dental
State of Florida

Strategic Focus and Value Proposition

Patterson Dental Special Markets feels that with a unique value proposition focused on growth, operational efficiency and unique technical service it could have a different impact within the established DSO space (15 or more locations). Regarding the Elite space (50 or more locations), our strategy is to lead with our best-in-class equipment and technology, primarily A-dec and Sirona, as a foot in the door.

Patterson Special Markets feels that we can offer value to the space by helping the clients grow and become more operationally efficient both organically and inorganically, allowing them to grow their current business while acquiring and setting up denovos.

It is also understood that each Special Markets account has unique needs and is structured in a unique way. Therefore, it may become necessary to develop an individualized value proposition to meet the needs of special circumstances based on opportunities, challenges and requisite solutions.

We feel that Henry Schein has grown complacent and relies on their historical advantage of supporting the growth of Special Markets through their large centralized infrastructure.

Special Markets Offerings

Merchandise

Sundries Pricing Model

Develop a pricing template for all group sizes, which is a rational and consistent strategy. Branding for these tiers is underway and will be displayed in branch systems for their reference when servicing the customer. To create consistency, the definition of these classes (i.e., 15-24 locations) will carry through various aspects of our pricing model. We will build a marketing story around the 5 levels. Also, the levels are A,B,C,D,E so they will be easy for the branches to remember when billing. Some customers may be grandfathered in initially. Below is the initial pricing we will model on merchandise.

INITIAL CLASSES TO MODEL MERCHANDISE PRICING:

		Annual Merchandise	Branded Merchandise Gross Margin	Patterson Brand Merchandise Gross Margin
<i>Accelerated</i>	15-24 locations	\$600,000 up to \$1M	~25% GM	~28% GM
<i>Business</i>	25-49 locations	\$1M up to \$2M	~23% GM	~26% GM
<i>Champion</i>	50 to 124 locations	\$2M up to \$5M	~21% GM	~24% GM
<i>Dynasty</i>	125 to 249 locations	\$5M up to \$10M	~19% GM	~22% GM
<i>Elite</i>	250 or more locations	\$10M +	~17% GM	~20% GM

Numbers may be adjusted after initial modeling.

Since Patterson has not been in this space, we feel we need to be aggressive with merchandise pricing to get our foot in the door. Core equipment opportunities are a by-product of the merchandise relationship. We will use sales of core equipment and proprietary technology products to raise our overall blended Gross Margin percentage.

Returns will be handled by printable call tags or return services labels, without a territory representative or branch involved.

Pharmaceuticals will be a necessary addition to the Special Markets team as many RFPs will be sole source distributor. An anomaly is American Dental Partners, which purchases supplies from Patterson but pharmaceuticals from Henry Schein.

Work with Patterson Logistics on customer differentiated opportunities – best-in-class delivery for top client experience.

Pattersondental.com

Merchandise Order Management:

Create a Special Markets Pattersondental.com web facing page, to launch FY15, displaying the client's logo with their formulary attached. The IT department will remove any free goods and Advantage dollars.

Patterson Proprietary Offerings

- Free or special deal on CAESY patient education software with new merchandise partnership
- Special pricing on Patterson Office Supplies
- Discounts on RevenueWell
- Complimentary office design services

1-800-DENTIST

Partner with Futuredontics:

Designed to drive new patients to client and also regenerate lost or complacent patients within the practice. Patterson Special Markets will offer new centralized business a 4-month trial with 5 select modules designed to grow the client's current business:

- 1-800-DENTIST – Drive new leads to the office
- Patient Activator – Patient communication tool
- Patient ReActivator – Mine for lost or complacent patients within the clients database
- Reputation Monitor – Track how the client's organization is perceived within the marketplace
- Web Director – Customized web development for both PC and handheld devices

Mercer 360 Planning

Partner with Mercer:

Recently acquired by Patterson Dental, the Mercer team will offer Special Markets new business 6 months of complimentary access to OnTrack, designed to perform the following:

- Prioritize the areas you need to pay attention to
- Monitor those areas and provide real-time feedback
- Systems to offer solutions to close the gaps

QSI Partnership

Establish a true business partnership with QSI to offer large DSOs a complete practice management solution on the cloud. No money will change hands within Patterson and QSI. It is suggested that QSI will offer all new Special Markets clients a discount for the referral.

Technical Service Offering

Patterson Dental boasts the largest and best technical service field force in the country. Patterson Special Markets will utilize the local technical service departments to service its centralized business. By utilizing the existing branch service departments we plan to offer all new Special Markets business the following value proposition:

- Centralized service dispatch through their “one point of contact”
- Online scheduling of technical service calls
- Dedicated technicians assigned to affiliates
- Proactive response: A monthly automated scheduled courtesy call by a designated technician
- Patterson Technology Center hotline for all technology service needs
- National repair hotline for all everyday repairs
- Extended warranties on select products
- Response time guarantee on service calls
- Guaranteed cost of ownership with select new business when purchasing A-dec equipment
- National Service Contract including pre-paid technical service

We will offer the same tiered model as merchandise for service:

INITIAL CLASSES TO MODEL SERVICE PRICING:

		Labor Rate	Parts Discount	Natl Rpr Discount	MFG Repair Discount
<i>Accelerated</i>	15-24 locations	\$115	10%	10%	10%
<i>Business</i>	25-49 locations	\$105	10%	10%	10%
<i>Champion</i>	50-124 locations	\$95	15%	15%	15%
<i>Dynasty</i>	125-249 locations	\$80	15%	15%	15%
<i>Elite</i>	250 or more locations	\$70	15%	15%	15%

Numbers may be adjusted after initial modeling.

- Current business will remain and be managed at the branch level until the time comes to migrate the account(s). All new business will be centralized and managed by the Special Markets division. Special Markets will employ a service coordinator(s) to work with the local branches to schedule technical service for Special Markets accounts. Special Markets agrees to supplement the local branch at the current Gold Advantage rate for that branch. For example, if the branch Gold Advantage rate was \$180:

- For an account that has 15 or more locations and is NOT centralized: the branch will service and bill the customer directly. The Special Markets division will NOT supplement the branch.
- In the case where an account that IS centralized calls for technical service labor: the branch bills the customer at \$80 per hour. The Special Markets division will give \$180 per hour to the branch as goodwill, because the branch did not receive ANY revenue from the invoicing.
- In the case where an account that IS centralized needs equipment installed: the Special Markets division will give the branch \$180 per hour for commodity installs. When a complete installation occurs Special Markets will establish a flat rate reimbursement for the branch (i.e., \$5,000). The customer will be billed at no charge.
- The Special Markets division will create a new annual incentive opportunity for the entire service department at each branch based on their service to Special Markets customers. The additional bonus will require a completed survey and/or a satisfaction scorecard filled out by the select affiliate and returned to the Special Markets division. The amount is TBD and will be paid annually.

Customer Reporting Suite

A reporting suite will be developed in conjunction with several of our current and initial future customers. Once we have intelligence from a few of these interviews we will create a reporting suite to be offered to all Special Markets Customers. The goal is to have a reporting suite defined by the beginning of calendar 2015.

Forecast

SPECIAL MARKETS	FY2015	FY2016	FY2017	FY2018
REVENUE	\$105,000,000	\$120,000,000	\$140,000,000	\$170,000,000
<i>Growth Rate</i>	17%	14%	17%	21%
GM%	23.7%	23.7%	23.7%	23.7%
GROSS MARGIN	\$24,900,000	\$28,400,000	\$33,200,000	\$40,300,000
TOTAL EXPENSE	\$12,200,000	\$14,000,000	\$16,300,000	\$19,500,000
Operating Income	\$12,700,000 12.1%	\$14,400,000 12.0%	\$16,900,000 12.1%	\$20,800,000 12.2%

Organization

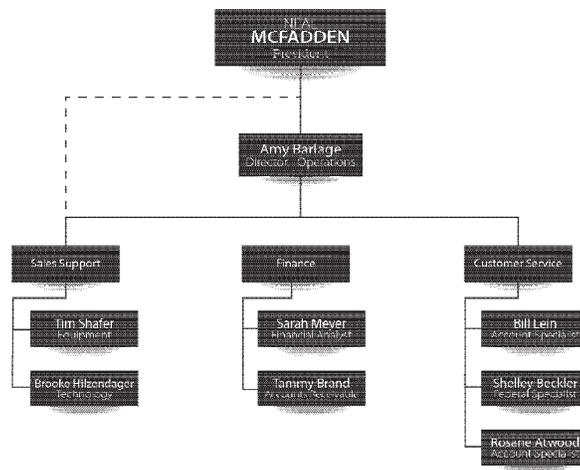
Today

We have added three necessary positions in Special Markets in FY14:

- Director of Operations
- Financial Analyst
- Account Specialist (one additional)



Current Organization Chart



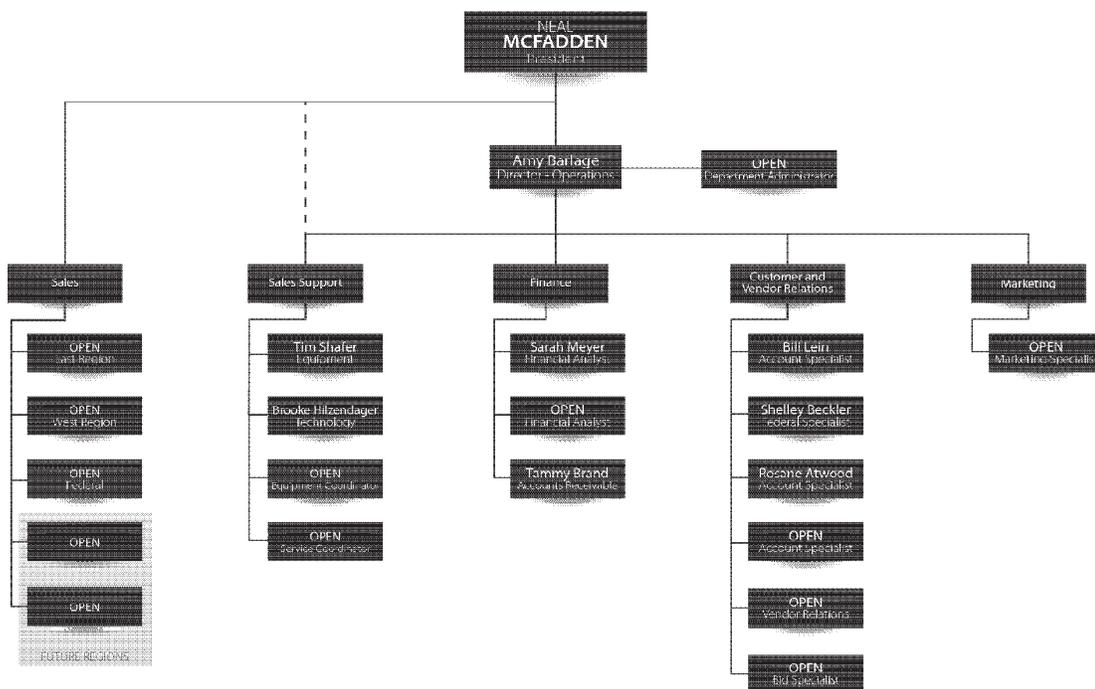
Tomorrow

In FY15 budgeted proposed positions include:

- 2 Bid Specialists/Vendor Relations
- Equipment Coordinator
- Service Coordinator
- 2 Field Sales Representatives: East and West Coasts
- 2 Account Specialists
- Department Administrator
- Financial Analyst
- Marketing Specialist
- Federal Specialist



Organization with Proposed Positions



■ **Special Markets Regional Sales Representatives**

It is proposed to have four Special Markets Regional Sales Managers by the end of FY16 focusing on the following markets: New England, Florida, Texas, and California. For the short term, in Q2 of FY15 two sales representatives will be hired: East and West regions – ***actual region lines may vary:**



Special Markets Regional Sales Representatives will focus on new business for the organization and serve as a support liaison for the two Elite clients currently with Patterson Dental: American Dental Partners and Pacific Dental Services.

The position will be salaried with a performance based bonus% of salary.

It is recommended that as Special Markets is building out its business the guaranteed pay of the sales reps be a higher % of the total for the first year. Therefore, a portion of the bonus will be guaranteed during the first year for the initial representatives hired, and paid quarterly.

Sales Rep Compensation	Year 1	GOAL (Year 2)
Base Salary	\$110,000	\$110,000
Bonus %	50%	50%
Bonus \$	\$55,000	\$55,000
Target Total Compensation	\$165,000	\$165,000
Bonus Guarantee % of Salary	25%	0%
Guarantee \$	\$137,500	\$110,000
Total Guarantee % of Target	83%	67%

An example of bonus metrics would be:

- New Business in fiscal year – 50% of bonus
- Growth of current business within region – 30% of bonus
- Sirona sales growth – total dollars or growth – 10% of bonus
- Adec sales growth – total dollars or growth – 10% of bonus

We are also looking at an expense budget of \$30,000 per representative.

CEREC and A-dec Plan

Patterson Special Markets' entry into this space brings two of the biggest manufacturers: Sirona and A-dec. Both have dedicated themselves to pursuing this business. Each has established a matrix supporting the various sizes of DSOs.

Current Business

CEREC Pilot Programs

Since 2012 Sirona has offered pilot programs to several DSOs. A pilot is a 120-day CEREC "trial" where the client pays \$3,000 per month for up to four units each to try with select dentists. Sirona spearheads this and handles all training. If the client decides to proceed with purchasing the CEREC then two-thirds of the pilot fees are credited toward the cost of each CEREC unit. A similar pilot program exists for Digital Impressioning and lasers. Sirona trains Special Markets customers. Once Patterson Special Markets hires field sales reps we will take the leadership role in these pilots.

Future Program

Sirona

Sirona and Patterson have agreed to the following pricing tiers:

	Discount off of MSRP			Patterson Group Practice Margin
	Tier 1	Tier 2	Tier 3	
	10-24 Installations	25-99 Installations	100+ Installations	
Intraoral				
- Equipment	45.0%	50.0%	55.0%	28.0%
- Upgrades	50.0%	55.0%	60.0%	25.0%
Extraoral				
2D (incl. Hediodent)	30.0%	32.0%	35.0%	25.0%
3D	22.0%	24.0%	26.0%	25.0%
3D Service Contracts	22.0%	24.0%	26.0%	25.0%
CAD CAM				
- Equipment	10.0%	15.0%	20.0%	30.0%
- Service Club	10.0%	15.0%	20.0%	40.0%
Lasers				
Laser and Consumables				
- SiroLaser Xtend	28.0%	30.0%	32.0%	20.0%
- SiroLaser Advance	24.0%	26.0%	28.0%	20.0%
- Consumables	30.0%	34.0%	37.0%	20.0%



The Dental Company

As of March 11, 2014		Tier 1 - 15-24 Installs			Tier 2 - 25-99 Installs			Tier 3 - 100+ Installs		
Patterson Standard Cost:		Customer	Patterson	Patterson	Customer	Patterson	Patterson	Customer	Patterson	Patterson
Product Configuration	MSRP	Retail Price	Branch Cost	True-Up	Retail Price	Branch Cost	True-Up	Retail Price	Branch Cost	True-Up
		10%	@ GM	Due / (Owes)	15%	@ GM	Due / (Owes)	20%	@ GM	Due / (Owes)
Complete Packages										
Cerec OmniCam + MCXL	\$ 136,995	\$ 123,296	\$ 86,307	\$ (15,545)	\$ 116,446	\$ 81,512	\$ (10,750)	\$ 109,596	\$ 76,717	\$ (5,956)
Cerec OmniCam + MCXL Practice Lab	\$ 139,995	\$ 125,996	\$ 88,197	\$ (10,648)	\$ 118,996	\$ 83,297	\$ (5,748)	\$ 111,996	\$ 78,397	\$ (848)
Cerec OmniCam + MCX	\$ 129,995	\$ 116,996	\$ 81,897	\$ (14,748)	\$ 110,496	\$ 77,347	\$ (10,198)	\$ 103,996	\$ 72,797	\$ (5,649)
Cerec OmniCam + MC	\$ 109,995	\$ 98,996	\$ 69,297	\$ (12,471)	\$ 93,496	\$ 65,447	\$ (8,621)	\$ 87,996	\$ 61,597	\$ (4,772)
Cerec AC Blue Cam + MCXL	\$ 106,995	\$ 96,296	\$ 67,407	\$ (12,132)	\$ 90,946	\$ 63,662	\$ (8,387)	\$ 85,596	\$ 59,917	\$ (4,642)
Cerec AC Blue Cam + MCXL Practice Lab	\$ 109,995	\$ 98,996	\$ 69,297	\$ (7,235)	\$ 93,496	\$ 65,447	\$ (3,385)	\$ 87,996	\$ 61,597	\$ 465
Cerec AC Blue Cam + MCX	\$ 99,995	\$ 89,996	\$ 62,997	\$ (11,335)	\$ 84,996	\$ 59,497	\$ (7,835)	\$ 79,996	\$ 55,997	\$ (4,335)
Cerec AC Blue Cam + MC	\$ 79,995	\$ 71,996	\$ 50,397	\$ (9,058)	\$ 67,996	\$ 47,597	\$ (6,258)	\$ 63,996	\$ 44,797	\$ (3,458)
Acquisition Units										
Cerec OmniCam	\$ 68,995	\$ 62,096	\$ 43,467	\$ (7,829)	\$ 58,646	\$ 41,052	\$ (5,414)	\$ 55,196	\$ 38,637	\$ (3,000)
Cerec AC Blue Cam	\$ 38,995	\$ 35,096	\$ 24,567	\$ (4,416)	\$ 33,146	\$ 23,202	\$ (3,051)	\$ 31,196	\$ 21,837	\$ (1,686)
Milling Units										
MCXL	\$ 68,000	\$ 61,200	\$ 42,840	\$ (7,716)	\$ 57,800	\$ 40,460	\$ (5,336)	\$ 54,400	\$ 38,080	\$ (2,956)
MCXL Practice Lab	\$ 71,000	\$ 63,900	\$ 44,730	\$ (2,819)	\$ 60,350	\$ 42,245	\$ (334)	\$ 56,800	\$ 39,760	\$ 2,151
MCX	\$ 61,000	\$ 54,900	\$ 38,430	\$ (6,919)	\$ 51,850	\$ 36,295	\$ (4,784)	\$ 48,800	\$ 34,160	\$ (2,649)
MC	\$ 41,000	\$ 36,900	\$ 25,830	\$ (4,642)	\$ 34,850	\$ 24,395	\$ (3,207)	\$ 32,800	\$ 22,960	\$ (1,772)
Digital Impression Machines										
Cerec OmniCam Connect	\$ 49,995	\$ 44,996	\$ 31,497	\$ 1,435	\$ 42,496	\$ 29,747	\$ 3,185	\$ 39,996	\$ 27,997	\$ 4,935
Cerec AC Blue Cam Connect	\$ 25,995	\$ 23,396	\$ 16,377	\$ 746	\$ 22,096	\$ 15,467	\$ 1,656	\$ 20,796	\$ 14,557	\$ 2,566
Apollo DI	\$ 19,750	\$ 17,775	\$ 12,443	\$ 567	\$ 16,788	\$ 11,751	\$ 1,258	\$ 15,800	\$ 11,060	\$ 1,949
Service Club										
Service Club - Acquisition Unit (std)	\$ 149	\$ 134	\$ 80	\$ 7	\$ 127	\$ 76	\$ 12	\$ 119	\$ 72	\$ 16
Service Club - Milling Unit	\$ 70	\$ 63	\$ 38	\$ 3	\$ 60	\$ 36	\$ 6	\$ 56	\$ 34	\$ 8
Service Club - Connect Club	\$ 149	\$ 134	\$ 80	\$ 7	\$ 127	\$ 76	\$ 12	\$ 119	\$ 72	\$ 16

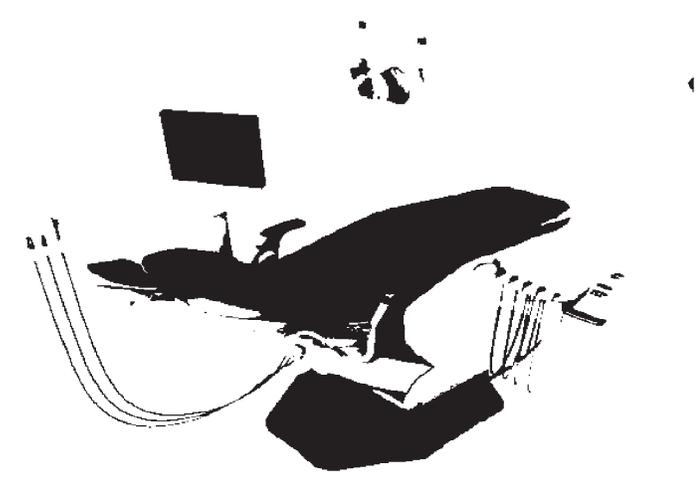
A-dec

A-dec has designed an operatory package specifically for the Special Markets space. This package cannot be sold through the branches without approval from the President of Special Markets and the Vice President of Sales for Patterson Dental.

The new "BRONZE" package (Basic package – gold and silver options available at \$16,930 and \$15,591 retail) will be tailored on the following matrix:

Baseline	Retail	DC	Dir GM	Selling Price to DSO	% off Retail	Diff from baseline selling Price	Projected Revenue to Patterson	Projected Savings to Customer
1	\$ 14,474	43%	32%	\$ 12,133	16.2%	\$ -		\$ -
Emerging DSO Scale (Draft)								
Min	Max	DC	Dir GM	Selling Price				
15	24	51%	27%	\$ 9,715	32.9%	\$ 2,417	\$ 233,170	\$ 58,013
25	50	52%	26%	\$ 9,389	35.1%	\$ 2,744	\$ 469,427	\$ 137,204
51	99	53%	25%	\$ 9,070	37.3%	\$ 3,062	\$ 897,967	\$ 303,162
Elite DSO Scale (Draft)								
Min	Max	DC	Dir GM	Selling Price				
100	200	54%	24%	\$ 8,761	39.5%	\$ 3,372	\$ 1,752,116	\$ 674,408
201	300	55%	23%	\$ 8,459	41.6%	\$ 3,674	\$ 2,537,649	\$ 1,102,136
301	400	56%	22%	\$ 8,165	43.6%	\$ 3,968	\$ 3,265,928	\$ 1,587,119
401	500	57%	21%	\$ 7,878	45.6%	\$ 4,254	\$ 3,939,127	\$ 2,127,182
501		58%	20%	\$ 7,599	47.5%	\$ 4,534		

Note: Contract would stipulate a 2 year time window as a standard to reach increments



Federal

It is proposed that 30% of Special Markets business will be federal. This consists of the following areas:

- Government/Military
- Community Health

- Indian Health
- Schools

We will have a full electronic catalog (ECAT) for the government by the end of calendar 2014. We are taking the current ECAT product selection from 2,000 products to over 57,000 products. This will increase the potential in sales with the government exponentially. According to our third-party contractor, Deborah Peyton, Henry Schein currently gets over \$120 million in federal sales. By increasing our ECAT selections our goal is to capture 40% of this market.

We will also have a full GSA/FSC contract by fall 2014. This will give both the branches and Special Markets the opportunity to bid for state, local government, community health and Indian health business that Patterson has not historically gone after.

We will build an internal federal support team to support the new Special Markets field sales force. Plans are to add one internal support position in Q4 of FY15 and then add a new Federal Field Sales Representative beginning FY16.

Marketing

A Patterson Special Markets marketing plan will be developed and worked on throughout FY15. Some aspects of the marketing focus will include both internal and external marketing:

- Advertising in First Impression publication in July FY15: 3 full-page ads and 1 editorial – create client awareness
- Special Markets trade show displays and banners
- Special Markets “Patterson Today” Q4 FY15
- Special Markets formulary Q4 FY15
- Sponsor and attend the Dental Group Practice Association board meeting in July 2014
- Sales rep presentation tools such as sales material and electronic media
- Participate in key DSO annual meetings such as Pacific Dental’s XP meeting and American Dental Partners’ Best Practices meeting
- Participate in several donation opportunities with key DSO accounts
- Direct Marketing to all group practices within target market

We will build a marketing plan and story around the 5 levels of Special Market clients:

Accelerated Class	15-24 locations
Business Class	25-49 locations
Champion Class	50-124 locations
Dynasty Class	125-249 locations
Elite Class	250+ locations

Appendix

Bid Specialist/Vendor Relations:

Assigned to complete and manage all Requests for Proposals (RFPs) and work with each manufacturer to determine appropriate wholesale pricing

Equipment Coordinator:

Work with all Special Markets clients as a centralized point of contact for equipment needs
Acts as the liaison between the account and the local branches for equipment

Service Coordinator:

Responsible for scheduling and monitoring the technical service needs of all Special Markets accounts
Works with the local branches to complete technical service needs: both repairs and installations
Will assist in tracking all rates and "remuneration" to the local branch service department

Account Specialist:

Required to handle the specific needs of assigned account

Department Administrator:

Acts as the department administrative assistant supporting inside and outside personnel: books travel, assists with processing/tracking branch remuneration, assists with AR administration

Financial Analyst:

Responsible for both client unique reporting, manufacturer reporting and internal reporting needs

Marketing Specialist:

Future position to include all external communication and promotions for the Special Markets division

Federal Specialist:

A Q4 position to handle all new ECAT and GSA needs

Sirona Technology Target Accounts: CEREC, Schick, Lasers, Panoramic & Conebeam

Pacific Dental	fully integrated
ADP	Schick - CEREC pilot – planned for May 14
Affordable Care	purchased 7 CEREC units
Applewhite	Schick
Coast Dental	CEREC pilot – planned for May 14
Dental Care Alliance	CEREC pilot – in progress – purchased 1 unit
Dental One Partners	CEREC pilot – in progress
Dental Depot	Schick
Gentle Dental –NW dental services	CEREC pilot – in discussions
Heartland	CEREC pilot – in discussions
Immediadent	Schick
Jefferson Dental	Schick
Lane and Associates	
Midwest dental	
Northeast Dental Management	Schick and Pans
Ocean Dental	Schick
Interdent	
Park Dental	

Special Market Target Accounts:

Firm	Contact	Title	City, State, ZIP	Phone
Affordable Care, Inc.	Mr. Doug Brown	CEO	Raleigh, NC 27607	252-208-3201
Allied Dental Practices	Dr. Edward B. Poller	CEO	Toms River, NJ 08753	732-914-1213
American Dental Partners	Greg Serraro	CEO	South Wakefield, MA 01880	781-213-0223
Aspen Dental Mangement, Inc.	Bob Fontana	CEO	East Syracuse, NY 13057	315-454-6000
Birner Dental Management Services, Inc.	Mr. Fred Birner	CEO	Denver, CO 80210	303-691-0680
Clear Choice Implants	Kevin Mosher	CEO		303-217-2409
Dental Associates	Mr. Anthony Vastardis	CEO	Wauwatosa, WI 53222-3108	414-778-5290
Dental Care Alliance	Mr. Mitch Olan	CEO	Sarasota, Florida 34237	941-955-3150
Dental Depot	Dr. Glenn Ashmore	CEO	Oklahoma City, OK 73107	405-949-0123
DentalOne Partners	Keith Newton	CEO	Mayfield Heights, Ohio 44124	216-584-1800
Dentisty For Children	Frank Baynham	CEO	Marietta, GA Sarasota, Florida 34237	678-244-4299
Dynamic Dental	Alex Giannini	CEO	Waltham, MA 02451	941-918-4300
Gentle Dental Partners	Dr. Ronald G. Weissman	CEO		617-966-3374
Great Expressions Dental Centers, Inc.	Rich Beckman	CEO	Bloomfield Hills, MI 48304	248-203-1121
Heartland Dental Care	Rick Workman, DMD	CEO	Effingham, Illinois 62401	217-540-5100
InterDent, Inc.	Vito Dacchille	CEO	Vancouver, Washington	310-765-2437

			98683	
Jefferson Dental Clinics	Mr. Chris Srong	CEO	Dallas, Texas 75234	469-766-7561
Katsur Management Group, Inc.	Dr. James T. Katsur	CEO	Altamonte Springs, FL 32714	407-718-5798
Midwest Dental	Jeffrey Moos, DDS	CEO	Mondovi, Wisconsin 54755	715-926-5050 x 131
Northeast Dental Management	Dr. Craig Abramowitz	CEO	Paramus, NJ 07652	201-291-0935
Northwestern Mgmt/Gentle Dental Group	Joseph Garcia	CEO	Boca Raton, FL 33487	561-999-9650
Ocean Dental	Chad Hoecker, DDS	CEO	Stillwater, OK 74074	405-707-6199
Onsite Health	Ern Blackwelder	CEO	Arlington, VA	571-257-2409
OrthoSynetics	David Marks	CEO	Irvine, Texas	888-622-7645
Pacific Dental Services	Mr. Stephen Thorne	CEO	Irvine, CA 92618	714-845-8405
Refresh Dental	Ken Cooper	CEO	New Castle, PA	724-698-2475
Samson/Immediadent	Theresa Schikirke	CEO	Leawood, KS	816-304-3332
Smile Brands	David Young (interim)	CEO	Irvine, CA 92618	714-824-5140
West Coast Dental	Dr. Fahrad Manavi	CEO	Los Angeles, CA 90025	310-820-9933
Western Dental Centers	Simon Castellanos	CEO	Orange, CA 92863	714-571-3690

The above accounts are members of the DGPA. In addition to these we have created an “ongoing” list of discovered opportunities:

Ocean Dental	Tampa Florida	800-327-6453	180 locations
Mortenson Dental	Louisville, KY		
Park Dental	Minneapolis, MN		
Bold Dental	Bentonville, AR		
Hero Mgt/Academy Kids	Denver, Co		
Family First	Omaha		

CX3016

From: neal.mcfadden@pattersondental.com
Sent: Wednesday, April 23, 2014 7:56 PM
To: Guggenheim, Paul
Subject: Fwd: ShoreTel voice message from NEW HAMPSHIRE , +16033250535 for mailbox 65102
Attachments: 7WN6AB24I.wav; ATT00001.htm

My reply to Ed. FYI. I agree with you.

Sent from my iPhone

Begin forwarded message:

From: "Neal McFadden" <neal.mcfadden@pattersondental.com>
Date: April 23, 2014 at 12:49:37 PM CDT
To: "Edward Ferrero" <edward.ferrero@pattersondental.com>
Cc: "David Misiak" <david.misiak@pattersondental.com>
Subject: Re: Fw: ShoreTel voice message from NEW HAMPSHIRE , +16033250535 for mailbox 65102

ED -- I have received several calls from GPO's - -I cannot find any advantage to PDCO moving in this direction , other than taking the account from Darby - - Its a slippery slope. If you want to call him and dig into some details and ask the hard questions that's fine - -They tout a 20% saving to the dentists on supplies - - like I said - its slippery..... I don't know what the future holds but as of this moment I am sure we should pass on these groups. Thanks

Neal McFadden
President Special Markets
1031 Mendota Heights Road
St. Paul, MN 55120
direct: 651-686-1945
cell: 864-346-7209
fax: 651-686-0288

Edward Ferrero---04/23/2014 12:35:43 PM---Hello Neal, I hope this message finds you well.

From: Edward Ferrero/PDCO/PDCO
To: Neal McFadden/PDCO/PDCO@PDCO,
Date: 04/23/2014 12:35 PM
Subject:Fwd: ShoreTel voice message from NEW HAMPSHIRE , +16033250535 for mailbox 65102

Hello Neal,

I hope this message finds you well.

I received this message yesterday from Dr. Baker. How should I handle it?

Thanks

Ed

Edward Ferrero
Boston Branch Manager
Patterson Dental

----- Forwarded by Edward Ferrero/PDCO/PDCO on 04/23/2014 09:53 AM -----

From: "ShoreWare Voice Mail" <voicemail_sender@NT124732>
To: <edward.ferrero@pattersondental.com>,
Date: 04/22/2014 02:54 PM
Subject: ShoreTel voice message from NEW HAMPSHIRE , +16033250535 for mailbox 65102

You have received a voice mail message from NEW HAMPSHIRE , +16033250535 for mailbox 65102.

Message length is 00:00:58. Message size is 455 KB. *(See attached file: 7WN6AB24I.wav)*

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CX3031

From: Frank Capaldo [capaldo@gadental.org]
Sent: Friday, September 11, 2015 12:11 PM
To: Cousins, Peter
Cc: Melana McClatchey;Antinora, Liz;Lisa VanZandt;Fruehauf, Anthony;McFadden, Neal
Subject: Re: RFP

Peter,

I am confused as your immediate prior email indicated you were setting up dates to sit down and talk with us and include your president!

Nothing ventured nothing gained as you may have found there is opportunity in sitting face to face before making a decision.

Although disappointed I will convey your response to the Board and membership.

Regards,

Frank

Sent from my iPhone

On Sep 10, 2015, at 3:10 PM, Cousins, Peter <Peter.Cousins@pattersondental.com> wrote:

Good afternoon everyone,
After careful consideration Patterson Dental has made the decision not to respond to the RFP at this time.
We certainly value our relationship with the GDA and will continue to support you as we have in the past.

Thank you for your understanding,

Pete Cousins
General Manager- GA/Chattanooga
Patterson Dental Company
1775 West Oak Parkway Suite 500
Marietta, GA 30062

<image001.png>

From: Melana McClatchey [mailto:mcclatchey@gadental.org]
Sent: Tuesday, September 08, 2015 5:53 PM
To: Frank Capaldo; McFadden, Neal; Antinora, Liz
Cc: Cousins, Peter; Lisa VanZandt
Subject: RE: RFP

Greetings:

Please find attached a Non-Disclosure and Confidentiality Letter Agreement. Once you have had an opportunity to review and sign the Agreement, please countersign and email it back to me. Thank you very much.

Sincerely,
Melana

Melana Kopman McClatchey
Georgia Dental Association
General Counsel
7000 Peachtree Dunwoody Road
Bldg. 17, Suite 200
Atlanta, Georgia 30328
Tel: 404.636.7553
Fax: 404.633-3943
mcclatchey@gadental.org

<image002.png>

Worried about how the Affordable Care Act is going to affect your health insurance plan?

No need to worry! Call GDIS today to learn about our exclusive group health plan offered to GDA members!

Call today! **(404)-636-7553** or **(800) 432-4357**

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From: Frank Capaldo

Sent: Tuesday, September 08, 2015 2:55 PM

To: neal.mcfadden@pattersondental.com; liz.antinora@pattersondental.com

Cc: peter.cousins@pattersondental.com; Lisa VanZandt <vanzandt@gadental.org>; Melana McClatchey <mcclatchey@gadental.org>

Subject: FW: RFP

Neal and Liz,

Please see below and attached.

Frank J. Capaldo
Executive Director
Georgia Dental Association
7000 Peachtree Dunwoody Road, NE
Suite 200, Building 17
Atlanta, GA 30328-1655
capaldo@gadental.org
404-636-7553
678-428-0096 (cell)
404-633-3943 (Fax)
www.gadental.org

GDA Vision Statement

“Georgia: A state with optimal oral health.”

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From: Frank Capaldo
Sent: Tuesday, September 08, 2015 11:48 AM
To: 'peter.cousins@pattersondental.com' <peter.cousins@pattersondental.com>
Cc: Melana McClatchey <mcclatchey@gadental.org>; Lisa VanZandt <vanzandt@gadental.org>
Subject: RFP

Pete,

As promised, attached please find the RFP for your consideration and response. Melana will forward the Confidentiality and Non-Disclosure to you later this week. As for the dates for responses and return we will work with you considering the late entry into the process.

In addition, I would very much like you to meet with our COO, Lisa VanZandt, who heads up the project. Meeting face to face and all can exchange questions information and begin a working relationship

Thank you,

Frank

Frank J. Capaldo
Executive Director
Georgia Dental Association
7000 Peachtree Dunwoody Road, NE
Suite 200, Building 17
Atlanta, GA 30328-1655
capaldo@gadental.org
404-636-7553
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GDA Vision Statement

“Georgia: A state with optimal oral health.”

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CX3086

From: Gosselin, Denis
Sent: Wednesday, November 26, 2014 1:10 PM
To: Guggenheim, Paul
Cc: Beaudet, Marc
Subject: RE: "buyers group"

Importance: High

At the end, how much comfortable are we with working with a Sirona KOL (Chagger) while this guy was behind this buying group ? One thing sure, since this buying group been turned down by Patterson, I am sure they are trying to reach an agreement with another distributor.....does Chagger still involve ? Paul, do you plan reaching out to Chagger and see which side he picks ?

Denis

Denis Gosselin, CPA, CA
 PATTERSON DENTAL CANADA INC
 National Finance &
 Operations Director
 514.745.4040 (x6376)
 514.745.0596 Fax
 514.898.3338 cell
denis.gosselin@pattersondental.ca

From: Beaudet, Marc
Sent: Tuesday, November 25, 2014 12:45 PM
To: Guggenheim, Paul; McCallum, Ross; Doroshenko, Gary
Cc: Gosselin, Denis
Subject: RE: "buyers group"

I wouldn't worry too much guys.

Interesting fact: Khois preaches high quality over and over again.

Dentists are no fool and they expect a good level of service; it's just a matter of time
 Before they realize who they are dealing with, aka Lars.

Have a great day everyone!

From: Guggenheim, Paul
Sent: Tuesday, November 25, 2014 12:22 PM
To: McCallum, Ross; Doroshenko, Gary
Cc: Beaudet, Marc; Gosselin, Denis
Subject: RE: "buyers group"

Ross, Gary,

We have explored this opportunity for both the U.S. and Canadian business and decided to pass at this time due to the implications to our margins and therefore our Sales Reps.

Paul

Paul A. Guggenheim
President-Patterson Dental Supply

From: McCallum, Ross
Sent: Monday, November 24, 2014 2:26 PM
To: Doroshenko, Gary
Cc: Guggenheim, Paul; Beaudet, Marc
Subject: RE: "buyers group"

Hi Gary

As per our discussion today please be advised that we are very aware of the KOIS group. They approached Marc Beaudet in Toronto and he in turn has spoken to Paul Guggenheim about them. Paul had a conference call with them and he will make the decision for both Canada and the USA on this. As I said to you their presentation numbers are crazy as they are asking us to cut margins to the bone. I have copied Paul so if there is any new information he can reply.

Thanks
Ross

Ross McCallum
National Business Development Director
Patterson Dental Canada
Office 519 657 5065
Cell 519 619 5199
ross.mccallum@pattersondental.ca

From: Doroshenko, Gary
Sent: Thursday, November 20, 2014 11:13 AM
To: McCallum, Ross
Subject: FW: "buyers group"

Hey Ross
Have a look... do you k now anything about this?
Thanks
Gary

From: Linda Lutz [<mailto:mstoothfairy2@gmail.com>]
Sent: Wednesday, November 19, 2014 8:03 PM
To: Barnes, Nigel; Doroshenko, Gary
Subject: "buyers group"

Hi Guys

Jordan Nofle pulled me aside today and spoke to me about a Buyers group being formed by KOIS in Seattle, of which many of my clients go to for training.

The TODS meeting also had the local Drs meeting about the buying power of the corporations coming our way.

He said Larr sales is stepping up to the plate and may be the Canadian distributor. He has joined the group to get all the info, but he will not participate if it compromises his customer service however, price is an issue and he is exploring the options that the buyers group is promising.

He also said Patterson US is stepping up in the states but has not responded in Canada so I mentioned Andre's passing and he understood

What are we doing with this???? He wants to keep me in the loop, that is why he told me about this.

Help!

Linda Lutz
Patterson Dental
250-470-7009

CX3089

From: Sullivan, Sean
Sent: Thursday, December 18, 2014 6:41 PM
To: Guggenheim, Paul; Michaud, Brian
Cc: Turner, Walter
Subject: RE: Kois buying group

Thanks for the reply Paul. I wouldn't say that Kois followers are more prevalent in San Diego than other cities but they are certainly our high quality / high producing clients. The two clients that we have lost to this "experiment" (Dr. Jeff Gray & Dr. Davis Perry) are both Platinum Advantage clients so the cut is deep to us all. The philosophical challenge is that Kois and his group are well known as high quality clinicians who spend a great amount of time perfecting their patient experience which makes them a perfect match for our services. In Dr. Gray's case, he's a Kois instructor and feels that he will be letting down his "tribe" if he did not follow suit with Dr. Kois.

Brian, Walter, and I (along with Jason and Jody from El Segundo) are putting our heads together to combat this as best we can. We want to make you aware of the situation in case an opportunity arises for you to address this with Dr. Kois or one of his tribe. We'll keep you updated as we learn more and meet with the doctors to address and measure the results.

Sean

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

From: Guggenheim, Paul
Sent: Thursday, December 18, 2014 3:31 PM
To: Michaud, Brian
Cc: Sullivan, Sean; Turner, Walter
Subject: RE: Kois buying group

Thanks Brian, Keep me posted on what you guys conclude here. How prevalent is Kois in S.D.? I thought they were more concentrated in the Northwest?

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

From: Michaud, Brian
Sent: Thursday, December 18, 2014 5:02 PM
To: Guggenheim, Paul
Cc: Sullivan, Sean; Turner, Walter
Subject: Kois buying group

Paul,

Hope all is well with you and you're staying warm!

I wanted to write you a brief email just to let you know that my customer, Dr. Dave Perry 456637214, has also decided to move his business from Patterson to the "Kois buying group".

I'm writing not to gripe, but rather provide you with the information I gathered from my conversation with Dave Perry. I know that this has come up with Walter, as well as others, so I thought it important.

Dr. Perry expressed to me that he will be leaving Patterson to join the buying group. According to him:

He will save 25% - 30% on his supply bill. Dr Perry has run the numbers and he believes that he will save \$30,000 - \$35,000. It is just too much savings for him to ignore.

He says that it's hard for him to make the change. He's been my customer for 20 years, and he says it should be no reflection on me or the excellent service I've provided all these years.

He is going to track his savings very carefully and if it doesn't work out, he would like to come back as a customer.

Additional:

- Burkhardt is the chosen supplier
- Dr considers Kois high integrity, so he's difficult for us to impeach
- Dr was told that the Kois group is going to negotiate directly with mfg for better deals.
- Patterson doesn't do a good job separating support costs and Cerec supplies on the doctors statement, so he will likely tell them he spent more than he really did with Patterson. This makes it easier for them to show a savings. I will work on preventing this.
- not sure if I heard this from the doctor, or with my discussion with Walter, but Burkhardt is going to give a rebate to the doctor if they don't save the amount they promised.

I have yearly business meetings with my doctors and Dr. Perry's supply overhead with Patterson has been:

2013 - 5.77%
2012 - 5.85%
2011 - 5.39%

The above numbers are determined by the production numbers shared by Dr. Perry.

Sean, Walter and I plan on putting our heads together and preparing a report for our doctors on exactly where they were with Patterson, so that they know what to compare to.

Unfortunately, many of our best doctors are Kois followers, so I think this is a precarious situation for us as a company. Any additional information or guidance you can provide would be appreciated.

Thanks,

Brian Michaud
Patterson Dental
(951) 285-7368 mobile/text

CX3128

From: Stewart, James
Sent: Thursday, October 23, 2014 3:22 PM
To: McFadden, Neal
Cc: Barlage, Amy; Misiak, Dave
Subject: RE: Kois Buying Group?

Neal,

Received a call from another TR today who asked the same question, is Patterson participating in a group buy program through Kois. Evidently, this customer stated that Kois asked all 600 members what they spend annually in supplies, for them to pull the number to go to all the national distributors to bid it on. The dealers that were mentioned that are going to be asked to bid on this is Patterson, Schein, Burkart and Benco. You may be seeing this shortly.

Thanks,

Jim Stewart
Branch Manager
Rochester, New York
Patterson Dental Supply, Inc.
P: (585) 924-0550 | F: (585) 924-4322
www.pattersondental.com

From: McFadden, Neal
Sent: Thursday, October 23, 2014 9:57 AM
To: Stewart, James
Cc: Barlage, Amy; Misiak, Dave
Subject: RE: Kois Buying Group?

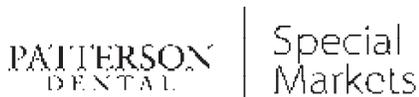
Jim,

As a rule we are trying our best to steer clear of all buying groups. As far as a "Kois group thru Patterson" --that's news to me. Special Markets has had no communication with Dr. John Kois and his team. I believe they are in Seattle and may have a deal with Burkhart (who supports GPO's, namely Smile Source). So, that's all I have for now. I wish I could say this was rare but it seems weekly I hear of a group forming. I hope this helps.

It might be good to ask Bill Neal since they are in his backyard.

thanks

Neal McFadden
President Special Markets
864-346-7209



From: Stewart, James
Sent: Thursday, October 23, 2014 8:39 AM

To: McFadden, Neal
Subject: Kois Buying Group?

Neal,

Hope things are well as I'm sure business is just taking off. I wanted to reach out to you about a comment one of our customers made referencing a new buying group with Kois. They just recently told us that they are trimming back on their orders with Patterson as they are waiting to hear about a new pricing structure through their affiliate with the Kois Group, from Patterson. They're a good gold customer, so any insight would be greatly appreciated.

<http://koiscenter.com/Default.aspx>

Thanks again,
Jim

Jim Stewart
Branch Manager
Rochester, New York
Patterson Dental Supply, Inc.
P: (585) 924-0550 | F: (585) 924-4322
www.pattersondental.com

CX3280

Redacted in Entirety

CX3283

Redacted in Entirety

CX3285

Redacted in Entirety

CX3286

Redacted in Entirety

CX3299

Redacted in Entirety

CX3300

From: Reinhardt, Daniel
Sent: Monday, July 21, 2014 7:10 PM
To: Bushman, Chad
Subject: RE: AZDA - SourceOne

Chad,
Please discuss live and no further emails.
Dan

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: "Bushman, Chad"
Date: 07/21/2014 5:35 PM (GMT-07:00)
To: Mike Wade
Cc: "Reinhardt, Daniel"
Subject: RE: AZDA - SourceOne

Mike,

Thank you for reaching out. If the AZDA has in fact signed on with SourceOne (which it looks like they have) we will be pulling our sponsorship and attendance of the state meeting as they will have positioned themselves as a competitor.

Thank you,

Chad Bushman
Branch Manager
Patterson Dental – Arizona
P: 480.898.7800
F: 480.898.7850

From: Mike Wade [<mailto:MWade@benco.com>]
Sent: Monday, July 21, 2014 2:55 PM
To: Bushman, Chad
Subject: AZDA - SourceOne

Chad,

Welcome to the Valley! Hope the transition is going well.

I wanted to catch up and get your take on our friends at the AZDA becoming our competitors? I am sure you are hearing plenty from your reps about the AZDA partnership with SourceOne selling supplies.

Needless to say we are not real happy and we are looking at pulling all our sponsorship including the AZDA meeting. I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in AZ.

Let me know your thoughts.

Feel free to call me on my cell to discuss.

Best regards,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
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Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

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CX3301

From: Guggenheim, Paul
Sent: Monday, June 10, 2013 1:12 PM
To: Chuck Cohen
Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Sounds good Chuck, Just wanted to clarify where you guys stand.

Thanks for the follow up and send my love and congratulations to Larry and Sally upon their return. If someone goes overboard It would probably be Larry and he's a pretty strong swimmer!

All the best,

Paul

Paul A. Guggenheim
President
Patterson Dental Supply

From: Chuck Cohen <ccohen@benco.com>
To: "paul.guggenheim@pattersondental.com" <paul.guggenheim@pattersondental.com>,
Date: 06/08/2013 07:16 AM
Subject: RE: Fwd: New Mexico Dental Cooperative purchasing.

Greetings, Paul...

Thanks for reaching out, I was at a board meeting yesterday & couldn't respond.

As we've discussed, we don't recognize buying groups. On the Atlantic Dental Care situation, here's our understanding after several in-depth conversations...

1. There are 32 practices that have legally merged together.
2. The new company is owned by the former practice owners.
3. They are in the process of rebranding all the offices Atlantic Dental Care.
4. They have a board of directors made up of some of the stakeholders that makes the decisions.

Although they're in the early stages of the process, we believe this meets our criteria for a large group practice. We've asked to see the merger documents once they are completed, to confirm that they've really become a legally merged entity, and we're going to continue monitoring the process to ensure that ADC delivers on their commitment to us. Happy to discuss in more detail, if you'd like.

Meanwhile, glad to hear that all's well with you & the family, and that you're enjoying the summer in Minnesota. As we speak, my folks are on a cruise across the Atlantic to celebrate their 50th anniversary; hopefully, one of them won't throw the other off the side of the ship.... 😊

All's good here, keep in touch, talk soon...

cfc

From: paul.guggenheim@pattersondental.com [mailto:paul.guggenheim@pattersondental.com]
Sent: Thursday, June 06, 2013 7:03 PM
To: Chuck Cohen
Subject: Re: Fwd: New Mexico Dental Cooperative purchasing.

Chuck,

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

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

Best to you, Rick and Larry.

Sincerely,

Paul.

Paul A. Guggenheim
President
Patterson Dental Supply

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

Greetings, Paul...

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

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

Thanks, best for success in 2013!

cfc

Charles F. Cohen
Benco Dental Company
'We deliver success, smile after smile.'

295 Centerpoint Boulevard
Pittston, PA. 18640
Phone: 570.602.6811
Cell: 570.407.1340
E-mail: ccohen@benco.com
Administrative Assistant: Nancy McCarroll (nmccarroll@benco.com)

Begin forwarded message:

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

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

All the Best,

Don Taylor
303 548 9475
dataylor@benco.com

Begin forwarded message:

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

Sent from my iPhone

Begin forwarded message:

From: Stewart Hanley <shanley@benco.com>
Date: February 6, 2013, 9:59:05 AM PST
To: Mike Trimble <mtrimble@benco.com>
Subject: Fwd: New Mexico Dental Cooperative purchasing.

Sent from my iPhone

Begin forwarded message:

From: "Bergman, Brandon" <Brandon.Bergman@henryschein.com>
Date: February 6, 2013 9:54:15 AM GMT-08:00

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

Did you see this? Call me.

Brandon Bergman

Henry Schein Dental

Regional Manager

Albuquerque Office 505-856-3384

Cell Phone 505-385-1934

brandon.bergman@henryschein.com

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

Is he joking?

Wow.....

Because we care.

Mike Stanislawski

Territory Manager

Dental Sales Division - Rocky Mountains

(303) 601-6493 - Cell

mstanislawski@midmark.com

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

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

From: brenton mason [<mailto:txdelphia@gmail.com>]

Sent: Monday, February 04, 2013 1:18 PM

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

Subject: New Mexico Dental Cooperative purchasing.

To All,

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

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

I) explain our philosophies

II) Have an open forum question and answer, I will take any and all questions and be available however long needed.

III) Explain our bid seeking for the next 12 months.

April 1st our co op will start to formulate the Preferred Vendor list for dental supplies. Our Preferred Vendor list will be update annually following our annual vendor meeting. We highly encourage our co op members to

support the manufactures whom best support our co op. At the present moment we have begun formulating the Preferred Vendor list for all aspect of running a dental office. Upon conclusion of this process we will have a Preferred Vendor List for everything from cotton rolls to credit card processing fees to janitorial services and everything in the middle.

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

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

--

Brenton Mason DMD

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CX3332

From: Mike Wade <MWade@benco.com>
Sent: Tuesday, July 22, 2014 11:21 AM
To: Bushman, Chad
Cc: Reinhardt, Daniel; Brian Evans
Subject: RE: AZDA - SourceOne

Chad,

Thanks for the quick response. We are of the same mindset. It would be gratifying to see every distributor with a local presence make a unified statement on the AZDA's ill-conceived idea to become a distribution competitor.

Best regards,

Mike Wade

Regional Manager - Cactus | **Benco Dental Company** | USA
Tempe Showroom | 1602 S Priest Dr Ste 101 Tempe AZ 85281
Office: 480-968-0460 Cell: 480-239-9502 | Fax: 480-753-5522 | mwade@benco.com
www.Benco.com

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From: Bushman, Chad [<mailto:Chad.Bushman@pattersondental.com>]
Sent: Monday, July 21, 2014 4:35 PM
To: Mike Wade
Cc: Reinhardt, Daniel
Subject: RE: AZDA - SourceOne

Mike,

Thank you for reaching out. If the AZDA has in fact signed on with SourceOne (which it looks like they have) we will be pulling our sponsorship and attendance of the state meeting as they will have positioned themselves as a competitor.

Thank you,

Chad Bushman
Branch Manager
Patterson Dental – Arizona
P: 480.898.7800
F: 480.898.7850

From: Mike Wade [<mailto:MWade@benco.com>]
Sent: Monday, July 21, 2014 2:55 PM
To: Bushman, Chad
Subject: AZDA - SourceOne

Chad,

Welcome to the Valley! Hope the transition is going well.

I wanted to catch up and get your take on our friends at the AZDA becoming our competitors? I am sure you are hearing plenty from your reps about the AZDA partnership with SourceOne selling supplies.

Needless to say we are not real happy and we are looking at pulling all our sponsorship including the AZDA meeting. I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in AZ.

Let me know your thoughts.

Feel free to call me on my cell to discuss.

Best regards,

Mike Wade

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CX3342

From: Neal, William
Sent: Sunday, July 26, 2015 3:04 PM
To: McFadden, Neal
Subject: RE: GPO's

Thanks Neal. I will talk with Feather on Monday morning and get some more information.

Bill Neal
Western Special Markets Territory Manager Patterson Dental Supply Inc.

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

From: McFadden, Neal
Sent: Sunday, July 26, 2015 12:37 PM
To: Neal, William
Subject: Re: GPO's

I'm going to talk to Dave over the next few days. I think we need to be picky and choosy and rethink our overall strategy. This is turning into a dirty business but if we continue to say no we will look back at ourselves, just like we did with special markets, and possibly regret it. So I would at least want to hear the story.

I had the same conversation with Pete Cousins on Friday. Unfortunately, the Georgia state association wants to do the same thing. I'm trying to be very open-minded.

I will keep you posted. Thanks

Neal McFadden
President Special Markets
Patterson Dental
Cell 864-346-7209

Sent from my iPhone

> On Jul 26, 2015, at 2:28 PM, Neal, William <Bill.Neal@pattersondental.com> wrote:

>

> Hi Neal,

>

> I wanted to make sure that GPO's are not something we as a company are choosing to partner with at this point. I know Dave has been clear about this in the past and I wanted to verify that this still is the case. Feather just contacted me about one and I want to make sure I'm correct about our stand on this.

>

> Have a great week.

> Bill

>

> Sent from my iPhone

CX3419

From: McFadden, M
Sent: Tuesday, February 11, 2014 7:39 AM
To: Guggenheim, Paul
Subject: Fwd: Special Markets

Paul, I need a bit of advice here. A few weeks ago a guy representing a community health center contacted Shelly regarding doing a bid. I approved her to get started working on the bid primarily as practice and experience as we will be involved in a lot of RFPs. A week or so into the project we found out that this guy George represents a GPO representing the CHC. He gets 3% of sales. It was after this I contacted Mike Orslen at medical and asked him about dealing with GPO's in the medical and government space. He told me it was a necessary evil for him. However, my gut told me that historically we've never done this so I sent the bottom letter respectfully declining the offer. Please see his response and let me know if I did the right thing or if I should proceed further. Thank you

Sent from my iPhone

Begin forwarded message:

From: glennon@naids.org
Date: February 10, 2014 at 9:37:03 PM CST
To: neal.mcfadden@pattersondental.com
Cc: Amanda.Barlage@pattersondental.com, Shelley.Beckler@pattersondental.com
Subject: RE: Special Markets

Neal,

I'm very disappointed in your decision to not go forward with this opportunity with this CHC. I do however understand your concern for partnering with a GPO and the different dental business model this opens. I am also aware of the time that Patterson spent on this project in terms of man hours spent with the price quote and talking to manufacturers to gain better pricing for your special market accounts, so I know your intentions were honest with me.

Having said this, my problem now is that I have a director of Purchasing expecting a call from you on Thursday who is anxious to replace his \$5,000,000 plus account from Schein to another national dealer. As you did, I also contacted Carestream (Kodak) to get a 30% discount for Patterson with this CHC so I now have to explain why they won't be getting this business after they reduced their film pricing to gain this business with Patterson.

I doubt if I can contact a national dealer that can handle this size account in two days and develop a plan that meets the needs of my customer. I know that neither of us wants to lose a \$5,000,000 account that can grow to 6X this size. Many dental companies use independent sales reps and I'm open to doing that with this account or more if you feel I can bring value to your special markets group. This is a market I know as well as anyone and could help you target areas that get very little attention that would bring some big rewards.

Competing against Schein in special markets is difficult at best and to take this account from them would be a game changer in dental, and I expect you would get this account. Schein's

strength in this market is their relationship with Danaher, it can also be their biggest weakness if you have the right strategy.

I hope to hear from you regarding saving this sale, working with your team has been a pleasure.

Best Regards,
George

George Lennon
Executive Director of Operations
Lighthouse Dental Buying Group, LLC
San Antonio, Texas 78260
585-781-0180
glennon@naids.org
<http://naids.org>

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

Subject: Special Markets
From: neal.mcfadden@pattersondental.com
Date: Mon, February 10, 2014 10:47 am
To: glennon@naids.org
Cc: Amanda.Barlage@pattersondental.com,
Shelley.Beckler@pattersondental.com

George,

I want to begin by thanking you for considering Patterson Dental as your preferred partner for NAIDS. As we discussed, the Special Markets group is new to Patterson Dental and we are in our early stages of building out our infrastructure and deciding our target market. At the advice of our legal department and our executive leadership team I am respectfully declining your offer to participate further in your RFP. Patterson has historically never done business with GPO's and culturally we do not feel it is a long term strategy for our company. I am sorry for this late decision and trust you will still have time to find another dental supplier.

Respectfully,

Neal McFadden
President Special Markets
1031 Mendota Heights Road
St. Paul, MN 55120
direct: 651-686-1945
fax: 651-686-0288

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CX4090

From: brenton mason [txdelphia@gmail.com]
Sent: Thursday, February 7, 2013 3:50 PM
To: Belcheff, Larry
Subject: Re:

That is fine, I get where your coming from, set up the meetings as needed with Jason and Frank, they will better be able to assist with the Co op efforts.

BRent

On Thu, Feb 7, 2013 at 2:44 PM, <Scott.Belcheff@pattersondental.com> wrote:
Dr. Mason,

I will not reach out with the manufacturer reps until after we meet on Monday. This way we can discuss this in person. I definitely want to keep this moving forward

Thanks,

Scott Belcheff
Branch Manager
Patterson Dental
Albuquerque Branch
505-884-6747

-----brenton mason <txdelphia@gmail.com> wrote: -----

To: Scott.Belcheff@pattersondental.com
From: brenton mason <txdelphia@gmail.com>
Date: 02/07/2013 02:19PM
Subject: Re:

Keep the meeting the same day, just put together all the information we need to make everyone happy. Thus we can keep moving forward.

BRent

On Thu, Feb 7, 2013 at 2:01 PM, <Scott.Belcheff@pattersondental.com> wrote:
Dr. Mason,

I wanted to reach out to you in regards to the Vendor meeting you scheduled through e-mail for March 13. There was some confusion on my part. I thought it was a meeting for your preferred vendors and vendors you want to introduce to the co-op on the running of the business side of the equation. For example Credit Card Services, Patterson, Banking, etc. I did not understand it to mean the entire dental manufactures group.

I wanted to take some time to think about this meeting before I reached out to you,

and after reflecting on this, here is the direction we need to take. We need to cancel this meeting, and I will be sending out an e-mail by the end of the day today to the included manufacturers about this cancellation, while also asking them to "stay tuned" for more information to come in the near future. The reason for this course of action is as follows, and I do look forward to discussing with you when you're able.

First - The email you sent out has greatly confused the dental community, and actually Patterson's role in the dental business community as well.. Dan Reinhardt, my regional manager and myself, have been getting calls with questions because manufacturers are confused as to the purpose of the meeting you called. These companies do choose to do business with distributors like Patterson, Schein or Benco, and we handle the bid process. Not the manufactures (unless they are a direct selling manufacturer, such as Brasseler). If Patterson is going to be your preferred vendor then we handle the bid process for you. We make sure you are getting the appropriate pricing on the supplies you use based on volume and commitment. As your partner, we're working to assure you fair pricing, and also anything else the manufacturing company has to offer such, as rebate programs. This is why we are your partner, which is not just verbiage to me. Your schedule is crazy enough with out having to deal with this as well.

Second - The e-mail invitation you sent includes manufacturers that Patterson does not do business with, and are, in some cases, direct competitors of Patterson Dental.

Third - Patterson Dental is a Value-Add distributor, and that's why you've chosen to do business with you over the years. We also extend this to our relations with our manufacturing community, as we value their knowledge, and their investment in Research and Development, and for advancing dental care in general.

This has the opportunity to be huge and is moving fast and I want to make sure we are doing this right from the beginning. Our dinner Monday night will help with this and also help us get guidelines in place. You and I have always been straight forward with each other and I respect your vision. I am hoping Patterson can be a partner you trust and that will always do the right thing for you. I won't always tell you what you want to hear, but that's what true partners do.

Thank for your understanding in regards to this matter.

*Scott Belcheff
Branch Manager
Patterson Dental
Albuquerque Branch
505-884-6747*

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--

Brenton Mason DMD

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--

Brenton Mason DMD

CX4128

Redacted in Entirety

CX4413



WIRELINE

2174760
02/05/2017

AT&T has queried for records from 01/01/2011 to 12/31/2016
AT&T has queried for records using Pacific Time Zone. AT&T's records are stored and provided in UTC.

Run Date: 02/06/2017
Run Time: 03:08:37
Voice Usage For: (414)975-8377

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
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AT&T Proprietary

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CX5005

10-K 1 pdco429201710-k.htm 10-K
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K**

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended April 29, 2017

OR

.. **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File No. 0-20572

PATTERSON COMPANIES, INC.
(Exact name of registrant as specified in its charter)

Minnesota
(State or other jurisdiction of
incorporation or organization)

41-0886515
(I.R.S. Employer
Identification No.)

1031 Mendota Heights Road
St. Paul, Minnesota 55120
(Address of principal executive offices including Zip Code)

Registrant's telephone number, including area code: (651) 686-1600

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of exchange on which registered
Common Stock, par value \$.01	NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes x No ..

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes .. No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes x No ..

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ..

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ..

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See definition of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	x	Accelerated filer	..	Non-accelerated filer
Smaller reporting company	..	Emerging growth company	..	

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ..

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes .. No x

The aggregate market value of voting stock held by non-affiliates of the registrant, computed by reference to the closing sales price as quoted on the NASDAQ Global Select Market on October 29, 2016, was approximately \$4,175,000,000 (For purposes of this calculation all of the registrant's executive officers and directors are deemed affiliates of the registrant.)

As of June 20, 2017, there were 96,342,000 shares of Common Stock of the registrant issued and outstanding.

Documents Incorporated By Reference

Portions of the registrant's definitive proxy statement to be filed pursuant to Regulation 14A within 120 days after the registrant's fiscal year-end of April 29, 2017 are incorporated by reference into Part III.

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PART I

Item 1. BUSINESS

Certain information of a non-historical nature contained in Items 1, 2, 3 and 7 of this Form 10-K includes forward-looking statements. Reference is made to “Risk Factors” in Item 1A and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 7, for a discussion of certain factors that could cause actual operating results to differ materially from those expressed in any forward-looking statements.

General

Patterson Companies, Inc. is a value-added specialty distributor serving the U.S. and Canadian dental supply markets and the U.S., Canadian and U.K. animal health supply markets. Patterson operates through its two strategic business units, Patterson Dental and Patterson Animal Health, offering similar products and services to different customer bases. Each business is a market leader with a strong competitive position, serves a fragmented market that offers consolidation opportunities and offers relatively low-cost consumable supplies, making our value-added business proposition highly attractive to our customers. We believe that we have a strong brand identity as a value-added, full-service distributor with broad product and service offerings, having begun distributing dental supplies in 1877.

In fiscal 2017, we continued the transformation of Patterson that began in fiscal 2016, when we more than doubled the size of our animal health business through the acquisition of Animal Health International, Inc., for \$1.1 billion in June 2015. This acquisition added a leading production animal supply business to our preexisting companion animal supply business, resulting in the creation of our animal health segment. In August 2015, we completed the disposition of our rehabilitative and assistive products supply business, Patterson Medical, for \$717 million; the results of this business are now presented as discontinued operations. See Note 4 to the Consolidated Financial Statements for further information about the sale of Patterson Medical.

The following table sets forth consolidated net sales (in millions) by segment.

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Dental	\$ 2,390	\$ 2,476	\$ 2,415
Animal Health	3,160	2,862	1,457
Corporate	43	49	39
Consolidated net sales	<u>\$ 5,593</u>	<u>\$ 5,387</u>	<u>\$ 3,911</u>

Our strategically located fulfillment centers enable us to better serve our customers and increase our operating efficiency. This infrastructure, together with broad product and service offerings at competitive prices, and a strong commitment to customer service, enables us to be a single source of supply for our customers’ needs. Our infrastructure also allows us to provide convenient ordering and rapid, accurate and complete order fulfillment.

Patterson became publicly traded in 1992 and is a corporation organized under the laws of the state of Minnesota. We are headquartered in St. Paul, Minnesota. Our principal executive offices are located at 1031 Mendota Heights Road, St. Paul, Minnesota, and our telephone number is (651) 686-1600. Unless the context specifically requires otherwise, the terms the “Company,” “Patterson,” “we,” “us” and “our” mean Patterson Companies, Inc., a Minnesota corporation, and its consolidated subsidiaries.

The Specialty Distribution Markets We Serve

We provide manufacturers with cost effective logistics and high-caliber sales professionals to access a geographically diverse customer base, which is critical to the supply chain for the markets we serve. We provide our customers with a vast array of value-added services, a dedicated and highly skilled sales team, and a broad selection of products through a single channel, thereby helping them efficiently manage their ordering process. Due in part to the inability of our customers to store and manage large quantities of supplies at their locations, the distribution of supplies and small equipment has been characterized by frequent, small-quantity orders, and a need for rapid, reliable

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and substantially-complete order fulfillment. Supplies and small equipment are generally purchased from more than one distributor, with one generally serving as the primary supplier.

We believe that consolidation within the industry will continue as distributors, particularly those with limited financial, operating and marketing resources, seek to combine with larger companies that can provide growth opportunities. This consolidation also may continue to result in distributors seeking to acquire companies that can enhance their current product and service offerings or provide opportunities to serve a broader customer base.

Dental Supply Market

We estimate the dental supply market we serve to be approximately \$7.7 billion annually and our share of this market, when direct distribution by manufacturers is included, to be approximately 31%. This market consists of a sizeable geographically dispersed number of fragmented dental practices. Customers range in size from sole practitioners to large group practices or service organizations. According to the American Dental Association and the Canadian Dental Association, there are over 196,000 dentists practicing in the U.S. and 21,000 dentists practicing in Canada, respectively. We believe the average dental practitioner purchases supplies from more than one vendor.

We believe the dental supply market continues to experience growth due to U.S. population growth, the aging population, advances in dentistry, demand for preventive dentistry and specialty services, the need for increased office productivity, demand for infection control products, and coverage by dental plans. Demographic trends indicate that our markets are growing, as an aging U.S. population is increasingly using dental services. In the dental industry, there is predicted to be a rise in oral health care expenditures as the 45 and older segment of the population increases. There is increasing demand for new technologies that allow dentists to increase productivity, and this is being driven in the U.S. by lower insurance reimbursement rates.

We support dental professionals through the many stock keeping units ("SKUs") that we offer, as well as through important value-added services, including practice management software, electronic claims processing, financial services and continuing education, all designed to help maximize a practitioner's efficiency.

Animal Health Supply Market

We estimate the animal health supply market we serve to be approximately \$14 billion annually and our share of this market, when direct distribution by manufacturers is included, to be approximately 23%. Similar to the dental supply market, the animal health supply market is fragmented and diverse. The animal health supply market is a mix of the production animal supply market, which primarily consists of beef and dairy cattle, poultry and swine, and other food-producing animals, and the companion animal supply market, which primarily consists of dogs, cats and horses. Our production animal customers include large animal veterinarians, beef producers (cow/calf, stocker and feedlots), dairy producers, poultry producers, swine producers and retail customers. According to the American Veterinary Medical Association, there are more than 68,000 veterinarians in private practice in the U.S. and Canada. Furthermore, there are approximately 22,000 veterinarians in the U.K. practicing in veterinary outlets; however, we believe there has been a shift in the U.K. market toward consolidation of veterinary practices. National Veterinary Services Limited, our veterinary products distributor in the U.K., has the highest percentage of buying groups and corporations as customers compared to its competitors.

The animal health supply market, impacted by growing companion pet ownership and care, as well as increased focus on safety and efficiency in livestock production, provides growth opportunities for us. We support our animal health customers through the distribution of biologicals, pharmaceuticals, parasiticides, supplies and equipment and by actively engaging in the development, sale and distribution of inventory, accounting and health management systems. Within the companion animal supply market, we anticipate increasing demand for veterinary services due to the following factors: the increasing number of households with companion animals, increased expenditures on animal health and preventative care, an aging pet population, advancements in animal health products and diagnostic testing, and extensive marketing programs sponsored by companion animal nutrition and pharmaceutical companies.

Product sales in the production animal supply market are impacted by volatility in commodity prices such as milk, grains, livestock and poultry. Changes in weather patterns also influence how long cattle will graze and consequently the number of days an animal is on feed during a finishing phase. In addition, changes in the general economy can shift the number of animals treated, the timing of when animals are treated, to what extent they are treated and with

which products they are treated. Historically, sales in this market have been largely driven by spending on animal health products to improve productivity, weight gain and disease prevention, as well as a growing focus on food safety.

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Within the production animal supply market, we anticipate an increasing demand for protein as consumption continues to increase with the growing population.

Competition

The distribution industry is highly competitive. It consists principally of national, regional and local full-service distributors, mail-order distributors and, increasingly, Internet-based businesses. Most of the products we sell are available to customers from a number of suppliers. In addition, our competitors could obtain exclusive rights from manufacturers to market particular products. Some manufacturers also sell directly to end-users, thereby eliminating or reducing our role and that of other distributors.

We compete with other distributors, as well as several manufacturers, of dental and animal health products, primarily on the basis of price, breadth of product line, customer service and value-added products and services. To differentiate ourselves from our competition we deploy a strategy of premium customer service with multiple value-added components, a highly qualified and motivated sales force, highly-trained and experienced service technicians, an extensive breadth and mix of products and services, technology solutions allowing customers to easily access our inventory, accurate and timely delivery of product, strategic location of sales offices and fulfillment centers, and competitive pricing.

In the U.S. and Canadian dental supply market, we compete against Henry Schein, Inc., Benco Dental Supply Company, at least 15 full-service distributors that operate on a regional level, and hundreds of small local distributors. Also, as noted above, some manufacturers sell directly to end users. With regard to our dental practice management software, we compete against numerous companies, including Carestream Health, Inc. and Henry Schein, Inc.

In the U.S. and Canadian animal health supply market, our primary competitors are AmerisourceBergen and Henry Schein, Inc. We also compete against a number of regional and local animal health distributors, as well as a number of manufacturers, including pharmaceutical companies that sell directly to production animal operators, animal health product retailers and veterinarians. To a lesser extent, we also compete with mail order distributors and buying groups. We face significant competition in the animal health supply market in the U.K., where we compete on the basis of price and customer service with several large competitors, including Henry Schein, Inc. and AmerisourceBergen. We also compete directly with pharmaceutical companies who sell certain products or services directly to the customer. In the animal health practice management market, our primary competitors are IDEXX Laboratories, Inc. and Henry Schein, Inc.

Successful distributors are increasingly providing value-added services in addition to the products they have traditionally provided. We believe that to remain competitive we must continue to add value to the distribution channel, while removing unnecessary costs associated with product movement. Significant price reductions by our competitors could result in competitive harm. Any of these competitive pressures may materially adversely affect our operating results.

Competitive Strengths

We have more than 130 years of experience in distributing products resulting in strong awareness of the Patterson brand. Although further information regarding these competitive strengths is set forth below in the discussion of our two strategic business units, our competitive strengths include:

- *Broad product and service offerings at competitive prices.* We offer over 189,000 SKUs to our customers, including many proprietary branded products. We believe that our proprietary branded products and our competitive pricing strategy have generated a loyal customer base that is confident in our brands. Of the SKUs offered, approximately 89,000 are offered to our dental customers and approximately 100,000 are offered to our animal health customers. Our product offerings include consumables, equipment and software. Our service offerings include software and design services, repair and maintenance, and equipment financing.

- *Focus on customer relationships and exceptional customer service.* Our sales and marketing efforts are designed to establish and solidify customer relationships through personal visits by field sales representatives, interaction via phone with sales representatives, web-based activities including e-commerce and frequent direct marketing, emphasizing our broad product lines, competitive prices

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and ease of order placement. We focus on providing our customers with exceptional order fulfillment and a streamlined ordering process.

- *Cost-effective purchasing and efficient distribution.* We believe that cost-effective purchasing is a key element to maintaining and enhancing our position as a competitive-pricing provider of dental and animal health products. We distribute our products from strategically located fulfillment centers. We strive to maintain optimal inventory levels in order to satisfy customer demand for prompt and complete order fulfillment.

Business Strategy

Our objective is to continue to expand as a leading value-added distributor of dental and animal health products and services. To accomplish this, we will apply our competitive strengths in executing the following strategies:

- *Emphasizing our value-added, full-service capabilities.* We are positioned to meet virtually all of the needs of dental practitioners, veterinarians, production animal operators and animal health product retailers by providing a broad range of consumable supplies, technology, equipment and software and value-added services. We believe our knowledgeable sales representatives can create special relationships with customers by providing an informational link to the overall industry. Our value-added strategy is further supported by our equipment specialists who offer consultation on design, equipment requirements and financing, our service technicians who perform equipment installation, maintenance and repair services, our business development professionals who provide business tools and educational programs to our customers, and our technology advisors who provide guidance on integrating technology solutions.
- *Using technology to enhance customer service.* As part of our commitment to providing superior customer service, we offer our customers easy order placement. Although we offer computerized order entry systems that we believe help establish relationships with new customers and increase loyalty among existing customers, predominant platforms for ordering today include www.pattersondental.com, www.pattersonvet.com and www.animalhealthinternational.com. The use of these methods of ordering enables our sales representatives to spend more time with existing and prospective customers. Our Internet environment includes order entry, customer support for digital and our proprietary products, customer-loyalty program reports and services, and access to articles and manufacturers' product information. We also provide real-time customer and sales information to our sales force, managers and vendors via the Internet. In addition, the Patterson Technology Center (the "PTC") differentiates Patterson from our competition by positioning Patterson as a single-source solution for digital components. In addition to trouble-shooting through the PTC's support center, customers can access various service capabilities offered by the PTC, including electronic claims and statement processing and system back-up capabilities.
- *Continuing to improve operating efficiencies.* We continue to implement programs designed to improve our operating efficiencies and allow for continued sales growth. This strategy includes our continuing investment in management information systems and consolidation and leveraging of fulfillment centers and sales branches between our operating segments. In addition, we have established shared sales branch offices in several locations.
- *Growing through internal expansion and acquisitions.* We intend to continue to grow by hiring established sales representatives, hiring and training skilled sales professionals, opening additional locations as needed, and acquiring other distributors in order to enter new, or more deeply penetrate existing, geographic markets, gain access to additional product lines, and expand our customer base. We believe both of our operating segments are well positioned to take advantage of expected continued consolidation in our markets.

Dental Segment - Products, Services and Sources of Supply

Patterson Dental, one of the two largest distributors of dental products in North America, has operations in the U.S. and Canada. As a full-service, value-added supplier to over 114,000 dentists, dental laboratories, institutions, and

other healthcare professionals, Patterson Dental provides consumable products (including infection control, restorative materials, hand instruments and sterilization products); basic and advanced technology dental equipment; exclusive,

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innovative technology solutions, including practice management software and e-commerce solutions; patient education systems; and office forms and stationery. Patterson Dental offers customers more than 89,000 SKUs of which approximately 4,000 are private-label products sold under the Patterson brand. Patterson Dental also offers customers a range of related services including software and design services, maintenance and repair, and equipment financing. Net sales and operating income were \$2.4 billion and \$264 million in fiscal 2017, respectively.

The following table sets forth the percentage of total sales by the principal categories of products and services offered to our dental segment customers:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Consumable	56%	56%	55%
Equipment and software	33	33	34
Other ⁽¹⁾	11	11	11
	<u>100%</u>	<u>100%</u>	<u>100%</u>

(1) Consists of other value-added services, including software and design service, and maintenance and repair.

Patterson Dental obtains products from more than 800 vendors. Although our relationships with most vendors are non-exclusive, we do obtain certain products on an exclusive basis. During the course of fiscal 2017, we made the decision to end the exclusive portion of our relationship with Sirona in September 2017. This decision is consistent with our strategy of serving the evolving needs of all of our customers and is expected to allow us to better serve the full range of practice models, including the Dental Support Organizations (“DSOs”) that represent an increasing share of the dental market.

While Patterson Dental makes purchases from many suppliers, and there is generally more than one source of supply for most of the categories of products we sell, the concentration of business with key suppliers is considerable. Our top ten supply vendors accounted for approximately 61% and 57% of the cost of products sold in fiscal 2017 and fiscal 2016, respectively. Of these ten, the top vendor accounted for 30% for fiscal 2017 and 25% for fiscal 2016 cost of sales.

Animal Health Segment - Products, Services and Sources of Supply

Patterson Animal Health is a leading distributor of animal health products in the U.S., Canada and the U.K. We sell more than 100,000 SKUs sourced from 3,500 manufacturers to over 50,000 customers in the highly fragmented animal health supply market. Products we distribute include pharmaceuticals, vaccines, parasiticides, diagnostics, prescription and non-prescription diets, nutritionals, consumable supplies, equipment and software. We offer a private label portfolio of products to veterinarians, producers, and retailers through our Aspen, First Companion and Patterson Veterinary brands. We also provide a range of value-added services to our customers. Within our companion animal supply market, our principal customers are companion-pet and equine veterinarians, veterinary clinics, public and private institutions, and shelters. In our production animal supply market, our principal customers are large animal veterinarians, production animal operators and animal health product retailers. Net sales and operating income were \$3.2 billion and \$88 million in fiscal 2017, respectively.

The following table sets forth the percentage of total sales by the principal categories of products and services offered to our animal health segment customers:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Consumable	97%	97%	95%
Equipment and software	2	2	3
Other	1	1	2
	<u>100%</u>	<u>100%</u>	<u>100%</u>

Patterson Animal Health obtains products from 2,600 vendors in the U.S. and Canada and 900 vendors in the U.K. While Patterson Animal Health makes purchases from many vendors and there is generally more than one

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source of supply for most of the categories of products, the concentration of business with key vendors is considerable. In fiscal 2017 and 2016, Patterson Animal Health's top 10 manufacturers comprised approximately 70% of the total cost of sales, and the single largest supplier comprised 18% of the total cost of sales.

Sales, Marketing and Distribution

During fiscal 2017, we sold products or services to over 164,000 customers who made one or more purchases during the year. Our customers include dentists, laboratories, institutions, other healthcare professionals, veterinarians, other animal health professionals, production animal operators and animal health product retailers. No single customer accounted for more than 10% of sales during fiscal 2017, and we are not dependent on any single customer or geographic group of customers.

We have offices throughout the U.S. and Canada so that we can provide a presence in the market and decision-making near the customer. Patterson Animal Health also has a central office in the U.K. These offices, or sales branches, are staffed with a complete complement of our capabilities, including sales, customer service and technical service personnel, as well as a local manager who has decision-making authority with regard to customer-related transactions and issues.

A primary component of our value-added approach is our sales force. Due to the fragmented nature of the markets we serve, we believe that a large sales force is necessary to reach potential customers and to provide full service. Sales representatives provide an informational link to the overall industry, assist practitioners in selecting and purchasing products and help customers efficiently manage their supply inventories. Our need for a large dedicated sales force in the U.K. is reduced due to the presence of buying groups and corporate customers as well as the significant number of orders placed electronically in the U.K.

In the U.S., customer service representatives in call centers work in tandem with our sales representatives, providing a dual coverage approach for individual customers. In addition to processing orders, customer service representatives are responsible for assisting customers with ordering, informing customers of monthly promotions, and responding to general inquiries. In the U.K., our customer service team is primarily responsible for handling customer inquiries and resolving issues.

To assist our customers with their purchasing decisions, we provide a multi-touch point shopping experience. From print to digital, this seamless experience is inclusive of products and services information. Patterson offers online and in-print showcases of our expansive merchandise and equipment offerings, including digital imaging and computer-aided design and computer-aided manufacturing ("CAD/CAM") technologies, hand-held and similar instruments, sundries, office design, e-services, repair and support assistance, as well as financial services. We also promote select products and services through our monthly magazine, *Insight*, in the U.S. and Canada, and our quarterly magazine, *The Cube*, in the U.K. Additional direct marketing tools that we utilize include customer loyalty programs, social media, and participation in trade shows.

We believe that responsive delivery of quality supplies and equipment is key to customer satisfaction. We ship consumable supplies from our strategically located fulfillment centers in the U.S. and Canada. In the U.K., orders are accepted in a centralized fulfillment center and shipped nationwide to one of our depots located throughout the country at which pre-packed orders are sorted by route for delivery to customers. Orders for consumable supplies can be placed through our sales representatives, customer service representatives or electronically 24 hours a day, seven days a week. Rapid and accurate order fulfillment is another principal component of our value-added approach.

In order to assure the availability of our broad product lines for prompt delivery to customers, we must maintain sufficient inventories at our fulfillment centers. Purchasing of consumables and standard equipment is centralized, and our purchasing department uses a real-time perpetual inventory system to manage inventory levels. Our inventory consists mostly of consumable supply items and pharmaceutical products.

Geographic Information

For information on revenues and long-lived assets of our dental and animal health segments by geographic area, see Note 12 to the Consolidated Financial Statements.

[Table of Contents](#)**Discontinued Operations**

In August 2015, we sold Patterson Medical Holdings, Inc., our wholly owned subsidiary responsible for our rehabilitation supply business known as Patterson Medical, for \$717 million to Madison Dearborn Partners. For a limited period of time following the disposition, Patterson will continue to provide certain transition services to Patterson Medical, as owned by Madison Dearborn Partners, pursuant to a transition services agreement. See Note 4 to the Consolidated Financial Statements for additional information.

Seasonality

Our business in general is not seasonal; however, there are some products that typically sell more often during the winter or summer season. In any given month, unusual weather patterns (e.g., unusually hot or cold weather) could impact the sales volumes of these products, either positively or negatively.

Governmental Regulation***Operating, Security and Licensure Standards***

Our dental and animal health supply businesses involve the distribution of pharmaceuticals and medical devices, and in this regard we are subject to various local, state, federal and foreign governmental laws and regulations applicable to the distribution of pharmaceuticals and medical devices. Among the U.S. federal laws applicable to us are the Controlled Substances Act, the Federal Food, Drug, and Cosmetic Act, as amended, and Section 361 of the Public Health Service Act. We are also subject to comparable foreign regulations.

The Federal Food, Drug, and Cosmetic Act ("FDC Act") and similar foreign laws generally regulate the introduction, manufacture, advertising, labeling, packaging, storage, handling, reporting, marketing and distribution of, and record keeping for, pharmaceuticals and medical devices shipped in interstate commerce, and states may similarly regulate such activities within the state. Section 361 of the Public Health Service Act, which provides authority to prevent the spread of communicable diseases, serves as the legal basis for the U.S. Food and Drug Administration's ("FDA") regulation of human cells, tissues and cellular and tissue-based products, also known as "HCT/P products."

The federal Drug Quality and Security Act of 2013 brought about significant changes with respect to pharmaceutical supply chain requirements and pre-empts state law. Title II of this measure, known as the Drug Supply Chain Security Act ("DSCSA"), will be phased in over 10 years, and is intended to build a national electronic, interoperable system to identify and trace certain prescription drugs as they are distributed in the U.S. The law's track and trace requirements applicable to manufacturers, wholesalers, repackagers and dispensers (e.g., pharmacies) of prescription drugs began to take effect in January 2015. The DSCSA product tracing requirements replace the former FDA drug pedigree requirements and pre-empt state requirements that are inconsistent with, more stringent than, or in addition to, the DSCSA requirements. Also in January 2015, the DSCSA required manufacturers and wholesale distributors to have systems in place by which they can identify whether a product in their possession or control is a "suspect" or "illegitimate" product, and handle it accordingly.

The DSCSA also establishes certain requirements for the licensing and operation of prescription drug wholesalers and third party logistics providers ("3PLs"), and includes the creation of national wholesaler and 3PL licenses in cases where states do not license such entities. The DSCSA requires that wholesalers and 3PLs distribute drugs in accordance with certain standards regarding the recordkeeping, storage and handling of prescription drugs. Beginning January 1, 2015, the DSCSA required wholesalers and 3PLs to submit annual reports to the FDA, which include information regarding each state where the wholesaler or 3PL is licensed, the name and address of each facility and contact information. According to FDA guidance, states are pre-empted from imposing any licensing requirements that are inconsistent with, less stringent than, directly related to, or covered by the standards established by federal law in this area. Current state licensing requirements will likely remain in effect until the FDA issues new regulations as directed by the DSCSA.

The Food and Drug Administration Amendments Act of 2007 ("FDAAA") and the Food and Drug Administration Safety and Innovation Act of 2012 ("FDASIA") amended the FDC Act to require the FDA to promulgate regulations to implement a Unique Device Identification System. The FDA issued a final rule in September 2013 implementing the

Unique Device Identification System, requiring the labels of most medical devices to bear a unique device identifier (“UDI”), and prescribing the content and format of the UDI. The rule also requires the submission of certain information

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concerning UDI-labeled devices to an FDA database, the Global Unique Device Identification Database (“GUDID”). Additional FDA UDI guidance has subsequently been issued, and the FDA’s UDI regulations are being phased in over seven years from the rule’s promulgation in September 2013, beginning with the highest-risk devices (i.e., Class III medical devices) and ending with the lowest-risk devices. For the lowest-risk, Class I medical devices, a Universal Product Code may take the place of a UDI on the device’s label.

The FDA’s UDI regulations require certain entities, referred to as “labelers,” to develop and include UDIs on the labels of medical devices, and to directly mark certain devices with UDIs. Labelers are entities that cause a device’s label to be applied or modified, without any subsequent replacement or modification. Typically, these entities are device manufacturers, specification developers, single-use device reproducers, convenience kit assemblers, repackagers and relabelers.

Violations of the UDI regulations, including failure to include a UDI on a device’s label after the effective date for the device type, result in the misbranding of the device. The FDC Act makes it unlawful to introduce or deliver for introduction into interstate commerce a misbranded device. It is also unlawful to cause a device to become misbranded.

Under the Controlled Substances Act, as a distributor of controlled substances, we are required to obtain and renew annually registrations for our facilities from the U.S. Drug Enforcement Administration (“DEA”) permitting us to handle controlled substances. We are also subject to other statutory and regulatory requirements relating to the storage, sale, marketing, handling and distribution of such drugs, in accordance with the Controlled Substances Act and its implementing regulations, and these requirements have been subject to heightened enforcement activity in recent times. We are subject to inspection by the DEA.

Certain of our businesses are also required to register for permits and/or licenses with, and comply with operating and security standards of, the DEA, the FDA, the U.S. Department of Health and Human Services, and various state boards of pharmacy, state health departments and/or comparable state agencies as well as comparable foreign agencies, and certain accrediting bodies depending on the type of operations and location of product distribution, manufacturing or sale. These businesses include those that distribute, manufacture and/or repackage prescription pharmaceuticals and/or medical devices and/or HCT/P products, or own pharmacy operations, or install, maintain or repair equipment. In addition, Section 301 of the National Organ Transplant Act, and a number of comparable state laws, impose civil and/or criminal penalties for the transfer of certain human tissue (for example, human bone products) for valuable consideration, while generally permitting payments for the reasonable costs incurred in procuring, processing, storing and distributing that tissue. We are also subject to foreign government regulation of such products. The DEA, the FDA and state regulatory authorities have broad inspection and enforcement powers, including the ability to suspend or limit the distribution of products by our fulfillment centers, seize or order the recall of products and impose significant criminal, civil and administrative sanctions for violations of these laws and regulations. Foreign regulations subject us to similar foreign powers. Furthermore, compliance with legal requirements has required and may in the future require us to institute voluntary recalls of products we sell, which could result in financial losses and potential reputational harm. Our customers are also subject to significant federal, state, local and foreign governmental regulation.

Certain of our businesses are subject to various additional federal, state, local and foreign laws and regulations, including with respect to the sale, transportation, storage, handling and disposal of hazardous or potentially hazardous substances, and safe working conditions. There have also been increasing efforts by various levels of government globally to regulate the pharmaceutical distribution system in order to prevent the introduction of counterfeit, adulterated or misbranded pharmaceuticals into the distribution system.

Certain of our businesses also maintain contracts with governmental agencies and are subject to certain regulatory requirements specific to government contractors.

Health Care Fraud

Certain of our businesses are subject to federal and state (and similar foreign) health care fraud and abuse, referral and reimbursement laws and regulations with respect to their operations. Some of these laws, referred to as “false claims laws,” prohibit the submission or causing the submission of false or fraudulent claims for reimbursement to federal, state and other health care payers and programs. Other laws, referred to as “anti-kickback laws,” prohibit

soliciting, offering, receiving or paying remuneration in order to induce the referral of a patient or ordering, purchasing, leasing or arranging for or recommending ordering, purchasing or leasing, of items or services that are paid for by federal, state and other health care payers and programs.

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Failure to comply with fraud and abuse laws and regulations could result in significant civil and criminal penalties and costs, including the loss of licenses and the ability to participate in federal and state health care programs, and could have a material adverse effect on our business. Also, these measures may be interpreted or applied by a prosecutorial, regulatory or judicial authority in a manner that could require us to make changes in our operations or incur substantial defense and settlement expenses. Even unsuccessful challenges by regulatory authorities or private relators could result in reputational harm and the incurring of substantial costs. In addition, many of these laws are vague or indefinite and have not been interpreted by the courts, and have been subject to frequent modification and varied interpretation by prosecutorial and regulatory authorities, increasing the risk of noncompliance.

Health Care Reform

The U.S. Health Care Reform Law adopted through the March 2010 enactment of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act increased federal oversight of private health insurance plans and included a number of provisions designed to reduce Medicare expenditures and the cost of health care generally, to reduce fraud and abuse, and to provide access to increased health coverage.

A Health Care Reform Law provision, generally referred to as the Physician Payment Sunshine Act or Open Payments Program, has imposed reporting and disclosure requirements for drug and device manufacturers with regard to payments or other transfers of value made to certain practitioners (including physicians, dentists and teaching hospitals), and for such manufacturers and for group purchasing organizations, with regard to certain ownership interests held by physicians in the reporting entity. On February 1, 2013, the Centers for Medicare and Medicaid Services ("CMS") released the final rule to implement the Physician Payment Sunshine Act. Under this rule, data collection activities began on August 1, 2013, and as required under the Physician Payment Sunshine Act, CMS publishes information from these reports on a publicly available website, including amounts transferred and physician, dentist and teaching hospital identities.

Under the Physician Payment Sunshine Act we are required to collect and report detailed information regarding certain financial relationships we have with physicians, dentists and teaching hospitals. The Physician Payment Sunshine Act pre-empts similar state reporting laws, although we or our subsidiaries may also be required to report under certain state transparency laws that address circumstances not covered by the Physician Payment Sunshine Act, and some of these state laws, as well as the federal law, can be ambiguous. We are also subject to foreign regulations requiring transparency of certain interactions between suppliers and their customers. Our compliance with these rules imposes additional costs on us.

Regulated Software; Electronic Health Records

The FDA has become increasingly active in addressing the regulation of medical device software, and has developed and continues to develop policies on regulating clinical decision support tools and other types of software as medical devices. Certain of our businesses involve the development and sale of software and related products to support physician and dental practice management, and it is possible that the FDA or foreign government authorities could determine that one or more of our products is a medical device, which could subject us or one or more of our businesses to substantial additional requirements with respect to these products.

In addition, our businesses that involve physician and dental practice management products include electronic information technology systems that store and process personal health, clinical, financial and other sensitive information of individuals. These information technology systems may be vulnerable to breakdown, wrongful intrusions, data breaches and malicious attack, which could require us to expend significant resources to eliminate these problems and address related security concerns, and could involve claims against us by private parties and/or governmental agencies. For example, we are directly or indirectly subject to numerous and evolving federal, state, local and foreign laws and regulations that protect the privacy and security of such information, such as the privacy and security provisions of the federal Health Insurance Portability and Accountability Act of 1996, as amended, and implementing regulations ("HIPAA"). HIPAA requires, among other things, the implementation of various recordkeeping, operational, notice and other practices intended to safeguard that information, limit its use to allowed purposes and notify individuals in the event of privacy and security breaches.

We also sell products and services that health care providers, such as physicians and dentists, use to store and manage patient medical or dental records. These customers are subject to laws and regulations, such as HIPAA, which

require that they protect the privacy and security of those records, and our products may be used as part of these customers' comprehensive data security programs, including in connection with their efforts to comply with applicable

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privacy and security laws. Perceived or actual security vulnerabilities in our products or services, or the perceived or actual failure by us or our customers who use our products to comply with applicable legal requirements, may not only cause us significant reputational harm, but may also lead to claims against us by our customers and/or governmental agencies and involve substantial fines, penalties and other liabilities and expenses and costs for remediation.

International Transactions

In addition, U.S. and foreign import and export laws and regulations require us to abide by certain standards relating to the importation and exportation of products. We also are subject to certain laws and regulations concerning the conduct of our foreign operations, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and other anti-bribery laws and laws pertaining to the accuracy of our internal books and records, as well as other types of foreign requirements similar to those imposed in the U.S.

See "Item 1A. Risk Factors" for a discussion of additional burdens, risks and regulatory developments that may affect our results of operations and financial condition.

Proprietary Rights

We hold trademarks relating to the "Patterson®" name and logo, as well as certain other trademarks. Our U.S. trademark registrations have 10-year terms, and may be renewed for additional 10-year terms. We intend to protect our trademarks to the fullest extent practicable.

Employees

As of April 29, 2017, we had approximately 7,500 full-time employees. We have not experienced a shortage of qualified personnel in the past and believe that we will be able to attract such employees in the future. We believe our relations with employees to be good.

Available Information

We make available free of charge through our website, www.pattersoncompanies.com, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, statements of beneficial ownership of securities on Forms 3, 4 and 5 and amendments to these reports and statements filed or furnished pursuant to Section 13(a) and Section 16 of the Securities Exchange Act of 1934 as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the U.S. Securities and Exchange Commission, or SEC. This material may be accessed by visiting the Investor Relations section of our website.

The above information is also available at the SEC's Public Reference Room at U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549, on official business days during the hours of 10:00 a.m. to 3:00 p.m., or obtainable by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet website at www.sec.gov, where the above information can be viewed.

Information relating to our corporate governance, including our Principles of Business Conduct and Code of Ethics, and information concerning executive officers, Board of Directors and Board committees, and transactions in Patterson securities by directors and officers, is available on or through our website, www.pattersoncompanies.com in the Investor Relations section.

Information maintained on the website is not being included as part of this Annual Report on Form 10-K.

Executive Officers of the Registrant

Set forth below is the name, age and position of the executive officers of Patterson, who are elected annually and serve at the discretion of our Board of Directors, as of June 20, 2017.

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James W. Wiltz	72	Interim President and Chief Executive Officer, Director – Patterson Companies, Inc.
Ann B. Gugino	45	Executive Vice President, Chief Financial Officer and Treasurer – Patterson Companies, Inc.
David G. Misiak	51	President - Patterson Dental North America
John E. Adent	49	Chief Executive Officer - Patterson Animal Health
Les B. Korsh	47	Vice President, General Counsel and Secretary - Patterson Companies, Inc.
Kelly A. Baker	48	Chief Human Resources Officer - Patterson Companies, Inc.

Background of Executive Officers

James W. Wiltz became our Interim President and Chief Executive Officer on June 1, 2017. Mr. Wiltz served as our President and Chief Executive Officer from May 2005 until his retirement in April 2010. Mr. Wiltz served as our President and Chief Operating Officer from April 2003 through May 2005. He began working with us in September 1969. From 1996 to 2003, Mr. Wiltz served as President of our subsidiary, Patterson Dental Supply, Inc. Since January 2010, Mr. Wiltz has served as a director of HealthEast Care System, a non-profit healthcare provider, and on its audit and finance committees. He has been one of our directors since March 2001.

Ann B. Gugino became Vice President, Chief Financial Officer and Treasurer in November 2014 and was promoted to Executive Vice President, Chief Financial Officer and Treasurer in June 2015. She previously served as Vice President, Strategy & Planning since April 2012. Before that, she was Vice President of Finance and Operations - Patterson Dental from 2008 until April 2012. She joined Patterson in 2000 as an assistant controller and became Controller - Patterson Dental in 2004. Prior to her career with Patterson, she worked for Ernst & Young LLP and achieved her Certified Public Accountant designation.

David G. Misiak became President of Patterson Dental North America in November 2016. Mr. Misiak, who has been employed by our company for more than 20 years in various sales and management roles of increasing responsibility, most recently served as President of Patterson Dental U.S. from July 2015 through October 2016. He also serves as President of the Patterson Foundation Board of Directors.

John E. Adent, who currently serves as Chief Executive Officer of Patterson Animal Health, served as President and Chief Executive Officer of Animal Health International, Inc. from 2004 through Patterson's acquisition of that company in June 2015.

Les B. Korsh became Vice President, General Counsel and Secretary of Patterson in July 2015. Mr. Korsh served as Patterson's Associate General Counsel since June 2014. Prior to joining Patterson, Mr. Korsh held positions as Vice President and Associate General Counsel for MoneyGram International, Inc. from May 2004 to May 2014, and was a principal in the law firm of Gray Plant Mooty, P.A. from June 1999 to May 2004. He has served as a director of the Patterson Foundation since June 2016.

Kelly A. Baker became Chief Human Resources Officer in February 2016. Prior to joining Patterson, Ms. Baker was employed at General Mills for more than 20 years in multiple human resources roles. Her most recent position at General Mills was Vice President, Human Resources for the U.S. Retail Operating Segment of General Mills, a position she held from April 2014 to January 2016. Prior to that, Ms. Baker was Vice President, Human Resources, Corporate Groups of General Mills since February 2009.

Item 1A. RISK FACTORS

The risks described below could have a material adverse effect on our business, reputation, financial condition and/or the trading price of our common stock. Although it is not possible to predict or identify all such risks and uncertainties, they may include, but are not limited to, the factors discussed below. Our business operations could also be affected by additional factors that are not presently known to us or that we currently consider not to be material to our operations. You should not consider this list to be a complete statement of all risks and uncertainties. The order in

which these factors appear should not be construed to indicate their relative importance or priority.

[Table of Contents](#)***The dental and animal health supply markets are highly competitive, and we may not be able to compete successfully.***

Our competitors include national, regional and local full-service distributors, mail-order distributors and, increasingly, Internet-based businesses. Some of our competitors have greater resources than we do, or operate through different sales and distribution models that could allow them to compete more successfully. For example, many of our suppliers are manufacturers, some of whom compete with us by selling directly to customers. Furthermore, Internet-based businesses may be able to offer the same product at a lower cost.

Most of our products are available from multiple sources, and our customers tend to have relationships with several different distributors who can fulfill their orders. Our competitors could obtain exclusive rights to market particular products, which we would then be unable to market. Manufacturers also could increase their efforts to sell directly to end-users and thereby eliminate or reduce the role of distributors. These suppliers could sell their products at lower prices and maintain a higher gross margin on the product sales than we can. Increased competition from any supplier of dental or animal health products could significantly reduce our market share and adversely impact our financial results.

Industry consolidation among suppliers, price competition, the unavailability of products, or the emergence of new competitors also could increase competition. There has also been increasing consolidation among manufacturers, which could have a material adverse effect on our margins and product availability. This consolidation could cause the industry to become more competitive as greater economies of scale are achieved by competitors, or as competitors with new lower cost business models are able to operate with lower prices and gross profit on products. These competitive pressures could adversely affect our sales and profitability. Our failure to compete effectively may limit and/or reduce our revenue, profitability and cash flow.

General economic conditions could adversely affect our operating results and financial condition.

Uncertain weak economic conditions in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect our operating results and financial condition. These uncertainties, including, among other things:

- changes to laws and policies governing foreign trade;
- greater restrictions on imports and exports;
- changes in laws and policies governing health care;
- tariffs and sanctions;
- the United Kingdom's vote to leave the European Union;
- election results;
- sovereign debt levels;
- the inability of political institutions to effectively resolve actual or perceived economic, currency or budgetary crises or issues;
- consumer confidence;
- unemployment levels (and a corresponding increase in uninsured and underinsured population);
- changes in regulations, including tax regulations;
- increases in interest rates;
- availability of capital;
- increases in fuel and energy costs;
- changes in tax rates and the availability of certain tax deductions;
- increases in healthcare costs;
- the threat or outbreak of terrorism or public unrest; and
- changes in laws and policies in countries where we do business.

Changes in government, government debt and/or budget crises may lead to reductions in government spending in certain countries and/or higher income or corporate taxes, which could depress spending overall. In addition, recessionary conditions and depressed levels of consumer and commercial spending may cause customers to reduce, modify, delay, or cancel purchasing our products and services, and a prolonged period of economic instability could reduce their ability to make payments. Furthermore, such conditions could cause our suppliers to reduce their production, decrease their number of product offerings, or change their terms of sale to us. Increasing commodity prices may also increase our cost of operations, either directly through increased energy costs or indirectly through

what we are charged by our suppliers. Recessionary economic conditions could also cause changes in our product

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mix as our customers prioritize established, low-margin products rather than innovative, high-margin products, which could reduce our profit margin.

We are dependent on our relationships with our sales representatives, service technicians and our customers.

The inability to attract or retain qualified employees, particularly sales representatives and service technicians who relate directly with our customers, or our inability to build or maintain relationships with customers in the dental and animal health markets, may have an adverse effect on our business. Due to the specialized nature of many of our products and services, generally only highly qualified and trained personnel have the necessary skills to market such products and provide such services. These individuals develop relationships with our customers that could be damaged if these employees are not retained. We face intense competition for the hiring of these professionals, and many professionals in the field that may otherwise be attractive candidates for us to hire may be bound by non-competition agreements with our competitors. Any failure on our part to hire, train and retain a sufficient number of qualified professionals would damage our business.

We may be unable to successfully integrate the operations of Animal Health International, Inc. or realize targeted cost savings and other benefits of the acquisition.

In June 2015, we acquired Animal Health International, Inc. Achieving the targeted benefits of the acquisition will depend in part upon whether we can integrate Animal Health International, Inc.'s businesses in an efficient and effective manner. We may not be able to accomplish this integration process smoothly or successfully. The necessity of coordinating geographically separated organizations, systems and facilities and addressing possible differences in business backgrounds, corporate cultures and management philosophies may increase the difficulties of integration. We and Animal Health International, Inc. operate numerous systems, including those involving management information, purchasing, accounting and finance, sales, billing, and regulatory compliance. Moreover, the integration of our respective operations will require the dedication of significant management resources, which is likely to distract management's attention from day-to-day operations. Employee uncertainty and lack of focus during the integration process may also disrupt our business and result in undesired employee attrition. An inability of management to successfully integrate the operations of the two companies could have a material adverse effect on our business, results of operations and financial condition.

In addition, our actual cost-savings could differ materially from our initial estimates of synergies to be realized from the Animal Health International, Inc. acquisition. Actual cost-savings, the costs required to realize the cost-savings and the source of the cost-savings could differ materially from our estimates, and we cannot assure you that we will achieve cost-savings, or that these cost-savings programs will not have other adverse effects on our business.

Finally, we may not be able to achieve the targeted operating or long-term strategic benefits of the Animal Health International, Inc. acquisition. An inability to realize the full extent of, or any of, the anticipated benefits of the Animal Health International, Inc. acquisition, as well as any delays encountered in the integration process, could have an adverse effect on our business, results of operations and financial condition.

Disruption to our distribution capabilities, including service issues with our third-party shippers, could materially adversely affect our results.

Weather, natural disaster, fire, terrorism, pandemic, strikes, geopolitical events or other reasons could impair our ability to distribute our products and conduct our business. If we are unable to manage effectively such events if they occur, there could be a material adverse effect on our business, financial condition or results of operations. Similarly, increases in service costs or service issues with our third-party shippers, including strikes or other service interruptions, could cause our operating expenses to rise and materially adversely affect our ability to deliver products on a timely basis. Our ability to provide same-day shipping and next-day delivery is an integral component of our business strategy and any significant increase in shipping rates or service interruptions could adversely impact our business, financial condition or results of operations.

Our business development efforts may suffer if we fail to provide our sales force and customers with the latest customer relationship and order management tools.

Due to generational and other trends in the dental and animal health industries, our customer base is increasingly comfortable with and reliant upon the latest technologies to manage their businesses. As part of our commitment to

providing superior customer service, we offer our customers computerized order entry, customer support for digital

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and proprietary products, including the Patterson Technology Center, customer-loyalty program reports and services, and access to articles and manufacturers' product information. We also provide real-time customer and sales information to our sales force, managers and vendors via the Internet to enable them to compete in the digital marketplace. While we have had past success with implementing customer relationship and order management technologies, our business development efforts may suffer if we fail to keep pace with rapidly changing technologies and customer expectations.

We are dependent on our suppliers because we generally do not manufacture the products we sell.

Interruptions in supply could adversely affect our operating results. If a supplier is unable to deliver product in a timely and efficient manner, whether due to financial difficulties, natural disasters or other reasons, we could experience lost sales. We generally do not have long-term contracts with our suppliers that commit them to producing products for us and there is considerable concentration within our animal health and dental businesses with a few key suppliers. In addition, because we generally do not control the actual production of the products we sell, we may be subject to delays caused by interruption in production based on conditions outside of our control, including the failure to comply with applicable government requirements. The failure of manufacturers of products regulated by the FDA or other governmental agencies to meet these requirements, could result in product recall, cessation of sales or other market disruptions. An extended interruption in the supply of our products would have an adverse effect on our results of operations.

In addition, a portion of our products is sourced, directly or indirectly, from outside the U.S. Political or financial instability, increased tariffs, restrictions on trade, currency exchange rates, labor unrest, outbreak of pandemics or other events could slow distribution activities, affect foreign trade beyond our control and adversely affect our results of operations.

Material changes in our purchasing relationship with suppliers could have a material adverse effect on our business.

Our ability to sustain our gross profits depends, in part, on the structure of our relationship with our suppliers. Such relationships are subject to change from time to time, such as changing from a "buy/sell" to an agency relationship, or from an agency to a "buy/sell" relationship, either of which could adversely affect our revenues and operating income. Suppliers may also choose to change the method in which products are taken to market. A supplier may change our relationship from a complete distribution provider, including logistics and sales support, to only a logistics provider, or only a sales support provider. A reduction in our role as a value-added service provider would result in reduced margins on product sales, which could have a material adverse effect on our business, financial condition or results of operations.

Patterson's continued success is substantially dependent on positive perceptions of Patterson's reputation.

One of the reasons why customers choose to do business with Patterson and why employees choose Patterson as a place of employment is the reputation that Patterson has built over many years. To be successful in the future, Patterson must continue to preserve, grow and leverage the value of Patterson's brand. Reputational value is based in large part on perceptions of subjective qualities. Even an isolated incident, or the aggregate effect of individually insignificant incidents, can erode trust and confidence, particularly if they result in adverse publicity, governmental investigations or litigation, and as a result, could tarnish Patterson's brand and lead to adverse effects on our business, financial condition and results of operations.

Risks inherent in acquiring other businesses could offset the anticipated benefits of such acquisitions and we may face difficulty in efficiently and effectively integrating acquired businesses.

As a part of our business strategy, we have acquired businesses in the ordinary course and expect to continue acquiring businesses in the future. These acquisitions can involve a number of risks and challenges, any of which could cause significant operating inefficiencies and adversely affect our growth and profitability, and may not result in the benefits and revenue growth we expect. Such risks and challenges include underperformance relative to our expectations and the price paid for the acquisition; unanticipated demands on our management and operational resources; difficulty in integrating personnel, operations and systems; retention of customers of the combined businesses; assumption of contingent liabilities; and acquisition-related earnings charges.

As we operate through two strategic business units, we consolidate the distribution, information technology, human resources, financial and other administrative functions of those business units jointly to meet their needs while

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addressing distinctions in the individual markets of those segments. We may not be able to do so effectively and efficiently.

Our ability to continue to make acquisitions will depend upon our success in identifying suitable targets, which requires substantial judgment in assessing their values, strengths, weaknesses, liabilities and potential profitability, as well as the availability of suitable candidates at acceptable prices, and whether restrictions are imposed by anti-trust or other regulations.

Our acquired technology or developed technology may not be successful in maintaining existing customers or gaining new customers, or the technology may fail to produce its intended results.

The process of acquiring or developing new technology products and solutions is inherently complex and uncertain. It requires accurate anticipation of customers' changing needs and emerging technological trends. We must make long-term investments and commit significant resources before knowing whether these investments will eventually result in products or services that achieve customer acceptance and generate the revenue required to provide desired returns. If we fail to accurately anticipate and meet our customers' needs through the development of new products and technologies and service offerings or if we fail to adequately protect our intellectual property rights, or if our new products are not widely accepted or if our current or future products fail to meet applicable regulatory requirements, we could lose customers to our competitors and that could materially and adversely affect our results of operations and financial condition. In addition, if technology investments do not achieve the intended results, we may write-off the investments, and we face the risk of claims from system users that the systems failed to produce the intended result or negatively affected the operation of our customers' businesses. Any such claims, even those without merit, could be expensive and time-consuming to defend, cause us to lose customers and the associated revenue, divert management's attention and resources, or require us to pay damages.

We are subject to a variety of litigation that could adversely affect our results of operations and financial condition.

We are subject to a variety of litigation incidental to our business, including product liability claims, intellectual property claims, employment claims, commercial disputes, governmental inquiries and investigations, and other matters arising out of the ordinary course of our business, including antitrust litigation. We also may be subject to securities litigation. From time to time we are named as a defendant in cases as a result of our distribution of products. Additionally, purchasers of private-label products may seek recourse directly from us, rather than the ultimate product manufacturer, for product-related claims. Another potential risk we face in the distribution of our products is liability resulting from counterfeit or tainted products infiltrating the supply chain. In addition, some of the products that we transport and sell are considered hazardous materials. The improper handling of such materials or accidents involving the transportation of such materials could subject us to liability. Defending against such claims may divert our management's attention, may be expensive, and may require that we pay damage awards or settlements or become subject to equitable remedies that could adversely affect our financial condition and results of operations. A successful claim brought against us in excess of available insurance or not covered by insurance or indemnification agreements, or any claim that results in significant adverse publicity against us, could have a material adverse effect on our business and our reputation. Furthermore, the outcome of litigation is inherently uncertain.

Changes in consumer preferences could adversely affect our business.

The demand for production animal health products is heavily dependent upon consumer demand for beef, dairy, poultry and swine. The food industry in general is subject to changing consumer trends, demands and preferences. Trends within the food industry change often and our failure to anticipate, identify or react to changes in these trends could lead to, among other things, reduced demand and price reductions for our animal health products, and could have a material adverse effect on our business. Moreover, even if we do anticipate and identify these trends, we may be unable to react effectively. For example, changes in consumer diets may negatively affect consumer demand for beef, dairy, poultry and/or swine, and therefore reduce the demand for our production animal health products which could have a material adverse effect on our business.

In addition, there has been consumer concern and consumer activism with respect to the use of antibiotics and growth promotants in animal feed. A sustained campaign of negative press resulting from media or consumer advocacy groups, industry litigation, loss of export markets or other factors could adversely affect the public's perception of the industry as a whole, or lead to reluctance by consumers to buy protein or other products. Concern over the impact of

growth promotants on animal welfare could result in the removal from the market of products in that category, adversely

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impacting our sales. In addition, heightened consumer concern over the use of antibiotics and growth promotants in animal feed could result in increased government regulation in response to that concern. Any such event may affect the growth of the production animal market and lead to a decrease in the sales of the products we distribute, which could have a material adverse effect on our business, financial condition and results of operations.

From time to time, we experience changes in customer and product mix that affect gross margin. Changes in customer and product mix result primarily from business acquisitions, changes in customer demand, customer acquisitions, selling and marketing activities and competition. There can be no assurance that we will be able to maintain historical gross margins in the future.

Our business may be directly and indirectly affected by the cyclicity of the livestock market, including the effect of poor or unusual weather conditions, that could reduce demand for the production animal products we distribute.

Poor or unusual weather conditions can significantly affect the purchasing decisions of our production animal customers. The timing and quantity of rainfall are two of the most important factors in agricultural production. Drought can affect the availability and price of feed for livestock. Faced with a reduction in readily available feed or an increase in costs for such feed, our customers may decide to reduce herd size, which would ultimately decrease the demand for the products we distribute, including micro feed ingredients, animal health products, dairy sanitation solutions, as well as the development and implementation of systems for feed, health, information and production animal management.

The outbreak of an infectious disease within either the production animal or companion animal population could have a significant adverse effect on our business and our results of operations.

An outbreak of disease affecting animals, such as foot-and-mouth disease, porcine epidemic diarrhea virus, Newcastle disease, avian flu or bovine spongiform encephalopathy, commonly referred to as “mad cow disease,” could result in the widespread destruction of affected animals and consequently result in a reduction in demand for animal health products. In addition, outbreaks of these or other diseases or concerns of such diseases could create adverse publicity that may have a material adverse effect on consumer demand for meat, dairy and poultry products, and, as a result, on our customers’ demand for the products we distribute. It could also harm export markets for such products and lead to increased government regulation. The outbreak of a disease among the companion animal population which could cause a reduction in the demand for companion animals could also adversely affect our business.

Pricing pressure from branded pharmaceutical manufacturers or adverse changes in supplier rebates could negatively affect our business.

We face pricing pressure from branded pharmaceutical manufacturers. In addition, the terms on which we purchase or sell products from many suppliers of animal health products may entitle us to receive a rebate based on the attainment of certain growth goals. Suppliers may reduce or eliminate rebates offered under their programs, or increase the growth goals or other conditions we must meet to earn rebates to levels that we cannot achieve. Increased competition either from generic or equivalent branded products could result in us failing to earn rebates that are conditioned upon achievement of growth goals. Additionally, factors outside of our control, such as customer preferences, consolidation of suppliers or supply issues, can have a material impact on our ability to achieve the growth goals established by our suppliers, which may reduce the amount of rebates we receive. The occurrence of any of these events could have an adverse impact on our results of operations.

The formation of group purchasing organizations (“GPO”) or provider networks may place us at a competitive disadvantage.

The formation of GPOs and provider networks may shift purchasing decisions to entities or persons with whom we do not have a historical relationship. This may threaten our ability to compete effectively, which would in turn negatively impact our financial results. Although we are seeking to obtain access to lower prices demanded by GPO contracts or other contracts, and develop relationships with provider networks and new GPOs, we cannot assure that such terms will be obtained or contracts will be executed.

We may experience competition from third-party online commerce sites.

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Traditional distribution relationships are being challenged by online commerce solutions. Such competition will require us to cost-effectively adapt to changing technology, to continue to provide enhanced service offerings and to continue to differentiate our business (including with additional value-added services) to address demands of consumers and customers on a timely basis. The emergence of such competition and our inability to anticipate and effectively respond to changes on a timely basis could have a material adverse effect on our business.

Increases in over-the-counter sales of companion animal products, or sales of companion animal products from non-veterinarian sources, could adversely affect our business.

Animal health products are becoming increasingly available to consumers at competitive prices from sources other than veterinarians, including human health product pharmacies, Internet pharmacies and big-box retailers. Any increase competition from such channels could have a material adverse effect on our business, financial condition or results of operations.

Our international operations are subject to inherent risks that could adversely affect our operating results.

There are a number of risks inherent in foreign operations, including complex regulatory requirements, staffing and management complexities, import and export costs, other economic factors and political considerations, all of which are subject to unanticipated changes. Additionally, foreign operations expose us to foreign currency fluctuations. Because our financial statements are denominated in U.S. dollars, changes in currency exchange rates between the U.S. dollar and other currencies will have an impact on our income. Currency exchange rate fluctuations may adversely affect our results of operations and financial condition. Furthermore, we generally do not hedge translation exposure with respect to foreign operations.

The U.S. Health Care Reform Law could materially adversely affect our business.

Provisions of the U.S. Health Care Reform Law could have a material adverse effect on our business. Additionally, further federal and state proposals for health care reform in the U.S. are likely, and foreign government authorities may also adopt reforms of their health systems. We cannot predict what further reform proposals, if any, will be adopted, when they may be adopted, or what impact they may have on us.

Reporting and disclosure obligations under the Physician Payment Sunshine Act provisions of the Health Care Reform Law increase the cost of our regulatory compliance.

The Physician Payment Sunshine Act imposes reporting and disclosure requirements for drug and device manufacturers with regard to payments or other transfers of value made to certain practitioners (including physicians, dentists and teaching hospitals), and for such manufacturers and for group purchasing organizations, with regard to certain ownership interests held by physicians in the reporting entity. Under the Physician Payment Sunshine Act we are required to collect and report detailed information regarding certain financial relationships we have with physicians, dentists and teaching hospitals. We may also be required to report under certain state transparency laws that address circumstances not covered by the Physician Payment Sunshine Act, and some of these state laws, as well as the federal law, can be ambiguous. We are also subject to foreign regulations requiring transparency of certain interactions between suppliers and their customers. Our compliance with these rules imposes additional costs on us.

Failure to comply with existing and future U.S. and foreign laws and regulatory requirements could subject us to claims or otherwise harm our business.

Our business is subject to requirements under various local, state, federal and international laws and regulations applicable to the distribution of pharmaceuticals and medical devices, and human cells, tissue and cellular and tissue-based products, also known as HCT/P products, and animal feed and supplements. Among other things, such laws, and the regulations promulgated thereunder:

- regulate the storage and distribution, labeling, packaging, handling, reporting, record keeping, introduction, manufacturing and marketing of drugs, HCT/P products and medical devices;
- subject us to inspection by the FDA and the DEA;
- regulate the storage, transportation and disposal of certain of our products that are considered hazardous materials;

- require us to advertise and promote our drugs and devices in accordance with applicable FDA requirements;
- require registration with the FDA and the DEA and various state agencies;

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- require record keeping and documentation of transactions involving drug products;
- require us to design and operate a system to identify and report suspicious orders of controlled substances to the DEA;
- require us to manage returns of products that have been recalled and subject us to inspection of our recall procedures and activities; and
- impose reporting requirements if a pharmaceutical, HCT/P product or medical device causes serious illness, injury or death.

Applicable federal, state, local and foreign laws and regulations also may require us to meet various standards relating to, among other things, licensure or registration, sales and marketing practices, product integrity and supply tracking to the manufacturer of the product, personnel, privacy and security of health or other personal information, installation, maintenance and repair of equipment, and the importation and exportation of products. Our business also is subject to requirements of similar and other foreign governmental laws and regulations affecting our operations abroad.

The failure to comply with any of these regulations, or new interpretations of existing laws and regulations, or the imposition of any additional laws and regulations, could materially adversely affect our business. Allegations by a governmental body that we have not complied with these laws could have a material adverse effect on our business. If it is determined that we have not complied with these laws, we are potentially subject to penalties including warning letters, civil and criminal penalties, mandatory recall of product, seizure of product and injunction, consent decrees, and suspension or limitation of product sale and distribution. If we enter into settlement agreements to resolve allegations of non-compliance, we could be required to make settlement payments or be subject to civil and criminal penalties, including fines and the loss of licenses. Non-compliance with government requirements could adversely affect our ability to participate in federal and state government health care programs, and damage our reputation.

If we fail to comply with laws and regulations relating to health care fraud or other laws and regulations, we could suffer penalties or be required to make significant changes to our operations, which could materially adversely affect our business.

We are subject to federal and state (and similar foreign) health care fraud and abuse, referral and reimbursement laws and regulations. Some of these laws, referred to as "false claims laws," prohibit the submission or causing the submission of false or fraudulent claims for reimbursement to federal, state and other health care payers and programs. Other laws, referred to as "anti-kickback laws," prohibit soliciting, offering, receiving or paying remuneration in order to induce the referral of a patient or ordering, purchasing, leasing or arranging for or recommending ordering, purchasing or leasing, of items or services that are paid for by federal, state and other health care payers and programs. Health care fraud measures may implicate, for example, our relationships with pharmaceutical manufacturers, our pricing and incentive programs for physician and dental practices, and our dental and physician practice management products that offer billing-related functionality.

If we fail to comply with laws and regulations relating to the confidentiality of sensitive personal information or standards in electronic health data transmissions, we could be required to make significant changes to our products, or incur substantial fines, penalties or other liabilities.

Our dental practice management products include electronic information technology systems that store and process personal health, clinical, financial and other sensitive information of individuals. These information technology systems may be vulnerable to breakdown, wrongful intrusions, data breaches and malicious attack, which could require us to expend significant resources to eliminate these problems and address related security concerns, and could involve claims against us by private parties and/or governmental agencies. For example, we are directly or indirectly subject to numerous federal, state, local and foreign laws and regulations that protect the privacy and security of such information, such as HIPAA. HIPAA requires, among other things, the implementation of various recordkeeping, operational, notice and other practices intended to safeguard that information, limit its use to allowed purposes and notify individuals in the event of privacy and security breaches. Failure to comply with these laws and regulations could expose us to breach of contract claims, substantial fines, penalties and other liabilities and expenses, costs for remediation and harm to our reputation. Also, evolving laws and regulations in this area could restrict the ability of our customers to obtain, use or disseminate patient information, or could require us to incur significant additional costs to re-design our products in a timely manner to reflect these legal requirements, either of which could have a material adverse effect on our results of operations.

[Table of Contents](#)***Risks generally associated with our information systems and cyber-security attacks could adversely affect our results of operations.***

We rely on information systems ("IS") in our business to obtain, rapidly process, analyze and manage data to, among other things:

- facilitate the purchase and distribution of thousands of inventory items through numerous fulfillment centers;
- receive, process and ship orders on a timely basis;
- accurately bill and collect from thousands of customers;
- process payments to suppliers; and
- provide products and services that maintain certain of our customers' electronic medical or dental records (including protected health information of their human patients).

Our IS are vulnerable to natural disasters, power losses, computer viruses, telecommunication failures and other problems. In addition, information security risks have generally increased in recent years. Increased IS security threats and more sophisticated computer crime, including advanced persistent threats, pose a potential risk to the security of our IS, customers and other business partners, as well as the confidentiality, availability, and integrity of our data, customers and other business partners. A cyber-security attack that bypasses our IS security causing an IS security breach may lead to a material disruption of our IS and/or the loss of business information, which could adversely affect our business. These risks may include, among others, the following:

- future results could be adversely affected due to the theft, destruction, loss, misappropriation or release of confidential data or intellectual property;
- operational or business delays resulting from the disruption or damage of IS and subsequent clean-up and mitigation activities, including our ability to process orders, maintain proper levels of inventories, collect accounts receivable and disburse funds;
- negative publicity resulting in reputation or brand damage with our customers, suppliers or industry peers; and
- lawsuits for, or regulatory proceedings relating to, a breach of personal financial and health information belonging to our customers and their patients.

We also increasingly rely upon server- and Internet-based technologies to run our business and to store our data as well as our customers' data. The use of such technologies may carry additional cyber-security risks relative to those posed by legacy technologies. Our Internet-based services also depend on our ability and the ability of our customers access the Internet. In the event of any difficulties, outages or delays by Internet service providers, we may be impeded from providing such services, which may have a material adverse effect on our business and our reputation.

Our results of operations and cash flows could be adversely affected if our IS are interrupted, damaged by unforeseen events, are subject to cyber-security attacks, or fail for any extended period of time. If our business continuity plans do not provide effective alternative processes on a timely basis, we may suffer interruptions in our ability to manage or conduct our operations, which may adversely affect our business. We may need to expend additional resources in the future to continue to protect against, or to address problems caused by, any business interruptions or data security breaches.

Breaches of information systems security could damage our reputation, disrupt operations, increase costs and/or decrease revenues.

We collect and store confidential information from customers so that they may, among other things, purchase products or services, use our software or practice management systems, enroll in promotional programs, register on our websites, engage in data conversion or otherwise communicate or interact with us. We also acquire and retain information about suppliers, employees and others in the normal course of business. We may be unable to protect sensitive data and/or the integrity of our IS. In addition, compliance with evolving privacy and information security laws and standards may result in significant additional expense due to increased investment in technology and the development of new operational processes. We could be subject to liability for failure to comply with these laws and standards, failure to protect information, or failure to respond appropriately to an incident or misuse of information, including use of information for unauthorized marketing purposes.

The products we sell are subject to market and technological obsolescence; our software products may contain undetected errors or bugs when released.

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Some of the products we distribute are subject to technological obsolescence outside of our control, since we do not manufacture the majority of the products we sell. If our customers discontinue purchasing a given product, we might have to record expense related to the diminution in value of inventories we have in stock, and depending on the magnitude, that expense could adversely impact our operating results.

Furthermore, we cannot be sure that we will be successful in introducing and marketing new software, software enhancements, or e-services, or that such software, software enhancements and e-services will be released on time or accepted by the market. Our software and applicable e-services products, like software products generally, may contain undetected errors or bugs when introduced, or as new versions are released. We cannot be sure that future problems with post-release software errors or bugs will not occur. Any such defective software may result in increased expenses related to the software and could adversely affect our relationships with the customers using such software, as well as our reputation. We do not have any patents on our software or e-services, and rely upon copyright, trademark and trade secret laws, as well as contractual and common-law protections. We cannot provide assurance that such legal protections will be available or enforceable to protect our software or e-services products.

Volatility in the financial markets could adversely affect our operating results and financial condition.

Volatility and other disruptions in the financial markets could adversely affect the cost and availability of credit to us, as well as the cost of, and ability to sell, finance contracts we receive from customers to outside financial institutions. Reduced access to capital for our customers limits the amount of investment that they can make in their businesses, and with limited investment by the customer, our revenue from equipment sales could be adversely affected.

Our ability to make payments on our debt obligations depends on our performance.

Our ability to make scheduled payments on, or refinance, our debt obligations depends on our operational and financial performance, which is subject to economic conditions and financial market conditions beyond our control. If our performance were to suffer, our access to the capital necessary to run our business may become limited.

The market price for our common stock may be highly volatile.

The market price for our common stock may be highly volatile. A variety of factors may have a significant impact on the market price of our common stock, including:

- the publication of earnings estimates or other research reports and speculation in the press or investment community;
- changes in our industry and competitors;
- changes in government or legislation;
- our financial condition, results of operations and cash flows and prospects;
- stock repurchases;
- any future issuances of our common stock, which may include primary offerings for cash, stock splits, issuances in connection with business acquisitions, issuances of restricted stock/units and the grant or exercise of stock options from time to time;
- general market and economic conditions; and
- any outbreak or escalation of hostilities in areas where we do business.

In addition, the NASDAQ Stock Market can experience extreme price and volume fluctuations that can be unrelated or disproportionate to the operating performance of the companies listed on NASDAQ. Broad market and industry factors may negatively affect the market price of our common stock, regardless of actual operating performance. In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted against companies. This type of litigation, if instituted, could result in substantial costs and a diversion of management's attention and resources, which could have a material adverse effect on our business.

Our ability to execute our business strategies and retain key employees may be adversely affected by uncertainty associated with the transition to a successor Chief Executive Officer.

In June 2017, we announced a leadership transition involving our Chief Executive Officer. Although we have employed an interim Chief Executive Officer, we are currently conducting a search for a successor. This type of management change has the potential to disrupt our operations due to the diversion of efforts of our executive

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management team toward managing the transition, the sufficiency of management resources to drive key business initiatives forward, the potential deterioration of morale, and the potential for departures among senior management. This change also increases our dependency on members of the executive leadership team who remain with us. These individuals are not contractually obligated to remain employed by us and may leave at any time. Such a departure could be particularly disruptive in light of the transition we are currently undergoing. In addition, the loss of any of these individuals could significantly delay, prevent the achievement of, or make it more difficult for us to pursue and execute on our business objectives, and could have an adverse effect on our business, financial condition and operating results. We also expect to incur costs related to the transition, including transitional salary and severance payments, as well as recruiting costs, including equity awards, non-equity incentive awards and potential relocation payments, relating to the hiring of a successor Chief Executive Officer.

Our future success depends on our leadership development and succession planning.

Our success depends, in large part, on our ability to recruit skilled personnel and then train our personnel to support the long-term growth of our business. While our Board of Directors and management actively monitor our succession plans and processes, our business could suffer if we lose key personnel unexpectedly. In addition, competition for senior management is intense and we may not be successful in attracting and retaining key personnel.

If we experience significant disruptions in our operations during our enterprise resource planning system implementation, our business may be adversely affected.

We depend on our information technology systems and our financial shared services for the efficient functioning of our business, including accounting, billing, data storage, purchasing and inventory management. We are working on implementing a new enterprise resource planning ("ERP") system across our significant operating locations. Although we believe we are more than halfway through the rollout, our ERP system implementation will require the investment of significant human and financial resources. During implementation, we may encounter difficulties in operating our business, which could disrupt our operations, including our ability to timely ship and track customer orders, determine inventory requirements, manage our supply chain, manage customer billing and otherwise adequately service our customers, and lead to increased costs and other difficulties. If we experience significant disruptions during our ERP implementation, we may not be able to repair our systems in an efficient and timely manner. Accordingly, such events may disrupt or reduce the efficiency of our entire operation and have a material adverse effect on our operating results and cash flows.

We may be required to record a significant charge to earnings if our goodwill or other intangible assets become impaired.

Our balance sheet includes goodwill and other identifiable intangible assets. If impairment of our goodwill or other identifiable intangible assets is determined, we may be required to record a significant charge to earnings in the period of such determination under U.S. generally accepted accounting principles (GAAP).

Our credit agreement contains restrictive covenants, which limit our business and financing activities.

In order to fund our financial obligations in connection with the Animal Health International, Inc. acquisition, we entered into a credit agreement, which includes customary covenants that impose restrictions on our business and financing activities, subject to certain exceptions or the consent of our lenders, including, among other things, limits on our ability to incur additional debt, create liens, enter into merger, acquisition and divestiture transactions, pay dividends and engage in transactions with affiliates. The credit agreement contains certain customary affirmative covenants, including a requirement that we maintain a maximum consolidated leverage ratio and a minimum consolidated interest coverage ratio, and customary events of default. Our ability to comply with these covenants may be adversely affected by events beyond our control, including economic, financial and industry conditions. A breach of the credit agreement covenants may result in an event of default, which could allow our lenders to terminate the commitments under the credit agreement, declare all amounts outstanding under the credit agreement (if any), together with accrued interest, to be immediately due and payable, and exercise other rights and remedies. If this occurs, we may not be able to refinance the accelerated indebtedness on acceptable terms, or at all, or otherwise repay the accelerated indebtedness.

[Table of Contents](#)***Audits by tax authorities could result in additional tax payments for prior periods, and tax legislation could materially adversely affect our financial results and tax liabilities.***

The amount of income taxes we pay is subject to ongoing audits by U.S. federal, state and local tax authorities and by non-U.S. tax authorities. If these audits result in assessments different from our reserves, our future results may include unfavorable adjustments to our tax liabilities.

We are subject to the tax laws and regulations of the U.S. federal, state and local governments, as well as foreign jurisdictions. From time to time, various legislative initiatives may be proposed that could materially adversely affect our tax positions. There can be no assurance that our effective tax rate will not be materially adversely affected by legislation resulting from these initiatives. In addition, tax laws and regulations are extremely complex and subject to varying interpretations. Although we believe that our historical tax positions are sound and consistent with applicable laws, regulations and existing precedent, they can be no assurance that our tax positions will not be challenged by relevant tax authorities or that we would be successful in any such challenge.

We are exposed to the risk of changes in interest rates.

Our balance sheet includes certain non-current assets that are sensitive to movements in short-term interest rates. The variable rates are comprised of both LIBOR and commercial paper rates plus a spread and reset on certain dates, as set forth in the respective agreements. In addition, our balance sheet includes fixed rate long-term debt, whose fair value could be adversely affected by movements in interest rates. We finance purchases by our customers using finance contracts that are issued at fixed interest rates, and sell these contracts under various funding arrangements that are priced using variable interest rates. Sudden and dramatic changes in the interest rates within relevant markets could adversely affect our results of operations.

Our governing documents, other documents to which we are a party, and Minnesota law may discourage takeovers and business combinations that our shareholders might consider to be in their best interests.

Anti-takeover provisions of our articles of incorporation, bylaws, and Minnesota law could diminish the opportunity for shareholders to participate in acquisition proposals at a price above the then current market price of our common stock. For example, while we have no present plans to issue any preferred stock, our Board of Directors, without further shareholder approval, may issue up to approximately 30 million shares of undesignated preferred stock and fix the powers, preferences, rights and limitations of such class or series, which could adversely affect the voting power of our common stock. Further, as a Minnesota corporation, we are subject to provisions of the Minnesota Business Corporation Act, or MBCA, regarding "control share acquisitions" and "business combinations." We may, in the future, consider adopting additional anti-takeover measures. The authority of our Board of Directors to issue undesignated preferred stock and the anti-takeover provisions of the MBCA, as well as any future anti-takeover measures adopted by us, may, in certain circumstances, delay, deter or prevent takeover attempts and other changes in control of our company not approved by our Board of Directors.

In addition, our Amended and Restated Equity Incentive Plan provides that awards issued under that plan are fully vested and all restrictions on the awards lapse in the event of a change in control, as defined in such plan. Additionally, our Capital Accumulation Plan provides that on an event of acceleration, as defined in the plan, the restrictions on shares of restricted stock lapse and such stock becomes fully vested. An event of acceleration occurs if (a) a person has acquired a beneficial ownership interest in 30% or more of the voting power of our company, (b) a tender offer is made to acquire 30% or more of our company, (c) a solicitation subject to Rule 14a-11 of the Exchange Act relating to the election or removal of 50% or more of our Board of Directors occurs, or (d) our shareholders approve a merger, consolidation, share exchange, division or sale of our company's assets. Furthermore, if the surviving or acquiring company in a change in control does not assume our company's outstanding incentive awards or provide for their equivalent substitutes, our 2015 Omnibus Incentive Plan provides for accelerated vesting of incentive awards following a change in control upon the termination of the employee's service and in certain other circumstances, provided such event occurs within two years of a change in control.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

[Table of Contents](#)**Item 2. PROPERTIES**

We own our principal executive offices in St. Paul, Minnesota, and the majority of our distribution and manufacturing facilities. Leases of other distribution and administrative facilities generally are on a long-term basis, expiring at various times, with options to renew for additional periods. Most sales offices are leased for varying and usually shorter periods, with or without renewal options. We believe our properties are in good operating condition and are suitable for the purposes for which they are being used.

Patterson Logistics Services

The majority of assets we use to distribute product are owned and operated by Patterson Logistics Services, Inc. ("PLSI"), a wholly-owned subsidiary, which operates the distribution function for the benefit of our dental and animal health segments in the U.S. PLSI also advises on the operations of our fulfillment centers outside of the U.S., but these properties are not owned by PLSI.

As of April 29, 2017, PLSI operated the following 13 fulfillment centers (seven primary centers) totaling 1.0 million square feet:

- two dental fulfillment centers (Hawaii and Texas);
- four animal health fulfillment centers (Alabama, Colorado and Texas (two)); and
- seven fulfillment centers that distribute dental and animal health products (California, Florida, Indiana, Iowa, Pennsylvania, South Carolina and Washington).

Approximately 90% of the PLSI fulfillment center space is owned.

Dental

In addition to the locations operated by PLSI, Patterson Dental utilizes an owned location in Illinois to produce and ship printed office products. Operations in Canada are supported by fulfillment centers located in Quebec and Alberta. This segment is headquartered in our principal executive offices, and maintains sales and administrative offices at approximately 75 locations across 40 states in the U.S. and 10 locations in Canada, the majority of which are leased. In addition, this segment operates the Patterson Technology Center, a 100,000 square-foot facility in Illinois.

Animal Health

In addition to the locations operated by PLSI, Patterson Animal Health has approximately 100 properties located in the U.S. and Canada, the majority of which are leased. In the U.S., these properties are in 89 locations across 27 states, and comprise fulfillment centers, storage locations, sales and administrative offices, retail stores and call centers. In Canada, operations are supported by two fulfillment centers located in Alberta and Ontario. The segment's operations in the U.K. are supported by a primary distribution facility in Stoke-on-Trent and an additional nine depots used as secondary distribution points throughout the U.K. The headquarters for this segment are located in a leased office in Colorado.

Item 3. LEGAL PROCEEDINGS

In September 2015, we were served with a summons and complaint in an action commenced in the U.S. District Court for the Eastern District of New York, entitled SourceOne Dental, Inc. v. Patterson Companies, Inc., Henry Schein, Inc. and Benco Dental Supply Company, Civil Action No. 15-cv-05440-JMA-GRB. SourceOne, as plaintiff, alleges that, through its website, it markets and sells dental supplies and equipment to dentists. SourceOne alleges in the complaint, among other things, that we, along with the defendants Henry Schein and Benco, conspired to eliminate plaintiff as a competitor and to exclude them from the market for the marketing, distribution and sale of dental supplies and equipment in the U.S. and that defendants unlawfully agreed with one another to boycott dentists, manufacturers, and state dental associations that deal with, or considered dealing with, plaintiff. Plaintiff asserts the following claims: (i) unreasonable restraint of trade in violation of state and federal antitrust laws; (ii) tortious interference with prospective business relations; (iii) civil conspiracy; and (iv) aiding and abetting the other defendants' ongoing tortious and anticompetitive conduct. Plaintiff seeks equitable relief, compensatory and treble damages, jointly and severally, punitive damages, interest, and reasonable costs and expenses, including attorneys' fees and expert fees. We are vigorously defending ourselves in this litigation. We do not anticipate that this matter will have a material adverse effect on our financial condition.

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Beginning in January 2016, purported class action complaints were filed against defendants Henry Schein, Inc., Benco Dental Supply Co. and Patterson Companies, Inc. Although there were factual and legal variations among these complaints, each alleged that defendants conspired to foreclose and exclude competitors by boycotting manufacturers, state dental associations, and others that deal with defendants' competitors. On February 9, 2016, the U.S. District Court for the Eastern District of New York ordered all of these actions, and all other actions filed thereafter asserting substantially similar claims against defendants, consolidated for pre-trial purposes. On February 26, 2016, a consolidated class action complaint was filed by Arnell Prato, D.D.S., P.L.L.C., d/b/a Down to Earth Dental, Evolution Dental Sciences, LLC, Howard M. May, DDS, P.C., Casey Nelson, D.D.S., Jim Peck, D.D.S., Bernard W. Kurek, D.M.D., Larchmont Dental Associates, P.C., and Keith Schwartz, D.M.D., P.A. (collectively, the "putative class representatives") in the U.S. District Court for the Eastern District of New York, entitled In re Dental Supplies Antitrust Litigation, Civil Action No. 1:16-CV-00696-BMC-GRB. Burkhart Dental Supply Company, Inc. was added as a defendant on October 22, 2016. Subject to certain exclusions, the putative class representatives seek to represent all persons who purchased dental supplies or equipment in the U.S. directly from any of the defendants, since August 31, 2008. In the consolidated class action complaint, putative class representatives allege a nationwide agreement among Henry Schein, Benco, Patterson and Burkhart not to compete on price. The consolidated class action complaint asserts a single count under Section 1 of the Sherman Act, and seeks equitable relief, compensatory and treble damages, jointly and severally, interest, and reasonable costs and expenses, including attorneys' fees and expert fees. Putative class representatives have not specified a damage amount in their complaint. While the outcome of litigation is inherently uncertain, we believe the consolidated class action complaint is without merit, and we are vigorously defending ourselves in this litigation.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

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PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Patterson's common stock trades on the NASDAQ Global Select Market® under the symbol "PDCO."

The following table sets forth the range of high and low sale prices for Patterson's common stock for each full quarterly period within the two most recent fiscal years. Such quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not necessarily represent actual transactions.

	High	Low	Dividends per share
Fiscal 2017			
First Quarter	\$ 50.40	\$ 42.69	\$ 0.24
Second Quarter	49.69	42.08	0.24
Third Quarter	49.26	36.46	0.24
Fourth Quarter	46.13	40.68	0.26
Fiscal 2016			
First Quarter	50.94	45.32	0.22
Second Quarter	53.07	42.62	0.22
Third Quarter	48.87	38.51	0.22
Fourth Quarter	46.64	40.17	0.24

Holders

On June 20, 2017, the number of holders on record of common stock was 1,858. The transfer agent for Patterson's common stock is Wells Fargo Bank, N.A., 161 North Concord Exchange, South St. Paul, Minnesota, 55075-0738, telephone: (651) 450-4064.

Dividends

In fiscal 2017, a quarterly cash dividend of \$0.24 per share was paid throughout the year, except in the fourth quarter when the dividend was increased to \$0.26 per share. We expect to continue to pay a quarterly cash dividend for the foreseeable future; however, the payment of dividends is within the discretion of our Board of Directors and will depend upon our earnings, capital requirements, operating results and financial condition among other factors.

Securities Authorized for Issuance Under Equity Compensation Plans

For information relating to securities authorized for issuance under equity compensation plans, see Part III, Item 12.

Purchases of Equity Securities by the Issuer

In March 2013, Patterson's Board of Directors approved a share repurchase plan by which up to 25,000,000 shares may be purchased in open market transactions through March 19, 2018.

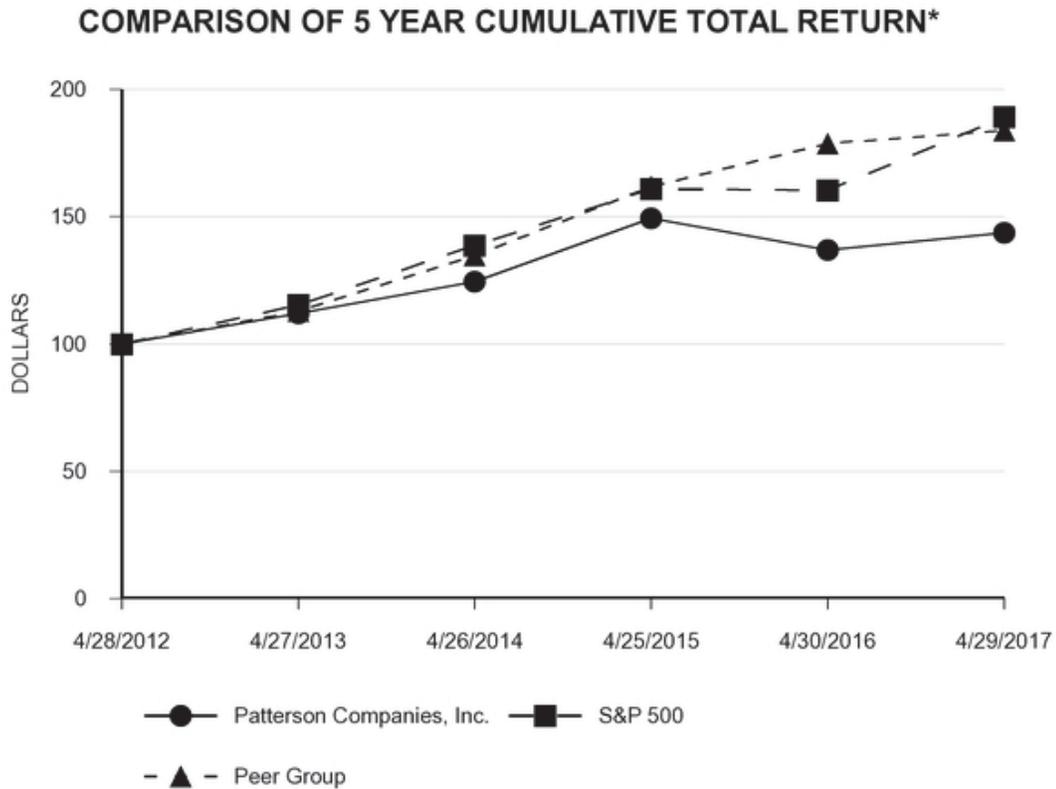
The following table presents activity under the stock repurchase plan during the fourth quarter of fiscal 2017:

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	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under the Plan
January 29, 2017 to February 25, 2017	201,250	\$ 42.15	201,250	14,309,791
February 26, 2017 to March 25, 2017	461,030	44.92	461,030	13,848,761
March 26, 2017 to April 29, 2017	206,711	44.95	206,711	13,642,050
	868,991	\$ 44.28	868,991	13,642,050

Performance Graph

The graph below compares the cumulative total shareholder return on \$100 invested at the market close on April 28, 2012, through April 29, 2017, with the cumulative return over the same time period on the same amount invested in the S&P 500 Index and a Peer Group Index, consisting of seven companies (including our company) based on the same Standard Industrial Classification Code.* The chart below the graph sets forth the actual numbers depicted on the graph.



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	Fiscal Year Ending					
	<u>4/28/2012</u>	<u>4/27/2013</u>	<u>4/26/2014</u>	<u>4/25/2015</u>	<u>4/30/2016</u>	<u>4/29/2017</u>
Patterson Companies, Inc.	100.00	112.08	124.42	149.29	136.97	143.68
S&P 500	100.00	115.32	138.69	160.85	160.35	189.08
Peer Group	100.00	112.83	134.78	161.76	178.76	183.88

* The current composition of SIC Code 5047 – Wholesale – Medical, Dental & Hospital Equipment & Supplies – is as follows: Fuse Medical, Inc., Henry Schein, Inc., Millennium Healthcare, Inc., Owens & Minor, Inc., Cerebain Biotech Corp., Vet Supply, Inc. and Patterson Companies, Inc.

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Item 6. SELECTED CONSOLIDATED FINANCIAL DATA

(In thousands, except per share amounts)

	Fiscal Year Ended				
	April 29, 2017 ⁽²⁾	April 30, 2016 ⁽³⁾	April 25, 2015	April 26, 2014 ⁽⁴⁾	April 27, 2013
Statement of Income Data:					
Net sales	\$ 5,593,127	\$ 5,386,703	\$ 3,910,865	\$ 3,585,141	\$ 3,135,215
Cost of sales	4,291,730	4,063,955	2,850,316	2,566,444	2,138,468
Gross profit	1,301,397	1,322,748	1,060,549	1,018,697	996,747
Operating expenses	1,013,469	975,035	755,963	724,971	711,532
Operating income	287,928	347,713	304,586	293,726	285,215
Other expense, net	(37,047)	(46,020)	(30,268)	(32,463)	(33,670)
Income from continuing operations before taxes	250,881	301,693	274,318	261,263	251,545
Income tax expense	77,093	116,009	94,235	89,931	86,629
Net income from continuing operations	173,788	185,684	180,083	171,332	164,916
Net income (loss) from discontinued operations	(2,895)	1,500	43,178	29,280	45,356
Net income	<u>\$ 170,893</u>	<u>\$ 187,184</u>	<u>\$ 223,261</u>	<u>\$ 200,612</u>	<u>\$ 210,272</u>
Diluted earnings (loss) per share:					
Continuing operations	\$ 1.82	\$ 1.90	\$ 1.81	\$ 1.69	\$ 1.59
Discontinued operations ⁽¹⁾	(0.03)	0.01	0.43	0.28	0.44
Net diluted earnings per share	<u>\$ 1.79</u>	<u>\$ 1.91</u>	<u>\$ 2.24</u>	<u>\$ 1.97</u>	<u>\$ 2.03</u>
Weighted average shares and potentially dilutive shares outstanding					
	95,567	97,902	99,694	101,643	103,807
Dividends per common share	\$ 0.98	\$ 0.90	\$ 0.82	\$ 0.68	\$ 0.58
Balance Sheet Data:					
Working capital	\$ 899,662	\$ 918,206	\$ 995,540	\$ 872,254	\$ 912,817
Total assets	3,507,913	3,520,804	2,945,248	2,863,191	2,679,862
Total long-term debt	998,272	1,022,155	722,542	723,514	723,084
Stockholders' equity	1,394,433	1,441,746	1,514,123	1,471,664	1,394,455

See the Notes to the Consolidated Financial Statements included in Item 8 of this Annual Report on Form 10-K.

- (1) Fiscal 2014 includes a pre-tax restructuring charge of \$15.4 million, or \$0.13 per diluted share on an after-tax basis.
- (2) Fiscal 2017 includes a pre-tax non-cash impairment charge of \$36.3 million, or \$23.0 million after taxes or \$0.24 per diluted share. See Note 3 to the Consolidated Financial Statements for additional information.
- (3) In June 2015, we acquired Animal Health International, Inc. Prior to our acquisition, Animal Health International, Inc. generated sales and earnings before interest, income taxes, depreciation and amortization of \$1.5 billion and \$68 million, respectively, during the 12 months ended March 2015. In connection with this acquisition, we incurred pre-tax transaction costs of \$13.7 million, or \$0.11 per diluted share from continuing operations on an after-tax basis. Also in fiscal 2016, we approved a one-time repatriation of approximately \$200.0 million of foreign earnings. This one-time repatriation reduced the overall cost of funding the acquisition of Animal Health International, Inc. In addition, certain foreign cash at Patterson Medical was required to be repatriated as part of the sale transaction. The continuing operations tax impact of \$12.3 million from the repatriation was recorded during fiscal 2016. See Note 11 to the Consolidated Financial Statements for additional information.

- (4) In August 2013, we acquired National Veterinary Services Limited ("NVS"), which had revenues of more than £315 million, or approximately \$493 million, in its fiscal year ended June 30, 2013 prior to acquisition. NVS results beginning on the date of the acquisition are included in continuing operations.

[Table of Contents](#)**Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS****Overview**

Our financial information for fiscal 2017 is summarized in this Management's Discussion and Analysis and the Consolidated Financial Statements and related Notes. The following background is provided to readers to assist in the review of our financial information.

We present three reportable segments: Dental, Animal Health and Corporate. Dental and Animal Health are strategic business units that offer similar products and services to different customer bases. Dental provides a virtually complete range of consumable dental products, equipment and software, turnkey digital solutions and value-added services to dentists and dental laboratories throughout North America. Animal Health is a leading, full-line distributor in North America and the U.K. of animal health products, services and technologies to both the production-animal and companion-pet markets. Our Corporate segment is comprised of general and administrative expenses, including home office support costs in areas such as information technology, finance, legal, human resources and facilities. In addition, customer financing and other miscellaneous sales are reported within Corporate results.

In August 2015, we divested our wholly-owned subsidiary Patterson Medical Holdings, Inc. ("Patterson Medical"), the entity through which we operated the rehabilitation supply business. We classified the results of operations of Patterson Medical as discontinued operations for all periods presented in the consolidated statements of income and other comprehensive income.

Operating margins of the animal health business are considerably lower than the dental business. While operating expenses run at a lower rate in the animal health business when compared to the dental business, gross margins in the animal health business are substantially lower due generally to the low margins experienced on the sale of pharmaceutical products.

We operate with a 52-53 week accounting convention with our fiscal year ending on the last Saturday in April. Fiscal years 2017, 2016 and 2015 ended on April 29, 2017, April 30, 2016 and April 25, 2015, respectively. Fiscal years 2017 and 2015 consisted of 52 weeks, while fiscal year 2016 consisted of 53 weeks. Fiscal year 2018 will end on April 28, 2018 and will consist of 52 weeks.

We believe there are several important aspects of our business that are useful in analyzing it, including: (1) growth in the various markets in which we operate; (2) internal growth; (3) growth through acquisition; and (4) continued focus on controlling costs and enhancing efficiency. Management defines internal growth as the increase in net sales from period to period, adjusting for differences in the number of weeks in fiscal years, excluding the impact of changes in currency exchange rates, and excluding the net sales, for a period of twelve months following the transaction date, of businesses we have acquired.

The following significant activities occurred in fiscal 2016 or 2017:

Enterprise Resource Planning System Initiatives. In the third quarter of fiscal 2017, we completed the application development stage of our enterprise resource planning ("ERP") system, and we began depreciating our investment in such system. We incurred increased depreciation and other operating expenses of approximately \$25.0 million in the fiscal year ended April 29, 2017 as compared to the fiscal year ended April 30, 2016, related to this implementation.

Intangible Asset Impairment. In fiscal 2006, we extended our exclusive North American distribution relationship with Sirona Dental Systems for Sirona's CEREC 3D dental restorative system. At that time, we paid a \$100.0 million distribution fee to extend the existing exclusive relationship for at least a 10-year period beginning in 2007. This distribution fee has been accounted for as an intangible asset that has been amortized since 2007. Based on our November 2016 decision not to extend sales exclusivity for the full Sirona portfolio of products, we recorded a pre-tax non-cash impairment charge of \$36.3 million, or \$23.0 million after taxes or \$0.24 per diluted share in our Dental

segment in the third quarter of fiscal 2017, related to the distribution fee associated with the CEREC product component of this arrangement.

Animal Health International Acquisition. In June 2015, we completed the acquisition of Animal Health International, Inc., a leading production animal health distribution company in the U.S. Prior to our acquisition, Animal Health International, Inc. generated sales and earnings before interest, income taxes, depreciation and amortization

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of \$1.5 billion and \$68 million, respectively, during the 12 months ended March 2015. Our acquisition more than doubled the revenue of our legacy animal health business, which was previously focused on the companion animal market. Our animal health business now offers an expanded range of products and services to a broader base of customers in North America and the U.K. During fiscal 2016, we incurred \$10.4 million, or \$0.11 per diluted share, on an after-tax basis, of transaction costs related to the acquisition of Animal Health International, Inc.

Patterson Medical Sale. In August 2015, we sold Patterson Medical for \$716.9 million. See Note 4 to the Consolidated Financial Statements for additional information.

Cash Repatriation. In fiscal 2016, we approved a one-time repatriation of approximately \$200.0 million of foreign earnings. This one-time repatriation reduced the overall cost of funding the acquisition of Animal Health International, Inc. In addition, certain foreign cash at Patterson Medical was required to be repatriated as part of the sale transaction. A continuing operations tax impact of \$12.3 million from the repatriation was recorded during fiscal 2016. During fiscal 2017, we recorded a \$2.4 million tax benefit related to a change in estimate of the tax impact of the cash repatriation. See Note 11 to the Consolidated Financial Statements for additional information.

Results of Operations

The following table summarizes our results from continuing operations as a percent of sales from continuing operations:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Net sales	100.0 %	100.0 %	100.0 %
Cost of sales	76.7	75.4	72.9
Gross profit	23.3	24.6	27.1
Operating expenses	18.2	18.1	19.3
Operating income from continuing operations	5.1	6.5	7.8
Other income (expense)	(0.6)	(0.9)	(0.8)
Income from continuing operations before taxes	4.5	5.6	7.0
Income tax expense	1.4	2.2	2.4
Net income from continuing operations	3.1 %	3.4 %	4.6 %

Fiscal 2017 Compared to Fiscal 2016

Continuing Operations

Net Sales. Consolidated net sales in fiscal 2017 were \$5,593.1 million, an increase of 3.8% from \$5,386.7 million in fiscal 2016. The inclusion of Animal Health International, Inc. results for approximately six additional weeks in fiscal 2017 had a 3.6% favorable impact on sales, foreign exchange rate changes had an estimated 1.7% unfavorable impact on fiscal 2017 sales, and one less week of results in fiscal 2017 had a 1.0% unfavorable impact on sales, resulting in internal growth of 2.9%.

Dental segment sales decreased 3.5% to \$2,390.2 million in fiscal 2017 from \$2,476.2 million in fiscal 2016. One less week of results in the current period had an estimated 1.1% unfavorable impact on sales. Adjusting for this difference in number of weeks, sales decreased 2.4%. Sales of consumables decreased 4.1%, primarily due to having one less week of results in the current period and to a sales force realignment in the first quarter of fiscal 2017. Dental equipment and software sales decreased 3.2%, primarily due to a decrease in sales of digital products, partially offset by increased sales of core equipment. Other dental sales, consisting primarily of technical service parts and labor, software support services and artificial teeth, decreased 1.0% in fiscal 2017.

Animal Health segment sales grew 10.4% to \$3,159.8 million in fiscal 2017 from \$2,862.2 million in fiscal 2016.

Incremental sales attributed to the acquisition of Animal Health International, Inc. contributed 6.8% to this sales growth, foreign exchange rate changes had an unfavorable impact of 3.1% on fiscal 2017 sales, and one less week of results in fiscal 2017 had a 1.0% unfavorable impact on sales, resulting in internal growth of 7.7%. In addition, due to changes in certain vendor relationships, sales of certain products previously recognized on an agency basis were recognized on a buy/sell basis during fiscal 2017, resulting in a 2.5% favorable impact to sales.

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Gross Profit. Consolidated gross profit margin decreased 130 basis points from the prior year to 23.3%. The decrease in the gross profit margin rate was predominantly the result of the inclusion of sales and cost of sales from Animal Health International, Inc. in our results for a full year in fiscal 2017, as that business traditionally has lower gross margins than our historical businesses. In addition, the Animal Health segment gross margin rate declined when compared to the prior year, primarily as a result of pricing pressure from branded pharmaceutical manufacturers, execution challenges associated with integration activities in our Animal Health segment and unfavorable product mix.

Operating Expenses. Consolidated operating expenses for fiscal 2017 were \$1,013.5 million, a 3.9% increase from the prior year of \$975.0 million. The increase was predominantly the result of the \$36.3 million intangible asset impairment charge recognized in fiscal 2017 in our Dental segment, increased expenses related to our ERP system initiatives and the inclusion of Animal Health International, Inc. results for a full year in fiscal 2017, partially offset by reduced transaction costs related to the acquisition of Animal Health International, Inc., synergy capture in our Animal Health segment and cost containment efforts. The consolidated operating expense ratio of 18.2% decreased 10 basis points from the prior year due to these same factors.

Operating Income from Continuing Operations. Operating income from continuing operations was \$287.9 million, or 5.1% of net sales, in fiscal 2017, compared to \$347.7 million, or 6.5% of sales, in fiscal 2016. The decrease in operating income from continuing operations and operating income as a percent of sales were driven primarily by the impairment charge and increased expenses related to our ERP system initiative. The decrease in operating income as a percent of sales was mainly due to these same factors.

Dental segment operating income was \$263.7 million for fiscal 2017, a decrease of \$48.5 million from the prior year period. The decrease was driven primarily by the impairment charge, increased expenses related to our ERP system initiatives and lower sales volumes.

Animal Health segment operating income was \$88.1 million for fiscal 2017, a decrease of \$6.2 million from the prior year period. The decrease was primarily driven by lower gross margins, which decreased as a result of pricing pressure from branded pharmaceutical manufacturers, execution challenges associated with integration activities, unfavorable product mix and increased expenses related to our ERP system initiatives. Synergy capture, cost containment efforts and lower bad debt expense in fiscal 2017 partially offset these factors.

Corporate segment operating loss was \$63.9 million for fiscal 2017, as compared to a loss of \$58.8 million from the prior year period. The change was driven primarily by lower net sales related to our customer financing contracts and increased legal expenses, partially offset by reduced transaction costs related to the acquisition of Animal Health International, Inc.

Other Income (Expense), Net. Net other expense was \$37.0 million in fiscal 2017, compared to \$46.0 million in fiscal 2016. The decrease was mainly due to \$5.2 million of accelerated debt issuance cost amortization incurred in fiscal 2016.

Income Tax Expense. The effective income tax rate was 30.7% in fiscal 2017 and 38.5% in fiscal 2016. The decrease in the rate was primarily due to the prior year impact of cash repatriation and transaction-related costs incurred in the acquisition of Animal Health International, Inc. In addition, the current year rate included excess tax benefits from the adoption of ASU No. 2016-09. See Note 1 to the Consolidated Financial Statements for additional information on this adoption.

Net Income and Earnings Per Share from Continuing Operations. Net income from continuing operations decreased 6.4% to \$173.8 million in fiscal 2017, compared to \$185.7 million in the prior year. Earnings per diluted share from continuing operations were \$1.82 in fiscal 2017, compared to \$1.90 in the prior year. Weighted average diluted shares in fiscal 2017 were 95,567,000, compared to 97,902,000 in the prior year. The fiscal 2017 cash dividend was \$0.98 per common share, compared to \$0.90 in the prior year.

Discontinued Operations

Net loss from discontinued operations was \$2.9 million in fiscal 2017, compared to net income from discontinued operations of \$1.5 million in fiscal 2016. The net loss incurred during fiscal 2017 was due to a change in estimate of the

tax impact of the sale of Patterson Medical.

[Table of Contents](#)**Fiscal 2016 Compared to Fiscal 2015****Continuing Operations**

Net Sales. Consolidated net sales in fiscal 2016 were \$5,386.7 million, an increase of 37.7% from \$3,910.9 million in fiscal 2015. The growth in sales includes a 35.7% contribution from acquisitions and a 1.8% unfavorable impact of changes in foreign currency exchange rates.

Dental segment sales rose 2.5% to \$2,476.2 million in fiscal 2016 from \$2,415.0 million in fiscal 2015. The growth included a 1.3% unfavorable impact from changes in foreign currency exchange rates. Consumable sales increased 4.5%. Dental equipment and software sales decreased 1.4%, driven by a 1.3% unfavorable impact from changes in foreign currency exchange rates. Other dental sales, consisting primarily of technical service parts and labor, software support services and artificial teeth, increased 4.7% in fiscal 2016.

Animal Health segment sales grew 96.5% to \$2,862.2 million in fiscal 2016 from \$1,456.6 million in fiscal 2015. Our acquisition of Animal Health International, Inc. in fiscal 2016 drove most of the increase in sales, contributing \$1,396.1 million in sales in fiscal 2016. Consumables increased 101.4%, driven almost entirely by sales from Animal Health International, Inc. Equipment and software sales increased 7.2%, and other sales increased 17.3%, with both increases driven by organic growth and partially offset by unfavorable impacts from changes in foreign currency exchange rates.

Gross Profit. Consolidated gross profit margin for fiscal 2016 decreased 250 basis points from the prior year to 24.6%. The decrease in gross profit margin was predominantly the result of the inclusion of sales and cost of sales from Animal Health International, Inc. in our results, as that business traditionally has lower gross margins than our historical businesses.

Operating Expenses. Consolidated operating expenses for fiscal 2016 were \$975.0 million, a 29.0% increase from the prior year of \$756.0 million. Operating expenses mainly increased due to the acquisition of Animal Health International, Inc. and transaction-related costs. The consolidated operating expense ratio of 18.1% decreased 120 basis points from the prior year, primarily due to the acquisition of Animal Health International, Inc., which has a lower operating expense ratio than our other business.

Operating Income from Continuing Operations. Operating income from continuing operations was \$347.7 million, or 6.5% of net sales, in fiscal 2016, compared to \$304.6 million, or 7.8% of sales, in fiscal 2015. The decrease in operating income as a percent of net sales was mainly due to the inclusion of results of Animal Health International, Inc. and transaction-related costs.

Dental segment operating income was \$312.2 million for fiscal 2016, an increase of \$11.8 million from the prior year period. The increase was driven primarily by higher sales volumes.

Animal Health segment operating income was \$94.3 million for fiscal 2016, an increase of \$37.6 million from the prior year period. The increase was primarily driven by the inclusion of results of Animal Health International, Inc., which contributed \$37.2 million of operating income in fiscal 2016.

Corporate segment operating loss was \$58.8 million for fiscal 2016, as compared to a loss of \$52.4 million from the prior year period. The change was driven primarily by transaction costs incurred in fiscal 2016.

Other Income (Expense), Net. Net other expense was \$46.0 million in fiscal 2016, compared to \$30.3 million in fiscal 2015. The increase was mainly due to increased interest expense related to the credit agreement entered into in connection with the acquisition of Animal Health International, Inc., including \$5.2 million of accelerated debt issuance cost amortization incurred in fiscal 2016 as a result of early repayment of debt.

Income Tax Expense. The effective income tax rate was 38.5% in fiscal 2016 and 34.4% in fiscal 2015. The increase in the rate was primarily due to the fiscal 2016 impact of cash repatriation and transaction-related costs incurred related to the acquisition of Animal Health International, Inc.

Net Income and Earnings Per Share from Continuing Operations. Net income from continuing operations increased 3.1% to \$185.7 million in fiscal 2016, compared to \$180.1 million in the prior year. Earnings per diluted share from continuing operations were \$1.90 in fiscal 2016 compared to \$1.81 in the prior year. Weighted average diluted

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shares in fiscal 2016 were 97,902,000 compared to 99,694,000 in the prior year. The fiscal 2016 cash dividend was \$0.90 per common share compared to \$0.82 in the prior year.

Discontinued Operations

Net income from discontinued operations was \$1.5 million in fiscal 2016, compared to \$43.2 million in fiscal 2015. The decrease was primarily due to there being twelve months of operations in the prior year as compared to less than four months of operations in fiscal 2016, as well as by transaction-related costs related to the sale of Patterson Medical, which reduced income before taxes from discontinued operations by \$10.5 million in fiscal 2016 as compared to fiscal 2015.

Liquidity and Capital Resources

Patterson's operating cash flow has been our principal source of liquidity in the last three fiscal years. During each of these fiscal years, we used our revolving credit facility as a source of liquidity in addition to operating cash flow. Net cash provided by operating activities was \$162.7 million in fiscal 2017, compared to \$156.3 million in fiscal 2016 and \$262.7 million in fiscal 2015. Our cash flows from operating activities are primarily driven by net income from continuing operations, partially offset by uses of cash within discontinued operations of \$2.9 million in fiscal 2017 and \$38.5 million in fiscal 2016. In fiscal 2015, net cash provided by operating activities from discontinued operations was \$57.6 million.

Net cash flows provided by investing activities were \$1.2 million in fiscal 2017, compared to net cash flows used in investing activities of \$400.6 million and \$9.6 million in fiscal 2016 and 2015, respectively. Capital expenditures were \$47.0 million, \$79.4 million and \$60.7 million in fiscal years 2017, 2016 and 2015, respectively. Significant expenditures in each year included investments in our ERP system initiatives. We expect to use a total of approximately \$50 million for capital expenditures in fiscal 2018. Fiscal 2016 included the purchase of Animal Health International, Inc. for \$1,106.6 million, which was partially offset by the receipt of net cash proceeds of \$714.4 million from completion of the sale of Patterson Medical. Fiscal years 2016 and 2015 included the sale of securities of \$48.7 million and \$40.8 million, respectively.

During fiscal 2016, we entered into a credit agreement (the "Credit Agreement"), under which the lenders provided us with senior unsecured lending facilities of up to \$1.5 billion, consisting of a \$1.0 billion unsecured term loan and a \$500 million unsecured revolving line of credit. The Credit Agreement was due to expire in fiscal 2021.

During fiscal 2017, we entered into an amendment of the Credit Agreement (the "Amended Credit Agreement"), consisting of a \$295.1 million term loan and a \$750 million revolving line of credit. Interest on borrowings is variable and is determined as a base rate plus a spread. This spread, as well as a commitment fee on the unused portion of the facility, is based on our leverage ratio, as defined in the Amended Credit Agreement. The term loan and revolving credit facilities will mature no later than January 2022. As of April 29, 2017, \$291.4 million of the Amended Credit Agreement unsecured term loan was outstanding at an interest rate of 2.24%, and \$59.0 million was outstanding under the Amended Credit Agreement revolving line of credit at an interest rate of 2.19%. At April 30, 2016, \$317.6 million was outstanding under the Credit Agreement unsecured term loan at an interest rate of 1.81%, and \$20.0 million was outstanding under the Credit Agreement revolving line of credit at an interest rate of 3.88%.

In fiscal 2015, we entered into a Note Purchase Agreement, under which we issued fixed rate Senior Notes in an aggregate principal amount of \$250.0 million at an interest rate of 3.48% per annum, due March 2025. The proceeds were used to repay \$250.0 million of Senior Notes that came due in March 2015. Also in fiscal 2015, a cash payment of \$29.0 million was made to settle an interest rate swap. We originally entered into this swap in January 2014 to hedge interest rate fluctuations in anticipation of refinancing the Senior Notes that came due on in March 2015.

Total dividends paid in fiscal years 2017, 2016 and 2015 were \$95.9 million, \$90.6 million and \$81.8 million, respectively. We expect to continue to pay a quarterly cash dividend for the foreseeable future. In fiscal 2017, we repurchased 2.9 million shares of common stock for \$125.4 million. In fiscal 2016, we repurchased 4.4 million shares of common stock for \$200.0 million. In fiscal 2015, we repurchased 1.2 million shares of common stock for \$47.5 million. Under a share repurchase plan authorized by the Board of Directors in March 2013, Patterson may repurchase up to 25.0 million shares of its common stock. This authorization remains in effect through March 19, 2018. As of April 29, 2017, approximately 13.6 million shares remain available under the current repurchase authorization.

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We have \$95.0 million in cash and cash equivalents as of April 29, 2017, of which \$49.8 million is in foreign bank accounts. See Note 11 to the Consolidated Financial Statements for further information regarding our intention to permanently reinvest these funds. Included in cash and cash equivalents as of April 29, 2017 is \$17.9 million of cash collected from previously sold customer financing arrangements that have not yet been settled with the third party. See Note 7 to the Consolidated Financial Statements for further information. We expect funds generated from operations, existing cash balances and credit availability under existing debt facilities will be sufficient to meet our working capital needs and to finance anticipated expansion plans and strategic initiatives over the next fiscal year.

We expect to continue to obtain liquidity from the sale of equipment finance contracts. Patterson sells a significant portion of our finance contracts (see below) to a commercial paper funded conduit managed by a third party bank, and as a result, commercial paper is indirectly an important source of liquidity for Patterson. Patterson is allowed to participate in the conduit due to the quality of our finance contracts and our financial strength. Cash flows could be impaired if our financial strength diminishes to a level that precluded us from taking part in this facility or other similar facilities. Also, market conditions outside of our control could adversely affect the ability for us to sell the contracts.

Customer Financing Arrangements

As a convenience to our customers, we offer several different financing alternatives, including a third party program and a Patterson-sponsored program. For the third party program, we act as a facilitator between the customer and the third party financing entity with no on-going involvement in the financing transaction. Under our sponsored program, equipment purchased by customers with strong credit may be financed up to a maximum of \$1 million. We generally sell our customers' financing contracts to outside financial institutions in the normal course of our business. We currently have two arrangements under which we sell these contracts.

First, we operate under an agreement to sell a portion of our equipment finance contracts to commercial paper conduits with The Bank of Tokyo-Mitsubishi UFJ, Ltd. ("BTMU") serving as the agent. We utilize PDC Funding, a consolidated, wholly owned subsidiary, to fulfill a requirement of participating in the commercial paper conduit. We receive the proceeds of the contracts upon sale to BTMU. The capacity under the agreement with BTMU at April 29, 2017 was \$575 million.

Second, we also maintain an agreement with Fifth Third Bank ("Fifth Third") whereby the bank purchases customers' financing contracts. PDC Funding II, a consolidated, wholly owned subsidiary, sells financing contracts to Fifth Third. We receive the proceeds of the contracts upon sale to Fifth Third. The capacity under the agreement with Fifth Third at April 29, 2017 was \$100 million.

Our financing business is described in further detail in Note 7 to the Consolidated Financial Statements.

Contractual Obligations

A summary of our contractual obligations as of April 29, 2017 follows (in thousands):

	Payments due by year				
	Total	Less than 1 year ⁽¹⁾	1-3 years	3-5 years	More than 5 years
Long-term debt principal	\$ 1,016,387	\$ 164,754	\$ 100,573	\$ 401,060	\$ 350,000
Long-term debt interest	164,891	35,241	50,353	45,717	33,580
Operating leases	71,028	22,690	27,682	14,841	5,815
Total	<u>\$ 1,252,306</u>	<u>\$ 222,685</u>	<u>\$ 178,608</u>	<u>\$ 461,618</u>	<u>\$ 389,395</u>

(1) Includes \$150,000 classified as long-term debt on the consolidated balance sheet as we have both the intent and ability to refinance at the time the debt is set to mature in March 2018.

As of April 29, 2017 our gross liability for uncertain tax positions, including interest and penalties, was \$15.4 million. We are not able to reasonably estimate the amount by which the liability will increase or decrease over an extended period of time or whether a cash settlement of the liability will be required. Therefore, these amounts have been excluded from the schedule of contractual obligations.

For a more complete description of our contractual obligations, see Notes 6 and 10 to the Consolidated Financial Statements.

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Outlook

We believe certain strategic decisions made will have an effect on our future results of operations. In the near term, we believe that our decision to not extend our exclusive relationship with Sirona for its full portfolio of products and a realignment of our sales force will have a negative effect on sales. In addition, we expect to incur increased operating expenses associated with our ERP system initiatives. While these strategic decisions are expected to impact our near-term performance, we believe that we are making the right strategic moves to facilitate growth in our two key operating businesses.

Asset Management

The following table summarizes our accounts receivable days sales outstanding (“DSO”) and average annual inventory turnover for the past three fiscal years:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
DSO ⁽¹⁾	55	49	48
Inventory turnover	6.0	7.1	6.2

(1) Calculation includes approximately \$50 million, \$18 million and \$12 million as of April 29, 2017, April 30, 2016 and April 25, 2015, respectively, of receivables from finance contracts received from customers related to certain financing promotions.

Foreign Operations

We derive foreign sales from Dental operations in Canada, and Animal Health operations in Canada and the U.K. Fluctuations in currency exchange rates have not significantly impacted earnings, as these fluctuations impact sales, cost of sales and operating expenses. However, changes in exchange rates adversely affected net sales by \$89.9 million, \$69.4 million, and \$37.1 million in fiscal years 2017, 2016 and 2015, respectively. Changes in currency exchange rates are a risk accompanying foreign operations, but this risk is not considered material with respect to our consolidated operations.

Critical Accounting Policies and Estimates

Patterson has adopted various accounting policies to prepare our consolidated financial statements in accordance with accounting principles generally accepted in the U.S. Management believes that our policies are conservative and our philosophy is to adopt accounting policies that minimize the risk of adverse events having a material impact on recorded assets and liabilities. However, the preparation of financial statements requires the use of estimates and judgments regarding the realization of assets and the settlement of liabilities based on the information available to management at the time. Changes subsequent to the preparation of the financial statements in economic, technological and competitive conditions may materially impact the recorded values of Patterson’s assets and liabilities. Therefore, the users of the financial statements should read all the notes to the Consolidated Financial Statements and be aware that conditions currently unknown to management may develop in the future. This may require a material adjustment to a recorded asset or liability to consistently apply to our significant accounting principles and policies that are discussed in Note 1 to the Consolidated Financial Statements. The financial performance and condition of Patterson may also be materially impacted by transactions and events that we have not previously experienced and for which we have not been required to establish an accounting policy or adopt a generally accepted accounting principle.

Revenue Recognition – Revenues are generated from the sale of consumable products, equipment, software products and services, technical service parts and labor, freight and delivery charges, and other sources. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable, and there is reasonable assurance of collection of the sale. Estimates for returns, damaged goods, rebates, loyalty programs and other revenue allowances are made at the time the revenue is recognized based on the historical experience for such items. In addition to revenues generated from the distribution of

consumable products under conventional arrangements (buy/sell agreements) where the full market value of the product is recorded as revenue, the animal health segment may earn a small amount of commission income for services provided under agency agreements with certain pharmaceutical manufacturers. The services generally consist of

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detailing the product and taking the customer's order. The agency agreement contrasts to a buy/sell agreement in that the animal health segment does not purchase and handle the product or bill and collect from the customer in an agency relationship with a vendor.

Consumable product sales are recorded upon delivery, except in those circumstances where terms of the sale are FOB shipping point, in which case sales are recorded upon shipment. Commissions under agency agreements are recorded when the services are provided.

Equipment and software product revenues are recognized upon delivery and, if necessary, installation. In those circumstances where terms of the sale are FOB shipping point, revenues are recognized when products are transferred to the shipping carrier. Revenue derived from post contract customer support for software is deferred and recognized ratably over the period in which the support is provided. Patterson provides financing for select equipment and software sales. Revenue is recorded at the present value of the finance contract, with discount, if any, and interest income recognized over the life of the finance contract as other income, net in our consolidated statement of income. See Note 7 to the Consolidated Financial Statements for more information regarding customer financing.

Other revenue, including freight and delivery charges and technical service parts and labor, is recognized when the related product revenue is recognized or when the product or services are provided to the customer.

The receivables that result from the recognition of revenue are reported net of the related allowances discussed above. Patterson maintains a valuation allowance based upon the expected collectability of receivables held. Estimates are used to determine the valuation allowance and are based on several factors, including historical collection data, economic trends and credit worthiness of customers. Receivables are written off when we determine the amounts to be uncollectible, typically upon customer bankruptcy or non-response to continuous collection efforts. The portions of receivable amounts that are not expected to be collected during the next twelve months are classified as long-term.

Patterson has a relatively large, dispersed customer base and no single customer accounts for more than 1% of consolidated net sales. In addition, the equipment sold to customers under finance contracts generally serves as collateral for the contract and the customer provides a personal guarantee as well.

Patterson Advantage Loyalty Program – Patterson Dental provides a point-based awards program to qualifying customers involving the issuance of "Patterson Advantage dollars" which can be used toward equipment and technology purchases. The program was initiated in January 2009 and runs on a calendar year schedule. Patterson Advantage dollars earned during a program year expire one year after the end of the program year. The cost and corresponding liability associated with the program is recognized as contra-revenue in accordance with ASC Topic 605-50, "Revenue Recognition-Customer Payments and Incentives." As of April 29, 2017, we believe we have sufficient experience with the program to reasonably estimate the amount of Patterson Advantage dollars that will not be redeemed and thus have recorded a liability for 87% of the maximum potential amount that could be redeemed. We use the redemption recognition method, and we recognize the estimated value of unused Patterson Advantage dollars as redemptions occur. Breakage recognized was immaterial to all periods presented.

Inventory and Reserves – Inventory consists primarily of merchandise held for sale and is stated at the lower of cost or market. Cost is determined using the last-in, first-out ("LIFO") method for all inventories, except for foreign inventories and manufactured inventories, which are valued using the first-in, first-out ("FIFO") method. We continually assess the valuation of inventories and reduce the carrying value of those inventories that are obsolete or in excess of forecasted usage to estimated realizable value. Estimates are made of the net realizable value of such inventories based on analyses and assumptions including, but not limited to, historical usage, future demand and market requirements.

Goodwill and Other Indefinite-Lived Intangible Assets – Goodwill represents the excess of cost over the fair value of identifiable net assets of businesses acquired. We have two reporting units as of April 29, 2017; dental and animal health. Our Corporate reportable segment's assets and liabilities, and net sales and expenses, are allocated to the two reporting units. Other indefinite-lived intangible assets include copyrights, trade names and trademarks.

We evaluate goodwill at least annually. If we determine that the fair value of the reporting unit may be less than its carrying amount, we evaluate goodwill using a two-step impairment test. Otherwise, we conclude that no impairment is indicated and we do not perform the two-step impairment test. In fiscal 2017, we determined it was appropriate to perform a two-step impairment test.

The first step of the goodwill impairment test compares the book value of a reporting unit, including goodwill, with its fair value, as determined by its discounted cash flows. If the book value of a reporting unit exceeds its fair value,

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the second step of the impairment test is performed to determine the amount of goodwill impairment loss to be recorded. The determination of fair value involves uncertainties because it requires management to make assumptions and to apply judgment to estimate industry and economic factors and the profitability of future business strategies. Patterson conducts impairment testing based on current business strategy in light of present industry and economic conditions, as well as future expectations. Additionally, in assessing goodwill for impairment, the reasonableness of the implied control premium is considered based on market capitalizations and recent market transactions.

Other indefinite-lived intangible assets are assessed for impairment by comparing the carrying value of an asset with its fair value. If the carrying value exceeds fair value, an impairment loss is recognized in an amount equal to the excess. The determination of fair value involves assumptions, including projected revenues and gross profit levels, as well as consideration of any factors that may indicate potential impairment.

In the fourth quarter of fiscal 2017, management completed its annual goodwill and other indefinite-lived intangible asset impairment tests and determined there was no impairment, and that our dental reporting unit was not at risk of failing step 1. The animal health reporting unit has a higher level of sensitivity to impairment as management currently assesses the various estimates and assumptions used to conduct these tests. Adverse changes to one or more of these estimates or assumptions could cause us to recognize a material impairment charge on this reporting unit. At April 29, 2017, the estimated fair value of the animal health reporting unit exceeded its book value by approximately 11%.

Long-Lived Assets – Long-lived assets, including definite-lived intangible assets, are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable through the estimated undiscounted future cash flows derived from such assets. Our definite-lived intangible assets primarily consist of customer lists. When impairment exists, the related assets are written down to fair value using level 3 inputs, as discussed further in Note 9 to the Consolidated Financial Statements. In fiscal 2017, we recorded a non-cash impairment charge of \$36.3 million related to a distribution agreement intangible asset. Refer to Note 3 to the Consolidated Financial Statements for more information.

Income Taxes – We are subject to income taxes in both the U.S. and numerous foreign jurisdictions. Significant judgments are required in determining the consolidated provision for income taxes.

During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. As a result, we recognize tax liabilities based on estimates of whether additional taxes and interest will be due. These tax liabilities are recognized when, despite our belief that our tax return position is supportable, we believe that certain positions may not be fully sustained upon review by tax authorities. We believe that our accruals for tax liabilities are adequate for all open audit years based on our assessment of many factors including past experience and interpretations of tax law. This assessment relies on estimates and assumptions and may involve a series of complex judgments about future events. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will impact income tax expense in the period in which such determination is made and could materially affect our financial results.

Valuation allowances are established for deferred tax assets if, after assessment of available positive and negative evidence, it is more likely than not that the deferred tax asset will not be fully realized. The valuation allowance reflected in the footnote disclosure relates primarily to foreign tax credit carryovers generated in fiscal 2016.

Self-insurance – Patterson is self-insured for certain losses related to general liability, product liability, automobile, workers' compensation and medical claims. We estimate our liabilities based upon an analysis of historical data and actuarial estimates. While current estimates are believed reasonable based on information currently available, actual results could differ and affect financial results due to changes in the amount or frequency of claims, medical cost inflation or other factors. Historically, actual results related to these types of claims have not varied significantly from estimated amounts.

Stock-based Compensation – We recognize stock-based compensation based on certain assumptions including inputs within valuation models, estimated forfeitures and estimated performance outcomes. These assumptions require subjective judgment and changes in the assumptions can materially affect fair value estimates. Management assesses the assumptions and methodologies used to estimate forfeitures and to calculate estimated fair value of stock-based compensation on a regular basis. Circumstances may change, and additional data may become available over time, which could result in changes to these assumptions and methodologies and thereby materially impact the fair value determination or estimates of forfeitures. If factors change and we employ different assumptions, the amount of

compensation expense associated with stock-based compensation may differ significantly from what was recorded in the current period.

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We are exposed to market risk consisting of foreign currency rate fluctuations and changes in interest rates.

We are exposed to foreign currency exchange rate fluctuations in our operating statement due to transactions denominated primarily in Canadian Dollars and British Pounds. Although we are not currently involved with foreign currency hedge contracts, we continually evaluate our foreign currency exchange rate risk and the different mechanisms for use in managing such risk. A hypothetical 10% change in the value of the U.S. dollar in relation to our most significant foreign currency exposures would have changed net sales by approximately \$79 million for the fiscal year ended April 29, 2017. This amount is not indicative of the hypothetical net earnings impact due to the partially offsetting impact of the currency exchange movements on cost of sales and operating expenses. We estimate that if foreign currency exchange rates changed by 10%, the impact would have been approximately \$3 million to earnings before income taxes for the fiscal year ended April 29, 2017.

During fiscal 2016, we entered into the Credit Agreement under which the lenders provided us with senior unsecured lending facilities of up to \$1.5 billion, consisting of a \$1.0 billion unsecured term loan and a \$500 million unsecured revolving line of credit, which was due to expire in fiscal 2021. In the third quarter of fiscal 2017, we entered into an amendment of the Credit Agreement (the "Amended Credit Agreement"), consisting of a \$295.1 million term loan and a \$750 million revolving line of credit. Interest on borrowings under the Amended Credit Agreement is variable. Due to the interest rate being variable, fluctuations in interest rates may impact our earnings. Based on our current level of debt, we estimate that a 100 basis point change in interest rates would have a \$3.5 million annual impact on our net income from continuing operations before taxes.

Our earnings are also affected by fluctuations in short-term interest rates through the investment of cash balances and the practice of selling fixed rate equipment finance contracts under agreements with both a commercial paper conduit and a bank that provide for pricing based on variable interest rates.

When considering the exposure under the agreements whereby we sell equipment finance contracts to both a commercial paper conduit and bank, we have the ability to select pricing based on interest rates ranging from 30 day LIBOR up to twelve month LIBOR. In addition, the majority of the portfolio of installment contracts generally turns over in less than 48 months, and we can adjust the rate we charge on new customer contracts at any time. Therefore, in times where the interest rate markets are not rapidly increasing or decreasing, the average interest rate in the portfolio generally moves with the interest rate markets and thus would parallel the underlying interest rate movement of the pricing built into the sale agreements. In calculating the gain on the contract sales, we use an interest rate curve that approximates the maturity period of the then-outstanding contracts. If increases in the interest rate markets occur, the average interest rate in our contract portfolio may not increase at the same rate, resulting in a reduction of gain on the contracts sales as compared to the gain that would be realized if the average interest rate in our portfolio were to increase at a more similar rate to the interest rate markets. We estimate that a 10% change in interest rates would have an approximate \$1 million annual impact on our net income from continuing operations before taxes.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders
Patterson Companies, Inc.

We have audited Patterson Companies, Inc.'s internal control over financial reporting as of April 29, 2017, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). Patterson Companies, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting appearing in Item 9A, Controls and Procedures, of this Annual report on Form 10-K. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

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We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Patterson Companies, Inc. maintained, in all material respects, effective internal control over financial reporting as of April 29, 2017, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Patterson Companies, Inc. as of April 29, 2017 and April 30, 2016, and the related consolidated statements of income and other comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended April 29, 2017, and our report dated June 28, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Minneapolis, Minnesota
June 28, 2017

[Table of Contents](#)**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders
Patterson Companies, Inc.

We have audited the accompanying consolidated balance sheets of Patterson Companies, Inc. as of April 29, 2017 and April 30, 2016, and the related consolidated statements of income and other comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended April 29, 2017. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Patterson Companies, Inc. at April 29, 2017 and April 30, 2016, and the consolidated results of its operations and its cash flows for each of the three years in the period ended April 29, 2017, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Patterson Companies, Inc.'s internal control over financial reporting as of April 29, 2017, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated June 28, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Minneapolis, Minnesota
June 28, 2017

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PATTERSON COMPANIES, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	April 29, 2017	April 30, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 94,959	\$ 137,453
Receivables, net of allowance for doubtful accounts of \$9,342 and \$12,008	884,803	796,693
Inventory	711,903	722,140
Prepaid expenses and other current assets	111,928	91,255
Total current assets	1,803,593	1,747,541
Property and equipment, net	298,452	293,315
Long-term receivables, net	101,529	88,248
Goodwill	813,547	816,592
Identifiable intangibles, net	425,436	509,297
Other non-current assets	65,356	65,811
Total assets	\$ 3,507,913	\$ 3,520,804
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 616,859	\$ 566,253
Accrued payroll expense	56,881	75,448
Other accrued liabilities	156,437	151,134
Current maturities of long-term debt	14,754	16,500
Borrowings on revolving credit	59,000	20,000
Total current liabilities	903,931	829,335
Long-term debt	998,272	1,022,155
Deferred income taxes	191,686	206,896
Other non-current liabilities	19,591	20,672
Total liabilities	2,113,480	2,079,058
Stockholders' equity:		
Common stock, \$.01 par value: 600,000 shares authorized; 96,534 and 99,107 shares issued and outstanding	966	991
Additional paid-in capital	72,973	48,477
Accumulated other comprehensive loss	(92,669)	(67,964)
Retained earnings	1,481,234	1,529,158
Unearned ESOP shares	(68,071)	(68,916)
Total stockholders' equity	1,394,433	1,441,746
Total liabilities and stockholders' equity	\$ 3,507,913	\$ 3,520,804

See accompanying notes

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PATTERSON COMPANIES, INC.
CONSOLIDATED STATEMENTS OF INCOME
AND OTHER COMPREHENSIVE INCOME
(In thousands, except per share amounts)

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Net sales	\$ 5,593,127	\$ 5,386,703	\$ 3,910,865
Cost of sales	4,291,730	4,063,955	2,850,316
Gross profit	1,301,397	1,322,748	1,060,549
Operating expenses	1,013,469	975,035	755,963
Operating income from continuing operations	287,928	347,713	304,586
Other income (expense):			
Other income, net	6,013	4,045	3,425
Interest expense	(43,060)	(50,065)	(33,693)
Income from continuing operations before taxes	250,881	301,693	274,318
Income tax expense	77,093	116,009	94,235
Net income from continuing operations	173,788	185,684	180,083
Net income (loss) from discontinued operations	(2,895)	1,500	43,178
Net income	<u>\$ 170,893</u>	<u>\$ 187,184</u>	<u>\$ 223,261</u>
Basic earnings (loss) per share:			
Continuing operations	\$ 1.83	\$ 1.91	\$ 1.82
Discontinued operations	(0.03)	0.02	0.44
Net basic earnings per share	<u>\$ 1.80</u>	<u>\$ 1.93</u>	<u>\$ 2.26</u>
Diluted earnings (loss) per share:			
Continuing operations	\$ 1.82	\$ 1.90	\$ 1.81
Discontinued operations	(0.03)	0.01	0.43
Net diluted earnings per share	<u>\$ 1.79</u>	<u>\$ 1.91</u>	<u>\$ 2.24</u>
Weighted average shares:			
Basic	94,897	97,222	98,989
Diluted	95,567	97,902	99,694
Dividends declared per common share	<u>\$ 0.98</u>	<u>\$ 0.90</u>	<u>\$ 0.82</u>
Comprehensive income			
Net income	\$ 170,893	\$ 187,184	\$ 223,261
Foreign currency translation loss	(26,450)	(9,552)	(73,271)
Cash flow hedges, net of tax	1,745	1,934	(12,445)
Comprehensive income	<u>\$ 146,188</u>	<u>\$ 179,566</u>	<u>\$ 137,545</u>

See accompanying notes

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PATTERSON COMPANIES, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Unearned ESOP Shares	Total
	Number	Amount					
Balance at April 26, 2014	103,965	\$ 1,040	\$ —	\$ 25,370	\$ 1,531,198	\$ (85,944)	\$ 1,471,664
Foreign currency translation	—	—	—	(73,271)	—	—	(73,271)
Cash flow hedges	—	—	—	(12,445)	—	—	(12,445)
Net income	—	—	—	—	223,261	—	223,261
Dividends declared	—	—	—	—	(82,531)	—	(82,531)
Common stock issued and related tax benefits	507	5	11,331	—	—	—	11,336
Repurchase of common stock	(1,194)	(12)	(5,747)	—	(41,780)	—	(47,539)
Stock based compensation	—	—	15,442	—	—	—	15,442
ESOP activity	—	—	—	—	—	8,206	8,206
Balance at April 25, 2015	103,278	1,033	21,026	(60,346)	1,630,148	(77,738)	1,514,123
Foreign currency translation	—	—	—	(9,552)	—	—	(9,552)
Cash flow hedges	—	—	—	1,934	—	—	1,934
Net income	—	—	—	—	187,184	—	187,184
Dividends declared	—	—	—	—	(88,218)	—	(88,218)
Common stock issued and related tax benefits	208	2	12,875	—	—	—	12,877
Repurchase of common stock	(4,379)	(44)	—	—	(199,956)	—	(200,000)
Stock based compensation	—	—	14,576	—	—	—	14,576
ESOP activity	—	—	—	—	—	8,822	8,822
Balance at April 30, 2016	99,107	991	48,477	(67,964)	1,529,158	(68,916)	1,441,746
Foreign currency translation	—	—	—	(26,450)	—	—	(26,450)
Cash flow hedges	—	—	—	1,745	—	—	1,745
Net income	—	—	—	—	170,893	—	170,893
Dividends declared	—	—	—	—	(93,461)	—	(93,461)
Common stock issued and related tax benefits	282	3	6,786	—	—	—	6,789
Repurchase of common stock	(2,855)	(28)	—	—	(125,356)	—	(125,384)
Stock based compensation	—	—	17,710	—	—	—	17,710

ESOP activity	—	—	—	—	—	845	845
Balance at April 29, 2017	<u>96,534</u>	<u>\$ 966</u>	<u>\$ 72,973</u>	<u>\$ (92,669)</u>	<u>\$ 1,481,234</u>	<u>\$ (68,071)</u>	<u>\$ 1,394,433</u>

See accompanying notes

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PATTERSON COMPANIES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Operating activities:			
Net income	\$ 170,893	\$ 187,184	\$ 223,261
Net income (loss) from discontinued operations	(2,895)	1,500	43,178
Net income from continuing operations	173,788	185,684	180,083
Adjustments to reconcile net income from continuing operations to net cash provided by operating activities:			
Depreciation	40,004	34,315	23,768
Amortization	43,814	48,068	20,755
Intangible asset impairment	36,312	—	—
Bad debt expense	1,642	8,246	2,546
Non-cash employee compensation	19,025	28,851	23,070
Accelerated amortization of debt issuance costs on early retirement of debt	60	5,153	—
Excess tax benefits from stock-based compensation	—	(2,656)	(255)
Deferred income taxes	(13,713)	(16,034)	460
Change in assets and liabilities, net of acquired:			
Receivables	(103,181)	(57,249)	(40,696)
Inventory	(961)	(118,351)	(21,754)
Accounts payable	59,654	119,690	10,286
Accrued liabilities	(9,009)	(4,055)	42,555
Long term receivables	(63,976)	(38,882)	814
Other changes from operating activities, net	(17,845)	2,093	(36,568)
Net cash provided by operating activities- continuing operations	165,614	194,873	205,064
Net cash provided by (used in) operating activities- discontinued operations	(2,895)	(38,544)	57,627
Net cash provided by operating activities	162,719	156,329	262,691
Investing activities:			
Additions to property and equipment	(47,019)	(79,354)	(60,662)
Acquisitions and equity investments, net of cash assumed	—	(1,106,583)	(10,515)
Proceeds from sale of securities	—	48,744	40,775
Purchase of investments	—	—	(543)
Other investing activities	48,212	22,320	18,035
Net cash provided by (used in) investing activities- continuing operations	1,193	(1,114,873)	(12,910)
Net cash provided by investing activities- discontinued operations	—	714,239	3,311
Net cash provided by (used in) investing activities	1,193	(400,634)	(9,599)
Financing activities:			
Dividends paid	(95,910)	(90,597)	(81,760)
Repurchases of common stock	(125,384)	(200,000)	(47,539)

Proceeds from issuance of long-term debt	—	1,000,000	250,000
Debt issuance costs	—	(11,600)	—
Debt amendment costs	(1,266)	—	—
Retirement of long-term debt	(26,238)	(682,375)	(250,000)
Settlement of swap	—	—	(29,003)
Draw on revolver	39,000	20,000	—
Common stock issued, net	8,721	4,825	7,300
ESOP activity	(1,086)	(133)	(188)
Excess tax benefits from stock-based compensation	—	2,749	255
Net cash provided by (used in) financing activities	(202,163)	42,869	(150,935)
Effect of exchange rate changes on cash	(4,243)	(8,371)	(19,805)
Net increase (decrease) in cash and cash equivalents	(42,494)	(209,807)	82,352
Cash and cash equivalents at beginning of period	137,453	347,260	264,908
Cash and cash equivalents at end of period	<u>\$ 94,959</u>	<u>\$ 137,453</u>	<u>\$ 347,260</u>
Supplemental disclosures:			
Income taxes paid	\$ 108,394	\$ 151,662	\$ 110,909
Interest paid	34,972	37,883	34,076

See accompanying notes

[Table of Contents](#)**PATTERSON COMPANIES, INC.**
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**April 29, 2017***(Dollars, except per share amounts, and shares in thousands)***1. Summary of Significant Accounting Policies***Description of Business*

Patterson Companies, Inc. (referred to herein as "Patterson" or in the first person notations "we," "our," and "us") is a value-added specialty distributor serving the U.S. and Canadian dental supply and the U.S., Canadian and U.K. animal health supply markets. Patterson has three reportable segments: Dental, Animal Health and Corporate.

Basis of Presentation

The consolidated financial statements include the accounts of our wholly owned subsidiaries. Intercompany transactions and balances have been eliminated in consolidation. The respective assets of PDC Funding Company, LLC and PDC Funding Company II, LLC would be available first and foremost to satisfy the claims of their respective creditors. There are no known creditors of PDC Funding Company, LLC or PDC Funding Company II, LLC.

Fiscal Year End

We operate with a 52-53 week accounting convention with our fiscal year ending on the last Saturday in April. Fiscal years 2017, 2016 and 2015 ended on April 29, 2017, April 30, 2016 and April 25, 2015, respectively. Fiscal years 2017 and 2015 consisted of 52 weeks, while fiscal year 2016 consisted of 53 weeks. Fiscal year 2018 will end on April 28, 2018 and will consist of 52 weeks.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Reclassifications

None.

Cash and Cash Equivalents

Cash equivalents consist primarily of investments in money market funds and government securities. The maturity of these securities at the time of purchase is 90 days or less. All cash and cash equivalents are classified as available-for-sale and carried at fair value, which approximates cost.

Inventory

Inventory consists of merchandise held for sale and is stated at the lower of cost or market. Cost is determined using the last-in, first-out ("LIFO") method for all inventories, except for foreign inventories, which are valued using the first-in, first-out ("FIFO") method. Inventories valued at LIFO represented 84% and 84% of total inventories at April 29, 2017 and April 30, 2016, respectively.

The accumulated LIFO reserve was \$77,816 at April 29, 2017 and \$76,501 at April 30, 2016. We believe that inventory replacement cost exceeds the inventory balance by an amount approximating the LIFO reserve.

Property and Equipment

Property and equipment are stated at cost. Depreciation is calculated on the straight-line method over estimated useful lives of up to 39 years for buildings or the expected remaining life of purchased buildings, the term of the lease for leasehold improvements, 3 to 10 years for computer hardware and software, and 5 to 10 years for furniture and equipment.

[Table of Contents](#)*Goodwill and Other Indefinite-Lived Intangible Assets*

Goodwill represents the excess of cost over the fair value of identifiable net assets of businesses acquired. We have two reporting units as of April 29, 2017; dental and animal health. Our Corporate reportable segment's assets and liabilities, and net sales and expenses, are allocated to the two reporting units. Other indefinite-lived intangible assets include copyrights, trade names and trademarks.

We evaluate goodwill at least annually. If we determine that the fair value of the reporting unit may be less than its carrying amount, we evaluate goodwill using a two-step impairment test. Otherwise, we conclude that no impairment is indicated and we do not perform the two-step impairment test. In fiscal 2017, we determined it was appropriate to perform a two-step impairment test.

The first step of the goodwill impairment test compares the book value of a reporting unit, including goodwill, with its fair value, as determined primarily by its discounted cash flows. If the book value of a reporting unit exceeds its fair value, the second step of the impairment test is performed to determine the amount of goodwill impairment loss to be recorded. The determination of fair value involves uncertainties because it requires management to make assumptions and to apply judgment to estimate industry and economic factors and the profitability of future business strategies. Patterson conducts impairment testing based on current business strategy in light of present industry and economic conditions, as well as future expectations. Additionally, in assessing goodwill for impairment, the reasonableness of the implied control premium is considered based on market capitalizations and recent market transactions.

Other indefinite-lived intangible assets are assessed for impairment by comparing the carrying value of an asset with its fair value. If the carrying value exceeds fair value, an impairment loss is recognized in an amount equal to the excess. The determination of fair value involves assumptions, including projected revenues and gross profit levels, as well as consideration of any factors that may indicate potential impairment.

In the fourth quarter of fiscal 2017, management completed its annual goodwill and other indefinite-lived intangible asset impairment tests and determined there was no impairment, and that our dental reporting unit was not at risk of failing step 1. The animal health reporting unit has a higher level of sensitivity to impairment as management currently assesses the various estimates and assumptions used to conduct these tests. Adverse changes to one or more of these estimates or assumptions could cause us to recognize a material impairment charge on this reporting unit. At April 29, 2017, the estimated fair value of the animal health reporting unit exceeded its book value by approximately 11%.

Long-Lived Assets

Long-lived assets, including definite-lived intangible assets, are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable through the estimated undiscounted future cash flows derived from such assets. Our definite-lived intangible assets primarily consist of customer lists. When impairment exists, the related assets are written down to fair value using level 3 inputs, as discussed further in Note 9. In fiscal 2017, we recorded a non-cash impairment charge of \$36,312 related to a distribution agreement intangible asset. Refer to Note 3 for more information.

Financial Instruments

We account for derivative financial instruments under the provisions of Accounting Standards Codification ("ASC") Topic 815, "Derivatives and Hedging." Our use of derivative financial instruments is generally limited to managing well-defined interest rate risks. We do not use financial instruments or derivatives for any trading purposes.

Revenue Recognition

Revenues are generated from the sale of consumable products, equipment, software products and services, technical service parts and labor, freight and delivery charges, and other sources. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable, and there is reasonable assurance of collection of the sale. Estimates for returns, damaged goods, rebates, loyalty programs and other revenue allowances are made at the time the revenue is recognized based on the historical experience for such items. In addition to revenues generated from the distribution of consumable products under conventional arrangements (buy/sell agreements) where the full market value of the product is recorded as revenue, the animal health segment may earn a small amount of commission income for services provided under agency agreements with certain pharmaceutical manufacturers. The services generally consist of detailing the product

and taking the customer's order. The agency agreement contrasts to a buy/sell agreement in that the animal health

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segment does not purchase and handle the product or bill and collect from the customer in an agency relationship with a vendor.

Consumable product sales are recorded upon delivery, except in those circumstances where terms of the sale are FOB shipping point, in which case sales are recorded upon shipment. Commissions under agency agreements are recorded when the services are provided.

Equipment and software product revenues are recognized upon delivery and, if necessary, installation. In those circumstances where terms of the sale are FOB shipping point, revenues are recognized when products are transferred to the shipping carrier. Revenue derived from post contract customer support for software is deferred and recognized ratably over the period in which the support is provided. Patterson provides financing for select equipment and software sales. Revenue is recorded at the present value of the finance contract, with discount, if any, and interest income recognized over the life of the finance contract as other income, net in our consolidated statement of income. See Note 7 for more information regarding customer financing.

Other revenue, including freight and delivery charges and technical service parts and labor, is recognized when the related product revenue is recognized or when the product or services are provided to the customer.

The receivables that result from the recognition of revenue are reported net of the related allowances discussed above. Patterson maintains a valuation allowance based upon the expected collectability of receivables held. Estimates are used to determine the valuation allowance and are based on several factors, including historical collection data, economic trends and credit worthiness of customers. Receivables are written off when we determine the amounts to be uncollectible, typically upon customer bankruptcy or non-response to continuous collection efforts. The portions of receivable amounts that are not expected to be collected during the next twelve months are classified as long-term.

Patterson has a relatively large, dispersed customer base and no single customer accounts for more than 10% of consolidated net sales. In addition, the equipment sold to customers under finance contracts generally serves as collateral for the contract and the customer provides a personal guarantee as well.

Net sales do not include sales tax as we are considered a pass-through conduit for collecting and remitting sales tax.

Patterson Advantage Loyalty Program

The Dental segment provides a point-based awards program to qualifying customers involving the issuance of "Patterson Advantage dollars" which can be used toward equipment and technology purchases. The program was initiated on January 1, 2009 and runs on a calendar year schedule. Patterson Advantage dollars earned during a program year expire one year after the end of the program year. The cost and corresponding liability associated with the program are recognized as contra-revenue in accordance with ASC Topic 605-50, "Revenue Recognition-Customer Payments and Incentives." As of April 29, 2017, we believe we have sufficient experience with the program to reasonably estimate the amount of Patterson Advantage dollars that will not be redeemed and thus have recorded a liability for 87% of the maximum potential amount that could be redeemed. We use the redemption recognition method and we recognize the estimated value of unused Advantage dollars as a percentage of Patterson Advantage dollars earned. Breakage recognized was immaterial to all periods presented.

Freight and Delivery Charges

Freight and delivery charges are included in cost of sales in the consolidated statements of income.

Advertising

We expense all advertising and promotional costs as incurred, except for direct marketing expenses, which are expensed over the shorter of the life of the asset or one year. Total advertising and promotional expenses were \$10,128, \$12,113 and \$10,181 for fiscal years 2017, 2016 and 2015, respectively. There were no deferred direct-marketing expenses included in the consolidated balance sheets as of April 29, 2017 and April 30, 2016.

Income Taxes

The liability method is used to account for income tax expense. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse.

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Valuation allowances are established for deferred tax assets if, after assessment of available positive and negative evidence, it is more likely than not that the deferred tax asset will not be fully realized.

Employee Stock Ownership Plan ("ESOP")

Compensation expense related to our defined contribution ESOP is computed based on the shares allocated method.

Self-insurance

Patterson is self-insured for certain losses related to general liability, product liability, automobile, workers' compensation and medical claims. We estimate our liabilities based upon an analysis of historical data and actuarial estimates. While current estimates are believed reasonable based on information currently available, actual results could differ and affect financial results due to changes in the amount or frequency of claims, medical cost inflation or other factors. Historically, actual results related to these types of claims have not varied significantly from estimated amounts.

Stock-based Compensation

We recognize stock-based compensation expense based on estimated grant date fair values. The grant date fair value of stock options and stock purchases made through our Employee Stock Purchase Plan and our Capital Accumulation Plan are estimated using the Black-Scholes option pricing valuation model. The grant date fair value of performance stock units that vest upon meeting certain market conditions is estimated using the Monte Carlo valuation model. These valuations require estimates to be made including expected stock price volatility which considers historical volatility trends, implied future volatility based on certain traded options and other factors. We estimate the expected life of awards based on several factors, including types of participants, vesting schedules, contractual terms and various factors surrounding exercise behavior of different groups.

The grant date fair value of time-based restricted stock awards and restricted stock units is calculated based on the closing price of our common stock on the date of grant.

Compensation expense for all share-based payment awards is recognized over the requisite service period (or to the date a participant becomes eligible for retirement, if earlier) for awards that are expected to vest.

Comprehensive Income

Comprehensive income is computed as net income plus certain other items that are recorded directly to stockholders' equity. Significant items included in comprehensive income are foreign currency translation adjustments and the effective portion of cash flow hedges, net of tax. Foreign currency translation adjustments do not include a provision for income tax because earnings from foreign operations are considered to be indefinitely reinvested outside the U.S. The income tax expense (benefit) related to cash flow hedge losses was \$1,057, \$883 and \$(10,843) for the fiscal years ended April 29, 2017, April 30, 2016 and April 25, 2015, respectively.

Earnings Per Share

The amount of basic earnings per share is computed by dividing net income by the weighted average number of outstanding common shares during the period. The amount of diluted earnings per share is computed by dividing net income by the weighted average number of outstanding common shares and common share equivalents, when dilutive, during the period.

The following table sets forth the denominator for the computation of basic and diluted earnings per share. There were no material adjustments to the numerator.

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	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Denominator			
Denominator for basic earnings per share – weighted average shares	94,897	97,222	98,989
Effect of dilutive securities – stock options, restricted stock and stock purchase plans	670	680	705
Denominator for diluted earnings per share – adjusted weighted average shares	95,567	97,902	99,694

Potentially dilutive securities representing 1,133, 765 and 147 shares for fiscal years 2017, 2016 and 2015, respectively, were excluded from the calculation of diluted earnings per share because their effects were anti-dilutive.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers (Topic 606)". ASU No. 2014-09 supersedes the revenue recognition requirements in "Revenue Recognition (Topic 605)," and requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In July 2015, the FASB deferred the effective date of this pronouncement by one year to December 15, 2017 for annual reporting periods beginning after that date. Early adoption is permitted, but not before the original effective date, which for annual periods was December 15, 2016. Companies may use either a full retrospective or a modified retrospective approach to adopt the standard. We plan to adopt the new guidance in the first quarter of fiscal 2019 and are currently evaluating the standard, including the method we will use for adoption and the effect it will have on our financial statements. We do not expect the standard to materially affect our consolidated net earnings, financial position, or cash flows. We are currently evaluating the new standard as it relates to certain sales transactions in which products are shipped directly from the vendor to our customers. We currently report these sales on a gross basis, and are evaluating if we will be required to report these sales on a net basis. Such sales represented approximately 2% of consolidated net sales in fiscal 2017. Any change to net presentation would not impact gross margin or earnings.

In July 2015, the FASB issued ASU No. 2015-11, "Inventory (Topic 330), Simplifying the Measurement of Inventory." ASU 2015-11 requires inventory measured using any method other than LIFO or the retail inventory method to be subsequently measured at the lower of cost or net realizable value, rather than at the lower of cost or market. Subsequent measurement of inventory using the LIFO and retail inventory method is unchanged. We are required to adopt the new pronouncement in the first quarter of fiscal 2018, and plan to do so at that time. We are evaluating the effect of adopting this pronouncement, but do not, at this time, anticipate a material impact to our financial statements once implemented.

In January 2016, the FASB issued ASU No. 2016-01 "Financial Instruments- Recognition and Measurement of Financial Assets and Financial Liabilities (Subtopic 825-10)", which amends certain aspects of recognition, measurement, presentation and disclosure of financial instruments, including the requirement to measure certain equity investments at fair value with changes in fair value recognized in net income. We are required to adopt the ASU No. 2016-01 in the first quarter of fiscal 2019, and plan to do so at that time. Early adoption is permitted. We are evaluating the impact of adopting this pronouncement.

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)," which requires lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by most leases, as well as requires additional qualitative and quantitative disclosures. We are required to adopt ASU 2016-02 in the first quarter of fiscal 2020, with early adoption permitted. We are evaluating the impact of adopting this pronouncement.

In March 2016, the FASB issued ASU No. 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting." ASU No. 2016-09 eliminates the additional paid-in capital pool concept and requires that excess tax benefits and tax deficiencies be recorded in the income statement when awards are settled. ASU No. 2016-09 also addresses simplifications related to statement of cash flows classification, accounting for forfeitures, and minimum statutory tax withholding requirements. During the first quarter of

fiscal 2017, we adopted ASU No. 2016-09. As a result of this adoption, we recognized \$2,493 of excess tax benefits

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related to share-based payments in our provision for income taxes for the fiscal year ended April 29, 2017. These items were historically recorded in additional paid-in capital. In addition, for the fiscal year ended April 29, 2017, cash flows related to excess tax benefits are classified as an operating activity along with other income tax cash flows. No prior period amounts have been adjusted. Cash paid on employees' behalf related to shares withheld for tax purposes continues to be classified as a financing activity. Our share-based compensation expense in each period continues to reflect estimated forfeitures.

In August 2016, the FASB issues ASU No. 2016-15, "Statement of Cash Flows: Classification of Certain Cash Receipts and Payments." ASU No. 2016-15 provides guidance on eight specific cash flow issues with the objective of reducing diversity in practice. The guidance is effective for interim and annual periods beginning after December 15, 2017. Early adoption is permitted in any interim or annual period. During the third quarter of fiscal 2017, we adopted ASU No. 2016-15 and it had no material impact on the consolidated financial statements.

2. Cash and Cash Equivalents

At April 29, 2017 and April 30, 2016, cash and cash equivalents consisted of the following:

	April 29, 2017	April 30, 2016
Cash on hand	\$ 88,161	\$ 122,844
Money market funds	6,798	14,609
Total	<u>\$ 94,959</u>	<u>\$ 137,453</u>

Cash on hand is generally in interest earning accounts.

3. Goodwill and Other Intangible Assets

The changes in the carrying value of goodwill for each of our reportable segments for the fiscal year ended April 29, 2017 are as follows:

	Balance at April 30, 2016	Other Activity	Balance at April 29, 2017
Dental	\$ 139,129	\$ (840)	\$ 138,289
Animal Health	677,463	(2,205)	675,258
Corporate	—	—	—
Total	<u>\$ 816,592</u>	<u>\$ (3,045)</u>	<u>\$ 813,547</u>

Activity in fiscal 2017 primarily consists of the impact from foreign currency translation.

Balances of other intangible assets, excluding goodwill, are as follows:

	April 29, 2017			April 30, 2016		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Unamortized - indefinite lived:						
Copyrights, trade names and trademarks	\$ 29,900	\$ —	\$ 29,900	\$ 29,900	\$ —	\$ 29,900
Amortized - definite lived:						
Customer relationships	353,237	67,483	285,754	356,707	44,953	311,754
Trade names and trademarks	129,426	35,580	93,846	130,516	22,454	108,062
Developed technology and other	54,209	38,273	15,936	154,013	94,432	59,581

Total amortized intangible assets	<u>536,872</u>	<u>141,336</u>	<u>395,536</u>	<u>641,236</u>	<u>161,839</u>	<u>479,397</u>
Total identifiable intangible assets	<u>\$ 566,772</u>	<u>\$ 141,336</u>	<u>\$ 425,436</u>	<u>\$ 671,136</u>	<u>\$ 161,839</u>	<u>\$ 509,297</u>

In fiscal 2006, we extended our exclusive North American distribution relationship with Sirona Dental Systems for Sirona's CEREC 3D dental restorative system. At that time, we paid a \$100,000 distribution fee to extend the

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existing exclusive relationship for at least a 10-year beginning in 2007. This distribution fee has been accounted for as an intangible asset in our Dental segment that has been amortized since 2007.

Based on our November 2016 decision not to extend sales exclusivity for the full Sirona portfolio of products, we recorded a pre-tax non-cash impairment charge of \$36,312 in our Dental segment in the third quarter fiscal 2017, related to the distribution fee associated with the CEREC product component of this arrangement. This charge was recorded within operating expenses in the consolidated statements of income and other comprehensive income.

With respect to the amortized intangible assets, future amortization expense is expected to approximate \$38,811, \$36,320, \$35,022, \$34,919 and \$34,602 for fiscal years 2018, 2019, 2020, 2021 and 2022, respectively. Actual amounts of amortization expense may differ from estimated amounts due to additional intangible asset acquisitions, changes in foreign currency exchange rates, impairment of intangible assets, accelerated amortization of intangible assets and other events.

4. Discontinued Operations

In August 2015, we sold all of the outstanding shares of common stock of Patterson Medical Holdings, Inc., our wholly owned subsidiary responsible for our rehabilitation supply business ("Patterson Medical"), for \$716,886 in cash to Madison Dearborn Partners. As additional consideration for the shares of Patterson Medical, we obtained a number of common units of the parent company of the buyer equal to 10% of the common units outstanding at closing. Unlike the other common units, these units will only become entitled to begin participating in distributions to the common unit holders at such time, if any, as the Madison Dearborn Partners' investor cash inflows equal or exceed 2.5 times the Madison Dearborn Partners' investor cash outflows. These units are non-transferable.

In connection with the above described transaction, we also entered into a transition services agreement with our former subsidiary, pursuant to which Patterson Medical, as owned by Madison Dearborn Partners, is paying us to provide, among other things, certain information technology, distribution, facilities, finance, tax and treasury, and human resources services for up to 24 months after closing.

We classified Patterson Medical's results of operations as discontinued operations for all periods presented in the consolidated statements of income and other comprehensive income. The operations and cash flows of Patterson Medical have been eliminated from our continuing operations, which were previously recorded as the rehabilitation supply reportable segment. Net sales from discontinued operations were \$168,504 for fiscal year ended April 30, 2016. For the fiscal year ended April 29, 2017, net loss from discontinued operations was \$2,895, which was due to a change in estimate of the tax impact of the sale of Patterson Medical.

5. Property and Equipment

Property and equipment consisted of the following items:

	April 29, 2017	April 30, 2016
Land	\$ 11,518	\$ 11,585
Buildings	110,807	111,386
Leasehold improvements	25,173	26,291
Furniture and equipment	159,886	169,110
Computer hardware and software	206,402	141,727
Construction-in-progress	36,211	95,450
Property and equipment, gross	549,997	555,549
Accumulated depreciation	(251,545)	(262,234)
Property and equipment, net	<u>\$ 298,452</u>	<u>\$ 293,315</u>

6. Debt

Our long-term debt consists of the following:

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	Interest Rate	Carrying Value	
		April 29, 2017	April 30, 2016
Senior notes due fiscal 2018 ⁽¹⁾	5.75%	\$ 150,000	\$ 150,000
Senior notes due fiscal 2019 ⁽²⁾	2.95%	60,000	60,000
Senior notes due fiscal 2022 ⁽²⁾	3.59%	165,000	165,000
Senior notes due fiscal 2024 ⁽²⁾	3.74%	100,000	100,000
Senior notes due fiscal 2025 ⁽³⁾	3.48%	250,000	250,000
Term loan due fiscal 2022 ⁽⁴⁾	2.24%	291,387	317,625
Less: Deferred debt issuance costs		(3,361)	(3,970)
Total debt		1,013,026	1,038,655
Less: Current maturities of long-term debt		(14,754)	(16,500)
Long-term debt		\$ 998,272	\$ 1,022,155

(1) Issued in March 2008.

(2) Issued in December 2011.

(3) Issued in March 2015.

(4) Issued in June 2015, amended in January 2017. Interest rate is LIBOR plus 1.25% as of April 29, 2017.

Future principal payments due, based on stated contractual maturities for our long-term debt, are as follows as of April 29, 2017:

Fiscal Year	
2018 ⁽¹⁾	\$ 164,754
2019	76,598
2020	23,975
2021	29,508
2022	371,552
Thereafter	350,000
Total	\$ 1,016,387

(1) Includes \$150,000 classified as long-term debt on the consolidated balance sheet as we have both the intent and ability to refinance at the time the debt is set to mature in March 2018.

During fiscal 2016, we entered into a credit agreement (the "Credit Agreement"), under which the lenders provided us with senior unsecured lending facilities of up to \$1,500,000, consisting of a \$1,000,000 unsecured term loan and a \$500,000 unsecured revolving line of credit. The Credit Agreement was due to expire in fiscal 2021.

In the third quarter of fiscal 2017, we entered into an amendment of the Credit Agreement (the "Amended Credit Agreement"), consisting of a \$295,075 term loan and a \$750,000 revolving line of credit. Interest on borrowings is variable and is determined as a base rate plus a spread. This spread, as well as a commitment fee on the unused portion of the facility, is based on our leverage ratio, as defined in the Amended Credit Agreement. The term loan and revolving credit facilities will mature no later than January 2022. As of April 29, 2017, \$291,387 of the Amended Credit Agreement unsecured term loan was outstanding at an interest rate of 2.24%, and \$59,000 was outstanding under the Amended Credit Agreement revolving line of credit at an interest rate of 2.19%. At April 30, 2016, \$317,625 was outstanding under the Credit Agreement unsecured term loan at an interest rate of 1.81%, and \$20,000 was outstanding under the Credit Agreement revolving line of credit at an interest rate of 3.88%.

We are subject to various financial covenants under our debt agreements including the maintenance of leverage and interest coverage ratios. In the event of our default, any outstanding obligations may become due and payable immediately. We were in material compliance with the covenants under our debt agreements as of April 29, 2017.

7. Customer Financing

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As a convenience to our customers, we offer several different financing alternatives, including a third party program and a Patterson-sponsored program. For the third party program, we act as a facilitator between the customer and the third party financing entity with no on-going involvement in the financing transaction. Under our sponsored program, equipment purchased by customers with strong credit may be financed up to a maximum of \$1,000. We generally sell our customers' financing contracts to outside financial institutions in the normal course of our business. These financing arrangements are accounted for as a sale of assets under the provisions of ASC 860, *Transfers and Servicing*. We currently have two arrangements under which we sell these contracts.

First, we operate under an agreement to sell a portion of our equipment finance contracts to commercial paper conduits with The Bank of Tokyo-Mitsubishi UFJ, Ltd. ("BTMU") serving as the agent. We utilize PDC Funding to fulfill a requirement of participating in the commercial paper conduit. We receive the proceeds of the contracts upon sale to BTMU. At least 9% of the proceeds are held by the conduit as security against eventual performance of the portfolio. This percentage can be greater and is based upon certain ratios defined in the agreement with BTMU. The capacity under the agreement with BTMU at April 29, 2017 was \$575,000.

Second, we maintain an agreement with Fifth Third Bank ("Fifth Third") whereby the bank purchases customers' financing contracts. PDC Funding II sells financing contracts to Fifth Third. We receive the proceeds of the contracts upon sale to Fifth Third. At least 10% of the proceeds are held by the conduit as security against eventual performance of the portfolio. This percentage can be greater and is based upon certain ratios defined in the agreement with Fifth Third. The capacity under the agreement with Fifth Third at April 29, 2017 was \$100,000.

We retain servicing responsibilities for the financing contracts under both arrangements, for which we are paid a servicing fee. The servicing fees we receive are considered adequate compensation for services rendered. Accordingly, no servicing asset or liability has been recorded.

The portion of the purchase price for the receivables held by the conduits is deemed a deferred purchase price receivable, which is paid to the applicable special purpose entity as payments on the customers' financing contracts are collected from customers. The difference between the carrying amount of the receivables sold under these programs and the sum of the cash and the current fair value of the deferred purchase price receivables is recognized as a gain on sale of the related receivables and recorded in net sales in the consolidated statements of income and other comprehensive income. Expenses incurred related to customer financing activities were recorded in operating expenses in our consolidated statements of income and other comprehensive income.

During fiscal 2017, 2016 and 2015, we sold \$357,965, \$359,646 and \$312,303, respectively, of contracts under these arrangements. We recorded net sales in the consolidated statements of income and other comprehensive income of \$20,580, \$30,123 and \$21,668 during fiscal 2017, 2016 and 2015, respectively, related to these contracts sold.

Included in cash and cash equivalents in the consolidated balance sheets are \$17,902 and \$27,186 as of April 29, 2017 and April 30, 2016, respectively, which represent cash collected from previously sold customer financing arrangements that have not yet been settled. Included in current receivables in the consolidated balance sheets are \$124,098, net of unearned income of \$940, and \$87,406, net of unearned income of \$1,768, as of April 29, 2017 and April 30, 2016, respectively, of finance contracts that had not yet been sold as of those dates. A total of \$613,586 of finance contracts receivable sold under the arrangements was outstanding at April 29, 2017. The deferred purchase price receivable under the arrangements was \$119,798 and \$108,837 as of April 29, 2017 and April 30, 2016, respectively. Since the internal financing program began in 1994, bad debt write-offs have amounted to less than 1% of the loans originated.

The agreements require us to maintain a minimum current ratio and maximum leverage ratio. We were in material compliance with those covenants at April 29, 2017.

8. Derivative Financial Instruments

We are a party to certain offsetting and identical interest rate cap agreements entered into to fulfill certain covenants of the equipment finance contract sale agreements. The interest rate cap agreements also provide a credit enhancement feature for the financing contracts sold by PDC Funding and PDC Funding II to the commercial paper conduit.

The interest rate cap agreements are canceled and new agreements are entered into periodically to maintain consistency with the dollar maximum of the sale agreements and the maturity of the underlying financing contracts. As of April 29, 2017, PDC Funding had purchased an interest rate cap from a bank with a notional amount of \$575,000

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and a maturity date of November 2023. We sold an identical interest rate cap to the same bank. As of April 29, 2017, PDC Funding II had purchased an interest rate cap from a bank with a notional amount of \$100,000 and a maturity date of July 2024. We sold an identical interest rate cap to the same bank.

These interest rate cap agreements do not qualify for hedge accounting treatment and, accordingly, we record the fair value of the agreements as an asset or liability and the change as income or expense during the period in which the change occurs.

In March 2008 we entered into two forward starting interest rate swap agreements, each with notional amounts of \$100,000 and accounted for as cash flow hedges, to hedge interest rate fluctuations in anticipation of the issuance of the senior notes due fiscal 2015 and fiscal 2018. Upon issuance of the hedged debt, we settled the forward starting interest rate swap agreements and recorded a \$1,000 increase, net of income taxes, to other comprehensive income (loss), which is being amortized as a reduction to interest expense over the life of the related debt.

In January 2014 we entered into a forward interest rate swap agreement with a notional amount of \$250,000 and accounted for as a cash flow hedge, to hedge interest rate fluctuations in anticipation of refinancing the 5.17% senior notes due March 25, 2015. These notes were repaid on March 25, 2015 and replaced with new \$250,000 3.48% senior notes due March 24, 2025. A cash payment of \$29,003 was made in March 2015 to settle the interest rate swap. This amount is recorded in other comprehensive income (loss), net of tax, and will be recognized as interest expense over the life of the related debt.

The following presents the fair value of derivative instruments included in the consolidated balance sheets:

Derivative type	Classification	April 29, 2017	April 30, 2016
Assets:			
Interest rate cap agreements	Other noncurrent assets	\$ 1,188	\$ 816
Liabilities:			
Interest rate cap agreements	Other noncurrent liabilities	\$ 1,188	\$ 816

The following tables present the pre-tax effect of derivative instruments in cash flow hedging relationships on the consolidated statements of income and other comprehensive income ("OCI"):

Derivatives in cash flow hedging relationships	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion)			
	Fiscal Year Ended			
	April 29, 2017	April 30, 2016	April 25, 2015	
Interest rate swap	\$ —	\$ —	\$ (23,343)	
Derivatives in cash flow hedging relationships	Income statement location	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Loss into Income (Effective Portion)		
		Fiscal Year Ended		
		April 29, 2017	April 30, 2016	April 25, 2015
Interest rate swap	Interest expense	\$ (2,802)	\$ (2,817)	\$ (56)

We recorded no ineffectiveness during fiscal 2017, 2016 or 2015. As of April 29, 2017, the estimated pre-tax portion of accumulated other comprehensive loss that is expected to be reclassified into earnings over the next twelve months is \$2,817, which will be recorded as an increase to interest expense.

9. Fair Value Measurements

Fair value is the price at which an asset could be exchanged in a current transaction between knowledgeable, willing parties. The fair value hierarchy of measurements is categorized into one of three levels based on the lowest level of significant input used:

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- Level 1 –** Quoted prices in active markets for identical assets and liabilities at the measurement date.
- Level 2 –** Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3 –** Unobservable inputs for which there is little or no market data available. These inputs reflect management's assumptions of what market participants would use in pricing the asset or liability.

Our hierarchy for assets and liabilities measured at fair value on a recurring basis is as follows:

	April 29, 2017			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents	\$ 6,798	\$ 6,798	\$ —	\$ —
Deferred purchase price receivable	119,798	—	—	119,798
Derivative instruments	1,188	—	1,188	—
Total assets	\$ 127,784	\$ 6,798	\$ 1,188	\$ 119,798
Liabilities:				
Derivative instruments	\$ 1,188	\$ —	\$ 1,188	\$ —
	April 30, 2016			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents	\$ 14,609	\$ 14,609	\$ —	\$ —
Deferred purchase price receivable	108,837	—	—	108,837
Derivative instruments	816	—	816	—
Total assets	\$ 124,262	\$ 14,609	\$ 816	\$ 108,837
Liabilities:				
Derivative instruments	\$ 816	\$ —	\$ 816	\$ —

Cash equivalents – We value cash equivalents at their current market rates. The carrying value of cash equivalents approximates fair value and maturities are less than three months.

Deferred purchase price receivable – We value the deferred purchase price receivable based on a discounted cash flow analysis using unobservable inputs, which include a forward yield curve, the estimated timing of payments and the credit quality of the underlying creditor. Significant changes in any of the significant unobservable inputs in isolation would not result in a materially different fair value estimate. The interrelationship between these inputs is insignificant.

Derivative instruments – Patterson's derivative instruments consist of interest rate cap agreements and interest rate swaps. These instruments are valued using inputs such as interest rates and credit spreads.

Certain assets are measured at fair value on a non-recurring basis. These assets are not measured at fair value on an ongoing basis, but are subject to fair value adjustments under certain circumstances, such as when there is evidence of impairment. In fiscal 2017, we recorded a non-cash impairment charge of \$36,312 related to a distribution agreement intangible asset. Refer to Note 3 for more information. There were no fair value adjustments to such assets in fiscal years 2016 or 2015.

Our debt is not measured at fair value in the consolidated balance sheets. The estimated fair value of our debt as of April 29, 2017 and April 30, 2016 was \$1,025,761 and \$1,064,752, respectively, as compared to a carrying value of \$1,013,026 and \$1,038,655 at April 29, 2017 and April 30, 2016, respectively. The fair value of debt was measured using a discounted cash flow analysis based on expected market based yields (i.e. level 2 inputs).

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The carrying amounts of receivables, net of allowances, accounts payable, and certain accrued and other current liabilities approximated fair value at April 29, 2017 and April 30, 2016.

10. Lease Commitments

Patterson leases facilities for its branch office locations, a few small distribution facilities, and certain equipment. These leases are accounted for as operating leases. Future minimum rental payments under noncancelable operating leases are as follows at April 29, 2017:

2018	\$	22,690
2019		15,166
2020		12,516
2021		9,207
2022		5,634
Thereafter		5,815
Total	\$	<u>71,028</u>

Rent expense was \$24,502, \$23,315 and \$16,909 for fiscal years 2017, 2016 and 2015, respectively.

11. Income Taxes

The components of income from continuing operations before taxes are as follows:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Income from continuing operations before taxes			
United States	\$ 217,529	\$ 270,501	\$ 235,421
International	33,352	31,192	38,897
Total	<u>\$ 250,881</u>	<u>\$ 301,693</u>	<u>\$ 274,318</u>

Significant components of income tax expense are as follows:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Current:			
Federal	\$ 72,339	\$ 105,104	\$ 73,004
Foreign	9,100	11,690	11,764
State	9,367	15,249	9,007
Total current	<u>90,806</u>	<u>132,043</u>	<u>93,775</u>
Deferred:			
Federal	(11,802)	(14,308)	497
Foreign	(28)	323	44
State	(1,883)	(2,049)	(81)
Total deferred	<u>(13,713)</u>	<u>(16,034)</u>	<u>460</u>
Income tax expense	<u>\$ 77,093</u>	<u>\$ 116,009</u>	<u>\$ 94,235</u>

Deferred tax assets and liabilities are included in other non-current assets and deferred income taxes on the consolidated balance sheets. Significant components of Patterson's deferred tax assets (liabilities) as of April 29, 2017 and April 30, 2016 are as follows:

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	April 29, 2017	April 30, 2016
Deferred tax assets:		
Capital accumulation plan	\$ 7,676	\$ 5,898
Inventory related items	6,236	6,776
Bad debt allowance	2,317	2,649
Stock based compensation expense	8,663	9,985
Interest rate swap	8,656	9,749
Foreign tax credit	8,917	9,300
Net operating loss carryforwards	—	363
Other	14,269	11,979
Gross deferred tax assets	56,734	56,699
Less: Valuation allowance	(14,053)	(14,007)
Total net deferred tax assets	42,681	42,692
Deferred tax liabilities		
LIFO reserve	(25,833)	(21,294)
Amortizable intangibles	(133,037)	(156,782)
Goodwill	(61,108)	(57,405)
Property, plant, equipment	(14,389)	(11,748)
Total deferred tax liabilities	(234,367)	(247,229)
Deferred net long-term income tax liability	\$ (191,686)	\$ (204,537)

At April 29, 2017, we had a U.S. foreign tax credit asset that will expire in 9 years. In addition, we have deferred tax assets which would give rise to tax capital losses if triggered in the future. These losses have a 5 year carryforward period and can only be used against capital gain income. At this time, we believe that it is more likely than not that the foreign tax credit and capital loss carryforward attributes totaling \$14,053 will not be fully utilized prior to expiration. As a result, a full valuation allowance has been established against these assets.

No provision has been made for U.S. federal income taxes on certain undistributed earnings of foreign subsidiaries that we intend to permanently invest or that may be remitted substantially tax-free. The total undistributed earnings that would be subject to federal income tax if remitted under existing law are approximately \$121,347 as of April 29, 2017. Determination of the unrecognized deferred tax liability related to these earnings is not practicable because of the complexities with its hypothetical calculation. If a future distribution of these earnings is made, we will be subject to U.S. taxes and withholding taxes payable to various foreign governments. A credit for foreign taxes already paid may be available to reduce the U.S. tax liability.

In fiscal 2016, we approved a one-time repatriation of approximately \$200,000 of foreign earnings. This one-time repatriation reduced the overall cost of funding the acquisition of Animal Health International, Inc. In addition, certain foreign cash at Patterson Medical was required to be repatriated as part of the sale transaction. The continuing operations tax impact of \$12,300 from the repatriation was recorded in fiscal 2016. During fiscal 2017, we recorded a \$2,406 benefit related to a change in estimate of the tax impact of the cash repatriation. We have previously asserted that our foreign earnings are permanently reinvested. Except for the repatriations described above, there is no change in our on-going assertion.

Income tax expense varies from the amount computed using the U.S. statutory rate. The reasons for this difference and the related tax effects are shown below:

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	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Tax at U.S. statutory rate	\$ 87,807	\$ 105,593	\$ 96,012
State tax provision, net of federal benefit	5,217	7,364	6,479
Effect of foreign taxes	(2,602)	(1,195)	(1,806)
Permanent differences	(6,861)	(3,693)	(5,363)
Tax on dividends, net of foreign tax credit	(2,406)	12,300	—
Other	(4,062)	(4,360)	(1,087)
Income tax expense	<u>\$ 77,093</u>	<u>\$ 116,009</u>	<u>\$ 94,235</u>

We have accounted for the uncertainty in income taxes recognized in the financial statements in accordance with ASC Topic 740, "Income Taxes". This standard clarifies the separate identification and reporting of estimated amounts that could be assessed upon audit. The potential assessments are considered unrecognized tax benefits, because, if it is ultimately determined they are unnecessary, the reversal of these previously recorded amounts will result in a beneficial impact to our financial statements.

As of April 29, 2017 and April 30, 2016, Patterson's gross unrecognized tax benefits were \$14,211 and \$13,560, respectively. If determined to be unnecessary, these amounts (net of deferred tax assets of \$3,883 and \$3,800, respectively, related to the tax deductibility of the gross liabilities) would decrease our effective tax rate. The gross unrecognized tax benefits are included in other long-term liabilities on the consolidated balance sheet.

A summary of the changes in the gross amounts of unrecognized tax benefits for the years ended April 29, 2017 and April 30, 2016 is shown below:

	April 29, 2017	April 30, 2016
Balance at beginning of period	\$ 13,560	\$ 16,661
Additions for tax positions related to the current year	1,900	1,794
Additions for tax positions of prior years	418	560
Reductions for tax positions of prior years	(194)	(1,599)
Statute expirations	(1,145)	(3,486)
Settlements	(328)	(370)
Balance at end of period	<u>\$ 14,211</u>	<u>\$ 13,560</u>

We also recognize both interest and penalties with respect to unrecognized tax benefits as a component of income tax expense. As of April 29, 2017 and April 30, 2016, we had recorded \$1,568 and \$1,438, respectively, for interest and penalties. These amounts are also included in other long-term liabilities on the consolidated balance sheet. These amounts, net of related deferred tax assets, if determined to be unnecessary, would decrease our effective tax rate. During the year ended April 29, 2017, we recorded as part of tax expense \$350 related to an increase in our estimated liability for interest and penalties.

Patterson files income tax returns, including returns for our subsidiaries, with federal, state, local and foreign jurisdictions. During fiscal year 2017, the Internal Revenue Service ("IRS") began an audit of fiscal years ended April 25, 2015 and April 30, 2016. During fiscal 2016, the IRS completed an audit of our fiscal years ended April 27, 2013 and April 27, 2014. The outcome of this audit did not have a material adverse impact on our financial statements. The IRS has either examined or waived examination for all periods up to and including our fiscal year ended April 27, 2013, resulting in these periods being closed. In addition to the IRS, periodically, state, local and foreign income tax returns are examined by various taxing authorities. We do not believe that the outcome of these various examinations will have a material adverse impact on our financial statements.

12. Segment and Geographic Data

We present three reportable segments: Dental, Animal Health and Corporate. Dental and Animal Health are strategic business units that offer similar products and services to different customer bases. Dental provides a virtually complete range of consumable dental products, equipment and software, turnkey digital solutions and value-added services to dentists, dental laboratories, institutions, and other healthcare professionals throughout North America. Animal Health is a leading, full-line distributor in North America and the U.K. of animal health products, services and

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technologies to both the production-animal and companion-pet markets. Our Corporate segment is comprised of general and administrative expenses, including home office support costs in areas such as information technology, finance, legal, human resources and facilities. In addition, customer financing and other miscellaneous sales are reported within Corporate results. Corporate assets consist primarily of cash and cash equivalents, accounts receivable, property and equipment and long-term receivables. We evaluate segment performance based on operating income. The costs to operate the fulfillment centers are allocated to the operating units based on the through-put of the unit.

The following table presents information about our reportable segments:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Net sales			
Dental	\$ 2,390,219	\$ 2,476,234	\$ 2,415,003
Animal Health	3,159,826	2,862,249	1,456,570
Corporate	43,082	48,220	39,292
Consolidated net sales	<u>\$ 5,593,127</u>	<u>\$ 5,386,703</u>	<u>\$ 3,910,865</u>
Operating income (loss)			
Dental	\$ 263,671	\$ 312,176	\$ 300,357
Animal Health	88,132	94,318	56,670
Corporate	(63,875)	(58,781)	(52,441)
Consolidated operating income	<u>\$ 287,928</u>	<u>\$ 347,713</u>	<u>\$ 304,586</u>
Depreciation and amortization			
Dental	\$ 11,840	\$ 18,903	\$ 18,568
Animal Health	50,144	44,243	8,861
Corporate	21,834	19,237	17,094
Consolidated depreciation and amortization	<u>\$ 83,818</u>	<u>\$ 82,383</u>	<u>\$ 44,523</u>
	April 29, 2017	April 30, 2016	
Total assets			
Dental	\$ 863,970	\$ 994,113	
Animal Health	2,119,512	2,064,302	
Corporate	524,431	462,389	
Total assets	<u>\$ 3,507,913</u>	<u>\$ 3,520,804</u>	

The following table presents sales information by product for all of our reportable segments:

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	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Consolidated			
Consumable	\$ 4,400,888	\$ 4,153,921	\$ 2,697,581
Equipment and software	834,526	857,001	865,013
Other	357,713	375,781	348,271
Total	<u>\$ 5,593,127</u>	<u>\$ 5,386,703</u>	<u>\$ 3,910,865</u>
Dental			
Consumable	\$ 1,321,764	\$ 1,378,886	\$ 1,319,407
Equipment and software	780,868	806,993	818,342
Other	287,587	290,355	277,254
Total	<u>\$ 2,390,219</u>	<u>\$ 2,476,234</u>	<u>\$ 2,415,003</u>
Animal Health			
Consumable	\$ 3,079,124	\$ 2,775,035	\$ 1,378,174
Equipment and software	53,658	50,008	46,671
Other	27,044	37,206	31,725
Total	<u>\$ 3,159,826</u>	<u>\$ 2,862,249</u>	<u>\$ 1,456,570</u>
Corporate			
Other	43,082	48,220	39,292
Total	<u>\$ 43,082</u>	<u>\$ 48,220</u>	<u>\$ 39,292</u>

The following table presents information by geographic area. There were no material sales between geographic areas.

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Net sales			
United States	\$ 4,725,322	\$ 4,457,254	\$ 3,029,541
United Kingdom	547,968	626,603	649,541
Canada	319,837	302,846	231,783
Total	<u>\$ 5,593,127</u>	<u>\$ 5,386,703</u>	<u>\$ 3,910,865</u>
Property and equipment, net			
United States	\$ 286,178	\$ 278,667	
United Kingdom	1,947	2,459	
Canada	10,327	12,189	
Total	<u>\$ 298,452</u>	<u>\$ 293,315</u>	

13. Stockholders' Equity*Dividends*

The following table presents our declared and paid cash dividends per share on our common stock for the past

three years. Dividends were declared and paid in the same period. We expect to continue paying a quarterly cash dividend into the foreseeable future.

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Fiscal year	Quarter			
	1	2	3	4
2017	\$ 0.24	\$ 0.24	\$ 0.24	\$ 0.26
2016	0.22	0.22	0.22	0.24
2015	0.20	0.20	0.20	0.22

Share Repurchases

During fiscal 2017, we repurchased and retired 2,855 shares of our common stock for \$125,384, or an average of \$43.91 per share. During fiscal 2016, we repurchased and retired 4,379 shares of our common stock for \$200,000, or an average of \$45.68 per share. During fiscal 2015, we repurchased and retired 1,194 shares of our common stock for \$47,539, or an average of \$39.81 per share.

In March 2013, Patterson's Board of Directors approved a share repurchase plan. Under the plan, up to 25,000 shares may be repurchased in open market transactions through March 19, 2018. As of April 29, 2017, 13,642 shares remain available under the current repurchase authorization.

Employee Stock Ownership Plan ("ESOP")

During 1990, Patterson's Board of Directors adopted a leveraged ESOP. In fiscal 1991, under the provisions of the plan and related financing arrangements, Patterson loaned the ESOP \$22,000 (the "1990 note") for the purpose of acquiring its then outstanding preferred stock, which was subsequently converted to common stock. The Board of Directors determines the contribution from the Company to the ESOP annually. The contribution is used to retire a portion of the debt, which triggers a release of shares that are then allocated to the employee participants. Shares of stock acquired by the plan are allocated to each participant who has completed 1000 hours of service during the plan year. In fiscal 2011, the final payment on the 1990 note was made and all remaining shares were released for allocation to participants.

In fiscal 2002, Patterson's ESOP and an ESOP sponsored by the Thompson Dental Company ("Thompson") were used to facilitate the acquisition and merger of Thompson into Patterson. The net result of this transaction was an additional loan of \$12,612 being made to the ESOP and the ESOP acquiring 666 shares of common stock. The loan bears interest at current rates but principal did not begin to amortize until fiscal 2012. Beginning in fiscal 2012 and through fiscal 2020, an annual payment of \$200 plus interest is due and in fiscal 2020, a final payment of any outstanding principal and interest balance is due. Prepayments of principal can be made at any time without penalty. Of the 666 shares issued in the transaction, 98 were previously allocated to Thompson employees. The remaining 568 shares began to be allocated in fiscal 2004 as interest was paid on the loan.

In September 2006, we entered into a third loan agreement with the ESOP and loaned \$105,000 (the "2006 note") for the sole purpose of enabling the ESOP to purchase shares of our common stock. The ESOP purchased 3,160 shares with the proceeds from the 2006 note. Interest on the unpaid principal balance accrues at a rate equal to six-month LIBOR, with the rate resetting semi-annually. Interest payments were not required during the period from and including September 11, 2006 through April 30, 2010. On April 30, 2010, accrued and unpaid interest was added to the outstanding principal balance under the note, with interest thereafter accruing on the increased principal amount. Unpaid interest accruing after April 30, 2010 is due and payable on each successive April 30 occurring through September 10, 2026. Principal payments aren't due until September 10, 2026; however, prepayments can be made without penalty. In fiscal 2012, Patterson contributed \$20,214 to the ESOP, which then purchased 844 shares for allocation to the participants. No shares secured by the 2006 note were released prior to fiscal 2011.

At April 29, 2017, a total of 10,552 shares of common stock that have been allocated to participants remained in the ESOP and had a fair market value of \$469,465. Related to the shares from the Thompson transaction, committed-to-be-released shares were 11 and suspense shares were 436. Finally, with respect to the 2006 note, committed-to-be-released shares were 18 and suspense shares were 1,783.

Unearned ESOP shares are not considered outstanding for the computation of earnings per share until the shares are committed for release to the participants. During fiscal 2017, 2016 and 2015, the compensation expense recognized related to the ESOP was \$1,315, \$11,953 and \$9,939, respectively.

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We anticipate the allocation of the remaining suspense, or unearned, shares to occur over a period of approximately 5 to 10 years. As of April 29, 2017, the fair value of all unearned shares held by the ESOP was \$98,696. We will recognize an income tax deduction as the unearned ESOP shares are released. Such deductions will be limited to the ESOP's original cost to acquire the shares.

Dividends on allocated shares are passed through to the ESOP participants. Dividends on unallocated shares are used by the ESOP to make debt service payments on the notes due to Patterson.

14. Stock-based Compensation

The consolidated statements of income and other comprehensive income for fiscal years 2017, 2016 and 2015 include pre-tax (after-tax) stock-based compensation expense of \$17,710 (\$11,910), \$16,898 (\$11,120) and \$13,958 (\$9,171). Pre-tax expense is included in operating expenses within the consolidated statements of income and other comprehensive income.

As of April 29, 2017, the total unrecognized compensation cost related to non-vested awards was \$33,154, and it is expected to be recognized over a weighted average period of approximately 2.0 years.

2015 Omnibus Incentive Plan

In September 2015, our shareholders approved the 2015 Omnibus Incentive Plan ("Incentive Plan"). The aggregate number of shares of common stock that may be issued is 4,000. The Incentive Plan authorizes various award types to be issued under the plan, including stock options, restricted stock awards, restricted stock units, stock appreciation rights, performance awards, non-employee director awards, cash-based awards and other stock-based awards. We issue new shares for stock option exercises, restricted stock award grants and also for vesting of restricted stock units and performance stock units. Awards that expire or are canceled without delivery of shares generally become available for reissuance under the plan.

At April 29, 2017, there were 2,900 shares available for awards under the Incentive Plan.

As a result of the approval of the Incentive Plan, awards are no longer granted under any prior equity incentive plan, but all outstanding awards previously granted under such prior plans will remain outstanding and subject to the terms of such prior plans. At April 29, 2017, there were 1,576 shares outstanding under prior plans.

Stock Option Awards

Stock options granted to employees expire no later than ten years after the date of grant. Awards typically vest over three or five years.

The fair value of stock options granted was estimated as of the grant date using a Black-Scholes option-pricing model with the following assumptions:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Expected dividend yield	2.0%	1.8%	2.0%
Expected stock price volatility	21.2%	25.6%	26.3%
Risk-free interest rate	1.2%	2.1%	2.1%
Expected life (years)	6.6	6.7	7.0
Weighted average grant date fair value per share	\$ 8.32	\$ 9.66	\$ 9.78

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The following is a summary of stock option activity:

	Number of Options	Weighted- Average Exercise Price	Aggregate Intrinsic Value
Balance as of April 30, 2016	1,110	\$ 52.09	
Granted	189	48.46	
Exercised	(27)	35.75	
Canceled	(80)	48.47	
Balance as of April 29, 2017	<u>1,192</u>	<u>\$ 52.12</u>	<u>\$ 1,155</u>
Vested or expected to vest as of April 29, 2017	<u>1,145</u>	<u>\$ 52.14</u>	<u>\$ 1,091</u>
Exercisable as of April 29, 2017	<u>44</u>	<u>\$ 36.78</u>	<u>\$ 350</u>

The weighted average remaining contractual lives of options outstanding and options exercisable as of April 29, 2017 were 8.0 and 5.2 years, respectively.

Related to stock options exercised, the intrinsic value, cash received and tax benefits realized were \$266, \$958 and \$36, respectively, in fiscal 2017; \$901, \$3,173 and \$854, respectively, in fiscal 2016; and \$290, \$1,710 and \$286, respectively, in fiscal 2015.

Restricted Stock

Restricted stock awards and restricted stock units granted to employees generally vest over a five, seven or nine year period. Certain restricted stock awards, which are held by branch managers, are subject to accelerated vesting provisions beginning three years after the grant date, based on certain operating goals. Restricted stock awards are also granted to non-employee directors annually and vest over one or three years. The grant date fair value of restricted stock awards and restricted stock units is based on the closing stock price on the day of the grant. The total fair value of restricted stock awards and restricted stock units that vested in fiscal 2017, 2016 and 2015 was \$8,528, \$19,805 and \$8,474, respectively.

The following is a summary of restricted stock award activity:

	Restricted Stock Awards	
	Shares	Weighted- Average Grant Date Fair Value
Outstanding at April 30, 2016	760	\$ 38.18
Granted	18	45.78
Vested	(170)	39.10
Forfeitures	(129)	37.15
Outstanding at April 29, 2017	<u>479</u>	<u>\$ 38.41</u>

The following is a summary of restricted stock unit activity:

	Restricted Stock Units	
	Shares	Weighted- Average Grant Date Fair Value
Outstanding at April 30, 2016	71	44.26
Granted	265	48.19
Vested	(16)	43.60

Forfeitures	<u>(16)</u>	48.41
Outstanding at April 29, 2017	<u>304</u>	<u>\$ 47.50</u>

Performance Unit Awards

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In fiscal 2017 and 2016, we granted performance unit awards with a market-based condition to certain executives. The number of shares to be received at vesting will range from 0% - 200% of the target number of stock units based on Patterson's total shareholder return ("TSR") relative to the performance of companies in the S&P Midcap 400 Index measured over a three year period. We estimate the grant date fair value of the TSR awards using the Monte Carlo valuation model. In fiscal 2015, we granted performance unit awards, primarily to executive management, which are earned at the end of a three year period if certain operating goals are met. Accordingly, we recognize expense over the requisite service period based on the outcome that is probable for these awards. No performance unit awards vested in fiscal 2017 or 2015. The total fair value of performance unit awards that vested in fiscal 2016 was \$2,966.

The following is a summary of performance unit award activity at target:

	Performance Unit Awards	
	Shares	Weighted-Average Grant Date Fair Value
Outstanding at April 30, 2016	157	\$ 47.56
Granted	86	56.60
Vested	—	—
Forfeitures and cancellations	(13)	48.37
Outstanding at April 29, 2017	230	\$ 50.88

Employee Stock Purchase Plan ("ESPP")

We sponsor an ESPP under which a total of 6,750 shares have been reserved for purchase by employees. Eligible employees may purchase shares at 85% of the lower of the fair market value of our common stock on the beginning of the annual offering period, or on the end of each quarterly purchase period, which occur on March 31, June 30, September 30 and December 31. The offering periods begin on January 1 of each calendar year and end on December 31 of each calendar year. At April 29, 2017, there were 993 shares available for purchase under the ESPP.

We estimate the grant date fair value of shares purchased under our ESPP using the Black-Scholes option pricing valuation model with the following weighted average assumptions:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Expected dividend yield	2.3%	2.0%	1.6%
Expected stock price volatility	32.9%	21.1%	31.0%
Risk-free interest rate	0.7%	0.5%	0.1%
Expected life (years)	0.6	0.6	0.5
Weighted average grant date fair value per share	\$ 10.33	\$ 9.16	\$ 10.74

Capital Accumulation Plan ("CAP")

We also sponsor an employee CAP. A total of 6,000 shares of common stock are reserved for issuance under the CAP. Key employees of Patterson are eligible to participate by purchasing common stock through payroll deductions at 75% of the price of the common stock at the beginning of or the end of the calendar year, whichever is lower. The shares issued are restricted stock and are held in the custody of Patterson until the restrictions lapse. The restriction period is typically three years from the beginning of the plan year, and shares are subject to forfeiture provisions. At April 29, 2017, 1,926 shares were available for purchase under the CAP.

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We estimate the grant date fair value of shares purchased under our CAP using the Black-Scholes option pricing valuation model with the following weighted average assumptions:

	Fiscal Year Ended		
	April 29, 2017	April 30, 2016	April 25, 2015
Expected dividend yield	2.3%	2.0%	1.6%
Expected stock price volatility	28.3%	19.7%	31.0%
Risk-free interest rate	0.9%	0.6%	0.3%
Expected life (years)	1.0	1.0	1.0
Weighted average grant date fair value per share	\$ 15.21	\$ 14.13	\$ 17.67

15. Litigation

In September 2015, we were served with a summons and complaint in an action commenced in the U.S. District Court for the Eastern District of New York, entitled *SourceOne Dental, Inc. v. Patterson Companies, Inc., Henry Schein, Inc. and Benco Dental Supply Company*, Civil Action No. 15-cv-05440-JMA-GRB. SourceOne, as plaintiff, alleges that, through its website, it markets and sells dental supplies and equipment to dentists. SourceOne alleges in the complaint, among other things, that we, along with the defendants Henry Schein and Benco, conspired to eliminate plaintiff as a competitor and to exclude them from the market for the marketing, distribution and sale of dental supplies and equipment in the U.S. and that defendants unlawfully agreed with one another to boycott dentists, manufacturers, and state dental associations that deal with, or considered dealing with, plaintiff. Plaintiff asserts the following claims: (i) unreasonable restraint of trade in violation of state and federal antitrust laws; (ii) tortious interference with prospective business relations; (iii) civil conspiracy; and (iv) aiding and abetting the other defendants' ongoing tortious and anticompetitive conduct. Plaintiff seeks equitable relief, compensatory and treble damages, jointly and severally, punitive damages, interest, and reasonable costs and expenses, including attorneys' fees and expert fees. We are vigorously defending ourselves in this litigation. We do not anticipate that this matter will have a material adverse effect on our financial condition.

Beginning in January 2016, purported class action complaints were filed against defendants Henry Schein, Inc., Benco Dental Supply Co. and Patterson Companies, Inc. Although there were factual and legal variations among these complaints, each alleged that defendants conspired to foreclose and exclude competitors by boycotting manufacturers, state dental associations, and others that deal with defendants' competitors. On February 9, 2016, the U.S. District Court for the Eastern District of New York ordered all of these actions, and all other actions filed thereafter asserting substantially similar claims against defendants, consolidated for pre-trial purposes. On February 26, 2016, a consolidated class action complaint was filed by Arnell Prato, D.D.S., P.L.L.C., d/b/a Down to Earth Dental, Evolution Dental Sciences, LLC, Howard M. May, DDS, P.C., Casey Nelson, D.D.S., Jim Peck, D.D.S., Bernard W. Kurek, D.M.D., Larchmont Dental Associates, P.C., and Keith Schwartz, D.M.D., P.A. (collectively, the "putative class representatives") in the U.S. District Court for the Eastern District of New York, entitled *In re Dental Supplies Antitrust Litigation*, Civil Action No. 1:16-CV-00696-BMC-GRB. Burkhart Dental Supply Company, Inc. was added as a defendant on October 22, 2016. Subject to certain exclusions, the putative class representatives seek to represent all persons who purchased dental supplies or equipment in the U.S. directly from any of the defendants, since August 31, 2008. In the consolidated class action complaint, putative class representatives allege a nationwide agreement among Henry Schein, Benco, Patterson and Burkhart not to compete on price. The consolidated class action complaint asserts a single count under Section 1 of the Sherman Act, and seeks equitable relief, compensatory and treble damages, jointly and severally, interest, and reasonable costs and expenses, including attorneys' fees and expert fees. Putative class representatives have not specified a damage amount in their complaint. While the outcome of litigation is inherently uncertain, we believe the consolidated class action complaint is without merit, and we are vigorously defending ourselves in this litigation.

16. Quarterly Results (unaudited)

Quarterly results are determined in accordance with the accounting policies used for annual data and include certain items based upon estimates for the entire year. All fiscal quarters include results for 13 weeks except for the quarter ended August 1, 2015, which included 14 weeks.

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	Quarter Ended			
	April 29, 2017	January 28, 2017 ⁽¹⁾	October 29, 2016	July 30, 2016
Net sales	\$ 1,445,032	\$ 1,397,418	\$ 1,418,241	\$ 1,332,436
Gross profit	335,498	329,761	318,960	317,178
Operating income from continuing operations	96,155	46,554	79,803	65,416
Net income from continuing operations	61,357	27,769	45,756	38,906
Net income (loss) from discontinued operations	334	(3,229)	—	—
Net income	61,691	24,540	45,756	38,906
Basic earnings (loss) per share:				
Continuing operations	\$ 0.65	\$ 0.29	\$ 0.48	\$ 0.41
Discontinued operations	0.01	(0.03)	—	—
Net basic earnings per share	<u>\$ 0.66</u>	<u>\$ 0.26</u>	<u>\$ 0.48</u>	<u>\$ 0.41</u>
Diluted earnings (loss) per share:				
Continuing operations	\$ 0.65	\$ 0.29	\$ 0.48	\$ 0.40
Discontinued operations	—	(0.03)	—	—
Net diluted earnings per share	<u>\$ 0.65</u>	<u>\$ 0.26</u>	<u>\$ 0.48</u>	<u>\$ 0.40</u>

	Quarter Ended			
	April 30, 2016	January 30, 2016	October 31, 2015	August 1, 2015 ⁽²⁾
Net sales	\$ 1,453,770	\$ 1,400,853	\$ 1,389,210	\$ 1,142,870
Gross profit	363,741	339,864	330,899	288,244
Operating income from continuing operations	106,344	95,729	83,463	62,177
Net income from continuing operations	65,620	57,190	42,563	20,311
Net income (loss) from discontinued operations	—	(750)	(7,142)	9,392
Net income	65,620	56,440	35,421	29,703
Basic earnings (loss) per share:				
Continuing operations	\$ 0.69	\$ 0.60	\$ 0.43	\$ 0.20
Discontinued operations	—	(0.01)	(0.07)	0.10
Net basic earnings per share	<u>\$ 0.69</u>	<u>\$ 0.59</u>	<u>\$ 0.36</u>	<u>\$ 0.30</u>
Diluted earnings (loss) per share:				
Continuing operations	\$ 0.68	\$ 0.60	\$ 0.43	\$ 0.20
Discontinued operations	—	(0.01)	(0.07)	0.10
Net diluted earnings per share	<u>\$ 0.68</u>	<u>\$ 0.59</u>	<u>\$ 0.36</u>	<u>\$ 0.30</u>

(1) In the third quarter of fiscal 2017, we recorded a pre-tax non-cash impairment charge of \$36,312 within operating income from continuing operations. See Note 3 to the Consolidated Financial Statements for additional information.

(2) During the first quarter of fiscal 2016, we acquired Animal Health International, Inc. Included in this quarter are approximately six weeks of results of operations from this acquisition. We incurred \$9,302, or \$0.09 per diluted share from continuing operations on an after-tax basis, of transaction costs related to the acquisition of Animal Health International, Inc. during this quarter. Also during this quarter, we approved a one-time repatriation of approximately \$200,000 of foreign earnings. This one-time repatriation reduced the overall costs of funding the acquisition of Animal Health International, Inc. In addition, certain foreign cash at Patterson Medical was required to be repatriated as part of the sale transaction. The tax impact of the repatriation recorded during this quarter was \$11,800, or \$0.12 per diluted per share from continuing operations on an after-tax basis.

17. Accumulated Other Comprehensive Loss ("AOCL")

The following table summarizes the changes in AOCL as of April 29, 2017:

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	Cash Flow Hedges	Currency Translation Adjustment	Total
AOCL at April 30, 2016	\$ (16,734)	\$ (51,230)	\$ (67,964)
Other comprehensive loss before reclassifications	—	(26,450)	(26,450)
Amounts reclassified from AOCL	1,745	—	1,745
AOCL at April 29, 2017	<u>\$ (14,989)</u>	<u>\$ (77,680)</u>	<u>\$ (92,669)</u>

The amounts reclassified from AOCL during fiscal 2017 represent gains and losses on cash flow hedges, net of taxes of \$1,057. The impact to the consolidated statements of income was an increase to interest expense of \$2,802.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES

Management's Annual Report on Internal Control Over Financial Reporting

The management of Patterson Companies, Inc. (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. Our internal control system is designed to provide reasonable assurance to our management and Board of Directors regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we assessed the effectiveness of our internal control over financial reporting as of April 29, 2017, using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control - Integrated Framework* (2013). Based on this assessment, management has concluded that our internal control over financial reporting was effective as of April 29, 2017. Ernst & Young LLP, the independent registered public accounting firm that audited our consolidated financial statements included in Item 8, *Financial Statements and Supplementary Data*, of this Annual Report on Form 10-K, has issued an unqualified report on our internal control over financial reporting.

/s/ James W. Wiltz

Interim President and Chief Executive
Officer

/s/ Ann B. Gugino

Executive Vice President, Chief Financial
Officer and Treasurer

The report of our independent registered public accounting firm on internal control over financial reporting is included in Item 8 of this Annual Report on Form 10-K.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rules 13a-15 and 15d-15 of the Securities and Exchange Act of 1934 (the "Exchange Act"). Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls

and procedures were effective as of April 29, 2017. Disclosure controls and procedures are defined by Rules 13a-15(e) and 15d-15(e) of the Exchange Act as controls and other procedures that are designed to ensure that information required to be disclosed by Patterson in reports filed with the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and

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procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in reports filed under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

On June 16, 2015, we acquired Animal Health International, Inc., which was a privately-held company prior to the acquisition. As permitted by SEC regulation, we integrated Animal Health International, Inc.'s operations into the scope of our Sarbanes-Oxley Section 404 report on internal control over financial reporting for the fiscal year ended April 29, 2017.

In addition, we are in the process of implementing a new enterprise resource planning (ERP) system. During the quarter ended April 29, 2017, the transaction activity within the new ERP system became material, and as a result, the new ERP system and related processes were integrated into the scope of our Sarbanes-Oxley 404 report on internal control over financial reporting for the fiscal year ended April 29, 2017.

There were no other changes in our internal control over financial reporting that occurred during the quarter ended April 29, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

9B. OTHER INFORMATION

None.

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Information regarding the directors of Patterson is incorporated herein by reference to the descriptions set forth under the caption "Proposal No. 1 Election of Directors" in Patterson's Proxy Statement for its Annual Meeting of Shareholders to be held on September 18, 2017 (the "2017 Proxy Statement"). Information regarding executive officers of Patterson is incorporated herein by reference to Item 1 of Part I of this Form 10-K under the caption "Executive Officers of the Registrant." Information regarding compliance with Section 16(a) of the Securities Exchange Act of 1934 is incorporated herein by reference to the information set forth under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the 2017 Proxy Statement. The information called for by Item 10, as to the audit committee and the audit committee financial expert, is set forth under the captions "Proposal No. 1 Election of Directors" and "Our Board of Directors and Committees" in the 2017 Proxy Statement and such information is incorporated by reference herein.

Code of Ethics

We have adopted Principles of Business Conduct and Code of Ethics for our Chief Executive Officer, Chief Financial Officer, Directors and all employees. Our Code of Ethics is available on our website (www.pattersoncompanies.com) under the section "Investor Relations – Corporate Governance." We intend to satisfy the disclosure requirement of Form 8-K regarding an amendment to, or waiver from, a provision of our Code of Ethics by posting such information on our website at the address and location specified above.

Item 11. EXECUTIVE COMPENSATION

Information regarding executive compensation and director compensation is incorporated herein by reference to the information set forth under the captions "Non-Employee Director Compensation," "Executive Compensation" and "Our Board of Directors and Committees – Committee Responsibilities – Our Compensation Committee and Its Report" in the 2017 Proxy Statement.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information regarding the security ownership of certain beneficial owners and management is incorporated herein by reference to the information set forth under the captions "Security Ownership of Certain Beneficial Owners and Management" and "Equity Compensation Plan Information" in the 2017 Proxy Statement.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information called for by Item 13 is incorporated herein by reference to the information set forth under the captions "Certain Relationships and Related Transactions" and "Our Board of Directors and Committees" in the 2017 Proxy Statement.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information relating to principal accounting fees and services and pre-approval policies and procedures is set forth under the caption "Proposal No. 4 Ratification of Selection of Independent Registered Public Accounting Firm – Principal Accountant Fees and Services" in the 2017 Proxy Statement and such information is incorporated by reference herein.

[Table of Contents](#)**PART IV****Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES****(a) 1. Financial Statements.**

The following Consolidated Financial Statements and supplementary data of Patterson and its subsidiaries are included in Part II, Item 8:

Reports of Independent Registered Public Accounting Firm

Consolidated Balance Sheets

Consolidated Statements of Income and Other Comprehensive Income

Consolidated Statement of Changes in Stockholders' Equity

Consolidated Statements of Cash Flows

Notes to Consolidated Financial Statements

2. Financial Statement Schedules.

The following financial statement schedule is filed herewith: Schedule II – Valuation and Qualifying Accounts
Schedules other than that listed above have been omitted because they are not applicable or the required information is included in the financial statements or notes thereto.

3. Exhibits.

<u>Exhibit</u>	<u>Document Description</u>
3.1	Restated Articles of Incorporation (incorporated by reference to our Quarterly Report on Form 10-Q, filed September 9, 2004 (File No. 000-20572)).
3.2	Amended and Restated Bylaws (incorporated by reference to our Current Report on Form 8-K, filed December 13, 2013 (File No. 000-20572)).
4.1	Specimen form of Common Stock Certificate (incorporated by reference to our Quarterly Report on Form 10-Q, filed September 9, 2004 (File No. 000-20572)).
10.1	Patterson Companies, Inc. Fiscal 2017 Incentive Plan (<i>filed herewith</i>).
10.2	Patterson Companies, Inc. Fiscal 2016 Incentive Plan (incorporated by reference to our Annual Report on Form 10-K, filed June 29, 2016 (File No. 000-20572)).
10.3	Patterson Companies Capital Accumulation Plan (incorporated by reference to our Annual Report on Form 10-K, filed June 29, 2016 (File No. 000-20572)).
10.4	2001 Non-Employee Director Stock Option Plan (incorporated by reference to our Annual Report on Form 10-K, filed July 25, 2002 (File No. 000-20572)).
10.5	Patterson Companies, Inc. Amended and Restated Employee Stock Purchase Plan (incorporated by reference to our Definitive Proxy Statement, filed August 7, 2012 (File No. 000-20572)).

10.6

Patterson Dental Company Amended and Restated Employee Stock Ownership Plan, effective May 1, 2001 (incorporated by reference to our Annual Report on Form 10-K, filed July 25, 2002 (File No. 000-20572)).

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- 10.7 Stock Option Plan for Canadian Employees, effective June 13, 2000 (incorporated by reference to our Quarterly Report on Form 10-Q, filed March 11, 2003 (File No. 000-20572)).
- 10.8 Deferred Profit Sharing Plan for the Employees of Patterson Dental Canada Inc. (incorporated by reference to our Definitive Proxy Statement, filed July 28, 2008 (File No. 000-20572)).
- 10.9 Patterson Companies, Inc. Amended and Restated Equity Incentive Plan (incorporated by reference to our Definitive Proxy Statement, filed August 7, 2012 (File No. 000-20572)).
- 10.10 Patterson Companies, Inc. 2014 Sharesave Plan (incorporated by reference to our Definitive Proxy Statement, filed August 5, 2014 (File No. 000-20572)).
- 10.11 2015 Omnibus Incentive Plan (incorporated by reference to our Definitive Proxy Statement, filed August 7, 2015 (File No. 000-20572)).
- 10.12 ESOP Loan Agreement dated April 1, 2002 (incorporated by reference to our Annual Report on Form 10-K, filed July 24, 2003 (File No. 000-20572)).
- 10.13 Promissory Note dated April 1, 2002 between GreatBanc Trust Company, an Illinois corporation, not in its individual or corporate capacity, but solely as trustee of the Thompson Dental Company Employee Stock Ownership Plan and Trust and Thompson Dental Company (incorporated by reference to our Annual Report on Form 10-K, filed July 24, 2003 (File No. 000-20572)).
- 10.14 ESOP Loan Agreement dated September 11, 2006 (incorporated by reference to our Current Report on Form 8-K, filed September 12, 2006 (File No. 000-20572)).
- 10.15 ESOP Note dated September 11, 2006 (incorporated by reference to our Current Report on Form 8-K, filed September 12, 2006 (File No. 000-20572)).
- 10.16 Note Purchase Agreement dated March 19, 2008 among Patterson Companies, Inc., Patterson Medical Holdings, Inc., Patterson Medical Supply, Inc., Patterson Dental Holdings, Inc., Patterson Dental Supply, Inc., Webster Veterinary Supply, Inc. and Webster Management, LP (incorporated by reference to our Current Report on Form 8-K, filed March 24, 2008 (File No. 000-20572)).
- 10.17 Credit Agreement, dated December 1, 2011, among Patterson Companies, Inc., and JPMorgan Chase Bank, N.A., The Bank of Tokyo-Mitsubishi UFJ, Ltd., and U.S. Bank NA, Wells Fargo Bank, NA, and Bank of America, N.A. (incorporated by reference to our Current Report on Form 8-K, filed December 6, 2011 (File No. 000-20572)).
- 10.18 Note Purchase Agreement, dated December 8, 2011, by and among Patterson Companies, Inc., Patterson Medical Holdings, Inc., Patterson Medical Supply, Inc., Patterson Dental Holdings, Inc., Patterson Dental Supply, Inc., Webster Veterinary Supply, Inc., Webster Management, LP (incorporated by reference to our Current Report on Form 8-K, filed December 12, 2011 (File No. 000-20572)).

10.19 Note Purchase Agreement, dated March 23, 2015, by and among Patterson Companies, Inc., Patterson Medical Holdings, Inc., Patterson Medical Supply, Inc., Patterson Dental Holdings, Inc., Patterson Dental Supply, Inc., Patterson Veterinary Supply, Inc., and Patterson Management, LP (incorporated by reference to our Current Report on Form 8-K, filed March 25, 2015 (File No. 000-20572)).

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- 10.20 Commitment Letter, dated May 2, 2015, by and between Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank Of America, N.A., The Bank Of Tokyo-Mitsubishi UFJ, Ltd. and Patterson Companies, Inc. (incorporated by reference to our Current Report on Form 8-K, filed May 4, 2015 (File No. 000-20572)).
- 10.21 Credit Agreement dated as of June 16, 2015 by and among Patterson Companies, Inc., the lenders from time to time parties thereto, Bank of Tokyo-Mitsubishi UFJ, Ltd., as administrative agent, and Bank of America, N.A., as syndication agent (incorporated by reference to our Current Report on Form 8-K, filed June 17, 2015 (File No. 000-20572)).
- 10.22 Amended and Restated Contract Purchase Agreement dated August 12, 2011 among PDC Funding Company II, LLC, Patterson Companies, Inc., and Fifth Third Bank (incorporated by reference to our Current Report on Form 8-K, filed August 16, 2011 (File No. 000-20572)).
- 10.23 Receivables Sale Agreement, dated as May 10, 2002, by and among Patterson Dental Supply, Inc., Webster Veterinary Supply, Inc., and PDC Funding Company, LLC (incorporated by reference to our Annual Report on Form 10-K, filed July 25, 2002 (File No. 000-20572)).
- 10.24 Amended and Restated Receivables Sales Agreement dated August 12, 2011 by and among Patterson Dental Supply, Inc., Webster Veterinary Supply, Inc. and PDC Funding Company II, LLC incorporated by reference to our Annual Report on Form 10-K, filed June 24, 2015 (File No. 000-20572)).
- 10.25 Third Amended and Restated Receivables Purchase Agreement dated December 3, 2010 between PDC Funding Company, LLC, Patterson Companies, Inc., The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch (the "Bank") and a commercial paper conduit managed by the Bank (incorporated by reference to our Current Report on Form 8-K, filed December 8, 2010 (File No. 000-20572)).
- 10.26 Assignment and Assumption and Amendment No. 1 to Third Amended and Restated Receivables Purchase Agreement dated December 20, 2010, by and among The Bank of Tokyo-Mitsubishi UFJ, Ltd., Victory Receivables Corporation, PDC Funding Company, LLC, Patterson Companies, Inc., Royal Bank of Canada and Thunder Bay Funding, LLC (incorporated by reference to our Current Report on Form 8-K, filed December 23, 2010 (File No. 000-20572)).
- 10.27 Agreement and Plan of Merger, dated May 2, 2015, by and among Patterson Companies, Inc., Rams Merger Sub, Inc., Animal Health International, Inc. and Leonard Green & Partners, L.P. (incorporated by reference to our Current Report on Form 8-K, filed May 4, 2015 (File No. 000-20572)).
- 10.28 Stock Purchase Agreement between Patterson Companies, Inc. and Lanai Holdings III, Inc. dated July 1, 2015 (incorporated by reference to our Current Report on Form 8-K, filed July 1, 2015 (File No. 000-20572)).
- 10.29 Employment Agreement between John Adent and Animal Health International, Inc., dated May 2, 2015 (incorporated by reference to our Annual Report on Form 10-K, filed June 29, 2016 (File No. 000-20572)).

- 10.30 Amended and Restated Credit Agreement dated as of January 27, 2017, by and among Patterson Companies, Inc., the lenders from time to time parties thereto, Bank of Tokyo-Mitsubishi UFJ, Ltd., as administrative agent, and Bank of America, N.A., as syndication agent (incorporated by reference to our Current Report on Form 8-K, filed January 27, 2017 (File No. 000-20572)).

- 10.31 Transition Agreement by and between Patterson Companies, Inc. and Scott P. Anderson, dated June 1, 2017 (incorporated by reference to our Current Report on Form 8-K, filed June 1, 2017 (File No. 000-20572)).

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- 21 Subsidiaries (incorporated by reference to our Annual Report on Form 10-K, filed June 29, 2016 (File No. 000-20572)).
- 23 Consent of Independent Registered Public Accounting Firm (filed herewith).
- 31.1 Certification of the Chief Executive Officer pursuant to Rules 13a-4(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 31.2 Certification of the Chief Financial Officer pursuant to Rule 13a-4(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 32.1 Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 32.2 Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 101 (Filed Electronically) The following financial information from our Annual Report on Form 10-K for fiscal 2017, formatted in Extensible Business Reporting Language (XBRL): (i) the consolidated balance sheets, (ii) the consolidated statements of income, (iii) the consolidated statements of cash flows, (iv) the consolidated statements of changes in stockholders' equity and (v) the notes to the consolidated financial statements.(*)
- (*) The XBRL related information in Exhibit 101 to this Annual Report on Form 10-K shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liability of that section and shall not be incorporated by reference into any filing or other document pursuant to the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing or document.

(b) See Index to Exhibits.

(c) See Schedule II.

[Table of Contents](#)**SIGNATURES**

Pursuant to the requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: 6/28/2017

PATTERSON COMPANIES, INC.

By /s/ James W. Wiltz

James W. Wiltz,
Interim President and Chief
Executive Officer, Director

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

		Date
<u>/s/ James W. Wiltz</u> James W. Wiltz	Interim President and Chief Executive Officer, Director (Principal Executive Officer)	June 28, 2017
<u>/s/ Ann B. Gugino</u> Ann B. Gugino	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	June 28, 2017
<u>/s/ John D. Buck</u> John D. Buck	Chairman of the Board	June 28, 2017
<u>/s/ Scott P. Anderson</u> Scott P. Anderson	Director	June 28, 2017
<u>/s/ Alex N. Blanco</u> Alex N. Blanco	Director	June 28, 2017
<u>/s/ Jody H. Feragen</u> Jody H. Feragen	Director	June 28, 2017
<u>/s/ Sarena S. Lin</u> Sarena S. Lin	Director	June 28, 2017
<u>/s/ Ellen A. Rudnick</u> Ellen A. Rudnick	Director	June 28, 2017
<u>/s/ Neil A. Schrimsher</u> Neil A. Schrimsher	Director	June 28, 2017
<u>/s/ Les C. Vinney</u> Les C. Vinney	Director	June 28, 2017

[Table of Contents](#)**SCHEDULE II
VALUATION AND QUALIFYING ACCOUNTS****PATTERSON COMPANIES, INC.**
(In thousands)

	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
Year ended April 29, 2017					
Deducted from asset accounts:					
Allowance for doubtful accounts	\$ 12,008	\$ 1,825	\$ —	\$ 4,491	\$ 9,342
LIFO inventory adjustment	\$ 76,501	\$ 1,315	\$ —	\$ —	\$ 77,816
Inventory obsolescence reserve	6,621	18,026	—	19,026	5,621
Total inventory reserve	\$ 83,122	\$ 19,341	\$ —	\$ 19,026	\$ 83,437
Year ended April 30, 2016					
Deducted from asset accounts:					
Allowance for doubtful accounts	\$ 7,678	\$ 8,246	\$ 1,947	\$ 5,863	\$ 12,008
LIFO inventory adjustment	\$ 73,381	\$ 3,120	\$ —	\$ —	\$ 76,501
Inventory obsolescence reserve	4,218	15,547	1,550	14,694	6,621
Total inventory reserve	\$ 77,599	\$ 18,667	\$ 1,550	\$ 14,694	\$ 83,122
Year ended April 25, 2015					
Deducted from asset accounts:					
Allowance for doubtful accounts	\$ 8,322	\$ 2,546	\$ —	\$ 3,190	\$ 7,678
LIFO inventory adjustment	\$ 71,596	\$ 1,785	\$ —	\$ —	\$ 73,381
Inventory obsolescence reserve	3,498	17,624	—	16,904	4,218
Total inventory reserve	\$ 75,094	\$ 19,409	\$ —	\$ 16,904	\$ 77,599

[Table of Contents](#)**INDEX TO EXHIBITS**

Exhibit 10.1	Patterson Companies, Inc. Fiscal 2017 Incentive Plan.
Exhibit 23	Consent of Independent Registered Public Accounting Firm.
Exhibit 31.1	Certification of the Chief Executive Officer pursuant to Rules 13a-4(a) and 15d-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 31.2	Certification of the Chief Financial Officer pursuant to Rules 13a-4(a) and 15d-14(a), under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.1	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 101	(Filed Electronically) The following financial information from our Annual Report on Form 10-K for fiscal 2017, formatted in Extensible Business Reporting Language (XBRL): (i) the consolidated balance sheets, (ii) the consolidated statements of income, (iii) the consolidated statements of cash flows, (iv) the consolidated statements of changes in stockholders' equity and (v) the notes to the consolidated financial statements.(*)

- (*) The XBRL related information in Exhibit 101 to this Annual Report on Form 10-K shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liability of that section and shall not be incorporated by reference into any filing or other document pursuant to the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing or document.

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violations of state law alleged herein have caused loss and damage and threaten loss and damage to the general welfare and economy of the State of Texas.

IV. DEFENDANT

4.1 Benco is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal address at 295 Centerpoint Boulevard, Pittston, PA, 18640. Benco, among other things, sells consumable dental supplies to dentists throughout Texas and nationwide.

V. RELEVANT MARKETS

5.1 The relevant product market is the sale of consumable dental supplies.

5.2 The relevant geographic market is Texas.

VI. RELEVANT FACTS

6.1 Benco sells and distributes consumable dental supplies throughout Texas, and operates regional offices throughout the state.

6.2 Consumable dental supplies are traditionally sold through a sales model by which a distributor's sales representative interacts directly with a purchasing dentist. As a part of this business, many dental supply distributors and manufacturers participate in trade shows sponsored by organizations, such as the annual meeting sponsored by the Texas Dental Association (TDA).

6.3 The traditional dental supply distributors enjoy close relationships with one another, both personally and professionally. Many sales representatives, and even higher level employees, have previous employment relationships with other distributors. The employees interact regularly in person, at various social gatherings, and industry or trade association meetings, and remotely, through company email, personal email, personal cell phone calls, company cell phone calls, and text messaging. These close contacts provide the opportunity for

the sharing of competitively-sensitive information among the various distributors and manufacturers.

6.4 In October 2013, the TDA launched TDA Perks Supplies, an online sales platform, in partnership with SourceOne Dental. TDA Perks Supplies allows TDA member dentists to purchase dental supplies online, without working through a sales representative. This model allows for TDA Perks Supplies to sell TDA member dentists many dental supplies at a discount compared to the prices offered by Benco and its competitor distributors operating under the traditional sales model.

6.5 Benco and its competitor distributors understood that TDA Perks Supplies, with its potentially disruptive new business model, directly competed with them, and perceived a competitive threat based on the lower prices offered by TDA Perks Supplies for many of the same goods offered by Benco and its competitor distributors.

6.6 Building on their historic culture of cooperation and communication, Benco and its competitor distributors engaged in ongoing communications over several months about TDA Perks Supplies. They shared information about market players' reactions to the new firm's entry, they collectively developed a response, and they provided reassurances to market participants about the collective response.

6.7 The collective response to this competitive threat by TDA Perks Supplies was two-fold. Benco and its competitor distributors (1) agreed to break with their traditional pattern of attendance and boycott the annual TDA meeting held in May 2014 because they perceived that TDA had positioned itself as a competitor to the traditional distributors, and (2) agreed to pressure other distributors and manufacturers to discontinue supplying TDA Perks Supplies

and/or end any relationships with manufacturers or distributors that ultimately supplied TDA Perks Supplies in order to stifle the competition provided by the new TDA offering.

6.8 Pursuant to this agreement, Benco and its competitor distributors did not attend the annual TDA meeting, despite the economic gains Benco and other distributors historically derived from the event, not only from direct sales to conference attendees during the meeting, but also throughout the year through contacts and relationships fostered and developed at the meeting.

6.9 Pursuant to this agreement, Benco and its competitor distributors contacted other distributors and manufacturers to pressure those entities to discontinue any relationships that ultimately supplied TDA Perks Supplies.

6.10 As a result of this pressure, other distributors and manufacturers discontinued such relationships, causing TDA Perks Supplies to lose access to products.

VII. FIRST CAUSE OF ACTION

7.1 The State incorporates and adopts by reference the allegations contained in every prior paragraph of this petition.

7.2 Beginning in 2013 and continuing into 2014, Benco entered into and participated in an agreement with dental supply distributors not to attend the TDA 2014 meeting and not to do business with SourceOne Dental or its suppliers.

7.3 These agreements unreasonably restrained trade in the relevant product and geographic markets in *per se* violation of Tex. Bus. & Com. Code § 15.05(a).

VIII. PRAYER

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) Adjudging and decreeing that Benco engaged in conduct in violation of Section 15.05(a) of the Tex. Bus. & Com. Code;
- b) Awarding the State of Texas injunctive relief to remedy the violations alleged in this petition;
- c) Awarding the State of Texas its costs of this action, including reasonable attorneys' fees and costs, as provided in Tex. Bus. & Com. Code § 15.20(b) and Tex. Gov't Code § 402.006(c)
- d) Awarding the State of Texas a civil fine, as provided in Tex. Bus. & Com. Code § 15.20(a);
and
- e) Directing such other and further relief as the Court deems just and proper.

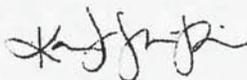
Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JOHN T. PRUD'HOMME
Division Chief
Consumer Protection Division

KIM VAN WINKLE
Section Chief
Antitrust Section



Kayna Stavast-Piper, Bar No. 24079388
David Ashton, Bar No. 24031828
Eric Lipman, Bar No. 24071869

Assistant Attorneys General

COUNSEL FOR PLAINTIFF STATE OF TEXAS

Dated: April 9, 2015

EXHIBIT B

B. Benco is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal address at 295 Centerpoint Boulevard, Pittston, PA, 18640. Benco, among other things, sells dental supplies to dentists throughout Texas and nationwide.

II. JURISDICTION & VENUE

Pursuant to Tex. Bus. & Comm. Code § 15.20(b), this Court has subject matter jurisdiction and may exercise personal jurisdiction over Benco. Venue in this Court is proper.

III. DEFINITIONS

As used herein, and for purposes of this Order only:

- A. "Benco" means Benco Dental Supply Company, its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial or total ownership or control between Benco and any other person.
- B. "Distribution channel" means any method or platform by which dental supplies are sold by a manufacturer or distributor to another distributor, dentist, or other end user, whether in-person, by mail, by brick and mortar retail establishment, through online sales platform, or otherwise.



IV. TERMS

IT IS ORDERED that Benco, directly or indirectly, through any corporation, subsidiary, division, or other device in connection with the actual or potential purchase or distribution of dental supplies and related products, is permanently enjoined from:

- A. Continuing, maintaining, entering into, or attempting to enter into any agreement or understanding with any manufacturer or distributor to limit supply of or refuse to sell dental supplies to any third party, or through or by means of any distribution channel;
- B. Urging, inducing, coercing, or pressuring, or attempting to urge, induce, coerce, or pressure, any manufacturer or distributor to limit supply of or refuse to sell dental supplies to any third party, or through or by means of any distribution channel;
- C. Requiring, soliciting, requesting, or encouraging any manufacturer or distributor to furnish information to Benco relating to the manufacturer's or distributor's sales to any third party;
- D. Facilitating or attempting to facilitate understandings or agreements between or among distributors and/or manufacturers relating to limiting or refusing the sale of dental supplies and related products to any third party, or through or by means of any distribution channel, including by transmitting or communicating any other distributor's or manufacturer's business plans or strategy;
- E. Advising in writing, declaring, announcing, providing notice, or otherwise intentionally communicating a message to any dental supply distributor that Benco will or may
 - 1. Contract with or terminate a contract with any dental supply manufacturer;
 - 2. Contract with or terminate a contract with any other dental supply distributor or discounter; or

3. Not participate in any charity or marketing event, such as a trade association exhibition; and/or

F. Terminating or giving notice of termination of a then-existing contract with a dental supply manufacturer because of that manufacturer's decision to contract or not to contract with any other dental supply distributor or discount;

PROVIDED, HOWEVER, THAT nothing in this Order shall prohibit Benco from (1) seeking or entering into a lawful contract with a manufacturer to become the authorized exclusive distributor of a manufacturer's dental products or equipment, (2) terminating or modifying in good faith its contractual relationship with a manufacturer of dental products or equipment, except as prohibited above, or (3) acquiring a distributor of dental products doing business in the State of Texas.

PROVIDED FURTHER THAT nothing in this Order shall prohibit Benco from communicating with its customers in the normal course of business, including but not limited to emailing advertisements or alerts to customers, distributing brochures to customers, and advertising on Benco's website, catalogs or newsletters, about the dental supplies and products it offers or may no longer offer.

IT IS FURTHER ORDERED that Benco shall:

G. Until the date upon which the State's investigation or any related litigation is concluded, provide full, complete, and prompt cooperation, upon good faith reasonable notice and reasonable request by the State, with the State's investigation and related proceedings and actions against any other person, corporation, or entity. Benco shall use its best efforts to secure the full and truthful cooperation of its current officers, directors, employees, and agents with the State's investigation or any related litigation. Such cooperation shall



include, but not be limited to, producing information or documents reasonably requested by the State, subject to the right to withhold information on grounds of attorney-client privilege, attorney work product, or other applicable privileges or protections, and making its current officers, directors, employees, or agents available for sworn testimony by declaration, sworn statement, or in-court testimony. The State and Benco shall work cooperatively and in good faith to schedule the timing and, if necessary, the location of any requested testimony or declaration. Further, the State and Benco shall work together with respect to any requested un-sworn statements or interviews to reach a mutually agreeable time and place, including telephonic interviews.

Benco's obligation to cooperate is limited to current officers, directors, employees, or agents at the time of any given request. Benco's obligation to cooperate excludes those officers, directors, employees or agents who are not associated with or employed by Benco at the time such cooperation is sought, and over whom Benco exercises no control, as of the time of the request.

The State and Benco agree to work together to establish the admissibility of documents where possible, including providing a written declaration regarding the authenticity and/or admissibility of Benco's documents as business records, admissions, or otherwise;

H. Institute an antitrust training program for current Benco officers, directors, and employees with responsibility for sales or pricing of dental supplies or responsibility for communications with manufacturers or distributors of dental supplies within ninety (90) days after the date on which this Order becomes final, and conduct antitrust compliance training at least annually for its officers, directors, and any Benco employee with responsibility for sales or pricing of dental supplies or responsibility for communications

with manufacturers or distributors of dental supplies, and provide the State with a description of the training and copies of any training materials associated with the program for each such training. Benco is permitted to conduct tiered training or otherwise structure the training such that it provides relevant, necessary information regarding antitrust laws appropriate to the level of the particular employee with more intensive training for managerial-level employees;

- I. Within thirty (30) days after the date this Order becomes final, provide a copy of this Order to each Benco director or officer, and to any Benco employee with responsibility for sales or pricing of dental supplies or responsibility for communications with dental supply distributors or manufacturers, and require each such person to sign a statement acknowledging receipt of the Order, representing that the person has read and understands the Order, and acknowledging that non-compliance with this Order may subject Benco to penalties for violation of the Order;
- J. For a period of three (3) years, maintain and furnish to the State on a twice yearly basis, a log of all oral and written communications, relating in whole or in part to the distribution or sale of dental supplies in the United States, between or among (1) any of Benco's officers, directors, or sales employees, and (2) any person employed by or associated with another dental supply distributor. The log shall include an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and a good faith estimate of the duration of the communication, the medium of the communication, and a description of the subject matter of the communication. The following communications between Benco and an employee of another dental supply distributor may be excluded from the log:



1. Privileged communications;
 2. Public communications, including but not limited to speaking engagements or publications sponsored by trade associations, public interest groups or charity groups;
 3. Purely administrative communications in lawful furtherance of a trade association, public interest group, or charity group event made by an actual or potential participant in that trade association, public interest group, or charity group event or meeting;
 4. Communications regarding employment of individuals at or from Benco, including communications between in-house or outside counsel of Benco and in-house or outside counsel of another dental supply distributor or manufacturer relating to disputes or the resolution of disputes over the hiring of employees, unless those communications involve the establishment or modification of a policy or company-wide agreement among or between dental supply distributors or manufacturers about the hiring and employment of individuals in the dental supply distributor industry;
 5. Communications related to the potential sale or acquisition of Benco or another dental supply distribution, or related businesses;
 6. Purely social and family related communications among or between former colleagues and business acquaintances; and
- K. Provide to the State annually, on or before the anniversary of the entry of this Order, a written statement as to the fact and manner of Benco's compliance with this Order.

V. FURTHER TERMS

- A. Except where otherwise noted, this Order shall remain in force for a period of five (5) years after the date on which this Order becomes final.



- B. Benco shall notify the State at least thirty (30) days prior to any change in Benco's status, such as an acquisition, merger, consolidation, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this order.
- C. Benco shall pay the Attorney General \$300,000 for reimbursement of the reasonable and necessary costs and fees associated with the State's investigation of Benco's business practices and in lieu of civil penalties.

VII. MISCELLENEOUS

- A. *Legal Exposure and Effect.* This Order is not intended to and does not give any legal rights or remedies of any nature to any third party.
- B. *Notices.* All notices required by this Order shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

As to the State:

Kayna Stavast-Piper
Assistant Attorney General, Antitrust Section
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

As to Benco:

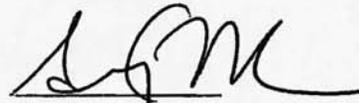
Steven Bizar
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555

- C. *Governing Law.* This Order shall be governed by and interpreted according to the laws of the State of Texas, excluding its conflict of laws provisions.
- D. *Modification.* If the State or Benco believes that modification of this Order would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Order, and such modification shall be granted unless the Court determines that the modification is contrary to the public interest. Nothing herein prohibits a party from petitioning this Court for a modification in the absence of agreement of the other party. Likewise, nothing herein prohibits a party from opposing such a petition for modification.
- E. *Retention of Jurisdiction.* The Court retains jurisdiction for five (5) years following the date this Order becomes final to enable any party to apply to the Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification, and enforcement of this order.
- F. *No Admission or Finding of Liability.* Benco has denied and continues to deny these allegations as well as any liability or wrongdoing. Benco's agreement to entry of this Order is not an admission of liability. This Order does not constitute a finding or conclusion that Benco has violated any law. This Order may not be offered or received into evidence in any action as evidence or admission of liability, whether such action arises before or after the entry of this Order.
- G. *Release of Claims.* In exchange for Benco's agreements, the State has released Benco from all claims of the State in its sovereign capacity on account of all matters related



to its Petition. The release includes all claims the State brought or could have brought in its enforcement capacity based on the allegations in its Petition, as well as the ability of the State to sue on behalf of any party for the allegations contained in its Petition.

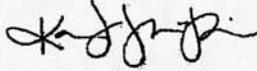
IT IS SO ORDERED, this 9 day of April, 2015,


JUDGE PRESIDING



APPROVED AND ENTRY REQUESTED:

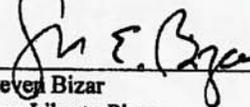
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GENERAL



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Attorneys for the State of Texas

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Attorney for Benco Dental Supply
Company



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PUBLIC

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
1	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson land line (phone # last four digits - 1708)	1/23/2009	10:44:00	2 min	[phone call - not UTC]	CX4435 at -026
2	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/13/2009	17:39:15	1 min 49 sec	[phone call]	CX4414 at -2043 (item 478)
3	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/15/2009	19:54:12	52 sec	[phone call]	CX4435 at -044; CX4414 at -2044 (item 500)
4	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/15/2009	19:55:14	16 min 56 sec	[phone call]	CX4435 at -044; CX4414 at -2044 (item 501)
5	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson land line (phone # last four digits - 1708)	6/25/2009	11:48:00	3 min	[phone call - not UTC]	CX4435 at -097
6	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	7/7/2009	17:55:59	1 min 29 sec	[phone call]	CX4414 at -2090 (item 97)
7	Call	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan land line (phone # last four digits - 2508)	7/8/2009	18:14:25	52 sec	[phone call]	CX4436 at -005 CX4414 at -0756 (item 849)
8	Call	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	7/8/2009	18:15:37	1 min 6 sec	[phone call]	CX4436 at -005 CX4414 at -2090
9	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/30/2009	20:01:48	7 min 25 sec	[phone call]	CX4435 at -175 CX4414 at -2113 (item 951)
10	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	13:02:27	5 min 7 sec	[phone call]	CX4414 at -2136 (item 491) CX4437 at -251
11	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	15:08:27	n/a	[no content available]	CX1114 at -17880 (item 1306)
12	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/16/2010	15:10:21	n/a	[no content available]	CX1114 at -17880 (item 1307)
13	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/16/2010	15:10:22	n/a	[no content available]	CX1114 at -17880 (item 1308)

Confidentiality designation is subject to the Protective Order and any rulings on motions for in camera treatment
Corrected 9/28/2018

CX6027-001

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
14	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/16/2010	16:47:44	n/a	[no content available]	CX1114 at -17880 (item 1313)
15	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/21/2010	4:04:47	n/a	[no content available]	CX1114 at -17882 (item 1440)
16	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/21/2010	12:10:20	n/a	[no content available]	CX1114 at -17882 (item 1441)
17	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/21/2010	22:54:09	n/a	[no content available]	CX1114 at -17883 (item 1488)
18	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/22/2010	0:20:08	n/a	[no content available]	CX1114 at -17883 (item 1489)
19	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/26/2010	18:41:22	n/a	[no content available]	CX1114 at -17910 (item 2854)
20	Call	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	6/24/2010	9:16:00	2 min	[phone call - not UTC]	CX4436 at -052
21	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson mobile (phone # last four digits - 7215)	6/24/2010	9:18:00	16 min	[phone call - not UTC]	CX4436 at -052
22	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2010	12:45:30	n/a	[no content available]	CX1114 at -17318 (item 6355)
23	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/30/2010	14:15:27	n/a	[no content available]	CX1114 at -17318 (item 6358)
24	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/30/2010	14:15:28	n/a	[no content available]	CX1114 at -17318 (item 6359)
25	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2010	17:16:44	n/a	[no content available]	CX1114 at -17319 (item 6365)
26	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	13:38:57	n/a	[no content available]	CX1114 at -17322 (item 6517)
27	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	16:30:56	n/a	[no content available]	CX1114 at -17323 (item 6548)
28	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	18:37:02	n/a	[no content available]	CX1114 at -17323 (item 6553)
29	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	18:37:35	n/a	[no content available]	CX1114 at -17323 (item 6554)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
30	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/2/2010	20:19:32	n/a	[no content available]	CX1114 at -17323 (item 6560)
31	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2010	21:17:33	n/a	[no content available]	CX1114 at -17323 (item 6561)
32	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/10/2010	16:22:40	1 min 52 sec	[phone call]	CX4414 at -2085 (item 836)
33	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/10/2010	16:23:33	n/a	[no content available]	CX1114 at -17334 (item 6973)
34	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	12/10/2010	16:25:13	n/a	[no content available]	CX1114 at -17323 (item 6974)
35	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/31/2011	23:55:24	20 sec	[phone call]	CX4413 at -0735 (item 132) CX1380 at -012
38	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/1/2011	0:07:18	n/a	[no content available]	CX4412 at -10919 (item 1392)
36	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	0:12:35	0 sec	[phone call]	CX4413 at -0735 (item 133)
37	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	0:18:43	49 sec	[phone call]	CX4413 at -0735 (item 134) CX1380 at -012
40	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/1/2011	14:14:38	35 sec	[phone call]	CX4413 at -0735 (item 135)
39	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/1/2011	14:19:41	17 min 14 sec	[phone call]	CX4413 at -0735 (item 136) CX1380 at -013
41	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/2/2011	14:30:08	n/a	[no content available]	CX4412 at -10922 (item 1500)
42	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/2/2011	14:30:08	n/a	[no content available]	CX4412 at -10923 (item 1501)
43	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	3:07:02	n/a	[no content available]	CX4412 at -10936 (item 1986)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
44	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2011	3:25:17	n/a	[no content available]	CX4412 at -10936 (item 1987)
45	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2011	3:25:18	n/a	[no content available]	CX4412 at -10936 (item 1988)
46	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	20:14:56	n/a	[no content available]	CX4412 at -10937 (item 2003)
47	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2011	20:15:32	n/a	[no content available]	CX4412 at -10937 (item 2004)
48	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	13:54:56	n/a	[no content available]	CX4412 at -10944 (item 2278)
49	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	19:25:11	n/a	[no content available]	CX4412 at -10944 (item 2279)
50	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	20:30:06	49 sec	[phone call]	CX4413 at -0737 (item 220)
51	Call	Chuck Cohen land line (phone # last four digits - 6811)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	20:43:05	31 sec	[phone call]	CX4412 at -09157 (item 847)
52	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	20:48:41	n/a	[no content available]	CX4412 at -10944 (item 2282)
53	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	20:59:19	n/a	[no content available]	CX4412 at -10944 (item 2283)
54	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	21:04:23	8 sec	[phone call]	CX4413 at -0737 (item 223)
55	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/14/2011	21:22:46	0 sec	[phone call]	CX4413 at -0737 (item 225)
56	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/14/2011	21:23:13	18 sec	[phone call]	CX4413 at -0737 (item 227)
57	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:40:32	n/a	[no content available]	CX4412 at -10951 (item 2521)
58	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:43:16	n/a	[no content available]	CX4412 at -10951 (item 2522)
59	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2011	11:44:03	n/a	[no content available]	CX4412 at -10951 (item 2523)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
60	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/21/2011	15:51:40	n/a	[no content available]	CX4412 at -10951 (item 2534)
61	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/22/2011	12:49:04	n/a	[no content available]	CX4412 at -10952 (item 2555)
62	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/24/2011	17:53:46	n/a	[no content available]	CX4412 at -10983 (item 3659)
63	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/24/2011	18:21:03	n/a	[no content available]	CX4412 at -10983 (item 3661)
64	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/24/2011	20:03:07	n/a	[no content available]	CX4412 at -10983 (item 3662)
65	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2011	21:58:47	n/a	[no content available]	CX4412 at -11003 (item 4367)
66	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/8/2011	23:55:26	n/a	[no content available]	CX4412 at -11003 (item 4371) CX4412 at -28340 (item 127)
67	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2011	23:57:46	n/a	[no content available]	CX4412 at -11003 (item 4372)
68	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/9/2011	0:23:24	n/a	[no content available]	CX4412 at -11003 (item 4373) CX4412 at -28340 (item 128)
70	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:37:00	1 min	[phone call - not UTC]	CX1382 at -011
71	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:37:00	1 min	[phone call - not UTC]	CX1382 at -011
72	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:38:00	1 min	[phone call - not UTC]	CX1382 at -011
73	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:40:00	1 min	[phone call - not UTC]	CX1382 at -011
74	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	16:48:00	1 min	[phone call - not UTC]	CX1382 at -011

PUBLIC

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
76	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	17:07:00	1 min	[phone call - not UTC]	CX1382 at -011
78	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim land line (phone # last four digits - 1760)	8/29/2011	17:50:00	1 min	[phone call - not UTC]	CX1382 at -011
79	Call	Paul Guggenheim land line (phone # last four digits - 1760)	Chuck Cohen mobile (phone # last four digits - 1340)	8/29/2011	17:52:00	3 min	[phone call - not UTC]	CX1382 at -011
69	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	20:31:10	50 sec	[phone call]	CX4413 at -0188 (item 1744) CX1382 at -010
75	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	20:57:58	25 sec	[phone call]	CX4413 at -0188 (item 1745) CX1382 at -011
77	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/29/2011	21:49:56	0 sec	[phone call]	CX4412 at -04634 (item 4653) CX1382 at -011
80	Call	Patterson Dental (phone # last four digits - 3100)	Chuck Cohen mobile (phone # last four digits - 1340)	9/27/2011	16:14:00	6 min	[phone call - not UTC]	CX1126 at -009
81	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	0:39:18	n/a	"Having dinner with Julie Charlestein in NY @ YPO program, she claims you have an RM @ Schein named Chuck Cohen. True?"	CX2846 CX4412 at -11290 (item 14622)
82	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	1:14:34	n/a	"Not a RM but there is a TSM (employee) w the name. Funny looking guy too. :)"	CX2967 CX4412 at -11290 (item 14623)
83	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:10:29	n/a	"Must be very bright & hard working. He needs to be working for Benco, does he have a contract? Can I give him a signing bonus? :-}"	CX2968 CX4412 at -11290 (item 14640)

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Corrected 9/28/2018

CX6027-006

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
84	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:11:53	n/a	"If it's a Brewers-Yankees series, we better be going to a game. I'll come to WI, or you come to NY. We can bring Stan too."	CX2969 CX4412 at -11290 (item 14641)
85	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:11:58	n/a	"I think Bill Rotert has already signed him too."	CX4412 at -11290 (item 14642) CX6615 CX2970
86	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:12:38	n/a	"In! Game 4 not starting well."	CX4412 at -11290 (item 14643) CX2972
87	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:27:33	n/a	"Maybe invite Bill too?"	CX4412 at -11291 (item 14645) CX2973
88	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:28:20	n/a	"Bill Rotert? Does he work for me?"	CX4412 at -11291 (item 14646)
89	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:29:30	n/a	"Apparently very soon. Part of group in Fresno. We should get together at ADA and talk."	CX2974 CX4412 at -11291 (item 14647) CX2975
90	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:31:12	n/a	"Happy to talk anytime, let's get a cup of coffee in Vegas."	CX4412 at -11291 (item 14648)
91	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:31:27	n/a	"I'm going to Yankee Stadium for game 5 tomorrow nite. Go Yanks!"	CX2971 CX4412 at -11290 (item 14644)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
92	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:32:45	n/a	"K. Shoot for during break at Board meeting? If we need mire time after that then we will schedule there. n/a Ok?"	CX2976 CX4412 at -11291 (item 14649)
93	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:34:27	n/a	"Tim on DTAF board, not DTA board. Our mtg is noon on Monday, when is DTA mtg?"	CX2977 CX4412 at -11291 (item 14650)
94	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/6/2011	2:35:51	n/a	"Oh yea. We r Tues 7 am to 11. I will look at schedule tomorrow and send you a few options."	CX2978 CX4412 at -11291 (item 14651)
95	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/6/2011	2:36:25	n/a	"Ok, let me know, thx."	CX2979 CX4412 at -11291 (item 14652)
96	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:08:45	n/a	"Tim: I had to change my ticket to leave Vegas early Weds AM. I arrive today & will be @ mtg all day tomorrow & GC party Tom nite. Any other time that wo "rks for you to meet? Sorry. Thx."	CX2980 CX4412 at -11303 (item 15091) CX2981 CX4412 at -11303 (item 15092)
97	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:14:25	n/a	"Though between the Brewers & Packers, you should be in a fine mood this morning."	CX2982 CX4412 at -11303 (item 15093)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
98	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	11:16:35	n/a	"On wayto airport myself. I will send alternate times later. Great time to be a cheesehead sports fan!"	CX2983 CX4412 at -11303 (item 15094)
99	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	11:32:07	n/a	"I arrive in Vegas midday today, maybe late afternoon today works for you. See u in Vegas."	CX2984 CX4412 at -11303 (item 15095)
100	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	13:02:09	n/a	"How does 5:00 work for you? We are staying at Mandalay Bay which is where convention is at. We can determine location once there and have a lay of the land. Ok?"	CX2985 CX4412 at -11303 (item 15096)
101	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	17:24:40	n/a	"Sp today works for me @ Mandalay, let me know. Thx."	CX2986 CX4412 at -11303 (item 15097)
102	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:13:37	n/a	"Oy. Go figure. I can no longer do this today. Maybe we chat via phone later in week and the live at annual session? I assume u r going to DC?"	CX2987 CX4412 at -11304 (item 15118)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
103	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:15:24		"Oy"? Clearly you've been hanging around Stan too long. Talk later this week & live in DC works for me. Am stuck now @ DTAF board mtg."	CX2988 CX4412 at -11304 (item 15119)
104	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:16:09		"If your calendar tomorrow frees up, let me know. My schedule tomorrow isn't too tight. Thx."	CX2989 CX4412 at -11304 (item 15120)
105	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:17:11		"I thought you would enjoy that. It's more Mark Mlotek then Stan, but I catch on quickly. Tomorrow afternoon gas possibilities, but not sure I want to do on convention floor. We'll figure it out."	CX2990 CX4412 at -11304 (item 15121)
106	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:17:16		[no content available]	CX4412 at -11304 (item 15122)
107	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:20:02		".-). OK, let me know for tomorrow. Thx."	CX2991 CX4412 at -11304 (item 15123)
108	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/10/2011	21:27:40		"BTW, I love the way that the Sullivan Foundation/DTAF joint scholarship has turned out. Well done. I'm going to talk with my dad about doing some." "thing similar. Thank you for helping to set the standard."	CX2847 CX4412 at -11304 (item 15124) CX2992 CX4412 at -11304 (item 15125)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
109	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:29:24		"That's great. We contemplated making it a matching fun somehow to get other Dental Families in the game, but it got complicated. Happy to see it having the effect anyway. n/a :)"	CX2993 CX4412 at -11304 (item 15126)
110	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/10/2011	21:29:29		[no content available]	CX4412 at -11304 (item 15127)
111	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:36:30		"U available right now by n/a chance?"	CX2994 CX4412 at -11309 (item 15302)
112	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	18:55:46		"Now?"	CX2995 CX4412 at -11309 (item 15305)
113	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:55:59		"Sorry. Jut Yates another one."	CX2996 CX4412 at -11309 (item 15306)
114	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	18:56:12		"Ooops. Just started another n/a one."	CX2997 CX4412 at -11309 (item 15307)
115	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	18:56:42		"No worries, ok."	CX2998 CX4412 at -11309 (item 15308)
116	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:27:50		"I will dial ya in 5 mins. Ok?"	CX2999 CX4412 at -11310 (item 15327)
117	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	20:30:03		"Ok."	CX6400 CX4412 at -11310 (item 15328)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
118	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:31:17	n/a	"Can I get u anything from Starbucks? I'm at drive thru. :)"	CX6401 CX4412 at -11310 (item 15329)
119	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	20:31:50	n/a	"Lol"	CX6402 CX4412 at -11310 (item 15330)
120	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:34:54	21 min 30 sec	[phone call]	CX1109 at -004 CX1356 CX1463 CX4413 at -0767 (item 1366)
121	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	20:56:51	59 sec	[phone call]	CX4413 at -0767 (item 1367)
122	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	10/14/2011	21:21:33	n/a	"Good to talk today, forgot to mention that I talked to Larry this week & he's excited about doing something similar with the DTAF fund, maybe 50k with a "match. So you've inspired others to give. Pls tell your mom. Happy birthday to your dad. Best for the wknd."	CX6403 CX6404 CX4412 at -11310 (item 15331) CX4412 at -11310 (item 15332)
123	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	21:26:19	n/a	"Awesome. I just read to my mom an we had a great smile n hug. :)"	CX6405 CX4412 at -11310 (item 15333)
124	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	10/14/2011	21:26:28	n/a	"Thank you!!"	CX6406 CX4412 at -11310 (item 15334)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
125	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	15:21:44	n/a	"Get together @ the break?"	CX2848 CX4412 at -11353 (item 16871)
126	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	15:49:28	n/a	"Sorry. I was on conf call and could not reply. Let's do on break between Ram Charan's parts. Ok?"	CX6407 CX4412 at -11353 (item 16872)
127	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	17:16:38	n/a	"Ok. Thx."	CX6408 CX4412 at -11353 (item 16873)
128	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	19:09:24	n/a	"I didn't get any popcorn at the break. You making another run?"	CX6409 CX4412 at -11353 (item 16882)
129	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	19:10:48	n/a	"I missed the popcorn too. But I'm sitting in the front & can't get up. Since Larry can't hear, we need to sit in the front. 'what did he say?'"	CX6410 CX4412 at -11353 (item 16883)
130	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	19:12:32	n/a	"Dont forget to send me a map of your zones. Thanks."	CX6411 CX4412 at -11353 (item 16884)
131	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/2/2011	19:14:48	n/a	"Got it."	CX6412 CX4412 at -11353 (item 16885)

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132	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	22:35:35	n/a	"Tim: Assume our conversation today only covers TRs/FSCs who get fired, equipment specialists, service techs, etc. are still" "I covered by the current Global Agreement terms. Your understanding also?"	CX4412 at -11353 (item 16894) CX4412 at -11354 (item 16895) CX6413 CX6414
133	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/2/2011	22:52:06	n/a	[no content available]	CX4412 at -11354 (item 16896)
134	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	0:10:19	n/a	"Anyone termed without cause . . Yes. Otherwise, I thought we were discussing any employees regardless of role."	CX6415 CX4412 at -11353 (item 16898)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
135	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	11:45:03		"Sorry, my confusion, I should have better stated my proposal. Since most of our stress & strain is over TR/FSCs, and all the names we discussed yesterday" "were TRs, my plan was to restrict the number of those folks who can move in a six-month period. We've rarely had issues with support like techs, Equipme" "nt specialists, etc. Doesn't make sense to me that hiring a tech should count the same as hiring a 3m rep. What do you think?"	CX6416 CX6595 CX6596 CX4412 at -11354 (item 16913)
136	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/3/2011	12:07:11		"Two days in a row that Paul G is late. I thought you ran a tighter ship."	CX2490 CX4412 at -11354 (item 16914)
137	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	12:14:11		"He can only contained...not controlled. He still runs on a west coast clock...we call it Guggentime."	CX4412 at -11354 (item 16915), and at -28350 (item 475) CX6588
138	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	13:06:10		"R u still here?"	CX4412 at -11354 (item 16920) CX6417
139	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:07:04		"Up in my room working on a project, should be down around 11."	CX4412 at -11354 (item 16921) CX6418

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140	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:07:14	n/a	"Don't tell Larry."	CX4412 at -11354 (item 16922) CX6419
141	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	13:43:01	n/a	"K. Maybe catch up at break? I literally am sprinting to airport after Ripken. Text me when you're coming down and I will step out if break is over."	CX4412 at -11354 (item 16923) CX6420
142	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2011	13:43:37	n/a	"Ok, will do."	CX4412 at -11354 (item 16924) CX6421
143	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	20:04:39	33 sec	[phone call]	CX4413 at -0770 (item 1447)
144	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2011	20:05:31	36 sec	[phone call]	CX4413 at -0770 (item 1448)
145	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/4/2011	21:04:48	0 sec	[phone call]	CX4413 at -0770 (item 1456)
146	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/4/2011	21:05:47	18 min 41 sec	[phone call]	CX1109 at -016 CX4412 at -09463 (item 6471)
147	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/7/2011	17:29:41	31 sec	[phone call]	CX4413 at -0770 (item 1468)
148	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/7/2011	18:44:16	n/a	"Got your message, will call later, tied up in meetings. Thx."	CX6483
149	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	11/7/2011	18:48:00	n/a	"Thanks"	CX6484
150	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	3:58:56	n/a	"Also, please send map. Thanks."	CX6485

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151	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	3:58:56	n/a	"Sorry didn't call earlier today, running in & out of meetings today. Sorry about Kent, he was in play before our conversation last week. After we talked Friday, I reviewed with our team & we will live up to new arrangement. I'm available to talk tomorrow AM, if you are. Thanks."	CX6486 CX1109 at -017
152	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/8/2011	23:37:30	13 sec	[phone call]	CX4412 at -09467 (item 6543)
153	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:40:55	0 sec	[phone call]	CX4412 at -09467 (item 6544)
154	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:42:26	0 sec	[phone call]	CX4412 at -09467 (item 6544)
155	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/8/2011	23:45:32	5 min 51 sec	[phone call]	CX4413 at -0770 (item 1476)
156	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/9/2011	0:02:50	4 sec	[phone call]	CX1109 at -017 CX4413 at -0770 (item 1478)
157	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	11/9/2011	0:44:15	1 min 16 sec	[phone call]	CX4413 at -0770 (item 1479) CX1109 at -017
158	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/9/2011	12:54:24	n/a	"Told my team to be done in Fresno. Thx."	CX6487
159	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	11/9/2011	12:57:31	n/a	":)"	CX6488

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
160	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/23/2011	23:47:59	n/a	[no content available]	CX4412 at -12052 (item 41855)
161	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/1/2011	15:50:03	12 sec	[phone call]	CX1384 at -006 CX4413 at -0211 (item 2619)
162	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	12/5/2011	16:21:05	n/a	"Available to talk? Subject is Kent Hayes."	CX6489
163	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"Still need to talk?"	CX2857
164	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"You owe me one. :-)"	CX6490
165	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	12/5/2011	18:14:24	n/a	"Sure, I'm around. Heard that Kent decided to go back. We won't pursue the customers, and he doesn't have to sit. If he tried it, and doesn't like it, and wants to go back, no hard feelings."	CX6491
166	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	12/5/2011	19:07:43	n/a	"No. All good. I appreciate the message."	CX6492
167	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	1:14:40	n/a	"You around to talk for a few minutes tomorrow? Let me know, thanks."	CX2347
168	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/13/2012	1:37:23	n/a	"Sure. About 8:00 am central best for me. Ok with you?"	CX2347
169	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	1:40:16	n/a	"OK by me, thanks. Will call."	CX2347

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170	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/13/2012	14:03:28	11 min 34 sec	[phone call]	CX1110 at -008 CX4413 at -0776 (item 1679) CX4434 at -204
171	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/19/2012	3:19:55	n/a	"Got your note. Can't make the YPO event in April. Keep me posted on future opportunities. Thanks."	CX2492
172	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/8/2012	22:57:30	n/a	"Did you warm up the Dentsply crowd for me & Paul? I'm nervous about following you, it's like following Elvis on stage! :~)"	CX1102 (Chats Tab row 3) CX2870
173	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/9/2012	0:19:12	n/a	"Just wrapped up. They boo'd me off the stage. Threw fruit. Ornerly crowd. I'm sure you'll do great!"	CX1102 (Chats Tab row 4) CX6560
174	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/9/2012	1:18:14	n/a	"Sure that's not true. You killed! Thanks for the heads up. I'm going back to Wilkes-Barre!"	CX1102 (Chats Tab row 5) CX6561
175	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	1:45:56	n/a	"Fired Ann Cox? Ethics?"	CX1102 (Chats Tab row 6) CX2871
176	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	1:53:04	n/a	"A. Yes. B. no. Catch up in Chicago?"	CX1102 (Chats Tab row 7)

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177	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	1:58:54	n/a	"Thanks. Absolutely. Thursday n/a AM?"	CX1102 (Chats Tab row 8)
178	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:05:52	n/a	"Sure. At dinner in UT. Will ask Carol I set it up."	CX1102 (Chats Tab row 9)
179	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:10:12	n/a	"Me too. We're @ Deer Valley. You?"	CX1102 (Chats Tab row 10)
180	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:12:16	n/a	"Wow. Snowbird. Ski tomorrow and Sat. With Bergmans on Sat."	CX1102 (Chats Tab row 11)
181	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:17:01	n/a	"Good stuff, enjoy. We're doing Jewish princess skiing where everything is groomed. Too bad you're not here, could have skied & had dinner!"	CX1102 (Chats Tab row 12)
182	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/17/2012	2:18:20	n/a	"BTW, had bfast with Stan, Jimmy & Mark on Monday. They offered me your job, I turned them down. Too much aggravation! :-). See u in Chicago."	CX1102 (Chats Tab row 13)
183	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/17/2012	2:22:56	n/a	"LoL. We should trade for a month. :)"	CX1102 (Chats Tab row 14)
184	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	15:53:36	n/a	"Hiring Anne?"	CX1102 (Chats Tab row 15) CX2872

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185	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:01:12	n/a	"Don't know, our RM out there is talking to her this week. I'm out of it for now, will see how it develops. Words of warning?"	CX1102 (Chats Tab row 16)
186	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:02:08	n/a	"No warnings. I'll call ya to chat live."	CX1102 (Chats Tab row 17)
187	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:02:22	n/a	"You hired all of my head cases in 2010, I don't need another."	CX1102 (Chats Tab row 18)
188	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:14:53	24 sec	[phone call]	CX4413 at -0779 (item 1806)
189	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	16:16:23	n/a	"On my way to SLC airport, heading home from skiing. Will call later. Thanks."	CX1102 (Chats Tab row 19)
190	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	16:19:12	n/a	"Must have had great snow day yesterday!! We had to leave early for airport to get out ahead of it!!"	CX1102 (Chats Tab row 20)
191	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	17:08:20	0 sec	[phone call]	CX1385 at -005 CX4412 at -09558 (item 8221)
192	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	17:09:44	27 sec	[phone call]	CX4412 at -09558 (item 8223)
193	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/20/2012	19:18:15	35 sec	[phone call]	CX1385 at -005 CX4412 at -09558 (item 8228) CX4413 at -0779 (item 1808)

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194	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	19:18:51	18 sec	[phone call]	CX4412 at -09559 (item 8229)
195	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/20/2012	19:19:21	11 min 39 sec	[phone call]	CX4412 at -09559 (item 8230) CX1385 at -005
196	Text	Chuck Cohen (ccohen@bencco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:43:28	n/a	"Hi Paul! Was at a meeting downtown. Am heading back to McCormick now. Catch up?"	CX3106 (iMessage Tab row 69)
197	Text	Chuck Cohen (ccohen@bencco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:45:36	n/a	"Yes."	CX3106 (iMessage Tab row 68)
198	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@bencco.com)	2/23/2012	21:46:15	n/a	"Im in a meeting offsite. Will you be around tomorrow"	CX3106 (iMessage Tab row 67)
199	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@bencco.com)	2/23/2012	21:47:01	n/a	"I'll call you and swing by"	CX3106 (iMessage Tab row 66)
200	Text	Chuck Cohen (ccohen@bencco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/23/2012	21:47:44	n/a	"How about 1:30?"	CX3106 (iMessage Tab row 65)
201	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@bencco.com)	2/23/2012	21:53:42	n/a	"Oops .. I'm currently not scheduled to be at the floor. I'm offsite in meetings all day If I make it over I'll call you. Otherwise next time?"	CX3106 (iMessage Tab row 64)
202	Text	Chuck Cohen (ccohen@bencco.com)	Paul Guggenheim mobile (phone # last four digits - 2444)	2/26/2012	2:14:24	n/a	"Good to see you at the O'Neill shindig. Give me a call if you want to touch base on something specific. Thanks."	CX3106 (iMessage Tab row 63)
203	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen (ccohen@bencco.com)	2/26/2012	4:28:33	n/a	"Good to see you too... Keep on touch and say hi to mom and dad."	CX3106 (iMessage Tab row 62)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
204	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:01:42	n/a	"Tim: You asked me to let you know re Anne Cox. We are hiring her, starts next week. Thanks. Cfc"	CX0060 (Chats Tab row 3)
205	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:26:01	n/a	"Yes. We're honoring our agreement even though she was dismissed."	CX0060 (Chats Tab row 4)
206	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	21:26:24	n/a	"Thanks Chuck. I'll call ya shortly. She'd have two weeks yet to sit out still then, right?"	CX0060 (Chats Tab row 5)
207	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	21:46:16	7 sec	[phone call]	CX1385 at -012 CX4413 at -0781 (item 1878)
208	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/2/2012	21:54:06	13 min 29 sec	[phone call]	CX1385 at -012 CX4412 at -09570 (item 8438)
209	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/2/2012	22:45:20	n/a	"Thanks for chat. Have a great weekend. Hello to Larry. :)"	CX0060 (Chats Tab row 6)
210	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	19:10:06	n/a	"Tim: Just heard that Steve Hoyt is your manager in CT. If you're interested in why he no longer has that role with Benco, happy to discuss. If not, that's OK too. Thanks."	CX0060 (Chats Tab row 7) CX2873
211	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/14/2012	20:20:16	n/a	"Tomorrow am or any time in fri would be great. Got one for you too. :)"	CX0060 (Chats Tab row 8)

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212	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	20:23:20	n/a	"Am at National Sales Meeting in Dallas, busy plotting your downfall. :-). Let's catch up next week. Thanks."	CX0060 (Chats Tab row 9)
213	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/14/2012	20:41:36	n/a	"Why don't I meet you there?! Have a good Meeting. Say hello to all my former Team Schein Members "	CX0060 (Chats Tab row 10)
214	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2012	20:44:25	n/a	"Dude, it would be no good for me if you were here. They'd all like you better! Thanks. "	CX0060 (Chats Tab row 11)
215	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2012	21:58:19	13 min 9 sec	[phone call]	CX1386 at -006 CX4413 at -0782 (item 1928)
216	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/30/2012	22:56:35	n/a	"Thanks for your note. Im going to start collecting all of my Chuck Cohen note cards!!!! :)"	CX0057 (SMS Messages Tab row 57) CX2849 CX4412 at -11499 (item 22078)
217	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2012	21:22:32	n/a	"Creative annual report this year!! Nice job and congrats on successful year. Too many former Team Schein Members included though. :)"	CX0057 (SMS Messages Tab row 56) CX6422 CX4412 at -11550 (item 23923)
218	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/13/2012	22:02:57	n/a	"Listen, if it wasn't for us, Patterson would smoke you guys. You're lucky to have us! :-). Thanks."	CX0060 (Chats Tab row 12)

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219	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2012	23:13:04	n/a	"We should chat soon. Rick Rietman makes 4th recent hire in Central Atlantic zone."	CX0060 (Chats Tab row 13)
220	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	11:40:47	n/a	"Let me check my numbers today... Thanks."	CX0060 (Chats Tab row 14)
221	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	18:47:48	n/a	"Here's our list for Atl Cen zone... Moss 3/30, Cate 3/30, Rietman 6/4. Happy to discuss. Thanks."	CX0060 (Chats Tab row 15)
222	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:01:20	n/a	"Thought we agreed Cox was included."	CX0060 (Chats Tab row 16)
223	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	19:06:39	n/a	"We agreed that she would sit even though she didn't have a contract. And she did sit, even longer than the agreement says. We never talked about whether she counts toward the limit. You fired her, we didn't recruit her."	CX0060 (Chats Tab row 17)
224	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:09:52	n/a	"Ok. Just confirming. Thanks Chuck."	CX0060 (Chats Tab row 18)
225	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/14/2012	19:15:34	n/a	"No worries. Thanks. Heard ur sales mtg was great."	CX0060 (Chats Tab row 19)
226	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/14/2012	19:39:44	n/a	"You should have been there. :)"	CX1102 (Chats Tab row 38)

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227	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/3/2013	15:58:36	n/a	"Time to chat today?"	CX0057 (SMS Messages Tab row 55) CX2850 CX4412 at -11762 (item 31473)
228	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/3/2013	16:02:15	n/a	"Of course. Expected to hear from you yesterday..."	CX1102 (Chats Tab row 39) CX6493
229	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/3/2013	16:06:24	n/a	"Was returning from Rosé Bowl with family. On conf call now. I'll call ya soon".	CX1102 (Chats Tab row 40) CX6494
230	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2013	21:22:28	n/a	"Kudos on the Packers, they looked good last nite. Sorry missed your call on Friday, I was out of the office. Will call you tomorrow. Thanks."	CX1102 (Chats Tab row 41) CX6495
231	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/6/2013	21:24:16	n/a	"Halftime of kids basketball right now. Tomorrow I am offsite for managers meeting. I'll call ya during a break. Nothing urgent."	CX1102 (Chats Tab row 42) CX6496
232	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2013	21:30:25	n/a	"OK. Thanks."	CX1102 (Chats Tab row 43) CX6497
233	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/7/2013	22:54:17	31 sec	[phone call]	CX1387 at -012 CX4413 at -805 (item 2808)
234	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/8/2013	20:59:37	10 sec	[phone call]	CX1387 at -013 CX4413 at -806 (item 2811)

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235	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/8/2013	22:43:22	11 sec	[phone call]	CX1387 at -013 CX4412 at -09838 (item 13301)
236	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/8/2013	22:47:28	16 min 40 sec	[phone call]	CX1387 at -013 CX4413 at -806 (item 2812)
237	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/25/2013	20:13:44	n/a	"You around? Available to talk?"	CX1102 (Chats Tab row 44) CX0196
238	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	20:15:07	n/a	"In meeting right now. Scheduled til 5:00 pm eastern. Wide open thereafter. What's best for you?"	CX1102 (Chats Tab row 45) CX6498
239	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/25/2013	20:17:25	n/a	"You go to meetings? i stopped years ago! :-) Great. Pls call on my cell when mtg ends."	CX1102 (Chats Tab row 46) CX6499
240	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	20:57:16	8 min 35 sec	[phone call]	CX0059 at-007 CX4413 at -0813 (item 3082)
241	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/25/2013	21:09:20	n/a	"Hi Chuck. Thanks for the call. Yes, I am good with the terms we discussed and I look forward to joining Team Benco! Ps. Want to confirm that the Benco tooth logo will include a picture of me. :)"	CX0060 (Chats Tab row 20) CX6500
242	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	2:49:52	n/a	"Problem with this joke is if Stan says 'Great!' It's a risk..."	CX0060 (Chats Tab row 21) CX6502

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243	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	2:50:20	n/a	"Here's a link to the press release we discussed http://marketbrief.com/atlantic-dental-care-plc/d/form-d/2012/11/21/9835185 "	CX0060 (Chats Tab row 22) CX6501
244	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/26/2013	2:54:06	n/a	"Ouch . . . Didn't think about that response from Stan!! Maybe Scott would hire me? Thanks for the follow up on that article. Unusual. "	CX0060 (Chats Tab row 23) CX6503
245	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/26/2013	11:58:37	n/a	"As per my guy in Raleigh: 'Dental alliance. They apparently get 7% off of catalog pricing just for joining. Dr. Ben Koren is the dentist involved. A guy named Sam contacted me about a year ago and asked if Benco was interested.. Told him he was out of his tree."	CX0060 (Chats Tab row 24) CX2670
246	Text	Chuck Cohen mobile (phone # last four digits - 1340) Tim Sullivan mobile (phone # last four digits - 8377)	Tim Sullivan mobile (phone # last four digits - 8377) Chuck Cohen mobile (phone # last four digits - 1340)	3/26/2013	11:58:56	n/a	"Could be a rumor, sometimes stories go around. Thanks"	CX0060 (Chats Tab row 25) CX6504
247	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	11:53:54	6 sec	[phone call]	CX4413 at -0813 (item 3089)

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248	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	20:04:49	n/a	"Tim: Did some additional research on the Atlantic Care deal, seems like they have actually merged ownership of all the practices. So it's not a buying group, it's a big group. We're going to bid. Thanks. "	CX0060 (Chats Tab row 26) CX6505
249	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	20:05:02	n/a	"Also, noticed you rang me this AM, no message. Call later?"	CX2858
250	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	23:21:53	20 sec	[phone call]	CX4413 at -0813 (item 3091)
251	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/27/2013	23:32:04	n/a	"Out for dinner, talk tomorrow?"	CX1102 (Chats Tab row 55) CX6506
252	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/27/2013	23:32:16	n/a	"Sure. Call cell. Bon appetite"	CX1102 (Chats Tab row 56) CX6507
253	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/28/2013	17:25:39	25 sec	[phone call]	CX0059 at-008 CX4413 at -0813 (item 3097)
254	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/28/2013	20:52:04	5 sec	[phone call]	CX0059 at-008 CX4413 at -0813 (item 3098)
255	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/3/2013	16:11:08	37 sec	[phone call]	CX4413 at -0814 (item 3120)
256	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/3/2013	21:41:48	5 min 36 sec	[phone call]	CX0059 at-011 CX4413 at -0814 (item 3122)

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257	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2013	18:30:56	n/a	"Shows we saw in NYC: Pippin & Mathilda. Both excellent. Our 10-yr-old loved both. Thanks."	CX2859
258	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:14:59	3 sec	[phone call]	CX4413 at -0818 (item 3300)
259	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:15:12	n/a	"Call me when you have a moment."	CX1102 (Chats Tab row 59)
260	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	6/13/2013	15:15:12	n/a	"Nothing urgent."	CX1102 (Chats Tab row 58)
261	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/18/2013	12:50:29	9 min 16 sec	[phone call]	CX1127 at -007 CX4413 at -0819 (item 3321)
262	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	6/18/2013	12:59:53	2 min 32 sec	[phone call]	CX1127 at -007 CX4413 at -0819 (item 3322)
263	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen land line (phone # last four digits - 6811)	6/18/2013	18:33:09	47 sec	[phone call]	CX4413 at -0295 (item 5805)
264	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/18/2013	18:34:40	56 sec	[phone call]	CX4413 at -0295 (item 5806)

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
							"1/4 YouMail TXT Alerts: Transcript: GUGGENHEIM PAUL - XXX-XXX-2444 - Jun 18 2:34PM EDT: Chuck, hey, it's Paul *****. How are you doing? Hey, just getting back" - - "2/4 to you on this question if we have done the reconnaissance in our organization. Yeah going back to the beginning of these agreements, there was always a 3" - - "3/4 year ***** clause that we've signed in specific with regard to ***** is in that agreement. So I think they're getting bad or I don't know, maybe they're" - - "4/4 trying to ***** over there or something, I don't know. But maybe we have a ***** regarding sharing of data includes a 2 year disclosure clause whereby they" [message cuts off]	CX0057 (SMS Messages Tab rows 51-54)
265	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/18/2013	18:44:30	n/a		
266	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	6/20/2013	16:59:00	1 min	[phone call - not UTC]	CX1127 at -008
267	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/21/2013	13:38:29	56 sec	[phone call]	CX4413 at -0296 (item 5844)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
268	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	6/21/2013	13:45:58	n/a	"1/4 YouMail TXT Alerts: Transcript: GUGGENHEIM PAUL - XXX-XXX-2444 - Jun 21 9:38AM EDT: Hey, Chuck. It's Paul returning your call. Yeah, I guess I'll catch up" - - "2/4 sometime soon. I'm heading off that soon. I guess the Turkey today. So, I'm at the airport. So, I might be tough to get a hold of me but we'll catch up at" - - "3/4 some point but generally just to know where we are pretty firm on that policy and the it's (??) free and we just agreed to that (??) signed off on that" - - "4/4 contract and there's a few (??) closet and then we have to get it from that. You know historically ever. So someone to tell me that we have you know we May" [message cuts off]	CX0057 (SMS Messages Tab rows 47-50)

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269	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/2/2013	15:32:33	n/a	"Tim: Sales rep forced to resign yesterday b/c of ethical issues, caught him with his hand in the cookie jar. Aaron Swanson in Twin Cities. Heard he's going to you guys, happy to fill you in on the details if you'd like. Just give me a call. Thanks."	CX0060 (Chats Tab row 27) CX2860
270	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:31:42	n/a	"?????"	CX1102 (Chats Tab row 61) CX6508
271	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/3/2013	14:33:39	2 min 4 sec	[phone call]	CX1127 at -012 CX4413 at -0821 (item 3384)
272	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:35:53	37 sec	[phone call]	CX1127 at -012 CX4413 at -0821 (item 3385)
273	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:36:51	7 min 10 sec	[phone call]	CX1127 at -012 CX4412 at -09997 (item 16190)
274	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/3/2013	14:45:37	n/a	"Thanks for the talk, much appreciated. Have a great vacation."	CX1102 (Chats Tab row 62) CX6509
275	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/3/2013	15:02:24	n/a	"Back at ya Chuck. Enjoy!!"	CX1102 (Chats Tab row 63) CX6510
276	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	8/1/2013	23:20:30	n/a	"Happy Sunshine Act day ... Ugh!!"	CX2861

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277	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/1/2013	23:21:26	n/a	"Ha! Larry sang everyone at Benco a song today in celebration. I'll send you a copy. Funny!" "Funniest conversation we had here was how to track pens that are given to offices. Lawyer wanted to track & report them. After I scratched out my eyeballs, and then got them back in my sockets, I told him he was crazy and put him back in his cage for a timeout. You can't make this shit up."	CX1102 (Chats Tab row 65) CX6511
278	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/1/2013	23:23:38	n/a	"Gotta c it!! Nice job on yours and Ricks video too. We're watching you. 66"	CX1102 (Chats Tab row 66)
279	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/1/2013	23:23:44	n/a	"Just fired a rep in CT for running his own deal on amalgam refinement, and manager for knowing about it & not handling. Rep is Steve Ryan, manager is Jon Horn. Call if questions."	CX1102 (Chats Tab row 67)
280	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/4/2013	18:41:17	n/a		CX0060 (Chats Tab row 28)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
281	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	8/4/2013	18:44:13		"Just fired a rep in CT for running his own deal on amalgam refinement, and manager for knowing about it & not handling. Rep is Steve Ryan, manager is Jon Horn. Call if questions. Thanks."	CX0060 (Chats Tab row 169) CX3106 (iMessage Tab row 61) CX6512 CX0060 (Chats Tab row 170) CX3106 (iMessage Tab row 59)
282	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	8/4/2013	19:35:48		"Cool.... Thanks for the heads up"	
283	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/5/2013	22:38:31		"Sorry for delayed response. Sorry you're dealing with this. I am not aware of any activity on our end with these guys, but clearly you termed for cause. I'll follow up."	CX0060 (Chats Tab row 29) CX6513
284	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	20:21:10		[no content available]	CX4412 at -11991 (item 39670)
285	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	20:22:14		"Just received the extra copy from First Impressions. Thanks for the note... Not!! 🙄"	CX0057 (SMS Messages Tab row 46)
286	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/3/2013	20:30:56		"You're lucky I didn't get it framed for your office. Haha!"	CX2862
287	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/3/2013	20:31:12		"Enjoy!"	CX1102 (Chats Tab row 71) CX6514

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
288	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/3/2013	23:06:40	n/a	":)"	CX1102 (Chats Tab row 73)
289	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Chuck Cohen mobile (phone # last four digits - 1340)	10/1/2013	9:11:00	2 min	[phone call - not UTC]	CX1000 at-011
290	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Randy Foley land line (phone # last four digits - 1529)	10/1/2013	11:00:00	18 min	[phone call - not UTC]	CX1000 at-024
291	Call	Patrick Ryan mobile (phone # last four digits - 4977)	Michael McLaney mobile (phone # last four digits - 4354)	10/1/2013	11:19:00	8 min	[phone call - not UTC]	CX1000 at-024
292	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	11/23/2013	23:48:01	n/a	"Traveling today. What's happening in college football?"	CX4412 at -28448 (item 3974) CX6589
293	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/23/2013	23:50:47	n/a	"The tide is turning. Enjoy the axe as we are getting legit with Kill. FU tomorrow as well!!"	CX6424
294	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	11/23/2013	23:51:20	n/a	"Now that's funny!!"	CX6425
295	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/24/2013	21:58:24	n/a	"Totally brutal for all!"	CX6426
296	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	11/24/2013	21:58:57	n/a	"I consider that a Viking win."	CX6427
297	Call	Jim Breslawski mobile (phone # last four digits - 6788)	Patterson Dental (phone # last four digits - 3100)	12/9/2013	22:59:39	11 min 56 sec	[phone call]	CX4412 at -14416 (item 8117)
298	Call	David Misiak land line (phone # last four digits - 1652)	Dave Steck mobile (phone # last four digits - 1925)	1/6/2014	12:42:00	14 min	[phone call - not UTC]	CX2839 at -199
299	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:09:04	n/a	"Happy New Year!!"	CX6428

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300	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXXX8377	1/6/2014	22:23:26	n/a	"8-7-1 and we win out pathetic division. Scary. At least we know we will be back next year. How 'bout y'all?"	CX6429
301	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:30:24	n/a	"I grew up in SF so yes we will be back!"	CX6430
302	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXXX8377	1/6/2014	22:31:58	n/a	"Ahhhh. Yes. Congrats on 1980's. Good years for ya. Anything since? Finish this year out and then I'll eat this text."	CX6431
303	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXXX8377	1/6/2014	22:34:20	n/a	"This close to being us in Carolina . . . And also, "	CX6432
304	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2014	22:36:48	n/a	"When win 5 Super Bowls call me! World champs don 't count!"	CX6433
305	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXXX8377	1/6/2014	23:03:43	n/a	"One behind on SBs and 9 ahead on world championships."	CX6434
306	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/7/2014	15:34:14	n/a	"Our newest recruit!!" (attach. IMG951873.jpg)	CX0057 (MMS Messages Tab row 3) CX2874 CX4412 at -12131 (item 44661, 44662)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
307	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	2/7/2014	16:21:28	n/a	"Funny! Can we trade? I'll take Anderson in Richmond & a 3rd round choice."	CX1102 (Chats Tab row 74) CX6515
308	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	2/7/2014	16:44:48	n/a	"Ha. I won't share that with Richard. :)"	CX1102 (Chats Tab row 75)
309	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	3/14/2014	0:05:03	n/a	"Go Vikes...Manziel Mania!"	CX6436
310	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	3/14/2014	0:13:24	n/a	":)"	CX6437
311	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	3/14/2014	23:38:00	n/a	"NIT...NIT. :)"	CX6435
312	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:16:28	n/a	"Tim: I'm updating our sales regions, and would appreciate having a look at your latest zone map. If you wouldn't mind, please send. Thanks. Cfc"	CX0057 (SMS Messages Tab row 45) CX4412 at -12166 (item 45897) CX6423
313	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:16:32	n/a	"I've got Badgers in March. You?"	CX1102 (Chats Tab row 76) CX6516
314	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:16:32	n/a	"Will do."	CX1102 (Chats Tab row 77)
315	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:20:18	n/a	"Good pick, #2 seed. They'll have to get past Creighton & McDermott, will be tough."	CX1102 (Chats Tab row 78) CX2863

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316	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:20:53	n/a	"Excited to see Ivy (Harvard) as 12 seed this year. Might go to round 2!"	CX1102 (Chats Tab row 79) CX6517
317	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:21:29	n/a	"So you're not declaring? Where did you go to college?"	CX1102 (Chats Tab row 80) CX6518
318	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:22:34	n/a	"Penn. Our basketball program has been a shambles the last few years. Depressing. This time of year we're all Harvard fans."	CX1102 (Chats Tab row 81) CX6519
319	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	3/19/2014	2:22:56	n/a	"Ok. I've got Badgers. You've got Harvard. For a beer. 🍺"	CX1102 (Chats Tab row 82) CX6520
320	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:23:02	n/a	"I'm going with FL all the way, too tough I think."	CX1102 (Chats Tab row 83) CX6521
321	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	3/19/2014	2:24:02	n/a	"Count me in, I'll take that bet, I'm a man with more pride than brains."	CX1102 (Chats Tab row 84) CX6522
322	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/4/2014	1:11:18	n/a	"Congrats. Good for Big Ten. Now it's badgers turn. :)"	CX6438
323	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/4/2014	1:16:48	n/a	"Going to final four with Kari...we will cheer on the badgers, I like Bo!"	CX6439
324	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/4/2014	1:21:10	n/a	"I may be there with two of my boys. I'll text ya if we make it."	CX6440

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325	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377) 4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/4/2014	1:23:12	n/a	"Will buy you a beer!"	CX6441
326	Text	Tim Sullivan mobile (phone # last four digits - 8377)		4/4/2014	1:25:41	n/a	"Unless you're in a suite . . . No beer. NCAA. :("	CX6442
327	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	1:33:52	n/a	"Dude...great game, Badger nation was awesome. Am now a UConn fan!"	CX6443
328	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	1:47:54	n/a	"Was that awesome or what?! Bad ending, but great game. One of my sons is HUGE UConn fan. Had them winning his bracket."	CX6444
329	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	1:48:11	n/a	"Wow. Those your seats?!?"	CX6445
330	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	1:48:48	n/a	"Will tell you my hook up next time we are together...it is all about division 3, just like Bo. Say hi to Obama in DC!"	CX6446
331	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377) 4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	1:50:56	n/a	"Going to game Monday...I am the new Perry! "	CX6447
332	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	1:51:12	n/a	"You not going to DC?"	CX6448
333	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	1:54:52	n/a	"Had Bucky won I'd be staying too. Go UConn!"	CX6449

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
334	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:08:00	n/a	"Look who sat behind my kid at San Diego regional two weeks ago."	CX6450
335	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	2:16:58	n/a	"That's cool. Did he take pic or sign autograph? Wait til I show you the Selfies my son took this weekend. Between final four and nascar today he was hilarious."	CX6451
336	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:18:40	n/a	"He was so nice to Cole, talked brackets with him all game."	CX6452
337	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	2:20:59	n/a	"I can c you're warming up to Packers!! :)"	CX6454
338	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/7/2014	2:21:48	n/a	"Fuck you!"	CX6453
339	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/7/2014	2:22:16	n/a	"Literally lol"	CX6455
340	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	4/8/2014	1:17:52	n/a	"Same seats tonight?"	CX6456
341	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	4/8/2014	1:24:37	n/a	[Image]	CX6585
342	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	4/8/2014	1:25:31	n/a	"Nice!! Go Huskies!"	CX6586
343	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/16/2014	17:37:29	n/a	"Got a minute?"	CX1102 (Chats Tab row 85) CX2864

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344	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/16/2014	17:38:08	n/a	"In about 20 mins. Ok?"	CX1102 (Chats Tab row 86) CX6523
345	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	4/16/2014	17:40:22	n/a	"Good. Thanks."	CX1102 (Chats Tab row 87) CX6524
346	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	4/16/2014	17:59:35	9 min 16 sec	[phone call]	CX1111 at -004 CX4413 at -0845 (item 4288)
347	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXX8377	5/10/2014	20:56:35	n/a	"Watching The Players reminds me of a free lunch last fall. :)"	CX6457
348	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	5/10/2014	21:14:59	n/a	"So good!"	CX6458
349	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/20/2014	13:28:33	n/a	"Thanks for Amazon change."	CX1102 (Chats Tab row 88) CX2865
350	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2014	13:30:40	n/a	"I don't know what you're talking about. Do you have time to chat this am?"	CX1102 (Chats Tab row 89) CX6525
351	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/20/2014	13:32:37	n/a	"Talking about buy now direct. Can talk in the afternoon. Morning busy."	CX1102 (Chats Tab row 90) CX6616
352	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2014	13:32:48	n/a	"I'm open between 12:00-3:00 eastern or after 6:00 PM. Not urgent"	CX1102 (Chats Tab row 91) CX6526

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353	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	11:50:26	n/a	"Time today? Sorry, got busy yesterday. Thanks."	CX1102 (Chats Tab row 92) CX6527
354	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	12:05:15	n/a	"NP. 8:30 eastern?"	CX1102 (Chats Tab row 93) CX6528
355	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	12:05:20	n/a	"Sure. Call my cell when available."	CX1102 (Chats Tab row 94) CX6530
356	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	12:05:48	n/a	"9 ok."	CX1102 (Chats Tab row 95) CX6529
357	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	13:10:29	12 min 45 sec	[phone call]	CX1389 at -006 CX4413 at -0848 (item 4414)
358	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/21/2014	13:22:08	n/a	"Good discussion on your family foundation. Let me know if you want to discuss further on how we manage ours. :)"	CX1102 (Chats Tab row 96) CX6531
359	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/21/2014	17:57:20	n/a	"Thanks. Much appreciated."	CX1102 (Chats Tab row 97) CX6532
360	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	6/29/2014	16:59:13	n/a	"Weekend lacrosse tourney here at st. Thomas academy. Just noticed today the neighbor. Nice building. :)"	CX6459
361	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	6/29/2014	18:25:04	n/a	"Too funny!!"	CX6460

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363	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	7/16/2014	0:17:04	n/a	"Why are you in 3M suite and not me??"	CX0057 (Chats Tab row 93)
362	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	7/16/2014	0:31:57	n/a	"Look to your right...our suite is better...?"	CX0057 (Chats Tab row 94)
364	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	13:03:01	n/a	"Got your message, out with my kid this morning, will call later. Heard rumbles about Ohio issue, I think it's resolved, want to talk about it. Sorry. Thanks."	CX1102 (Chats Tab row 98) CX2866
365	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	13:20:00	n/a	"No worries. Call when available, but don't interrupt family time!!"	CX1102 (Chats Tab row 99) CX6533
366	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	15:34:39	n/a	"Guess which one is mine..."	CX1102 (Chats Tab row 100) CX6534
367	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	16:00:00	n/a	"Very cool!!"	CX1102 (Chats Tab row 101) CX1102 (Chats Tab row 102)
368	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/18/2014	20:16:54	n/a	"Sorry, on the run to meet my wife. Talk Monday? Thanks."	CX6535 CX1102 (Chats Tab row 103)
369	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2014	20:30:56	n/a	"NP. Enjoy the weekend."	CX6536 CX1102 (Chats Tab row 104)
370	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/24/2014	17:27:58	n/a	"Available today?"	CX6537

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371	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/24/2014	18:56:59	n/a	"Sorry. No. Early afternoon tomorrow?"	CX1102 (Chats Tab row 105) CX6538
372	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/24/2014	19:20:49	n/a	"No worries, tomorrow afternoon good with me. Thanks."	CX1102 (Chats Tab row 106) CX6539
373	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	22:05:55	n/a	"Available?"	CX1102 (Chats Tab row 107) CX6540
374	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:19:28	n/a	"Just landed. Call ya shortly? Too late?"	CX1102 (Chats Tab row 108) CX6541
375	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:25:56	n/a	"Good now if u r."	CX1102 (Chats Tab row 109) CX6542
376	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:34:24	n/a	"Give me 10 mins. Baggage claim and then to car. K?"	CX1102 (Chats Tab row 110) CX6543
377	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:34:53	n/a	"KK. Thanks."	CX1102 (Chats Tab row 111) CX6544
378	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:50:55	n/a	"Argh. Still waiting on baggage."	CX1102 (Chats Tab row 112) CX6545
379	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	7/25/2014	23:53:22	n/a	"Annoying. Where r u? I'm home in 10 mins. No worries, talk next week or over the weekend."	CX1102 (Chats Tab row 113) CX6546
380	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	7/25/2014	23:57:27	10 min 42 sec	[phone call]	CX1390 at -008 CX4413 at -0853 (item 4590)

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381	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	8/4/2014	23:33:34	n/a	"Tim: Need to talk about Rotert when u get a chance. Thanks."	CX2867 CX1390 at -012 CX4413 at -0853 (item 4600)
382	Call	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	8/5/2014	0:07:48	8 min 43 sec	[phone call]	CX0057 (SMS Messages Tab row 40) CX2851 CX4412 at -12293 (item 50462)
383	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/9/2014	21:35:33	n/a	"Talk today? Thanks."	CX0057 (SMS Messages Tab row 37) CX2853 CX4412 at -12293 (item 50465)
384	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/10/2014	3:03:23	n/a	"Sorry. Just saw this. Tomorrow ok? Sons varsity soccer game now."	CX0057 (SMS Messages Tab row 38 and 39) CX2852 CX4412 at -12293 (item 50463 and 50464)
385	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/10/2014	3:04:30	n/a	"I sent this at 8:00 and didn't go thru. Argh. Chat tomorrow."	CX0057 (SMS Messages Tab row 36) CX2854 CX4412 at -12293 (item 50466)
386	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	17:31:48	n/a	"Good. Available later? Thanks."	CX1391 at -009 CX4412 at -10323 (item 22029)
387	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	17:31:50	n/a	[no content available]	
388	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/10/2014	21:14:13	12 min 21 sec	[phone call]	

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
389	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	9/25/2014	13:04:17	n/a	"John Cox says hello."	CX0057 (SMS Messages Tab row 31) CX2855 CX4412 at -12299 (item 50669) CX0057 (SMS Messages Tab row 30) CX2856 CX4412 at -12299 (item 50670)
390	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	9/25/2014	21:38:17	n/a	"Haha!"	
391	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/3/2014	22:37:07	n/a	"Beat so bad no shit from Packer nation..."	CX6461
392	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXXX8377	10/3/2014	22:37:48	n/a	"Wasn't worthy of a dig"	CX6462
393	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/3/2014	22:43:12	n/a	"Gophers on fire...Bucky nervous."	CX6463
394	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXXX8377	10/3/2014	22:44:23	n/a	"That's it"	CX6464
395	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXXX8377	10/25/2014	19:50:29	n/a	"What's worse. Wi loss to Northwestern or MN loss to IL? Big Ten not so pretty this year."	CX6465
396	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/25/2014	20:12:24	n/a	"Someone will be the best of the worst. Hate that i even care!!!"	CX6466

PUBLIC

#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
397	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	10/27/2014	22:17:43	n/a	"Just heard about Andre today. Sorry for your loss. I heard only good things about him, but never had opportunity to meet him."	CX6467
398	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	10/27/2014	22:45:20	n/a	"Great guy...thanks for the note."	CX6468
399	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	12/2/2014	17:00:24	n/a	"10 minutes. Sorry. Thanks"	CX0060 (Chats Tab row 171) CX3106 (iMessage Tab row 20)
400	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	12/2/2014	17:00:31	n/a	"In vendor meeting."	CX0060 (Chats Tab row 172) CX3106 (iMessage Tab row 19)
401	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2014	17:02:51	n/a	"No worries...I'm at my booth"	CX0060 (Chats Tab row 173) CX3106 (iMessage Tab row 18)
402	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	12/2/2014	17:03:49	n/a	"Whoever the vendor is... Make sure you leave some for us! ☺"	CX0060 (Chats Tab row 174) CX3106 (iMessage Tab row 17)
403	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2015	23:29:27	n/a	"Good get. Well played."	CX2868
404	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	1/6/2015	23:46:31	n/a	"Thanks. Interesting process."	CX1102 (Chats Tab row 116) CX6547
405	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	1/6/2015	23:50:24	n/a	"I bet."	CX1102 (Chats Tab row 117) CX6548

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
406	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:01	n/a	[no content available]	CX4412 at -26058 (item 7834)
407	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:02	n/a	[no content available]	CX4412 at -26058 (item 7835)
408	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:03	n/a	[no content available]	CX4412 at -26058 (item 7836)
409	Text	Stan Bergman mobile (phone # last four digits - 2691)	Chuck Cohen mobile (phone # last four digits - 1340)	1/10/2015	18:00:04	n/a	"Hi Chuck. Thanks for your nice card.). Appreciate. There must be a way for us to partner in some way and meet out mutual needs. You're the best in the bu"	CX0057 (SMS Messages Tab row 28)
410	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	1/10/2015	19:06:43	n/a	[no content available]	CX4412 at -26058 (item 7839)
411	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	1/10/2015	19:06:47	n/a	[no content available]	CX4412 at -26058 (item 7840)
412	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	2/21/2015	16:20:43	n/a	"Go Badgers!"	CX6469
413	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2015	17:42:24	n/a	"Could care less today!"	CX6470
414	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	2/21/2015	17:44:30	n/a	"Nice. Where r Ya? I'm about to jump on snowmobile in N WI. Little different climate. "	CX6471
415	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	2/21/2015	18:27:09	n/a	"Calusa Pines...enjoy!"	CX6472
416	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/10/2015	17:09:01	n/a	"Are you at the IDS?"	CX0057 (SMS Messages Tab row 27) CX3106 (SMS Tab row 14)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
417	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:24:00	n/a	"Yes, just spent the day at show. You?"	CX3106 (SMS Tab row 11)
418	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/10/2015	17:27:00	n/a	"Yes... Heading to the Kavø event. Are you going there?"	CX0057 (SMS Messages Tab row 26) CX3106 (SMS Tab row 13)
419	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:27:22	n/a	"Yes, me too. See you there."	CX3106 (SMS Tab row 10)
420	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/10/2015	17:28:11	n/a	"däDon't suck up so much that you get Pelton opened this year, give me" -- "dÄ a little break! □ □"	CX3106 (SMS Tab row 9 and 8)
421	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	3/11/2015	9:43:59	n/a	"You on the floor?"	CX0057 (SMS Messages Tab row 25) CX3106 (SMS Tab row 12)
422	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/11/2015	12:14:53	n/a	"Yes. You?"	CX3106 (SMS Tab row 7) CX4412 at -05930 (item 27241) CX1392 at -015
423	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	3/11/2015	12:18:09	55 sec	[phone call]	
424	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/5/2015	0:54:14	n/a	"Hey Chuck, I heard rumor that you've been REDACTED. I hope not true of course, but if so know we are thinking of you."	CX2869
425	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:43:00	n/a	"No rumor: REDACTED"	CX6549

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
426	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/5/2015	1:44:03	n/a	"I hope REDACTED my friend."	CX6550
427	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:44:24	n/a	"After years of threats, REDACTED. Should be just fine by the end of the summer."	CX6551
428	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:45:09	n/a	"REDACTED, thank God. Just a bit of a distraction, I'll be fine."	CX6552
429	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:45:32	n/a	"Thanks for the kind thoughts, check your REDACTED tonite!"	CX6553
430	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/5/2015	1:45:37	n/a	"Let me know when it's ok to tease Ya about that. :) Until then, prayers your way!!"	CX6554
431	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:46:31	n/a	"Can't wait to report this conversation on my monthly report to the Texas AG: 'I told Tim Sullivan to grab his balls!' Let's see what they do with that comment!"	CX0057 (Chats Tab row 3) CX6555
432	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:46:40	n/a	"Teasing and jokes are always welcome! :-)"	CX6556
433	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/5/2015	1:46:47	n/a	"Now that's funny!!"	CX6557

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
434	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/5/2015	1:47:38	n/a	"Thanks, be well!"	CX6558
435	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	5/10/2015	0:00:00	n/a	"Fowler is a stud!! Great tourney!"	CX6474
436	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/10/2015	0:02:30	n/a	"Whole family was cheering him on here. Mom too. :) Amazing he pulled it off after all the crap this week."	CX6475
437	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	5/10/2015	23:51:41	n/a	"I was in that bunker!"	CX6473
438	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	5/13/2015	11:01:12	n/a	"Hysterical!! Thanks!!"	CX6559
439	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Chuck Cohen mobile (phone # last four digits - 1340)	5/13/2015	11:27:33	n/a	[[illegible]]	CX6584
440	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
441	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	5/15/2015	17:42:17	10 min 16 sec	[[phone call]]	CX1393 at -004 CX4413 at -0436 (item 11163)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
442	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Scott Anderson mobile (phone # last four digits - 7215)	5/19/2015	20:34:00	n/a	"I'm doing well, and expect a quick recovery. No worries! Even with REDACTED, I'm twice the man Guggenheim is --- be sure to tell him that!" [not UTC]	CX1500
443	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/19/2015	22:39:50	n/a	"Paul got me in the loop on your short term challenge. My brother in law had REDACTED. He is a neurosurgeon which is sometimes annoying. If you ever want to talk to him let me know. He is a great guy. Scott A." [not UTC]	CX0057 (Chats Tab row 95)
444	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:35:02	n/a	"Five times Sullivan!!!"	CX0057 (Chats Tab row 96)
445	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:35:46	n/a	"Serious about my bro in law if you ever want to talk to him."	CX0057 (Chats Tab row 97)
446	Text	Scott Anderson mobile (phone # last four digits - 7215)	Chuck Cohen mobile (phone # last four digits - 1340)	5/20/2015	0:39:09	n/a	"25 years in the clear...you will do great!"	CX0057 (Chats Tab row 98)
447	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	6/5/2015	11:30:01	n/a	[no content available]	CX4412 at -26268 (item 15333)
448	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Stan Bergman mobile (phone # last four digits - 2691)	6/5/2015	11:30:01	n/a	[no content available]	CX4412 at -26268 (item 15334)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
449	Text	Michelle Lewis mobile (phone # last four digits - 3590)	Chuck Cohen mobile (phone # last four digits - 1340)	7/18/2015	20:27:48	n/a	"Yes. I'll get it back over tonight. Just leaving a wedding in Milwaukee. When do you think I should tell Schein? I'll probably reach out to Tim first."	CX0057 (Chats Tab row 103)
450	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/18/2015	20:30:56	n/a	"Good idea. That's a tough conversation. It will go over easier if you assure him no issues transitioning your current territory."	CX0057 (Chats Tab row 104)
451	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/18/2015	20:31:42	n/a	"Agree talk to Tim. Try the 'Schein is just too big now' angle. He can't argue too much with that one."	CX0057 (Chats Tab row 105)
452	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/21/2015	2:18:57	n/a	"Suggest you get a mentor who can help you make the transition from Schein to Benco. Some things you'll like, some things will frustrate you."	CX0057 (Chats Tab row 106)
453	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Michelle Lewis mobile (phone # last four digits - 3590)	7/21/2015	2:26:52	n/a	"Let's let this idea ruminate for a few days while you get thru the conversation with Schein, and then revisit. No rush now."	CX0057 (Chats Tab row 107)
454	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	15:34:25	n/a	"Mark Mlotek here...free for a quick call so can understand why we canceled?"	CX1498 (SMS Tab row 3) CX4412 at -23884 (item 123417)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
455	Text	Rick Cohen mobile (phone # last four digits - 2279)	Mark Mlotek mobile (phone # last four digits - 6968)	10/14/2015	15:40:24	n/a	"OK... but I think we should have outside counsel on the call. We are concerned with the various anti trust cases and better safe than sorry."	CX1498 (SMS Tab row 4) CX4412 at -23884 (item 123426)
456	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	15:41:36	n/a	"Great. No issues. Just tell me when it can work from your end."	CX1498 (SMS Tab row 5) CX4412 at -23884 (item 123428)
457	Text	Rick Cohen mobile (phone # last four digits - 2279)	Mark Mlotek mobile (phone # last four digits - 6968)	10/14/2015	15:42:12	n/a	[no content available]	CX4412 at -23884 (item 123429)
458	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	17:46:09	n/a	[no content available]	CX4412 at -23885 (item 123442)
459	Text	Mark Mlotek mobile (phone # last four digits - 6968)	Rick Cohen mobile (phone # last four digits - 2279)	10/14/2015	17:46:47	n/a	[no content available]	CX4412 at -23885 (item 123443)
460	Text	Tim Sullivan mobile (phone # last four digits - 8377)	Scott Anderson mobile (phone # last four digits - 7215)	10/22/2015	14:28:39	n/a	"Driver says 'Go Pack Go!'"	CX6587 CX0057 (Call Log Tab row 5)
461	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Tim Sullivan mobile (phone # last four digits - 8377)	11/3/2015	13:50:44	4 min 59 sec	[phone call]	CX1395 at -071 CX4413 at -0886 (item 5847)
462	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/3/2015	14:01:41	n/a	"Got a minute?"	CX3106 (iMessage Tab row 14)
463	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:02:06	n/a	"Can I call you in 30?"	CX3106 (iMessage Tab row 13)
464	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/3/2015	14:02:19	n/a	"Yes, please, on my cell. Thanks."	CX3106 (iMessage Tab row 12)
465	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:02:30	n/a	"Got it...will do."	CX3106 (iMessage Tab row 11)

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
466	Call	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/3/2015	14:31:10	7 min 57 sec	[phone call]	CX1395 at -071 CX4413 at -0469 (item 12419)
467	Call	Chuck Cohen mobile (phone # last four digits - 1340)	Dave Steck land line (phone # last four digits - 2568)	11/9/2015	20:01:46	11 min 20 sec	[phone call]	CX0057 (Call Log Tab row 4) CX2963
468	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/10/2015	19:56:17	n/a	"Chuck, can you do lunch Tuesday at the greater New York meeting?"	CX3106 (iMessage Tab row 10)
469	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/12/2015	14:31:28	n/a	"Lunch on Tuesday?"	CX3106 (iMessage Tab row 9)
470	Text	Chuck Cohen mobile (phone # last four digits - 1340)	Paul Guggenheim mobile (phone # last four digits - 2444)	11/12/2015	23:34:38	n/a	"Paul. Sorry for the delayed response. Spoke with our attorney this week and I think we should pass on any conversations until current anti- trust issues are resolved. Thanks."	CX3106 (iMessage Tab row 8)
471	Text	Paul Guggenheim mobile (phone # last four digits - 2444)	Chuck Cohen mobile (phone # last four digits - 1340)	11/13/2015	0:16:31	n/a	"Ok...sounds good. Catch up with you then."	CX3106 (iMessage Tab row 7)
472	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXX8377	11/29/2015	0:51:43	n/a	The Ax remains "Home"! :)	CX6476
473	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2015	13:41:06	n/a	"Skol Vikings!!"	CX6477
474	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042- 67110e7750d3@iMessage: +XXXXXXXXX8377	11/30/2015	13:41:57	n/a	"Congrats on another reg season win."	CX6478
475	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	11/30/2015	13:42:23	n/a	"Discount Double Check!"	CX6479

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#	Type	From	To	Date	Time (UTC)	Duration	Content	Supporting CX
476	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	12/1/2015	0:54:34	n/a	"Ever hear of school called Gustavous? They are interested in my son for soccer, but their academic program looks n/a suspect."	CX6480
477	Text	Scott Anderson mobile (phone # last four digits - 7215)	Tim Sullivan mobile (phone # last four digits - 8377)	12/1/2015	0:59:18	n/a	"Ha!! Only I could get your kid in!!"	CX6481
478	Text	Tim Sullivan mobile (phone # last four digits - 8377)	4c54b051-b551-4262-b042-67110e7750d3@iMessage: +XXXXXXXXX8377	12/1/2015	1:00:13	n/a	"I thought you graduated in 1962? Was it 1862?!"	CX6482

CX7100

Redacted in Entirety

CX8001

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D. FOSTER
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
Docket No. D09379

-----X
IN THE MATTER OF BENCO DENTAL
INC., et al.,

-----X
DEPOSITION OF DEBORAH FOSTER
Charlotte, North Carolina
Thursday, June 7, 2018

Reported by:
RANDI J. GARCIA, RPR
Job No. 142911

1 D. FOSTER
 2
 3 June 7, 2018
 4 Charlotte, North Carolina
 5 Deposition of DEBORAH FOSTER,
 6 taken by the Federal Trade Commission at Nexsen
 7 Pruet, LLC, 227 West Trade Street, Suite 1550,
 8 Charlotte, North Carolina, before Randi J.
 9 Garcia, Registered Professional Reporter, and
 10 Notary Public in and for the State of North
 11 Carolina, on June 7, 2018, beginning at
 12 approximately 8:52 a.m., when were present on
 13 behalf of the respective parties:
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1 D. FOSTER
 2 A P P E A R A N C E S:
 3 For the Federal Trade Commission.:
 4 BY: David Owyang, Esq.
 5 Lin Kahn, Esq. (via telephone)
 6 400 7th Street SW
 7 Washington, DC 20024
 8
 9 For Henry Schein Dental and the witness.:
 10 Locke Lord
 11 BY: John McDonald, Esq.
 12 2200 Ross Avenue
 13 Dallas, TX 75201
 14
 15 For Defendant Patterson.:
 16 Baker Botts
 17 BY: Jana Seidl, Esq.
 18 1299 Pennsylvania Avenue, NW
 19 Washington, DC 20004
 20
 21 For Defendant Benco Dental Supply.:
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1 D. FOSTER
 2 DEBORAH FOSTER,
 3 after having been first duly sworn, was
 4 examined and testified as follows:
 5 MR. McDONALD: So my name is John
 6 McDonald. I'm here on behalf of Henry
 7 Schein and the witness.
 8 MS. SEIDL: My name is Jana Seidl.
 9 I'm here on behalf of Patterson.
 10 MR. OWYANG: David Owyang on behalf
 11 of the Federal Trade Commission.
 12 MR. McDONALD: And who's on the
 13 phone? Can you please announce?
 14 MR. MANNING: This is Thomas -- go
 15 ahead.
 16 MS. KAHN: Lin Kahn with the Federal
 17 Trade Commission.
 18 MR. MANNING: This is Thomas Manning
 19 of Buchanan Ingersoll & Rooney on behalf
 20 of Benco Dental Supply.
 21 EXAMINATION
 22 BY MR. OWYANG:
 23 Q. Good morning, Ms. Foster. Thank you
 24 for appearing here today.
 25 Please state and spell your name.

1 D. FOSTER
 2 mean John and his team?
 3 MR. OWYANG: Yes.
 4 THE WITNESS: Yes, we met yesterday.
 5 BY MR. OWYANG:
 6 Q. For how long?
 7 A. Several hours. I mean, from about
 8 9:30 in the morning till about 5 o'clock at
 9 night, a little after 5:00.
 10 Q. Do you recall the names of the folks
 11 who were there?
 12 A. Adrian. I don't remember his last
 13 name.
 14 MR. McDONALD: Fontecilla.
 15 BY MR. OWYANG:
 16 Q. Is that it?
 17 A. And John, of course. And I met with
 18 the representative from Patterson.
 19 MS. SEIDL: Just to be clear, it was
 20 just an introduction. We didn't discuss
 21 anything related to the deposition.
 22 MR. OWYANG: Understood.
 23 MR. McDONALD: I think he wanted an
 24 answer from you, Debbie, that it was
 25 Adrian Fontecilla who you met with.

1 D. FOSTER
 2 A. Deborah, D-E-B-O-R-A-H, Foster,
 3 F-O-S-T-E-R.
 4 Q. Who is your current employer?
 5 A. Henry Schein Incorporated.
 6 Q. What is your current job title?
 7 A. Regional account manager, abbreviated
 8 as RAM, R-A-M.
 9 Q. Was your name ever Debbie Torgersen
 10 Foster?
 11 A. Yes.
 12 Q. Approximately when did that stop?
 13 A. I was remarried in 2011, so lost my
 14 previous name then.
 15 Q. Understood.
 16 Did you meet with counsel before
 17 today?
 18 A. No.
 19 Q. Did you meet with counsel today?
 20 A. Yes.
 21 Q. Approximately how long did you meet
 22 with counsel?
 23 A. Five minutes.
 24 MR. McDONALD: Actually --
 25 THE WITNESS: And by "counsel," you

1 D. FOSTER
 2 THE WITNESS: Okay.
 3 MR. McDONALD: Is that right?
 4 THE WITNESS: Yes.
 5 BY MR. OWYANG:
 6 Q. Did counsel show you any documents?
 7 A. Yes.
 8 Q. Did any of those documents refresh
 9 your recollection on anything?
 10 A. Yes.
 11 Q. What did it refresh your recollection
 12 on?
 13 A. Well, you know, in just reading them,
 14 again, when I was first asked, Does this look
 15 familiar to you? Of course, going back many
 16 years it is difficult to recall. But as I read
 17 through some of the documents, I remembered the
 18 circumstances around them.
 19 Q. With the exception of speaking with
 20 your lawyers, did you do anything to prepare
 21 for today?
 22 A. No.
 23 Q. Did you speak with anyone other than
 24 your lawyers about today's deposition?
 25 A. I just alerted my manager that I

1 D. FOSTER
 2 would be here.
 3 Q. And who was your manager?
 4 A. Marcy Roy.
 5 Q. And what is Ms. Roy's position?
 6 A. She is the dental group practice
 7 regional manager for the east coast.
 8 Q. Is she the person that you report
 9 directly to?
 10 A. Yes. Now.
 11 Q. With the exception of documents that
 12 your lawyer showed you, did you review any on
 13 your own?
 14 A. No.
 15 Q. I'd like to go over a couple of
 16 ground rules today so things run smoothly.
 17 As you're aware, you were just sworn
 18 in by the court reporter. Do you understand
 19 that?
 20 A. Yes.
 21 Q. All of my questions and all of your
 22 answers are going to be recorded by the court
 23 reporter. Please answer my questions
 24 truthfully, completely, and to the best of your
 25 knowledge.

1 D. FOSTER
 2 would ask that you answer it before we take a
 3 break.
 4 Does that make sense?
 5 A. Yes.
 6 Q. Is there any reason whatsoever that
 7 will prevent you from giving full, complete,
 8 accurate, and truthful testimony today?
 9 A. Absolutely not.
 10 Q. When did you start working at Henry
 11 Schein?
 12 A. June of '94.
 13 Q. What was your first position at
 14 Schein?
 15 A. I was an outbound telesales rep.
 16 Q. How -- approximately how long were
 17 you a outbound telesales rep?
 18 A. About a year, year and a half.
 19 Q. What was your position after that?
 20 A. I was promoted to the inbound
 21 telesales supervisor for New York.
 22 Q. What is the difference between
 23 inbound and outbound?
 24 A. Outbound, we worked with accounts
 25 that were more high-touch. They needed more

1 D. FOSTER
 2 Do you understand that?
 3 A. Yes.
 4 Q. Please make sure that you answer my
 5 questions verbally, rather than by nodding or
 6 saying "uh-huh" or "huh-huh," so that the court
 7 reporter can take that down.
 8 Does that make sense?
 9 A. Yes.
 10 Q. Let's try not to speak over each
 11 other. Please let me finish asking my question
 12 before you begin to answer, and I will do the
 13 same. I will let you finish answering your
 14 question before I ask my next one.
 15 Does that make sense?
 16 A. Yes, it does.
 17 Q. If you don't understand a question,
 18 please tell me that you don't understand, and I
 19 will do my best to rephrase or clarify it.
 20 Do you understand?
 21 A. Yes.
 22 Q. If you need to take a break at any
 23 time, please tell me or your lawyer, and I will
 24 do my best to accommodate you. The one
 25 exception is if there is a question pending, I

1 D. FOSTER
 2 attention. Some of them were multiple
 3 locations; some of them were single locations,
 4 just large volume.
 5 And inbound was basically all of the
 6 incoming phone calls where doctors, dentists,
 7 assistants were calling in for orders.
 8 Q. How long did you work in telesales?
 9 A. Well, I basically went from that
 10 current position of inbound supervisor to
 11 special markets telesales supervisor, and I did
 12 that up to the point where I moved to the
 13 field, which was in 2005.
 14 Q. So you're doing telesales from '94 --
 15 A. Telesales management, yes.
 16 Q. Please let me finish.
 17 You were doing telesales from '94 to
 18 2005?
 19 A. Yes.
 20 Q. So after telesales, you became
 21 director of sales for special markets?
 22 A. Yes.
 23 Q. And how long were you director of
 24 sales for special markets?
 25 A. I was focusing on correctional

1 D. FOSTER
2 facilities, and up until this point currently,
3 have been working in the special markets group
4 and in the mid-market group in the field since
5 then.

6 Q. What years were you in special
7 markets?

8 A. Mid-market started about end of 2014.

9 Q. What were your responsibilities as
10 director of sales for special markets?

11 A. They varied, because it changed
12 almost yearly. There were restructures.
13 Started out calling on all of the correctional
14 facilities nationally, and then I did get a few
15 folks working underneath me at one point. And
16 then I was focusing on institutional and
17 community health, and then that blossomed into
18 group practices.

19 Q. Is community health the same as
20 community health center?

21 A. Yes.

22 Q. In your current position, you're a
23 regional account manager; is that right?

24 A. Yes.

25 Q. When did you start as a regional

1 D. FOSTER
2 account manager?

3 A. The end of 2014 the division was
4 created, and we started transitioning. It was
5 official, I guess, the beginning of 2015, but
6 we started the transition in the end of '14.

7 Q. Are you responsible for a particular
8 region?

9 A. Yes.

10 Q. What is that region?

11 A. Currently it's North and South
12 Carolina, Georgia, and Tennessee, but that has
13 changed over the years.

14 Q. How has it changed over the years?

15 A. I was going up as far as Maryland at
16 one point.

17 Q. But you're no longer responsible for
18 Maryland?

19 A. No longer.

20 Q. What are your responsibilities as
21 regional account manager?

22 A. To increase market share in group
23 practices, buying groups, DSOs. We just gave
24 up the community health centers. I was calling
25 on them up until January. January, there was a

1 D. FOSTER
2 transition. So now I'm focusing strictly on
3 group practices, buying groups, and DSOs.

4 Q. You mentioned you're responsible for
5 increasing market share; is that right?

6 A. Yes.

7 Q. What does that mean?

8 A. That means taking business from our
9 competition.

10 Q. You also mentioned you gave up the
11 CHCs. What did you mean by that?

12 A. We restructured once again, and they
13 created a new position, an institutional
14 government manager. And all the community
15 health centers were given to those folks.

16 Q. So Schein still serves CHCs, just
17 you're not responsible for it?

18 A. Absolutely. Absolutely.

19 Q. Then you mentioned three other
20 groups: Group practices, buying groups, and
21 DSOs; is that right?

22 A. Correct.

23 Q. Are those three things distinct in
24 your mind?

25 A. Yes.

1 D. FOSTER

2 Q. Right before you became regional
3 account manager, while you were still director
4 of sales for special markets, who did you
5 report to?

6 A. I reported in to Randy Foley.

7 Q. Who is Randy Foley?

8 A. Randy Foley was the director of sales
9 nationally for special markets.

10 Q. Is that his title today?

11 A. He's retired since.

12 Q. What was his title -- was he always
13 director of sales for -- nationally for special
14 markets?

15 A. No, he was not. He came from our
16 software division.

17 Q. What was his title before he retired?

18 A. Might have been -- I'm not really
19 sure -- vice president of sales for special
20 markets.

21 Q. Did you continue to report to
22 Mr. Foley when you became regional account
23 manager?

24 A. No.

25 Q. How long did you work with Mr. Foley?

1 D. FOSTER

2 A. Very long time, even before I
3 reported directly to him, because he was in
4 charge of the software solutions that we offer.
5 So I had known and worked with Randy for at
6 least eight, nine years.

7 Q. How long did you report to Mr. Foley?

8 A. Can't recall exactly. Several years,
9 but again, there were so many restructures in
10 our division that I had multiple bosses at one
11 time.

12 Q. Who are some of those other bosses?

13 A. I reported directly, at one point, to
14 Hal Muller, and we had John Barresi come in for
15 a very short time, and then we had Colan
16 Rogers.

17 Q. What was Mr. Muller's title at the
18 time you reported to him?

19 A. He was president of special markets.

20 Q. What was John Barresi's title at the
21 time you reported to him?

22 A. Director of sales, special markets.

23 Q. And I missed the last one. Colan?

24 A. Colan Rogers.

25 Q. What was Mr. Rogers' title when you

1 D. FOSTER

2 reported to him?

3 A. Director of sales, special markets.

4 Q. Did anyone -- strike that.

5 Did anyone directly report to you
6 when you were director of sales for special
7 markets?

8 A. Yes, for a short time.

9 Q. How many people?

10 A. I had three people.

11 Q. What were their titles?

12 A. They were, at the time -- I honestly
13 don't remember what the titles were, because we
14 changed names. Corporate accounts field. I'm
15 not really sure.

16 Q. Do you recall their names?

17 A. Yes. It was Casey Silvis, Rhonda
18 Durante, and Mark McIlroy.

19 Q. How do you typically communicate with
20 the people that you -- to whom you directly
21 report?

22 MR. McDONALD: Object to form.

23 BY MR. OWYANG:

24 Q. You can answer.

25 A. Via phone, phone call, text, e-mail;

1 D. FOSTER

2 any method that I can reach them.

3 Q. Did you typically communicate by
4 e-mail when you were director of sales for
5 special markets?

6 MR. McDONALD: Object to the form.

7 THE WITNESS: Not typically. Just
8 that was one form.

9 BY MR. OWYANG:

10 Q. How do you communicate with the
11 people that report directly to you?

12 A. I don't have anybody that reports
13 directly to me any longer.

14 Q. You don't manage anyone right now?

15 A. No, I do not.

16 Q. Is it your ordinary practice to be
17 truthful, accurate, and complete in your e-mail
18 communications with your superiors?

19 A. Absolutely. Yes.

20 Q. Is it your ordinary practice to be
21 truthful, accurate, and complete in your e-mail
22 communications with people you work with but
23 don't report to?

24 A. Yes.

25 Q. I'm going to hand you a document that

1 D. FOSTER

2 has been marked as CX5000. It's a copy of your
3 LinkedIn profile that is available online.

4 (Thereupon, Exhibit CX5000 was marked for
5 identification.)

6 BY MR. OWYANG:

7 Q. Please take a moment to look at this
8 document and let me know when you're done.

9 MR. OWYANG: Oh. Throughout the day,
10 as you can see in the bottom right-hand
11 corner, there's a number that begins "CX,"
12 and then there's a four-digit number.

13 There is going to be a unique four-digit
14 number on each of the documents I'm
15 showing you. After that, there is a
16 three-digit number that is the page number
17 for the document. That is the page number
18 I'm going to be referring to throughout
19 the day.

20 THE WITNESS: Okay.

21 MR. McDONALD: So, David, there's a
22 date at the bottom of this. Is that when
23 you printed this?

24 MR. OWYANG: Yes.

25

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. Are you ready?
 4 A. Yes.
 5 Q. Have you had a chance to review
 6 CX5000?
 7 A. Yes.
 8 Q. Have you seen this document before?
 9 A. Yes.
 10 Q. What is CX5000?
 11 A. It is my LinkedIn profile.
 12 Q. And you created this --
 13 A. I did.
 14 Q. -- profile?
 15 Turning to the second page --
 16 sorry -- the document has a date, 5/26/2018,
 17 and that is the date I printed it.
 18 After you reviewed this document, is
 19 it current as of today?
 20 A. No.
 21 Q. How is it different?
 22 A. I have not added my regional account
 23 manager position to present.
 24 Q. Okay. Is that the only change?
 25 A. Yeah. I just haven't updated my

1 D. FOSTER
 2 just through telesales. We also had other
 3 ordering platforms, such as touch-tone
 4 phone ordering, Aruba, which was a
 5 software that we used at henryschein.com.
 6 BY MR. OWYANG:
 7 Q. Is Aruba something that customers
 8 would use?
 9 A. Yes.
 10 Q. Is Aruba an online platform?
 11 A. It is the beginning stages of -- it's
 12 a software program that they had to install to
 13 be able to order, prior to henryschein.com
 14 being created.
 15 Q. Today, Henry Schein is a full-service
 16 distributor; is that right?
 17 A. Correct.
 18 Q. How do you define "full service"?
 19 A. Basically, we have a wheel that we
 20 represent to our customers, and the wheel
 21 covers not only supplies and equipment and
 22 technology, but other services, like business
 23 solutions. So we've evolved into a
 24 full-service company, not only servicing their
 25 dental needs, but also their business needs.

1 D. FOSTER
 2 current responsibilities.
 3 Q. Okay. Turning to the second page.
 4 There's a heading that reads "telesales
 5 manager."
 6 Do you see that?
 7 A. Yes.
 8 Q. Is that the telesales manager
 9 position that we were discussing earlier?
 10 A. Yes.
 11 Q. Could you generally describe what
 12 telesales was when you were in that position?
 13 A. Sure. We had a call center of calls
 14 coming in and reps making outbound calls to
 15 customers, and it was my job to make sure that
 16 calls were handed in a timely manner and
 17 efficiently, and also coach the reps through
 18 monitoring sessions and make sure that they are
 19 meeting the customers' needs and doing what
 20 they needed to do to upsell.
 21 Q. At the time you were telesales
 22 manager, did Henry Schein only sell dental
 23 supplies through telesales?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: No, we did not sell

1 D. FOSTER
 2 Q. When did that evolution take place?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: It took place right
 5 about the time -- I would say 2014, when
 6 the mid-markets area was created, out of
 7 the need and change in the whole industry.
 8 BY MR. OWYANG:
 9 Q. So if I understand you correctly,
 10 Henry Schein wasn't a full-service distributor
 11 before 2014?
 12 A. The business solutions were not
 13 introduced up until that point. We still
 14 serviced all equipment and did equipment
 15 merchandise; we just didn't have our business
 16 solutions portfolio.
 17 Q. When did Henry Schein become a
 18 full-service distributor?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: Depending on your
 21 definition, like I said, if we're talking
 22 business solutions, that was about the
 23 2014 time frame. But we serviced
 24 customers in a full-service manner as far
 25 as their equipment and service locally all

1 D. FOSTER
 2 along.
 3 BY MR. OWYANG:
 4 Q. Before 2014, was there ever a time
 5 when you described Henry Schein as being a
 6 full-service distributor?
 7 A. Repeat the question.
 8 Q. Before 2014, was there ever a time
 9 when you described Henry Schein as offering
 10 full-service distribution?
 11 A. Yes.
 12 Q. When did you start describing Henry
 13 Schein's offering as being full-service?
 14 A. From the time I started in '94.
 15 Q. What is the difference between full
 16 service and telesales?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Telesales is strictly
 19 customers call in and place their orders.
 20 They also can assist with some customer
 21 service issues. But a full-service
 22 company encompasses a relationship with
 23 the customer, making sure that we have
 24 touched on them in every aspect, and not
 25 just dental supplies, but all of the other

1 D. FOSTER
 2 to help our customers grow and evolve.
 3 Q. Does the wheel include repair
 4 services at all?
 5 A. Service, yes.
 6 Q. What types of repair service does
 7 Schein offer?
 8 A. Anything and everything on their
 9 dental equipment.
 10 Q. How quickly does Schein provide that
 11 repair service?
 12 A. The customer calls into a hub and
 13 they immediately contact a local technical
 14 service rep, so depending on what part of the
 15 country, what city and state they are in, that
 16 would depend on their response time.
 17 Q. For a dentist in Charlotte, if the
 18 dentist were to call on Monday, how soon would
 19 the dentist receive the repair service?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Yeah, that is very
 22 dependent on how many projects are
 23 currently going on. We have multiple
 24 service techs out of the Charlotte branch,
 25 but at any given time it's a new day.

1 D. FOSTER
 2 services that we offer.
 3 BY MR. OWYANG:
 4 Q. What is the difference between full
 5 service and online?
 6 A. Again, same -- same concept. If a
 7 customer is just ordering online, they only
 8 have the ability to place an order for supplies
 9 or equipment. Again, involving the wheel,
 10 making sure that we are fully entrenching that
 11 customer with all the services we have to
 12 offer.
 13 Q. What are some of those services on
 14 the wheel?
 15 A. Right now, we have technology
 16 services. We can help customers with software
 17 solutions, the hardware and the software, to
 18 help manage their practices and their patient
 19 records electronically, the business solutions,
 20 which is the newer part of the wheel in
 21 addition to supplies and equipment.
 22 Q. What do you mean by "business
 23 solutions"?
 24 A. Business solutions are consultants
 25 that Henry Schein works with and partner with

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. Would it take a week?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I don't hear that we
 6 generally take a week. I'm not involved
 7 in the service department, so I don't
 8 really know.
 9 BY MR. OWYANG:
 10 Q. What is the general turnaround time
 11 that you're aware of?
 12 MR. McDONALD: Object to the form.
 13 If you know, tell him, but don't
 14 guess.
 15 THE WITNESS: Response time is within
 16 minutes of their service call. But actual
 17 service, that I don't know. Again, I
 18 don't have those statistics.
 19 BY MR. OWYANG:
 20 Q. On the first page of CX5000 there's a
 21 heading that reads "Director of Sales, Special
 22 Markets."
 23 Do you see that?
 24 A. Yes.
 25 Q. Is that the director of sales,

1 D. FOSTER
 2 special markets position that we discussed
 3 earlier?
 4 A. Yes.
 5 Q. The first sentence of the paragraph
 6 below that title reads, quote, "Managed a
 7 nationwide territory consisting of the
 8 following markets over the 10-year period:
 9 Correctional, community health, institutional,
 10 and large group practices."
 11 Do you see that?
 12 A. Yes.
 13 Q. Correctional, community health,
 14 institutional, and large group practices are
 15 examples of different types of Schein
 16 customers; is that right?
 17 A. Correct.
 18 Q. What does "correctional" mean?
 19 A. Correctional is our either state,
 20 federal, or privately owned jails and prisons
 21 throughout the country.
 22 Q. What does "large group practices"
 23 refer to?
 24 A. They refer to multiple location
 25 private practices.

1 D. FOSTER
 2 A. Discovery meeting is questioning your
 3 customer, finding out where they are at now,
 4 where they are going, what their goals are, and
 5 how we can align them with what our services
 6 offer.
 7 Q. How do you help customers with
 8 pricing?
 9 A. We have multiple tiers on our sales
 10 plans. So, again, it is finding out from the
 11 customer where they are starting, where they
 12 plan to be in the future, so we can place them
 13 on one of our pricing plans and get them what
 14 they need at the best price possible, but also
 15 have room to grow with them as they start
 16 evolving over time.
 17 Q. Are the pricing tiers the same as
 18 discounts?
 19 A. Yes.
 20 Q. What does "product mix" refer to?
 21 A. There are two ways you can reduce a
 22 customer's spend. You can reduce the price on
 23 that individual product, or you can start
 24 looking a little bit deeper at what they're
 25 ordering, and if they are willing to make

1 D. FOSTER
 2 Q. And what do you mean by "private
 3 practice"?
 4 A. Private dental practices.
 5 Q. So owned by the dentist or dentists
 6 who work for that practice?
 7 A. No, not necessarily.
 8 Q. Could you explain that?
 9 A. They could be owned individually by
 10 the private dentist, or they could be owned by
 11 a corporate location or entity.
 12 Q. I see.
 13 The second sentence of that paragraph
 14 reads, quote, "Helped customers reach their
 15 potential by assisting with pricing, reporting,
 16 training, economic changes, product mix."
 17 Do you see that?
 18 A. Yes.
 19 Q. What does "pricing" refer to?
 20 A. "Pricing" refers to their buying
 21 power. We have multiple sales plans set up for
 22 each one of those business units, so to vet the
 23 customer, have discovery meetings, question
 24 them, and find where they fit in.
 25 Q. What is a discovery meeting?

1 D. FOSTER
 2 changes, in brands perhaps, we can negotiate
 3 better pricing with our manufacturer partners,
 4 or if they are willing to look at private brand
 5 we can certainly save them money there.
 6 So product mix, when we work with
 7 customers long-term, we do evaluate what they
 8 are ordering and make suggestions to help them
 9 buy smarter.
 10 Q. Have you personally evaluated a
 11 customer's product mix?
 12 A. Yes.
 13 Q. Do you do that today?
 14 A. I do.
 15 Q. For what types of customers do you
 16 evaluate their product mix?
 17 A. Again, now, since I'm focusing mainly
 18 on groups or multiple-location entities, it is
 19 for them now. But I have done that with pretty
 20 much all of those market segments that are
 21 listed on there.
 22 Q. Have you ever evaluated the product
 23 mix for a single-dentist practice?
 24 A. No.
 25 Q. What is the smallest group practice

1 D. FOSTER
 2 for which you've evaluated their product mix?
 3 A. Three.
 4 Q. Three dentists?
 5 A. Three locations, yeah, three. It
 6 could be more than three dentists. Multiple
 7 dentists at each location, possibly.
 8 Q. In terms of number of dentists, how
 9 small is the smallest group practice for which
 10 you've personally evaluated product mix?
 11 A. Three.
 12 Q. Three dentists.
 13 A. Yes.
 14 Q. Okay.
 15 On the first page of CX5000, there is
 16 a heading that reads "Regional Account
 17 Manager."
 18 Do you see that?
 19 A. Yes.
 20 Q. Is the regional account manager
 21 position on this page the same position that we
 22 discussed earlier?
 23 A. Yes.
 24 Q. The first sentence of the paragraph
 25 below that title reads, quote, "Manage a

1 D. FOSTER
 2 territory of four states focusing on community
 3 health clinics, technical schools, and group
 4 practices."
 5 Do you see that?
 6 A. I do.
 7 Q. Which four states are in your
 8 territory again?
 9 A. At this time, again, I haven't
 10 updated. North Carolina, South Carolina,
 11 Georgia, and Tennessee.
 12 Q. On this third line of that --
 13 MR. McDONALD: Just so we are clear,
 14 are you saying that those four states is
 15 what you referenced here, or that's
 16 what -- your current four?
 17 THE WITNESS: Referenced here. I
 18 haven't updated it.
 19 MR. OWYANG: Thank you for that
 20 clarification.
 21 THE WITNESS: Sure.
 22 BY MR. OWYANG:
 23 Q. On the third line of the paragraph
 24 underneath regional account manager, there's a
 25 sentence that reads, quote, "Currently managing

1 D. FOSTER
 2 a territory of over 600 accounts, working with
 3 over 80 local field reps and four regional
 4 managers."
 5 Do you see that?
 6 A. Yes.
 7 Q. I take it that that was at the time
 8 of the regional account manager position, and
 9 not current?
 10 A. Well, the accounts are different, the
 11 number of accounts, because my territory has
 12 shrunk down. But I still work with local field
 13 reps and regional managers.
 14 Q. Approximately how many local field
 15 reps do you work with right now?
 16 A. Approximately 45.
 17 Q. And approximately how many regional
 18 managers do you work with right now?
 19 A. I have four.
 20 Q. What is a field rep?
 21 A. Field sales consultant, field rep.
 22 That is the Henry Schein feet on the street,
 23 the folks that actually call on the offices on
 24 a routine basis.
 25 Q. Is field sale -- is field sales rep

1 D. FOSTER
 2 the lowest person in the organization?
 3 MR. McDONALD: Object to form.
 4 THE WITNESS: I'm not sure what you
 5 mean by "lowest."
 6 BY MR. OWYANG:
 7 Q. Are there any positions below field
 8 sales rep?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: As far as feet on the
 11 street?
 12 BY MR. OWYANG:
 13 Q. Correct.
 14 A. There is no -- no. That is the
 15 initial position.
 16 Q. What is the position above field
 17 sales rep?
 18 A. Regional manager.
 19 Q. And what is above regional manager?
 20 A. Zone manager.
 21 Q. What is above zone manager?
 22 A. Vice president.
 23 Q. And where do you fall into that
 24 hierarchy?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 THE WITNESS: I'm not in that
 3 hierarchy, because mid-markets is a
 4 separate dental division, so I'm not
 5 either one of those titles. Mine is still
 6 regional account manager.
 7 BY MR. OWYANG:
 8 Q. Understood.
 9 FSC is the same as field sales rep?
 10 A. Field sales consultant, yes.
 11 Q. Got it.
 12 In the middle of that paragraph,
 13 there's a sentence that reads, "Appointed as
 14 the manager working directly with National
 15 Association of Free Clinics in VA to ensure we
 16 are working together to provide the free
 17 clinics in the US with the tools they need to
 18 help the underserved in our country."
 19 Do you see that?
 20 A. Yes.
 21 Q. What does that sentence generally
 22 mean?
 23 A. Even though I wasn't managing the
 24 state of Virginia for those other market
 25 segments listed, they did appoint me to work

1 D. FOSTER
 2 Q. What does that sentence mean?
 3 A. I worked with the state community
 4 health center associations, not just the
 5 individual clinics, but at the state level, to
 6 help ensure that we are providing all of our
 7 services to them and their members.
 8 Q. Approximately how many of your
 9 accounts are community health clinics?
 10 MR. McDONALD: Currently?
 11 THE WITNESS: Currently?
 12 BY MR. OWYANG:
 13 Q. Currently.
 14 A. I don't have any.
 15 Q. How many at the time when you were
 16 regional account manager?
 17 A. Out of the 600 accounts I was
 18 managing, I would speculate about a third of
 19 them were community health centers.
 20 Q. Community health centers is sometimes
 21 shortened down to "CHC"; is that right?
 22 A. Correct.
 23 Q. "FQHC" stands for federally qualified
 24 health centers; is that right?
 25 A. Correct.

1 D. FOSTER
 2 with the association of free clinics that was
 3 headquartered there to help drive additional
 4 business into those underserved clinics.
 5 Q. Who appointed you to that position?
 6 A. That was my manager.
 7 Q. Who --
 8 A. Marcy Roy.
 9 Q. Can you spell that?
 10 A. Sure. M-A-R-C-Y, last name Roy,
 11 R-O-Y.
 12 Q. What does "free clinic" mean?
 13 A. Free clinics are clinics that are
 14 treating patients, and they basically don't
 15 receive any federal or state money. The only
 16 type of funding they can actually receive is
 17 grants that they are given, so public grants
 18 and fundraising.
 19 Q. The next sentence in that paragraph
 20 reads, "Tied closely with the community health
 21 clinics," in parentheses, "(FQHCs)," close
 22 parentheses, "and the state associations in the
 23 southeast."
 24 Do you see that?
 25 A. Yes.

1 D. FOSTER
 2 Q. Community health centers are
 3 not-for-profit; correct?
 4 A. Correct.
 5 Q. Community health centers receive
 6 funding from the government; correct?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: In some cases, yes.
 9 BY MR. OWYANG:
 10 Q. What about the other cases?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: In other cases, they
 13 have to go out for their own funding.
 14 BY MR. OWYANG:
 15 Q. And who are the sources of that
 16 funding?
 17 MR. McDONALD: Object to form.
 18 THE WITNESS: Any type of fundraising
 19 they can do and grants that they can apply
 20 for.
 21 BY MR. OWYANG:
 22 Q. Community health centers serve the
 23 indigent; correct?
 24 A. Correct.
 25 Q. Community health centers serve the

1 D. FOSTER
 2 uninsured; correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Not always.
 5 BY MR. OWYANG:
 6 Q. Community health centers provide
 7 services in addition to dental services;
 8 correct?
 9 A. I'm not sure what you mean by the
 10 question.
 11 Q. Sure. So what types of services
 12 other than dental services do community health
 13 centers provide?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: They have usually a
 16 medical division, but I don't deal with
 17 that at all.
 18 BY MR. OWYANG:
 19 Q. Sure.
 20 Other than medical, do they offer any
 21 other types of services?
 22 MR. McDONALD: Object to form.
 23 THE WITNESS: Just in knowing --
 24 BY MR. OWYANG:
 25 Q. Yes.

1 D. FOSTER
 2 of where the customer is currently at and where
 3 they would like to go, to see where our
 4 consulting services and business solutions and
 5 technology can help them research their goals.
 6 Q. Does Henry Schein offer dentists
 7 one-stop shopping for their dental supplies
 8 needs?
 9 A. Yes, we do.
 10 Q. Focusing on the group practices for
 11 private practices -- are you with me?
 12 A. Yes.
 13 Q. What types of dental supplies do
 14 those groups purchase?
 15 MR. McDONALD: Object to the form.
 16 You mean in general?
 17 MR. OWYANG: In general.
 18 THE WITNESS: They'll purchase
 19 everything from us, so we have the
 20 opportunity to gain their business from
 21 the consumables and disposables, through
 22 their instruments, through their small
 23 equipment and technology into their large
 24 equipment.
 25

1 D. FOSTER
 2 A. -- and doing a lot of research, they
 3 do behavioral health as well.
 4 Q. What percentage of Schein's dental
 5 business is attributable to CHCs?
 6 MR. McDONALD: Object to form.
 7 THE WITNESS: I have no idea.
 8 BY MR. OWYANG:
 9 Q. Continuing on with CX5000, about a
 10 third of the way down, on that same paragraph
 11 underneath regional account manager, there's a
 12 sentence that reads, "Personally handle the
 13 sales experience from discovery meeting to
 14 close and beyond."
 15 Do you see that?
 16 A. Yes.
 17 Q. I think we discussed that, but can
 18 you remind me again what that means?
 19 A. Sure. So from the very early stages
 20 of a customer having interest in doing business
 21 with Henry Schein, I meet with them. We make
 22 sure that we, as a team -- usually, we're going
 23 with the local field sales rep; local regional
 24 manager; in some cases, the equipment
 25 specialist -- and we really do a full diagnosis

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. What is a consumable?
 4 A. Consumables are items that are being
 5 used in the patient's mouth; for example,
 6 fillings, the composite material they use to
 7 fill teeth. Anything they are using on a
 8 customer that involves that particular
 9 customer, the materials and the disposables.
 10 Q. What is the difference between
 11 consumable and disposable?
 12 A. They are one and the same.
 13 Q. Okay. Would consumables include
 14 cotton products?
 15 A. Yes.
 16 Q. Bibs?
 17 A. Yes.
 18 Q. Towels?
 19 A. Yes.
 20 Q. Tongue depressors?
 21 A. Yes.
 22 Q. Gloves?
 23 A. Yes.
 24 Q. Anesthetics?
 25 A. Yes.

1 D. FOSTER
 2 Q. Are you familiar with the spend --
 3 the average spend of a single-dentist practice?
 4 A. No.
 5 Q. When a dentist orders supplies from
 6 Schein, how long does it typically take for the
 7 dentist to receive that order?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: If they order before
 10 3:00 p.m., they usually receive the order
 11 next day.
 12 (Thereupon, Exhibit CX2002 was marked for
 13 identification.)
 14 BY MR. OWYANG:
 15 Q. You can put that document aside.
 16 I'm going to hand you a document that
 17 has been marked CX2002. This document is Bates
 18 stamped Henry Schein-000-16-7972 through 974.
 19 It appears to be an e-mail from
 20 Debbie Foster to Randy Foley dated February 21,
 21 2012. The subject is "Presentation to HSD,"
 22 and it has an attachment, a Word attachment,
 23 "HSD BD versus DSO - document for meetings."
 24 Please take a moment to look at this
 25 and let me know when you're ready.

1 D. FOSTER
 2 would have something to review with the teams.
 3 It was part of my job to meet with the local
 4 teams and help support them.
 5 Q. Did you ultimately present this
 6 document?
 7 A. That, I don't remember. I don't
 8 remember if Randy ever approved or it was
 9 presented.
 10 Q. Is there anything that would refresh
 11 your recollection of that?
 12 A. Probably not from 2012. I did a lot
 13 of presentations to the groups.
 14 Q. Have you given presentations like
 15 this before?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: Not necessarily like
 18 this, but I do presentations to our local
 19 teams on a regular basis.
 20 BY MR. OWYANG:
 21 Q. Why do you present to the local
 22 teams?
 23 A. Because it is my job to engage them
 24 to make sure that they fully understand what my
 25 role is, what their role is, and make sure that

1 D. FOSTER
 2 Have you had a chance to review
 3 CX2002?
 4 A. Yes.
 5 Q. Have you seen CX2002 before?
 6 A. Yes.
 7 Q. What is CX2002?
 8 A. It is an e-mail that I sent to Randy
 9 Foley on February 21st, 2012, which was a
 10 proposal of a presentation that I was going to
 11 make to our field sales consultants in Raleigh
 12 and Charlotte.
 13 Q. Did you create the proposed
 14 presentation?
 15 A. I didn't necessarily create it. It
 16 was a compilation of some other e-mails that we
 17 had had, and I sort of put it together in
 18 one -- one document.
 19 Q. Did you create this document in the
 20 ordinary course of business?
 21 A. Yes.
 22 Q. Did you create this document as part
 23 of your responsibilities as director of sales
 24 for Henry Schein special markets?
 25 A. No. I created the document so I

1 D. FOSTER
 2 I'm constantly answering their questions and
 3 introducing new solutions for our customers
 4 that we share.
 5 Q. In 2012, approximately how many times
 6 did you present to the local teams?
 7 A. I could not even speculate.
 8 Q. Would it be multiple times?
 9 A. I met with each region at least twice
 10 in the year, some more.
 11 Q. How many regions were there?
 12 A. In 2012, I believe I still handled
 13 Maryland and Virginia, so that would have been
 14 about seven regions within Henry Schein.
 15 Q. So if you presented to each region
 16 twice, and there were seven regions, you made
 17 about 14 presentations?
 18 A. Sure.
 19 Q. What was the purpose of this
 20 particular presentation?
 21 A. It was just to -- we were continuing
 22 to evolve as a company. We were leading the
 23 market in group practice and buying groups
 24 space. Nothing was really clearly defined at
 25 that time, because this is when these group

1 D. FOSTER
2 practices and buying groups were emerging.
3 Even since this document, so much has changed
4 and evolved.

5 So it was really just the purpose of
6 meeting with the team to better define which
7 division at that time was handling what.

8 Q. What do you mean when you said that
9 buying groups were emerging?

10 A. We had at that time several buying
11 groups under the special markets umbrella.
12 Some of them were opened and were doing
13 business with us under the Henry Schein Dental
14 umbrella, so we were trying to at that point
15 restructure ourselves to better meet the
16 market.

17 Q. Were buying groups becoming more
18 prevalent in 2012?

19 A. Absolutely.

20 Q. What are the Charlotte and Raleigh
21 teams that you reference in the cover e-mail?

22 A. What do you mean by what are they?

23 Q. Just what do those teams do, or what
24 did they do at the time?

25 A. The field consultants. So that is

1 D. FOSTER
2 who I was meeting with: The regional manager
3 and the field sales consultants for each
4 region.

5 Q. I see.

6 Was the purpose of this presentation
7 to make sure that the field sales consultants
8 understood the distinction between a DSO and a
9 buying group?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: It was definitely to
12 help them try to understand better who to
13 engage with and who to pass on to the
14 management team.

15 BY MR. OWYANG:

16 Q. And who are they supposed to engage
17 with?

18 A. First, their engagement is with their
19 regional manager.

20 Q. In terms of the types of customers,
21 who were they supposed to engage with?

22 MR. McDONALD: Object to the form.

23 THE WITNESS: I'm not sure I
24 understand what you're asking.
25

1 D. FOSTER
2 BY MR. OWYANG:

3 Q. Okay. We'll get there.

4 On the cover e-mail, in the first
5 sentence, you wrote, "When you have a moment,
6 ha ha, can you take a look at the following
7 presentation I made up using a bunch of e-mails
8 and documents you have given me?"

9 Do you see that?

10 A. Yes.

11 Q. What e-mails from Mr. Foley did you
12 use to prepare this presentation?

13 A. I don't recall.

14 Q. Do you recall what types of
15 information were contained in those e-mails?

16 A. The information that was compiled on
17 the attachment.

18 Q. When did Mr. Foley send you those
19 e-mails you used to prepare this presentation?

20 A. That, I don't recall.

21 Q. Why did Mr. Foley provide you with
22 those e-mails?

23 MR. McDONALD: Object to the form.

24 THE WITNESS: Because internally, we
25 were evolving and making sense, and

1 D. FOSTER
2 distinctively trying to identify which
3 division was going to handle which type of
4 account.

5 BY MR. OWYANG:

6 Q. On the first page of CX2002, the
7 second sentence in your e-mail reads, "I am
8 meeting with the Charlotte and Raleigh teams
9 this Thursday and want to make it sure it makes
10 sense."

11 Do you see that?

12 A. Yes.

13 Q. You prepared the presentation using
14 e-mails and documents given to you by Mr. Foley
15 because you wanted to make sure the
16 presentation made sense; correct?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: I wanted to make sure
19 that when I compiled a bunch of items and
20 documents, that it actually fell together
21 the way it should have.

22 BY MR. OWYANG:

23 Q. Did you try to make sure that the
24 presentation accurately reflected the e-mails
25 that Mr. Foley had given you?

1 D. FOSTER

2 A. Yes.

3 Q. Did Mr. Foley review this
4 presentation?

5 A. I don't know what happened to it
6 after this. Again, I don't even remember if I
7 ended up using it.

8 Q. On the second and third pages, you
9 have three separate definitions: Definition of
10 a DSO, definition of a buying group, and
11 definition of a large group practice.

12 Do you see that?

13 A. Yes.

14 Q. Let's start with the definition of a
15 buying group, which appears at the bottom of
16 page 2 of CX2002.

17 You identify four bullet points. Do
18 you see that?

19 A. Yes.

20 Q. The first bullet reads, quote, "An
21 organization or group of dentists that get
22 together to leverage better pricing from a
23 distributor, share best practices, and/or
24 network."

25 Is that right?

1 D. FOSTER

2 A. Yes.

3 Q. What does "leverage better pricing
4 from a distributor" mean?

5 A. It means that the group of dentists
6 that are unrelated are just trying to receive
7 better pricing for their dental supplies.

8 Q. How are they able to receive better
9 pricing?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: The way that we were
12 able to set up buying groups at that time,
13 and even before this time, was to make
14 sure that there was some centralized
15 contact, instead of having to offer better
16 pricing, erode our margins, and still
17 offer the feet-on-the-street option.

18 We tried to make sure that there was
19 someone or someones available for us to
20 reach out to, so we could follow up on
21 anything from past due invoices to driving
22 compliance to formulary suggestions.

23 BY MR. OWYANG:

24 Q. Would that someone or someones be an
25 employee of Schein?

1 D. FOSTER

2 A. No.

3 Q. Who would that person be?

4 A. It would have to be somebody at the
5 group level.

6 Q. At the buying group level?

7 A. Yes.

8 Q. The second bullet reads, quote, "No
9 centralized billing. Dentists are individually
10 paying their own bills."

11 Do you see that?

12 A. I do.

13 Q. What does "no centralized billing"
14 mean?

15 A. All bills were not reporting up
16 through one billing location. So each
17 individual dentist still had their own billing
18 going to their own location.

19 Q. And each of those dentists would pay
20 their own bill separately from the others?

21 A. Correct.

22 Q. The third bullet reads, quote,
23 "Dentists and support staff are not employed by
24 one company or LLC."

25 Do you see that?

1 D. FOSTER

2 A. I do.

3 Q. What does that bullet mean?

4 A. It means that, again, they were
5 operating completely independently from each
6 other and there was no real tangible tie
7 between the dental offices.

8 Q. Were the dental offices separately
9 owned?

10 A. Yes.

11 Q. Were they separately operated?

12 A. Yes.

13 MR. McDONALD: Object to the form.

14 BY MR. OWYANG:

15 Q. Next to the heading "Definition of a
16 Buying Group," it says, "Neither SM nor HSD
17 would take on."

18 Do you see that?

19 A. Yes.

20 Q. "SM" refers to special markets;
21 correct?

22 A. Yes.

23 Q. "HSD" refers to Henry Schein Dental;
24 correct?

25 A. Yes.

1 D. FOSTER

2 Q. What does "neither SM nor HSD would
3 take on" -- what does that mean?

4 A. It means that at the field level,
5 when they were going in and getting leads or
6 possible customers at the field level, they
7 shouldn't be making any decisions at all. That
8 should be passed through the regional manager
9 and go up the chain, simply because these
10 bullet points were not enough to help our men
11 with what we needed to ask to find out if it
12 was a true win-win for us and the customer.

13 Q. So what would a field sales rep do
14 when it found an organization that met these
15 criteria?

16 A. I can't say in all cases what they
17 did. What they should have done was bring to
18 it to their regional manager.

19 Q. And what would the regional manager
20 do at that point?

21 A. The regional manager would reach out
22 to the particular customer or customers and try
23 to, again, evaluate where they are, where they
24 are going, and if it involved additional market
25 share for Henry Schein, then we could certainly

1 D. FOSTER

2 erode our margins. So it was a series of
3 questions and basically discovery that took
4 place.

5 Q. What were those questions?

6 MR. McDONALD: Object to the form.

7 THE WITNESS: I wasn't involved in
8 those meetings, so I'm not sure what the
9 exact questions are.

10 BY MR. OWYANG:

11 Q. Who would know that?

12 MR. McDONALD: Object to form.

13 THE WITNESS: The regional managers
14 would know what they were asking customers
15 when they were provided a lead like this.

16 BY MR. OWYANG:

17 Q. Why did field sales reps have to take
18 those buying groups to their regional manager?
19 Why couldn't they just sell it -- sell
20 directly?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: What happens with --
23 anytime we are dealing with multiple
24 dental offices, the chances of a group of
25 10 dentists where the rep actually managed

1 D. FOSTER

2 all 10 was very slim, so normally it
3 involved other field sales consultants.

4 And we didn't allow one field sales
5 consultant to make a decision on behalf of
6 another on whether they were going to drop
7 their margins, thus affect commission.

8 BY MR. OWYANG:

9 Q. Why does it say "neither SM nor HSD
10 would take on"?

11 A. Because none of the field people, the
12 feet on the street, were allowed to do anything
13 and take them on without running things up the
14 chain. So even myself, at my director level, I
15 had to run those up the chain.

16 Q. To whom would you run it up to?

17 A. I would go to my immediate report at
18 the time.

19 Q. Who was that person?

20 A. It was multiple people during that
21 period.

22 Q. Was it ever Randy Foley?

23 A. Yes.

24 Q. Did the e-mails that you used to
25 prepare this presentation, did those e-mails

1 D. FOSTER

2 make clear that neither SM nor HSD would take
3 on buying groups?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I don't even recall.

6 BY MR. OWYANG:

7 Q. Do you use the term "buying group"
8 and "GPO" interchangeably?

9 A. At this point in time, no. But at
10 one point in time, yes.

11 Q. What was the point in time when you
12 did use them interchangeably?

13 A. When they were first introduced. Now
14 I know a GPO is a completely separate animal
15 and has a completely different definition, and
16 is more on the community health side, not so
17 much the private practice side.

18 Q. When did you learn that?

19 A. I can't specifically pinpoint a date.

20 Q. Just to be clear, you first used
21 "buying group" and "GPO" interchangeably, and
22 then there was a time you learned that they
23 were different?

24 A. Yes.

25 Q. Let's move on to definition of a DSO,

1 D. FOSTER
 2 which appears at the top of page 2 of CX2002.
 3 Do you see that?
 4 A. Yes.
 5 Q. First, the definition of a dental
 6 sales organization is distinct from the
 7 definition of a buying group; is that right?
 8 A. Yes.
 9 Q. Underneath the heading "Definition of
 10 a DSO," there are three main bullets. The
 11 first one is "Ownership"; correct?
 12 A. Yes.
 13 Q. The second one is "Owned in Part by
 14 DSO"; correct?
 15 A. Yes.
 16 Q. The third is "Managed by DSO";
 17 correct?
 18 A. Yes.
 19 Q. Let's start with the first one that
 20 reads "Ownership."
 21 Bullet A reads, "The clinic's support
 22 staff is employed by DSO, LLC, or its
 23 subsidiaries or affiliates."
 24 Did I read that correctly?
 25 A. Yes.

1 D. FOSTER
 2 Q. Moving to the second main bullet,
 3 which reads, "Owned in Part by DSO," bullet A
 4 reads, "The dentists working in the practice
 5 may be employed by and/or independent
 6 contractors of DSO, PC, or its subsidiaries or
 7 affiliates, and/or the dentist owner may
 8 provide services as an owner of the practice."
 9 Did I read that correctly?
 10 A. Correct.
 11 Q. Bullet B is, "The clinic support
 12 staff is employed by DSO, LLC, or its
 13 subsidiaries or affiliates."
 14 Is that right?
 15 A. Yes.
 16 Q. And bullet C reads, "The dentist
 17 owner and DSO makes the strategic business and
 18 financial management decisions, but DSO makes
 19 the day-to-day operational administrative
 20 decisions under a management contract."
 21 Is that right?
 22 A. Yes.
 23 Q. In DSOs where the DSO partly owns the
 24 dental practices, dentists also may own part of
 25 the practice; is that right?

1 D. FOSTER
 2 Q. Bullet B reads, "The dentists working
 3 in the practice are employed by and/or
 4 independent contractors of DSO, PC, or its
 5 subsidiaries or affiliates."
 6 Is that right?
 7 A. Yes.
 8 Q. And bullet C is, "The business and
 9 operational decisions of the practice are made
 10 by DSO."
 11 Is that right?
 12 A. Yes.
 13 Q. In the ownership definition of a DSO,
 14 the DSO owns the dental practices; is that
 15 right?
 16 A. Correct. Or they're independent
 17 contractors.
 18 Q. In the ownership definition of a DSO,
 19 the DSO employs dentists and dental support
 20 staff; is that right?
 21 A. Yes.
 22 Q. In the ownership definition of a DSO,
 23 the DSO makes its own business decisions; is
 24 that right?
 25 A. Correct.

1 D. FOSTER
 2 A. Correct.
 3 Q. In DSOs where the DSO partly owns the
 4 dental practice, the DSO is responsible for
 5 managing the day-to-day business operations of
 6 the practice; is that right?
 7 A. Yes.
 8 Q. Moving to the third main bullet,
 9 which is "Managed by DSO," bullet A reads, "The
 10 dentists working in the practice may be
 11 employees and/or independent contractors of
 12 DSO, PC, or its subsidiaries or affiliates,
 13 and/or the dentist owner may provide services
 14 as an owner of the practice."
 15 Is that right?
 16 A. Yes.
 17 Q. Bullet B reads, "The clinic support
 18 staff is employed by DSO, LLC, or its
 19 subsidiaries or affiliates."
 20 Is that right?
 21 A. Yes.
 22 Q. Bullet C reads, "The dentist owner
 23 makes the strategic business and financial
 24 management decisions, but the DSO makes the
 25 day-to-day operational and administrative

1 D. FOSTER
 2 decisions under a management contract."
 3 Did I read that correctly?
 4 A. Correct.
 5 Q. In DSOs where the dental practices
 6 are owned by dentists, the DSO is responsible
 7 for managing the day-to-day business operations
 8 of the practice; is that right?
 9 MR. McDONALD: Object to the form.
 10 You're asking that's what she's written?
 11 MR. OWYANG: No, I'm asking --
 12 MR. McDONALD: Is that the law?
 13 MR. OWYANG: No, no, no, no. I'm
 14 just asking:
 15 BY MR. OWYANG:
 16 Q. In DSOs where the dental practices
 17 are owned by dentists, DSOs are responsible for
 18 managing the day-to-day operations of the
 19 practice; is that right?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Can you rephrase it?
 22 I'm sorry.
 23 BY MR. OWYANG:
 24 Q. Sure. I'm just trying to understand
 25 the third definition underneath definition of a

1 D. FOSTER
 2 DSO, so focusing on DSOs that are managed by
 3 the DSO.
 4 A. Uh-huh.
 5 Q. In those -- in DSOs that are managed
 6 by DSOs, who is responsible for the day-to-day
 7 business operations of those practices?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: The DSO organization.
 10 BY MR. OWYANG:
 11 Q. And that is through a management
 12 contract?
 13 A. Yes.
 14 MR. McDONALD: Object to the form.
 15 Pause, please; okay?
 16 THE WITNESS: Yes.
 17 MR. McDONALD: Thanks.
 18 BY MR. OWYANG:
 19 Q. In each of the three types of DSOs --
 20 ownership, owned in part by DSO, and managed by
 21 a DSO -- the DSO is responsible for day-to-day
 22 management; is that right?
 23 MR. McDONALD: Object to form.
 24 THE WITNESS: Correct.
 25 MR. OWYANG: You can put this

1 D. FOSTER
 2 document aside.
 3 MR. McDONALD: Are you switching
 4 topics?
 5 MR. OWYANG: Yes.
 6 MR. McDONALD: Why don't we take a
 7 five-minute bathroom break?
 8 MR. OWYANG: Sure.
 9 (Thereupon, a brief recess was taken.)
 10 BY MR. OWYANG:
 11 Q. Back on the record.
 12 I'd like to go back to the document
 13 we were just looking at, CX2002.
 14 Was it your intention when you were
 15 drafting this presentation to also present it
 16 to regional managers?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Generally, regional
 19 managers are in the room when I meet with
 20 their FSCs.
 21 BY MR. OWYANG:
 22 Q. So on the top of page 2, the first
 23 heading is "Definition of a DSO: Dental sales
 24 organization that would fall under SM"?
 25 A. Uh-huh.

1 D. FOSTER
 2 Q. Was the purpose of this document to
 3 determine what types of groups would fall under
 4 SM versus HSD?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: That was one of the
 7 purposes of the document.
 8 BY MR. OWYANG:
 9 Q. Okay. And so DSOs would fall under
 10 special markets; is that correct?
 11 A. Correct.
 12 Q. And then at the bottom of page 2, it
 13 reads, "Definition of a large group practice
 14 that would fall under HSD."
 15 Do you see that?
 16 A. Yes.
 17 Q. So large group practices would fall
 18 under Henry Schein Dental; is that right?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: At that time.
 21 BY MR. OWYANG:
 22 Q. At the time of this document, which
 23 is February 2012, between special markets and
 24 Henry Schein Dental, which one of those groups
 25 would handle buying groups?

1 D. FOSTER

2 MR. McDONALD: Object to the form.

3 THE WITNESS: Those were created
4 depending on what the discovery meeting
5 revealed, and whether the offices needed
6 the individual local touch. So that could
7 go either way.

8 BY MR. OWYANG:

9 Q. And you testified before the break
10 that field sales reps were supposed to bring
11 buying groups to the attention of their
12 regional managers; is that right?

13 A. Correct.

14 Q. Where in the document does it say
15 that field sales reps should do that?

16 A. There is nothing in the document, but
17 during the discussion I planned on reviewing
18 that with them. This is something that they
19 knew all along and just were not abiding by.

20 Q. Okay. You can put this aside.

21 What is the difference between
22 special markets and Henry Schein Dental?

23 MR. McDONALD: Object to the form.

24 THE WITNESS: At that time, special
25 markets was a subsidiary of Henry Schein

1 D. FOSTER

2 Dental. It was its own division with its
3 own P&L.

4 BY MR. OWYANG:

5 Q. Was Henry Schein a separate
6 subsidiary --

7 MR. McDONALD: Object to the form.

8 Q. -- at that time?

9 MR. McDONALD: I mean, you should
10 restate your question, David. If you read
11 it, you will see that it doesn't make
12 sense.

13 MR. OWYANG: Sure.

14 BY MR. OWYANG:

15 Q. In February 2012, was Henry Schein
16 Dental a subsidiary of Schein?

17 MR. McDONALD: Object to the form.
18 Lack of foundation.

19 THE WITNESS: Henry Schein Dental was
20 a division of Henry Schein.

21 BY MR. OWYANG:

22 Q. So special markets and Henry Schein
23 Dental were two separate divisions; is that
24 right?

25 A. Yes. With separate P&Ls.

1 D. FOSTER

2 Q. What types of customers did special
3 markets focus on in February 2012?

4 A. We had all of the institutional, so
5 that was state and local government -- going
6 back in my archives: State and local
7 government; community health; dental clinics in
8 hospitals; all types of correctional
9 facilities, prisons and jails; group practices;
10 buying groups; elite DSOs, which was defined as
11 100-plus locations; federal government;
12 military; Indian health; VA.

13 Q. Any others?

14 A. I believe that covers it, but I could
15 have missed something.

16 Q. Sure. In February 2012, what types
17 of customers did Henry Schein Dental cover?

18 MR. McDONALD: Object to the form.

19 THE WITNESS: They covered dental
20 practitioners; even though they did not
21 take on the financial P&L responsibility,
22 they were still calling on community
23 health centers; buying groups; and large
24 group practices that needed a local touch.
25

1 D. FOSTER

2 BY MR. OWYANG:

3 Q. What do you mean by dental
4 practitioners?

5 A. Private practitioners that own their
6 own dental offices individually.

7 Q. Would that be like a single-dentist
8 practice?

9 A. Yes.

10 Q. Why are there separate divisions --
11 sorry.

12 Why is special markets separate from
13 Henry Schein Dental?

14 MR. McDONALD: Object to the form.
15 Lack of foundation.

16 THE WITNESS: I don't know why it was
17 originally created.

18 BY MR. OWYANG:

19 Q. Now, you mentioned that Henry Schein
20 Dental called CHCs, but didn't -- CHCs didn't
21 appear on their P&L; is that right?

22 A. Correct.

23 Q. Was there ever a point in time when
24 special markets took on CHCs as part of their
25 P&L?

1 D. FOSTER
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Yes. Special markets
 4 did have CHCs on their P&L.
 5 BY MR. OWYANG:
 6 Q. Was there ever a time when special
 7 markets stopped handling CHCs?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: As far as P&L
 10 responsibility, no.
 11 BY MR. OWYANG:
 12 Q. Did special markets ever stop calling
 13 CHCs?
 14 A. No.
 15 Q. Did responsibility for CHCs ever
 16 transfer from special markets to Henry Schein
 17 Dental?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I'm not -- I don't
 20 understand the question. It was shared.
 21 There were special markets people as well
 22 as HSD people calling on those customers.
 23 BY MR. OWYANG:
 24 Q. Has there always been shared
 25 responsibility for calling on CHCs?

1 D. FOSTER
 2 sold to a new account?
 3 A. Yes.
 4 Q. So you had a financial incentive to
 5 sell to new accounts?
 6 A. Absolutely.
 7 Q. Are you familiar with how field sales
 8 reps are compensated?
 9 A. I'm not.
 10 Q. In February 2012, did you have a
 11 financial incentive to sell to buying groups?
 12 A. Yes.
 13 Q. And why is that?
 14 A. Any additional volume for me meant
 15 helping me meet my goals.
 16 Q. How are your goals measured?
 17 A. Through various reporting at Henry
 18 Schein. So our manager would review that with
 19 us periodically.
 20 Q. Do you recall the metrics that were
 21 used to measure growth?
 22 A. I don't at this -- back in that time.
 23 Q. Do you receive a commission today?
 24 A. I do not.
 25 Q. When you were in special markets, did

1 D. FOSTER
 2 A. I can't speak to always, because I'm
 3 not really sure back in the beginning.
 4 Q. Okay. When you were director of
 5 sales for special markets, how were you
 6 compensated?
 7 A. I received a salary, and then an MBO
 8 bonus plan.
 9 Q. Did you receive a commission?
 10 A. No.
 11 Q. How did the bonus work?
 12 A. I had certain goals I had to meet
 13 each year --
 14 Q. What --
 15 A. -- most of them involving growth on
 16 sales.
 17 Q. What does that mean, "growth on
 18 sales"?
 19 A. It means taking business from our
 20 competition, growing our market share within
 21 existing customers.
 22 Q. Would that also include selling to a
 23 new account?
 24 A. Yes.
 25 Q. So you would make more money if you

1 D. FOSTER
 2 sales reps and special markets earn commissions
 3 as part of their compensation?
 4 A. We only had regional account managers
 5 or strategic account managers, and they were
 6 all on bonus plans.
 7 Q. And the bonus depended on -- or what
 8 did the bonus depend on?
 9 A. Everyone had individual goals that
 10 were specified by their manager.
 11 Q. Did it depend on growth in sales?
 12 A. The majority of our plans, I'm
 13 assuming, had growth baked in.
 14 Q. In general, is it fair to say that
 15 those strategic -- sorry.
 16 What were the two?
 17 A. Strategic account managers and
 18 regional account managers.
 19 Q. Is it fair to say that strategic
 20 account managers and regional account managers
 21 had an incentive to sell to buying groups?
 22 A. Yes.
 23 (Thereupon, Exhibit CX2003 was marked for
 24 identification.)
 25

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. I'm handing you a document that has
 4 been marked CX2003. It is Bates stamped Henry
 5 Schein-000177564 through 565.
 6 It appears to be an e-mail from Randy
 7 Foley to Troy Neil and Debbie Torgersen Foster
 8 dated April 11, 2012, and the subject line is
 9 "Dr. Hadairi."
 10 Please take a moment to look at this
 11 and let me know when you're done.
 12 A. Okay.
 13 Q. Have you had a chance to review
 14 CX2003?
 15 A. I did.
 16 Q. Have you seen this document before?
 17 A. I don't recall the document, but I
 18 saw it yesterday.
 19 Q. What is this document?
 20 A. It's an e-mail from Randy Foley
 21 responding to an inquiry from one of our
 22 regional managers in Georgia, Troy Neil.
 23 Q. Starting on the second page in the
 24 e-mail from Troy Neil, in the middle of the
 25 e-mail, he wrote, "We have a group of 50 docks

1 D. FOSTER
 2 Q. What is a study club?
 3 A. A lot of doctors, dentists get
 4 together and just meet periodically. It's a
 5 very informal -- sometimes there's education
 6 involved. Sometimes there's not. Sometimes
 7 it's sharing of best practices. It's a very
 8 informal link between doctors that just has a
 9 personal relationship.
 10 Q. Is a study club different than a
 11 buying group?
 12 A. Yes.
 13 Q. Your response to Mr. Neil's e-mail
 14 appears on the first page. And in your
 15 response, you wrote, "Neither HSD or special
 16 markets will participate in buying groups of
 17 any kind."
 18 Do you see that?
 19 A. I do.
 20 Q. "HSD" refers to Henry Schein Dental;
 21 is that right?
 22 A. Yes.
 23 Q. What did you mean when you wrote,
 24 "Neither HSD or special markets will
 25 participate in buying groups of any kind"?

1 D. FOSTER
 2 in a study club and they are interested in
 3 hearing what we might be able to do for them on
 4 creating a buying group for this study club.
 5 Can you let me know if this is a possibility,
 6 and if so, how something like this works?"
 7 Do you see that?
 8 A. I do.
 9 Q. Mr. Neil e-mailed you to see if
 10 selling to a buying group is possible; is that
 11 right?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: No. He was actually
 14 asking for my assistance and our
 15 division's assistance in helping doctors
 16 create a buying group.
 17 BY MR. OWYANG:
 18 Q. Was Mr. Neil interested in selling to
 19 the buying group?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I would assume so.
 22 BY MR. OWYANG:
 23 Q. Why is that your assumption?
 24 A. Because it was always our goal to
 25 sell to as many customers as we possibly could.

1 D. FOSTER
 2 A. At that time, back in 2012, we were
 3 not able to assist anybody in creating or
 4 starting up. We do today have resources to
 5 help folks do that, but at that time, we didn't
 6 have the consultants in place to help an actual
 7 start-up and officially figure out who has
 8 financial responsibility, whether they could
 9 drive compliance to a formulary that we
 10 suggested.
 11 So we would not be able to -- in
 12 2012, be able to help any start-up of a buying
 13 group of any kind.
 14 Q. In the next sentence, you wrote,
 15 "They just erode our margins and rarely bring
 16 any new business to the table."
 17 Do you see that?
 18 A. I do.
 19 Q. You were referring to buying groups
 20 in that sentence; is that right?
 21 A. I was referring to buying groups that
 22 are existing customers.
 23 Q. Would new buying groups erode
 24 Schein's margins?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 THE WITNESS: New business is --
 3 there is no erosion when you maintain --
 4 when you acquire a new business, it is
 5 just growth.
 6 BY MR. OWYANG:
 7 Q. How did existing buying groups erode
 8 margins?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: There was always -- so
 11 if a group of dentists got together and
 12 they were all current customers of Henry
 13 Schein, and they were just meeting with a
 14 very informal agenda, just to discuss best
 15 practices, and not actually put somebody
 16 in charge of driving any compliance to a
 17 formulary or additional sales to Henry
 18 Schein, that informality would just take
 19 an existing customer that was ordering at
 20 whatever discounts and deeper discount
 21 what they were currently ordering.
 22 BY MR. OWYANG:
 23 Q. I think you mentioned that at this
 24 time, April 2012, that Henry Schein Dental and
 25 special markets didn't have the resources to

1 D. FOSTER
 2 Q. You don't know --
 3 A. I don't see an additional e-mail
 4 after his response, so I don't know where it
 5 went.
 6 Q. Are there instances -- at this time,
 7 were there instances when you brought a new
 8 buying group to Mr. Foley's attention?
 9 A. Yes.
 10 Q. And what did he do when you did that?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: He called them -- I'm
 13 sorry.
 14 MR. McDONALD: Object to the form.
 15 Go ahead.
 16 THE WITNESS: He called them and
 17 vetted them and had discussions with them
 18 and started a discovery process.
 19 BY MR. OWYANG:
 20 Q. What was he trying to discover?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Again, discover, is
 23 there any type of centralized person or
 24 persons who would be able to help drive
 25 sales, or are all the doctors independent

1 D. FOSTER
 2 help put together new buying groups; is that
 3 right?
 4 A. Correct. We did not have resources
 5 to help a group of dentists start their own
 6 buying group.
 7 Q. Why not?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: We didn't have the
 10 resources. Everything was new then and we
 11 were evolving. Today we have an entire
 12 business solutions division, and I refer
 13 buying groups to one of our law firms that
 14 we work with on a regular basis to help
 15 them actually set things up so they are
 16 legally protected.
 17 BY MR. OWYANG:
 18 Q. At this time, did you try to get the
 19 resources to sell to buying groups, new buying
 20 groups?
 21 A. Me personally? I would just take it
 22 to -- I took it to Randy Foley, my manager.
 23 Q. And what did he do when you took it
 24 to him?
 25 A. I don't know. I don't know.

1 D. FOSTER
 2 of each other?
 3 BY MR. OWYANG:
 4 Q. Why would he want to know if there is
 5 a centralized person or if the dentists are
 6 independent of each other?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: At this time, we had
 9 buying groups already buying from Henry
 10 Schein as customers, and some of them, if
 11 you look at his comment at the top, we did
 12 get burned by financially.
 13 They started ordering supplies, and
 14 because they were independent and we
 15 didn't have one entity or person to go to
 16 to help us collect, they kind of turned
 17 into nightmares. So some of the
 18 experiences were not positive with buying
 19 groups, while others -- there was one on
 20 the list of buying groups I saw yesterday
 21 that I'm still servicing today, and that
 22 is more than 10 years later.
 23 BY MR. OWYANG:
 24 Q. When you wrote "they just erode our
 25 margins," how did you know that at that time?

1 D. FOSTER
 2 A. Because when we reduce a price to a
 3 customer, margins erode.
 4 Q. Did you have personal experience
 5 reducing the price to buying groups?
 6 A. I'm not sure what you mean, "personal
 7 experience."
 8 Q. Did you yourself ever reduce the
 9 price for a buying group?
 10 A. Yes, after it was approved by the
 11 management team. Yes, some of my customers
 12 became buying groups, and their GPs eroded.
 13 Q. What is that, "GP"?
 14 A. Gross profit.
 15 Q. Is that measured as a percentage?
 16 A. Yes.
 17 Q. Which buying groups were you
 18 referring to when you wrote, "they just erode
 19 our margins"?
 20 A. None in particular.
 21 Q. So then how do you know that they
 22 just erode your margins, if you weren't
 23 referring to any in particular?
 24 A. Because I --
 25 MR. McDONALD: Object to form. Hang

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. But you don't know the specifics of
 4 any particular buying group --
 5 A. No.
 6 Q. -- how much margins eroded?
 7 A. I don't recall any.
 8 Q. You can put that aside. Actually,
 9 sorry --
 10 MR. McDONALD: Nope, it's too late.
 11 MR. OWYANG: It's not too late.
 12 MR. McDONALD: I'm kidding.
 13 THE WITNESS: I don't know the
 14 legalities here.
 15 BY MR. OWYANG:
 16 Q. In your e-mail, when you wrote,
 17 "Neither HSD or special markets will
 18 participate in buying groups of any kind," how
 19 did you know that at that time?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I just knew from the
 22 experience that unless it was brought up
 23 the chain to upper management, we were not
 24 letting anyone on the street level make
 25 those decisions.

1 D. FOSTER
 2 on. Object to form.
 3 THE WITNESS: Because I know when you
 4 reduce price and your cost stays the same,
 5 your GP goes down.
 6 BY MR. OWYANG:
 7 Q. Which buying groups were you working
 8 with at the time you wrote that e-mail?
 9 A. I don't recall which ones I was
 10 currently working with. Again, I had over 600
 11 accounts at the time.
 12 Q. Do you recall how many buying groups
 13 you were working with at the time?
 14 A. I don't.
 15 Q. How much did margins erode when you
 16 reduced prices to buying groups that you worked
 17 with?
 18 MR. McDONALD: Object to form.
 19 Vague. Overly broad.
 20 THE WITNESS: That depended on the
 21 pricing for the customer. How large the
 22 group was, everything that we discussed
 23 during discovery process and where we
 24 ended up with pricing.
 25

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. You said based on experience. What
 4 experience are you talking about?
 5 A. The fact that we were coached to
 6 always bring in the upper management team and
 7 not let that lie on someone in my position.
 8 Q. Who were you coached by?
 9 A. Our entire management team.
 10 Q. And who would that include?
 11 A. Hal Muller, Randy Foley, Andrea
 12 Hight, Kathleen Titus.
 13 Q. Who is Andrea Hight?
 14 A. She was one of the regional managers,
 15 regional account managers, in our division.
 16 She was a senior representative.
 17 Q. And who is Kathleen Titus?
 18 A. Same. She was also calling on
 19 customers and customer-facing, in the same
 20 position as me but a senior representative.
 21 (Thereupon, Exhibit CX238 was marked for
 22 identification.)
 23 BY MR. OWYANG:
 24 Q. Now you can put it aside. And I'll
 25 give you a new one. This document is CX238.

1 D. FOSTER
 2 MR. McDONALD: Off the record.
 3 (Off the record.)
 4 BY MR. OWYANG:
 5 Q. CX238 is Bates stamped Henry
 6 Schein-000178482 through 484. It appears to be
 7 an e-mail string from Randy Foley to Debbie
 8 Torgersen Foster dated February 20, 2012, with
 9 the subject, "Who is ProABC?"
 10 Please take a moment to look at this
 11 and let me know when you're done.
 12 A. Okay.
 13 Q. Have you had a chance to review
 14 CX238?
 15 A. Yes.
 16 Q. Have you seen this document before?
 17 A. Yes.
 18 Q. What is this document?
 19 A. It was an e-mail from Randy to myself
 20 based on an inquiry I received from one of our
 21 equipment specialists.
 22 Q. Who was the equipment specialist?
 23 A. Jay Barringer.
 24 Q. In the first paragraph on the first
 25 page of CX238, Mr. Foley wrote, "Honestly,

1 D. FOSTER
 2 group that Mr. Foley referenced, the one in
 3 Utah?
 4 A. I do not.
 5 Q. In the last sentence of the second
 6 paragraph of Mr. Foley's e-mail, he wrote, "So
 7 this is a corporate decision not to participate
 8 in these."
 9 Do you see that?
 10 A. I do.
 11 Q. Mr. Foley was referring to a
 12 corporate decision regarding buying groups; is
 13 that right?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I believe he was
 16 referring to the sentence right prior,
 17 where dentists were coming to us and
 18 saying, I don't want to join the buying
 19 group, but I want you to share the pricing
 20 with me because I found out about it.
 21 BY MR. OWYANG:
 22 Q. He wrote, "So this is a corporate
 23 decision not to participate in these."
 24 What is the "these"?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 within Schein we have a few buying groups that
 3 we wish we didn't have. There is a large one
 4 under HSD in Utah, and we used to have one in
 5 special markets called Smile Source."
 6 Do you see that?
 7 A. Yes.
 8 Q. "HSD" in the first paragraph refers
 9 to Henry Schein Dental; is that right?
 10 A. Correct.
 11 Q. Based on what I just read, Henry
 12 Schein Dental worked with buying groups before
 13 February 2012; is that right?
 14 A. Correct.
 15 Q. And special markets also worked with
 16 buying groups before February 2012; is that
 17 correct?
 18 A. Correct.
 19 Q. For instance, special markets worked
 20 with a buying group called Smile Source.
 21 A. Yes.
 22 Q. What do you know about Smile Source?
 23 A. I don't know anything. I never
 24 managed the account.
 25 Q. Do you know the name of the buying

1 D. FOSTER
 2 If you know, tell him. But don't
 3 speculate.
 4 THE WITNESS: I didn't write the
 5 e-mail, so I'm not exactly sure.
 6 BY MR. OWYANG:
 7 Q. What do you understand the corporate
 8 decision to be?
 9 MR. McDONALD: Object to form.
 10 THE WITNESS: I don't understand the
 11 corporate decision coming out of Randy's
 12 e-mail at all.
 13 BY MR. OWYANG:
 14 Q. Did you understand it at the time he
 15 sent this e-mail to you?
 16 MR. McDONALD: Object to form.
 17 THE WITNESS: I can't remember what I
 18 understood in 2012.
 19 BY MR. OWYANG:
 20 Q. In the bottom, in the last sentence
 21 of the first paragraph of Mr. Foley's e-mail,
 22 he writes, "Tim Sullivan is happy that we are
 23 less one more BG."
 24 Do you see that?
 25 A. Which paragraph are you -- oh, okay.

1 D. FOSTER
 2 Q. The first one.
 3 A. Okay. I do see, yes.
 4 Q. "BG" is buying group; correct?
 5 A. Again, I didn't write the e-mail. I
 6 can only assume.
 7 Q. Assuming "BG" is buying group, what
 8 do you understand that sentence to mean?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I didn't write the
 11 e-mail. I don't know what it means.
 12 BY MR. OWYANG:
 13 Q. Did you ever ask Mr. Foley what this
 14 e-mail meant?
 15 A. I don't recall.
 16 Q. You received this e-mail, CX238, one
 17 day before the e-mail with the presentation you
 18 prepared; is that correct?
 19 MR. McDONALD: Object to the form.
 20 BY MR. OWYANG:
 21 Q. That document was -- I believe it was
 22 CX2002.
 23 A. February 21st. Correct.
 24 Q. It's correct that you received CX238
 25 one day before you sent CX2002?

1 D. FOSTER
 2 Q. Who is Zachary Harrison, at the time
 3 of this e-mail?
 4 A. He was the regional account manager
 5 based out of Florida, doing the same role I
 6 have.
 7 Q. The same role you have today?
 8 A. Same role I had at that time.
 9 Q. The most recent e-mail on this string
 10 is dated January 13, 2015; is that right?
 11 A. Correct.
 12 Q. On the first -- on the bottom of the
 13 first page, Mr. Foley wrote, "This group
 14 connected to Tralongo. Tralongo is also a
 15 buying group that we would not work with."
 16 Do you see that?
 17 A. I do.
 18 Q. What do you understand that to mean?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: It doesn't make any
 21 sense to me, because we did work with
 22 Tralongo. They were one of our customers.
 23 BY MR. OWYANG:
 24 Q. How do you know that?
 25 A. Just from the name.

1 D. FOSTER
 2 A. Correct.
 3 (Thereupon, Exhibit CX2001 was marked for
 4 identification.)
 5 BY MR. OWYANG:
 6 Q. You can put that aside.
 7 This document is CX2001. CX2001 is
 8 Bates stamped Henry Schein-000-154202 through
 9 209. It appears to be an e-mail string between
 10 Debbie Foster, Randy Foley, and Zachary
 11 Harrison. It's dated January 13, 2015. And
 12 the subject is "New offices."
 13 Please a take a moment to look at
 14 this and let me know when you're done.
 15 A. Okay.
 16 Q. Have you had a chance to review
 17 CX2001?
 18 A. Yes.
 19 Q. Have you seen this document before?
 20 A. Yes.
 21 Q. What is this document?
 22 A. It is an e-mail to my boss, Randy,
 23 and Zach Harrison reaching out about some
 24 offices that one of my accounts had just
 25 acquired in another region.

1 D. FOSTER
 2 Q. Did you ever work with Tralongo
 3 personally?
 4 A. Not directly, no.
 5 Q. In your reply at the top, you wrote,
 6 "Never heard of them."
 7 Do you see that?
 8 A. Correct.
 9 Q. Were you referring to Tralongo there?
 10 A. I was.
 11 Q. So at the time, you had never heard
 12 of Tralongo?
 13 A. No.
 14 Q. So when did you become aware -- or
 15 when did you first become aware that Schein
 16 worked with Tralongo?
 17 A. It was -- I don't know the specific
 18 date, but it was after January 13, 2015.
 19 Q. How did you become aware?
 20 A. Because I started to inherit a
 21 further south territory, and Tralongo was
 22 mostly in the southeast. Some of the customers
 23 I came across were members.
 24 Q. But you never worked with any of
 25 those customers?

1 D. FOSTER
 2 A. No.
 3 Q. Did you ask why Mr. Foley -- sorry,
 4 Strike that.
 5 So you mentioned that you were
 6 confused because Tralongo is a customer that
 7 you work with -- that Schein works with?
 8 A. That Schein works with, correct.
 9 Q. Did you ask Mr. Foley why he wrote,
 10 "Tralongo is also a buying group that we would
 11 not work with"?
 12 A. I don't see a subsequent e-mail from
 13 there, so I can't speculate.
 14 Q. Who is the "we" in the second
 15 sentence of Mr. Foley's e-mail, do you know?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I don't know.
 18 BY MR. OWYANG:
 19 Q. At the time of this document,
 20 January 2015, was Mr. Foley in special markets?
 21 A. Yes.
 22 Q. Is it your testimony that as of
 23 January 13, 2015, Henry Schein worked with
 24 buying groups?
 25 A. Yes.

1 D. FOSTER
 2 very well. And Council Connections. And they
 3 were both geared towards a buying group for
 4 community health centers, not private dental
 5 practices.
 6 Q. So Commonwealth and Council
 7 Connections were community health centers?
 8 A. No. They were buying groups formed
 9 to help provide services and discounts for
 10 community health centers.
 11 Q. Discounts on what?
 12 A. All kinds of supplies. If you look
 13 at the website, they not only partner with
 14 Henry Schein Dental for dental supplies, but
 15 they also have a medical supply partner, office
 16 supplies, other various services that community
 17 health centers may need.
 18 Q. So in addition to dental supplies,
 19 they're also doing medical supplies?
 20 A. Correct.
 21 Q. Did you work with -- did you
 22 personally work with Commonwealth?
 23 A. I did.
 24 Q. When?
 25 A. I know I worked with them at this

1 D. FOSTER
 2 Q. How many?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Since I wasn't privy to
 5 all of the accounts across the country, I
 6 can't be sure.
 7 BY MR. OWYANG:
 8 Q. Can you name any of them?
 9 A. One that --
 10 MR. McDONALD: Object to the form.
 11 Go ahead.
 12 THE WITNESS: One that happened to
 13 fall in the southeast that I knew of was
 14 Dental Partners of Georgia.
 15 BY MR. OWYANG:
 16 Q. Any others besides Dental Partners of
 17 Georgia?
 18 A. Gator Dental.
 19 Q. Any others?
 20 A. In the southeast, I can't think of --
 21 I'm sorry, I can't think of any others in the
 22 southeast.
 23 Q. Outside of the southeast, can you
 24 think of any?
 25 A. I know Commonwealth Purchasing Group

1 D. FOSTER
 2 time and prior. I don't know when I started
 3 working with them. I worked with their clinics
 4 at the inception of me working for special
 5 markets, their members.
 6 Q. Did you work with Council
 7 Connections?
 8 A. I worked with some of their members,
 9 but because they were headquartered out west,
 10 and I never handle that territory, I never
 11 worked with Council Connections directly.
 12 Q. Did you work with Dental Partners of
 13 Georgia?
 14 A. On and off throughout the
 15 restructure. It was given to me, taken from
 16 me, and I have it back now.
 17 Q. Did you work with Gator personally?
 18 A. No.
 19 (Thereupon, Exhibit CX2000 was marked for
 20 identification.)
 21 BY MR. OWYANG:
 22 Q. You can set that aside.
 23 I'm handing you a document that has
 24 been marked as CX2000. CX2000 is Bates number
 25 Henry Schein-000151683 through 692.

1 D. FOSTER
 2 BY MR. OWYANG
 3 Q. It appears to be an e-mail chain from
 4 Debbie Foster to Randy Foley dated January 20,
 5 2015, and the subject line is "Jim Nasim."
 6 Please take a moment to review this
 7 and let me know when you're done.
 8 A. Okay.
 9 Q. Have you had a chance to -- sorry.
 10 Have you had a chance to review CX2000?
 11 A. Yes.
 12 Q. Have you seen this document before?
 13 A. Yes.
 14 Q. What is this document?
 15 A. This is an e-mail chain regarding a
 16 smaller group of practices that was purchased
 17 by a larger group from the southeast.
 18 Q. What was the name of the small group?
 19 A. Carolina Dental Alliance.
 20 Q. And what was the name of the group
 21 that was purchasing Carolina Dental Alliance?
 22 A. VSM Management.
 23 Q. This e-mail string is from
 24 January 2015; is that right?
 25 A. Correct.

1 D. FOSTER
 2 Q. Would it include CHCs?
 3 A. No.
 4 Q. Were you trying to determine whether
 5 or not this group was a DSO?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: No. I was trying to
 8 determine which group, special markets or
 9 Henry Schein mid-markets, should be taking
 10 on this customer and onboarding them.
 11 BY MR. OWYANG:
 12 Q. But you wrote, "Website for
 13 management company states that they are a DSO
 14 and growing"?
 15 A. Correct.
 16 Q. So how does that help you determine
 17 whether or not it's more than a million or less
 18 than a million?
 19 A. The growing part did. 16 locations
 20 is generally more than a million dollars in
 21 merchandise. I was defining the customer for
 22 Randy.
 23 Q. Did you care whether it was a DSO or
 24 not?
 25 A. No.

1 D. FOSTER
 2 Q. On the second page of CX2000,
 3 Mr. Foley wrote -- sorry, you wrote to
 4 Mr. Foley, "Can you take a look at the info
 5 below and let me know what you think? Website
 6 for management company states that they are a
 7 DSO and growing."
 8 Do you see that?
 9 A. I do.
 10 Q. What were you asking Mr. Foley to do?
 11 A. At this point, I was no longer in
 12 special markets. I was in the mid-market team,
 13 and we were only authorized to take on new
 14 groups that were doing under a million dollars.
 15 And special markets would take those that were
 16 doing over a million dollars. So I was trying
 17 to determine which division should pursue this
 18 lead.
 19 Q. When you say "groups under a million
 20 dollars," what types of groups are you
 21 referring to?
 22 A. All types of groups.
 23 Q. Which would include DSOs?
 24 A. DSOs, buying groups, large group
 25 practices.

1 D. FOSTER
 2 Q. Why not?
 3 A. Doesn't matter to us if it is
 4 business.
 5 Q. On the first page of CX2000,
 6 Mr. Foley responded to you and wrote, "20 plus
 7 1 million equals elite, so you should make this
 8 mid-market. Are you sure this is not a buying
 9 group?"
 10 Do you see that?
 11 A. I do.
 12 Q. What is your understanding of why
 13 Mr. Foley asked you, "Are you sure this is not
 14 a buying group?"
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: At this point in time
 17 in 2015, the mid-market groups -- the
 18 mid-market area was not handling buying
 19 groups. That was Henry Schein Dental. So
 20 over the years, we clearly defined which
 21 division handles which type of account.
 22 BY MR. OWYANG:
 23 Q. Why does the distinction between
 24 buying group and DSO matter?
 25 A. For DSOs, Henry Schein receives cost

1 D. FOSTER

2 concessions from manufacturers, and that is how
3 we have a very low-cost model with those
4 particular customers. And everything is driven
5 by the corporate location, so we don't have to
6 have local touch.

7 We have the expense of field sales
8 consultants when it is a buying group, and each
9 individual practice has to be called on
10 individually by either the same or a different
11 FSC, so they are completely different.

12 Q. It has to do with how much touch the
13 customer requires?

14 A. Correct.

15 Q. What does that mean?

16 A. A corporate entity will trickle down
17 whatever they want to the local level. So if a
18 corporate entity signs a prime vendor agreement
19 with Henry Schein, like most of them do, they
20 have the authority to enforce formularies,
21 product changes and drive the compliance to
22 meet that 80 percent minimum that we require
23 for a customer signing a PVA.

24 In a buying group, we don't have that
25 situation. We have nobody to sign or review a

1 D. FOSTER

2 prime vendor agreement; nobody to actually
3 force purchasing more from Henry Schein as
4 opposed to one of our competitors.

5 MR. McDONALD: She said PVA, not PBA.

6 THE WITNESS: Sorry. Prime vendor
7 agreement.

8 BY MR. OWYANG:

9 Q. Why doesn't Henry Schein have those
10 resources for buying groups?

11 A. What resources are you referring to?

12 Q. You said you didn't have someone to
13 review a prime vendor agreement?

14 A. No. We have everyone we need. The
15 customers don't. So there is no person to go
16 to at a buying group and say, Here is our prime
17 vendor agreement; here is our value
18 proposition; will you sign on the dotted line?
19 Because they are individually owned.

20 Q. I see.

21 If this group had been a buying
22 group, who -- which division would have handled
23 it?

24 A. At this time, Henry Schein Dental.

25 Q. But special markets would not have

1 D. FOSTER

2 handled it?

3 A. They would not have taken on a new
4 one. There were some grandfathered in that
5 were current customers that they kept, but as
6 far as the new rules at that point in time, the
7 structure was that Henry Schein Dental would
8 sign on because they needed to assign local
9 FSCs.

10 Q. You can put this aside.

11 MR. OWYANG: Do you want to take
12 another break?

13 MR. McDONALD: It's up to you.
14 (A recess was taken.)

15 MR. McDONALD: So Ms. Foster has a
16 clarification to make. I don't think it
17 is material to anything, and -- but rather
18 than do this in an errata sheet, to the
19 extent you care, I think she testified
20 that -- and you can ask her all you
21 want -- she testified that CHCs were not
22 in mid-market.

23 MR. OWYANG: Sorry. CHCs --

24 MR. McDONALD: Did not go to
25 mid-market. And in fact, they did go to

1 D. FOSTER

2 mid-market, but now they are back in
3 special markets.

4 So to the extent that makes any
5 difference to you, she can fix that in the
6 transcript, but if you care, you can ask
7 her about it now.

8 BY MR. OWYANG:

9 Q. Sorry, would you like to correct
10 something?

11 A. Sure. Originally I was talking about
12 at the date of the e-mail, we -- mid-markets
13 was covering community health centers, but this
14 past January we passed that on to our
15 institutional government reps in special
16 markets.

17 Q. Okay.

18 A. My apologies.

19 Q. Thank you.

20 So I'd like to follow up on a couple
21 of things from the last session. I think you
22 mentioned that field sales consultants, when
23 they encountered a buying group, should have
24 their regional manager do a little discovery on
25 that buying group; is that right?

1 D. FOSTER
 2 A. Correct.
 3 Q. Is that policy written down anywhere?
 4 A. No, I don't believe so. I've never
 5 seen it.
 6 Q. And then -- oh, you also mentioned
 7 that in April 2015, Henry Schein Dental handled
 8 buying groups instead of special markets; is
 9 that right?
 10 MR. McDONALD: Object to the form.
 11 Go ahead.
 12 THE WITNESS: Correct.
 13 BY MR. OWYANG:
 14 Q. But prior to April 2015, there was a
 15 point in time when Henry Schein special markets
 16 would sometimes handle buying groups, but
 17 sometimes Henry Schein Dental would also handle
 18 buying groups; is that right?
 19 A. Correct.
 20 Q. When did the change happen when only
 21 Henry Schein Dental handled buying groups?
 22 MR. McDONALD: Object to the form.
 23 Misstates her prior testimony.
 24 THE WITNESS: I don't actually know
 25 the date that that happened.

1 D. FOSTER
 2 Q. When was it given back to you?
 3 A. I don't know the exact date. I'm
 4 sorry.
 5 Q. Was it this year?
 6 A. Yes. It was definitely after
 7 January 1.
 8 Q. When did you handle Dental Partners
 9 of Georgia before?
 10 A. When I was in special markets they
 11 were in one of the states that I covered.
 12 Q. What were the approximate dates when
 13 you were handling that?
 14 A. Probably '13, '14. Early '14.
 15 Q. Has the discount offered to Dental
 16 Partners of Georgia changed since you first
 17 started handling them?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Their discount
 20 structure has not changed, but their
 21 product mix has.
 22 BY MR. OWYANG:
 23 Q. How has the product mix changed?
 24 A. Just encouraging them to order
 25 smarter, and again, offering savings by

1 D. FOSTER
 2 BY MR. OWYANG:
 3 Q. Are you aware of any buying groups
 4 that Schein worked with as of April 2012?
 5 A. Yes, I do.
 6 Q. Which ones?
 7 A. 2012. So we had -- I believe Dental
 8 Partners of Georgia was already signed up at
 9 that point. Cloudland Dental may have been.
 10 Again, I'm just trying to remember. I don't
 11 remember exact dates of when people signed on
 12 with us.
 13 I know we were partners with
 14 Commonwealth Purchasing Group and Council
 15 Connections at that time.
 16 Q. Do you recall any others?
 17 A. Not that I can think of off the top
 18 of my head. I know there were many more.
 19 Q. You mentioned that you've had
 20 off-and-on responsibility for Dental Partners
 21 of Georgia; is that right?
 22 A. Correct.
 23 Q. Who handles it today?
 24 A. It was just given back to me
 25 recently.

1 D. FOSTER
 2 changing certain branded products depending on
 3 manufacturer rebates, and also private label
 4 products.
 5 Q. What are your responsibilities with
 6 respect to Dental Partners of Georgia today?
 7 A. It is a difficult one to explain.
 8 I'm more of a quarterback.
 9 Again, I work with the field sales
 10 consultants that are assigned to the individual
 11 offices, because there is no corporate entity
 12 or one person or persons to go to for
 13 decisions. So I work really hand-in-hand with
 14 the local FSCs to ensure that they are buying
 15 and we are doing the best in offering services
 16 for them.
 17 Q. Do you communicate with anyone at
 18 Dental Partners of Georgia?
 19 A. I do not.
 20 Q. Do you know the name of any of the
 21 contact persons at Dental Partners of Georgia?
 22 A. No, I do not.
 23 Q. How long has Schein worked with
 24 Dental Partners of Georgia?
 25 A. Again, I don't know when we signed

1 D. FOSTER
 2 them on, but they were one of the early
 3 customers that we worked with. So I'm assuming
 4 somewhere around '12, '13.
 5 Q. 2012 or 2013?
 6 A. Yeah.
 7 (Thereupon, Exhibit CX2005 was marked for
 8 identification.)
 9 BY MR. OWYANG:
 10 Q. I'd like to hand you CX2005.
 11 CX2005 has Bates number Henry
 12 Schein-001405771 through 76. It appears to be
 13 an e-mail string between Debbie Foster and Beth
 14 McGlinn dated March 17, 2015. The subject line
 15 is "Dr. Thomas Farley, JDE00824430."
 16 Please take a moment to look at this
 17 and let me know when you're done.
 18 A. Okay.
 19 Q. Have you had a chance to review
 20 CX2005?
 21 A. Yes.
 22 Q. Have you seen this document before?
 23 A. Yes.
 24 Q. What is this document?
 25 A. It's an e-mail chain concerning a

1 D. FOSTER
 2 customer of Beth McGlinn, who was an FSC, and a
 3 potential buying group that she ran into in the
 4 field with one of her contacts.
 5 Q. What was the name of the potential
 6 buying group that she ran into?
 7 A. There is no name. There's just a
 8 doctor name, Dr. Thomas Farley.
 9 Oh, I'm sorry. Part of Synergy
 10 Dental, is the name of their group.
 11 Q. In the original e-mail in the string,
 12 the one from Beth McGlinn which starts on the
 13 first page and goes onto the second page,
 14 Ms. McGlinn wrote, "Dr. Thomas Farley,
 15 JDE00824430, is in a buying group called
 16 Synergy Dental."
 17 She goes on to write, "I was told by
 18 the girls in Dr. Sha-khan's, office which is
 19 located beside Dr. Thomas Farley's office, that
 20 the buying group consists of 400 dentists."
 21 Do you see that?
 22 A. Yes.
 23 Q. Why did Ms. McGlinn bring this buying
 24 group to your attention?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 THE WITNESS: I'm not sure.
 3 BY MR. OWYANG:
 4 Q. Was she interested in making sales to
 5 this particular buying group?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I'm not sure. I'm only
 8 assuming yes.
 9 BY MR. OWYANG:
 10 Q. In your experience, are there
 11 instances when a field sales rep brings a
 12 potential customer to your attention and they
 13 are not interested in making sales for that
 14 customer?
 15 A. I would say no.
 16 Q. Why is that?
 17 A. Because --
 18 MR. McDONALD: Object to form.
 19 Go ahead.
 20 THE WITNESS: They are all paid on
 21 making money and bringing in new
 22 customers.
 23 BY MR. OWYANG:
 24 Q. Ms. McGlinn then wrote, "How can we
 25 pull this 400-dentist buying group over to

1 D. FOSTER
 2 Henry Schein Dental? In the next few e-mails I
 3 will forward you the invoices I received from
 4 Dr. Farley's front desk representative."
 5 Do you see that?
 6 A. Yes.
 7 Q. Did Ms. McGlinn send you those
 8 invoices?
 9 A. I don't recall.
 10 Q. What would those invoices have shown?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: It states they were
 13 going to show me the invoices that she
 14 received from their front desk
 15 representative.
 16 BY MR. OWYANG:
 17 Q. What types of information are
 18 typically contained on an invoice?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: A list of items
 21 ordered, to whom it was shipped to,
 22 quantity, date of invoice, and price.
 23 BY MR. OWYANG:
 24 Q. And assuming she sent those invoices
 25 to you, what would you have done with those

1 D. FOSTER
 2 invoices?
 3 MR. McDONALD: Object to the form,
 4 foundation.
 5 THE WITNESS: Yeah. As you can see,
 6 it wouldn't be my decision, so I referred
 7 her to the folks that she should go to,
 8 who was Michael Porro, who was the zone
 9 manager at the time, and Jason Krause, who
 10 was my boss.
 11 BY MR. OWYANG:
 12 Q. Separate from this e-mail, have field
 13 sales consultants sent you invoices before?
 14 A. Constantly.
 15 Q. And what do you do with those
 16 invoices?
 17 A. If it's a customer that falls into my
 18 area, I will handle them myself. If it's
 19 someone that doesn't fall in my area, I pass it
 20 on.
 21 Q. Assuming it is in your area, what do
 22 you do with the information on the invoices?
 23 A. We would have our team convert item
 24 codes to do a comparison for the customer.
 25 Q. What is a comparison?

1 D. FOSTER
 2 division, and I work very closely with them
 3 strictly off of GPO contracts, and historically
 4 they haven't existed in the dental world.
 5 Q. You just testified that at this time
 6 you were using "GPO" and "buying groups"
 7 interchangeably. So would it be fair to read
 8 that sentence, "Historically, Schein does not
 9 participate in or partner with any buying
 10 groups"?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: No.
 13 BY MR. OWYANG:
 14 Q. Why not?
 15 A. Because I put "GPO," which is a
 16 different organization than a typical buying
 17 group.
 18 Q. Right, but you did just testify that
 19 at this time, you used "buying group" and
 20 "dental GPO" interchangeably.
 21 MR. McDONALD: Object to the form.
 22 If you misspoke and you need to
 23 change your testimony, you're free to do
 24 that.
 25 THE WITNESS: Yeah, I'm just trying

1 D. FOSTER
 2 A. Our price versus competitor price.
 3 Q. On the first page, you replied to
 4 Ms. McGlinn; correct?
 5 A. Yes.
 6 Q. You wrote, "Historically, Schein does
 7 not participate or partner with any dental
 8 GPOs."
 9 Do you see that?
 10 A. I do.
 11 Q. Earlier today, you testified that
 12 there was a point in time when you used "dental
 13 GPO" and "buying group" interchangeably.
 14 Do you recall that?
 15 A. Yes.
 16 Q. In this document, CX2005, are you
 17 using "dental GPO" and "buying group"
 18 interchangeably?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I believe so, yes.
 21 BY MR. OWYANG:
 22 Q. When you wrote, "Historically, Schein
 23 does not participate in or partner with any
 24 dental GPO groups," what did you mean?
 25 A. Medical operates our medical

1 D. FOSTER
 2 to read it over again.
 3 MR. McDONALD: Sure.
 4 THE WITNESS: No. I was specifically
 5 talking about GPO, group purchasing
 6 organizations.
 7 BY MR. OWYANG:
 8 Q. Is it your testimony that dental
 9 GPO -- at the time you wrote this e-mail,
 10 dental GPOs were distinct from buying groups?
 11 A. Yes.
 12 Q. Ms. McGlinn was specifically asking
 13 about a buying group called Synergy Dental; is
 14 that right?
 15 A. Correct.
 16 Q. In your reply e-mail, you're
 17 referring to dental GPOs; is that right?
 18 A. Correct.
 19 Q. Why aren't you addressing her
 20 question if she's specifically asking about
 21 buying groups?
 22 A. Because either way, whatever
 23 definition they fell under within Henry Schein,
 24 it is not a decision I could have made on my
 25 own. So it needed to go to her zone manager,

1 D. FOSTER
2 and my manager.
3 Q. What did you mean when you used the
4 word "historically"?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: In the past.
7 BY MR. OWYANG:
8 Q. How long was it the case that Henry
9 Schein Dental didn't partner with dental GPO
10 groups?
11 MR. McDONALD: Object to the form.
12 THE WITNESS: I can't remember
13 specific dates.
14 BY MR. OWYANG:
15 Q. Was it multiple years?
16 MR. McDONALD: Object to form.
17 THE WITNESS: I can't even state if
18 it was multiple years.
19 (Thereupon, Exhibit CX2004 was marked for
20 identification.)
21 BY MR. OWYANG:
22 Q. You can put this aside.
23 This document is CX2004. CX2004 is
24 Bates stamped Henry Schein-001405796. It is an
25 e-mail from Brad Fine to Jason Krause and

1 D. FOSTER
2 Q. Was Mr. Fine hoping to sell to
3 UnifiedSmiles?
4 A. Yes.
5 Q. Are you familiar with UnifiedSmiles?
6 A. I'm not, other than the information
7 that was provided in this e-mail.
8 Q. Your reply to Mr. Fine starts at the
9 bottom of the first page and flows on to the
10 top of the second page.
11 Do you see that?
12 A. Yes.
13 Q. You wrote on April 13, 2015, quote,
14 "Never heard of them, but from their website
15 they appear to be a buying group and not a
16 DSO."
17 Do you see that?
18 A. I do.
19 Q. "DSO" in that sentence means dental
20 services organization; is that right?
21 A. Correct.
22 Q. In that sentence, you're saying that
23 UnifiedSmiles appears to be a buying group
24 rather than a dental service organization;
25 right?

1 D. FOSTER
2 Debbie Foster and several other individuals.
3 It's dated April 13, 2015, and the subject is
4 "UnifiedSmiles."
5 Please take a moment to review this
6 and let me know when you're done.
7 A. Okay.
8 Q. Have you had a chance to review
9 CX2004?
10 A. Yes.
11 Q. Have you seen this document before?
12 A. Yes.
13 Q. What is CX2004?
14 A. It is an e-mail to Brad Fine to my
15 manager at the time, Jason Krause, which was
16 April 2015.
17 Q. In the original e-mail from Brad Fine
18 which appears on CX2004 page 2, Mr. Fine
19 mentions a group called UnifiedSmiles; is that
20 right?
21 A. Correct.
22 Q. Mr. Fine then states that he is
23 putting together a proposal for UnifiedSmiles;
24 is that right?
25 A. Correct.

1 D. FOSTER
2 A. Correct.
3 Q. Next, you quote UnifiedSmiles'
4 website, and the quotation is, "Through
5 UnifiedSmiles, independent dental practitioners
6 will benefit from the influence of the group
7 and will have the opportunity to obtain
8 significant savings on products and services."
9 Do you see that?
10 A. Yes.
11 Q. What information in that quotation
12 from UnifiedSmiles' website led you to believe
13 that UnifiedSmiles was a buying group rather
14 than a dental services organization?
15 A. They were not discussing any type of
16 ownership or any type of corporate entity that
17 was responsible for billing.
18 Q. Is the fact that UnifiedSmiles is
19 made up of independent dental practices what
20 makes them a buying group?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: No.
23 BY MR. OWYANG:
24 Q. Then what makes them a buying group
25 rather than a dental services organization?

1 D. FOSTER

2 A. The fact that there was nobody
3 mentioned in there or in charge or anybody that
4 was going to lead that group.

5 Q. But the language you quoted from the
6 website says "independent dental
7 practitioners."

8 A. Correct.

9 Q. What does that mean?

10 A. That means there is no corporate
11 entity. There is no leader. There is nobody
12 for us to go to with a prime vendor agreement
13 on their end.

14 Q. Does "independent dental
15 practitioners" mean that the members of the
16 buying group are separately owned?

17 A. Yes, "independent dental
18 practitioners" means they are separate.

19 Q. Beneath the website quote, you wrote,
20 "With that being said, unless something has
21 changed during the week I was on vacation,
22 Schein does not have a program to work with
23 them and discourages it."

24 Do you see that?

25 A. Yes.

1 D. FOSTER

2 Q. Who were you referring to when you
3 used the word "them"?

4 A. Loosely knitted groups of dentists
5 who are just friends and are looking for a
6 full-on program from Schein when they are not
7 offering any value proposition to their
8 clinicians.

9 Q. So you weren't saying that Schein
10 doesn't have a program to work with buying
11 groups?

12 A. No.

13 Q. But you start -- sorry, go ahead.

14 A. I was going to say, as a matter of
15 fact, the reason that I needed to define
16 whether it was DSO or buying group, again, is
17 because Brad was in HSD and he would handle
18 that at a local level, because they would need
19 FSC involvement. And the DSO goes up either
20 through mid-market or special market and would
21 not necessarily need the FSC touch.

22 Q. So your testimony is that -- you're
23 saying Schein didn't have a program to work
24 with loosely knitted groups of dentists?

25 A. Mid-market did not have a program. I

1 D. FOSTER

2 was leading Brad into saying that, yes, you do
3 need to contact each doctor individually, which
4 he states he would need to do in his final
5 e-mail.

6 Q. You also wrote that "Schein
7 discourages it."

8 Do you see that?

9 A. What page are you on?

10 Q. It's the very top of the second page.

11 A. Oh, okay. Yes.

12 Q. What does -- at the time you wrote
13 this, what did Schein discourage?

14 A. Our division -- that's more what I
15 meant. Our division discouraged us working
16 with them, and we pushed it down to the
17 regional managers at Henry Schein Dental.

18 Q. Pushed what down?

19 A. We pushed those types of accounts
20 down, because they needed the local touch.

21 Q. What types of accounts did you push
22 down?

23 A. The accounts that didn't have a
24 structure or person or persons in charge to
25 drive compliance to formularies.

1 D. FOSTER

2 Q. What are examples of those types of
3 accounts?

4 A. Any type of group of dentists that
5 would get together with no structure or no
6 compliance issues and nobody to sign that prime
7 vendor agreement we've put in front of their
8 faces.

9 Q. Would that include buying groups?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: It depends on how
12 you're defining "buying groups."

13 BY MR. OWYANG:

14 Q. Using the definition we looked at
15 from your February 2012 presentation, would
16 those be included?

17 A. Yes.

18 (Thereupon, Exhibit CX2059 was marked for
19 identification.)

20 BY MR. OWYANG:

21 Q. You can set this aside.

22 This document is CX2059. CX2059 is
23 Bates stamped Henry Schein-001584869 through
24 872. It appears to be an e-mail from Michael
25 Porro to Debbie Foster dated February 27, 2015,

1 D. FOSTER
 2 and the subject is, "AC sales 3:37 minutes".
 3 Please take a moment to look at this
 4 and let me know when you're done.
 5 A. Okay.
 6 Q. Have you had a chance to review
 7 CX2059?
 8 A. Yes.
 9 Q. Have you seen this document before?
 10 A. Yes.
 11 Q. What is CX2059?
 12 A. An e-mail from Michael Porro to me on
 13 Friday, February 27, 2015 to discuss changes in
 14 the markets and how we were dealing with the
 15 local teams and educating them.
 16 Q. Who is -- or who was Michael Porro at
 17 the time of this e-mail?
 18 A. The zone manager.
 19 Q. Is he still the zone manager?
 20 A. He is not.
 21 Q. In the original e-mail that appears
 22 in page 2 and flows onto page 3, Mr. Porro
 23 circulates a link to a YouTube video; is that
 24 right?
 25 A. Yes.

1 D. FOSTER
 2 group that you're referring to there?
 3 A. I do not.
 4 Q. To clarify, between Krista and
 5 Kimberley, which one was up against the buying
 6 group?
 7 A. Krista was the regional manager and
 8 Kimberley was the field sales consultant, so
 9 both.
 10 Q. How were Krista and Kimberley up
 11 against the buying group?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: During my conversation
 14 with Kimberley, she was losing customers
 15 that were signing onto a buying group that
 16 was dealing with one of our competitors.
 17 BY MR. OWYANG:
 18 Q. Could you explain what that means?
 19 A. One of our competitors had an
 20 agreement with a buying group, and some of
 21 Krista's -- Kimberly's Schein customers were
 22 now joining that buying group. So she was
 23 losing the business.
 24 Q. At this time of this e-mail, was
 25 Schein encountering buying groups more

1 D. FOSTER
 2 Q. Do you recall what that video was
 3 about?
 4 A. I don't.
 5 Q. In your reply which appears on
 6 page 2, you wrote, "I think your team does need
 7 some positive thoughts these days. I get the
 8 feeling they are starting to feel less in
 9 control."
 10 Do you see that?
 11 A. Yes.
 12 Q. What were you trying to convey to
 13 Mr. Porro there?
 14 A. I have no recollection of exactly.
 15 There must have been an instance that prompted
 16 that, but I don't recall.
 17 Q. Do you recall what the team was
 18 starting to feel less in control of?
 19 A. I do not.
 20 Q. You also wrote in that e-mail, "Had a
 21 talk with Krista and Kimberley Sbarra yesterday
 22 about another buying group she is up against."
 23 Do you see that?
 24 A. Yes.
 25 Q. Do you recall the name of the buying

1 D. FOSTER
 2 frequently than in the past?
 3 A. Yes.
 4 Q. How much more frequently?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I can't even speculate,
 7 because I only had my eyes on my part of
 8 the country.
 9 BY MR. OWYANG:
 10 Q. So how do you know that Schein was
 11 encountering buying groups more frequently?
 12 A. Because my other regional account
 13 managers and I would get together and discuss.
 14 Q. Who were those other regional account
 15 managers?
 16 A. Back then, I really could not name
 17 them. Our team is entirely different today
 18 than it was.
 19 Q. Do you recall what you discussed with
 20 Krista and Kimberley about this particular
 21 buying group?
 22 A. Just the fact that Kimberley was
 23 losing customers that were joining this buying
 24 group that happened to be contracted with one
 25 of our competitors.

1 D. FOSTER
 2 Q. Which competitor?
 3 A. I don't recall.
 4 Q. Did Krista or Kimberley propose a
 5 solution to losing those customers?
 6 A. I brought Michael into the mix,
 7 because he was Krista's zone manager, to make
 8 sure that we all had a discussion together.
 9 Q. Did anything result from that
 10 discussion?
 11 A. We actually did a proposal for the
 12 group, a small cluster that left Kim's
 13 territory. And we were undercut by the
 14 competitor, and we didn't win them back.
 15 Q. You can put this aside.
 16 MR. OWYANG: Do you want to take a
 17 lunch break now?
 18 MR. McDONALD: Let's go off the
 19 record.
 20 (A lunch recess was taken.)
 21 MR. OWYANG: Back on the record.
 22 BY MR. OWYANG:
 23 Q. Ms. Foster, welcome back. Do you
 24 understand that you're still under oath?
 25 A. Yes.

1 D. FOSTER
 2 The page -- on page 2 next to
 3 definition buying group, it reads, "Neither SM
 4 nor HSD would take on." How do you reconcile
 5 that statement with your testimony that buying
 6 groups get assigned to special markets or Henry
 7 Schein Dental depending on their needs?
 8 MR. McDONALD: Object to the form.
 9 Asked and answered. Go ahead.
 10 THE WITNESS: Neither special markets
 11 nor HSD field teams would be able to take
 12 them on.
 13 BY MR. OWYANG:
 14 Q. So it's your testimony that that
 15 statement, "Neither SM nor HSD would take on"
 16 should actually read -- it's your testimony
 17 that the statement "neither SM nor HSD would
 18 take on" should actually read "neither SM nor
 19 HSD field sales would take on"?
 20 A. The document was prepared for the
 21 field sales team, so yes, I assume that they
 22 would realize that that was directed to them.
 23 Q. Okay. But it's not included in this
 24 document; is that right?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 Q. If you could pull out CX2002. This
 3 is the document that you prepared as a
 4 presentation. Do you recall this?
 5 A. Yes.
 6 Q. Earlier, you testified that buying
 7 groups get assigned to either special markets
 8 or Henry Schein Dental, depending on the needs
 9 of the buying group; is that right?
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: As of a certain date,
 12 yes.
 13 BY MR. OWYANG:
 14 Q. As of February 21, 2012; is that
 15 right?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: Yes.
 18 BY MR. OWYANG:
 19 Q. If you flip to the second page of
 20 CX2002. I'm trying to -- it's hard for me to
 21 understand what's written on this page versus
 22 what you just said, that buying groups get
 23 assigned to special markets or Henry Schein
 24 Dental. And I'm hoping you can help me
 25 understand that.

1 D. FOSTER
 2 Asked and answered. You've already gone
 3 over this with her, David.
 4 You can answer it again.
 5 THE WITNESS: No.
 6 BY MR. OWYANG:
 7 Q. You can put this -- put this document
 8 aside. I think you mentioned in April 2012,
 9 that Schein worked with existing buying groups
 10 but would not take on new buying groups; is
 11 that right?
 12 MR. McDONALD: Object to the form.
 13 Mischaracterizes her testimony.
 14 THE WITNESS: No. We had existing
 15 and we were still taking on new buying
 16 groups.
 17 BY MR. OWYANG:
 18 Q. As of what date are you referring to?
 19 A. You said as of April 2012.
 20 Q. Yes.
 21 A. Yes.
 22 Q. Okay. So there was never a point in
 23 time when Henry Schein only worked with
 24 existing buying groups but did not take on new
 25 buying groups?

1 D. FOSTER
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Not Henry Schein.
 4 Special markets. Initially, special
 5 markets was the only division that would
 6 take on buying groups and then it was
 7 shared between Henry Schein Dental and
 8 special markets.
 9 BY MR. OWYANG:
 10 Q. Sorry. Was there a time when special
 11 markets only worked with existing buying group
 12 customers but would not take on new buying
 13 group customers?
 14 MR. McDONALD: Object to the form.
 15 Mischaracterizes testimony.
 16 THE WITNESS: No.
 17 BY MR. OWYANG:
 18 Q. If you can pull out CX2003.
 19 MR. McDONALD: That's the one he just
 20 asked you about.
 21 BY MR. OWYANG:
 22 Q. On page 1 of CX2003, you wrote to
 23 Troy, quote, "Neither HSD or special markets
 24 will participate in buying groups of any kind."
 25 Do you see that?

1 D. FOSTER
 2 A. Yes.
 3 Q. In your e-mail, you didn't mention
 4 anything to Troy about asking his regional
 5 manager about buying groups, did you?
 6 A. He is the regional manager or he was.
 7 I'm sorry.
 8 Q. He was at that time?
 9 A. Yes.
 10 Q. And then Mr. Neil responded, "Oh, no
 11 worries. Thanks so much for the feedback.
 12 Much appreciated."
 13 Do you see that?
 14 A. Yes.
 15 Q. Do you know whether Mr. Neil
 16 investigated whether that buying group was a
 17 buying group that he could work with?
 18 A. He knew the customers themselves
 19 because as individual doctors, a lot of them
 20 were Henry Schein existing customers.
 21 Q. And then at the top of page 1 of
 22 CX2003, Mr. Foley wrote, "Troy, we get a lot of
 23 these requests and have to say no."
 24 Do you see that?
 25 A. Yes.

1 D. FOSTER
 2 Q. What kinds of requests is Mr. Foley
 3 referring to?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I'm not sure. I'm
 6 not -- I didn't write the e-mail.
 7 BY MR. OWYANG:
 8 Q. And then later in that e-mail
 9 Mr. Foley writes, "Did a few and it only led to
 10 issues."
 11 Do you see that?
 12 A. Yes.
 13 Q. What kinds of issues is Mr. Foley
 14 referring to?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I don't know, because
 17 it wasn't me who wrote the e-mail.
 18 BY MR. OWYANG:
 19 Q. Okay. You can put this aside. If
 20 you could pull out CX2059.
 21 A. Uh-huh.
 22 Q. Earlier, you mentioned that Krista
 23 and Kim put together a proposal for the buying
 24 group mentioned in this e-mail; is that right?
 25 A. They did not put a proposal for the

1 D. FOSTER
 2 buying group. They put a proposal for the
 3 customers that Kim was losing to the buying
 4 group.
 5 Q. I see. Are the customers that were
 6 being lost, are those customers part of the
 7 buying group?
 8 A. They -- it says in the e-mail they
 9 joined the buying group, yes.
 10 Q. Do you recall who the buying group
 11 was?
 12 A. I don't.
 13 Q. Do you recall who the competitor was?
 14 A. I don't.
 15 Q. What were the specifics of this
 16 proposal that Schein made to the customers?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I didn't make the
 19 proposal. Krista, the regional manager,
 20 took it upon herself to work with her rep
 21 and do that.
 22 BY MR. OWYANG:
 23 Q. Do you recall how much of a discount
 24 Schein offered for customers?
 25 MR. McDONALD: Object to the form.

1 D. FOSTER
 2 THE WITNESS: I do not.
 3 BY MR. OWYANG:
 4 Q. You can put that one aside. Then if
 5 you could pull out CX238. On the second page
 6 at the bottom, you wrote to Randy Foley, quote,
 7 "Can you tell me who this is and confirm
 8 whether they are a buying group."
 9 Do you see that?
 10 A. Yes.
 11 Q. You were referring to Pro ABC; is
 12 that right?
 13 A. Correct.
 14 Q. Why did you want to know whether Pro
 15 ABC was a buying group?
 16 A. To see which team at Henry Schein
 17 would actually call the customer for discovery.
 18 Q. And then Mr. Foley sends a reply and
 19 then you send a reply, which appears -- the
 20 substance appears at the top of page 2.
 21 Do you see that?
 22 A. Yes.
 23 Q. You wrote in the second sentence, "He
 24 was like, who is Pro ABC and why do we sell to
 25 them when all they are is a buying group?"

1 D. FOSTER
 2 GPO?
 3 A. Yes.
 4 Q. What is a dental GPO?
 5 MR. McDONALD: Object to the form.
 6 Go ahead.
 7 THE WITNESS: As of today, a dental
 8 GPO is a group purchasing organization
 9 that has members pay them a fee, a
 10 membership fee, to provide discounts and
 11 services to those particular offices,
 12 practices or CHCs.
 13 BY MR. OWYANG:
 14 Q. Was there ever a time when dental GPO
 15 had a different definition than what you just
 16 testified to?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Folks used to use GPO
 19 interchangeably with buying groups and
 20 group practices. So as we learned to
 21 better understand what each individual one
 22 was, we better defined it.
 23 BY MR. OWYANG:
 24 Q. Is there a difference between dental
 25 GPO and GPO?

1 D. FOSTER
 2 Do you see that?
 3 A. I do.
 4 Q. What did you mean by that?
 5 A. Jay didn't know. Because Jay was one
 6 of the local FSCs, he didn't know that we had
 7 them set up as a buying group. ABC -- Pro ABC
 8 was not in his area. He handles the South
 9 Carolina region.
 10 Q. Is Jay Barringer suggesting that
 11 Schein doesn't work with buying groups?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: No. He just didn't
 14 know who Pro ABC was.
 15 BY MR. OWYANG:
 16 Q. Why did he ask, "Why do we sell to
 17 them when all they are is a buying group"?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Because one of his --
 20 he found out one of his customers who was
 21 quoting was a member of this buying group
 22 that wasn't in his region.
 23 BY MR. OWYANG:
 24 Q. You can put this aside.
 25 Are you familiar with the term dental

1 D. FOSTER
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: There are GPOs in
 4 basically every type of business, so we
 5 also have medical GPOs and our medical
 6 team works with them.
 7 BY MR. OWYANG:
 8 Q. Can you name any dental GPOs?
 9 A. Commonwealth Purchasing Group and
 10 Council Connections are two of the biggest ones
 11 we have.
 12 Q. How long has Schein worked with
 13 Council Connections?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I didn't sign them on,
 16 but I can tell you we've been working with
 17 community health centers in general for
 18 over 20 years and they came on board
 19 several years after.
 20 BY MR. OWYANG:
 21 Q. Which division is handling Council
 22 Connections right now?
 23 A. Special markets.
 24 Q. How long has Schein worked with
 25 Commonwealth?

1 D. FOSTER
 2 A. Again, I don't remember -- can't
 3 recall exact dates, but they came after Council
 4 Connections.
 5 Q. Which division is handling
 6 Commonwealth?
 7 MR. McDONALD: Currently?
 8 MR. OWYANG: Currently.
 9 MR. McDONALD: Currently.
 10 THE WITNESS: Special markets. Thank
 11 you. Special markets.
 12 BY MR. OWYANG:
 13 Q. I think you also mentioned a buying
 14 group called Cloudland Dental earlier; is that
 15 right?
 16 A. Yes.
 17 Q. What is Cloudland Dental?
 18 A. It's a group of dentists that got
 19 together and they span several states. I found
 20 out about them when I was covering the
 21 Tennessee region.
 22 Q. Which states does Cloudland Dental
 23 cover?
 24 A. At the time that I was inquiring
 25 about them, it was, I believe, Tennessee,

1 D. FOSTER
 2 Arkansas, and somewhere in Pennsylvania. I
 3 can't recall if it was Pittsburgh or
 4 Philadelphia, but Pennsylvania.
 5 Q. Where is Cloudland Dental based?
 6 A. They are based in Pennsylvania.
 7 Q. Who handles the Cloudland Dental
 8 account today?
 9 A. I believe it's still the FSC that
 10 resides where they're corporately located,
 11 which is in Pennsylvania.
 12 Q. What is the FSC's name?
 13 A. I don't recall.
 14 Q. How long has Cloudland been a Schein
 15 customer?
 16 A. Approximately six years.
 17 Q. Cloudland Dental is a buying group;
 18 is that right?
 19 A. Yes.
 20 Q. How do you know that Cloudland is a
 21 buying group?
 22 A. Because when I stumbled upon them and
 23 I noticed there were multiple locations open in
 24 our system, I checked with the regional manager
 25 to see who they were assigned to, because they

1 D. FOSTER
 2 weren't appearing on my report. And I checked
 3 with the FSC who was assigned.
 4 Q. What report are you referring to?
 5 A. Our regional report with our account
 6 listing.
 7 Q. Was there any written analysis
 8 showing that Cloudland Dental was a buying
 9 group?
 10 A. Written analysis, no. It was a
 11 conversation between me and the field rep.
 12 Q. The same field rep who handles
 13 Cloudland today?
 14 A. Yes.
 15 MR. OWYANG: I'll reserve the
 16 remainder of my time.
 17 MR. McDONALD: Okay. Why don't you
 18 give us five minutes to get organized.
 19 MR. OWYANG: Sure.
 20 (Off the record.)
 21 BY MR. OWYANG:
 22 Q. Back on record.
 23 So you mentioned Cloudland Dental.
 24 Can you spell Cloudland Dental for us.
 25 A. C-L-O-U-D-L-A-N-D.

1 D. FOSTER
 2 Q. And then it's Cloudland Dental?
 3 A. Dental.
 4 Q. If you can pull out CX2000. For the
 5 portions that you authored, did you write that
 6 in your capacity as regional account manager?
 7 A. Yes.
 8 Q. You testified earlier today that you
 9 reviewed several documents that refreshed your
 10 recollection yesterday; is that right?
 11 A. Yes.
 12 Q. Is this one of the documents that
 13 refreshed your recollection?
 14 A. Yes.
 15 Q. If you can pull out CX238. For the
 16 portion of CX238 that you authored, did you
 17 offer that in your capacity as director of
 18 sales for special markets?
 19 A. Yes.
 20 Q. Is this one of the documents that
 21 refreshed your recollection from yesterday?
 22 A. Yes.
 23 Q. Can you pull out CX2001. For those
 24 portions of CX2001 that you authored, did you
 25 write that in your capacity as regional account

1 D. FOSTER
 2 manager?
 3 A. Yes.
 4 Q. Is this one of the documents that you
 5 refreshed your recollection yesterday?
 6 A. Yes.
 7 Q. Going to CX2002. Did you author
 8 CX2002 in your capacity as director of sales
 9 for special markets?
 10 A. Yes.
 11 Q. Is this one of the documents that you
 12 looked at yesterday that refreshed your
 13 recollection?
 14 A. Yes.
 15 Q. Going to CX2004. For the portions of
 16 CX2004 that you authored, did you write that in
 17 your capacity as regional account manager?
 18 A. Yes.
 19 Q. Is this one of the documents that you
 20 looked at that refreshed your recollection?
 21 A. Yes.
 22 Q. Going to CX2005. For the portions of
 23 CX2005 that you authored, did you write that in
 24 your capacity as regional account manager?
 25 A. It wasn't an official title --

1 D. FOSTER
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: -- at that point, but
 4 same capacity, managed group practice
 5 specialist.
 6 BY MR. OWYANG:
 7 Q. So you authored CX2005 in your
 8 capacity as manager and group practice
 9 specialist?
 10 A. Yes.
 11 Q. Is this one of the documents that
 12 refreshed your recollection yesterday?
 13 A. Yes.
 14 Q. And then finally, CX2059 -- sorry,
 15 2059. For the portions of CX2059 that you
 16 authored, did you author that in your capacity
 17 as regional account manager?
 18 A. Yes.
 19 Q. Is this one of those documents that
 20 you looked at that refreshed your recollection?
 21 A. No.
 22 MR. OWYANG: That's it.
 23 MR. McDONALD: What was the one you
 24 wanted her to pull out?
 25 MS. SEIDL: 2000.

1 D. FOSTER
 2 FURTHER EXAMINATION
 3 BY MS. SEIDL:
 4 Q. So I just have a few questions for
 5 you. If anything I ask is unclear, I just hope
 6 you'll let me know so I can clarify.
 7 A. Okay. Thank you.
 8 Q. So you testified that one of the ways
 9 of increasing market share for Schein is to
 10 take business from certain competitors; is that
 11 correct?
 12 A. Yes.
 13 Q. And who are Schein's competitors that
 14 you are aware of?
 15 A. We have numerous competitors. We
 16 have Patterson, Benco. In my region, I deal
 17 with some regionals, like Nashville Dental,
 18 Atlanta Dental, Benco. Those are some of the
 19 more common ones.
 20 Q. So is it fair to say that Patterson
 21 and Schein competed vigorously throughout your
 22 time at Schein?
 23 MR. OWYANG: Object to form.
 24 Leading.
 25 THE WITNESS: Yes, absolutely.

1 D. FOSTER
 2 BY MS. SEIDL:
 3 Q. And that competition was continuous;
 4 correct?
 5 MR. OWYANG: Same objection.
 6 THE WITNESS: Yes.
 7 BY MS. SEIDL:
 8 Q. So there were no exceptions?
 9 MR. OWYANG: Same objection.
 10 THE WITNESS: No exceptions that I
 11 know of.
 12 BY MS. SEIDL:
 13 Q. And so Patterson, in your experience,
 14 tried to steal Schein's customers?
 15 MR. OWYANG: Same objection.
 16 THE WITNESS: Yes. Patterson has
 17 always historically tried to win our
 18 customers, as we did theirs.
 19 BY MS. SEIDL:
 20 Q. So is it fair to say then that
 21 Patterson always -- in your time at Schein,
 22 competed with Schein for individual dentists?
 23 MR. OWYANG: Object to form.
 24 Leading.
 25 THE WITNESS: Yes.

1 D. FOSTER
 2 BY MS. SEIDL:
 3 Q. Corporate accounts?
 4 A. Yes.
 5 Q. Community health centers?
 6 MR. OWYANG: Same objection.
 7 THE WITNESS: Yes.
 8 BY MS. SEIDL:
 9 Q. Government accounts?
 10 A. Yes.
 11 MR. OWYANG: Same objection.
 12 BY MS. SEIDL:
 13 Q. And that would include correctional
 14 facilities?
 15 A. Yes.
 16 MR. OWYANG: Same objection.
 17 BY MS. SEIDL:
 18 Q. And the same for Indian clinics?
 19 MR. OWYANG: Same objection.
 20 THE WITNESS: Yes.
 21 BY MS. SEIDL:
 22 Q. So a few documents to show you.
 23 We'll start with CX2000. If you would go to
 24 page 6 on that document, please, at the bottom
 25 of the page, the e-mail from Kirk Greenway to

1 D. FOSTER
 2 you. And it reads that -- at the bottom, very
 3 bottom, it says, "Dr. Nasim has always worked
 4 with PDCO and admittedly needs to switch to HS
 5 based on the value add I have shown him."
 6 Is PDCO there Patterson?
 7 A. Yes.
 8 Q. And HS, I'm assuming is Schein?
 9 A. Yes.
 10 Q. So this is an instance in which
 11 Schein is going after one of Patterson's
 12 current customers?
 13 A. Yes.
 14 MR. OWYANG: Object to form.
 15 BY MS. SEIDL:
 16 Q. And that was in 2015?
 17 A. Yes.
 18 MS. SEIDL: So we'll head to the next
 19 document. I'm going to hand the court
 20 reporter a document Bates labeled
 21 HS00249299. Would you please mark as it
 22 as Exhibit 28, I believe, what we're
 23 starting with.
 24 (Thereupon, Exhibit 28 was marked for
 25 identification.)

1 D. FOSTER
 2 BY MS. SEIDL:
 3 Q. If you could review that and let me
 4 know when you're done looking at it. And this
 5 looks to be a document from Michael Herrin to
 6 Debbie Foster and a number of other individuals
 7 dated Tuesday, March 10, 2015.
 8 A. Okay.
 9 Q. Do you recognize this document?
 10 A. Yes.
 11 Q. What is the document about?
 12 A. It's about a group called Premise
 13 Health, formerly Take Care Health, who is now
 14 asking and requesting of Schein to remove local
 15 field sales consultants from their locations.
 16 Q. Okay. If you'll turn to the second
 17 page. The e-mail from you to Russ Baker, Kyle
 18 Steck and Michael Herrin and a number of others
 19 on the CC line from March 10, 2015. If you
 20 look at the second full paragraph, the sentence
 21 reads, "Two of the three sites are down in
 22 sales and they started ordering from Patterson
 23 last year."
 24 A. Yes.
 25 Q. Last year was 2014; correct?

1 D. FOSTER
 2 A. Yes.
 3 Q. So in 2014, Patterson took the
 4 Premise Health business for two of the three
 5 sites from you?
 6 A. Correct.
 7 Q. It then goes on to say, "With the
 8 signed agreement, we will get them back and can
 9 start assisting their dental expansion"; is
 10 that right?
 11 A. Correct.
 12 Q. So in 2015, March 2015, Schein is
 13 competing with Patterson to get back the
 14 Premise Health accounts that they lost the
 15 prior year?
 16 A. Correct.
 17 Q. So is it fair to say that in this
 18 instance, Patterson and Schein competed for a
 19 group account?
 20 MR. OWYANG: Object to form.
 21 Leading.
 22 THE WITNESS: Yes.
 23 MS. SEIDL: Thank you. Now I'm going
 24 to hand the court reporter a document
 25 Bates stamped Henry Schein 000143324.

1 D. FOSTER
 2 (Thereupon, Exhibit 29 was marked for
 3 identification.)
 4 MS. SEIDL: Can you please mark that
 5 as Exhibit 29 and hand it to the witness.
 6 BY MS. SEIDL:
 7 Q. This looks to be a document from
 8 Randy Foley to Debbie Foster titled "DSO
 9 stuff." And the e-mail was sent on April 7,
 10 2016. If you could just review this and let me
 11 know when you're done taking a look at it.
 12 A. Okay.
 13 Q. Okay. So I'll only ask you about the
 14 first page, the e-mail from Mr. Foley to you.
 15 And the first line starts, "Rhonda is telling
 16 folks that she has taken 50 million in business
 17 from Schein."
 18 Do you know who Rhonda is that
 19 Randy's referring to?
 20 A. I do.
 21 Q. Who is Rhonda?
 22 A. Rhonda Durante was an employee of
 23 Henry Schein and she left to go to Patterson
 24 Dental.
 25 Q. Okay. And then it goes on to state,

1 D. FOSTER
 2 "The only EDSO that went from us to PDCO was
 3 Mortenson two years ago." What does EDSO refer
 4 to?
 5 A. Elite Dental Service Organization.
 6 Q. And PDCO is Patterson?
 7 A. Yes.
 8 Q. So two years prior to this e-mail
 9 dated 2016, so in 2014, Patterson stole an
 10 Elite Dental Service Organization customer from
 11 Schein?
 12 A. Yes.
 13 Q. And then it goes on to say,
 14 "ImmediaDent came to us and back to PDCO due to
 15 Saturday service hours in certain regions."
 16 PDCO is Patterson again?
 17 A. Yes.
 18 Q. So ImmediaDent was a customer that
 19 Schein and Patterson competed for vigorously?
 20 A. Yes.
 21 MR. OWYANG: Object to form.
 22 BY MS. SEIDL:
 23 Q. Thank you. That it's on the
 24 documents. I have a few more questions for
 25 you.

1 D. FOSTER
 2 So the documents I just showed you
 3 are examples of the vigorous competition over
 4 the years that we already discussed; correct?
 5 MR. OWYANG: Object to form.
 6 Leading.
 7 THE WITNESS: Yes.
 8 BY MS. SEIDL:
 9 Q. And the competition did not wane
 10 throughout your entire time at Schein; correct?
 11 MR. OWYANG: Same objection.
 12 THE WITNESS: No.
 13 BY MS. SEIDL:
 14 Q. And the competition also did not wane
 15 with respect to any particular type of
 16 customer; correct?
 17 MR. OWYANG: Same objection.
 18 THE WITNESS: No.
 19 MS. SEIDL: Would you let me finish.
 20 Thank you.
 21 BY MS. SEIDL:
 22 Q. So you're aware or are you aware that
 23 complaint counsel is alleging that Patterson
 24 and Schein entered into a conspiracy in 2013
 25 relating to buying groups; correct?

1 D. FOSTER
 2 MR. OWYANG: Object to form.
 3 THE REPORTER: I didn't get your
 4 answer.
 5 MR. McDONALD: So Debbie, pause. Let
 6 him object and then answer. She needs you
 7 to answer that question again.
 8 BY MS. SEIDL:
 9 Q. So are you aware that complaint
 10 counsel is alleging that Patterson and Schein
 11 entered into a conspiracy in 2013 relating to
 12 buying groups?
 13 A. Yes.
 14 Q. And are you aware that the alleged
 15 conspiracy was not to do business with buying
 16 groups?
 17 MR. OWYANG: Object to form.
 18 THE WITNESS: Yes.
 19 BY MS. SEIDL:
 20 Q. And in the past five hours, complaint
 21 counsel has not shown a single document of you
 22 discussing anything related to buying groups
 23 with anyone at Patterson; correct?
 24 MR. OWYANG: Object to form.
 25 Leading.

1 D. FOSTER
 2 THE WITNESS: Correct.
 3 BY MS. SEIDL:
 4 Q. And, in fact, you did not speak to
 5 anyone at Patterson; correct?
 6 MR. OWYANG: Object to form.
 7 THE WITNESS: Correct.
 8 BY MS. SEIDL:
 9 Q. I'm going to ask you a number of
 10 questions using the word "agreement." When I
 11 say agreement, I mean its common understanding
 12 for a meeting of the minds or a conscious
 13 commitment to a common scheme. Do you
 14 understand what I mean by agreement?
 15 A. Uh-huh.
 16 Q. So are you aware of any agreements
 17 between Schein and Patterson not to compete in
 18 general?
 19 MR. OWYANG: Object. Calls for a
 20 legal conclusion.
 21 THE WITNESS: No.
 22 BY MS. SEIDL:
 23 Q. Are you aware of anyone at Henry
 24 Schein, in general, discussing with anyone at
 25 Patterson the idea of not competing in general?

1 D. FOSTER
 2 compete for certain customers; right?
 3 MR. OWYANG: Objection. Leading.
 4 THE WITNESS: No, I did not.
 5 BY MS. SEIDL:
 6 Q. Are you aware of any agreement
 7 between Schein and Patterson not to do business
 8 with buying groups?
 9 MR. OWYANG: Objection. Calls for a
 10 legal conclusion.
 11 THE WITNESS: No.
 12 BY MS. SEIDL:
 13 Q. And are you aware of anyone at Henry
 14 Schein discussing with anyone at Patterson the
 15 idea of not competing for buying groups or
 16 not -- sorry. Let me rephrase.
 17 Are you aware of any agreement
 18 between Henry Schein and Patterson not to do
 19 business with buying groups?
 20 MR. OWYANG: Objection. Calls for a
 21 legal conclusion.
 22 THE WITNESS: No.
 23 BY MS. SEIDL:
 24 Q. And you certainly did not reach any
 25 agreement with anyone at Patterson not to do

1 D. FOSTER
 2 A. No.
 3 MR. OWYANG: Object to form.
 4 BY MS. SEIDL:
 5 Q. And you certainly did not discuss
 6 with anyone at Patterson the idea of not
 7 competing in general?
 8 MR. OWYANG: Object to form.
 9 THE WITNESS: No.
 10 BY MS. SEIDL:
 11 Q. Are you aware of any agreement
 12 between Henry Schein and Patterson not to
 13 compete for certain customers?
 14 MR. OWYANG: Objection. Calls for a
 15 legal conclusion.
 16 THE WITNESS: No.
 17 BY MS. SEIDL:
 18 Q. Are you aware of anyone at Schein
 19 discussing with anyone at Patterson the idea of
 20 not competing for certain customers?
 21 MR. OWYANG: Same objection.
 22 THE WITNESS: No.
 23 BY MS. SEIDL:
 24 Q. And you certainly didn't reach any
 25 agreement with anyone at Patterson not to

1 D. FOSTER
 2 business with buying groups?
 3 MR. OWYANG: Object to form. Calls
 4 for a legal conclusion.
 5 THE WITNESS: No.
 6 BY MS. SEIDL:
 7 Q. And you've never discussed with
 8 anyone at Patterson the idea of not doing
 9 business with buying groups; right?
 10 MR. OWYANG: Objection. Leading.
 11 THE WITNESS: Never.
 12 MS. SEIDL: That's it for me.
 13 MR. OWYANG: Could we get five
 14 minutes to confer with my counsel?
 15 MR. McDONALD: Yeah, but I might want
 16 to go.
 17 MR. MANNING: This is counsel for
 18 Benco. I would like to go.
 19 FURTHER EXAMINATION
 20 BY MR. MANNING:
 21 Q. My name is Thomas Manning. I'm with
 22 Buchanan Ingersoll in Philadelphia and I
 23 represent Benco in this matter. I just have a
 24 few questions for you.
 25 Using the same understanding of the

1 D. FOSTER
 2 word agreement that Patterson's counsel gave
 3 you, are you aware of any agreement between
 4 Benco and Schein not to do business with buying
 5 groups?
 6 MR. OWYANG: Object to form. Calls
 7 for a legal conclusion.
 8 THE WITNESS: No.
 9 BY MR. MANNING:
 10 Q. Did you have any discussions with
 11 anyone at Benco about not doing business with
 12 buying groups?
 13 MR. OWYANG: Object to form.
 14 THE WITNESS: No.
 15 BY MR. MANNING:
 16 Q. Are you aware of anyone else at
 17 Schein having discussions with anyone at Benco
 18 about not doing business with buying groups?
 19 MR. OWYANG: Objection. Vague.
 20 THE WITNESS: No.
 21 MR. MANNING: That's all I have.
 22 FURTHER EXAMINATION
 23 BY MR. McDONALD:
 24 Q. Ms. Foster, I just have a few
 25 questions for you.

1 D. FOSTER
 2 group?
 3 MR. OWYANG: Objection. Leading.
 4 MR. McDONALD: Really? You need to
 5 go read the rules.
 6 BY MR. McDONALD:
 7 Q. Did you consider them to be a buying
 8 group?
 9 A. Yes.
 10 Q. Have you ever heard of a company
 11 called Dental Associates?
 12 A. Yes.
 13 Q. And what is Dental Associates?
 14 A. Dental Associates started out as a
 15 group with a central location and central
 16 contact folks. And they also didn't do well
 17 financially, so Henry Schein decided to keep on
 18 the members and went together under a discount
 19 plan.
 20 Q. And what type of customer was Dental
 21 Associates?
 22 A. They were a buying group.
 23 Q. Are you aware of any policy at Henry
 24 Schein regarding doing business with buying
 25 groups?

1 D. FOSTER
 2 Have you ever heard of a company
 3 called Ciraden?
 4 A. Yes.
 5 Q. And what is Ciraden?
 6 A. Ciraden was a customer. They were
 7 formerly formed under the name of Main Street
 8 Dental and then under their new financing, got
 9 their new name, Ciraden.
 10 And unfortunately, that company did
 11 not do well financially, so when they went
 12 bankrupt, we decided to keep all of those
 13 offices on with Henry Schein at a discount as a
 14 buying group through our company.
 15 Q. Have you ever heard of a company
 16 called Dental Smart?
 17 A. Yes.
 18 Q. And what is Dental Smart?
 19 A. Dental Smart was a combination. Some
 20 of their locations were -- they owned them.
 21 Others, they did not own. They just helped
 22 manage and guide them. And those members
 23 actually paid a fee to Dental Smart to get
 24 their business solution services.
 25 Q. Did you consider them to be a buying

1 D. FOSTER
 2 MR. OWYANG: Objection. Vague.
 3 THE WITNESS: No. No policies.
 4 BY MR. McDONALD:
 5 Q. Did anyone at Henry Schein ever tell
 6 you not to do business with buying groups?
 7 A. No.
 8 Q. Did you do business with buying
 9 groups?
 10 A. Yes.
 11 Q. Did you ever have a discussion with
 12 anyone at Patterson about a customer?
 13 A. Never.
 14 Q. Did you ever have a discussion with
 15 anyone at Benco about a customer?
 16 A. Never.
 17 Q. Early in your deposition today, you
 18 testified about Henry Schein's business
 19 solutions offering. Do you recall that?
 20 A. Yes.
 21 Q. And I believe you said that it
 22 started in 2014.
 23 A. Correct.
 24 Q. Did Henry Schein offer business
 25 solutions practices or offerings to its clients

1 D. FOSTER
2 before 2014?
3 MR. OWYANG: Objection. Vague.
4 THE WITNESS: We did offer services.
5 We did not have a formal division. That
6 was formed with outside sales force and
7 management team.
8 BY MR. McDONALD:
9 Q. So when you said it didn't -- it
10 wasn't offered until 2014, what did you mean?
11 A. I meant that we didn't have that
12 entity created, but we did offer individual
13 services through our regional managers and
14 field sales force.
15 Q. If you'll look at Exhibit 2004,
16 CX2004. This is an e-mail chain that you
17 looked at earlier today. Do you recall looking
18 at that?
19 A. Yes.
20 Q. I want to focus on the top e-mail
21 from Brad Fine. In the second -- I'm sorry,
22 the second line, which is the third sentence,
23 he states, "We have been given a little insight
24 from one of the doctors and the oral surgeon
25 who is leading the charge. Based on those

1 D. FOSTER
2 the first sentence of your e-mail, you make a
3 reference to Premise Health.
4 Do you see that?
5 A. Yes.
6 Q. What is Premise Health?
7 A. Premise Health is a buying group that
8 is more of an occupational health, so they set
9 up dental and medical clinics inside industrial
10 companies.
11 Q. Toward the end of the first
12 paragraph, there's a sentence that reads, "The
13 corporate office has to approve all items being
14 ordered by their sites."
15 Do you see that?
16 A. Yes.
17 Q. What does that mean?
18 A. That means that we created a
19 customized formulary for all of their dental
20 clinics. They were using the same standardized
21 products throughout all their locations.
22 Q. So Premise Health's corporate office
23 would order products for the different offices?
24 A. No. They approved the formulary to
25 be used at the individual dental clinics.

1 D. FOSTER
2 conversations, they asked for a proposal so
3 they can discuss."
4 Do you see that?
5 A. Yes.
6 Q. Was it your understanding that Henry
7 Schein made an offer to this group?
8 A. Yes.
9 MR. McDONALD: That's all the
10 questions I have at this time.
11 MR. OWYANG: Anyone else on the
12 phone?
13 MR. McDONALD: There isn't anybody
14 else. I'm not going to let Lin ask
15 questions.
16 MR. OWYANG: Can we take five
17 minutes?
18 MR. McDONALD: Of course.
19 (Thereupon, a brief recess was taken.)
20 MR. OWYANG: Back on the record.
21 FURTHER EXAMINATION
22 BY MR. OWYANG:
23 Q. Could you pull out Exhibit 28, the
24 e-mail that is from Michael Herrin.
25 If you turn to the second page. In

1 D. FOSTER
2 Q. So the corporate office determined
3 each dental clinic's formulary?
4 A. With the help of one of their main
5 dental directors out of one of the locations.
6 Q. In the next sentence you wrote, "In
7 addition, the pricing on anything that is used
8 in both a medical/dental environment has to be
9 coded as the same price."
10 Do you see that?
11 A. Yes.
12 Q. What did you mean when you wrote
13 "medical dental environment"?
14 A. Because they had medical clinics and
15 dental clinics, we needed to make sure that our
16 discounts and pricing was in line among the two
17 divisions.
18 Q. What types of medical services does
19 Premise Health provide?
20 A. They had medical clinics in the same
21 industrial offices and sites.
22 Q. What types of medical services?
23 A. All types. Family medicine just for
24 the employees and their families.
25 Q. You can set this aside.

1 D. FOSTER
 2 Counsel asked you about three groups:
 3 Ciraden, Dental Smart and Dental Associates.
 4 Do you recall that?
 5 A. Yes.
 6 Q. Starting with Ciraden. First, how do
 7 you spell Ciraden?
 8 A. C-I-R-A-D-E-N.
 9 Q. You testified that Ciraden is a
 10 buying group; is that right?
 11 A. They're no longer, but, yes, they
 12 were when we were dealing with them.
 13 Q. When you dealt with Ciraden as a
 14 buying group, what time period was that?
 15 A. I don't recall the dates that they
 16 were under the name of Ciraden.
 17 Q. Who was responsible for handling the
 18 Ciraden account when it was a buying group?
 19 MR. OWYANG: Object to the form.
 20 MR. McDONALD: Objection to form.
 21 THE WITNESS: The sales
 22 representative that called on them was
 23 Rosemarie Manjapani.
 24 BY MR. OWYANG:
 25 Q. Where is Ciraden located?

1 D. FOSTER
 2 Q. Do you know when that -- when the
 3 Ciraden buying group started?
 4 A. I don't.
 5 Q. Moving on to Dental Smart. What is
 6 Dental Smart?
 7 A. Dental Smart was what we refer to as
 8 a hybrid. They owned some of their offices and
 9 consulted for some of their other offices.
 10 Q. Is Dental Smart a buying group?
 11 A. Partially, yes.
 12 Q. What part of it is a buying group?
 13 A. The part where they don't own the
 14 actual practices and they're individually
 15 owned.
 16 Q. What is -- what do you consider the
 17 part of Dental Smart that is owned by Dental
 18 Smart?
 19 A. That's more under a group practice
 20 model with corporate ownership.
 21 Q. Who at Schein is responsible for the
 22 Dental Smart account?
 23 A. They have gone bankrupt and they no
 24 longer are our customer, but it was under
 25 special markets when we were dealing with them.

1 D. FOSTER
 2 A. I don't know where their corporate
 3 office is located. I don't know where they
 4 actually were out of.
 5 Q. Do you know what region of the
 6 country they were out of?
 7 A. They were definitely eastern part of
 8 the country.
 9 Q. Can you be any more specific than
 10 that?
 11 A. No.
 12 Q. When did you first learn that Ciraden
 13 was a buying group?
 14 A. Rosemarie actually shared with me
 15 that they were no longer -- their corporate
 16 entity went out of business and they were going
 17 to keep them in special markets under the
 18 buying group umbrella and still offer
 19 individual offices' discounts.
 20 Q. Which division handled Ciraden when
 21 it was a buying group?
 22 A. Special markets.
 23 Q. When Ciraden was a buying group, was
 24 it made up of independent dental practices?
 25 A. Yes.

1 D. FOSTER
 2 Q. And what was the time period when
 3 Schein was dealing with Dental Smart?
 4 A. I don't recall an exact year. I
 5 don't recall exact year.
 6 Q. Was it before or after 2015?
 7 A. We started before 2015.
 8 Q. Which division at Schein handled the
 9 Dental Smart account?
 10 A. Special markets.
 11 Q. When did Dental Smart become a buying
 12 group?
 13 A. When they signed on with us. So they
 14 were always a hybrid, half owned and half
 15 consultant.
 16 Q. But you don't recall when they signed
 17 on with Schein?
 18 A. I don't.
 19 Q. Where is Dental Smart located?
 20 A. They were headquartered in Charlotte
 21 -- Charleston.
 22 Q. Charleston, South Carolina?
 23 A. South Carolina.
 24 Q. When did you first learn that Dental
 25 Smart was a buying group?

1 D. FOSTER
 2 MR. McDONALD: Object to form. Asked
 3 and answered.
 4 THE WITNESS: When I originally met
 5 with them, which again, I can't recall the
 6 exact time frame.
 7 BY MR. OWYANG:
 8 Q. And then moving on to Dental
 9 Associates. What is Dental Associates?
 10 A. Dental Associates is a buying group
 11 that was located in the northeast.
 12 Q. Where in the northeast?
 13 A. In Virginia.
 14 Q. Is Dental Associates a current Schein
 15 customer?
 16 A. I don't know.
 17 Q. When did -- how long has Schein
 18 served Dental Associates?
 19 A. Again, I don't know if they're a
 20 current customer, so I can't speak for now. I
 21 don't handle the state of Virginia anymore.
 22 But about five years ago is when I was involved
 23 with the account.
 24 Q. Who -- which division did Dental
 25 Associates fall under?

1 D. FOSTER
 2 Q. Do you remember who told you?
 3 A. I actually was doing some research on
 4 some of my key accounts and I started making
 5 phone calls to see who I could reach out to to
 6 get them to comply more to Henry Schein,
 7 because most of the locations were not ordering
 8 from us at that time. And I heard from several
 9 offices that there was nobody to contact. You
 10 have to contact each individual doctor.
 11 Q. When did you do that research?
 12 A. I don't recall when that was exactly.
 13 Q. Was it before or after 2015?
 14 A. Before.
 15 MR. OWYANG: No further questions.
 16 MR. McDONALD: Do you have anything?
 17 FURTHER EXAMINATION
 18 BY MS. SEIDL:
 19 Q. Just something very quick. With
 20 respect to Exhibit 28, you testified that
 21 Premise Health is a buying group. Is it fair
 22 to say that in 2014, Schein and Patterson
 23 competed for a buying group?
 24 MR. OWYANG: Object to form.
 25 THE WITNESS: Yes.

1 D. FOSTER
 2 A. Special markets.
 3 Q. Is Dental Associates a buying group?
 4 A. Yes.
 5 Q. Are Dental Associates members made up
 6 of independent dental practices?
 7 A. Yes, they are. I'd like to correct
 8 one thing, if I may.
 9 Q. Go ahead.
 10 A. When you said who handled Dental
 11 Associates, it was handled originally from
 12 special markets and then it was passed over and
 13 handed over to Henry Schein Dental.
 14 Q. Do you know who within Henry Schein
 15 Dental it was passed on to?
 16 A. Well, it was passed on to Henry
 17 Schein Dental in general. And each one of
 18 those accounts was assigned to a local FSC from
 19 the regional manager.
 20 Q. Did FSC handle Dental Associates
 21 before it moved to Henry Schein Dental?
 22 A. No.
 23 Q. When did you first learn that Dental
 24 Associates was a buying group?
 25 A. I don't remember the time.

1 D. FOSTER
 2 BY MS. SEIDL:
 3 Q. Is the same true for 2015?
 4 MR. OWYANG: Object to form.
 5 THE WITNESS: Yes.
 6 MS. SEIDL: That's it for me.
 7 MR. McDONALD: Benco? Anybody from
 8 Benco?
 9 MR. MANNING: Nothing else.
 10 MR. McDONALD: That's all the
 11 questions I have.
 12 (Whereupon, at 1:53 p.m., the deposition was
 13 concluded.)
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D. FOSTER
CERTIFICATE
NORTH CAROLINA

I, the undersigned authority, hereby certify that the foregoing transcript, page 1 through 179 is a true and correct transcription of the deposition of Debbie Foster taken before me at the time and place set forth on the title page hereof.

I further certify that said witness was duly sworn by me according to law.

I further certify that I am not of counsel to any of the parties to said cause or otherwise interested in the event thereof.

IN WITNESS WHEREOF I hereunto set my hand and affix official seal this 19th day of June, 2018.

RANDI GARCIA, COURT REPORTER, RPR
NOTARY PUBLIC

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NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

- 1. To clarify the record.
- 2. To conform to the facts.
- 3. To correct transcription errors.

Page _____ Line _____ Reason _____
 From _____ to _____
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JURAT

I, DEBORAH FOSTER, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 7, 2018; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 2018,
at _____.

DEBORAH FOSTER

SUBSCRIBED AND SWORN BEFORE ME
THIS ____ DAY OF _____, 2018.

(Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

DEPOSITION OF: Deborah Foster

DATE DEPOSITION: June 7, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
10	7	Change "regional manager" to "director"	Clarification/misspoke
18	14	Change "Barresi" to "Boresi"	Typographical error
19	17	Change "Silvis" to "Silvas"	Typographical error
19	18	Change "McIlory" to "McElroy"	Typographical error
23	16	Change "handed" to "handled"	Typographical error
38	4-5	Change "because mid-markets is a separate dental division," to "because I'm in mid-markets,"	Clarification
39	18	Change "and" to "through"	Clarification
44	5	Change "research" to "reach"	Typographical error
45	8-9	Change "customer" to "patient"	Clarification
58	10	Change "men" to "team"	Clarification/typographical error
75	20	Change "competition, growing" to "competition and growing"	Clarification
99	18	Change "Gator Dental" to "Dental Gator"	Clarification/misspoke
104	8	Change "group" to "division of Schein"	Clarification
128	16	Change "down" to "over"	Clarification
128	20	Change "down" to "over"	Clarification
131	14	Change "exactly" to "that"	Typographical error/clarification
143	6	Change "FSCs" to "equipment specialists"	Clarification/misspoke
143	20	Change "who" to "he"	Typographical error
168	17-18	Change "went together under a discount plan" to "went forward under"	Clarification

		a discount plan”	
173	5	Change “out of one of the locations” to “out of Texas”	Clarification

I, Deborah Foster, do hereby acknowledge that I have read the above-referenced deposition transcript, that I have made any corrections, additions or deletions that I was desirous of making; and that the transcript contains my true and correct testimony.

EXECUTED this 10 day of July, 2018.

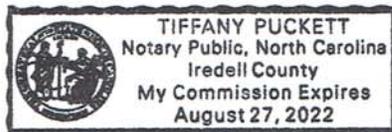
at Cornelius, NC
(City) (State)

Deborah Foster
Deborah Foster

Subscribed and sworn to and before me this 10 day of July, 2018.

Tiffany Puckett
Notary Public

SEAL:



A				
a.m (1) 2:12	added (1) 22:22	60:12	approved (3) 48:8 86:10 172:24	174:3 178:9,9,10,14 178:18,25 179:3,5 179:11,20,24
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CX8002

Redacted in Entirety

CX8003

1 CONFIDENTIAL - RANDALL FOLEY
2 June 20, 2018

3
4 ***CONFIDENTIAL***

5
6 Videotaped deposition of RANDALL
7 FOLEY, held at Proskauer Rose LLP,
8 Eleven Times Square, New York, New York,
9 before Kathy S. Klepfer, a Registered
10 Professional Reporter, Registered Merit
11 Reporter, Certified Realtime Reporter,
12 Certified Livenote Reporter, and Notary
13 Public of the State of New York.
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25

1 CONFIDENTIAL - RANDALL FOLEY
2 A P P E A R A N C E S:

3
4 FEDERAL TRADE COMMISSION
5 Attorneys for the Federal Trade Commission
6 600 Pennsylvania Avenue, N.W.
7 Washington, D.C. 20580
8 BY: JASMINE ROSNER, ESQ.
9 RONNIE SOLOMON, ESQ. (Telephonically)
10 KAREN GOFF, ESQ. (Telephonically)
11

12 LOCKE LORD
13 Attorneys for Henry Schein Dental and the Witness
14 600 Congress Avenue
15 Austin, Texas 78701
16 BY: LAUREN FINCHER, ESQ.
17 JOHN McDONALD, ESQ.
18
19
20
21
22
23
24
25

1 CONFIDENTIAL - RANDALL FOLEY
2 A P P E A R A N C E S: (Cont'd.)

3
4 BUCHANAN INGERSOLL & ROONEY
5 Attorneys for Benco Dental Supply, Inc.
6 Two Liberty Place
7 50 South 16th Street
8 Philadelphia, PA 19102
9 BY: HYUN YOON, ESQ.

10
11 BAKER BOTTS
12 Attorneys for Patterson Dental
13 1299 Pennsylvania Avenue, N.W.
14 Washington, D.C. 20004
15 BY: WILLIAM LAVERY, ESQ.

16
17 ALSO PRESENT:
18 MATTHEW SMITH, Videographer
19
20
21
22
23
24
25

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2
3 IT IS HEREBY STIPULATED AND
4 AGREED, by and between the attorneys for
5 the respective parties herein, that the
6 filing and sealing be and the same are
7 hereby waived.

8 IT IS FURTHER STIPULATED AND
9 AGREED that all objections, except as to
10 the form of the question, shall be
11 reserved to the time of the trial.

12 IT IS FURTHER STIPULATED AND
13 AGREED that the within deposition may be
14 sworn to and signed before any officer
15 authorized to administer an oath, with
16 the same force and effect as if signed
17 and sworn to before the Court.
18
19
20
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25

1 CONFIDENTIAL - RANDALL FOLEY
 2 THE VIDEOGRAPHER: This begins media
 3 labeled number 1 of the video recorded
 4 deposition of Randall Foley in the matter of
 5 In re Benco Dental Incorporated, et al.

6 This deposition is being held at 11
 7 Times Square in New York, New York, on June
 8 20, 2018 at approximately 8:08 a.m.

9 My name is Matthew Smith for TSG
 10 Reporting, Incorporated. I'm the legal
 11 video specialist. The court reporter is
 12 Kathy Klepfer, in association with TSG
 13 Reporting.

14 Will counsel please introduce yourself
 15 for the record.

16 MS. ROSNER: Jasmine Rosner for
 17 complaint counsel.

18 MS. FINCHER: Lauren Fincher from
 19 Locke Lord on behalf of the witness and
 20 Henry Schein.

21 MR. McDONALD: John McDonald with
 22 Locke Lord on behalf of Henry Schein and the
 23 witness.

24 MR. LAVERY: Will Lavery with Baker
 25 Botts for Patterson.

1 CONFIDENTIAL - RANDALL FOLEY
 2 MR. YOON: Eric Yoon, Buchanan
 3 Ingersoll on behalf of Benco Dental Supply
 4 Company.

5 THE VIDEOGRAPHER: Thank you.
 6 Is there anyone present on the phone?
 7 (No response.)

8 MS. ROSNER: Not at the moment.

9 THE VIDEOGRAPHER: Okay. Thank you.
 10 Will the court reporter please swear
 11 in the witness.

12 * * *

13 RANDALL FOLEY, called as a
 14 witness, having been duly sworn by a Notary
 15 Public, was examined and testified as
 16 follows:

17 EXAMINATION BY

18 MS. ROSNER:

19 Q. Mr. Foley, thank you for being here
 20 today. I understand that you have taken an
 21 investigational hearing in this matter
 22 previously and so you are familiar with the
 23 setup of having a court reporter and being asked
 24 questions, correct?

25 A. Yes, I am.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. And you are familiar that you have
 3 just taken an oath where you are going to tell
 4 the truth today?

5 A. Yes, I do.

6 Q. So all of the same rules apply from
 7 the last time you were in this setting. The two
 8 most important rules are that you tell the truth
 9 today and that you and I work together such that
 10 the court reporter can understand and hear us.

11 A. Okay.

12 Q. Mr. Foley, I understand you used to
 13 work at Henry Schein Inc.; is that correct?

14 A. Yes.

15 Q. If I refer to Henry Schein Inc. as
 16 "Schein," will you know what I'm talking about?

17 A. Yes.

18 Q. You retired from Schein?

19 A. Yes.

20 Q. When?

21 A. In December 16, 2016.

22 Q. Since you retired from Schein, have
 23 you been employed elsewhere?

24 A. No.

25 Q. Since you retired from Schein, have

1 CONFIDENTIAL - RANDALL FOLEY
 2 you done any work for Schein on either a formal
 3 or informal basis?

4 A. No.

5 Q. Since you retired from Schein, have
 6 you worked in the dental industry?

7 A. No.

8 Q. How many years did you work for
 9 Schein?

10 A. Just under 14.

11 Q. When you were working in the Special
 12 Markets Division at Schein, how often did you go
 13 into the office?

14 A. Maybe every other month.

15 Q. When you were working with the Special
 16 Division -- excuse me. When you were working
 17 with the Special Markets Division, how often
 18 were you on work travel?

19 A. Approximately three weeks out of the
 20 month.

21 Q. When you traveled for work, did you
 22 travel alone?

23 A. I -- no, I usually would travel with
 24 co-workers. I mean, I traveled to the place
 25 alone, but met with co-workers.

1 CONFIDENTIAL - RANDALL FOLEY
2 Q. When you met with co-workers, was that
3 your entire team?

4 A. No, it would be with -- it would be --
5 Meaning the entire team at one time?

6 Q. Correct.

7 A. No, it would be with an individual
8 sales member that was calling on a customer. I
9 would co-travel with that -- with that
10 individual, for the most part.

11 Q. So when you traveled for work, you
12 would typically meet one or maybe two other
13 people at --

14 A. For the most part, yes, correct.

15 Q. While working from -- when you weren't
16 in the office and when you weren't on travel,
17 did you work from home?

18 A. Yes; I was home-based.

19 Q. While working from home or while on
20 work travel, how did you keep in touch with the
21 rest of your team?

22 A. I was very heavy in using e-mail as my
23 main correspondence, and while working out of
24 the house, I would use my either voice -- my
25 voice line or my cell phone. Out of the house,

1 CONFIDENTIAL - RANDALL FOLEY
2 I preferred my house line. It has a headset.

3 Q. Your house line, that's your home
4 phone?

5 A. It would be my home phone, but it
6 was -- yes, it was owned by me, but it was a
7 company -- it was published on my business card
8 as a -- as a work number. I still own that
9 number.

10 Q. Is that a separate business line in
11 your home?

12 A. No.

13 Q. Is there anyone else in your home who
14 has access to that business line?

15 A. No, I live alone.

16 Q. So you conducted business over e-mail?

17 A. Primarily.

18 Q. And you gave direction to your direct
19 reports over e-mail?

20 A. Through e-mail, uh-huh.

21 Q. You provided information to your
22 superiors over e-mail?

23 A. Yes.

24 Q. And while conducting business over
25 e-mail, you attempted to be accurate in the

1 CONFIDENTIAL - RANDALL FOLEY
2 information that you conveyed?

3 A. Yes.

4 MS. FINCHER: Just, Randy, slow down a
5 little bit and let her finish her question
6 before you answer.

7 Q. I see here today you're represented by
8 attorneys from Locke Lord?

9 A. Yes.

10 Q. Locke Lord is representing Henry
11 Schein in this matter?

12 A. Yes.

13 Q. Is Schein paying Locke Lord's fees for
14 representing you in connection with today's
15 deposition?

16 A. I'm unaware.

17 Q. Did you meet with attorneys from Locke
18 Lord prior to today's deposition?

19 A. Yes.

20 Q. Did attorneys from Locke Lord assist
21 you in preparing for today's deposition?

22 A. Yes.

23 Q. How did you prepare for today's
24 deposition?

25 A. We reviewed about 50 or 60 e-mails

1 CONFIDENTIAL - RANDALL FOLEY
2 that I had sent or I was a part of and some
3 prior vendor agreements that were attachments.

4 Q. Did you do anything else?

5 A. No.

6 Q. Other than meeting with attorneys from
7 Locke Lord, did you meet with anyone else in
8 preparation for today's deposition?

9 A. No.

10 Q. Did you meet with anyone from Schein
11 in preparation for today's deposition?

12 A. No.

13 Q. How long was your meeting with
14 attorneys from Locke Lord in preparation for
15 today's deposition?

16 A. About eight hours.

17 Q. Was this an in-person meeting?

18 A. I'm sorry?

19 Q. Was this an in-person meeting?

20 A. Meaning just us meeting face-to-face?

21 Q. Versus telephonically?

22 A. Oh, yes. It was face-to-face. In
23 person.

24 Q. Other than yourself and counsel for
25 Schein, was anybody else in the room?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. No.

3 Q. Other than yourself and counsel for
4 Schein, was anybody else listening by phone?

5 A. No.

6 Q. When you met with counsel for Schein,
7 what did you talk about?

8 MS. FINCHER: I'm going to instruct
9 the witness not to reveal any
10 attorney-client privileged communications.

11 MR. McDONALD: So she's instructing
12 you do not answer that question.

13 THE WITNESS: Okay.

14 BY MS. ROSNER:

15 Q. Are you going to follow your counsel's
16 instruction?

17 MR. McDONALD: Yes, he is.

18 THE WITNESS: Yes.

19 MS. ROSNER: Can I ask what the
20 privilege is based on?

21 MR. McDONALD: It's attorney-client,
22 work product privileged.

23 MS. FINCHER: Attorney-client.

24 MS. ROSNER: Locke Lord represents Mr.
25 Foley.

1 CONFIDENTIAL - RANDALL FOLEY

2 MS. FINCHER: Correct.

3 MR. McDONALD: Yes.

4 You asked me to accept service for him
5 being here today, and so if you're going to
6 challenge that, he's going to get up and
7 walk out because he's under subpoena.

8 MS. ROSNER: I just want to make clear
9 the relationship. I'm not going to --

10 MR. McDONALD: It's clear. We
11 represent him. You all contacted me and
12 asked me if I represented him and if I could
13 accept service of process for him being here
14 today, and I did.

15 MS. ROSNER: Is the relationship based
16 on representation of Mr. Foley in his
17 personal capacity?

18 MR. McDONALD: We represent him
19 individually as well as we represent the
20 company. He's a former employee.

21 MS. ROSNER: And so the representation
22 is two-part. It's based on his individual
23 capacity and it's also based on his
24 connection to Henry Schein?

25 MR. McDONALD: Well, they're one and

1 CONFIDENTIAL - RANDALL FOLEY
2 the same, Jasmine. He has no individual
3 liability. He's only here in his capacity
4 as a former employee of Henry Schein.

5 MS. ROSNER: Thank you. I just wanted
6 to make that clear.

7 MR. McDONALD: Okay.

8 BY MS. ROSNER:

9 Q. I understand that you previously had
10 an investigational hearing taken in this matter
11 in July 2017?

12 A. Yes.

13 Q. And at the time of your
14 investigational hearing, you were no longer
15 working at Schein?

16 A. Correct.

17 Q. Did Locke Lord represent you at your
18 investigational hearing?

19 A. Yes.

20 Q. Did attorneys from Locke Lord assist
21 in preparing you for your investigational
22 hearing?

23 A. Yes.

24 Q. Did you meet with attorneys from Locke
25 Lord prior to your investigational hearing?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. No.

3 Q. Did you prepare in any way for your
4 investigational hearing?

5 A. Yes.

6 Q. How did you prepare for your
7 investigational hearing?

8 A. We reviewed e-mails and documents. I
9 don't remember how many at that time.

10 Q. Who did you review e-mails and
11 documents with in preparation for your
12 investigational hearing?

13 A. These two.

14 Q. You're referring to attorneys from
15 Locke Lord?

16 A. Right.

17 Q. Other than your investigational
18 hearing and today's deposition, have you ever
19 met with any lawyers from the Federal Trade
20 Commission?

21 A. No.

22 Q. Did you discuss your deposition with
23 lawyers from the Federal Trade Commission in
24 advance of today?

25 A. No.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. Do you have retirement benefits from
 3 Schein?
 4 A. I was given six months pay and COBRA
 5 for free for six months. Other than that, they
 6 have expired.
 7 I've been retired for 18 months.
 8 Q. Do you hold any stock in Schein?
 9 A. Yes.
 10 Q. Do you have stock options for Schein?
 11 A. I'm unsure if what that -- what --
 12 that I have unvested stock that will vest in the
 13 next year or two.
 14 Q. Do you maintain any friendships with
 15 any Schein current employees?
 16 A. Yes.
 17 Q. Who?
 18 A. One is Becky Demers and the other one
 19 is Hal Muller.
 20 Q. Anyone else?
 21 A. Pam Reece on occasion.
 22 Q. Anyone else?
 23 A. No.
 24 Q. Did Schein pay for your travel to get
 25 here today?

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 2 Q. And what's that assumption based on?
 3 A. Well, they're represent -- they're
 4 representing me here today, so I would think it
 5 would be the same whether I'm in a courtroom or
 6 whether I'm here in a deposition.
 7 Q. I want to move on to talk a little bit
 8 about Schein, the organization, and maybe some
 9 of the terms that you used while you worked
 10 there.
 11 A. Okay.
 12 Q. So Schein has a lot of divisions:
 13 Medical, dental, veterinarian, maybe some other
 14 ones.
 15 Today when we talk about Schein, I'm
 16 only going to be referring to the dental
 17 business. Do you understand that?
 18 A. Yes.
 19 Q. When you left Schein, you were in the
 20 Special Markets Division of the dental business?
 21 A. That's correct.
 22 Q. Special Markets is sometimes referred
 23 to as SM?
 24 A. Yes.
 25 Q. Special Markets can also be referred

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Yes.
 3 Q. Do you have any legal or financial
 4 relationship of any kind with Schein?
 5 A. None.
 6 Q. Are you being reimbursed by Schein for
 7 your time to be here today?
 8 A. No.
 9 Q. Are you being reimbursed by Schein for
 10 the time that you spent with Schein's lawyers to
 11 prepare for today's deposition?
 12 A. No.
 13 Q. If you serve as a witness at trial in
 14 Washington, D.C., is it your understanding that
 15 Schein will pay for your travel to the trial?
 16 A. I would assume that.
 17 Q. If you serve as a witness at trial, is
 18 it your understanding that Schein will pay for
 19 your time at trial?
 20 A. No.
 21 Q. If you serve as a witness at trial, is
 22 it your understanding that you will meet with
 23 Schein's lawyers to prepare for your trial
 24 testimony?
 25 A. I would assume so.

1 CONFIDENTIAL - RANDALL FOLEY
 2 to as HSM?
 3 A. Yes.
 4 Q. Traditionally, Special Markets
 5 customers were non-private practice dentists?
 6 A. Correct.
 7 MS. FINCHER: Object to form.
 8 A. Yes.
 9 Q. Special Markets customers include
 10 corporate dentists?
 11 A. Yes. DSOs, as we referred to them,
 12 they don't serve as organizations.
 13 Q. Special Markets customers included
 14 institutions?
 15 A. Correct.
 16 Q. Special Markets customers included
 17 dental schools?
 18 A. Yes.
 19 Q. Special Markets customers included
 20 perhaps a variety of other types of
 21 nontraditional, non-private practice dentists?
 22 A. Correct.
 23 MS. FINCHER: Object to the form.
 24 If you could just slow down a little
 25 bit, Randy.

1 CONFIDENTIAL - RANDALL FOLEY
 2 THE WITNESS: Okay.
 3 BY MS. ROSNER:
 4 Q. Your boss in Special Markets was Hal
 5 Muller?
 6 A. Yes.
 7 Q. Private practice dentists were
 8 traditionally customers of another division
 9 within the dental business at Schein?
 10 A. Yes.
 11 Q. Private practice dentists
 12 traditionally were customers of Henry Schein
 13 Dental?
 14 MS. FINCHER: Object to the form.
 15 A. Yes. HSD.
 16 Q. Henry Schein Dental is sometimes
 17 referred to as HSD?
 18 A. Correct.
 19 Q. Is that correct?
 20 A. Correct.
 21 Q. While you were at Schein, the head of
 22 HSD was a man named Tim Sullivan?
 23 A. Yes.
 24 Q. Tim Sullivan and Hal Muller are peers?
 25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Peers in the sense of friends or peers
 3 as far as company -- they are -- Hal is the
 4 president of Special Markets. Tim Sullivan is
 5 the president of HSD.
 6 Q. Hal Muller and Tim Sullivan appear at
 7 the same level in the Schein organizational
 8 chart?
 9 A. From what I understand, yes.
 10 Q. Both Hal Muller and Tim Sullivan
 11 reported up to a man named Jim Breslawski?
 12 A. I know that Hal Muller -- yes. I'm
 13 sorry, yes, they both did.
 14 Q. Jim Breslawski oversees all of Dental
 15 for Schein?
 16 MS. FINCHER: Object to the form.
 17 A. It is my understanding.
 18 Q. Jim Breslawski oversees Special
 19 Markets and HSD?
 20 MS. FINCHER: Object to the form.
 21 A. Yes.
 22 Q. Jim Breslawski is sometimes referred
 23 to as Jimmie?
 24 A. Jimmie B., yes.
 25 Q. Do you understand the term "buying

1 CONFIDENTIAL - RANDALL FOLEY
 2 group" to be a collection of independent private
 3 practitioner dentists?
 4 MS. FINCHER: Object to the form.
 5 A. No, I don't understand it as that.
 6 Q. What do you understand the term
 7 "buying group" to mean?
 8 A. It is some -- a company or a group
 9 that has set up product offerings that will be
 10 made available to private dentists, whether it's
 11 reduce supplies, reduce marketing costs, reduce
 12 cell phones to private dentists, for the most
 13 part, and to community health centers. So it's
 14 just not private dentists.
 15 Q. So you would include community health
 16 centers as potential members of a buying group?
 17 A. Absolutely.
 18 Q. At times, independent dentists may
 19 choose to become members of a buying group?
 20 MS. FINCHER: Object to the form.
 21 A. Yes.
 22 Q. And buying groups may offer a variety
 23 of services for their members?
 24 A. Yes.
 25 Q. One service offered by buying groups

1 CONFIDENTIAL - RANDALL FOLEY
 2 may be to negotiate lower supply prices on
 3 behalf of their members?
 4 A. Yes.
 5 Q. Buying groups pool their members'
 6 purchasing power?
 7 MS. FINCHER: Object to the form.
 8 Are you asking him generally, Jasmine,
 9 his understanding of what buying groups do
 10 or can you clarify?
 11 Q. Do you understand the question, Mr.
 12 Foley?
 13 A. Repeat it.
 14 Q. Buying groups pool their members'
 15 purchasing power; isn't that correct?
 16 MS. FINCHER: Object to the form.
 17 MR. LAVERY: Object to the form.
 18 A. They would give us an idea how many
 19 members they might have, and then we would base
 20 pricing based on that volume, yes.
 21 Q. Having higher volume may allow a
 22 buying group to get lower prices for its
 23 members; is that right?
 24 MS. FINCHER: Object to the form.
 25 MR. YOON: Objection.

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. It could.
 3 Q. How could it?
 4 A. Generally, we would figure out, you
 5 know, how many members they would have, and
 6 then, based on that, we could provide a higher
 7 discount for our -- for our off-catalog pricing.
 8 We had different plans. One was 10
 9 percent off catalog, one was 12, one was 15, one
 10 was 20. So, depending on where this buying
 11 group might fall from our side, we could chose
 12 one of those plans. As they got bigger, we
 13 could then put them on a higher plan, higher
 14 discounted plan.
 15 Q. You say that as they got bigger, you
 16 could put them on a higher discount plan?
 17 A. I'm sorry, more members.
 18 Q. The more members they brought the more
 19 likely they would get a higher discount plan, is
 20 that what you're saying?
 21 A. That is correct.
 22 MS. FINCHER: Object to the form.
 23 THE WITNESS: I'm sorry.
 24 MS. FINCHER: Slow down a little bit.
 25 THE WITNESS: I will.

1 CONFIDENTIAL - RANDALL FOLEY
 2 clause that requires the customer to purchase a
 3 percentage of spend from Schein?
 4 MS. FINCHER: Object to the form.
 5 A. Yes.
 6 Q. The DSO employee dentists are under
 7 contract?
 8 MS. FINCHER: Object to the form.
 9 A. I am unaware of the actual contracts
 10 between the DSO and their members. It varies by
 11 DSO.
 12 Q. The DSOs tend to have -- strike that.
 13 Dentists affiliated with the DSO tend
 14 to be employees of the DSO?
 15 MS. FINCHER: Object to the form.
 16 A. I'm not aware of the actual
 17 relationship. It varies.
 18 Q. DSOs are not made up of independent
 19 private practice dentists?
 20 MS. FINCHER: Object to the form.
 21 MR. YOON: Objection.
 22 A. I don't think that's an absolute. I
 23 think I may have one or two that fall in the DSO
 24 and have more of a private practice situation,
 25 but for the most part, no.

1 CONFIDENTIAL - RANDALL FOLEY
 2 That is correct.
 3 BY MS. ROSNER:
 4 Q. You mentioned earlier dental service
 5 organizations, or DSOs?
 6 A. Uh-huh.
 7 MS. FINCHER: Randy, you need to
 8 answer yes or no.
 9 A. Yes.
 10 Q. One characteristic of DSOs is they
 11 have common ownership; is that right?
 12 MS. FINCHER: Object to the form.
 13 A. That it's more that they have equity.
 14 It's some type of equity in the practices is how
 15 I would phrase that.
 16 Q. And when you say "equity," you're
 17 referring to some sort of ownership interest in
 18 the practices?
 19 A. Correct.
 20 Q. Typically, DSOs have the ability to
 21 drive purchasing compliance based on a
 22 formulary?
 23 MS. FINCHER: Object to the form.
 24 A. Yes.
 25 Q. This means there's a contractual

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. Can you give me an example of the one
 3 or two that are DSOs with private practice
 4 dentists?
 5 A. They may have been categorized by us
 6 as a DSO -- I really -- you know what? I want
 7 to reverse that. I can't think of any, and I
 8 just want to be absolute on that question that
 9 they're all -- you know, that none of them have
 10 a private dentist-type arm to them, I'm not
 11 really aware.
 12 Q. I just want to make sure I understand
 13 your testimony. Is it that --
 14 Let me just ask the question. DSOs
 15 are not made up as independent private
 16 practices; is that correct?
 17 A. That is correct.
 18 MS. FINCHER: Object to the form.
 19 Q. When faced with a perspective customer
 20 group, you would distinguish whether they were a
 21 buying group or a DSO?
 22 MS. FINCHER: Object to the form.
 23 MR. YOON: Objection.
 24 A. Yes.
 25 Q. You mentioned community health centers

1 CONFIDENTIAL - RANDALL FOLEY
2 earlier today?

3 A. Yes.

4 Q. A community health center is a
5 federally qualified community health group that
6 provides care to the indigent?

7 A. Yes, it could be that or also not
8 federally qualified. It could be a 501(c)(3)
9 type of organization too. It wasn't
10 specifically federally qualified.

11 Q. The defining characteristic of a
12 community health center is that it provides care
13 to the indigent?

14 A. That is correct.

15 Q. These tend to not be for-profit
16 entities?

17 A. That is -- that is correct.

18 Q. Community health centers are often
19 referred to as CHCs?

20 A. Yes.

21 Q. CHCs are not made up of independent
22 private practice dentists?

23 MS. FINCHER: Object to the form.

24 A. I believe so, that they are employed
25 by the community health center.

1 CONFIDENTIAL - RANDALL FOLEY

2 Q. The dentists that work at a CHC are
3 not independent private practitioners?

4 A. Correct.

5 Q. Some CHCs are members of CHC specific
6 buying groups?

7 A. That is correct.

8 Q. And CHC specific buying groups do not
9 include independent private practice dentists
10 among their members?

11 MS. FINCHER: Object to the form.

12 A. That is correct.

13 MS. ROSNER: I just want to pause here
14 for a moment. I think I heard someone beep
15 in on the phone.

16 Did someone just join us?

17 MR. SOLOMON: Yes. Good morning.
18 It's Ronnie Solomon, Federal Trade
19 Commission.

20 MR. McDONALD: While we're paused,
21 Jasmine, can we agree that an objection by
22 one defendant is good for all of them so
23 we're not everybody feeling the need to
24 object.

25 MS. ROSNER: We are agreed.

1 CONFIDENTIAL - RANDALL FOLEY

2 MR. McDONALD: Great. Thank you.

3 BY MS. ROSNER:

4 Q. One more definition for you, Mr.
5 Foley. You have heard the term "group
6 purchasing organization," correct?

7 A. Correct.

8 Q. Group purchasing organizations are
9 sometimes known as GPOs?

10 A. Correct.

11 Q. GPOs in the medical industry are
12 different from GPOs in the dental industry?

13 MS. FINCHER: Object to the form.

14 A. Correct.

15 Q. GPOs in the medical industry typically
16 represent large hospitals and doctor groups?

17 MS. FINCHER: Object to the form.

18 A. And private practice doctors, yes.

19 Q. When used in the dental industry, a
20 GPO often refers to a buying group?

21 MS. FINCHER: Object to form.

22 A. Yes.

23 Q. When used in the dental industry, a
24 GPO often refers to a collection of independent
25 private practice dentists?

1 CONFIDENTIAL - RANDALL FOLEY

2 MS. FINCHER: Object to the form.

3 A. Or a group of community health
4 centers.

5 Q. You would use the term "GPO" to refer
6 to a CH --

7 A. You asked if a buying group --

8 I'm sorry. Can you repeat the
9 question?

10 MS. FINCHER: Randy, let's let her
11 finish her question first and you can answer
12 it.

13 THE WITNESS: I'm sorry.

14 BY MS. ROSNER:

15 Q. When used in dental industry, "GPO"
16 often refers to an independent collection of
17 private practice dentists?

18 MS. FINCHER: Object to the form.

19 A. If "GPO" equates to buying group, yes.

20 Q. Would you ever use the term "GPO" to
21 refer to a CHC buying group?

22 A. Yes.

23 Q. I want to discuss where Schein
24 generally housed buying group customers. I know
25 this changed over time, so maybe we could walk

1 CONFIDENTIAL - RANDALL FOLEY
2 through it step-by-step.

3 Let's start when you first joined
4 Special Markets. What year was that?

5 A. Well, technically, I started at Schein
6 in 2003, and even though I started in our
7 software division, it was -- I actually reported
8 up to Hal Muller, indirectly. So, technically,
9 I was Special Markets, Enterprise Software
10 Division.

11 Q. And at that time, to your knowledge,
12 did Schein do business with buying groups in
13 2003?

14 A. I'm not sure if it was 2003, but it
15 was very early on because I created in the
16 software side buying -- GPO Council Connections
17 and Commonwealth Purchasing Group that were part
18 of Henry Schein, I created software buying group
19 contracts for their members.

20 So I started to work with Hal on that
21 so that they would get discounted software
22 prices similar to them getting discounted
23 supplies through the GPOs or buying groups in
24 the community health center that Special Markets
25 had created.

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2 So that's my first experience with
3 buying groups.

4 Q. So your experience is that Schein did
5 some business with buying groups in 2003?

6 A. Yes, in -- correct.

7 Q. You mentioned two groups Council
8 Connections and Commonwealth?

9 A. Yes.

10 Q. Starting with Council Connections, is
11 that a buying group made up of CHCs?

12 A. Yes.

13 Q. Are there any private practitioner
14 dentists in that buying group?

15 A. Not that I'm aware of.

16 Q. Moving to Commonwealth, is that a
17 buying group made up of CHCs?

18 A. Yes.

19 Q. Are there any private practitioner
20 dentists that are members of Commonwealth?

21 A. Not that I'm aware of.

22 Q. To the extent that you know, which
23 entity within Schein's dental business oversaw
24 buying group customers in the 2003 timeframe?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
2 A. To my knowledge, at that time, it
3 would be Special Markets.

4 Q. Did that ever change?

5 A. Over time?

6 Q. Yes.

7 A. Yes.

8 Q. When was the first time it changed?

9 A. Can you rephrase? I'm -- I think I
10 might have answered this incorrectly.

11 Q. Which entity within Schein's dental
12 business oversaw buying group customers in the
13 2003 timeframe?

14 MS. FINCHER: Object to the form.

15 A. At that time, Special Markets.

16 Okay. Let me re- -- let me answer
17 this differently.

18 MS. FINCHER: Randy, why don't you let
19 her ask a question and then you can answer
20 it.

21 THE WITNESS: Okay.

22 BY MS. ROSNER:

23 Q. Special Markets oversaw buying groups
24 in the 2003 timeframe?

25 A. Yes, but I later discovered that there

1 CONFIDENTIAL - RANDALL FOLEY
2 were other buying groups in the HSD market. I
3 do not know when they started, okay?

4 Q. You're aware that Special Markets had
5 oversight for buying groups in 2003?

6 MS. FINCHER: Object to the form.

7 A. Yes, in the community -- I'm sorry, in
8 the community health center market.

9 Q. Did Special Markets also have
10 oversight of buying groups for private
11 practitioner dentists in 2003?

12 A. I was not --

13 MS. FINCHER: Object to the form.

14 A. I was not part of the special market
15 on the merchandise side at that time. I was not
16 there until 2009. So I do not know. Sorry.
17 I'm trying to get a timeframe here where I was.

18 Q. The timing is very important so I
19 appreciate that.

20 So let's move to 2009 then. Which
21 entity within Dental Schein's business oversaw
22 buying group customers in 2009?

23 MS. FINCHER: Object to the form.

24 A. When I started in 2009 with Special
25 Markets, we had a number of buying groups in

1 CONFIDENTIAL - RANDALL FOLEY
2 place and others were added while they were
3 under my watch at that time.

4 Again, I was unaware that there
5 were -- I was unaware what HSD had as far as
6 buying groups.

7 Q. When you refer to the buying groups
8 that were in Special Markets as of 2009, are you
9 including both CHC buying groups and private
10 practitioner buying groups?

11 A. Yes. Yes.

12 Q. So in 2009, there were private
13 practitioner buying groups in Special Markets?

14 A. Yes.

15 Q. Did Special Markets ever relinquish
16 oversight of buying group customers?

17 MS. FINCHER: Object to the form.

18 A. Not in its entirety.

19 Q. What do you mean by that?

20 A. We maintained certain customers that
21 fit our model better that were buying groups,
22 and then we transferred other buying groups over
23 to HSD at a later date that fit their model
24 better.

25 Q. When you say certain buying groups fit

1 CONFIDENTIAL - RANDALL FOLEY
2 the Special Markets model better, what do you
3 mean?

4 A. We were a team that was very
5 centralized in how we operated and worked with
6 our customers. So if the buying group had a
7 strong central team that we would work with --
8 one customer example would be OrthoSynetics, we
9 would maintain that customer and feel that we
10 were best at maintaining them.

11 In a world in which the buying group
12 was kind of weak in maintaining some kind of
13 centralized control or functionality and needed
14 more care at the office level, we decided that
15 those would be better serviced by HSD. It was
16 on a per basis, you know, an analysis of a
17 customer and as we learned more about the
18 customer.

19 Q. You mentioned a moment ago that you
20 transferred customers from Special Markets to
21 HSD based on where the model fit.

22 When did that occur?

23 MS. FINCHER: Object to form.

24 A. It's hard for me to be specific. I
25 haven't been there in a while, but based on some

1 CONFIDENTIAL - RANDALL FOLEY
2 reviews of e-mails, I can think of one that
3 changed within almost a year of me starting in
4 Special Markets, so about 2010-2011 was one of
5 them.

6 Q. You just provided an example. Is that
7 the Smile Source example?

8 A. Repeat that.

9 Q. You provided an example of a customer
10 that switched from Special Markets to HSD.

11 Are you referring to Smile Source?

12 A. Yes.

13 Q. Was there a process at any point in
14 time to transfer customers from Special Markets
15 to HSD that was not a one-off transfer?

16 MS. FINCHER: Object to the form.

17 A. Not that I'm aware of. It was
18 per-customer basis.

19 Q. Did Special Markets ever decide not to
20 do additional business with buying groups made
21 up of private practitioner dentists?

22 MS. FINCHER: Object to the form.

23 A. No.

24 Q. Is it your testimony that both Special
25 Markets and Henry Schein Dental have buying

1 CONFIDENTIAL - RANDALL FOLEY
2 group customers that are private practice
3 dentists?

4 A. Yes.

5 Q. At no time was there a division
6 between whether Special Markets and Henry Schein
7 Dental would divide up buying group customers?

8 MS. FINCHER: Object to the form.

9 A. I don't understand the question. What
10 do you mean by the word "division"?

11 Q. Was there ever a time when Special
12 Markets and Henry Schein Dental had a plan on
13 how to allocate buying group customers?

14 MS. FINCHER: Object to the form.

15 A. Not really. It was more based on a
16 per-customer basis as to which market -- which
17 division would service them the best.

18 Can I give an example?

19 Q. Please.

20 A. For example, OrthoSynetics, when I
21 left -- now, remember I left in 2016 -- was a
22 buying group, and it remained in Special
23 Markets, but at the same time, a number of other
24 buying groups were transferred over to HSD, as
25 an example one that we felt better served in

1 CONFIDENTIAL - RANDALL FOLEY
2 Special Markets.

3 Q. Did Schein have a policy not to do
4 business with buying groups?

5 A. No.

6 Q. Did Schein have a policy not to do
7 business with certain types of buying groups?

8 MS. FINCHER: Object to the form.

9 A. Not a general policy, no.

10 Q. You mentioned "not a general policy."
11 Was there something else?

12 A. There was no policy not to do business
13 with any buying group. What there was was that
14 each -- each opportunity was analyzed as if it
15 was a good opportunity for the company or not.
16 So that was left up to maybe my discretion or
17 somebody else above me to say, hey, let's move
18 forward with this or let's see if we can build a
19 different type of relationship with them than
20 what they're proposing. An example might be a
21 study group wanting to get together. It really
22 didn't work with our model.

23 Q. How would you determine whether or not
24 a buying group proposed -- strike that.

25 How would you determine whether or not

1 CONFIDENTIAL - RANDALL FOLEY
2 a buying group posed a good opportunity?

3 MS. FINCHER: Object to the form.

4 Are you asking him Special Markets

5 or...

6 Q. Do you understand the question?

7 A. Go ahead and rephrase it now. How do
8 I?

9 Q. How did you determine whether a buying
10 group posed a good opportunity to do business?

11 MS. FINCHER: Object to the form.

12 A. If it was able to help us maintain or
13 build a strong relationship with the end-user so
14 that we could provide what we call our wheel of
15 services to a customer, and if it was just
16 solely based on price and we would not be given
17 access, almost acting like a procurement company
18 or something like that, then we really didn't
19 want to pursue it.

20 Q. What would be some of the
21 characteristics that would allow you to maintain
22 or build a strong relationship with the
23 end-user?

24 A. That -- the buying group itself would
25 ask us for assistance in providing literature

1 CONFIDENTIAL - RANDALL FOLEY
2 and information to hand out to the users as to
3 the benefits of, you know, using that buying
4 group. We actually co-created certain material
5 like with Dental Gator, for an example, and
6 would allow us to promote our software to the
7 end-user, again, all services, and would allow
8 our FSCs to go in and work with the end-user.

9 Q. Anything else?

10 A. No.

11 Q. Would a buying group have to offer
12 each of these three things you mentioned in
13 order for them to be a good opportunity?

14 And let me list the three things that
15 you mentioned: Assistance in providing
16 literature and information; promoting Schein
17 software; and allowing the FSCs to go into the
18 members.

19 MS. FINCHER: Object to the form.

20 A. No, that was not a requirement of any
21 of those three.

22 Q. Do they have to provide -- did a
23 buying group have to provide one of these three
24 to be a good opportunity?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. I would say that, again, it's -- they
3 had to provide us to have access to help
4 introduce whatever we offered to that end-user,
5 whether it was one of those three or it more
6 than those three. Could be credit card
7 processing or electronic claims processing.

8 Q. Is it your testimony that, as long as
9 a buying group allowed access to its members, it
10 was a good opportunity for Schein to do
11 business?

12 MS. FINCHER: Object to the form.

13 A. For the most part, yes.

14 Q. How do you measure access to
15 end-users?

16 MS. FINCHER: Object to the form.

17 A. That, you know, there are -- there
18 was -- that the company, the buying group, would
19 allow a field sales consultant to go in and
20 promote whatever the field sales person wanted
21 to promote without the buying group kind of
22 control like, well, don't show them this, don't
23 show them that type of thing.

24 Q. When a buying group opportunity arose,
25 how did you probe whether or not Schein was

1 CONFIDENTIAL - RANDALL FOLEY
2 going to have the access that would allow that
3 relationship to go forward?

4 MS. FINCHER: Object to the form.

5 A. We would -- what I would do is to see
6 that it's nothing more -- that the actual
7 capabilities of the buying group were one where
8 our management teams could work together in
9 promoting Schein and help build their
10 businesses.

11 Where it may have been somebody that
12 had very limited capabilities and was simply
13 setting up on price, that would red-signal to me
14 that they're only here trying to set up a -- a
15 price-only type buying group, period, nothing
16 more. And a perfect example would be a study
17 group of dentists.

18 Q. So you mentioned the capabilities of
19 buying groups. What do you mean by the
20 capabilities?

21 A. That they have a defined -- not a C
22 suite, but a defined corporate-type approach to
23 their members, that they're actually providing
24 services beyond Schein's discounted pricing,
25 beyond Schein's services, very similar to what a

1 CONFIDENTIAL - RANDALL FOLEY
2 DSO does to its member.

3 They provide a lot of management
4 services, and the more that they provided the
5 better it was for us as a company.

6 Q. You mentioned earlier that buying
7 groups would be a good opportunity for Schein as
8 long as they provided access.

9 Are you now also adding that buying
10 groups needed to provide services to their
11 members?

12 MS. FINCHER: Object to the form.

13 Mischaracterizes testimony.

14 Go ahead.

15 A. Yes, I would -- I would say that's
16 accurate.

17 Q. So, in order for a buying group to be
18 a good opportunity, they would need to provide
19 two things: Access to members and additional
20 services for members?

21 A. Amongst --

22 I'm sorry.

23 MS. FINCHER: Object to the form.

24 Go ahead.

25 A. Not just those two items or one or the

1 CONFIDENTIAL - RANDALL FOLEY
2 other, but that's part of the gist of it. It
3 was a very general thing. There was no written
4 rules. No, you know, hey, this is what a buying
5 group is, this is what that is, that is what we
6 do. It was just trying to feel them out if it
7 wasn't just based on price and there was, you
8 know, it limited our capabilities, you know, to
9 drive compliance with the customer and the
10 end-user.

11 Q. Other than access and services to
12 members, are there other characteristics or
13 qualities that would make a buying group a good
14 opportunity for Schein?

15 MS. FINCHER: Object to the form.

16 A. Yes.

17 Q. What would those be?

18 A. That the buying group could also offer
19 help with them in their HR, their marketing and
20 other capabilities. Because anything that would
21 help the private practice grow would -- would in
22 turn hopefully bring in higher revenue for the
23 doctor, higher revenue for us in supply spend.

24 Q. Anything else?

25 A. No.

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2 Q. Anything else that Schein would look
3 to when determining whether or not a buying
4 group was a good opportunity for business?

5 MS. FINCHER: Object to the form.

6 A. Not that I can think of.

7 MS. ROSNER: We've been going for
8 about 45 minutes. Are you okay to continue?

9 THE WITNESS: I'm fine.

10 Are you fine?

11 MS. FINCHER: Yes.

12 BY MS. ROSNER:

13 Q. I want to shift gears and talk about
14 Smile Source.

15 A. Okay.

16 Q. You're familiar with Smile Source?

17 A. Yes.

18 Q. Smile Source is a buying group with
19 headquarters in Texas?

20 A. Correct.

21 Q. And Smile Source's members are
22 independent private practice dentists?

23 A. From what I understand.

24 Q. As a shorthand, sometimes you refer to
25 Smile Source as "SS"?

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2 A. Yes.

3 Q. Smile Source started as a Special
4 Markets customer?

5 A. Yes, under my watch.

6 Q. Smile Source was a very profitable
7 customer when it belonged to Special Markets?

8 A. Yes.

9 Q. Smile Source was growing its member
10 base when it belonged to Special Markets?

11 A. Yes.

12 Q. Smile Source was adding larger
13 practices to its member base?

14 MS. FINCHER: Object to the form.

15 A. At the time that I was under it, yes.
16 They had just added a large practice in Utah,
17 but I can't say that every one of them were
18 large, okay?

19 Q. Did Smile Source have a model of
20 targeting larger dental practices?

21 MS. FINCHER: Object to the form.

22 A. From what I remember, they were --
23 they were after -- I don't want to categorize
24 dentists, but higher-end type dentists, okay,
25 more sophisticated type clients.

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2 Q. The higher end dentists that you're
3 referring to, did they tend to have larger
4 practices?

5 A. They tend to have higher revenue and
6 use more technology, okay?

7 Q. You thought Smile Source had a great
8 business plan for growth?

9 A. Yes.

10 Q. Smile Source targeted the best
11 practices in an area?

12 MS. FINCHER: Object to the form.

13 A. Yes; it tried.

14 Q. Smile Source's members are large
15 private practices?

16 MS. FINCHER: Object to form.

17 A. I'm unfamiliar with if they're
18 considered large private practices.

19 Q. Smile Source's members had an average
20 spend of \$1.7 million annually?

21 MS. FINCHER: Object to the form.

22 A. Say that -- Smile Source practice --
23 No, not that I'm aware of. I was
24 only, at the time that I left, the whole account
25 with all users was doing about \$900,000, almost

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2 a million in total supply spend. If that's what
3 the question is, supply spend? Or what their
4 revenue is as a practice? What they bill out?

5 Why don't you rephrase that question
6 instead of me guessing?

7 Q. I'll rephrase.

8 Smile Source's members had average
9 revenues of \$1.7 million?

10 MS. FINCHER: Object to the form.

11 A. I am not familiar with that. No, I
12 don't know. I don't know is the answer. Sorry.

13 Q. You have never been told that Smile
14 Source's members averaged \$1.7 million?

15 MS. FINCHER: Object to the form.

16 Asked and answered.

17 A. Not that I remember.

18 Q. If I showed you a document, might it
19 refresh your recollection?

20 MS. FINCHER: Object to the form.

21 A. I'm sorry?

22 Q. If I showed you a document, might it
23 refresh your recollection?

24 A. Sure.

25 MS. FINCHER: Object to the form.

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2 A. Yes.

3 I'm sorry.

4 Q. I'm handing you a document that has
5 been premarked as CX2150.

6 (Exhibit CX2150-001 through 11, a
7 document bearing Bates Nos. Henry
8 Schein-000130321 through 331, marked for
9 identification, as of this date.)

10 MS. FINCHER: Jasmine, can you read
11 into the record the Bates label on that?

12 MS. ROSNER: This is a multi-page
13 document that begins with Henry
14 Schein-000130321.

15 BY MS. ROSNER:

16 Q. If you could take --

17 MS. FINCHER: Sorry. Jasmine, just to
18 be clear, this appears to be an e-mail along
19 with multiple pages of an attachment,
20 correct?

21 MS. ROSNER: Correct.

22 MS. FINCHER: For the record.

23 MS. ROSNER: At this time, I'm not
24 trying to establish anything other than
25 allow him to refresh his recollection.

1 CONFIDENTIAL - RANDALL FOLEY
2 BY MS. ROSNER:

3 Q. You can take a look at the e-mail.
4 The first e-mail is from you. In particular, I
5 would reference you to the second bullet at the
6 e-mail at the top of the page, and then once
7 you've had a chance to review, I'll reask you my
8 question.

9 MS. FINCHER: Go ahead and take your
10 time to read the e-mail, Randy, and she'll
11 ask you a question.

12 (Document review.)

13 A. Okay.

14 Q. I previously asked whether or not
15 Smile Source's members had an average of \$1.7
16 million in revenues.

17 After reviewing this document, is your
18 recollection refreshed?

19 A. Yes.

20 MS. FINCHER: Object to the form.

21 A. Yes.

22 Q. I can take the document back. Thank
23 you.

24 Smile Source targeted the best
25 practices in an area, correct?

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2 MS. FINCHER: Object to the form.

3 A. That was their goal from what I
4 understood.

5 Q. And Smile Source members averaged \$1.7
6 million in revenues?

7 A. Yes.

8 Q. Smile Source brought Schein new
9 customers, correct?

10 MS. FINCHER: Object to the form.

11 A. Yes.

12 Q. Through Smile Source, Schein gained
13 customers that had previously been with other
14 distributors?

15 A. On occasion, yes.

16 Q. Through Smile Source, Schein took
17 customers from Patterson?

18 MS. FINCHER: Object to the form.

19 A. I know of one, yes.

20 Q. Through Smile Source, Schein took
21 customers from Benco?

22 A. I'm not aware. I don't know at this
23 time. I don't remember.

24 Q. Smile Source was attempting to bring
25 customers from Benco to Schein, correct?

1 CONFIDENTIAL - RANDALL FOLEY

2 MS. FINCHER: Object to the form.

3 A. It didn't matter what -- that question
4 sounds -- sorry.

5 It wasn't a goal that they take them
6 from Benco. It was a goal that they get it from
7 any -- whoever the dentist was using, whether it
8 be Burkhart, Atlanta Dental, whatever.

9 Q. Smile Source's goal was to bring
10 customers to Schein, correct?

11 A. Correct.

12 MS. FINCHER: Object to the form.

13 A. To their -- to their program, which
14 would then -- which would bring them to Schein.

15 Q. As part of that goal, Smile Source
16 would bring customers from Benco to Schein?

17 MS. FINCHER: Object to the form.

18 A. Could have.

19 Q. Smile Source enabled Schein to get
20 more volume from its existing customers,
21 correct?

22 MS. FINCHER: Object to the form.

23 A. They stated they could do that.

24 Q. Did they do that?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. I'm unaware. I did not track the
3 numbers to see if they were successful at that.

4 Q. Some existing Schein customers would
5 split their purchases among multiple
6 distributors or direct selling manufacturers?

7 A. Yes.

8 Q. And Smile Source could eliminate the
9 cherrypicking from other distributors and direct
10 selling manufacturers?

11 MS. FINCHER: Object to the form.

12 A. They stated that they could do that.

13 Q. Smile Source promoted Schein's
14 products and services?

15 A. Yes.

16 Q. Smile Source held monthly meetings for
17 members where Schein could introduce products
18 and equipment?

19 MS. FINCHER: Object to the form.

20 A. I am not sure of that specifically. I
21 don't remember. I don't recall. I do know that
22 they had a national sales meeting for their
23 members and we were invited to it, but I don't
24 know on a regular basis did they, you know, go
25 into each of their offices and promote Schein.

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 2 Q. If I handed you a document, might it
 3 refresh your recollection?
 4 MS. FINCHER: Object to the form.
 5 A. Sure. Yes.
 6 Q. I'm going to hand you back the same
 7 document that you looked at, which is CX2150.
 8 A. Okay.
 9 Q. It begins with Henry Schein-000130321.
 10 I'll reference you to the fourth
 11 bullet in your first e-mail on that page, but
 12 feel free to take your time with this document
 13 to refresh your recollection, and once you have
 14 had your recollection refreshed, just let me
 15 know.
 16 (Document review.)
 17 A. Okay. I'm all set.
 18 Q. I can take that document.
 19 A. Okay.
 20 Q. Thank you.
 21 Smile Source held monthly meetings for
 22 members where Schein could introduce products
 23 and equipment?
 24 MS. FINCHER: Object to the form.
 25 A. They stated that they would hold

1 CONFIDENTIAL - RANDALL FOLEY
 2 consultants.
 3 Q. In 2010, Special Markets started to
 4 get pressure to drop the Smile Source account?
 5 MS. FINCHER: Object to the form.
 6 A. No.
 7 Q. In 2010, Special Markets didn't get
 8 pressure to drop the Smile Source account?
 9 A. No, not that I'm aware of.
 10 When you say did they get pressure
 11 from -- to eliminate the customer?
 12 MS. FINCHER: Do you need her to
 13 rephrase the question, Randy?
 14 THE WITNESS: Yes, please.
 15 BY MS. ROSNER:
 16 Q. What does it mean to drop an account?
 17 MS. FINCHER: Object to the form.
 18 A. Well, an account in itself could mean
 19 an individual dental practice. A group would
 20 mean to -- you know, to drop a group would be a
 21 big group practice.
 22 Q. What does it mean to drop?
 23 A. That would be to --
 24 MS. FINCHER: Object to the form.
 25 A. I'm sorry.

1 CONFIDENTIAL - RANDALL FOLEY
 2 monthly meetings. I'm not sure if they took
 3 place.
 4 Q. You liked how Smile Source could
 5 promote high-tech to its customers?
 6 A. Yes.
 7 Q. And Smile Source's customers or
 8 members would make purchases based on Smile
 9 Source's advice and support?
 10 MS. FINCHER: Object to the form.
 11 A. From what I understand, yes.
 12 Q. Smile Source was a great buying group
 13 when they were with you?
 14 A. Yes.
 15 MS. FINCHER: Object to the form.
 16 A. Yes. My opinion, yes.
 17 Q. Special Markets got push-back from the
 18 Private Division regarding Smile Source?
 19 MS. FINCHER: Object to the form.
 20 A. We got some push-back.
 21 Q. You got push-back from HSD regarding
 22 Smile Source?
 23 MS. FINCHER: Object to the form.
 24 A. There was some push-back that came
 25 from HSD members, particularly field sales

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 2 MS. FINCHER: Go ahead.
 3 Jasmine, that was your question. Do
 4 you want to ask him another question?
 5 BY MS. ROSNER:
 6 Q. Do you understand my question?
 7 A. To drop would be to close it down or
 8 eliminate it.
 9 Q. In 2010, Special Markets got pressure
 10 to drop the Smile Source account?
 11 MS. FINCHER: Object to the form.
 12 A. From what I understand, we got -- we
 13 had an FSC that had concerns about it, but
 14 there -- I didn't -- there was not pressure just
 15 to drop the account.
 16 Q. I'm going to hand you a document
 17 that's been premarked as CX2112. It begins with
 18 the Bates Henry Schein-001563754.
 19 (Exhibit CX2112-001, a document
 20 bearing Bates Nos. Henry Schein-001563754,
 21 marked for identification, as of this date.)
 22 BY MS. ROSNER:
 23 Q. Take a moment to review the document,
 24 and once you have a moment to review the
 25 document, just let me know.

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2 (Document review.)

3 A. Okay.

4 Q. You've had a moment to review CX2112?

5 A. Yes.

6 Q. This is an e-mail at the top drafted
7 by you on September 14, 2010?

8 A. Yes.

9 Q. You drafted CX2112 as part of your
10 job?

11 MS. FINCHER: Object to the form.

12 A. I'm sorry. Yes, I got it. Yes.

13 Q. It's part of your job to communicate
14 with Hal Muller about buying groups like Smile
15 Source?

16 A. About --

17 MS. FINCHER: Object to the form.

18 A. About buying groups and any other
19 customer, correct.

20 Q. You have knowledge of the contents of
21 CX2112?

22 MS. FINCHER: Object to the form.

23 A. I really don't remember this at all,
24 having written this, but I understand it.

25 Q. At the time that you wrote it, you had

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2 knowledge of the contents of CX2112?

3 MS. FINCHER: Object to the form.

4 A. Yes.

5 Q. And you wrote the e-mail at the top of
6 CX2112 near or at the time of the events that
7 occurred inside the e-mail?

8 A. Yes.

9 Q. You drafted this e-mail and kept it in
10 the course of regularly conducted business at
11 Schein?

12 A. Yes.

13 Q. CX2112 is a true and correct copy of
14 your e-mail correspondence?

15 MS. FINCHER: Object to the form.

16 A. Yes.

17 Q. You see in Hal Muller's e-mail below
18 your e-mail, he says, "The pressure is really on
19 to drop this account as Tim feels it is a buying
20 group, and even though they add value and charge
21 a percentage of revenue, I am losing the
22 battle."

23 Did I read that correctly?

24 A. Yes.

25 Q. So Special Markets started to get

1 CONFIDENTIAL - RANDALL FOLEY
2 pressure to drop the Smile Source account?

3 MS. FINCHER: Object to the form.

4 A. Based on this e-mail, yes.

5 Q. Do you have any reason to dispute Hal
6 Muller's statements that the pressure is really
7 on to drop this account?

8 MS. FINCHER: Object to the form.

9 A. If that's what he says, I would ask
10 him, but I see what he's saying.

11 Q. Do you agree with what he's saying?

12 MR. LAVERY: Objection.

13 A. I -- I really don't know how to -- I
14 feel that, yes, that he is getting pressure to
15 drop it. He is stating that, and I would
16 believe Hal Muller.

17 Q. Tim Sullivan at HSD considered Smile
18 Source a buying group?

19 MS. FINCHER: Object to the form.

20 A. According to this, yes.

21 Q. You can put that aside.

22 Okay. HSD personnel were against
23 Special Markets' relationship with Smile Source?

24 MS. FINCHER: Object to the form.

25 A. I would not, as a generalization that

1 CONFIDENTIAL - RANDALL FOLEY
2 all HSD personnel, I would say no.

3 Q. Is there someone within HSD that you
4 refer to by the initials JC?

5 A. Yes.

6 Q. Would that be Joe Cavaretta?

7 A. Okay. Sorry, there's John Chatham and
8 Joe Cavaretta, so I'm not sure which one. So I
9 would have to say no. That would be an
10 abbreviation for either one of them, John
11 Chatham or Joe Cavaretta, and they're both with
12 HSD.

13 Q. Was John Chatham against Special
14 Markets' relationship with Smile Source?

15 MS. FINCHER: Object to the form.

16 A. No, I actually worked with him in
17 transferring the account over to HSD, and he was
18 part of the team when I transferred them over to
19 HSD.

20 Q. Was Joe Cavaretta against Special
21 Markets' relationship with Smile Source?

22 MS. FINCHER: Object to form.

23 A. Not that I'm aware of.

24 Q. I'm handing you a document that has
25 been premarked as CX2099. It begins with Bates

1 CONFIDENTIAL - RANDALL FOLEY
2 label Henry Schein-001517611. Please take a
3 moment to review.

4 (Exhibit CX2099-001, a document
5 bearing Bates Nos. Henry Schein-001517611,
6 marked for identification, as of this date.)

7 (Document review.)

8 THE WITNESS: Okay.

9 BY MS. ROSNER:

10 Q. You've had an opportunity to review
11 CX2099?

12 A. Yes.

13 Q. CX2099 is an e-mail sent by you on
14 June 21, 2016?

15 MS. FINCHER: Object to the form.

16 A. That is correct.

17 Q. You drafted this e-mail as part of
18 your job?

19 A. Yes.

20 MS. FINCHER: And Jasmine, just for
21 clarity, you're talking about the e-mail at
22 the top of the chain?

23 MS. ROSNER: Correct.

24 THE WITNESS: Yes.

25 BY MS. ROSNER:

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2 Q. It's part of your job to communicate
3 with Hal Muller, correct?

4 A. Yes.

5 Q. You have knowledge of the contents of
6 this e-mail, correct?

7 MS. FINCHER: Object to the form.

8 A. Yes.

9 Q. You drafted this e-mail at or near the
10 time of the events that were being described by
11 you and Hal in this e-mail exchange?

12 A. Yes.

13 Q. You drafted CX2099 and kept it in the
14 ordinary course of regularly conducted business
15 at Schein?

16 MS. FINCHER: Object to the form.

17 A. Yes.

18 Q. CX2099 is a true and correct copy of
19 your business record?

20 MS. FINCHER: Object to the form.

21 A. Yes.

22 Q. In the e-mail, Hal Muller starts by
23 saying, "I can't stand JC." And you respond,
24 "He's most likely against this, as he was with
25 Smile Source."

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2 Did I read that correctly?

3 MS. FINCHER: Object to the form.

4 A. Yes.

5 Q. You're saying that JC is against Smile
6 Source?

7 MS. FINCHER: Object to the form.

8 A. Yes.

9 Q. Does this refresh your recollection as
10 to who JC is?

11 MS. FINCHER: Object to the form.

12 A. No.

13 Q. It would be either John Chatham or Joe
14 Cavaretta?

15 A. Yes.

16 Q. It wouldn't be anybody else?

17 A. That I know of, correct.

18 Q. And both John Chatham and Joe
19 Cavaretta work in HSD?

20 A. Yes.

21 Q. You can put that aside.

22 MS. FINCHER: Jasmine, I just note
23 we've been going for an hour now, so
24 whenever might be a good time for a bathroom
25 break, let us know, please.

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2 MS. ROSNER: Is it okay if we go
3 through a few more questions and then we'll
4 take a break?

5 THE WITNESS: Okay.

6 MS. FINCHER: Do you need a break,
7 Randy, or --

8 THE WITNESS: I can do a few more.

9 BY MS. ROSNER:

10 Q. HSD was asking Special Markets to
11 dismantle the relationship with Smile Source?

12 MS. FINCHER: Object to the form.

13 A. They were complaining about the
14 relationship with Smile Source, but they may
15 have asked to dismantle it. But Hal and I were
16 working in how best to keep it.

17 Q. Do you recall HSD asking Special
18 Markets to dismantle the relationship with Smile
19 Source?

20 A. No.

21 MS. FINCHER: Object to the form.

22 Q. I'm going to hand you a document
23 that's been previously marked as Exhibit 2158.
24 It starts with Bates number Henry
25 Schein-00683482.

1 CONFIDENTIAL - RANDALL FOLEY
2 Please take a moment to review CX2158
3 and let me know when you're ready.

4 (Exhibit CX2158-001, a document
5 bearing Bates Nos. Henry Schein-00683482,
6 marked for identification, as of this date.)

7 (Document review.)

8 THE WITNESS: Okay.

9 BY MS. ROSNER:

10 Q. You had an opportunity to review
11 CX2158?

12 A. Yes.

13 Q. CX2158 is an e-mail string. At the
14 top of the page is an e-mail from you dated
15 October 5, 2010. Do you see that?

16 A. Yes.

17 Q. You drafted this e-mail as part of
18 your job?

19 A. Yes.

20 Q. It's part of your job to communicate
21 about buying groups and dental conferences?

22 MS. FINCHER: Object to the form.

23 A. Yes.

24 Q. You have knowledge of the contents of
25 CX2158?

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2 A. Yes.

3 Q. You drafted CX2158 at or near the time
4 of the events described therein?

5 A. Yes.

6 Q. You drafted this e-mail in CX2158 and
7 kept it in the course of your regularly
8 conducted business?

9 A. Yes.

10 Q. CX2158 is a true and accurate copy of
11 the e-mail that you drafted?

12 MS. FINCHER: Object to the form.

13 A. Yes.

14 Q. In the e-mail you say, "This doctor is
15 from Smile Source, the buying group that HSD is
16 asking us to dismantle."

17 Did I read that correctly?

18 A. Yes.

19 Q. So HSD was asking you to dismantle
20 Smile Source?

21 A. Based --

22 MS. FINCHER: Object to the form.

23 A. Based on this e-mail, yes.

24 Q. Do you have any reason to dispute the
25 veracity of what you wrote at this time?

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2 MS. FINCHER: Object to the form.

3 A. No.

4 Q. You can put that aside.

5 Special Markets --

6 THE WITNESS: Could we take a break
7 now?

8 MS. FINCHER: You need a break? Yeah.

9 MS. ROSNER: We can take a break.

10 Sure.

11 Off the record.

12 THE VIDEOGRAPHER: The time is 9:11
13 a.m. We're off the record.

14 (Recess.)

15 THE VIDEOGRAPHER: The time is 9:21
16 a.m. We're on the record.

17 BY MS. ROSNER:

18 Q. Mr. Foley, you questioned why Tim
19 Sullivan would want to shut down a \$900,000
20 account referring to Smile Source, correct?

21 MS. FINCHER: Object to the not form.

22 A. Can you rephrase that? I wrote could
23 you request -- I didn't hear you.

24 Q. Mr. Foley, you questioned why Tim
25 Sullivan would want to shut down a \$900,000

1 CONFIDENTIAL - RANDALL FOLEY

2 account, referring to Smile Source, correct?

3 MS. FINCHER: Object to the form.

4 A. Not that I remember.

5 Q. You don't remember asking why Tim
6 Sullivan wanted to shut down a \$900,000 account?

7 MS. FINCHER: Object to the form.

8 A. No, not that I remember.

9 Q. I'm handing you a document that has
10 been Bates -- excuse me, I'm handing you a
11 document that was previously marked as CX2157.
12 It bears the Bates label Henry Schein-1 --
13 excuse me, Smile Source 001563733.

14 Please take a moment to review CX2157
15 and let me know when you're done.

16 (Exhibit CX2157-001 through 004, a
17 document bearing Bates Nos. Henry
18 Schein-001563733 through 736, marked for
19 identification, as of this date.)

20 MS. FINCHER: Go ahead and take your
21 time to read, and just to help you, Randy,
22 the start of the e-mail is on the back page
23 and you can read up.

24 (Document review.)

25 THE WITNESS: Okay.

1 CONFIDENTIAL - RANDALL FOLEY
2 BY MS. ROSNER:

3 Q. Mr. Foley, you've had an opportunity
4 to review CX2157?

5 A. Yes.

6 Q. At the top of CX2157 is an e-mail from
7 you dated September 8, 2010.

8 Do you see that?

9 A. Yes.

10 Q. You drafted this e-mail as part of
11 your job?

12 A. Yes.

13 Q. It's part of your job to communicate
14 with those at Schein regarding buying groups
15 like Smile Source?

16 A. Yes.

17 Q. You have knowledge of the contents of
18 CX2157?

19 MS. FINCHER: Object to the form.

20 A. Yes.

21 Q. You drafted the e-mail in CX2157 at or
22 near the time of the events described therein?

23 A. Yes.

24 Q. You drafted the e-mail in CX2157 and
25 kept it in the course of Schein's regularly

1 CONFIDENTIAL - RANDALL FOLEY
2 conducted business?

3 A. Yes.

4 MS. FINCHER: Object to the form.

5 THE WITNESS: I'm sorry.

6 MS. FINCHER: Jasmine, just for
7 clarity, are you talking only about the
8 e-mail at the top of the chain? There are a
9 few others that he drafted within the chain
10 as well.

11 BY MS. ROSNER:

12 Q. All of the e-mails in CX2157 you
13 drafted and kept in the course of Schein's
14 regularly conducted business?

15 MS. FINCHER: Object to the form.

16 A. I'm sorry. I was reading this. Can
17 you repeat that?

18 Q. All of the e-mails that are authored
19 by you in CX2157 were drafted and kept in the
20 course of Schein's ordinary conducted business?

21 A. Yes.

22 Q. CX2157 is a true and correct copy of
23 your e-mail correspondence?

24 MS. FINCHER: Object to the form.

25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY

2 Q. In the top e-mail from you, the last
3 sentence questions, "Does Tim Sullivan want us
4 to shut down this \$900K account?"

5 Did I read that correctly?

6 A. Yes.

7 Q. And the \$900K account that you're
8 referring to is Smile Source; is that right?

9 A. Yes.

10 Q. You were asking whether or not Tim
11 Sullivan wanted Special Markets to shut down the
12 Smile Source account?

13 MS. FINCHER: Object to the form.

14 A. Not really.

15 Q. What was --

16 A. It was a sarcastic comment. Would he
17 really want us to shut down a \$9,000 [sic]
18 account, along those lines. It was not a
19 request does he want us to shut this down.

20 Q. Why would you ask a sarcastic question
21 about whether Tim Sullivan would want you to
22 shut down --

23 A. Well, here we --

24 Q. -- a \$900,000 account?

25 MS. FINCHER: Object to the form.

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2 Go ahead.

3 A. Because here we have one field sales
4 consultant or one group in Miami concerned that
5 this may be encroaching upon their business, and
6 here I'm responding in parts of this e-mail that
7 there are more -- and Hal is responding that
8 they are not just a purchasing club, as referred
9 to by Mike, but instead, they are along the
10 lines of OrthSynetics and that this is a
11 legitimate buying group endorsed by Special
12 Markets, supported by Special Markets, and that
13 we should continue it. And my line is kind of
14 would we really ever shut down a \$9,000 [sic]
15 account? That would be stupid.

16 Q. I just want to clarify a couple of
17 things that you mentioned there. You're
18 referring to a buying group.

19 The buying group that you're referring
20 to is Smile Source?

21 A. That is correct.

22 Q. And it was a \$900,000 account,
23 correct?

24 A. At this time, they must have been
25 doing \$900,000 a year with us.

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 2 Q. And you're saying that Schein wouldn't
 3 shut down a \$900,000 account?
 4 MS. FINCHER: Object to the form.
 5 A. I'm saying, yes, that would be
 6 foolish.
 7 Q. You can put this aside.
 8 A. And we didn't.
 9 Q. HSD wanted to put the kibosh on Smile
 10 Source?
 11 MS. FINCHER: Object to the form.
 12 A. Not that I'm aware of.
 13 Q. You never said that HSD wanted to put
 14 the kibosh on Smile Source?
 15 MS. FINCHER: Object to the form.
 16 A. Not that I remember.
 17 Q. I'm handing you a document that has
 18 been premarked as CX2154. The first page bears
 19 the Bates label Henry Schein-001563773.
 20 Please take a moment to review CX2154
 21 and let me know once you have finished.
 22 (Exhibit CX2156-001 through 007, a
 23 document bearing Bates Nos. Henry
 24 Schein-001563773 through 779, marked for
 25 identification, as of this date.)

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Yes.
 3 Q. You have knowledge of the contents of
 4 CX2154?
 5 MS. FINCHER: Object to the form.
 6 A. Yes.
 7 Q. You drafted the e-mail in CX2154 at or
 8 near the time of the events therein?
 9 A. Yes.
 10 Q. You drafted the e-mail in CX2154 and
 11 kept it in the course of regularly conducted
 12 business at Schein?
 13 A. Yes.
 14 Q. CX2154 is a true and correct copy of
 15 your e-mail correspondence?
 16 MS. FINCHER: Object to the form.
 17 A. Yes.
 18 Q. You begin the e-mail in CX2154 by
 19 saying, "We only need HSD to be there as it is
 20 HSD that wants to put the kibosh on this."
 21 Did I read that correctly?
 22 A. Yes.
 23 Q. You're referring to a meeting with
 24 Smile Source, correct?
 25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
 2 MS. FINCHER: Same with this e-mail,
 3 Randy. Some of these can get long, so if
 4 you start at the back, that's the start of
 5 the chain and then read up.
 6 (Document review.)
 7 THE WITNESS: Okay.
 8 BY MS. ROSNER:
 9 Q. You've had an opportunity to review
 10 CX2154?
 11 A. Yes.
 12 Q. This is a multi-page e-mail chain.
 13 The only e-mail in this chain written by you is
 14 the one at the very top of the page. You see
 15 that?
 16 A. Yes.
 17 Q. And it's dated September 21, 2010,
 18 correct?
 19 A. Yes.
 20 Q. You drafted the e-mail in CX2154 as
 21 part of your job?
 22 A. Yes.
 23 Q. It's part of your job to communicate
 24 about buying groups such as Smile Source,
 25 correct?

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 2 A. Yes, we're trying to set up a meeting
 3 between HSD, Smile Source, and Hal and myself.
 4 Q. And you're saying that you only need
 5 HSD to attend the Smile Source meeting, as HSD
 6 wants to put the kibosh on Smile Source,
 7 correct?
 8 MS. FINCHER: Object to the form.
 9 A. I'm saying that I want HSD to be at
 10 that meeting because they're believing that this
 11 is purely a buying group that sells on price
 12 only, and I wanted them to meet with HSD to show
 13 their -- what all they have to offer their
 14 customers.
 15 Q. And it was your understanding at the
 16 time that HSD wanted to put the kibosh on Smile
 17 Source?
 18 MS. FINCHER: Object to the form.
 19 A. I don't know if that's the correct
 20 terminology to use, that they wanted to shut it
 21 down, or they were objecting to how they were
 22 doing -- doing their business and needed more
 23 information.
 24 Q. That's the terminology you used, to
 25 put the kibosh on Smile Source?

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2 MS. FINCHER: Object to the form.

3 A. Yeah, you know, eight years ago, I,
4 you know, don't know exactly if that's the best
5 term, but basically they -- they had concerns
6 that this was just a buying group focused on
7 price and were questioning it.

8 So we wanted to set up a meeting with
9 HSD to sell, and this is the CEO of Smile Source
10 wanting to meet with Tim Sullivan and others to
11 explain their program. A meeting did eventually
12 take place here in New York City.

13 Q. And it was your understanding eight
14 years ago when you wrote this e-mail that HSD
15 wanted to put the kibosh on Schein working with
16 Smile Source?

17 MS. FINCHER: Object to the form.

18 Asked and answered.

19 You can go ahead.

20 A. That's what this says, correct.

21 Q. Do you have any reason to dispute the
22 veracity of what this says?

23 MS. FINCHER: Object to the form.

24 A. Yea, I think it's more of a general
25 comment to one of my employees like, look, I

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2 guess they don't like doing business with this
3 particular Smile Source because they think it's
4 fee only, and we need to help sell it and I
5 don't need Rick, who wants to come to New York,
6 to help sell it.

7 Q. Was it inaccurate to say at the time
8 you understood that HSD wanted to put the kibosh
9 on Smile Source?

10 A. Yes. Uh-huh.

11 Q. How would you have amended this?

12 A. I'm sorry?

13 MS. FINCHER: Object to the form.

14 A. How would I have amended this?

15 Q. How would you have amended the
16 statement, "HSD wants to put the kibosh on
17 this"?

18 MS. FINCHER: Object not form.

19 Jasmine, are you asking him sitting
20 here today what's inaccurate about it? Can
21 you clarify?

22 Q. At the time that you wrote CX2154, was
23 it your understanding that HSD wanted to put the
24 kibosh on Smile Source?

25 MS. FINCHER: Object to the form.

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2 Asked and answered.

3 A. It was my understanding that they were
4 struggling with their business model and
5 disputing it.

6 Q. When you say they were struggling with
7 their business model?

8 A. I'm sorry, HSD was -- HSD was
9 disputing their business model and questioning
10 it.

11 Q. HSD was disputing Smile Source's
12 business model and questioning Smile Source's
13 business model?

14 A. Correct. And also, Hal was
15 questioning are they just becoming a buying
16 group focused on price only. He wanted to meet
17 with them, too, to see what their business model
18 was. This was the first meeting that Hal would
19 actually have with them.

20 Q. We can put this one aside.

21 I want to go back to something you
22 mentioned earlier when we were talking about
23 your sarcastic question about whether or not Tim
24 Sullivan would want to shut down this \$900,000
25 account.

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2 You mentioned that was a sarcastic
3 comment because that would just be foolish?

4 MS. FINCHER: Object to the form.

5 Mischaracterizes the testimony.

6 Go ahead.

7 Q. Do you recall saying that?

8 MS. FINCHER: Object to the form.

9 Go ahead.

10 A. I don't recall. I recall it by
11 reading in the email that I made that comment.

12 Q. Why would it be foolish for Schein to
13 shut down a \$900,000 account?

14 MS. FINCHER: Object to the form.

15 A. Well, it's our goal to sell to as many
16 dentists and to as many organizations that we
17 possibly can. They have proven -- at that time,
18 nobody had really ever met with Smile Source
19 other than myself and Rick Heysquierdo.

20 We were very aware of what they were
21 doing, we liked their model, and we had not
22 explained it to everybody in the company as to
23 how it was. It was already at \$900,000, and at
24 the time that we transferred it to HSD, which is
25 what we eventually did -- we never dismantled

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1 it, we never shut it down -- they were growing
2 in my numbers and we did -- we decided that it
3 would be best served in HSD.
4

5 But that smart ass remark, sorry, is
6 that, you know, Schein would be foolish to shut
7 down a \$900,000 account, just dismantle it,
8 so...

9 Q. Why would Schein be foolish to shut
10 down a \$900,000 account?

11 A. I think I just answered that. Because
12 it's revenue to us, and it was -- actually, it
13 was a very high-margin account, to be honest
14 with you, very, very profitable, and I -- I knew
15 their business model and it was an excellent
16 business model. People are misconstruing that
17 this is price only and nothing more.

18 Q. At the time when you were getting some
19 push-back from HSD on Smile Source, you were
20 confused about Schein's policy on buying groups?

21 MS. FINCHER: Object to the form.
22 Mischaracterizes the testimony.

23 Go ahead.

24 A. I was only with Special Markets
25 perhaps a year and a few months at this time,

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1 and there was no, again, no really written
2 policy on how to handle buying groups. And this
3 one, from what I believe, would be one of the
4 first buying groups that we entered into on the
5 Special Markets side, and -- that I'm aware of.

6 There were a couple others in place,
7 and I don't know exactly their start dates, but
8 this is the first one that we really set up and
9 established. It was like the beginning of the
10 buying group. In my opinion, this might be the
11 start of it in the private sector.

12 Q. You mentioned earlier Council
13 Connections and Commonwealth.

14 Are you making a distinction that
15 Smile Source was the first buying group that
16 catered to private practice dentists?

17 MS. FINCHER: Object to the form.

18 A. In the Special Markets world, I
19 believe so, yes.

20 Q. So you were confused about the
21 company's policy on buying groups?

22 MS. FINCHER: Object to the form.
23 Asked and answered.

24 Go ahead.
25

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1 A. There was no company policy on it, and
2 being in Special Markets, again, even those as
3 private dentists, we actually handled things
4 that are outside the normal realm of selling
5 directly to a private dentist.
6

7 So it was a new -- a new, let's say a
8 business segment for us moving from community
9 health centers over to the private sector. So
10 this was -- I look at this as the start of it.
11 There were a couple others right around the
12 exact same time, like Breakaway I think started
13 about this time, and -- I'm sorry, OrthSynetics
14 was well in place, so there's where my basis
15 come from.

16 OrthoSynetics had been with us when I
17 started and was very large, so this would, I'm
18 sorry, this would be like the second one into
19 that space.

20 Q. You were bothered by HSD's push-back
21 on Smile Source?

22 MS. FINCHER: Object to the form.
23 Asked and answered.

24 Go ahead.

25 A. I would say I was frustrated that they

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1 didn't understand the business model, so, yes,
2 it bothered me.
3

4 Q. HSD had previously done business with
5 other buying groups is your testimony?

6 A. I have found out, yes, that they had.
7 I don't know the start dates of when those took
8 effect, but I believe they were in effect at
9 this time.

10 Q. And HSD had fully supported other
11 buying groups?

12 MS. FINCHER: Object to the form.

13 A. According to what I uncovered --
14 discovered later, yes, they had a couple buying
15 groups in place themselves.

16 Q. You were pissed off that HSD had fully
17 supported other buying groups, but complained to
18 management about Smile Source?

19 MS. FINCHER: Object to the form.

20 A. I would be -- if I knew -- yeah, when
21 I found out that there were other groups, I took
22 it as that they were more concerned that this
23 was a buying group under Special Markets instead
24 of a buying group under HSD.

25 There was intercompany competition

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2 between Special Markets and between our private
3 sector because a lot of group practices would
4 acquire private dentists, buying groups were
5 going after private dentists, okay, and they
6 would fall under Special Markets.

7 There was all -- it didn't matter if
8 it was a buying group or a DSO, there would be
9 squabbling from the -- the sales -- HSD field
10 sales team on occasion.

11 Q. It didn't make sense to you that HSD
12 supported some buying groups over Smile Source's
13 franchise buying group model?

14 MS. FINCHER: Object to the form.

15 A. Rephrase. I'm sorry.

16 Q. It didn't make sense to you that HSD
17 supported other buying group models over Smile
18 Source's franchise model?

19 MS. FINCHER: Object to the form.

20 A. I'm not getting the -- the question.
21 I'm sorry.

22 Over -- I mean --

23 MS. FINCHER: Let her go ahead and
24 rephrase.

25 A. If you can try to...

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2 Q. Let me give you an example.

3 Are you familiar with the Thorup
4 buying group out of Utah?

5 A. Yes, a co-op.

6 Q. And you were pissed off that HSD fully
7 supported the Thorup co-op model, correct?

8 MS. FINCHER: Object to the form.

9 A. I was pissed off that they were
10 complaining about Smile Source under Special
11 Markets when I found out they had -- I always
12 call them throw-ups, I'm sorry -- when they had
13 Thorup -- when they had Thorup themselves out of
14 Utah. I was unaware of it but uncovered it.

15 Q. You thought the Smile Source franchise
16 model was more appealing than the Thorup co-op
17 model?

18 MS. FINCHER: Object to the form.

19 Go ahead.

20 A. No, I didn't know the model of Thorup
21 compared to Smile Source, but in my opinion,
22 from what my limited knowledge, they both
23 appeared to be buying groups. I didn't know how
24 much services Thorup offered at the time.

25 I was upset that I'm getting push-back

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2 on Smile Source from HSD field reps, yet they
3 had one themselves, to put it that way.

4 Q. You referred to Thorup as the buying
5 group in Utah that nobody would admit to,
6 correct?

7 MS. FINCHER: Object to the form.

8 A. It wasn't that -- well, I never -- no
9 one ever said it to me that there was a buying
10 group in Utah, correct.

11 Q. Why wouldn't anybody admit to the
12 Thorup buying group in Utah?

13 MS. FINCHER: Object to the form.

14 Asked and answered.

15 Go ahead.

16 A. It wasn't that I asked them and they
17 denied it. No one ever brought it up and said:
18 Oh, by the way, we have a model like this in
19 Utah. Why don't we duplicate that for Smile
20 Source?

21 Q. Eventually, Thorup changed its name to
22 The Co-op?

23 MS. FINCHER: Object to the form.

24 A. That was later when it fell under a
25 different -- well, that's my understanding.

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2 Q. And HSD ended its relationship with
3 Thorup?

4 A. I'm not --

5 MS. FINCHER: Object to the form.

6 THE WITNESS: Sorry.

7 MS. FINCHER: Go ahead.

8 THE WITNESS: I'm not -- I'm unsure of
9 when that. When I left, I think they were
10 still a customer. I'm not sure.

11 BY MS. ROSNER:

12 Q. Kathleen Titus went into Thorup and
13 closed them down?

14 MS. FINCHER: Object to the form.

15 A. I recall Kathleen Titus was going to
16 meet with them, and I don't know if she closed
17 them down. That fell under a different division
18 and she no longer reported to me at the time.

19 Q. I'm going to hand you a document
20 that's been premarked for identification as
21 CX2084. The Bates begins Henry
22 Schein-000758034.

23 Please take a moment to familiarize
24 yourself with CX2084 and let me know when you're
25 done.

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2 (Exhibit CX2084-001, a document
3 bearing Bates Nos. Henry Schein-00758034,
4 marked for identification, as of this date.)
5 (Document review.)

6 THE WITNESS: Okay.

7 BY MS. ROSNER:

8 Q. You've had a moment to look at CX2084?

9 A. Yes.

10 Q. This is a one-page e-mail from you on
11 February 3, 2015. Do you see that?

12 A. Yes.

13 Q. You drafted the e-mail in CX2084 as
14 part of your job?

15 A. Yes.

16 Q. It's part of your job to communicate
17 about buying groups, correct?

18 A. Yes.

19 Q. You have knowledge of the contents of
20 CX2084?

21 A. Yes.

22 Q. You drafted CX2084 at the time, at or
23 near the time of the events described therein?

24 A. Yes.

25 Q. You drafted the e-mail in CX2084 and

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2 kept it in the course of your regularly
3 conducted business?

4 A. Yes.

5 Q. CX2084 is a true and correct copy of
6 your e-mail correspondence?

7 MS. FINCHER: Object to the form.

8 A. Yes.

9 Q. CX2084 is an e-mail that discusses two
10 buying groups. One is Thorup and the other is
11 Floss Dental.

12 Do you see that?

13 MS. FINCHER: Object to the form.

14 A. Yes, and Dental Gator.

15 Q. And Dental Gator. Thank you.

16 In the e-mail, you reference, "KT went
17 in there and closed them down."

18 Did I read that correctly?

19 A. You read it correctly.

20 Q. "KT" refers to Kathleen Titus?

21 A. Yes.

22 Q. She went into Thorup and closed them
23 down, correct?

24 MS. FINCHER: Object to the form.

25 A. Per this e-mail, she went in there and

1 CONFIDENTIAL - RANDALL FOLEY
2 met with them. I'm sorry. Per this e-mail, she
3 stated that she closed them down.

4 Q. Per this e-mail, you stated that she
5 closed them down?

6 A. Correct.

7 Q. Do you have any reason to question the
8 veracity of this e-mail?

9 MS. FINCHER: Object to the form.

10 A. No; but I understand why she went in
11 there and what happened.

12 Can I explain that?

13 Q. Sure.

14 A. It turns out that Thorup was more of
15 a -- was a buying group with HSD and had turned
16 and became more of a procurement company and was
17 now offering other competitive products from
18 P&G, which is Procter & Gamble, where we have a
19 relationship with Colgate. So she went in and
20 met with them to see if they would be prime
21 vendor and work as a normal buying group, like
22 it must have been prior, and they said no. So
23 we discontinued their sales plan.

24 Q. I can take that document back.

25 When did the Smile Source account

1 CONFIDENTIAL - RANDALL FOLEY
2 transfer from Special Markets to HSD?

3 MS. FINCHER: Object to the form.

4 A. I don't remember the exact dates, but
5 I would think it was around 2011, beginning. In
6 the beginning of the year of 2011.

7 Q. After the transfer to HSD, Schein
8 ended the Smile Source relationship when Smile
9 Source became more of a GPO than a management
10 company?

11 MS. FINCHER: Object to the form.

12 A. Can you question that -- ask that
13 again?

14 Q. After the transfer to HSD, Schein
15 ended the Smile Source relationship when Smile
16 Source became more of a GPO than a management
17 company, right?

18 MS. FINCHER: Object to the form.

19 A. Not to my understanding. I believe
20 that Smile Source dumped Schein sometime after
21 the transition.

22 Q. Schein didn't end the Smile Source
23 relationship?

24 A. No.

25 Q. You never said that Schein ended the

1 CONFIDENTIAL - RANDALL FOLEY
2 Smile Source relationship?

3 A. Schein never ended the relationship.
4 Schein did not end the relationship with Smile
5 Source. My understanding, they fired us.

6 Q. I'll hand you a document that has been
7 premarked as CX2107. The first page bears the
8 Bates stamp Henry Schein-000104677.

9 Please take a moment to familiarize
10 yourself with this document.

11 (Exhibit CX2107-001 through 004, a
12 document bearing Bates Nos. Henry
13 Schein-000104677 through 680, marked for
14 identification, as of this date.)

15 (Document review.)

16 THE WITNESS: Okay.

17 BY MS. ROSNER:

18 Q. You've had a moment to review CX2107?

19 A. Yes.

20 Q. CX2107 is a multi-page e-mail string.
21 The top e-mail on the first page is from July
22 11, 2014. I'm going to refer you to the e-mail
23 that you wrote first in time, July 11, 2014, at
24 8:41 a.m.

25 Do you see that e-mail?

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2 A. At 8:45?

3 Q. 8:41 a.m.

4 A. Hold on.

5 Q. It's on page CX2107-002.

6 A. I got it. Okay.

7 Q. You drafted this e-mail as part of
8 your job?

9 A. Yes.

10 Q. It's part of your job to communicate
11 about Schein's customers, correct?

12 A. Yes.

13 Q. You have knowledge of the contents of
14 CX2107?

15 MS. FINCHER: Object to the form.

16 A. Yes.

17 Q. You drafted CX2107 at or near the time
18 of the events described therein?

19 A. Yes.

20 Q. You drafted CX2107 and maintained it
21 in the course of regularly conducted business at
22 Schein?

23 A. Yes.

24 Q. CX2107 is a true and accurate copy of
25 your e-mail correspondence?

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2 MS. FINCHER: Object to the form.

3 A. Yes.

4 Q. On page CX2107-002, in this e-mail you
5 note that there are a couple of issues, and you
6 have some bullets. In bullet number 2 --

7 A. Uh-huh.

8 Q. -- the last sentence reads, "We ended
9 the Smile Source relationship when they became
10 more of a GPO than a management company."

11 Did I read that correctly?

12 A. Yes.

13 Q. So you ended the Smile Source
14 relationship when it became more of a GPO than a
15 management company?

16 MS. FINCHER: Object to the form.

17 A. I think that's an incorrect statement
18 by me.

19 Q. Was it incorrect at the time that you
20 wrote it?

21 MS. FINCHER: Object to the form.

22 A. Yes.

23 Q. When did you learn that it was
24 incorrect?

25 A. I later learned -- well, I don't

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2 remember why it would say that. I knew that
3 they had fired us; that they decided to go to
4 Burkhart and not work with Schein.

5 I, again, I don't know why I would
6 write that -- that we ended it. It was my
7 understanding that -- that Smile Source ended
8 the relationship with HSD and moved to Burkhart.
9 We --

10 Q. You're writing an e-mail to Daniel
11 Hobson. Who is Daniel Hobson?

12 A. Daniel Hobson reported directly to me,
13 and he was a strategic account manager and he
14 was on MB2 and on our buying group, Dental
15 Gator.

16 Q. And so when you conveyed information
17 to one of your direct reports, was it important
18 to you to have accurate information conveyed?

19 MS. FINCHER: Object to the form.

20 A. Sure.

21 Q. Why would you convey this information
22 about Schein ending the Smile Source
23 relationship if you knew that it was false?

24 MS. FINCHER: Object to the form.

25 Mischaracterizes the testimony and the

1 CONFIDENTIAL - RANDALL FOLEY

2 document.

3 Go ahead.

4 A. Correct. I don't know at this time if
5 I knew they were fired or if later on I found
6 out they were fired.

7 Q. For clarity, in this e-mail you say
8 "when Smile Source became more of a GPO."

9 By "GPO," you're referring to buying
10 group?

11 A. By buying --

12 MS. FINCHER: Object to the form.

13 A. A buying group that focuses solely on
14 price. A GPO is a buying group, but they became
15 more of a buying group that focused on price
16 only.

17 Q. You can put that document aside.

18 A. Can I add that --

19 MS. FINCHER: Let her ask the
20 questions.

21 MS. ROSNER: Can we take a quick
22 moment and go off the record?

23 MS. FINCHER: You bet.

24 THE VIDEOGRAPHER: The time is 9:55
25 a.m. We're off the record.

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2 (Pause in the proceedings.)

3 THE VIDEOGRAPHER: The time is 9:58
4 a.m. We're on the record.

5 BY MS. ROSNER:

6 Q. Mr. Foley, prior to going on the
7 break, you mentioned you wanted to clarify
8 something. I wanted to give you an opportunity.
9 I apologize if we have broken your train of
10 thought.

11 A. Yeah, it did.

12 MS. FINCHER: It's okay if you don't
13 recall.

14 A. No, I don't recall. Sorry.

15 MS. FINCHER: We can move on.

16 Q. I want to go back to some testimony
17 that you said earlier today just to make sure
18 that I understand.

19 Did I understand correctly that you
20 said study clubs don't fit the Special Markets
21 model?

22 MS. FINCHER: Object to the form.

23 A. Yes, when a study group of dentists do
24 not fit the Special Markets model for either a
25 buying group or a DSO.

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2 Q. Why not?

3 A. Because there was no structure to it.
4 It would just be a group of dentists wanting to
5 get together and not being able to formalize any
6 type of plan. We just didn't have the resources
7 to help them along in creating some kind of
8 buying group specifically for them and
9 monitoring it, both in the HSD world or in the
10 Special Markets world.

11 Q. What resources would be required to
12 create this centralized group that you're
13 referring to?

14 MS. FINCHER: Object to the form.

15 Go ahead.

16 A. Because there was no central -- there
17 was no key contact such as, you know, let's say
18 20 dentists get together, then who would be the
19 key driver of, you know, submitting pricing to,
20 that type of stuff.

21 There was no -- there was no
22 infrastructure on their end that we could work
23 with, and we didn't want to have to create that
24 infrastructure ourselves.

25 Q. So when negotiating with a buying

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2 group, Schein wants a key point of contact?

3 MS. FINCHER: Object to the form.

4 A. For the most part, yes, correct.

5 Q. And it was your experience that study
6 clubs lacked one key contact person?

7 A. Yes, that's one of the things they
8 lacked.

9 Q. What are some of the other things that
10 study clubs would lack such that they would not
11 fit Schein's model?

12 MS. FINCHER: Object to the form.

13 A. That they wouldn't offer other
14 services that buying groups offer, like
15 discounted, you know, cell mobile phones,
16 discounted marketing expenses, and help drive
17 compliance amongst their users.

18 Q. Any other services?

19 A. Not that I can think of.

20 Q. Other than a key contact person and
21 offering services to their members, are there
22 other things that study clubs lacked such that
23 study clubs did not fit Schein's model for a
24 buying group customer?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
2 Asked and answered.

3 Do you mean other than what he's
4 already testified to?

5 Q. Other than what you've already
6 testified to?

7 A. The key thing is not having a main
8 contact, no business structure. It's not like
9 call Dental Gator or OrthoSynetics' buying group
10 or Smile Source. There would be no name to
11 that. It's just a co-op of dentists.

12 Q. We haven't talked about MSOs today.
13 Are you familiar with the term "MSO"?

14 A. It's interchangeable in my head
15 between a management service organization and a
16 DSO is almost the same, in my opinion, from
17 what -- it depends on the context of what
18 somebody is writing. Okay? Some people use it
19 differently, but I would interpret that as a
20 dental service organization/management service
21 organization, a DSO.

22 Q. "MSO" refers to management service
23 organization?

24 A. Correct.

25 Q. You view MSOs and DSOs as

1 CONFIDENTIAL - RANDALL FOLEY
2 interchangeable?

3 A. Yeah, we -- 99 percent of the time DSO
4 terminology was used. Some people might say
5 MSO, and I would interpret that as a DSO.

6 Q. Are there any distinguishing
7 characteristics between MSOs and DSOs?

8 MS. FINCHER: Object to the form.

9 A. Not that I -- not that I'm aware of.
10 I've never really used the "MSO" terminology
11 myself.

12 Q. Do MSOs have ownership interests in
13 the dental practices?

14 MS. FINCHER: Object to the form.

15 A. I'm not -- I'm not aware. I don't
16 know the arrangement between an MSO, which I
17 would interpret as a DSO, and the end-user.

18 Q. Earlier when we were talking about
19 buying groups that would pose a good opportunity
20 for Schein, you mentioned that it was important
21 that the buying group allowed access to the
22 end-users, correct?

23 A. Correct.

24 Q. Are you aware of any buying groups
25 that do not allow access to the end-user?

1 CONFIDENTIAL - RANDALL FOLEY
2 MS. FINCHER: Object to the form.

3 A. OrthoSynetics prefers that we work
4 directly with their -- with their centralized
5 team and not have FSCs work at their sites, but
6 they work directly with a strong team member on
7 my side to manage the practice.

8 However, it's not absolute. About 20
9 percent of OrthoSynetics' bigger accounts, its
10 bigger clients, are assigned to FSCs.

11 Q. Any other buying groups that don't
12 allow access to their member sites?

13 MS. FINCHER: Object to the form.

14 Go ahead.

15 A. Not that I'm aware of.

16 Q. You're only aware of OrthoSynetics not
17 providing access to its member sites?

18 A. To not all --

19 MS. FINCHER: Object to the form.

20 Go ahead.

21 A. To not all sites. Okay?

22 Q. Yet OrthoSynetics is a good customer
23 for Schein?

24 A. Yes.

25 Q. How do you square the tension between

1 CONFIDENTIAL - RANDALL FOLEY
2 good opportunities to work with buying groups
3 allowing Schein access and OrthoSynetics not
4 allowing access while still being a good
5 customer?

6 MS. FINCHER: Object to the form.

7 Mischaracterizes the testimony. Asked and
8 answered, but go ahead.

9 A. Of all the buying groups,
10 OrthoSynetics had one of the most powerful
11 centralized teams, with their headquarters
12 Metairie, Louisiana, and one -- and a secondary
13 one for software in the Dallas area -- or,
14 Houston area. I'm sorry. Dallas. It's Dallas.

15 So, therefore, they could drive
16 compliance. They had a purchasing -- somewhat
17 of a purchasing director that would help drive
18 compliance with their sites, and preferred that
19 the sites buy based on their formula, a
20 formulary.

21 So there's more of a little bit of a
22 control, but there was zero equity ownership in
23 all of those sites. They were just members.

24 Q. So with OrthoSynetics you were willing
25 to overlook the lack of access to all member

1 CONFIDENTIAL - RANDALL FOLEY
 2 sites because of these other features?
 3 MS. FINCHER: Object to the form.
 4 A. Yes, because we could still promote
 5 the whole the Schein wheel to corporate and they
 6 would help drive it.
 7 Q. For OrthoSynetics, you were willing to
 8 overlook the lack of access to the member sites
 9 because they could drive compliance?
 10 MS. FINCHER: Object to the form.
 11 Asked and answered.
 12 Go ahead.
 13 A. They could drive compliance and they
 14 could drive promotions that we offered to their
 15 end-users.
 16 Q. I want to shift gears a little bit to
 17 a time after Smile Source.
 18 So, after Smile Source, Special
 19 Markets was working with a small DPM called G4
 20 Dental Corp., correct?
 21 MS. FINCHER: Object to the form.
 22 A. I don't recall that, that title, that
 23 name.
 24 Q. What is a DPM?
 25 A. A DSO. Dental practice management

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 2 identification, as of this date.)
 3 (Document review.)
 4 THE WITNESS: Okay.
 5 BY MS. ROSNER:
 6 Q. You've had a moment to review CX2103?
 7 A. Yes.
 8 Q. CX2103 is a multi-page e-mail. The
 9 e-mail authored by you is one down from the top
 10 dated April 21, 2011.
 11 Do you see that?
 12 A. Yes.
 13 Q. You drafted this e-mail CX2103 as part
 14 of your job?
 15 A. Yes.
 16 Q. It's part of your job to communicate
 17 about potential customers of Schein, correct?
 18 A. Yes.
 19 Q. You have knowledge of the contents of
 20 CX2103?
 21 MS. FINCHER: Object to the form.
 22 A. Yes.
 23 Q. You drafted CX2103 at or near the time
 24 of the events described therein?
 25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
 2 company. It was the old terminology.
 3 Q. You questioned whether G4 Dental Corp.
 4 was a DPM or a buying group?
 5 MS. FINCHER: Object to the form.
 6 A. I don't recall any of this.
 7 Q. You didn't care whether G4 Dental was
 8 a buying group, but noted that HSD usually
 9 cares?
 10 MS. FINCHER: Object to the form.
 11 A. Again, G4 does not ring a bell to me
 12 at all.
 13 Q. HSD is concerned when their accounts
 14 join buying groups to get reduced supply costs?
 15 MS. FINCHER: Object to the form.
 16 A. That's not an absolute.
 17 Q. Let me hand you a document that has
 18 been premarked for identification as CX2103. It
 19 bears the Bates number on the first page Henry
 20 Schein-000167268.
 21 Please take a moment to review CX2103
 22 and let me know when you're finished.
 23 (Exhibit CX2103-001 through 006, a
 24 document bearing Bates Nos. Henry
 25 Schein-000167268 through 273, marked for

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. You drafted the e-mail in CX2103 and
 3 kept it in the course of regularly conducted
 4 business at Schein?
 5 A. Yes.
 6 Q. And CX2103 is a true and correct copy
 7 of your e-mail correspondence?
 8 MS. FINCHER: Object to the form.
 9 A. Yes.
 10 Q. In the last sentence of your e-mail of
 11 CX2103, you say, "I don't care if this a buying
 12 group, but HSD usually does when their accounts
 13 join it to get reduced supply costs."
 14 Did I read that correctly?
 15 A. Yes.
 16 Q. You didn't care whether or not G4
 17 Dental was a buying group or a DPM, correct?
 18 MS. FINCHER: Object to the form.
 19 A. Can you rephrase that or say it again?
 20 Q. You didn't care whether G4 Dental was
 21 a DSO or a buying group?
 22 MS. FINCHER: Object to the form.
 23 A. I didn't care if this was a buying
 24 group or a DSO, but a buying group that offers
 25 services to its end-users, which the doctor

1 CONFIDENTIAL - RANDALL FOLEY
2 explains in the back.

3 Q. HSD usually cares when their accounts
4 join a buying group to get -- to reduce supply
5 costs?

6 MS. FINCHER: Object to the form.

7 A. It may cause frustrations with the
8 FSCs if this is a supply cost only type
9 relationship and nothing more. As a
10 generalization, term of buying groups would fall
11 in different categories of buying groups,
12 different levels, but the general statement is
13 that if this is a supply cost only, they have
14 frustration with it.

15 Q. You didn't care if G4 Dental resulted
16 in reduced supply costs?

17 MS. FINCHER: Object to the form.

18 A. I did care if all they did would be to
19 reduce supply costs and nothing more, but the
20 doctor explains on the first part of the e-mail
21 that he's providing a number of other services
22 to his -- to his end-users, and I'm questioning
23 whether it's a buying group or if it's a DSO,
24 how to categorize the account, does it matter.
25 As far as my class -- my classification, I

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2 would -- I would put it in Special Markets and
3 move forward with it.

4 Q. If Schein did business with G4 Dental
5 in Special Markets, the members of G4 Dental
6 would get reduced supply costs?

7 MS. FINCHER: Object to the form.

8 A. I'm sorry. Say that again.

9 Q. If Schein did business with G4 Dental
10 as a Special Markets customer, the members of G4
11 Dental would get reduced supply costs?

12 MS. FINCHER: Object to the form.

13 A. Yes.

14 Q. If G4 Dental was a DSO, HSD accounts
15 would still be impacted?

16 MS. FINCHER: Object to the form.

17 A. That is correct.

18 Q. HSD accounts that joined a DSO would
19 be transferred from Henry Schein Dental to
20 Special Markets?

21 MS. FINCHER: Object to the form.

22 A. Yes; on the merchandise side.

23 Q. HSD does not care when it loses
24 accounts to a DSO?

25 MS. FINCHER: Object to the form.

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2 A. No, they -- the FSCs were always
3 frustrated when they lost an account to a DSO.
4 And it depended on the DSO, because a number of
5 DSOs maintain the assignment of the FSCs, paid
6 through us at Special Markets, but some of the
7 larger ones did not want assignment of FSCs, and
8 those were more frustrating to the FSCs.

9 So it's a -- it depends. It's a
10 per-case basis of how they -- how they worked
11 with the -- how large the DSO was or the group
12 and whether they could stay on the account and
13 be assigned. And also, their commission rate
14 would remain the same.

15 Q. HSD as an organization doesn't object
16 when Special Markets does business with DSOs?

17 MS. FINCHER: Object to the form.

18 A. No, not at all.

19 Q. But HSD cares when their accounts join
20 buying groups to get reduced supply costs?

21 MS. FINCHER: Object to the form.

22 Asked and answered.

23 You can answer it again.

24 A. No, I would say that the FSCs, they
25 get flat from an FSC. Again, if it's just based

1 CONFIDENTIAL - RANDALL FOLEY
2 on price. The account would still remain
3 assigned to the FSC. The margins would stay
4 pretty -- are pretty high on these buying
5 groups, so...

6 I want to say that any change to their
7 customer would cause the FSC to be frustrated.

8 Q. Outside of the individual FSCs, HSD
9 doesn't like it when its accounts join buying
10 groups to get reduced supply costs?

11 MS. FINCHER: Object not form. Asked
12 and answered. Mischaracterizes the
13 testimony.

14 Answer again.

15 A. I don't know what their -- what
16 they -- when they liked it or didn't like it per
17 se. There was no policy not to sell to buying
18 groups.

19 Q. Did Special Markets get push-back from
20 HSD when it did business with new DSO customers?

21 MS. FINCHER: Object to form.

22 A. No.

23 Q. You can put that document aside.

24 You had the opportunity to bid on a
25 buying group associated with CDA, correct?

1 CONFIDENTIAL - RANDALL FOLEY
2 MS. FINCHER: Object to form.

3 A. Not to my knowledge.

4 Q. "CDA" stands for the California Dental
5 Association?

6 MS. FINCHER: Object to the form.

7 A. Correct.

8 Q. If CDA created a buying group that was
9 set up as a DSO, it would have been assigned to
10 Special Markets, correct?

11 MS. FINCHER: Object to the form.

12 A. If the CDA -- you know, at that -- I'm
13 not sure when the CDA came into place, but it
14 was later on, and I don't know if that's when
15 HSD had taken over buying groups, but I think it
16 would have fallen under, if it's a buying group
17 for the CDA --

18 Let's go backwards. I was not
19 involved in the CDA component of what
20 negotiations were going on and their requests
21 for buying groups that I can remember.

22 Q. If the CDA had a buying group that was
23 set up as a DSO, where would it have been
24 assigned?

25 MS. FINCHER: Object to the form.

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2 Asked and answered. Go ahead.

3 A. I don't even get the logic of the
4 question. If the CDA were a buying group --
5 were a DSO, a DSO would mean there's equity and
6 practices, so the CDA would not be a DSO from
7 what you're asking me. They would be a buying
8 group.

9 Q. So if the CDA set up a buying group,
10 it likely would have been assigned to HSD?

11 MS. FINCHER: Object to the form,
12 asked and answered. Calls for speculation,
13 but go ahead.

14 A. Each one of the accounts we would
15 determine, you know, for example, if the CDA set
16 up a very large centralized team, it may work
17 better than Special Markets run it centrally and
18 work with the FSCs on it like it would a DSO,
19 okay? But if it's just to offer perhaps reduced
20 pricing and services to its members, it may be
21 better off in HSD. I don't know where that
22 went. Again, I was not part of that.

23 Q. You questioned whether or not HSD
24 would even want to work with a CDA buying group?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY

2 Asked and answered.

3 A. I don't even remember asking, you
4 know, being involved at all in the CDA.

5 Q. I'm going to hand you a document
6 that's been premarked for identification as
7 CX2060. It bears the Bates label on the first
8 page Henry Schein-000167221.

9 Please take a moment to review this
10 document and let me know when you are finished
11 reviewing CX2060.

12 (Exhibit CX2060-001 through 003, a
13 document bearing Bates Nos. Henry
14 Schein-000167221 through 223, marked for
15 identification, as of this date.)

16 (Document review.)

17 THE WITNESS: Okay.

18 BY MS. ROSNER:

19 Q. You've had an opportunity to review
20 CX2060?

21 A. Yes.

22 Q. CX2060 starts with an e-mail from John
23 Boresi. One e-mail down from that is an e-mail
24 from you dated May 9, 2011; is that right?

25 A. Yes.

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2 MS. FINCHER: Jasmine, just to clarify
3 for those on the phone, you're on the first
4 page of the document, but it's the last
5 e-mail in the chain, correct?

6 MS. ROSNER: Correct. It's
7 CX2060-001.

8 THE WITNESS: At 2:07 p.m. Is that
9 what you're asking about?

10 BY MS. FINCHER:

11 Q. The e-mail on May 9, 2011 at 2:07 p.m.

12 A. Got it. Yes.

13 Q. You drafted this e-mail as part of
14 your job?

15 A. Yes.

16 Q. It's part of your job to communicate
17 about potential customers of Schein?

18 A. Yes.

19 Q. Do you have knowledge of the contents
20 of CX2060?

21 MS. FINCHER: Object to the form.

22 A. Yes.

23 Q. You drafted the e-mail in CX2060 at or
24 near the time of the events therein?

25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
2 Q. You drafted the e-mail in CX2060 and
3 kept it in the course of regularly conducted
4 business at Schein?

5 A. Yes.

6 Q. CX2060 is a true and accurate copy of
7 your e-mail correspondence?

8 MS. FINCHER: Object to the form.

9 A. Yes.

10 Q. In the e-mail you write, "If it turns
11 out to be a DSO, all ours. If it turns out to
12 be more of a local buying group, HSD (if they
13 even want it)."

14 Did I read that correctly?

15 A. Yes.

16 Q. So if CDA's buying group was a DSO, it
17 would have been assigned to Special Markets?

18 MS. FINCHER: Object to the form.

19 A. Say it again.

20 Q. This e-mail is about CDA setting up a
21 buying group, correct?

22 A. It --

23 MS. FINCHER: Object to form.

24 Go ahead.

25 A. No, I'm unsure. By reading the

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2 e-mail, it sounds like they're going to be much
3 more involved in being a buying group, as if
4 they're going to provide a bunch, you know, more
5 than a buying group.

6 It's an organization where they may
7 own even members and what we can bring to all of
8 those members. So Kathleen, who reports to me
9 at this time and works with our DSO segment, is
10 the one meeting with them. So I would put it
11 along the lines that they were maybe forming a
12 DSO more so than a buying group, but unclear at
13 the time.

14 So I'm explaining to John Boresi,
15 who's relatively new with us, you know, that
16 it -- it looks like if it's a DSO, it would fall
17 under us. If it's a buying group, a local
18 buying group, it may go to the HSD group.

19 Q. And you added the caveat "if they even
20 want it," correct?

21 MS. FINCHER: Object the to form.

22 A. Yes.

23 Q. And you're referring to whether or not
24 HSD would want this buying group as a customer,
25 correct?

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2 MS. FINCHER: Object to the form.

3 Go ahead.

4 A. Yes. A smart ass remark.

5 Q. Why wouldn't HSD want a buying group
6 customer?

7 MS. FINCHER: Object to the form.

8 A. Looking at the timing of this e-mail,
9 it may be due to the back and forth we were
10 having with Smile Source.

11 Q. How would the back and forth with
12 Smile Source affect whether HSD would want to do
13 business with this buying group in California?

14 MS. FINCHER: Object to the form.

15 A. Well, those e-mails regarding Smile
16 Source, they were expressing frustration with
17 working with Smile Source, and we moved Smile
18 Source to them prior to, from what I gather,
19 this e-mail. So I'm just rehashing frustrations
20 they had, but they would -- it would be -- but I
21 did know that if it was a buying group, at this
22 time we were now having buying groups under HSD
23 because we had just recently moved Smile Source
24 to them. So, a flippant remark.

25 Q. So buying groups were moved to HSD as

1 CONFIDENTIAL - RANDALL FOLEY
2 a policy starting with Smile Source?

3 MS. FINCHER: Object to the form.

4 A. Again, based on how the -- how the --
5 it was set up, they were now, from what I was
6 understanding, we would do an analysis, and if
7 it felt that it was part of a certain model, HSD
8 would get it, okay? And Smile Source was the
9 start of that.

10 Q. And you were questioning whether HSD
11 would even want to work with this buying group?

12 MS. FINCHER: Object to the form.

13 Mischaracterizes the testimony and the
14 document.

15 Go ahead.

16 A. Yeah, again, I think it's more of a
17 flippant remark to John Boresi that, you know,
18 if they even want it type thing.

19 I may -- I may clarify that that it
20 was out of the -- it's more out of the norm of
21 them being able to handle certain things that we
22 can handle better.

23 Q. Are you saying that Special Markets
24 can handle buying group customers better than
25 HSD?

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MS. FINCHER: Object to the form.

Mischaracterizes the testimony, but go ahead.

A. I believe from the situation that happened with Smile Source, that we were better at controlling it from a central point of view than HSD was from a practice side of view. So, yes, there was a part of a bias on my part that I felt we were better with the buying groups.

Q. But there was a policy shift where buying groups were now being located within HSD?

A. No.

MS. FINCHER: Object to the form.

THE WITNESS: I'm sorry.

MS. FINCHER: Mischaracterizes testimony.

Go ahead.

THE WITNESS: No, there was no policy change. It was just one -- they were accepting -- they had moved Smile Source over, so in my head, again, being there a couple years, HSD could now handle buying groups.

As far as I know, at the time of this

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e-mail, Smile Source was running along just fine.

BY MS. ROSNER:

Q. If Smile Source was running along just fine, why would you question whether HSD would even want to work with the CDA buying group at this time?

MS. FINCHER: Object to the form.

Go ahead.

A. I think it's, again, just a -- I'll -- okay, that it's more of a remark that it falls out of the norm -- HSD was excellent at selling to a private dentist. All the resources were there. Anything that slipped out of that normal, even to a community health center, created frustration amongst them. Just the fact that it was different.

So a buying group is different, and structurally, I think they were so geared to private dentists, and nothing more, that they didn't know how to handle as well as we did the uniqueness of what Special Markets did.

Q. So HSD --

A. That's as far as --

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Q. Please, go ahead.

A. No, I'm all set.

Q. So HSD didn't have experience working with buying groups?

MS. FINCHER: Object to the form.

Mischaracterizes the testimony.

Go ahead.

A. HSD wasn't, to my knowledge, as strong of an organization when it came outside of the private dentists only type selling.

Q. You in the e-mail of CX2060 also note, "A lot of activity concerning buying groups lately."

What do you mean by that?

A. That there were more and more people coming across my -- from my team that were wanting to create buying groups. There was more activity. I believe at this time Breakaway started as well as Steadfast Medical. So there was a lot of activity happening in the buying group world, which wasn't there when I first started, other than OrthoSynetics and then Smile Source.

It was a mature -- it was starting to

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enter the marketplace, as far as I was concerned. I didn't know about the other ones that HSD had at the time.

Q. I just want to make sure I understand your testimony. Are you saying that there were simply more buying groups popping up, or are you saying that your group wanted to do more business with buying groups?

A. No, I think there were -- that more buying groups were popping up and coming across our radar.

Q. And there was a corporate decision not to participate in these buying groups?

MS. FINCHER: Object to the form.

A. No, absolutely not. There was no corporate decision.

Q. You never thought there was a corporate decision to not participate in buying groups?

A. Not at all. I was setting them up. Steadfast Dental came into play. Breakaway came into play right around this time. Smile Source was up.

Q. I'm going to hand you a document that

1 CONFIDENTIAL - RANDALL FOLEY
2 has been premarked as CX238. It bears the Bates
3 label on the first page Henry Schein-000178482.

4 Please take a moment to review CX238,
5 and let me know when you're finished.

6 (Exhibit CX0238.001 through 003, a
7 document bearing Bates Nos. Henry
8 Schein-000178482 through 484, marked for
9 identification, as of this date.)

10 (Document review.)

11 THE WITNESS: Okay.

12 BY MS. ROSNER:

13 Q. You've had an opportunity to review
14 CX2038?

15 A. Yes.

16 Q. CX2038 is an e-mail chain between you
17 and Debbie Foster, correct?

18 A. Yes.

19 Q. The top e-mail, the latest in time
20 e-mail, is dated February 20, 2012.

21 You wrote the e-mails in CX238 as part
22 of your job?

23 A. Yes.

24 Q. It's part of your job to communicate
25 about potential customers?

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2 A. Yes.

3 Q. You have knowledge of the contents of
4 CX238?

5 MS. FINCHER: Object to the form.

6 A. Yes.

7 Q. You drafted CX238 at or near the time
8 of the events described therein?

9 A. Yes.

10 Q. You drafted the e-mails in CX238 and
11 kept them in the course of regularly conducted
12 business of Schein?

13 A. Yes.

14 Q. CX238 represents a true and correct
15 copy of your e-mail correspondence?

16 MS. FINCHER: Object to the form.

17 A. Yes.

18 Q. In the second paragraph of the
19 last-in-time e-mail, which is at the top of the
20 first page of CX238.001, the second paragraph
21 concludes, "So, this is a corporate decision,
22 not to participate in these."

23 Did I read that correctly?

24 A. You read it correctly.

25 Q. So there was a corporate decision not

1 CONFIDENTIAL - RANDALL FOLEY
2 to participate in buying groups?

3 MS. FINCHER: Object to the form.

4 Asked and answered.

5 Go ahead.

6 A. You read -- there -- I knew of no
7 corporate decision not to participate in buying
8 groups.

9 Q. Who is Debbie Foster?

10 A. Debbie Foster-Torgersen, she reported
11 to me at the time and was a regional account
12 manager of the Southeast.

13 Q. And in corresponding with your direct
14 reports, it's important for you to be accurate
15 in the information you convey?

16 A. Yes.

17 MS. FINCHER: Object to the form.

18 Go ahead.

19 Q. And at this time, you're communicating
20 to Debbie Foster that Schein has a corporate
21 decision not to participate in buying groups?

22 MS. FINCHER: Object to the form.

23 Mischaracterizes the document.

24 Go ahead.

25 A. I'm saying that to her in this e-mail,

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2 yes.

3 Q. You also tell her that when existing
4 Schein customers enroll in buying groups, it
5 simply erodes margins, correct?

6 MS. FINCHER: Object to the form.

7 A. Yes.

8 MS. FINCHER: Go ahead.

9 THE WITNESS: Sorry.

10 MS. FINCHER: Just pause for a minute.

11 Give me time to object.

12 BY MS. ROSNER:

13 Q. And that when buying groups market
14 their reduced spend, existing customers come to
15 Schein and say, "I don't want to join their
16 group but I want their pricing." Correct?

17 MS. FINCHER: Object to the form. Are
18 you asking if that's what he wrote?

19 Q. Do you understand the question?

20 A. That's what I wrote, but I know what I
21 meant; that when a buying group comes with only
22 price only, it'll reduce spend and there is no
23 other options, that they find it objectionable.

24 Q. And you attributed this quote to Tim
25 Sullivan, correct?

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2 MS. FINCHER: Object to the form.

3 A. Tim Sullivan, being the head of HSD,
4 is an indirect -- indirect way of saying it.
5 It's HSD.

6 Q. So Tim Sullivan was telling you that
7 buying groups erode margins when customers just
8 want to reduce their pricing?

9 MS. FINCHER: Object to the form.

10 Mischaracterizes the testimony.

11 Go ahead.

12 A. No, I think -- I believe Tim's
13 statement was along the lines that if a buying
14 group only led in with price, that it would
15 simply just erode margin; there would be no
16 opportunity to sell up.

17 Q. Do you agree with that thought, that
18 buying groups erode margins?

19 MS. FINCHER: Object to the form.

20 Mischaracterizes the testimony.

21 Go ahead.

22 A. No, it can be different. I mean,
23 there are situations where in Special Markets we
24 were able to get pretty good pricing from our
25 vendor partners that, in essence, sometimes the

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2 GP level would be higher in a buying group that
3 moved over from Schein, you know, from a private
4 practice to us, you know, that -- that we were
5 able to -- the price would be lower for the
6 end-user, but our GPs could be higher on the way
7 we did our model.

8 Q. When you say "GPs," what are you
9 referring to?

10 A. Gross profit. I'm sorry.

11 Q. Is it also possible that you can lower
12 price for existing customers and offset that
13 with volume from new business?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. And what effect would that have?

17 MS. FINCHER: Object to the form.

18 A. It would be a positive -- well, it
19 depends on, if there was reduction in GP, how
20 much of it was compensated by the new business.
21 It would all be based on a formula.

22 Q. If volume from new business exceeds
23 lower margins on existing business, that would
24 add to profit?

25 A. Absolutely.

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2 Q. I can take back document CX238.

3 MS. FINCHER: We've been going for a
4 little over an hour, so whenever is a good
5 time for a bathroom break, let us know.

6 MS. ROSNER: We can take a break right
7 now.

8 Off the record.

9 THE VIDEOGRAPHER: The time is 10:37
10 a.m. We're off the record.

11 (Recess.)

12 THE VIDEOGRAPHER: The time is 10:49
13 a.m. We're on the record.

14 BY MS. ROSNER:

15 Q. I want to go back to the document that
16 we were talking about where you mentioned that
17 there was a corporate decision not to
18 participate in buying groups.

19 It's your testimony that there was no
20 such corporate decision, correct?

21 A. Correct.

22 MS. FINCHER: Object to the form.

23 THE WITNESS: I'm sorry.

24 MS. FINCHER: Mischaracterizes the
25 document.

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2 Go ahead.

3 THE WITNESS: Correct.

4 BY MS. ROSNER:

5 Q. Why would you tell Debbie Foster that
6 there was a corporate decision if no such
7 corporate decision existed?

8 MS. FINCHER: Object to the form.

9 Go ahead.

10 A. I have no idea why I would write
11 that -- why I would have written that. There
12 was no corporate decision not to -- I continued
13 to sell to buying groups and add new ones.

14 Q. You noted that, "Within Schein we have
15 a few buying groups that we wish we didn't
16 have."

17 Are you referring to Schein as a
18 company or HSD?

19 A. I would believe I was referring to the
20 company as a whole.

21 Q. Which buying groups did Schein wish it
22 didn't have?

23 MS. FINCHER: Object to the form.

24 A. I don't -- I don't remember -- the
25 date of the e-mail. Could you tell me that

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2 again?

3 Q. It's from February 20, 2012.

4 MS. FINCHER: Why don't we give him a
5 moment to pull it back out.

6 MS. ROSNER: I think I have it.

7 THE WITNESS: She has it.

8 MS. FINCHER: You have his copy,
9 Jasmine?

10 THE WITNESS: Yes.

11 MS. FINCHER: Okay.

12 BY MS. ROSNER:

13 Q. I'm handing you Exhibit CX238. The
14 very first line says, "Honestly, within Schein
15 we have a few buying groups (BG) that we wish we
16 didn't have."

17 My question is which buying groups did
18 Schein wish it didn't have?

19 MS. FINCHER: Object to the form.

20 Go ahead.

21 A. I really don't remember who I was
22 referring to in this.

23 Q. Has Schein ever had buying groups it
24 wished it didn't have?

25 MS. FINCHER: Object to the form.

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2 A. Later on, we had a couple that we
3 found that went off their initial business plan
4 of providing more services and instead became a
5 procurement company, and one of those was
6 Steadfast. And I am not sure if I was referring
7 to Steadfast at this time. I think that was at
8 a later date.

9 Q. Any other buying groups that Schein
10 wishes it didn't have?

11 MS. FINCHER: Object to the form.

12 A. No, not that I can remember.

13 Q. At the end of the first paragraph of
14 that e-mail, you were talking about Smile
15 Source. "HSD did not give Smile Source the love
16 that SM provided. Tim Sullivan is happy that we
17 are less one more buying group."

18 Do you see that?

19 A. Yes.

20 MS. FINCHER: Object to the form.

21 THE WITNESS: Sorry.

22 BY MS. ROSNER:

23 Q. Why was Tim Sullivan happy that Smile
24 Source was no longer a customer of Schein?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
2 Mischaracterizes the document.
3 Go ahead.

4 A. Again, I would look at that as a
5 flippant remark. It was not an accurate
6 statement that Tim Sullivan told me he was happy
7 or anything along those lines.

8 Q. What did you mean by that sentence,
9 "Tim Sullivan is happy that we are less one more
10 buying group"?

11 A. I believe that the buying groups
12 caused some frustration again with the sales
13 team in the HSD world, and it would be less of a
14 headache to Tim or HS- -- in general to, not Tim
15 himself, but to HSD. It's a -- there's a
16 connection there. When I say "Tim Sullivan," it
17 could mean HSD itself or just Tim.

18 Q. Earlier you said it would be foolish
19 to end the relationship with Smile Source, and
20 now you're saying Tim Sullivan is happy that
21 Smile Source is no longer a customer?

22 MS. FINCHER: Object to the form.

23 Mischaracterizes the document and the
24 testimony.

25 A. Again, I think I'm being flippant. I

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2 don't think he was happy that we lost a \$900,000
3 account. I would think it would be even more at
4 that time, you know, based on the time.

5 So I'm not sure why I would make a
6 comment like that other than to be a smart ass
7 to Becky -- to Debbie.

8 Q. In the second paragraph of Exhibit
9 238, you talk about this conversation that you
10 had with Tim Sullivan, and you mentioned earlier
11 that if a buying group was price-only focused,
12 Tim Sullivan believed that that would erode
13 margins for Schein, right?

14 MS. FINCHER: Object to the form.

15 Mischaracterizes the testimony.

16 A. Yes.

17 Q. When did you have that conversation
18 with Tim Sullivan?

19 A. I don't remember exactly when I had a
20 conversation. I just remember it was a verbal
21 conversation one time where he pointed out that
22 customers would say, hey, I don't want to join
23 that buying group, but I want their pricing, if
24 it's just on a price-based situation, and that
25 causes, you know, that's an issue. And that's

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2 where that conversation came up. But it was
3 maybe at a trade show or just standing there
4 talking to him about it.

5 Q. What did Tim Sullivan say about doing
6 business with price-only buying groups?

7 A. I'm sorry?

8 Q. What did Tim Sullivan say to you about
9 doing business with price-only buying groups?

10 MS. FINCHER: Object to the form.

11 A. I think I just answered that; that it
12 was -- that it would -- that it would cause,
13 where they would go to a trade show, set up a
14 booth, and show that there's -- the customers
15 would say I want that pricing, but I don't want
16 to join that buying group. They don't offer
17 anything, but give me a price, and I'll give you
18 a -- give me a -- pay me a fee, and I'll give
19 you lower prices, so they'd say I'd just rather
20 get the lower prices.

21 Q. Did Schein do business with price-only
22 buying groups?

23 MS. FINCHER: Object to the form.

24 A. I'm not aware as to how Thorup was set
25 up, if it was price only. I believe we did with

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2 Advantage Dental in the Northwest. It was a
3 very large buying group that was managed by the
4 local HSD team, and the fact that they had a lot
5 of customers, I would make an assumption, if
6 that's okay, that they were just based on price.

7 Q. So it's your testimony that Schein did
8 business with price-only buying groups?

9 MS. FINCHER: Object to the form.

10 A. I believe that we had a couple that
11 were just on price, and Advantage Dental may
12 have been -- there's two segments at Advantage.
13 There's a DSO and then there's the other. I --
14 I handled the DSO part of it, and I -- and I
15 understood that Advantage had a buying group arm
16 to it.

17 Q. Did Schein have a policy against doing
18 business with price-only buying groups?

19 MS. FINCHER: Object to the form.

20 A. No, there was no policy. There was no
21 written policy about how to handle a buying
22 group, you know, what -- what to do, what not to
23 do, how to do it. All off the cuff.

24 Is that the right word?

25 Q. Did you ever discuss with Tim Sullivan

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2 whether or not Schein should bid on price-only
3 buying groups?

4 A. No.

5 Q. Tim Sullivan in CX2038 is concerned
6 about buying groups that simply erode margins.

7 What was the plan to prevent margin
8 erosion?

9 MS. FINCHER: Object to the form.

10 Mischaracterizes the document.

11 You can answer it if you understand.

12 A. That if we had -- if it was just based
13 on price and we really didn't have any access to
14 the offices, and the main buying group entity
15 itself couldn't help drive compliance or promote
16 products like Smile Source did, then it could
17 just simply erode margin. They would buy
18 exactly the same amount of product from us at a
19 lower price, nothing else.

20 Whereas, if we had access to the
21 offices and had some type of compliance we could
22 drive to higher margin-type products, even at a
23 lower price, but a higher margin, we wouldn't
24 have that erosion.

25 Q. I don't think you answered my

1 CONFIDENTIAL - RANDALL FOLEY
2 question. My question was what was the plan to
3 prevent margin erosion?

4 MS. FINCHER: Object to the form.

5 Asked and answered.

6 You can answer it again.

7 A. There was no plan to prevent margin
8 erosion.

9 Q. You mentioned that Schein had a couple
10 of customers that were price-only buying groups.
11 You listed the Advantage Dental buying group as
12 one of those customers.

13 Who else was a price-only buying
14 group?

15 MS. FINCHER: Object to the form.

16 A. I had none on the -- on my side, on
17 the DSO side, so I'm unaware, I'm not sure
18 exactly who.

19 Q. You mentioned the group Steadfast a
20 couple of times.

21 Was Steadfast a price-only buying
22 group?

23 A. Initially, I believe they offered more
24 services like helping them open offices. That's
25 how they started with me on the equipment side,

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2 and they eventually became a procurement center
3 versus price only -- well, it would be more
4 price only, but it actually went into a -- like
5 a gateway for any, you know, any order that a
6 doctor would place, they would like work as a
7 procurement office for the sites.

8 So it became price only. Sorry about
9 the roundabout way, but that's basically what
10 happened to them.

11 Q. So procurement companies are
12 equivalent to price-only buying groups in your
13 mind?

14 MS. FINCHER: Object to the form.

15 A. Yeah, they're -- they're -- they're
16 maybe like a subset of a buying group, and it
17 goes into more of a procurement environment.

18 Q. We mentioned earlier the dental co-op
19 in Utah, and you identified that company as a
20 procurement company, correct?

21 MS. FINCHER: Object to the form.

22 A. I had heard that --

23 MS. FINCHER: Mischaracterizes the
24 testimony.

25 Go ahead.

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2 THE WITNESS: Sorry.

3 MS. FINCHER: Go ahead.

4 A. I had heard that --

5 I'm sorry. I had heard --

6 MS. FINCHER: Just slow down a little
7 bit.

8 THE WITNESS: I'm drinking coffee.

9 I had heard that it had become more of
10 a procurement company.

11 BY MS. ROSNER:

12 Q. Who did you hear that from?

13 A. Kathleen Titus.

14 Q. How had it become more -- how had the
15 dental co-op in Utah become more of a
16 procurement-type company?

17 MS. FINCHER: Object to the form.

18 A. They were helping their end-users or
19 their customer base, however you want to call
20 it, help them find the cheapest supplies based
21 on multiple vendors, not prime vendor with
22 Schein. It could be a Benco product. It could
23 be Atlantic Dental. A perfect example was when
24 they went from our Colgate division to Procter &
25 Gamble.

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2 Q. Were the individual dentists members
3 of the dental co-op of Utah buying products on
4 their own?

5 MS. FINCHER: Object to the form.

6 A. I can't answer that because I don't
7 know the relationship of that, of Thorup or
8 whatever it was called.

9 Do you want this back?

10 Q. I can take back --

11 A. Pardon me?

12 Q. I can take back CX238.

13 MS. FINCHER: Jasmine, why are you
14 taking back the documents when you put them
15 in front of him?

16 MS. ROSNER: I prefer to take this one
17 back, and if we refer to it again, I'll give
18 it back to him.

19 MS. FINCHER: Will you make that copy
20 available to him again, Jasmine, when other
21 counsel have questions that you're asking
22 about this document?

23 MS. ROSNER: Yes.

24 BY MS. ROSNER:

25 Q. It was not Schein's policy to work

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2 with local buying groups?

3 MS. FINCHER: Object to the form.

4 Is that a question?

5 Q. Correct?

6 A. Can you ask me the question again?

7 Q. It was not Schein's policy to work
8 with local buying groups, correct?

9 MS. FINCHER: Object to the form.

10 A. It was not a policy -- Schein did not
11 have a policy not to work with buying groups.

12 Q. Did Schein have a policy to work with
13 buying groups?

14 MS. FINCHER: Object to the form.

15 A. There was no written policy, but we
16 did work with buying groups. There was no
17 written policy to say we work with DSOs.

18 Q. Schein stayed clear of buying groups
19 because they only erode Schein's margins?

20 MS. FINCHER: Object to the form.

21 A. Every buying group was analyzed that
22 came to us to see whether they were based on
23 price only or offered other services. So if it
24 was one that was price only, we, as a company,
25 decided -- not as a company. We would decide

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2 that we don't really want to enter into a
3 relationship with them, price only.

4 So it's under a -- you're putting it
5 under a general -- the buying groups fall into
6 different spectrum. Each one of them -- we
7 would meet with every one of them, lift up the
8 covers to find more about them, and if it was
9 just simply a price only, you know, I set up
10 one, Joe on the street sets up one, and says I'm
11 just going to reduce price. We decided as a --
12 we would say that's just not a good fit for
13 Schein.

14 Q. So you're testifying that Schein did
15 not stay clear of buying groups?

16 A. We did not -- Schein did not -- Schein
17 would work with buying groups.

18 Q. You stumbled across some of the
19 regional branches that got involved with local
20 buying groups even though it was not Schein's
21 policy?

22 MS. FINCHER: Object to the form.

23 A. Rephrase it. I stumbled -- go ahead.
24 Say it again.

25 Q. You stumbled across some of the

1 CONFIDENTIAL - RANDALL FOLEY
2 regional branches that got involved with local
3 buying groups even though it was not Schein's
4 policy?

5 MS. FINCHER: Object to the form.

6 A. I'm not aware of that. I don't know
7 what I mean by that.

8 Q. Are you saying you're not aware that
9 it was not Schein's policy to not do business
10 with buying groups?

11 MS. FINCHER: Object to the form.

12 Asked and answered.

13 You can answer it if you understand
14 it.

15 A. Correct.

16 Q. I'm going to hand you a document
17 that's been premarked as CX2074. It bears the
18 Bates number Henry Schein-001491116.

19 Please take a moment to review CX2074
20 and let me know when you're done.

21 (Exhibit CX2074-001 through 002, a

22 document bearing Bates Nos. Henry
23 Schein-001491116 through 117, marked for
24 identification, as of this date.)

25 (Document review.)

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2 THE WITNESS: Okay.

3 BY MS. ROSNER:

4 Q. You've had a moment to look at CX2074?

5 A. Yes.

6 Q. This is an e-mail correspondence
7 between you and Chad Thompson of Heartland?

8 A. Yes.

9 Q. You respond to Mr. Thompson's e-mail
10 on March 5, 2014; is that right?

11 A. Yes.

12 Q. You drafted this e-mail in CX2074 as
13 part of your job?

14 A. Yes.

15 Q. It's part of your job to communicate
16 with customers of Schein?

17 A. Yes.

18 Q. You have knowledge of the contents of
19 CX2074?

20 A. Yes.

21 Q. You drafted CX2074 e-mail at or near
22 the time of the events therein described?

23 A. Yes.

24 Q. You drafted the e-mail in CX2074 and
25 kept it in the course of regularly conducted

1 CONFIDENTIAL - RANDALL FOLEY
2 business?

3 A. Yes.

4 Q. CX2074 is a true and correct copy of
5 your e-mail correspondence?

6 MS. FINCHER: Object to the form.

7 A. Yes.

8 Q. In the second paragraph of your e-mail
9 to Mr. Thompson in CX2074, you say that you're
10 continually bombarded by dental associations and
11 other groups to form what you call buying
12 groups.

13 Did I read that correctly?

14 A. Yes.

15 Q. You then later say, "We stay clear of
16 these, as they only erode our margins."

17 Did I read that correctly?

18 A. You read that correctly.

19 Q. So Schein stayed clear of buying
20 groups because they only eroded its margins?

21 MS. FINCHER: Object to the form.

22 Mischaracterizes the document.

23 A. In the -- in the shortened response to
24 a customer, instead of going into the detail of
25 the different level of buying groups, if they

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2 were price only, then we would stay clear of
3 that. But to this customer, Chad, I wasn't
4 going to go into the detail of which ones we did
5 business with and which ones we didn't.

6 The paragraph starts with -- the first
7 paragraph starts with me stating that we do have
8 a buying group, but it's only -- because he's
9 asking about Texas, and I'm unaware of what the
10 DDA is. So I am explaining that we do have a
11 buying group on the community health center
12 side, but I didn't go into much detail as to the
13 different levels of buying groups with him. So
14 it's a general statement.

15 Q. I want to go back for a minute. So
16 you said that where buying groups are price
17 only, you try to stay away from them?

18 MS. FINCHER: Object to form.

19 A. When they're only -- when they --
20 again, if it's all based on price, we would try
21 to -- we would stay away from them, if we did an
22 analysis of them and just say, no, we're not
23 going to work with you.

24 Q. So Schein had a policy not to do
25 business with buying groups that were price

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2 only?

3 MS. FINCHER: Object to the form.

4 Mischaracterizes the testimony. Asked and
5 answered.

6 You can answer it again.

7 A. There was really no verbal or written
8 policy about any of this. It was just a
9 general, hey, again, this is the type of client
10 that we would like to do business with, yea or
11 nay. No written instructions don't do this, you
12 know, do this. Okay.

13 So it's not a -- it was not a company
14 policy not to do business with buying groups
15 based on price only. We had Thorup. We had --
16 we had Advantage were price only.

17 Q. In the last paragraph of your e-mail,
18 you say, on CX2074, "I have stumbled across some
19 of our regional branches that have gotten
20 involved with a local buying group even though
21 it is not our policy."

22 Did I read that correctly?

23 A. You read it correctly.

24 Q. You are referring to a policy against
25 doing buying groups, correct?

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2 MS. FINCHER: Object to the form.

3 Mischaracterizes the document. Asked and
4 answered.

5 You can answer it again.

6 A. Again, I would state that, instead of
7 going into detail with Chad Thompson, a
8 customer, that doing buying groups based on
9 price only -- and that's what I'm assuming the
10 TDA is here -- that it's -- that we generally do
11 not get involved. And here I actually said
12 about associations, like -- like I mentioned
13 earlier, like study groups, that type of thing.

14 Q. In your e-mail to Mr. Thompson, are
15 you using the word "policy" as a shorthand for
16 something else?

17 MS. FINCHER: Object to the form.

18 A. I -- what I'm -- I'm using "policy"
19 here even though it is not a policy of the
20 company, as just a -- if I would rephrase it,
21 I'd say, if a -- when we meet with people that
22 are based on price only, the company usually
23 does not engage with them. It's not a written
24 policy.

25 So I think in the sense it's not our

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2 practice to do that would be a better word,
3 okay?

4 Q. So it's not Henry Schein's practice to
5 engage in price-only buying group customers?

6 MS. FINCHER: Object to the form.

7 A. It's kind of an absolute, but that's
8 where -- that's where we were at the beginning
9 of this -- at the beginning of the buying groups
10 entering the market, that's -- I would say that
11 would be where we were at, the beginning.

12 Q. And who understood at Schein the
13 practice of not doing business with price-only
14 buying groups?

15 MS. FINCHER: Object to the form.

16 Mischaracterizes the testimony.

17 Go ahead.

18 A. That would be with Hal Muller and
19 myself and with Tim Sullivan and perhaps Dave
20 Steck that our goal was to, again, always
21 analyze the buying group and figure out if it
22 has anything to offer, but price, we don't -- we
23 don't really want to enter that relationship
24 with that particular group. Otherwise, we will
25 and have and done and did.

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 2 Q. You can put that document aside.
 3 A. Okay.
 4 Q. Had you heard about HSD responding to
 5 a bid for Smile Source in the 2014 period?
 6 A. Yes, I knew that there was a bid out
 7 there to regain the business at Smile Source.
 8 Q. And did Schein respond to the Smile
 9 Source bid --
 10 MS. FINCHER: Objection.
 11 Q. -- in 2014?
 12 MS. FINCHER: Object to the form.
 13 A. It is my understanding, because I
 14 believe -- it's hard for me to remember, but I
 15 believe I looked at a PowerPoint presentation
 16 that they had created, and reviewed it, you
 17 know, but that's it.
 18 Q. When you say "they," who are you
 19 referring to?
 20 A. Oh, I'm sorry, that HSD had created a
 21 PowerPoint and they wanted -- I looked it over.
 22 They were no longer under, you know, my division
 23 at that time.
 24 Q. Smile Source was no longer under your
 25 division at that time?

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Correct; and they were not -- and this
 3 bid was not coming through our division. It
 4 would stay with HSD.
 5 Q. Knowing that HSD was responding to a
 6 Smile Source bid in 2014 caused you to question
 7 whether Schein was okay with some buying groups?
 8 MS. FINCHER: Object to the form.
 9 Mischaracterizes the testimony.
 10 A. I understood that Schein was fine with
 11 buying groups, and again, with one similar to --
 12 like Smile Source, where they provided services
 13 and to their end-users and worked with us as a
 14 team. So they were actively bidding on winning
 15 back that business.
 16 Q. Handing you a document that's been
 17 premarked for identification as CX2075. It
 18 bears the Bates label on the first page Henry
 19 Schein-000165626.
 20 Please take a moment to familiarize
 21 yourself with CX2075 and let me know when you're
 22 done.
 23 (Exhibit CX2075-001 through 004, a
 24 document bearing Bates Nos. Henry
 25 Schein-000165626 through 629, marked for

1 CONFIDENTIAL - RANDALL FOLEY
 2 identification, as of this date.)
 3 (Document review.)
 4 THE WITNESS: Okay.
 5 BY MS. ROSNER:
 6 Q. You've had a moment to review CX2075?
 7 A. Yes.
 8 Q. CX2075 is an e-mail chain with you,
 9 Andrea Hight, Hal Muller, and Bill Harrison.
 10 The top e-mail on the chain, latest in time, is
 11 dated March 17, 2014.
 12 Do you see that?
 13 A. Yes.
 14 Q. You drafted the e-mails in this chain
 15 as part of your job, correct?
 16 A. Yes.
 17 Q. It's part of your job to communicate
 18 about customers of Schein?
 19 A. Yes.
 20 Q. You have knowledge of the contents of
 21 e-mails in CX2035?
 22 MS. FINCHER: Object to the form.
 23 A. Yes.
 24 Q. You drafted the e-mails in CX2075 at
 25 or near the time of the events therein

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 2 described?
 3 A. Yes.
 4 Q. You drafted the e-mails in CX2075 and
 5 kept them in the ordinary course of your
 6 regularly conducted business?
 7 A. Yes.
 8 Q. CX2075 is a true and correct copy of
 9 your e-mail correspondence?
 10 MS. FINCHER: Object to the form.
 11 A. Yes.
 12 Q. I want to refer you to CX2075-002.
 13 There's an e-mail from you at 7:29
 14 a.m.
 15 A. Okay.
 16 MS. FINCHER: Do you see that, Randy?
 17 THE WITNESS: Yes.
 18 BY MS. ROSNER:
 19 Q. The last sentence in that e-mail says,
 20 "With HSD responding to a Smile Source bid, we
 21 must be okay with some BGs," followed by six
 22 question marks -- five question marks; is that
 23 correct?
 24 A. Correct.
 25 Q. When you say "BGs," you're referring

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2 to buying groups?

3 A. Yes.

4 Q. In this e-mail you're saying "we must
5 be okay with some buying groups," correct?

6 A. Correct.

7 Q. Why did you include so many question
8 marks?

9 MS. FINCHER: Object to the form.
10 Go ahead.

11 A. I'm not familiar why I put the
12 question marks on there. I know that this
13 e-mail is generating a new -- Dental Gator is
14 being created at this time and that we're moving
15 positively forward by responding to the Smile
16 Source bid, from my knowledge. So Schein must
17 be okay -- as a company, we're okay with the
18 buying groups.

19 Q. You question whether Schein was okay
20 with some buying groups because this was
21 different than the practice of Schein?

22 A. No.

23 MS. FINCHER: Object.

24 THE WITNESS: I'm sorry.

25 MS. FINCHER: Object to the form.

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2 Mischaracterizes the testimony.

3 Go ahead.

4 THE WITNESS: No. Again, this is a
5 generalization about buying groups based on
6 price, you know, only versus buying groups
7 offering more services, but here we are,
8 moving along years later, and getting more
9 involved with buying groups than we were at
10 the beginning.

11 So I'm seeing that we're, you know,
12 we're fine with, you know, expanding that
13 business, that -- expanding that market
14 share into buying groups.

15 BY MS. ROSNER:

16 Q. In the e-mail chain, you're discussing
17 the buying group Dental Gator; is that right?

18 A. The formation --

19 MS. FINCHER: Object to the form.
20 Go ahead.

21 A. Yes, it starts like this is the
22 formation of Dental Gator.

23 Q. Is dental Gator a price-only buying
24 group?

25 MS. FINCHER: Object to the form.

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2 A. Their plan was not to be a price-only
3 buying group, correct. They were -- it was an
4 arm of MB2, which is a DSO, so they understood
5 management services, and they wanted to have a
6 way in two practices, like a starter to get
7 their foot in the door, and then promote them to
8 an actual affiliate of them.

9 So they were a buying group, but we
10 were working with them to make sure that it
11 wasn't just based on price, and this is the
12 start of it.

13 Q. If HSD was always okay with working
14 with some buying groups, why did you feel the
15 need to question it here?

16 MS. FINCHER: Objection to form.

17 Asked and answered. Mischaracterizes the
18 document.

19 Go ahead.

20 A. I'm not, again, I'm not sure why I
21 would question that at all, you know, what my --
22 why the question marks there.

23 Q. Why would you include that line?

24 MS. FINCHER: Object to the form.

25 Asked and answered.

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2 Q. "We must be okay with some buying
3 groups"?

4 MS. FINCHER: Object to the form.
5 Asked and answered.

6 You can answer again.

7 A. Because here we are going -- here we
8 are in the plans to form a new buying group, and
9 it looks like everything is okay for us to move
10 forward. Smile Source is being restarted,
11 rebid by us, so we must be -- you know, the
12 company is, as far as prior issues they may have
13 had with their frustration with the FSCs on the
14 buying groups, it seems they have solved some of
15 those issues and we got a plan in place.

16 And at this time, it's hard for me to
17 recollect, but I believe we started this -- I
18 don't know when we set up a particular person at
19 HSD that would then start handling buying
20 groups, I think it was subsequent to this, but
21 we actually had brought a person onboard just to
22 handle buying groups on the HSD side.

23 Q. So it's your testimony that Schein
24 always did business with some buying groups?

25 A. For sure, yes.

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Q. So why are you asking, "We must be okay with some buying groups?"

MS. FINCHER: Object to the form.

Asked and answered.

A. Yeah, I'm not sure why I'm asking that question.

Q. In the next in time e-mail, Andrea Hight responds to your e-mail.

Who is Andrea Hight?

A. Andrea Hight was a strategic account manager that reported directly to me. She was -- she was on the MB2 account.

Q. She responds saying, "I'm having a hard time figuring out what our position is."

Did I read that correctly?

A. Yes.

Q. So Andrea is having a hard time figuring out what Schein's position is on buying groups, is that your understanding?

MS. FINCHER: Object to the form.

A. Yes; there's no policy on buying groups, so she doesn't understand. Is our position move forward? Who qualifies as a buying group?

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As I mentioned earlier, that would fall up -- that would come up to Hal and myself, Tim Sullivan, Dave Steck, not a decision made at that level of a person.

So she's unclear as to it, so she's reaching out to us to say, hey, what do I have to put into this contract? What's the scoop?

Q. Andrea notes that she fears Schein "could be opening the floodgates to things we might not like at all."

What's your understanding of what she means by that?

MS. FINCHER: Object to the form.

Mischaracterizes the document.

A. I'm not sure what she means by that.

Q. You respond by saying, "I hear you."

What is it that you hear from Andrea?

MS. FINCHER: Object to the form.

A. I'm not sure if I'm asking I hear you to opening the floodgates or I hear you that it's a hard time figuring out our position.

Q. Why would you be having a hard time figuring out what the position is on buying groups?

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MS. FINCHER: Object to the form.

A. Okay. Reading further into my response, my concern here is are they just basically opening up the price-only type buying group and pulling the wool over our eyes, or are they really trying to get these customers eventually under their wings as clients? Are we opening up a price-only buying group is the concern here.

Q. So you don't want to open the floodgates on a price-only buying group?

A. On a price only, for this particular customer, MB2, we do not want to create a new one, price only, because again, we did not want to work a price-only, period, type customer.

Q. How would MB2's buying group open the floodgates on price-only buying groups?

MS. FINCHER: Object to the form.

Mischaracterizes the testimony.

Go ahead.

A. I don't understand why. We already had customers in place that were buying groups were price only and we had buying groups that weren't price only, so I don't understand this

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floodgate -- this floodgate statement, what she means by it.

Q. You say, "We just need to be able to close to floodgates."

What do you mean by that?

A. Well, if a -- if we open up a buying group and it deviates from the plans of not being price only, then we need to be able to tell the customer that, hey, you need to change your course and become less -- I mean less focused on price only, show other services available, promote our software, promote our services, and -- and give them an opportunity to comply to that.

And it's my knowledge that we did that with MB2, eventually -- I'm sorry, Dental Gator. It's hard, you know, to distinguish them.

Q. You note that Schein has closed the floodgates before.

When did Schein do that?

MS. FINCHER: Object to the form.

Mischaracterizes the document.

A. As of this date, I have not -- I did not know of any buying group that we had closed

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 2 down or shut down or at all that I can think of.
 3 Q. When you say, "We don't know of any
 4 buying group that we have shut down," are you
 5 referring to Special Markets or are you
 6 referring to Schein?
 7 A. I am -- I definitely am referring to
 8 Special Markets, and I'm also not aware of
 9 anybody on the HSD side or heard anything about
 10 them shutting anybody down.
 11 Q. We talked earlier today --
 12 A. I believe Steadfast was shut down
 13 later than this date. I'm not sure. I don't
 14 have my timeline, but it happened before 2016
 15 when I left.
 16 Q. Why was it necessary to close the
 17 floodgates on price-only buying groups?
 18 MS. FINCHER: Object to the form.
 19 Mischaracterizes the document and the
 20 testimony.
 21 Go ahead.
 22 A. Again, if we set up the customer
 23 originally to not be price only, and they become
 24 price only, then I felt it was -- that we
 25 could -- that opened up a floodgate of them just

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 2 being a buying group based on price only, which
 3 is not what we want to do business with.
 4 Q. Is there a particular reason why
 5 Schein doesn't want to do business with
 6 price-only buying groups?
 7 MS. FINCHER: Object to the form.
 8 A. It's -- it's not a fit with our
 9 business model. Our business model is to be
 10 full service. We were once a catalog company
 11 many, many years ago. Now we're a full service
 12 organization and we went to great strides to
 13 become that.
 14 A price-only buying group doesn't fit
 15 our model of providing full services to the
 16 end-user to do the complete wheel, as we call
 17 it.
 18 Q. Are there any other reasons why Schein
 19 doesn't want to do business with price-only
 20 buying groups?
 21 MS. FINCHER: Object to the form.
 22 A. I can't think of any others.
 23 Q. We've talked a little bit about
 24 Kathleen Titus. At one point, Kathleen Titus
 25 reported to you in Special Markets, correct?

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 2 A. That's correct.
 3 Q. At some point, Kathleen Titus was
 4 transferred to HSD; is that right?
 5 A. To our Mid Market Division, yes.
 6 Q. And Mid Market is within --
 7 A. HSD.
 8 Q. -- HSD?
 9 A. There was a transition period where it
 10 wasn't, but technically, at the end of the day,
 11 it was. Okay?
 12 Q. Approximately when was Ms. Titus
 13 transferred to HSD?
 14 A. I can't remember the dates of -- hold
 15 on. I believe in 2015 or end of 2014 is when
 16 Kathleen took a role with Mid Market, and
 17 technically, it fell under HSD in her -- but
 18 there was a transition period where, you know,
 19 customers couldn't move, you know, till
 20 year-end, and there was responsibility on my
 21 part to make sure that the customers were not
 22 disrupted by changes. So I don't know exactly
 23 when she became an official HSD employee.
 24 Q. Ms. Titus shut down a number of buying
 25 group customers, correct?

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 2 MS. FINCHER: Object to the form.
 3 A. I am only aware of her -- I heard that
 4 she had met with the dental co-op and it was
 5 decided, for whatever reason, that we would no
 6 longer do business with them, and then I was
 7 involved in a decision to end the relationship
 8 as it was with Steadfast, which was a buying
 9 group. Okay?
 10 Q. So Ms. Titus closed down the dental
 11 co-op relationship?
 12 MS. FINCHER: Object to the form.
 13 Mischaracterizes testimony.
 14 Go ahead.
 15 A. Her herself wouldn't have that
 16 authority to shut it down, but based on her
 17 meeting with that particular --
 18 Are you talking about the Utah co-op?
 19 Q. Yes.
 20 A. Yes. Based on her meeting with them,
 21 it is my understanding that the relationship was
 22 ended with that co-op.
 23 Q. Ms. Titus -- strike that.
 24 You thought someone gave Ms. Titus
 25 marching orders to dismantle buying groups at

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 2 Schein?
 3 MS. FINCHER: Object to the form.
 4 A. I would make that flippant kind of
 5 smart ass remark because she had just started
 6 with HSD, and she would -- she was a strong
 7 personality person, so I would make that a
 8 comment that somebody said, hey, take a good
 9 look at this customer and see what's going on.
 10 Q. So you made the comment that someone
 11 gave Ms. Titus marching orders to dismantle
 12 buying groups in May of 2014, that's when Ms.
 13 Titus just started with HSD?
 14 MS. FINCHER: Object to the form.
 15 Mischaracterizes the testimony.
 16 Go ahead.
 17 A. It would have been around the time she
 18 went to HSD, but there was no order to dismantle
 19 buying groups.
 20 Q. How do you know there was no order to
 21 dismantle buying groups?
 22 A. That would not be a Schein thing to --
 23 there was no mention to me that we need to shut
 24 down buying groups in HSD or in Special Markets.
 25 Q. But you don't deny saying you thought

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 2 Mischaracterizes the testimony. Asked and
 3 answered.
 4 You can answer it again.
 5 A. Again, she reported to Joe Cavaretta
 6 so she fell under his P&L. However, your
 7 statement that to close buying groups, I'm not
 8 making that statement, am I, that to close all
 9 buying groups at HSD? That would never -- that
 10 was never a statement.
 11 Q. Let me hand you a document that's been
 12 premarked for identification as CX257. It is an
 13 e-mail chain with a first page bearing the Bates
 14 Henry Schein-000166442.
 15 Please take a moment to review CX257
 16 and let me know when you're ready.
 17 (Exhibit CX257.001 through .003, a
 18 document bearing Bates Nos. Henry
 19 Schein-000166442 through 444, marked for
 20 identification, as of this date.)
 21 MS. FINCHER: And Randy, this will
 22 start at the back again.
 23 THE WITNESS: This is a long one.
 24 This is Kathleen Titus.
 25 (Document review.)

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 2 someone gave Ms. Titus marching orders to
 3 dismantle buying groups?
 4 MS. FINCHER: Object to the form.
 5 Mischaracterizes testimony. Asked and
 6 answered.
 7 You can answer it again.
 8 A. I don't really recall why I would say
 9 that. I do not know directly that anybody
 10 specifically told her to do that.
 11 Q. You thought it was possible that Joe
 12 Cavaretta directed Kathleen Titus to dismantle
 13 buying groups?
 14 MS. FINCHER: Object to the form.
 15 Mischaracterizes the testimony. Asked and
 16 answered.
 17 You can answer it again.
 18 A. At that time, Kathleen Titus reported
 19 to Joe Cavaretta, so it could have been -- I
 20 mean, if there was -- it could have been him.
 21 Q. Do you have any other reason to
 22 suspect why Joe Cavaretta would direct Kathleen
 23 Titus to dismantle Schein's buying group
 24 customers?
 25 MS. FINCHER: Object to the form.

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 2 THE WITNESS: Okay.
 3 BY MS. ROSNER:
 4 Q. You've had a moment to review CX257?
 5 A. Yes.
 6 Q. CX257 is an e-mail chain. You have
 7 written the top e-mail responding to -- excuse
 8 me, forwarding an e-mail from Kathleen Titus.
 9 Hal Muller also has an e-mail response.
 10 Your e-mail response is dated May 20,
 11 2014; is that correct?
 12 MS. FINCHER: Object to the form.
 13 A. Yes.
 14 Q. You drafted this e-mail as part of
 15 your job?
 16 A. Yes.
 17 Q. It's part of your job to communicate
 18 about Schein customers?
 19 A. Yes.
 20 Q. You have knowledge of the contents of
 21 CX2057?
 22 MS. FINCHER: Object to the form.
 23 Q. Let me ask that again. I believe I
 24 had the number wrong.
 25 You have knowledge of the contents of

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 2 CX257?
 3 MS. FINCHER: Object to the form.
 4 A. Yes.
 5 Q. You drafted the e-mail in CX257 at or
 6 near the time of the events described therein?
 7 A. Yes.
 8 Q. You drafted the e-mail in CX257 and
 9 kept it in the course of regularly conducted
 10 business at Schein?
 11 A. Yes.
 12 Q. This is a true and correct copy of
 13 your correspondence?
 14 MS. FINCHER: Object to the form.
 15 A. Yes.
 16 Q. In your e-mail you state, "I am not
 17 sure who gave her the marching orders to
 18 dismantle these."
 19 Did I read that correct?
 20 A. Yes.
 21 Q. You're referring to someone giving
 22 Kathleen Titus marching orders to dismantle
 23 buying groups, correct?
 24 MS. FINCHER: Object to the form.
 25 Mischaracterizes the document.

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 2 Go ahead.
 3 A. Can you rephrase that. I can't hear
 4 you, or look --
 5 Q. You were referring to Kathleen Titus
 6 receiving marching orders to dismantle buying
 7 groups customers; is that right?
 8 MS. FINCHER: Object to the form.
 9 Mischaracterizes the document.
 10 A. Yes, I'm making a general statement
 11 like who's asking her to go talk to all of these
 12 customers.
 13 Q. You suspected Joe Cavaretta asking her
 14 to dismantle these buying groups customers?
 15 MS. FINCHER: Object to the form.
 16 Mischaracterizes the testimony and the
 17 document.
 18 A. Yes, because she reported directly to
 19 Joe.
 20 Q. Was Joe in favor of doing business
 21 with buying groups?
 22 MS. FINCHER: Object to the form.
 23 A. I can't speak to what Joe was in favor
 24 of, so I really don't know how to answer -- I
 25 can't answer that.

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 2 Q. Henry Schein Dental had buying group
 3 customers, correct?
 4 A. Correct.
 5 Q. Is it strange that Joe Cavaretta is
 6 telling Kathleen Titus to dismantle Henry Schein
 7 Dental's buying group customers?
 8 MS. FINCHER: Object to the form.
 9 Mischaracterizes the document and the
 10 testimony.
 11 You can answer.
 12 A. I am stating I think Joe is giving the
 13 orders. I'm not -- there's just a -- it's
 14 making an assumption, and I'm assuming he's
 15 talking about the -- I think I'm talking about
 16 the Thorup one, the UT HSD. That's Thorup
 17 co-op.
 18 Q. You mentioned, "I think Joe is having
 19 her go after these," so you're referring to more
 20 than one buying group, correct?
 21 MS. FINCHER: Object to the form.
 22 A. Yes, because I think I'm talking about
 23 two in this situation: The one in Utah and now
 24 she's questioning what's the deal at Breakaway.
 25 Q. You can put that exhibit aside.

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 2 Schein used to business with a buying
 3 group called Steadfast, correct?
 4 A. That's correct.
 5 Q. Ms. Titus wanted to close Steadfast?
 6 MS. FINCHER: Object to the form.
 7 A. Yes, she requested from me -- she
 8 asked for authorization if she could end the
 9 relationship with Steadfast.
 10 Q. She wanted to shut down the Steadfast
 11 relationship completely?
 12 MS. FINCHER: Object to the form.
 13 Asked and answered.
 14 A. Yes.
 15 Q. Did you give her the authorization to
 16 close the Steadfast account?
 17 A. Reluctantly, I gave her the authority
 18 to do it based on her inability -- based on the
 19 customer unwilling -- unwillingness to meet with
 20 her and discuss their business plan and on
 21 discovery that they were really not so much a
 22 buying group, but more so a procurement company.
 23 So, reluctantly, they were actually
 24 doing good numbers with us and they had a good
 25 GP, but I understood the situation and it fell

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under me as far as financial at the time that I had to give the -- I gave the green light.

A. From Kathleen. She made a comment in an e-mail that they were acting as a procurement company.

Q. What was the basis of your understanding that Steadfast was a procurement service?

Q. And Steadfast was refusing to meet with Kathleen Titus?

A. As I mentioned, you know, earlier, that we like to have a relationship with the end-users and even with the corporate side, so Kathleen was attempting on multiple attempts to meet with the corporate people to see how we could better our relationship and they refused to meet with us.

A. Correct. She wanted to meet them face-to-face to see how we could better our relationship, and they were -- they were not open to meeting with her or meeting with Schein. Okay.

And then it was discovered that, as a Schein customer would place an order, they would intercept the order and find out and then shop out amongst competitors a lower -- who to buy it from and, instead, may ship a Benco or Patterson on a Darby order instead. That's not the kind of relationship that we started with Steadfast with Rick Heysquierdo many years ago in 2009, so that relationship had deteriorated and was no longer a good customer for us to work with.

Q. If steadfast was not open to meeting with Schein, what is your understanding of how Schein learned that Steadfast was acting as a procurement company?

MS. FINCHER: Object to the form.

Q. How did you hear that Steadfast was reallocating Schein orders?

A. It is my understanding that the end-users who were Schein customers were saying I placed an order with Schein, and I got a Benco box.

Q. What's that understanding based on?

MS. FINCHER: Object to the form.

A. That's based on the field sales team finding, you know, understanding what's going on at the end-users, at Steadfast customers.

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Q. Schein does business with an entity called Breakaway?

MS. FINCHER: Object to the form.

A. That is correct.

Asked and answered.

Q. Schein believed that Breakaway had a buying group affiliate?

A. I'm not sure. Off-the-cuff smart ass remark.

MS. FINCHER: Object to the form.

Q. What's the basis of that remark?

A. We totally understood that they were -- they had a DSO component, very small DSO component, but their bigger component was a buying group. It was created under my watch.

MS. FINCHER: Object to the form.

Asked and answered.

Q. You thought that if Ms. Titus knew about Breakaway, she would want to shut it down?

You can answer it again.

MS. FINCHER: Object to the form.

A. Kathleen was always strong in working with our DSO customers and very into the relationship of building relationships with the end-users. She's very in front of the customers, very strong Schein proponent -- person, and wanted that relationship.

A. I -- I think the comment again is a smart ass comment that she's going after, you know, that she would -- you know, hey, this is a buying group, and taking that view that, instead of looking at it that it was a full-service buying group, that I just made a comment like that, but that's not the end result of what happened. It turned out to be one of our largest buying groups after she met with them.

And I wouldn't make an assumption that she probably wouldn't like working with that buying group because she worked with OrthoSynetics with me.

Q. Why would you make the comment that she's going after buying groups?

Q. I don't think I understand. You earlier said that you made a smart ass comment that Kathleen was going after buying groups, and I asked you the basis for that comment, to which you say that Kathleen likes to have a strong relationship. But how does that relate to

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 2 Kathleen going after buying groups?
 3 MS. FINCHER: Object to form.
 4 A. An assumption that she feels that the
 5 relationship isn't as strong by working through
 6 a buying group versus directly with a DSO or
 7 versus directly with the end-user.
 8 Q. Why would the relationship with a
 9 buying group not be as strong as working with a
 10 DSO or the end-user?
 11 MS. FINCHER: Object to the form.
 12 Mischaracterizes the testimony. Vague.
 13 A. In that if it didn't allow us to offer
 14 our full services, she would -- she would be
 15 reluctant to work with them. So she was
 16 actually setting up meetings, and in this
 17 e-mail, she's actually getting all the data on
 18 Breakaway and creating a meeting with them to
 19 meet face-to-face.
 20 Q. If there were buying groups that
 21 allowed Schein to offer their full services,
 22 would Kathleen Titus have reason to be reluctant
 23 to work with them?
 24 A. No.
 25 MS. FINCHER: Objection.

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 2 that right?
 3 MS. FINCHER: Object to the form.
 4 Mischaracterizes the testimony.
 5 Go ahead.
 6 A. Correct, she did not have authority.
 7 Q. So when Kathleen Titus was in Special
 8 Markets, she had to seek authority to shut down
 9 any group through you, correct?
 10 MS. FINCHER: Object to the form.
 11 A. Yes, that would be my decision in
 12 Special Markets. Somebody else's in HSD.
 13 Q. Whose decision would it be in HSD?
 14 MS. FINCHER: Object to the form.
 15 You can answer if you know, but don't
 16 guess.
 17 A. I really don't know who -- who has the
 18 ultimate decision on that.
 19 Q. But it would not be Kathleen Titus?
 20 A. Correct.
 21 MS. FINCHER: Object to the form.
 22 THE WITNESS: Sorry.
 23 MS. FINCHER: Go ahead.
 24 BY MS. ROSNER:
 25 Q. Special Markets viewed buying groups

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 2 THE WITNESS: I'm sorry.
 3 MS. FINCHER: Just give me a minute.
 4 Object to the form. Go ahead.
 5 THE WITNESS: No.
 6 MS. ROSNER: We've been going for
 7 about an hour. You want to take a quick
 8 break?
 9 MS. FINCHER: Yes. Sure.
 10 MS. ROSNER: We can go off the record.
 11 THE VIDEOGRAPHER: The time is 11:44
 12 a.m. We're off the record.
 13 (Recess.)
 14 THE VIDEOGRAPHER: The time is 11:58
 15 a.m. We're on the record.
 16 MS. ROSNER: Did we have someone just
 17 join us by phone?
 18 MS. GOFF: Yes. Karen Goff, Federal
 19 Trade Commission.
 20 BY MS. ROSNER:
 21 Q. Mr. Foley, before we took a break, we
 22 were talking about Kathleen Titus shutting down
 23 a variety of buying groups, and you had
 24 previously mentioned that Kathleen Titus doesn't
 25 have authority to shut down buying groups; is

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 2 favorably, correct?
 3 MS. FINCHER: Object to the form.
 4 A. Correct.
 5 Q. Buying groups added revenues for
 6 Special Markets?
 7 MS. FINCHER: Object to the form.
 8 A. Yes.
 9 Q. Buying groups allowed Schein to have
 10 customers that it did not previously have?
 11 MS. FINCHER: Object to the form.
 12 Are you talking about buying groups
 13 generally, Jasmine? Is that the question?
 14 MS. ROSNER: Yes.
 15 THE WITNESS: Can you rephrase it?
 16 BY MS. ROSNER:
 17 Q. Buying groups allowed Schein to gain
 18 customers that it did not previously have?
 19 MS. FINCHER: Object to the form.
 20 A. Yes, it could.
 21 Q. Buying groups could lead to longer
 22 retention rates for existing Schein members?
 23 MS. FINCHER: Object to the form.
 24 Q. Let me rephrase.
 25 A. Okay.

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Q. Buying groups could lead to longer retention rates for existing Schein customers?

MS. FINCHER: Object to the form.

A. I had heard that from McKesson, a study, that when they were part of a buying group with Commonwealth, customer retention was bigger. So that's a general statement. I don't think it's proven at Schein. I never saw any statistics to prove that, but I believed it.

Q. Why did you believe it?

A. Because a study -- I had heard about a study done by McKesson on the medical side about working with buying groups and how it led to longer retention of the end-user.

Q. A number of Schein's buying groups had high growth rates?

MS. FINCHER: Object to the form.

A. Yes.

Q. Schein couldn't ignore the -- strike that.

Schein couldn't ignore the growing opportunity with buying groups?

MS. FINCHER: Object to the form.

A. Correct.

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Q. You wanted to bend Schein's buying groups rules to work with Smile Source?

MS. FINCHER: Object to the form.

A. I don't understand why I meant -- what I meant by I wanted to bend our rules to work with Smile Source.

Q. You said, "We should bend our buying groups rules to work with Smile Source," correct?

MS. FINCHER: Object to the form.

Do you have a document, Jasmine?

You're welcome to show it to him.

A. Let me clarify -- let me ask. Is this in the last e-mail or -- I'm stating that we should be able to work with Smile Source in Special Markets and change the rule of HSD owning Special Markets. That's, I believe, what I'm referring to there. I want Smile Source back.

Q. When we were talking about Smile Source earlier, you mentioned that HSD had misconstrued Smile Source and thought that it was a price-only buying group. Do you recall that?

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MS. FINCHER: Object to the form.

Mischaracterizes testimony.

A. Yes.

Q. Who within HSD misconstrued Smile Source's model?

MS. FINCHER: Object to the form.

A. If I were -- I believe it was the group in Miami who had started, you know, the regional manager and the FSC at that time.

Q. Anyone else within HSD misconstrue Smile Source's model?

A. Not that I know of.

Q. How was Smile Source's model misconstrued?

MS. FINCHER: Object to the form.

A. I believe the local team just jumped to a conclusion that Smile Source had nothing more to offer other than price and didn't -- didn't research any information, but they did reach out and want more information, and therefore, I shared back what their model was.

It was the first time, I believe, ever running into this. It was the first time that I had run into a problem with Smile Source or, you

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know, people to understand their model.

Q. The local team that you're referring to is a team that's housed within HSD, correct?

MS. FINCHER: Object to the form.

A. That is correct.

Q. Is it common for local teams to reach across division lines to talk to Special Markets?

MS. FINCHER: Object to the form.

A. Yes. When the customer is unknown to them, and they can look on the system and see that it's actually coded as HSM and would know who to reach out to then.

Q. Special Markets had told HSD several times that Smile Source was not a price-only buying group?

MS. FINCHER: Object to the form.

Mischaracterizes the testimony.

A. Yes, that is correct.

Q. Why was HSD still questioning whether Smile Source was a price-only buying group?

MS. FINCHER: Object to the form.

Mischaracterizes the testimony.

You can answer it.

1 CONFIDENTIAL - RANDALL FOLEY
2 A. I'm not sure. I think -- I would
3 think that it relates to it just not sinking in
4 that they're not doing any further research, and
5 just jumping to a conclusion and sticking to it,
6 and I would say that at, the FSC level, the
7 field sales consultant level.

8 Q. We talked earlier about how Smile
9 Source was very profitable for Schein?

10 A. Yes.

11 Q. Why would it matter whether Smile
12 Source was a price-only buying group if it was a
13 very profitable customer?

14 MS. FINCHER: Object to the form.

15 A. At the end of the day, it wouldn't
16 matter. We would continue to do business with
17 them and enjoy the revenue.

18 MS. ROSNER: Why don't we go ahead and
19 take a break now and we'll break for lunch.

20 MS. FINCHER: Sure.

21 MS. ROSNER: We can go off the record.

22 THE VIDEOGRAPHER: The time is 12:05
23 p.m. We're off the record.
24 (Luncheon recess.)
25

1 CONFIDENTIAL - RANDALL FOLEY
2 AFTERNOON SESSION

3 THE VIDEOGRAPHER: The time is 12:53
4 p.m. We're on the record.

5 RANDALL FOLEY, resumed and
6 testified further as follows:

7 EXAMINATION BY (Cont'd.)

8 MS. ROSNER:

9 Q. Mr. Foley, we've talked about how
10 Special Markets did business with buying groups.

11 Is it your understanding that buying
12 groups typically don't have an ownership
13 interest in their members' practices?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. At some point in time, Schein had an
17 ownership threshold before working with group
18 purchasers, correct?

19 MS. FINCHER: Object to the form.

20 A. We had an ownership -- before working
21 with DSOs.

22 Q. Schein required group purchasers to
23 have 35 percent ownership interest or complete
24 control before working with them?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
2 Mischaracterizes the testimony.
3 You can clarify.

4 A. Not a -- not a specific policy. We
5 may have said on the fly they should have at
6 least 35 percent.

7 Q. There was no specific decision that a
8 35 percent ownership threshold was required?

9 MS. FINCHER: Object to the form.

10 Asked and answered.

11 A. I don't recall that we had a strict
12 rule of 35 percent. We may have confused it as
13 a rule of thumb as to distinguish between a DSO
14 and something less of a DSO.

15 Q. And why was it important to
16 distinguish between DSO and something less than
17 a DSO?

18 MS. FINCHER: Object to the form.

19 A. In the pricing that we were provided
20 from our vendor partners, which would be our
21 supplier partners, like 3M, they specifically
22 wanted -- would not allow us to extend what we
23 call discounted pricing/chargebacks to non-DSO
24 customers, which would include buying groups.
25 I'm sorry. I want to rephrase that.

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2 Not only non-DSOs. They would allow
3 it for community health centers and other
4 segments of Special Markets, but specifically
5 not for buying groups.

6 Q. So if a buying group wanted discounts
7 but didn't have ownership, would Schein provide
8 the buying group with discounts on supplies?

9 MS. FINCHER: Object to the form.

10 A. Schein itself, yes, would provide, you
11 know, anywhere between 10 to 20 percent discount
12 off-catalog, regardless of vendor.

13 Q. Would you do business with buying
14 groups that had less than a 35 percent ownership
15 in their member practices?

16 MS. FINCHER: Object to the form.

17 A. I would say yes, we would, because we
18 really didn't confirm whether -- what the
19 ownership percentage was at any time.

20 Q. I'm going to hand you a document
21 that's been premarked for identification as
22 CX2153. It is an e-mail chain.

23 A. Okay.

24 Q. The first Bates is Henry
25 Schein-00819067.

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 2 Please take a moment to familiarize
 3 yourself with CX2153.
 4 (Exhibit CX2153-001 through 004, a
 5 document bearing Bates Nos. Henry
 6 Schein-000819067 through 070, marked for
 7 identification, as of this date.)
 8 (Document review.)
 9 THE WITNESS: Okay.
 10 BY MS. ROSNER:
 11 Q. You've had a moment to review CX2153?
 12 A. Yes, I have.
 13 Q. The top e-mail, last in time, is from
 14 Joe Cavaretta dated May 24, 2010; is that right?
 15 A. That's correct.
 16 Q. You respond to an e-mail from Andrea
 17 Hight at May 24, 2010, at 3:33. This is on page
 18 CX2153-002.
 19 Do you see that?
 20 A. Yes, I do.
 21 Q. You drafted this e-mail as part of
 22 your job?
 23 A. Yes.
 24 Q. It's part of your job to communicate
 25 about Schein's customers?

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 2 A. Yes, I am.
 3 Q. Who are they?
 4 A. They were a very small DSO based out
 5 of the Salt Lake City area in Idaho.
 6 Q. And Intermountain Dental Associates
 7 wanted to add affiliates to its group, correct?
 8 MS. FINCHER: Object to the form.
 9 A. Correct.
 10 Q. What does Ms. Hight -- what is your
 11 understanding of what Ms. Hight means when she's
 12 referring to adding affiliates to a group?
 13 A. That they won't have a complete --
 14 they won't have ownership of these particular
 15 add-ons. Currently, the model they have is they
 16 technically own the practices that fall under
 17 IDA. So now they're venturing into sort of
 18 buying group relationship with us, or wanting
 19 to.
 20 Q. Intermountain Dental Associates can be
 21 referred to as IDA?
 22 A. Yes. Uh-huh.
 23 Q. And IDA is opening a buying group?
 24 MS. FINCHER: Object to the form.
 25 A. Not in the sense of opening one like

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 2 A. Yes.
 3 Q. Do you have knowledge of the contents
 4 of CX253?
 5 MS. FINCHER: Object to the form.
 6 A. Yes.
 7 Q. You drafted the e-mail in CX2153 at or
 8 near the time of the events described therein?
 9 A. Yes.
 10 Q. You drafted the e-mail in CX2153 and
 11 kept it in the course of Schein's regularly
 12 conducted business?
 13 A. Yes.
 14 Q. CX2153 is a true and accurate copy of
 15 your e-mail correspondence?
 16 MS. FINCHER: Object to the form.
 17 A. Yes.
 18 Q. Starting with Andrea Hight's e-mail at
 19 the top of page CX2153-003.
 20 A. Okay.
 21 Q. Her e-mail at 10:20 a.m.
 22 She's talking about a group
 23 Intermountain Dental Associates.
 24 Are you familiar with Intermountain
 25 Dental Associates?

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 2 Dental Gator, competitor. They're actually just
 3 going to add offices and provide management
 4 services and want to extend our pricing to
 5 those -- to those affiliates, as they're
 6 referring to them.
 7 Q. And IDA would not have any ownership
 8 interest in these affiliates?
 9 MS. FINCHER: Object to the form.
 10 A. That is what they are telling us.
 11 Q. You respond to Ms. Hight by saying,
 12 "On buying groups -- and the fact that we need
 13 to let these groups know when they call us; that
 14 they need to have either a 35 percent ownership,
 15 or have complete control of purchasing policy
 16 that would force the distributor purchases to
 17 Schein."
 18 Did I read that right?
 19 A. Yes.
 20 Q. I'm sorry.
 21 MS. FINCHER: I'm not sure he's with
 22 you, Jasmine.
 23 Q. Let me back up.
 24 A. I have it right here.
 25 Q. On the e-mail at the top of page

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 2 CX2153-002 --
 3 A. Got it.
 4 Q. -- you respond to Ms. Hight, saying,
 5 "Joe, when Hal and I met with Tim and Dave, we
 6 decided: On Buying Groups -- and the fact that
 7 we need to let these groups know when they call
 8 us; that they need to either have at least a 35
 9 percent ownership, or have complete control of
 10 purchasing policy that would force the
 11 distributor purchases to Schein."
 12 Did I read that correctly?
 13 MS. FINCHER: Object to the form.
 14 A. Yes.
 15 Q. So you're saying that, for the IDA
 16 affiliates program, IDA needs to have at least
 17 35 percent ownership or complete control of
 18 purchasing policy?
 19 MS. FINCHER: Object to the form.
 20 A. Yes.
 21 Q. And if IDA does not have complete
 22 ownership -- excuse me. Strike that.
 23 If IDA does not have 35 percent
 24 ownership or complete control of purchasing
 25 policy, what is the consequence with respect to

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 2 Schein?
 3 MS. FINCHER: Object to the form.
 4 A. You know, I do not recall this -- this
 5 35 percent ownership and how it might relate to
 6 buying groups or the statement at all and how
 7 this was determined. It's early on in 2010, you
 8 know, at the time that we were starting Smile
 9 Source. So I'm unclear as to that.
 10 I am clear that Andrea had an
 11 incredible answer, saying that I will confirm
 12 that we have control of their purchasing;
 13 therefore, it satisfies the second cav- -- you
 14 know, second requirement. Instead of the 35
 15 percent, she said I'll just confirm that they
 16 can -- they can help control the purchases of
 17 those affiliates.
 18 Q. I want to talk a little bit about the
 19 35 percent ownership percentage.
 20 You mentioned that that was a decision
 21 that was made after a meeting between you, Hal,
 22 Tim and Dave.
 23 Hal is Hal Muller, right?
 24 A. Yes.
 25 MS. FINCHER: Object to the form.

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 2 Q. Tim is Tim Sullivan?
 3 A. Yes.
 4 Q. Dave is Dave Steck?
 5 A. Yes.
 6 Q. So you met with Hal Muller, Tim
 7 Sullivan, and Dave Steck and talked about a 35
 8 percent ownership threshold?
 9 MS. FINCHER: Object to the form.
 10 A. I don't recall the meeting.
 11 Q. Do you have any reason to suggest that
 12 what you wrote in CX2153 is inaccurate?
 13 MS. FINCHER: Object to the form.
 14 Mischaracterizes the document.
 15 You can answer.
 16 A. No. I simply don't remember the
 17 meeting.
 18 Q. Do you remember having any discussion
 19 about a 35 percent ownership threshold?
 20 A. No.
 21 Q. You write to Ms. Hight that there's
 22 been a decision requiring a 35 percent ownership
 23 threshold?
 24 MS. FINCHER: Object to the form.
 25 Mischaracterizes the document.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. Do you have any reason to think you
 3 just made that up?
 4 MS. FINCHER: Object to the form.
 5 A. No, I wouldn't have made it up. I
 6 would have been told, you know, or I had heard
 7 that along with this following statement "or
 8 control," you know, "ability to control
 9 purchases."
 10 I simply don't remember anything on
 11 this e-mail and having a meeting with them from
 12 that long ago, eight years ago.
 13 Q. Do buying groups typically have the
 14 ability to control purchases?
 15 MS. FINCHER: Object to the form.
 16 A. They can, yes. OrthoSynetics is a
 17 perfect example. At the end of the day, they
 18 can't force the end-users to buy anything. Even
 19 in the DSO world, they're not allowed really to
 20 force, but they can provide incentives to do so
 21 based on a formulary and tracking whether they
 22 are buying on formulary or off of formulary.
 23 So it does add a sense of control
 24 that, hey, last month you bought 80 percent on
 25 formulary and 20 percent off, and we would

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2 provide that data.

3 Q. Would you consider that complete
4 control of purchasing policy?

5 MS. FINCHER: Object to the form.

6 A. I can't -- I would not say that's
7 complete control, correct. I think what we're
8 heading here, though, is that, again, we want
9 the relationship with the buying group to be
10 that there is a sense of us helping to drive
11 compliance to buy the products from Schein.

12 I think the word "complete" is an
13 inaccurate word, to be honest. There's no such
14 thing as complete control.

15 Q. So, according to what you wrote to Ms.
16 Hight, if a buying group did not have 35 percent
17 ownership and did not have complete control of
18 purchasing policy, Schein would not do business
19 with that buying group?

20 MS. FINCHER: Object to the form.

21 Mischaracterizes the document and the
22 testimony.

23 You can answer.

24 A. No, I don't believe this was the only
25 two -- I don't think this was an absolute

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2 statement, that we couldn't do. Again, every
3 single entity we would evaluate. We would
4 evaluate if it made sense for us to do business
5 with them.

6 In this particular situation, I'm
7 stating this is what we recently talked about, I
8 don't remember the call, and will -- will IDA
9 fall into one of these two categories, and she
10 said yes, this one. So the approval I believe
11 was given to move forward, and I know they have
12 a buying group arm as well as their DSO arm.

13 Q. If IDA did not fall into one of these
14 two categories of 35 percent ownership or
15 complete control, what would be the outcome?

16 MS. FINCHER: Object to the form.

17 Speculation.

18 A. Yes, I think in this situation,
19 because they're already an existing customer,
20 that we would have made exception. I'm very
21 surprised at this 35 percent. I doubt -- I
22 don't think that it ever went any further than
23 here. I never really heard of it in any other
24 buying group.

25 We don't have 35 percent ownership in

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2 all the buying groups that we currently had or
3 the ones that we added. There was no ownership.
4 There was no equity rule in it.

5 Q. Is it often that you, Hal Muller, Tim
6 Sullivan and Dave Steck have a discussion, make
7 a decision, and then never reference that
8 decision again?

9 MS. FINCHER: Object to the form.

10 A. I had limited conversations between
11 Tim and Dave. I mainly communicated --
12 communicated with Hal, so I would maybe be
13 brought in for reference on this and -- and
14 share in it, but my meetings with the -- with
15 those three were limited at my level.

16 Q. And so when you did meet with them,
17 was it typically an important or memorable
18 meeting for you?

19 MS. FINCHER: Object to the form.

20 A. Well, sure. Yes. If we had meetings
21 with them, I, you know -- and to be honest, we
22 would move forward with any decisions made at
23 that time and carry them forward.

24 Q. And if you were to be in a meeting
25 with Hal Muller, Tim Sullivan, and Dave Steck

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2 and you made a decision, would you then instruct
3 your direct reports, we made this decision, but
4 we're not going to follow it?

5 MS. FINCHER: Object to the form.

6 A. No, we would not make that statement,
7 and when the -- and when the buying group --
8 when anything would come to our attention, we
9 would make -- we would then make the decision if
10 we're going to move forward with it or not. I
11 wouldn't say to my team, oh, by the way, we made
12 a 35 percent rule. It only came up because as
13 a -- again, this is very early into the buying
14 groups, and Andrea has a customer questioning
15 can I -- can I extend -- basically, can I extend
16 my pricing to these -- to these other offices
17 that I have no ownership in. Because their
18 existing contract states they have to have
19 ownership.

20 MS. FINCHER: Randy, make sure you
21 listen to her question, okay?

22 THE WITNESS: Okay.

23 BY MS. ROSNER:

24 Q. Is it your testimony that you don't
25 understand where the 35 percent threshold came

1 CONFIDENTIAL - RANDALL FOLEY
 2 from?
 3 A. Yes, it is.
 4 MS. FINCHER: Object to the --
 5 THE WITNESS: Oh, I'm sorry.
 6 MS. FINCHER: Object to the form.
 7 Go ahead.
 8 THE WITNESS: Yes.
 9 BY MS. ROSNER:
 10 Q. You can put this document aside.
 11 At a later point in time, Schein
 12 required groups to have at least a 51 percent
 13 ownership to receive discounted prices?
 14 MS. FINCHER: Object to the form.
 15 A. I'm not aware of that.
 16 When you say Schein had a policy of
 17 351 percent, for who? For DSOs? Buying groups?
 18 Q. After Smile Source, Schein required
 19 group purchasers to have at least a 51 percent
 20 ownership to receive discounted prices?
 21 MS. FINCHER: Object to the form.
 22 Mischaracterizes the testimony.
 23 You can answer.
 24 A. I am not aware of that rule or policy.
 25 Q. Anything short of a 51 percent

1 CONFIDENTIAL - RANDALL FOLEY
 2 ownership equates to a buying group?
 3 MS. FINCHER: Object to the form.
 4 Asked and answered. Misstates the
 5 testimony.
 6 Go ahead.
 7 A. It was my understanding that to be a
 8 buying group you didn't have to have any
 9 ownership whatsoever. It could be at zero
 10 percent. Perfect example, OrthoSynetics,
 11 Breakaway.
 12 Q. Let me hand you a document that's been
 13 premarked for identification as CX2061. The
 14 first Bates number is Henry Schein-000167180.
 15 Take a moment to review the exhibit
 16 and let me know when you finish reviewing
 17 CX2061.
 18 (Exhibit CX2061-001 through 002, a
 19 document bearing Bates Nos. Henry
 20 Schein-000167180 through 181, marked for
 21 identification, as of this date.)
 22 (Document review.)
 23 THE WITNESS: Okay.
 24 BY MS. ROSNER:
 25 Q. You've had a chance to review CX2061?

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 2 A. Yes.
 3 Q. This is an e-mail exchange between you
 4 and Andrea Hight. The latest-in-time e-mail is
 5 from Andrea Hight on June 6, 2011. Do you see
 6 that?
 7 A. Yes.
 8 Q. The e-mail that you wrote is one
 9 e-mail below, June 6, 2011 at 11:14 a.m.
 10 You drafted this e-mail as part of
 11 your job?
 12 A. Yes.
 13 Q. It's part of your job to communicate
 14 with folks at Schein regarding potential
 15 customers?
 16 A. Yes.
 17 Q. You have knowledge of the contents of
 18 e-mail in CX2061?
 19 A. Yes.
 20 MS. FINCHER: Object to --
 21 THE WITNESS: I'm sorry.
 22 MS. FINCHER: Object to form.
 23 BY MS. ROSNER:
 24 Q. You drafted the e-mail in CX2061 at or
 25 near the time of the events therein?

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 2 A. Yes.
 3 Q. You drafted the e-mail in CX2061 and
 4 kept it in the course of regularly conducted
 5 business at Schein?
 6 A. Yes.
 7 Q. CX2061 is a true and correct copy of
 8 your e-mail correspondence?
 9 MS. FINCHER: Object to the form.
 10 A. Yes.
 11 Q. In this e-mail, you state, "Regarding
 12 partial ownership, they would need at least 51
 13 percent ownership for us to provide supplies at
 14 a discounted rate to their practices."
 15 Did I read that correctly?
 16 A. Yes.
 17 Q. So you're saying that a group
 18 purchaser would need 51 percent ownership to get
 19 discounted prices?
 20 MS. FINCHER: Object to the form.
 21 Mischaracterizes the document. Asked and
 22 answered.
 23 Go ahead.
 24 A. Can you rephrase that or ask that
 25 again?

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2 Q. You're saying that a group purchaser
3 would need 51 percent ownership to receive
4 discounted prices from Schein?

5 MS. FINCHER: Object to the form.
6 Misstates the document.

7 A. To receive discounted pricing from our
8 vendor partners.

9 Q. Where in the e-mail do you say you
10 need 51 percent to get discounted pricing from
11 your vendor partners?

12 MS. FINCHER: Object to the form.

13 A. Our vendor partners did not allow us
14 to provide discounted pricing other than to the
15 DSO segment. Therefore, in this e-mail, we're
16 talking about Advantage Dental, who is a DSO,
17 and Andrea's writing a contract for the DSO
18 component of them. And Advantage also has 900
19 offices or is a buying group for 900 offices, so
20 I'm stating to her that there has to be 51
21 percent ownership of the offices that they have
22 in order to get the pricing that we're going to
23 give Advantage Dental, which has vendor-reduced
24 pricing it in.

25 Schein is already discounting -- would

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2 offer the discount to both Advantage buying
3 group and Advantage. There would not have to be
4 a -- that percentage ownership.

5 Q. Where in the e-mail do you tell Andrea
6 to get manufacturer discounts Advantage needs 51
7 percent ownership?

8 MS. FINCHER: Object to the form.
9 Asked and answered.

10 You can answer.

11 A. I state that "in order to provide
12 supplies at a discounted rate." I don't go into
13 the fact about the vendor partner.

14 Q. Why don't you go into the fact about
15 vendor partners?

16 A. It's not -- it's showing that we're
17 providing two different pricing plans for the
18 customer. Andrea doesn't need to know that part
19 of it's coming from the vendors and part of it's
20 coming from Schein.

21 Q. Why doesn't Andrea need to know where
22 the discounts are coming from on one of her
23 accounts?

24 MS. FINCHER: Object to the form.

25 A. Because the discounts themselves are

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2 all just based into the price. It's not an
3 added thing that there's also a 3M discount
4 shown online. It's not a line item. It's based
5 on our end price.

6 So it's -- my team members were not
7 really aware of how all the discounts came into
8 play. I'm not here explaining that; just they
9 have to have 51 percent ownership in order to
10 get the Advantage pricing, which has vendor
11 discounts.

12 Q. The last sentence in this e-mail says,
13 "Anything short of that amount," referencing 51
14 percent ownership, "especially a very minor
15 ownership, equates to a buying group, and you
16 know how we can't do buying groups."

17 Did I read that correctly?

18 A. Yes, you did.

19 MS. FINCHER: Object to the form.

20 THE WITNESS: I'm sorry.

21 MS. FINCHER: Object to the form.

22 Go ahead.

23 THE WITNESS: Yes.

24 BY MS. ROSNER:

25 Q. So you're telling Andrea that if

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2 Atlantic -- strike that.

3 You're telling Andrea that if
4 Advantage Dental does not have 51 percent
5 ownership, they're a buying group, and we can't
6 do buying groups?

7 MS. FINCHER: Objection to the form.
8 Mischaracterizes the document and the
9 testimony.

10 Go ahead.

11 A. I'm not -- again, I'm not getting into
12 explain the buying group. We can't do a
13 price-only buying group. However, of all the
14 examples here, they have 900 offices that are
15 part of a buying group. We are doing a buying
16 group here, and ran by the local team. It's one
17 of our largest -- that's one of HSD's largest
18 buying groups. And I want to make a
19 distinguishment between the buying group arm and
20 the part -- and that falls under HSD and
21 Advantage falls under us. She's trying to draft
22 a contract.

23 Q. Andrea is trying to draft a contract
24 with Advantage Dental, right?

25 A. Correct.

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 2 MS. FINCHER: Object to the form.
 3 Go ahead.
 4 THE WITNESS: Sorry.
 5 Correct.
 6 BY MS. ROSNER:
 7 Q. And the guidance that Andrea is
 8 getting from you is that if Advantage Dental
 9 doesn't have 51 percent ownership, we don't do
 10 buying groups?
 11 MS. FINCHER: Object to the form.
 12 Mischaracterizes the document and the
 13 testimony. Asked and answered.
 14 You can answer it again.
 15 A. No, I am telling Andrea that Advantage
 16 Dental will be getting this price for their DSO
 17 segment discounted if they have 51 percent
 18 ownership, and it does not carry over. That
 19 pricing cannot be used by the 900 offices that
 20 are part of their buying group.
 21 Q. Where are you telling Andrea that they
 22 are getting -- that Advantage Dental is getting
 23 a different pricing for the DSO than for the
 24 buying group?
 25 MS. FINCHER: Object to the form.

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 2 A. It is not specific in the e-mail.
 3 It's stating -- she's even questioning, I'm
 4 afraid that some of the other offices might try
 5 to ride into this new plan. How do we write a
 6 contract stating that these offices can't ride
 7 in it? What kind of rule can we come up with?
 8 So we came up with 51 percent. There should be
 9 51 percent. It's in some of our other
 10 customers.
 11 Q. If it's not explicit in the e-mail,
 12 how is Andrea supposed to understand from you
 13 that pricing for Advantage Dental will be
 14 different on the DSO side than the buying group
 15 side?
 16 MS. FINCHER: Object to the form.
 17 A. You know, again, I'm saying that for
 18 us to provide supplies at a discount, at a
 19 special discounted rate -- maybe I should have
 20 used the word "special" discounted or
 21 "additional" discounted rate -- from our vendor
 22 partners, there has to be 51 percent.
 23 I wasn't explicit in that, but we were
 24 drawing up a contract and want to distinguish
 25 between Advantage DSO versus Advantage buying

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 2 group. Because they already had their plan
 3 without the vendor pricing discounts. Just
 4 trying to come up with some nomenclature in a
 5 contract that she's trying to draft.
 6 Q. And where in the e-mail to Andrea do
 7 you say you want to distinguish between the
 8 buying group and the DSO?
 9 MS. FINCHER: Object to form.
 10 Jasmine, asked and answered. You asked him
 11 about three times already.
 12 You can answer it again.
 13 THE WITNESS: Yeah.
 14 MS. FINCHER: Unless --
 15 Go ahead.
 16 THE WITNESS: I'm not specifically
 17 saying to Andrea, hey, look, the buying
 18 group doesn't get this -- that arm doesn't
 19 get this price, they get this price. We can
 20 not extend our vendor pricing contract.
 21 I don't go into the detail of it, but
 22 for them to get a discounted rate, and I
 23 should have -- maybe you think I should have
 24 been more explicit that, including
 25 chargebacks from our vendors, they have to

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 2 have 51 percent ownership. That is in other
 3 DSO contracts so they don't extend their
 4 pricing to their best friend down the
 5 street, you know, or whoever they feel like
 6 extending their pricing to.
 7 BY MS. ROSNER:
 8 Q. Groups that have very minor ownership
 9 equate to buying groups in your mind?
 10 A. Pardon me?
 11 MS. FINCHER: Object to the form.
 12 Q. Group purchasers that have very minor
 13 ownership in their members' practices, equate to
 14 a buying group?
 15 MS. FINCHER: Object to the form.
 16 A. I don't know that I would make that
 17 connection. Again, I'm sorry, we don't -- they
 18 didn't have my -- our requirement. From my
 19 understanding, they could have zero ownership.
 20 OrthoSynetics did not own any part of their
 21 users.
 22 Q. I want to understand the last clause
 23 of your e-mail: "And you know how we can't do
 24 buying groups."
 25 What do you mean by that?

1 CONFIDENTIAL - RANDALL FOLEY
2 A. I'm not sure, considering on the back
3 side of this page is their 900 offices that are
4 part of a buying group. So I can't speculate on
5 to why I make that, again, off-the-cuff remark.

6 Q. I'm not asking you to speculate. I'm
7 asking you why did you say it?

8 MS. FINCHER: Objection.

9 A. I can't remember.

10 MS. FINCHER: Objection.

11 THE WITNESS: Sorry.

12 MS. FINCHER: Give me a moment.

13 Object to the form. Asked and
14 answered.

15 THE WITNESS: I can't remember why I
16 made that comment in 2011.

17 BY MS. ROSNER:

18 Q. Is there anything that would refresh
19 your recollection as to why you would make a
20 comment, "we can't do buying groups"?

21 MS. FINCHER: Object to the form.

22 A. No, it doesn't make sense to me, to be
23 honest, I mean, because I'm doing buying groups.
24 I'm getting \$10 million a year from buying
25 groups under, you know, that I'm doing business

1 CONFIDENTIAL - RANDALL FOLEY
2 with, not even counting the money coming into
3 HSD.

4 Q. Andrea Hight is one of your direct
5 reports, correct?

6 MS. FINCHER: Object to the form.
7 At this time?

8 A. At this time, yes. Not now.

9 Q. At this time, Andrea Hight took
10 guidance from you, correct?

11 A. That is correct.

12 Q. Most of your guidance came through
13 e-mails, correct?

14 A. That is correct.

15 Q. So it's important for you to be
16 accurate in your e-mails to your direct reports,
17 right?

18 MS. FINCHER: Object to the form.

19 A. Correct.

20 Q. And here you're stating to Andrea,
21 "Anything short of 51 percent is a buying group,
22 and you know how we can't do buying groups,"
23 correct?

24 MS. FINCHER: Object to the form.

25 Asked and answered. Mischaracterizes the

1 CONFIDENTIAL - RANDALL FOLEY
2 testimony.

3 You can answer.

4 A. No. That's not the connection here,
5 that there has to be 51 percent. There's no
6 rule that a buying group has to have 51 percent.
7 It could have zero percent, as their 900 offices
8 do. The 51 percent is to keep the pricing for a
9 DSO separate from the pricing that we offer
10 buying groups. It's not as deeply discounted
11 because of our vendor partners.

12 I'm not going into the detail with
13 Andrea how that all works. Just in your
14 contracts state that they should have 51 percent
15 ownership to get this pricing for your DSO
16 segment.

17 Q. How did you decide on the 51 percent
18 ownership threshold?

19 MS. FINCHER: Object to the form.

20 A. I pulled it from a contract that was
21 existing, such as Heartland Dental, and that
22 wasn't -- I don't believe I'm the one that came
23 up with that 51 percent rule for a DSO.

24 Q. Who came up with a 51 percent rule for
25 a DSO?

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2 MS. FINCHER: Object to the form.

3 You can answer if you know.

4 A. I would not know. I would -- I would
5 think Hal Muller.

6 Q. Why was there a change from 35 percent
7 ownership to the 51 percent ownership in the two
8 e-mails that we just looked at?

9 MS. FINCHER: Object to the form.

10 Mischaracterizes the testimony.

11 A. They are two separate subjects. The
12 35 percent sounds like -- which I don't
13 remember, sounds like a rule that there has to
14 be ownership to be a buying group. That's not
15 my understanding, that there has to be any
16 ownership to be a buying group.

17 So how -- where that 35 is talking
18 specifically about a buying group, here I'm
19 talking about a DSO, in order to qualify for
20 discounted pricing, has to have 51 percent
21 ownership. Two different situations.

22 Q. You can put that document aside.

23 Unless you have some ownership in your
24 practices, Schein considers your business model
25 as a buying group?

1 CONFIDENTIAL - RANDALL FOLEY
 2 MS. FINCHER: Object to the form.
 3 A. Yes.
 4 Q. And Schein no longer participates in
 5 buying groups?
 6 A. I'm sorry?
 7 MS. FINCHER: Object to the form.
 8 Q. Schein no longer participates in
 9 buying groups?
 10 A. No, they --
 11 MS. FINCHER: Object to the form.
 12 Give me a moment, Randy, to object.
 13 You can answer.
 14 A. No, they participate in a lot of
 15 buying groups.
 16 Q. In December 2011, Schein no longer
 17 participated in buying groups?
 18 MS. FINCHER: Object to the form.
 19 Mischaracterizes the testimony.
 20 A. No, that is not true. OrthoSynetics
 21 was a big buying group.
 22 Q. You never said, "We no longer
 23 participate in buying groups"?
 24 MS. FINCHER: Object to the form.
 25 A. Not that I remember.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. I'm going to hand you a document
 3 that's been premarked for identification as
 4 CX2062. The first page of this document is
 5 Bates number Henry Schein-000176969.
 6 (Exhibit CX2062-001 through 006, a
 7 document bearing Bates Nos. Henry
 8 Schein-000176969 through 6974, marked for
 9 identification, as of this date.)
 10 MS. FINCHER: And Randy, if you'll
 11 see, there's actually text on the very back
 12 page of this document.
 13 THE WITNESS: Okay.
 14 MS. FINCHER: So just make sure you
 15 read from the bottom all the way up, and let
 16 her know when you're done reading it.
 17 (Document review.)
 18 THE WITNESS: Okay.
 19 BY MS. ROSNER:
 20 Q. You've had an opportunity to review
 21 CX2062?
 22 A. Yes.
 23 Q. This is an e-mail chain between you
 24 and a potential customer of Schein. At the top
 25 of the chain is an e-mail from you dated

1 CONFIDENTIAL - RANDALL FOLEY
 2 December 21, 2011, forwarding your prior e-mail
 3 chain to someone named Rhonda Durante.
 4 Do you see that?
 5 A. Yes.
 6 MS. FINCHER: Jasmine, just to
 7 clarify, the last page of this document is
 8 what actually appears to be the attachment
 9 to the e-mail; is that right?
 10 BY MS. ROSNER:
 11 Q. And then the last page of this
 12 document is an attachment to this e-mail chain;
 13 is that right?
 14 A. I'm sorry?
 15 Q. The last page of CX2062 is a Word
 16 document attachment to your e-mail?
 17 A. Yes.
 18 Q. You drafted these e-mails in CX2062 as
 19 part of your job?
 20 A. Yes.
 21 Q. It's part of your job to communicate
 22 with potential customers of Schein?
 23 A. Yes.
 24 Q. You have knowledge of the contents of
 25 the e-mails in CX2062?

1 CONFIDENTIAL - RANDALL FOLEY
 2 MS. FINCHER: Object to the form.
 3 A. Yes.
 4 Q. You drafted the e-mails in CX2062 at
 5 or near the time you received a request from a
 6 potential customer?
 7 A. Yes.
 8 Q. You drafted the e-mails in CX2062 and
 9 kept them in the course of regularly conducted
 10 business at Schein?
 11 A. Yes.
 12 Q. CX2062 is a true and correct copy of
 13 your e-mail correspondence?
 14 MS. FINCHER: Object to the form.
 15 A. Yes.
 16 Q. In the e-mail, December 21, 2011, at
 17 1:52 -- this is on the first page, CX2062-01 --
 18 the second e-mail down, you are replying to
 19 Janet K-N-Y-S-Z.
 20 How do you pronounce that?
 21 A. Levandowski?
 22 I'm sorry. Where are we at?
 23 Q. We're on page CX2062-001.
 24 A. Yes.
 25 Q. The bottom e-mail on that page.

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2 A. I can't pronounce her name.

3 Knysz. Knysz is how it's pronounced,

4 but...

5 Q. We'll call her Jan.

6 A. Yeah, please.

7 Q. In the second paragraph of your e-mail
8 to Jan, you say, "Unfortunately, unless you have
9 some ownership of your practices, Henry Schein
10 considers your business model as a buying group,
11 and we no longer participate in buying groups."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. You're telling a potential customer
15 that Henry Schein can't do business with them
16 because they don't have ownership in their
17 practices?

18 MS. FINCHER: Object to form.

19 A. That's what I'm --

20 MS. FINCHER: Mischaracterizes the
21 document.

22 A. That's what I'm saying here.

23 Q. You're telling a potential customer
24 that Henry Schein does not participate in buying
25 groups?

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2 MS. FINCHER: Object to the form.

3 Mischaracterizes the document.

4 Go ahead.

5 A. Yes, that's what I'm saying here,
6 based on price only.

7 Q. Where do you say based on price only.

8 A. In my classification, this group -- by
9 the way, she was the owner of Great Expressions
10 Dental Centers, and they had recently sold them,
11 where they did have ownership of all their
12 practices, and they were wanting to create this
13 Unified Smiles, which was basically providing
14 limited service to end-users. And at this time,
15 I had a different issue here, but I did make
16 those statements.

17 Q. Where did you say that Henry Schein
18 does not do business with price-only buying
19 groups to Jan?

20 MS. FINCHER: Object to the form.

21 Q. Can you just point me to the language?

22 MS. FINCHER: Object to the form.

23 A. No, I did not make that -- I'm sorry,
24 I did not make that clear in here.

25 Q. Nowhere in the e-mail do you

1 CONFIDENTIAL - RANDALL FOLEY
2 distinguish between buying groups that provide
3 value-added services versus buying groups that
4 are price only?

5 A. In the -- no.

6 Q. You tell Jan that, "Buying groups
7 cause a lot of friction within our private
8 dentist segment as it leads to unwarranted
9 lower -- as it leads to unwarranted lower
10 pricing for existing customers"; is that right?

11 A. That's what I said.

12 Q. When you refer to your private dentist
13 segment, you're referring to HSD?

14 MS. FINCHER: Object to the form.

15 A. That is correct.

16 Q. You're telling a customer that buying
17 groups cause friction within HSD?

18 MS. FINCHER: Object to the form.

19 A. Yes, I am telling her that.

20 Q. You're telling a potential customer
21 that buying groups lead to unwarranted lower
22 pricing for existing customers?

23 MS. FINCHER: Yes.

24 A. Especially if they're leading in with
25 price only.

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2 Q. You can set this document aside.

3 Schein said no to a Dr. Nashville when
4 it found out there will be no ownership in its
5 buying group, correct?

6 MS. FINCHER: Object to the form.

7 A. I saw that in an e-mail you showed me
8 earlier, but I don't recall making that
9 statement and don't know who -- and I don't know
10 who the Nashville provider is.

11 Q. I'm going to return to you document
12 CX238.

13 MS. FINCHER: Just give me a moment,
14 Randy, to find it.

15 Can you give me that number again,
16 Jasmine?

17 MS. ROSNER: CX238.

18 MS. FINCHER: If you need to take a
19 moment to refamiliarize yourself with the
20 document, please do.

21 THE WITNESS: Okay.

22 BY MS. ROSNER:

23 Q. The last line of the e-mail at the top
24 of the page on CX238.001 says -- you write,
25 "Remember the doctor in Nashville that John and

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 2 I -- excuse me. "Remember the doctor in
 3 Nashville that John and you were working on. We
 4 had to tell him no when we found out there would
 5 be no ownership."

6 Did I read that properly?

7 A. Yes.

8 Q. Henry Schein told a potential customer
 9 no because there was no ownership in his buying
 10 group?

11 MS. FINCHER: Object to the form.

12 A. I do not remember who this is and
 13 what -- and who this is about and who John is.

14 Q. Would John be John Boresi?

15 A. I'm not sure --

16 MS. FINCHER: Objection.

17 THE WITNESS: I'm sorry.

18 MS. FINCHER: Objection to form.

19 THE WITNESS: No, I'm not sure.

20 BY MS. ROSNER:

21 Q. Do you have any reason to think that
 22 what you wrote was inaccurate at the time?

23 MS. FINCHER: Object to the form.

24 A. No, I don't think I would make an
 25 inaccurate statement.

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2 Q. Without ownership, buying groups cause
 3 issues throughout Schein?

4 MS. FINCHER: Object to the form.

5 Is that a question.

6 A. Was it? Without ownership? Say it
 7 again, please?

8 Q. Without ownership, buying groups cause
 9 issues throughout Schein?

10 MS. FINCHER: Object to the form.

11 A. No, that's -- that's too general of a
 12 statement. They didn't cause any issues in HSD
 13 or in Special Markets, a number of them.

14 Q. I can take back CX238 so that I can
 15 give it back to him when he needs it.

16 Schein refused to bid on what it
 17 believed was Tralongo's buying group; is that
 18 right?

19 MS. FINCHER: Object to the form.

20 A. Yes, I remember that they were price
 21 only. We did not bid on that arm of the
 22 business. They had a DSO arm, though, that we
 23 bid on.

24 Q. Tralongo's buying group was not an
 25 ownership model; is that right?

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2 MS. FINCHER: Object to the form.

3 A. Correct.

4 Q. And without ownership, this causes
 5 issues throughout the company, right?

6 MS. FINCHER: Object to the form.

7 Asked and answered. Mischaracterizes
 8 testimony.

9 You can answer it again.

10 A. Yeah, I don't understand why that
 11 comment is there, because, again, we had a
 12 number of buying groups with zero ownership.
 13 Nearly all the buying groups had zero ownership.

14 Q. Handing you a document that has been
 15 premarked for identification as CX2094.

16 A. Thank you.

17 Q. The first page of the document is
 18 Bates-stamped Henry Schein-001490215.

19 Please take a moment to familiarize
 20 yourself with CX2094 and let me know when you're
 21 done.

22 (Exhibit CX2094-001 through 008, a
 23 document bearing Bates Nos. Henry
 24 Schein-001490215 through 222, marked for
 25 identification, as of this date.)

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2 (Document review.)

3 THE WITNESS: Okay.

4 BY MS. ROSNER:

5 Q. You've had an opportunity to review
 6 CX2094?

7 A. Yes.

8 Q. CX2094 is an e-mail chain with a
 9 number of folks. The top e-mail is from Deanna
 10 Dickinson on October 28, 2015; is that right?

11 A. Yes.

12 Q. You respond to a number of e-mails in
 13 this chain. You drafted the e-mails in this
 14 chain as part of your job?

15 A. Yes.

16 Q. And it's part of your job to
 17 communicate about potential customers from
 18 Schein?

19 A. Yes.

20 Q. You have knowledge of the contents of
 21 CX2094?

22 A. Yes.

23 MS. FINCHER: Object to form.

24 A. Yes.

25 Q. You drafted the e-mails in CX2094 at

1 CONFIDENTIAL - RANDALL FOLEY
2 or near the time of the events described
3 therein?

4 A. Yes.

5 Q. You drafted the e-mails in CX2094 and
6 kept them in the course of regularly conducted
7 business?

8 A. Yes.

9 Q. CX2094 is a true and correct copy of
10 your e-mail correspondence?

11 MS. FINCHER: Object to the form.

12 A. Yes.

13 Q. Turning to the e-mail at the bottom of
14 the first page, that's CX2094-001, you write an
15 e-mail on October 28, 2015 at 9:45 a.m. In the
16 middle of the first paragraph, you are talking
17 about Tralongo's new office: "It was not an
18 ownership model' like D4C, DCA, Great
19 Expressions. Without ownership, that causes
20 issues throughout our company."

21 Did I read that correctly?

22 A. Yes.

23 Q. So, without ownership, buying groups
24 cause issues throughout Schein?

25 MS. FINCHER: Object to the form.

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2 A. I don't understand why I would make
3 that statement. I don't follow it as an
4 accurate statement because we have buying
5 groups, lots of them, without any ownership. So
6 I'm not understanding why I'm stating that,
7 because I think it's inaccurate.

8 Q. Is there anything that would refresh
9 your recollection as to why you would make the
10 statement, "Without ownership, this causes
11 issues throughout our company"?

12 MS. FINCHER: Object to the form.

13 A. No, I don't know why.

14 Q. Who are Deanna Dickinson, Dave Muller
15 and Scott Carringer?

16 A. Dave Muller is -- reported directly to
17 me, and he was assigned to this account,
18 Tralongo, and was working on an equipment
19 arrangement with them. Scott Carringer is the
20 Atlanta regional manager, I believe. And Deanna
21 Dickinson, I think she was the FSC. I'm not
22 sure.

23 Q. These are people who are associated
24 with the Tralongo account?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Yes.

3 Q. When talking about Schein's policy
4 that would affect Tralongo, it's important for
5 you to be accurate when discussing with people
6 who are assigned to the Tralongo account?

7 MS. FINCHER: Object to the form.

8 Mischaracterizes the testimony. Vague.

9 You can answer.

10 A. Yes.

11 Q. You would have no reason to make
12 something up when talking to the folks assigned
13 to the Tralongo account?

14 MS. FINCHER: Object to the form.

15 A. Correct.

16 Q. I can take that document back.

17 Andrea Hight created a litmus test for
18 distinguishing between buying groups and DSOs?

19 MS. FINCHER: Object to the form.

20 A. In regards to when a DSO was venturing
21 into both arenas, yes, she worked on a how to
22 distinguish between the DSO and how to
23 distinguish between the buying group arm.

24 Q. What was the purpose of having a
25 document that distinguished between DSOs and

1 CONFIDENTIAL - RANDALL FOLEY

2 buying groups?

3 A. Again --

4 I'm sorry.

5 MS. FINCHER: Object to the form.

6 Mischaracterizes testimony.

7 Go ahead.

8 A. Again, we were not allowed to extend
9 vendor discounted pricing to the buying group
10 arm; only to the DSO part of it.

11 Q. If a group was not able to pass the
12 DSO test, would Schein be able to provide
13 discounts?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. You created a document termed --
17 strike that.

18 You created a document called "Terms
19 not to be a Buying Group"?

20 MS. FINCHER: Object to the form.

21 Q. Correct?

22 MS. FINCHER: Object to the form.

23 A. I don't believe I created a form.

24 Andrea Hight might have created a form.

25 Q. I'm going to hand you a document

1 CONFIDENTIAL - RANDALL FOLEY
2 that's been premarked as CX2066. CX2066 bears
3 the Bates number Henry Schein-000178511.

4 Please take a moment to review CX2066
5 and let me know once you've familiarized
6 yourself.

7 (Exhibit CX2066-001 through 002, a
8 document bearing Bates Nos. Henry
9 Schein-000178511 through 512, marked for
10 identification, as of this date.)

11 (Document review.)

12 THE WITNESS: Okay.

13 MS. FINCHER: Have you had enough time
14 to review it, Randy?

15 THE WITNESS: Yes.

16 BY MS. ROSNER:

17 Q. You've had an opportunity to review
18 2066?

19 A. Yes.

20 Q. This is an e-mail sent by you to Jake
21 Meadows on March 15, 2013; is that right?

22 A. Yes.

23 Q. You drafted this e-mail as part of
24 your job?

25 A. Yes.

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2 MS. FINCHER: Sorry. Objection to
3 form.

4 Jasmine, you may want to look back at
5 your question and rephrase it.

6 Q. This is an e-mail drafted by you to
7 Jake Meadows on March 15, 2012; is that right?

8 A. Yes.

9 Q. You drafted this e-mail to Jake
10 Meadows as part of your job?

11 A. Yes.

12 Q. It's part of your job to communicate
13 policies about buying groups and DSOs?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. You have knowledge of the contents of
17 CX2066?

18 A. Yes.

19 Q. You drafted CX2066 around the time of
20 the events requiring you to send an e-mail to
21 Jake Meadows?

22 A. Yes.

23 Q. You drafted the e-mail in CX2066 and
24 maintained it in the course of regularly
25 conducted business?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Yes.

3 Q. And CX2066 is a true and correct copy
4 of your e-mail correspondence?

5 MS. FINCHER: Object to the form.

6 A. Yes.

7 Q. You're sending Jake Meadows an e-mail
8 with the subject "Terms not to be a Buying
9 Group"; is that right?

10 A. That's correct.

11 Q. Why are you identifying terms not to
12 be a buying group?

13 MS. FINCHER: Object to the form.

14 A. I'm sending him a cutout of Advantage
15 Dental's proposal distinguishing between the DSO
16 segment and that part that relates to a buying
17 group for Advantage Dental.

18 I'm not sure why Jake requested it,
19 but this is straight out of Advantage's
20 contract.

21 (Knocking at the door.)

22 MS. FINCHER: Do you want to go off
23 the record?

24 MS. ROSNER: Let's go off the record
25 for a moment.

1 CONFIDENTIAL - RANDALL FOLEY

2 THE WITNESS: Okay.

3 THE VIDEOGRAPHER: The time is 1:49
4 p.m. We're off the record.

5 (Recess.)

6 THE VIDEOGRAPHER: The time is 2:01
7 p.m. We're on the record.

8 BY MS. ROSNER:

9 Q. Mr. Foley, we're still talking about
10 CX2066. That's still in front of you as a
11 document, correct?

12 A. That's correct.

13 Q. You mentioned that the contents of
14 2066 came from the proposal for Advantage
15 Dental?

16 A. Came --

17 MS. FINCHER: Object to the form.

18 A. It came from their prime vendor
19 agreement, correct, their contract.

20 Q. Why were the terms in 2066 added to
21 the Advantage Dental prime vendor agreement?

22 A. This was to identify the DSO segment
23 of Advantage Dental and not the buying group.
24 So basically here they're saying there has to be
25 ownership for it to be a DSO, and so these are

1 CONFIDENTIAL - RANDALL FOLEY
2 the terms for a DSO and not -- and what they are
3 and not to be a buying group.

4 Q. Why was it important to identify the
5 terms to be a DSO and not a buying group?

6 MS. FINCHER: Object to the form.

7 A. Because the pricing and the rebate
8 structures that we put in place for Advantage
9 Dental were only applicable to the DSO segment
10 of their business model.

11 Q. Why were the pricings and rebate
12 structure for the DSO segment exclusive to
13 Advantage's DSO?

14 MS. FINCHER: Object to the form.

15 A. They would be exclusive to all DSOs,
16 by the way, but because the vendor partners
17 would not allow discount rebates -- I mean
18 chargebacks in the -- it only allowed it in a
19 DSO part of a customer.

20 Q. The vendor partners you're referring
21 to, those are dental product manufacturers?

22 A. Correct.

23 Q. Did the dental product manufacturers
24 ask for the terms that appear in CX2066?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. No, they did not.

3 Q. Was there some sort of problem that
4 needed to be addressed by the terms in CX2066?

5 MS. FINCHER: Object to the form.

6 A. Yes.

7 Q. What was that problem?

8 A. It had come to the -- some vendor
9 partners had seen pricing that we were providing
10 to -- and I think it was to Dental Gator -- that
11 was part of MB2's plan, and came back to us and
12 said this is not acceptable that you provide
13 these chargebacks that are part of Dental Gator
14 as part of MB2's plan.

15 So we started to add terminology to
16 inform the customer that they cannot extend this
17 pricing to their buying group arm.

18 Q. When did you start doing business with
19 Dental Gator?

20 A. You would have -- I can't -- I would
21 say -- it's hard for me to know dates. I would
22 say 2013, I think it was, 2014.

23 Q. So this e-mail came from 2012.

24 A. Uh-huh.

25 Q. Was there a problem at the time that

1 CONFIDENTIAL - RANDALL FOLEY
2 the terms in the Advantage Dental PDA were meant
3 to address?

4 MS. FINCHER: Object to the form.

5 A. There could have been a situation
6 prior that I'm not aware of that Paul Berkey,
7 who does our pricing, made a comment that we
8 cannot extend the vendor pricing. I am aware of
9 it later on becoming a -- a problem when it was
10 Dental Gator.

11 Q. Who drafted the terms that are found
12 in CX2066?

13 A. Andrea Hight. And I worked -- she
14 drafted it. I approved it.

15 Q. Did someone ask Andrea to draft those
16 terms?

17 MS. FINCHER: Object to the form.

18 A. Yes; I did.

19 Q. Why did you ask Andrea to draft the
20 terms in 2066?

21 A. Andrea was one of my brightest
22 strategic account managers. She was very
23 well-written. She -- her and I worked on what
24 we felt would be DSO-type versus buying group
25 and to help draw and distinguish things, and we

1 CONFIDENTIAL - RANDALL FOLEY
2 came up with these bullet points and put it into
3 a contract.

4 Q. Were you reacting or responding to
5 something by creating or having Andrea create
6 the bullets in CX2066?

7 MS. FINCHER: Object to the form.

8 A. Yes, we were. Again, in the Advantage
9 Dental situation, they had a buying group arm,
10 and we wanted to make sure that these terms
11 apply to the DSO segment and not to their buying
12 group. They said, well, define that. What do
13 you define as our buying group and what do you
14 define as -- and here we're saying there has to
15 be ownership on the DSO, and here we're actually
16 saying, by default, there doesn't have to be
17 ownership on the buying group side.

18 Q. The title of the e-mail to Randy Foley
19 in CX2066 is "Terms not to be a Buying Group"?

20 A. Uh-huh.

21 MS. FINCHER: Object to the form. You
22 may want to rephrase that.

23 A. That's what it states. Meaning terms
24 to be in a DSO. The reverse.

25 Q. Why wouldn't you just --

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. You --
 3 MS. FINCHER: Let her finish her
 4 question before you answer.
 5 THE WITNESS: Okay.
 6 BY MS. ROSNER:
 7 Q. Why wouldn't you just state "Terms to
 8 be a DSO"?
 9 MS. FINCHER: Object to the form.
 10 A. Not sure why I titled it the reverse.
 11 Q. Is there something that would refresh
 12 your recollection as to why you would title it
 13 in "Terms not to be a DSO"?
 14 A. No.
 15 MS. FINCHER: Object to the form.
 16 Q. Let me reask that.
 17 Is there something that would refresh
 18 your recollection as to why you titled it "Terms
 19 not to be a Buying Group"?
 20 MS. FINCHER: Object to the form.
 21 A. No, I'm not sure why I would title
 22 that.
 23 Q. You later sent a very similar document
 24 to Rhonda Durante?
 25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. This is an e-mail that you drafted as
 3 part of your job?
 4 A. Yes.
 5 Q. It's part of your job to communicate
 6 with others within Schein about Schein policies
 7 on buying groups and DSOs?
 8 MS. FINCHER: Object to the form.
 9 A. That is correct.
 10 Q. You have knowledge of the contents of
 11 CX2069?
 12 A. I --
 13 MS. FINCHER: Object to the form.
 14 A. Yes.
 15 Q. You drafted CX2069 near or at the time
 16 you and Rhonda Durante were discussing the
 17 contents therein?
 18 A. Correct.
 19 Q. You drafted the e-mail in CX2069 and
 20 kept it in the course of regularly conducted
 21 business of Schein?
 22 A. Yes.
 23 Q. CX2069 is a true and correct copy of
 24 your e-mail correspondence?
 25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. I don't recall.
 3 Q. I'm going to hand you a document
 4 that's been premarked for identification as
 5 CX2069. The first page bears the Bates stamp
 6 Henry Schein-000164080.
 7 Please take a moment to review 2069
 8 and let me know when you're done.
 9 (Exhibit CX2069-001 through 002, a
 10 document bearing Bates Nos. Henry
 11 Schein-000164080 through 081, marked for
 12 identification, as of this date.)
 13 MS. FINCHER: And Randy, there's text
 14 on the back of this page. Make sure you
 15 read the whole document.
 16 (Document review.)
 17 THE WITNESS: Okay.
 18 BY MS. ROSNER:
 19 Q. You've had an opportunity to review
 20 CX2069?
 21 A. Yes.
 22 Q. This is an e-mail that you sent to
 23 Rhonda Durante on January 30, 2013; is that
 24 correct?
 25 A. That's correct.

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Yes.
 3 Q. The body of CX2069 is identical, for
 4 the most part, to the body of the prior exhibit
 5 we looked at, 2066?
 6 A. Yes.
 7 MS. FINCHER: Objection.
 8 Randy, give me a moment to object.
 9 Object to the form.
 10 If you need to take a look and compare
 11 the documents, feel free to do so.
 12 BY MS. ROSNER:
 13 Q. One distinguishing factor is --
 14 MS. FINCHER: Can you give him a
 15 moment? I think he's looking at the two
 16 documents.
 17 A. These appear to be identical
 18 documents.
 19 Q. One distinguishing factor is that at
 20 the top of 2069, you add the line, "Rules to be
 21 a DSO, not a Buying Group."
 22 Did I read that correctly?
 23 MS. FINCHER: Object to form.
 24 A. Yes.
 25 Q. Why did you include that line, "Rules

1 CONFIDENTIAL - RANDALL FOLEY
 2 to be a DSO, not a Buying Group"?

3 A. Well, I don't remember the e-mail, but
 4 Rhonda Durante reported directly to me, like
 5 Andrea Hight, and I'm defining to her -- I don't
 6 know if she was trying to draw up a contract
 7 with a customer that may have both a DSO and a
 8 buying group arm, but I'm showing to her that,
 9 in order to get DSO pricing and to be a DSO,
 10 there has to be ownership and here's some rules
 11 that apply to ownership.

12 Q. Why would you compare DSO to a buying
 13 group for Rhonda Durante?

14 MS. FINCHER: Object to the form.

15 A. I am not sure why she needed this.

16 Q. Is there anything that would refresh
 17 your recollection as to why she might need this?

18 MS. FINCHER: Object to the form.

19 A. No.

20 Q. You can set that document aside.
 21 You sent Unified Smiles a note that
 22 Schein couldn't participate in their group, as
 23 it's basically a buying group.

24 MS. FINCHER: Object to the form.

25 A. I did state that in their e-mail.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. "Unified Smiles is a buying group that
 3 we do not participate with, as with all buying
 4 groups"?

5 MS. FINCHER: Object to the form.

6 A. No, we did participate with a lot of
 7 buying groups. I'm not sure why I would say
 8 that to them.

9 Q. Would you tell anybody else within
 10 Schein we do not participate with all buying
 11 groups?

12 MS. FINCHER: Object to the form.

13 A. I may have made the statement that we
 14 do not participate with all buying groups.
 15 You did say "all" in there, correct?

16 Okay.

17 Q. Yes.

18 Would you have made the statement to
 19 someone internal at Schein, "Unified Smiles is a
 20 buying group that we do not participate with, as
 21 with all buying groups"?

22 MS. FINCHER: Object to the form.

23 Jasmine, if you have a document you
 24 want to show him, feel free to do that. I
 25 just want to be efficient with our time

1 CONFIDENTIAL - RANDALL FOLEY
 2 here.

3 A. No, I don't know why I would say --
 4 use the term "as with all buying groups," as I
 5 had buying groups.

6 Q. I'm going to hand you a document
 7 that's been premarked for identification as
 8 CX2063. The first page of the document is
 9 Bates-stamped Henry Schein-000177549.

10 Please take a moment to review CX2063
 11 and let me know when you're ready.

12 (Exhibit CX2063-001 through 005, a
 13 document bearing Bates Nos. Henry
 14 Schein-000177549 through 553, marked for
 15 identification, as of this date.)

16 MS. FINCHER: Why don't you start all
 17 the way at the back, Randy, and read up.

18 THE WITNESS: Okay.

19 BY MS. ROSNER:

20 Q. Have you had an opportunity to review
 21 CX2063?

22 A. Yes.

23 Q. This is a multi-page e-mail with a
 24 one-page Word attachment. The top e-mail, last
 25 in time, is from you on December 21, 2011; is

1 CONFIDENTIAL - RANDALL FOLEY
 2 that right?

3 A. That's correct.

4 Q. You drafted this e-mail as part of
 5 your job?

6 A. Yes, I did.

7 Q. It's part of your job to communicate
 8 about potential customers of Schein?

9 A. Yes.

10 Q. You have knowledge of the contents of
 11 CX2063?

12 MS. FINCHER: Object to the form.

13 A. Yes.

14 Q. You drafted the e-mail in CX2063 at or
 15 near the time you received a request from
 16 Unified Smiles?

17 A. Yes.

18 Q. You drafted the e-mail in CX2063 and
 19 kept it in the course of regularly conducted
 20 business?

21 A. Yes.

22 Q. CX2063 is a true and correct copy of
 23 your e-mail correspondence?

24 MS. FINCHER: Object to the form.

25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. In the top e-mail of CX2063, you're
 3 writing to Hal Muller, Debbie Foster and John
 4 borrower, and you say, "What timing. I just
 5 sent the former owners of GEDC a note explaining
 6 that we cannot participate in their company,
 7 Unified Smiles, as it's basically a buying
 8 group."

9 Did I read that correctly?

10 A. You did.

11 Q. You're telling folks within Schein
 12 we're not participating with Unified Smiles
 13 because it's a buying group?

14 MS. FINCHER: Object to the form.

15 A. Can you say that again, please?

16 Q. You're telling folks within Schein
 17 that Schein is not participate with Unified
 18 Smiles because it's a buying group?

19 MS. FINCHER: Object to the form.

20 A. That's what I'm stating here in this
 21 e-mail.

22 Q. Any reason to suggest that what you're
 23 saying in this e-mail is -- is inaccurate?

24 MS. FINCHER: Object to the form.

25 A. I'm not going into the details that

1 CONFIDENTIAL - RANDALL FOLEY
 2 Unified Smiles is basically wanting to be on
 3 price only and that they actually want Great
 4 Expressions' pricing model, which I refused to
 5 give them.

6 Q. You don't say "price only" anywhere?

7 MS. FINCHER: Object to the form.

8 A. No, but that's my conclusion when I
 9 met with them.

10 Q. Anyone receiving this e-mail doesn't
 11 understand that you're referring to a price-only
 12 buying group?

13 MS. FINCHER: Object to the form.

14 Vague. Calls for speculation. Asked and
 15 answered.

16 Go ahead.

17 A. Based on how I wrote it, I wouldn't
 18 see how they would -- I make that draw, that
 19 conclusion. I don't think they may make that
 20 conclusion, come to that conclusion.

21 Q. You can put that document aside.

22 I'm going to hand you another document
 23 that's been premarked for identification as
 24 CX2073. The first Bates on this document is
 25 Henry Schein-000171851.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Please take a moment to review CX2073
 3 and let me know when you're done.
 4 (Exhibit CX2073-001 through 003, a
 5 document bearing Bates Nos. Henry
 6 Schein-000171851 through 851-002, marked for
 7 identification, as of this date.)

8 MS. FINCHER: Randy, why don't you
 9 start at the back of the e-mail chain and
 10 read up.

11 THE WITNESS: Okay.

12 MS. FINCHER: You've had a moment to
 13 review CX2073?

14 THE WITNESS: Yes.

15 BY MS. ROSNER:

16 Q. This is an e-mail chain that you had
 17 with members from Colgate. The top e-mail on
 18 the chain, latest in time, is dated December 20,
 19 2013; is that right?

20 A. Yes.

21 Q. You drafted e-mails in this e-mail
 22 chain as part of your job?

23 A. Yes.

24 Q. It's part of your job to communicate
 25 with vendor partners such as Colgate?

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. Yes.
 3 Q. You have knowledge of the contents of
 4 declaration 2073?

5 MS. FINCHER: Object to the form of
 6 the.

7 A. Yes.

8 Q. You drafted the e-mail in CX2073 at or
 9 near the time that you got a request from
 10 Colgate?

11 MS. FINCHER: Object to the form.

12 A. Yes.

13 Q. You drafted the e-mail in CX2073 and
 14 kept it in the course of regularly conducted
 15 business?

16 A. Yes.

17 Q. CX2073 is a true and correct copy of
 18 your e-mail correspondence?

19 MS. FINCHER: Object to the form.

20 A. Yes.

21 Q. At the top e-mail of CX2073, you
 22 write, "It's a buying group that we do not
 23 participate with, as with all buying groups."

24 Did I read that correctly?

25 A. You read it correctly.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. You're telling Colgate that Unified
 3 Smiles is a buying group, right?
 4 MS. FINCHER: Object to the form.
 5 A. Yes.
 6 Q. You're telling Colgate that Schein
 7 does not participate with buying groups?
 8 MS. FINCHER: Object to the form.
 9 A. I am saying that, but I don't
 10 understand why I said that when we do
 11 participate in buying groups.
 12 Q. Schein participates with buying
 13 groups, but you're telling a customer that
 14 Schein does not? Let me strike that.
 15 Schein participates with buying
 16 groups, but you're telling a vendor partner that
 17 Schein does not participate in buying groups?
 18 MS. FINCHER: Object to the form.
 19 A. Correct.
 20 Q. Why is that?
 21 A. I don't understand why I would say
 22 that, because at the time of this e-mail, I had
 23 \$10 million worth of revenue in buying groups.
 24 Q. Is there anything that would refresh
 25 your recollection as to why you would tell

1 CONFIDENTIAL - RANDALL FOLEY
 2 Colgate Schein does not do business with buying
 3 groups?
 4 MS. FINCHER: Object to the form.
 5 A. No.
 6 Q. Do you have any explanation for why
 7 you would tell Colgate we do not participate
 8 with buying groups?
 9 A. No.
 10 Q. You can set that e-mail aside.
 11 Neither HSD or Special Markets will
 12 participate in buying groups of any kind?
 13 MS. FINCHER: Object to the form.
 14 Mischaracterizes the testimony.
 15 Go ahead.
 16 A. Can you say that again?
 17 Q. Neither HSD or Special Markets will
 18 participate in buying groups of any kind?
 19 A. That's not true.
 20 MS. FINCHER: Object to the form.
 21 Go ahead.
 22 A. That is not an accurate statement.
 23 Q. Handing you a document that has been
 24 premarked for identification as CX2067. This is
 25 a document where the first page bears the Bates

1 CONFIDENTIAL - RANDALL FOLEY
 2 label Henry Schein-0007 -- sorry, Henry
 3 Schein-000177564.
 4 Please take a moment to review CX2067
 5 and let me know when you're done.
 6 (Document review.)
 7 (Exhibit CX2067-001 through 002, a
 8 document bearing Bates Nos. Henry
 9 Schein-000177564 through 565, marked for
 10 identification, as of this date.)
 11 THE WITNESS: Okay.
 12 BY MS. ROSNER:
 13 Q. You've had an opportunity to review
 14 CX2067?
 15 A. Yes.
 16 Q. This is an e-mail chain with the last
 17 in line e-mail authored by you on April 11,
 18 2012; is that right?
 19 A. Yes.
 20 Q. You wrote the last e-mail in this
 21 chain as part of your job?
 22 A. Yes.
 23 Q. It's part of your job to respond to
 24 requests about customers?
 25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. You have knowledge of the contents of
 3 CX2067?
 4 A. Yes.
 5 Q. You drafted the e-mail in CX2067 at or
 6 near the time you received this question about a
 7 customer?
 8 A. Yes.
 9 Q. You drafted the e-mail in CX2067 and
 10 kept it in the course of regularly conducted
 11 business?
 12 A. Yes.
 13 Q. CX2067 is a true and correct copy of
 14 your e-mail correspondence?
 15 MS. FINCHER: Object to the form.
 16 A. Yes.
 17 Q. In the e-mail on the second page,
 18 CX2067-002, Troy Neil discusses 50 doctors in a
 19 study club that want to create a buying group;
 20 is that your understanding?
 21 MS. FINCHER: Object to the form.
 22 A. That is correct.
 23 Q. And on the e-mail on page CX2067-001,
 24 Debbie Foster responds to Mr. Neil; is that
 25 right?

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2 A. That's correct.

3 Q. And Debbie Foster reports to you?

4 A. Yes, at this time.

5 Q. Debbie Foster says, "Neither HSD or
6 Special Markets will participate in buying
7 groups of any kind. They just erode our margins
8 and rarely bring any new business to the table.
9 Sorry."

10 Did I read that correctly?

11 A. You read that properly.

12 Q. Debbie is saying that Schein doesn't
13 participate in buying groups of any kind?

14 MS. FINCHER: Object to the form.

15 Are you asking him if that's what she
16 wrote in her e-mail?

17 A. I'm sorry. Can you ask again? I
18 didn't hear you.

19 Q. Debbie is saying Schein does not
20 participate in buying groups of any kind?

21 MS. FINCHER: Object to the form.

22 A. That's what Debbie is saying.

23 Q. That's your understanding of what
24 Debbie is saying?

25 A. That's --

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2 MS. FINCHER: Object to the form.

3 A. Yes, that's what Debbie is stating
4 here.

5 Q. You later respond and say, "We get a
6 lot of these requests and have to say no. Did a
7 few and it only led the issues."

8 Did I read that correctly?

9 A. Yes, you did.

10 Q. You were agreeing with Debbie that we
11 have to say no to the study club trying to
12 create a buying group?

13 MS. FINCHER: Object to the form.

14 Go ahead.

15 A. I am agreeing in this particular
16 situation that we get requests from study groups
17 and we have to say no to them, but I'm not
18 agreeing with we don't participate with all
19 buying groups, as she's stating below. She's
20 not being specific here. This is a study group.

21 Q. When Debbie says, "Neither HSD or
22 Special Markets participates in buying groups of
23 any kind," what do you interpret that to mean?

24 MS. FINCHER: Object to the form.

25 Asked and answered.

1 CONFIDENTIAL - RANDALL FOLEY

2 You can answer again.

3 A. That she doesn't understand our
4 policy. Because both divisions do participate
5 in buying groups.

6 Q. As Debbie's supervisor --

7 A. Her --

8 MS. FINCHER: Let her finish her
9 question, Randy.

10 Q. -- is it your responsibility to ensure
11 that Debbie understands the policies of Schein?

12 MS. FINCHER: Object to the form.

13 A. Yes, but she -- that should have been
14 brought to our attention to do a deeper dive
15 into the customer. It's not her decision to say
16 we're going to do business with A or B. I got
17 it from the fact that they're a study group.

18 Q. So Debbie is telling Mr. Troy Neil
19 that Schein does not do business with buying
20 groups of any kind?

21 MS. FINCHER: Object to the form.

22 Asked and answered.

23 A. Yes, she is stating that to him.

24 Q. Who is Troy Neil?

25 A. Troy Neil I believe was the -- is the

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2 regional manager for the Southeast. I think he
3 was based out of Atlanta, where, by the way, we
4 have a buying group under him with about 40
5 locations called Dental Partners of Georgia, a
6 buying group, no ownership.

7 Q. When you initially received this
8 e-mail, did you have any response to Debbie's
9 statement, "Neither HSD or Special Markets will
10 participate in buying groups of any kind"?

11 MS. FINCHER: Object to the form.

12 Are you asking outside of the context
13 of the e-mail you're looking at?

14 MS. ROSNER: Yes.

15 THE WITNESS: I'm sorry. You have to
16 do this again.

17 MS. FINCHER: Let her rephrase her
18 question.

19 BY MS. ROSNER:

20 Q. When you received this e-mail, did you
21 have any reaction to Ms. Foster's statement,
22 "Neither HSD or Special Markets will participate
23 in buying groups of any kind"?

24 MS. FINCHER: Object to the form.

25 A. No, at the time I just simply said,

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2 Troy, we get a lot of these requests. Didn't
3 even -- and I meant requests from that this is
4 a -- what do you call it? A study group, and
5 then moved on to a bigger topic.

6 Q. Ms. Foster is communicating to the
7 field about a policy regarding buying groups?

8 MS. FINCHER: Object to the form.

9 A. She is thinking that that is a policy
10 or making an inaccurate statement.

11 Q. As Ms. Foster's supervisor, would you
12 take it upon yourself to correct her inaccurate
13 statement?

14 MS. FINCHER: Object to the form.

15 A. Correct, but I didn't look at it as
16 being a big deal. Obviously, I just read right
17 over it.

18 Q. Why was it not a big deal?

19 MS. FINCHER: Object to the form.

20 A. Because I agreed that this particular
21 buying -- I'm sorry, this particular situation
22 with a study group and not getting into the
23 details, and not correcting her, no, if it's a
24 study or, Deb, we need to do this, I don't know
25 if I took it offline and explained it to her, I

1 CONFIDENTIAL - RANDALL FOLEY
2 can't remember, but just to get back to Troy, we
3 get a lot of these and say no to the buying, and
4 I was responding to that. Maybe I just glossed
5 right over the whole statement and found it not
6 to be important to respond to.

7 Q. Did you ever clarify with Troy Neil
8 that Ms. Foster's statement about not doing
9 business with any kind of buying group was
10 wrong?

11 A. No, but he should know because he had
12 Dental Partners of Georgia under his control,
13 which is a buying group. It fell under his
14 numbers, if I remember correctly.

15 Q. You can put this one aside.

16 A. Okay.

17 Q. I'm going to hand you a document
18 that's been premarked as CX2065. The first page
19 of this document is marked Henry
20 Schein-000167972. Please take a moment to
21 review CX2065 and let me know once you have
22 familiarized yourself with the document.

23 (Exhibit CX2065-001 through 003, a
24 document bearing Bates Nos. Henry
25 Schein-000167972 through 974, marked for

1 CONFIDENTIAL - RANDALL FOLEY
2 identification, as of this date.)
3 (Document review.)

4 THE WITNESS: Okay.

5 BY MS. ROSNER:

6 Q. You've had a moment to review CX20675?

7 A. Yes.

8 Q. This is an e-mail sent from Debbie
9 Foster to you on February 21, 2012, correct?

10 A. That's correct.

11 Q. And Debbie attaches a Word document
12 that's located at CX2065-002; is that right?

13 A. That's correct.

14 Q. The title of that document is
15 "Definition of a DSO that would fall under SM,"
16 correct?

17 MS. FINCHER: Object to the form.

18 A. Correct.

19 Q. In the e-mail that Debbie sends you,
20 she says, "Can you take a look at the following
21 presentation I made up using a bunch of the
22 e-mails and documents you have given me?"

23 Did I read that right?

24 A. You read that right.

25 Q. So Debbie created the attached

1 CONFIDENTIAL - RANDALL FOLEY
2 document that she's sending you, right?

3 MS. FINCHER: Object to the form.

4 A. Apparently so.

5 Q. And she created it based on
6 information you had given her, correct?

7 A. According to her.

8 Q. Do you have any reason to suggest that
9 that's not accurate?

10 A. No.

11 MS. FINCHER: Object to the form.

12 THE WITNESS: I'm sorry.

13 No.

14 BY MS. ROSNER:

15 Q. If you turn to the document on
16 CX2065-002, the second-to-last heading reads,
17 "Definition of a Buying Group: Neither SM Nor
18 HSD Would Take On."

19 Did I read that correctly?

20 A. Yes.

21 Q. What's your understanding of the
22 statement "Definition of a Buying Group:
23 Neither SM Nor HD Would Take On"?

24 A. She's stating that, based on the
25 conditions below, that heading, that this

1 CONFIDENTIAL - RANDALL FOLEY
2 customer -- this person would not qualify to be
3 a customer of Henry Schein.

4 Q. Ms. Foster mentioned that she had put
5 this paper together based on information that
6 she had received from you.

7 What information did you give her that
8 would enable her to say that Special Markets and
9 HSD do not do business with buying groups?

10 MS. FINCHER: Object to the form.

11 Mischaracterizes the document.

12 Go ahead.

13 A. Yeah, I do not remember this document.
14 I don't remember sending her what she's stating
15 here, and I don't remember ever seeing this
16 document from her.

17 Q. When you receive e-mails from your
18 direct reports, do you have a tendency to ignore
19 them?

20 MS. FINCHER: Object to form.

21 A. I may not get to all of them. I get a
22 couple hundred e-mails a day. So, I'm not sure.
23 I really -- I don't know if I ever responded to
24 this. Is there a response to it?

25 Q. Do you recall responding to this

1 CONFIDENTIAL - RANDALL FOLEY
2 e-mail?

3 A. No, I do not.

4 Q. Do you agree with what Ms. Foster has
5 written?

6 A. No, I don't --

7 MS. FINCHER: Objection.

8 THE WITNESS: I'm sorry.

9 MS. FINCHER: Go ahead.

10 THE WITNESS: No, I don't see with
11 what she said.

12 BY MS. ROSNER:

13 Q. When you don't agree with something
14 that one your direct reports has said, do you
15 take it upon yourself to correct them?

16 A. I generally do.

17 MS. FINCHER: Object to the form.

18 A. That is my goal.

19 Q. You can put that aside.

20 Are you familiar with the buying group
21 the Atlantic Dental Group out of Virginia?

22 A. Yes.

23 Q. Schein believed that Atlantic Dental
24 Group out of Virginia was going to be a group of
25 dentists trying to get a discount on supplies?

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2 MS. FINCHER: Object to the form.

3 A. I don't remember specific where it
4 started and where it ended up, but there were
5 different -- at different stages, we were
6 finding out different information about them.

7 Q. Schein believed that Atlantic Dental
8 Group was going to be a group of dentists trying
9 to get discounts on supplies which Schein
10 doesn't do?

11 MS. FINCHER: Object to the form.

12 A. No, I believe we had a call to discuss
13 what their business model was with the local
14 team, and the only reason I was on the call is
15 to determine whether this buying group, if it is
16 a buying group, was going to fall under HSD, or
17 if it was a DSO, should it fall under my team.

18 Q. Are you disputing that Atlantic Dental
19 was going to be a group of dentists trying to
20 get a discount on supplies which Schein doesn't
21 do?

22 MS. FINCHER: Object to the form.

23 A. I would disagree with that statement.

24 Q. Handing you a document that's been
25 premarked as Exhibit 2071. It bears the Bates

1 CONFIDENTIAL - RANDALL FOLEY
2 stamp on the first page of Henry
3 Schein-000164541. Please take a moment to
4 familiarize yourself with CX2071 and let me know
5 when you're ready.

6 (Exhibit CX2071-001 through 003, a
7 document bearing Bates Nos. Henry
8 Schein-000164541 through 543, marked for
9 identification, as of this date.)

10 (Document review.)

11 THE WITNESS: Okay.

12 BY MS. ROSNER:

13 Q. You've had an opportunity to review
14 CX2071?

15 A. Yes.

16 Q. Is CX2071 an e-mail chain between you
17 and Chad Thompson of Heartland Dental Care?

18 A. Yes.

19 Q. The top e-mail in the chain is from
20 April 5, 2013.

21 You drafted the e-mails in CX2071 as
22 part of your job?

23 A. Yes.

24 Q. It's part of your job to respond to
25 customers such as Heartland Dental?

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2 A. Yes.

3 Q. You have knowledge of the contents of
4 CX2071?

5 A. Yes.

6 Q. You drafted CX2071 at or near the time
7 you had an inquiry about Atlantic Dental Care?

8 MS. FINCHER: Object to the form.

9 A. Yes.

10 Q. The -- you drafted CX2071 and kept it
11 in the course of regularly conducted business?

12 A. Yes.

13 Q. CX2071 is a true and correct copy of
14 your e-mail correspondence?

15 MS. FINCHER: Object to the form.

16 A. Yes.

17 Q. In the e-mail on page CX2071-002, you
18 were asking Mr. Thompson if he knows of Atlantic
19 Dental Group out of Virginia; is that right?

20 A. That's correct.

21 Q. You include a couple of bullets that
22 suggest that Atlantic Dental is one corporate
23 structure, unified group of mature practices; is
24 that right?

25 MS. FINCHER: Object to the form.

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2 A. Yes.

3 Q. On the first page, CX2071-001, you
4 tell Mr. Thompson, "This is going to be a group
5 of dentists trying to get a discount on
6 supplies, which we don't do."

7 Did I read that correctly?

8 A. Yes.

9 Q. So Schein does not give discounts on
10 supplies to buying groups of dentists?

11 MS. FINCHER: Object to the form.

12 Asked and answered.

13 You can answer it again.

14 A. No, that is not an accurate statement.

15 Q. You drafted an inaccurate statement to
16 Mr. Chad Thompson of Heartland Dental?

17 A. Your statement was general. This is
18 not -- this is a statement that I don't go into
19 detail on, but I'm basically saying we don't
20 give a discount on supplies. People who just
21 want -- that want to be a price-only-type group.

22 Q. Where in the e-mail do you talk about
23 Atlantic Dental being a price-only group?

24 MS. FINCHER: Object to the form.

25 A. I don't need to -- I'm not going into

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2 it with Chad. I'm asking Chad is this a DSO, is
3 why I'm reaching out to him, do you know about
4 it, and then I just simply said, Thanks for
5 checking. Looks like it's going to just be a
6 group of dentists looking for discounted
7 pricing, and nothing more.

8 Q. And Schein does not work with dentists
9 looking for discounted pricing?

10 MS. FINCHER: Object to the form.

11 Mis- --

12 A. It goes --

13 Sorry.

14 MS. FINCHER: Let me object.

15 Object to the form. Mischaracterizes
16 the testimony.

17 You can go ahead.

18 THE WITNESS: I'm not getting into the
19 level that that response to Chad Thompson.

20 BY MS. ROSNER:

21 Q. But you conveyed to Chad Thompson that
22 Schein doesn't do discounts with groups of
23 dentists seeking discounts?

24 MS. FINCHER: Object to the form.

25 A. I said that. I could have said did

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2 not get a discount -- they only get discount on
3 supplies and nothing else, but I didn't need to
4 get into that detail with him.

5 Q. Why didn't you need to get into that
6 level of detail with him?

7 A. I don't need to share that with a
8 customer.

9 Q. Does it bother you to send inaccurate
10 information to a customer?

11 MS. FINCHER: Object to the form.

12 A. It bothers me to send inaccurate
13 information, but it's that that I wasn't as
14 specific as I could have been by reading how I
15 respond to this e-mail. It's irrelevant to the
16 customer.

17 Q. You can put this document aside.

18 Are you familiar with a buying group
19 called Sunrise?

20 A. No.

21 Q. Schein said no to Sunrise because they
22 were more of a buying group?

23 MS. FINCHER: Object to the form.

24 A. They don't ring a bell.

25 Q. Handing you a document that's been

1 CONFIDENTIAL - RANDALL FOLEY
2 premarked as CX2072. The first page is
3 Bates-stamped Henry Schein-000165168. Please
4 take a moment to review CX2072 and let me know
5 once you've had a chance to review it.

6 (Exhibit CX2072-001, a document
7 bearing Bates Nos. Henry Schein-000165168,
8 marked for identification, as of this date.)

9 (Document review.)

10 THE WITNESS: Okay.

11 BY MS. ROSNER:

12 Q. You've had a chance to review CX2072?

13 A. Yes.

14 Q. It's an e-mail exchange between you
15 and Philip Toh. The top e-mail latest in time
16 is dated August 1, 2013; is that right?

17 A. That's correct.

18 Q. You wrote the e-mail in 2072 as part
19 of your job?

20 A. Yes.

21 Q. It's part of your job to communicate
22 about potential customers for Schein?

23 A. Yes.

24 Q. You have knowledge of the contents of
25 CX2072?

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2 A. Yes.

3 Q. You drafted the e-mail in CX2072 at or
4 near the time you got a question about potential
5 buying group customers?

6 A. Yes.

7 Q. You drafted the e-mail in CX2072 and
8 kept it in the course of regularly conducted
9 business of Schein?

10 A. Yes.

11 Q. CX2072 is a true and correct copy of
12 your e-mail correspondence?

13 MS. FINCHER: Object to the form.

14 A. Yes.

15 Q. The very first line in your e-mail
16 says, "No on Sunrise, as they are more of a
17 buying group."

18 Did I read that correctly?

19 A. Yes.

20 Q. Who is Philip Toh?

21 A. He was part of our inside business
22 development at Special Markets, customer
23 development. He reported directly to Hal
24 Muller.

25 Q. And so you're telling Philip that

1 CONFIDENTIAL - RANDALL FOLEY
2 Special Markets is not doing business -- strike
3 that.

4 You're telling Philip that Schein is
5 not doing business with Sunrise because it's
6 more of a buying group?

7 MS. FINCHER: Object to the form.

8 A. That Special Markets is not doing
9 business with them.

10 Q. If Sunrise were to gain ownership in
11 its practices, would Schein be interested in
12 pursuing Sunrise as a customer?

13 MS. FINCHER: Object to the form.

14 A. Special Markets would have been
15 interested if they gained -- Andrea was working
16 on that.

17 I believe they eventually became a
18 customer, by the way.

19 Q. You can put that document aside.

20 Schein's North Carolina team was
21 entertaining a bid at one point to Synergy
22 Dental Partners?

23 MS. FINCHER: Object to the form.

24 A. That one does not ring a bell to me.

25 Q. As with other buying groups, Schein

1 CONFIDENTIAL - RANDALL FOLEY
2 continued to say no to Synergy Dental Partners,
3 or at least tried to?

4 MS. FINCHER: Object to the form.

5 A. Again, Synergy does not ring a bell.

6 Q. I'm going to hand you a document
7 that's been previously marked CX2079. The first
8 page Bates is Henry Schein-000150250.

9 Please take a moment to review CX2079
10 and let me know when you're done.

11 (Exhibit CX2079-001 through 004, a

12 document bearing Bates Nos. Henry
13 Schein-000150250 through 253, marked for
14 identification, as of this date.)

15 (Document review.)

16 THE WITNESS: Okay.

17 BY MS. ROSNER:

18 Q. You've had a moment to review CX2079?

19 A. Yes.

20 Q. CX2079 is an e-mail chain. The
21 last-in-time e-mail is from Peter Jugoon dated
22 September 14, 2014; is that right?

23 A. That's correct.

24 Q. You respond in this e-mail chain on
25 September 14, 2014. You drafted this e-mail as

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 2 parts of your job?
 3 A. Yes.
 4 Q. It's part of your job to communicate
 5 about potential customers for Schein?
 6 A. That's correct.
 7 Q. You have knowledge of the contents of
 8 CX2079?
 9 A. Yes.
 10 Q. You drafted the e-mail in CX2079 at or
 11 near the time you had -- someone raised a
 12 question for you about Synergy Dental Partners?
 13 MS. FINCHER: Object to the form.
 14 A. Yes.
 15 Q. You drafted the e-mail in CX2079 and
 16 kept it in the course of regularly conducted
 17 business?
 18 A. Yes.
 19 Q. CX2079 is a true and correct copy of
 20 your e-mail correspondence?
 21 MS. FINCHER: Object to the form.
 22 A. Yes.
 23 Q. Going to the e-mail that you draft on
 24 page CX2079-001, the bottom of the page, you
 25 say, "I believe our local North Carolina team

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 2 was entertaining the option for Schein to be a
 3 distributor for this group, but later decided
 4 against it. As with other buying groups, we
 5 continue to say no (as least try)."
 6 Did I read that correctly?
 7 A. You read it correctly.
 8 Q. Schein was trying to say no to buying
 9 groups?
 10 MS. FINCHER: Object to the form.
 11 Asked and answered.
 12 You can answer it again.
 13 A. No, Schein was not saying no to buying
 14 groups.
 15 Q. What do you mean when you said Schein
 16 at least tries to say no to buying groups?
 17 MS. FINCHER: Object to the form.
 18 A. I'm not exactly sure why I said that,
 19 but I was not getting into the details with this
 20 person about who would qualify as a buying group
 21 as a Schein customer and who wouldn't.
 22 Q. Is there anything that would refresh
 23 your recollection as to why you would say,
 24 Schein continues to say no to buying groups, or
 25 at least tries to?

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 2 A. No, because I continued to have buying
 3 groups and added buying groups.
 4 Q. Why wouldn't you get into the details
 5 with Peter Jagoon about why Schein does or does
 6 not do business with buying groups?
 7 MS. FINCHER: Object to form. Asked
 8 and answered.
 9 You can answer it.
 10 A. Can you rephrase that or reask that?
 11 Q. You mentioned that you didn't want to
 12 get into the details with this person regarding
 13 why Schein does or does not do business with
 14 buying groups.
 15 Why would you not want to get into the
 16 details with Peter Jagoon?
 17 MS. FINCHER: Object to the form.
 18 A. Because the question he asked, am I
 19 familiar with this group and do we do business
 20 with it, has been asked, and no, we don't do
 21 business with them. And then I made an
 22 additional comment that -- I don't understand
 23 why I would have to add it, but I simply said we
 24 don't do business with this group.
 25 Q. And you add, "As with other buying

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 2 groups, we continue to say no (at least try
 3 to)."
 4 What were you trying to convey through
 5 that statement?
 6 A. I'm not sure what I was trying to
 7 convey at that time by making that statement
 8 because we have buying groups and we were
 9 working with them on a daily basis.
 10 Q. Is there anything that could refresh
 11 your recollection as to what you were trying to
 12 convey at that time with the statement, "As with
 13 other buying groups, we continue to say no (or
 14 at least try to)"?
 15 MS. FINCHER: Object to the form.
 16 A. No.
 17 Q. You can put this aside.
 18 We mentioned Tralongo today. Schein
 19 has had the opportunity to bid on the Tralongo
 20 buying group, correct?
 21 A. Yes.
 22 Q. Rhonda Durante and yourself both met
 23 with Tralongo?
 24 A. Yes, at one time.
 25 Q. Rhonda and you determined that

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 2 Tralongo was a buying group and walked away?
 3 MS. FINCHER: Object to the form.
 4 A. I believe at a later date, Tralongo
 5 became a -- there was a part of Tralongo that
 6 became a buying group and we did know go in and
 7 bid, but while we were there, they had about 15
 8 locations that I believe we sent a bid on. So
 9 the timing on that -- there's two situations:
 10 Tralongo as a DSO and Tralongo created a buying
 11 group, and I can't remember the name of it.
 12 Q. For the Tralongo buying group, you
 13 decided it was a buying group and you walked
 14 away?
 15 MS. FINCHER: Object to the form.
 16 Mischaracterizes the testimony.
 17 A. I, yes, I recall that, instead of
 18 going in and bidding on that, we decided not to
 19 bid on it.
 20 Q. You directed Rhonda not to bid on the
 21 Tralongo buying group?
 22 A. I directed Rhonda not to meet with
 23 them any further about the buying group part of
 24 it because it was just based on price.
 25 Q. Okay.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. MB2 was a \$2 million-plus merchandise
 3 customer for Schein?
 4 MS. FINCHER: Object to the form.
 5 A. Yes.
 6 Q. In addition to its DSO, MB2 sponsored
 7 a buying group on the side?
 8 MS. FINCHER: Object to the form.
 9 A. Yes.
 10 Q. MB2 sponsored the Dental Gator buying
 11 group?
 12 MS. FINCHER: Object to the form.
 13 A. That's correct.
 14 MS. FINCHER: Give me a moment to
 15 object.
 16 Go ahead.
 17 Q. Dental Gator did not have a ownership
 18 interest in its affiliated dentists?
 19 MS. FINCHER: Object to the form.
 20 A. To my knowledge, correct.
 21 Q. MB2 was using Dental Gator as a way to
 22 acquire practices?
 23 A. Yes, they're a way to get a foot in
 24 the door.
 25 Q. Through Dental Gator, MB2 pursued

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 2 MS. ROSNER: We've been going about an
 3 hour. We can take a break, if that works.
 4 MS. FINCHER: Very quick bathroom
 5 break. Maybe like three minutes.
 6 MS. ROSNER: Off the record.
 7 THE VIDEOGRAPHER: The time is 2:52
 8 p.m. We're off the record.
 9 (Recess.)
 10 THE VIDEOGRAPHER: The time is 2:59
 11 p.m. We're on the record.
 12 BY MS. ROSNER:
 13 Q. Mr. Foley, I'm going to switch gears
 14 and talk about MB2 and Dental Gator.
 15 A. Okay.
 16 Q. You're familiar with MB2 and Dental
 17 Gator?
 18 A. Yes.
 19 Q. MB2 is a large DSO?
 20 A. Yes.
 21 Q. MB2 had an ownership interest in its
 22 dental practices?
 23 A. Yes.
 24 Q. MB2 was a Special Markets customer?
 25 A. Yes.

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 2 offices by setting them up as consultant
 3 practices to win them eventually as MB2-owned
 4 offices?
 5 MS. FINCHER: Object to the form.
 6 A. That was their goal.
 7 Q. MB2 had some success converting Dental
 8 Gator offices to MB2-acquired practices?
 9 MS. FINCHER: Object to the form.
 10 A. I remember -- I remember here and
 11 there they would get a couple of them to do so,
 12 correct. I don't know what the percentage of
 13 success -- what the success rate was of that.
 14 Q. Special Markets got push-back from the
 15 private division on Dental Gator?
 16 MS. FINCHER: Object to the form.
 17 A. There was some push-back from some
 18 FSCs, I believe.
 19 Q. HSD did not like that Dental Gator was
 20 using MB2's formulary pricing for private
 21 dentists?
 22 MS. FINCHER: Object to the form.
 23 A. Say that -- repeat that. I'm sorry.
 24 Q. HSD did not like that Dental Gator was
 25 using MB2's formulary pricing for private

1 CONFIDENTIAL - RANDALL FOLEY
2 dentists?

3 MS. FINCHER: Object to the form.

4 A. That is incorrect. They did not like
5 that Dental Gator was leading in their -- in
6 their solicitation of clients based solely on
7 Henry Schein's pricing when they first started
8 out.

9 Q. MB2's formulary pricing is lower than
10 pricing available to private practice dentists
11 through HSD?

12 MS. FINCHER: Object to the form.

13 A. Okay. Again, rephrase that.

14 Q. MB2's formulary pricing is lower than
15 pricing available to private practice dentists
16 through HSD?

17 MS. FINCHER: Object to the form.

18 A. To most of the customers, there could
19 be exceptions where HSD customers got better
20 pricing than MB2, for the most part, yes.

21 Q. What would be an exception where an
22 HSD customer has better pricing than MB2's
23 formulary pricing?

24 MS. FINCHER: Object to the form.

25 A. The FSCs were able to override and

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2 create certain pricing themselves, so we would
3 come across accounts that had very low GPs, you
4 know, for what they considered a good size
5 practice, and sometimes, again, their pricing
6 would be better on occasion than one of our
7 DSOs.

8 Q. Dental Gator did not have permission
9 to use MB2's formulary pricing for its private
10 practice members?

11 A. Correct, their contract again was
12 stated that this is your pricing for MB2, and we
13 have to have a different pricing plan for Dental
14 Gator.

15 Q. You felt that Henry Schein HSD was on
16 a high horse about no GPOs?

17 MS. FINCHER: Object to the form.

18 A. I don't recall that.

19 Q. You don't recall saying that someone
20 from HSD was on a high horse about no GPOs?

21 MS. FINCHER: Object to form.

22 A. Correct, I don't recall that.

23 Q. I'm handing you a document that has
24 been premarked as CX2078. The first page bears
25 the Bates number Henry Schein-001516940.

1 CONFIDENTIAL - RANDALL FOLEY
2 Please take a moment to review CX2078
3 and let me know when you're ready.

4 (Exhibit CX2078-001, a document
5 bearing Bates Nos. Henry Schein-001516940,
6 marked for identification, as of this date.)

7 (Document review.)

8 THE WITNESS: Okay.

9 BY MS. ROSNER:

10 Q. You've had an opportunity to review
11 CX2078?

12 A. Correct.

13 Q. CX2078 is an e-mail string. At the
14 top of the string, Hal Muller has an e-mail
15 dated July 9, 2014; is that right?

16 A. That is correct.

17 Q. Directly below that, you have an
18 e-mail that you write to Hal Muller of that same
19 date. You drafted this e-mail to Hal Muller as
20 part of your job?

21 A. Yes.

22 Q. It's part of your job to communicate
23 with Hal Muller about Special Markets accounts?

24 A. Yes.

25 Q. You have knowledge of the contents of

1 CONFIDENTIAL - RANDALL FOLEY
2 the e-mail in CX2078?

3 MS. FINCHER: Object to form.

4 A. Yes.

5 Q. You drafted the e-mail in CX2078 near
6 the time when there was a question about MB2?

7 A. Yes.

8 Q. You drafted the e-mail in CX2078 and
9 maintained it in the course of regularly
10 conducted business of Schein?

11 A. Yes.

12 Q. CX2078 is a true and correct copy of
13 your e-mail correspondence?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 Q. In the e-mail that you draft to Hal
17 Muller, you write, "Red alert. Don't include
18 Andrea on MB2 e-mails. She pissed at Daniel for
19 not keeping her on top of this customer. I
20 believe MB2 is fine with Daniel -- and he
21 doesn't ride the high horse of no GPO."

22 Did I read that properly?

23 A. You did.

24 Q. What does it mean to not ride the high
25 horse of no GPO?

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2 MS. FINCHER: Object to the form.

3 A. This GPO would mean buying group, for
4 one thing, and this statement is that Andrea is
5 the one who's riding a high horse of being
6 stricter on rules of how the buying groups
7 should work, and --

8 Q. At --

9 A. And Daniel is not.

10 Q. At this time, Andrea is a member of
11 the Mid Markets group?

12 MS. FINCHER: Object to form.

13 A. Correct. She has now moved to Mid
14 Markets, and she has transitioned this account
15 over and is still hanging on.

16 Q. She's transitioned the MB2 account to?

17 A. Daniel.

18 Q. Daniel Hobson?

19 A. Correct.

20 Q. And Daniel Hobson reports to you in
21 Special Markets?

22 A. Correct.

23 Q. Why do you say that Andrea is on a
24 high horse of no GPO?

25 A. I'm not sure. Andrea's a little more

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2 high-strung than Daniel, and she might go
3 ballistic -- I mean, not ballistic. It's a bad
4 term. She might overreact to a certain
5 situation such as this.

6 However, the situation was actually a
7 billing error, where the MB2 account was
8 attached to a private practice. All of this was
9 a waste of time, to be honest with you. This
10 has nothing to do with the buying group other
11 than somebody noticing, thinking that MB2 was
12 out sharing their pricing with somebody else
13 when there was an internal error that a private
14 dentist out of somewhere in Texas happened to be
15 assigned to their -- to their formulary in
16 error.

17 Q. You believed that Andrea was
18 overreacting to the mention of MB2 and a buying
19 group?

20 MS. FINCHER: Object to the form.

21 A. That may be not the best terminology.
22 Andrea can be very black and white into the
23 terms of a contract and might pursue the
24 customer as that you're not adhering to our
25 contract right to the tee.

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2 Daniel would be more like, hey, guys,
3 you know, watch it, you need to be careful here.
4 Again, this has -- but this was a billing error,
5 and it didn't have to go any further after this
6 e-mail.

7 Q. You can put that e-mail aside.

8 HSD was all over Special Markets for
9 its relationship with Dental Gator?

10 MS. FINCHER: Object to the form.

11 A. I don't recall saying that. It's very
12 general.

13 Q. You don't recall thinking that HSD was
14 all over Special Markets for its relationship
15 with Dental Gator?

16 MS. FINCHER: Object to the form.

17 A. Correct, I don't recall stating that.

18 Q. Handing you a document that's been
19 premarked for identification as CX2091. The
20 first page is Bates-labeled Henry
21 Schein-000179530.

22 Please take a moment to review CX2091
23 and let me know when you're finished.

24 (Exhibit CX2091-001 through 004, a
25 document bearing Bates Nos. Henry

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2 Schein-000179530 through 533, marked for
3 identification, as of this date.)

4 (Document review.)

5 THE WITNESS: Okay.

6 BY MS. ROSNER:

7 Q. You've had an opportunity to review
8 CX2091?

9 A. Yes.

10 Q. CX2091 is an e-mail string, the top
11 last-in-time e-mail is dated August 18, 2015,
12 drafted by you; is that correct?

13 A. That's correct.

14 Q. You drafted the e-mail in CX2091 as
15 part of your job?

16 A. Yes.

17 Q. It's part of your job to communicate
18 about Henry Schein customers?

19 A. Yes.

20 Q. You have knowledge of the contents of
21 CX2091?

22 A. Yes.

23 Q. You drafted CX2091 near or at the time
24 there was an inquiry about a particular Henry
25 Schein customer?

1 CONFIDENTIAL - RANDALL FOLEY
2 MS. FINCHER: Object to the form.

3 A. Correct.

4 Q. You drafted the e-mail in CX2091 and
5 kept it in the course of regularly conducted
6 business at Henry Schein?

7 A. Yes.

8 Q. CX2091 is a true and correct copy of
9 your e-mail correspondence?

10 A. Yes. I can look.

11 MS. FINCHER: Object to the form.

12 Q. At the last in line e-mail at the top
13 of the page on CX2091-001, you write, "I don't
14 get this. When Dental Gator created a similar
15 document and had a similar message, HSD was all
16 over us."

17 Did I read that correctly?

18 A. You did.

19 Q. So HSD was all over Special Markets
20 for the Dental Gator relationship?

21 MS. FINCHER: Object to the form.

22 Mischaracterizes the document.

23 Go ahead.

24 A. No, they were -- they were all over
25 the document and the message that Dental Gator

1 CONFIDENTIAL - RANDALL FOLEY
2 was sending out to its potential customers.

3 Q. HSD was all over Special Markets for
4 this Dental Gator document and message?

5 A. They did not like the document that
6 Dental Gator was promoting to its end-user which
7 just focused on the pricing of Schein and
8 included the pricing.

9 Q. I can take that document back.

10 You felt that you had a lot of
11 bullshit from HSD personnel regarding Dental
12 Gator?

13 MS. FINCHER: Object to the form.

14 A. That's a general statement.

15 Q. Would you say that you got a lot of BS
16 from HSD personnel regarding Dental Gator?

17 MS. FINCHER: Object to the form.

18 Again, in interest of time, Jasmine,
19 if you have a document you want to show him,
20 please go ahead and show him so we can honor
21 the witness's time.

22 A. I knew -- I knew we had a number of
23 local FSCs that struggled with the Dental Gator
24 model.

25 Q. Did you have anyone else within HSD

1 CONFIDENTIAL - RANDALL FOLEY
2 outside of FSC -- strike that.

3 Did you have anyone else within HSD
4 outside of FSCs that struggled with the Dental
5 Gator model?

6 A. The regional managers may join in with
7 them that they report up to.

8 Q. Other than regional managers and FSCs,
9 was there anyone else within HSD that struggled
10 with the Dental Gator model?

11 MS. FINCHER: Object to the form.

12 Answer if you know, but don't guess.

13 A. I -- I don't remember exactly if
14 anybody above that level objected to it. I
15 remember objections to how Dental Gator was
16 initially proposing their solution to end-users
17 and that we met with them and changed the
18 whole -- the way they presented.

19 Q. You got BS from Jake Meadows and
20 others about when buying groups existed under
21 Special Markets?

22 MS. FINCHER: Object to the form.

23 Asked and answered.

24 You can answer it again.

25 A. I remember that Jake Meadows -- now

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2 that you have mentioned that, I remember that
3 Jake Meadows is the one that pointed out that
4 how Smile Source was promoting -- I'm sorry, not
5 Smile Source -- how Dental Gator was promoting
6 their buying group based solely on price as a
7 lead and nothing else.

8 Q. And you got BS from Jake Meadows and
9 others about Dental Gator?

10 MS. FINCHER: Object to the form.

11 Asked and answered.

12 You can answer it again.

13 A. Yeah, I -- he -- I just -- like I just
14 stated, he did not like the way they presented
15 their -- their information, and I had them
16 change it, Dental Gator.

17 Q. Special Markets was willing to work
18 with Dental Gator?

19 A. Yes.

20 Q. Special Markets did want -- did not
21 want to risk losing MB2 as a customer?

22 MS. FINCHER: Object to the form.

23 A. That is part of the reason, yes.

24 Q. You were confused by some of the
25 push-back from HSD on Dental Gator?

1 CONFIDENTIAL - RANDALL FOLEY
 2 MS. FINCHER: Object to the form.
 3 A. If I recall, yes.
 4 Q. Why?
 5 A. Because we showed that Dental Gator --
 6 that Andrea was able to put together, actually,
 7 an entire brochure, you know, for Dental Gator
 8 to help promote their services. So this was the
 9 type of buying group that we prefer to do
 10 business with. So I was confused as to why we
 11 were getting push-back.
 12 Q. And you were getting push-back from
 13 HSD?
 14 MS. FINCHER: Object to the form.
 15 Go ahead.
 16 A. From personnel within HSD.
 17 Q. HSD was pushing back on Special
 18 Markets' relationship with Dental Gator because
 19 Dental Gator was a buying group pursuing private
 20 practice dentists?
 21 MS. FINCHER: Object to the form.
 22 Mischaracterizes the testimony.
 23 A. No.
 24 Q. At the same time that HSD was pushing
 25 back on Dental Gator, HSD was bidding on Smile

1 CONFIDENTIAL - RANDALL FOLEY
 2 Source?
 3 MS. FINCHER: Object to the form.
 4 A. Based on the e-mail I recently looked
 5 at, yes.
 6 Q. Pushing back on Special Markets'
 7 relationship with Dental Gator and bidding on
 8 Smile Source seemed inconsistent to you?
 9 MS. FINCHER: Object to the form.
 10 A. That is correct.
 11 Q. Why is that?
 12 A. Here I would get push-back on a buying
 13 group within Special Markets, and yet here was
 14 HSD entering into a new relationship with a
 15 buying group that was totally -- not different
 16 at all from the one I was working at.
 17 Therefore, I interpreted it more that they're
 18 just upset that it's in Special Markets and not
 19 in HSD, not that it's a buying group.
 20 Q. In your opinion, Dental Gator offers
 21 services in addition to lower prices on
 22 supplies?
 23 A. Yes.
 24 Q. Dental Gator promoted Dentrix and
 25 Henry Schein Financial?

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 2 A. Yes.
 3 Q. Dental Gator offered best practices
 4 for dental supplies?
 5 A. Yes.
 6 Q. Dental Gator offered lab services?
 7 A. From my knowledge, yes.
 8 Q. Dental Gator offered HR services?
 9 A. To my knowledge, yes.
 10 Q. Dental Gator offered legal services to
 11 its members?
 12 A. Correct. They extended the services
 13 that MB2 was familiar with and offered them to
 14 their end-users.
 15 Q. Did you think it was worthwhile for
 16 Schein to continue working with Dental Gator?
 17 A. Yes; and we always did.
 18 Q. Did you think it was worthwhile for
 19 Schein to continue helping Dental Gator to grow?
 20 A. Yes, we did help them promote their --
 21 promote their model.
 22 Q. HSD requested that Special Markets
 23 address the situation with Dental Gator?
 24 MS. FINCHER: Object to the form.
 25 A. They requested that. We had them

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 2 modify how they're leading in to the dental
 3 practices with price only.
 4 Q. Special Markets needed to come up with
 5 a plan on how to deal with Dental Gator, as it
 6 was becoming very explosive?
 7 MS. FINCHER: Object to the form.
 8 A. We felt it was necessary to meet with
 9 Dental Gator and -- and have them adjust how
 10 they were selling themselves to the -- to the
 11 dental segment.
 12 Q. What was becoming explosive?
 13 MS. FINCHER: Object to the form.
 14 A. I don't know if that's a -- is that a
 15 term I used?
 16 Q. Have you ever said that --
 17 A. I -- okay.
 18 MS. FINCHER: Let her finish her
 19 question, Randy.
 20 THE WITNESS: I will.
 21 BY MS. ROSNER:
 22 Q. Have you ever said that Schein needed
 23 to come up with a plan on how to deal with
 24 Dental Gator, as it was becoming very explosive?
 25 A. I don't recall.

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2 MS. FINCHER: Object to form.
3 THE WITNESS: Sorry.
4 I don't recall.

5 BY MS. ROSNER:

6 Q. I'm handing you a document that's been
7 premarked for identification as CX2081. The
8 first page has been Bates-stamped Henry
9 Schein-000104625.

10 Please take a moment to review CX2081
11 and let me know once you've had a chance to
12 familiarize yourself with it.

13 (Exhibit CX2081-001 through 005, a
14 document bearing Bates Nos. Henry
15 Schein-000104625 through 629, marked for
16 identification, as of this date.)

17 (Document review.)

18 THE WITNESS: Okay.

19 BY MS. ROSNER:

20 Q. You've had an opportunity to review
21 CX2081?

22 A. Yes.

23 Q. CX2081 is an e-mail string between
24 you, Hal Muller, and at times Daniel Hobson.
25 The last in line e-mail is written by Hal Muller

1 CONFIDENTIAL - RANDALL FOLEY
2 on November 10, 2014; is that right?

3 A. That is correct.

4 Q. You drafted e-mails in this e-mail
5 string as part of your job?

6 A. Yes.

7 Q. It's part of your job to correspond
8 with Hal Muller about Special Markets customers?

9 A. Yes.

10 Q. Do you have knowledge of the contents
11 of CX2081?

12 A. Yes.

13 Q. You drafted e-mails in CX2081 at or
14 near the time of the topics being raised that
15 are discussed therein?

16 A. Yes.

17 Q. You drafted e-mails in CX2081 and kept
18 them in the course of Schein's regularly
19 conducted business?

20 A. Yes.

21 Q. CX2081 is a true and correct copy of
22 your e-mail correspondence?

23 MS. FINCHER: Object to the form.

24 A. Yes.

25 Q. I want to alert your attention to page

1 CONFIDENTIAL - RANDALL FOLEY
2 4, so CX2081-004. At the top of the page is the
3 middle of an e-mail from you.

4 You write, "We have to come up with a
5 plan on how to deal with all of this, as it's
6 becoming very explosive."

7 Did I read that correctly?

8 A. Yes.

9 Q. You are referring to the need to come
10 up with a plan on buying groups, correct?

11 MS. FINCHER: Object to the form.

12 A. Yes.

13 Q. Why do you have to come up with a plan
14 on buying groups?

15 MS. FINCHER: Object to the form.

16 A. We have to come up with what exactly
17 it is how they want us -- the end-user to
18 promote their services. It's triggered by the
19 fact, again, that they're putting up on their
20 Web that they can save money on Henry Schein,
21 and then putting on LinkedIn additional
22 information that just leads in about Henry
23 Schein pricing.

24 So Hal's in a meeting about it. I'm
25 saying we need to get on the right -- on the

1 CONFIDENTIAL - RANDALL FOLEY
2 same page as to how to instruct these buying
3 groups the best way to promote their services
4 without looking like it's price only and
5 upsetting others in the company.

6 Q. This is an e-mail from 2014. At this
7 point in time, Schein has done business with
8 buying groups for quite a while is what your
9 testimony would be?

10 A. That is correct.

11 Q. Why is it that Schein is just now
12 coming up with a plan about how to deal with
13 buying groups?

14 MS. FINCHER: Object to the form.

15 Mischaracterizes the testimony.

16 Go ahead.

17 A. At the end of the day, there weren't
18 that many buying groups in comparison to private
19 practices and DSOs. So this was a very small
20 segment within the company, and even though I
21 might say, hey, they're coming at us left and
22 right, it's still not a major event that we were
23 sitting down and saying this is how we should
24 address all buying groups.

25 I'm kind of asking for, can we get to

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 2 a form that everybody agrees to as to how we
 3 should sell to them. And I believe later in
 4 this e-mail I'm stating that I understand
 5 Kathleen, or it was in the previous e-mail, is
 6 actually going out to west Dallas with a buying
 7 group plan and we're moving them all to HSD for
 8 them to handle all the buying groups and get
 9 them off my plate.

10 Q. I guess what I don't understand is
 11 certainly we've seen e-mails and you've
 12 mentioned that buying groups are popping up left
 13 and right?

14 A. Uh-huh.

15 Q. You're getting a lot of requests for
 16 buying groups. Now you're saying there weren't
 17 that many buying groups. So which is it?

18 A. In respect to how many new clients
 19 were getting in the HSD world, it was minor, and
 20 as far as the growth we were achieving in the
 21 DSO segment, it was at double digits at that
 22 time. These were, in essence, you know, time --
 23 we were devoting time to them, but it appeared
 24 we're spending more time and more time and more
 25 time, and as it got bigger, I said, hey, look,

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 2 guys, we've got to come up with a plan.

3 At first, it was easy being, you know,
 4 off the cuff, let's do this, let's do that,
 5 let's try this way, let's try that way, can
 6 somebody sit down and say exactly how is the
 7 best way to do this? So we're getting at that
 8 point. It was evolving.

9 Q. What do you mean when you say all of
 10 this was becoming very explosive?

11 MS. FINCHER: Object to the form.

12 A. Again, I don't understand why I would
 13 use the term "explosive." I would think that
 14 sometimes the way that FSC would -- what's
 15 happening to my customer could be kind of like
 16 high pressure, you know, explosive on their own,
 17 but they were that way even when a DSO would buy
 18 one of their practices.

19 Q. So when you mention "explosive,"
 20 you're talking about a tension between the FSCs
 21 and Special Markets?

22 MS. FINCHER: Object to the form.

23 Asked and answered.

24 A. Yes, I believe that's where I'm
 25 heading. That's where I get the most feedback

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 2 between an FSC, and I had to spend a lot of my
 3 time even in the DSO segment working with FSCs
 4 to appease them.

5 Q. In the next sentence on page
 6 CX2081-004, you say, "Dental Gator. We can ask
 7 that they not lead with the savings on
 8 LinkedIn."

9 Did I read that correctly?

10 A. That is correct.

11 Q. You were proposing that Schein tell
 12 Dental Gator how to advertise its savings?

13 MS. FINCHER: Object to the form.

14 Mischaracterizes the document.

15 Go ahead.

16 A. Yes, we were asking them not to lead
 17 in on it. They could use LinkedIn, but don't
 18 make that the main focus. Make the other
 19 services that they offer.

20 Then I explain to Hal all the benefits
 21 of Dental Gator to help him in his meeting.

22 Q. So Special Markets asked Dental Gator
 23 to change the way they are presenting themselves
 24 so that they can remain a buying group with
 25 Schein?

1 CONFIDENTIAL - RANDALL FOLEY

2 MS. FINCHER: Object to the form.

3 Mischaracterizes the testimony and the
 4 document.

5 Go ahead.

6 A. Yes, we did meet with Dental Gator so
 7 that they would not come across as a buying
 8 group that was price only.

9 Q. You can put that document aside.

10 Dental Gator after this time no longer
 11 could promote savings through Schein?

12 MS. FINCHER: Object to the form.

13 Mischaracterizes the testimony.

14 Go ahead.

15 A. No, that's not accurate.

16 Q. Dental Gator was upset that they could
 17 not promote Schein while other buying groups
 18 could promote Schein?

19 MS. FINCHER: Object to the form.

20 A. I don't believe that they were told
 21 they could not project savings to end-users like
 22 we can save you 10 percent. I don't understand
 23 that statement, why I would say that. We did
 24 not want them to be the lead-in.

25 Q. I'm going to hand you a document

1 CONFIDENTIAL - RANDALL FOLEY
2 that's been previously marked as CX2088. The
3 first page of this document is Henry
4 Schein-000191074.

5 Please take a moment to review this
6 document and let me know when you're done with
7 CX2088.

8 (Exhibit CX2088-001, a document
9 bearing Bates Nos. Henry Schein-000191074,
10 marked for identification, as of this date.)

11 (Document review.)

12 THE WITNESS: Okay.

13 BY MS. ROSNER:

14 Q. You've had an opportunity to review
15 CX2088?

16 A. Yes.

17 Q. This is a one-page e-mail from you to
18 Hal Muller and Bill Harrison on May 20, 2015; is
19 that right?

20 A. Yes.

21 Q. You drafted this e-mail as part of
22 your job?

23 A. Yes.

24 Q. It's part of your job to correspond
25 with people at Schein about customers and buying

1 CONFIDENTIAL - RANDALL FOLEY
2 groups, generally?

3 MS. FINCHER: Go ahead.

4 A. Yes.

5 Q. You had knowledge of the contents of
6 the e-mail in CX2088?

7 A. Yes.

8 Q. You drafted CX2088 around the time of
9 the events described therein?

10 A. Yes.

11 Q. You drafted the e-mail in CX2088 and
12 maintained it in the course of regularly
13 conducted business at Schein?

14 A. Yes.

15 Q. CX2088 is a true and correct copy of
16 your e-mail correspondence?

17 MS. FINCHER: Object to the form.

18 A. Yes.

19 Q. In the fourth sentence of your e-mail,
20 you write, "Regarding DG, they are upset that we
21 are allowing the BG of Floss Dental to promote
22 Schein yet DG cannot."

23 Did I read that correctly?

24 A. You did.

25 Q. "DG" refers to Dental Gator?

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2 A. Yes.

3 Q. And "BG" refers to buying group?

4 A. Yes.

5 Q. So Dental Gator is upset because they
6 can't promote Schein, while Floss Dental is
7 allowed to promote Schein?

8 MS. FINCHER: Object to the form.

9 A. That's what it states here. I'm not
10 sure if it details that we wouldn't allow them
11 to list pricing and yet we were allowing Floss
12 to list pricing. I can't see that we would not
13 promote Schein. You know, Schein as a company,
14 as a vendor, as a partner, we want that to be
15 promoted, we want to promote that as a selling
16 point to any of the buying group users.

17 Q. You wrote that DG's upset because they
18 can't promote Schein, but what you're saying is
19 what you meant was DG was upset because they
20 couldn't advertise savings through Schein?

21 A. That's what I believe I meant.

22 Because I've never heard of us not saying you
23 can't promote Schein as a partner. Never heard
24 of that.

25 Q. It's your understanding then that

1 CONFIDENTIAL - RANDALL FOLEY
2 Dental Gator was not allowed to advertise the
3 savings that its members could get through
4 Schein?

5 MS. FINCHER: Object to the form.

6 Mischaracterizes testimony.

7 Go ahead.

8 A. That it couldn't be the lead-in
9 savings; that it would be another part of the
10 features, okay? Not the main selling feature.

11 Q. Going back two sentences, you ask,
12 "Can we come up with some type of plan, either
13 from us or HSD?"

14 Did I read that correctly?

15 A. Yes, you did.

16 Q. You're asking Hal Muller and Bill
17 Harrison for Schein to come up with some type of
18 buying group plan?

19 A. Yes.

20 Q. This is in 2015. Why doesn't Schein
21 have a buying group plan at this point?

22 MS. FINCHER: Object to the form.

23 Mischaracterizes the document and the prior
24 testimony.

25 Go ahead.

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 2 A. So now it's been five years since
 3 we've had OrthoSynetics and Smile Source, and
 4 we're seeing -- and here I'm stating how many
 5 more are coming across the plate, and I'm saying
 6 that it's time that we come up with rules as to
 7 is it -- is it HSD? Is it Special Markets?

8 And KT is now coming into the -- into
 9 the fold to help out with that, and so I said
 10 we've really got to come up with what our
 11 best -- what are our best practices. We need to
 12 systematize this more than it has been instead
 13 of it being off the cuff like it's been. It's
 14 becoming a bigger segment. We need to address
 15 it.

16 Q. At this time in 2015, the Mid Markets
 17 group within HSD had already been formed,
 18 correct?

19 A. Yes.

20 Q. And Mid Markets was supposed to be
 21 addressing buying groups?

22 MS. FINCHER: Object to the form.

23 A. What was that?

24 Q. Mid Markets was supposed to be
 25 addressing buying groups?

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2 MS. FINCHER: Object to the form.

3 Can you specify what time you're
 4 asking about, Jasmine?

5 Q. Are you confused about my question?

6 A. Yes.

7 Q. We're referring to 2015.

8 A. Got it.

9 Q. And in 2015, Mid Markets had already
 10 been formed in HSD?

11 A. Yes.

12 Q. In 2015, it was established that Mid
 13 Markets would handle buying groups?

14 MS. FINCHER: Object to the form.

15 A. Yes, around that time. It was in
 16 place before I left in 2016.

17 Q. Mid Markets exists, and you are asking
 18 can we come up with some type of plan on buying
 19 groups, correct?

20 MS. FINCHER: Object to the form.

21 A. Correct.

22 Q. Why are you asking for a plan on
 23 buying groups if there's already one in place
 24 with Mid Markets?

25 MS. FINCHER: Object to the form.

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2 Asked and answered.

3 A. There is not a plan at the level that
 4 I want there to be a plan, and KT -- and this is
 5 the start of it where they assign Brian Brady
 6 and some person out West -- I can't remember her
 7 name -- and Kathleen to help come up with a
 8 whole business plan as to how best to handle
 9 buying groups.

10 We're finally -- we're getting to that
 11 point where it's a better way of handling buying
 12 groups, and I'm stating, come on, we got to
 13 get -- we got to get on with this. I -- it
 14 wasn't --

15 Q. You --

16 A. It doesn't start immediately when we
 17 moved them to Mid Market. There was a lapse,
 18 you know, there was timing, and Kathleen is
 19 being engaged with a number of them.

20 Q. You mentioned there wasn't a plan up
 21 to the level of your liking.

22 What was the plan that existed at the
 23 time then?

24 MS. FINCHER: Object to the form.

25 A. It was more, again, off the cuff. You

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2 know, this is a buying group. Let's put them on
 3 a P plan. They should lead with this. They
 4 don't want to be based on price. It was all
 5 just general, you know, thoughts. It wasn't
 6 like any written policy.

7 I actually wanted to get this more
 8 into a policy-type format or a -- I don't even
 9 know what the term would be. I've been retired
 10 too long. But into a systematic way of setting
 11 them up, coding them. You know, we didn't even
 12 have a code for them in our system as to that's
 13 just a buying group, and tracking and how -- and
 14 which division would be best for all of them.
 15 If HSD was it, so be it; if Special Markets was
 16 better, so be it.

17 Q. You can put that aside. Actually,
 18 I'll take that e-mail back.

19 Dental Gator was placed on a more
 20 restricted PG plan?

21 MS. FINCHER: Object to the form.

22 A. Yes.

23 Q. What is a PG plan?

24 A. A PG plan is a -- we have what's
 25 called a P plan, and that includes vendor

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rebates or chargebacks in it, and we erroneously had MB -- we erroneously had put Dental Gator on MB2's plan.

So we created what was called a PG plan, and in the PG plan, it had the same 20 percent discount that Schein offered MB2 on things that are -- regardless, anything would get 20 percent off, but it had different formulary pricing that did not include chargebacks. So there were increases in items where the vendor partners would not participate.

Q. Dental Gator had minimal growth since being put on a more restricted PG plan?

MS. FINCHER: Object to the form.

A. I'm not aware of that.

Q. You never said that Dental Gator's growth had been minimal since moving them to a more restricted PG plan?

MS. FINCHER: Object to the form.

A. I don't recall.

Q. I'm handing a document that's been premarked as CX2092. The first page Bates number is Henry Schein-000086962.

Please take a moment to review CX2092

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and let me know when you're done.

(Exhibit CX2092-001 through 003, a document bearing Bates Nos. Henry Schein-000086962 through 964, marked for identification, as of this date.)

(Document review.)

THE WITNESS: Okay.

BY MS. ROSNER:

Q. You've had a moment to review CX2092?

A. Yes.

Q. It's an e-mail string. The top e-mail is from Jake Meadows dated September 14, 2015; is that right?

A. That is correct.

Q. Just below that, you respond to an e-mail to Jake Meadows on that same date. This is an e-mail that you drafted as part of your job?

A. Yes.

Q. It's part of your job to communicate with others in Schein about buying groups?

A. Yes.

MS. FINCHER: Object to the form.

Go ahead.

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A. Yes.
Sorry.

Q. You have knowledge of the contents of CX2092?

A. Yes.

Q. You drafted the e-mail in CX2092 near or at the time you got a question about constraints placed on buying groups?

MS. FINCHER: Object to the form.

A. Yes.

Q. You drafted the e-mail in CX2092 and maintained it in the course of your regularly conducted business at Schein?

A. Yes.

Q. CX2092 is a true and correct copy of your e-mail correspondence?

MS. FINCHER: Object to the form.

A. Yes.

Q. If you go to the first page, CX2092-001, the second e-mail is the e-mail authored by you. The last sentence of your e-mail is, "SM has Dental Gator, but the growth has been minimal since we moved them to a more restrictive PG plan (unlike Breakaway who is on

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an aggressive P plan)."

Did I read that correctly?

A. Yes.

Q. So Dental Gator's growth slowed since it was moved to a more restrictive PG plan?

MS. FINCHER: Object to from.

Mischaracterizes the document.

Go ahead.

A. Yes.

Q. You can put that document aside.

MS. ROSNER: Do you need a break or shall we continue?

THE WITNESS: I'm fine.

MS. FINCHER: Go ahead.

THE WITNESS: Yes.

BY MS. ROSNER:

Q. Around the time that you were dealing with HSD complaints about Dental Gator, Kathleen Titus was spearheading a new paradigm at HSD to participate in buying groups?

MS. FINCHER: Object to the form.

A. I believe so.

Q. This was a new paradigm for Schein?

MS. FINCHER: Object to the form.

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A. No. We had already been working with buying groups. I believe Kathleen was trying to systematize it, as I requested.

Q. So this wasn't a new paradigm at Schein?

MS. FINCHER: Object to the form.

Asked and answered.

You can answer it again.

A. I don't know if we considered it a new paradigm. It was again assigning somebody like Kathleen and some other folks to focus on buying groups.

Q. Participating in buying groups was a new paradigm at HSD?

MS. FINCHER: Object to the form.

Asked and answered. Mischaracterizes the testimony.

You can answer it again.

A. To my knowledge, HSD had plenty of buying -- had a number of buying groups. So did SM. So nothing's new. There's no new paradigm on dealing with buying groups. We already were.

Q. I'm going to hand you a document that's been premarked as CX2089. The Bates

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label is Henry Schein-001490712.

Take a moment to familiarize yourself with CX2089 and let me know when you're done.

(Exhibit CX2089-001, a document bearing Bates Nos. Henry Schein-001490712, marked for identification, as of this date.)

(Document review.)

THE WITNESS: Okay.

BY MS. ROSNER:

Q. You've had an opportunity to review CX2089?

A. Yes.

Q. The top e-mail in CX2089 is from Hal Muller dated July 1, 2015; is that right?

A. Yes.

Q. Below that is an e-mail from you with that same date to Hal Muller and Bill Harrison.

You drafted this e-mail in 2089 as part of your job?

A. Yes.

Q. It's part of your job to communicate about buying groups at Schein?

MS. FINCHER: Object to the form.

A. Yes.

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Q. You have knowledge of the contents of CX2089?

A. Yes.

Q. You drafted the e-mail in CX2089 at or near the time you were thinking about buying groups at HSD?

MS. FINCHER: Object to the form.

A. Yes.

Q. You drafted the e-mail in CX2089 and maintained it in the course of regularly conducted business of Schein?

A. Yes.

Q. CX2089 is a true and correct copy of your e-mail correspondence?

MS. FINCHER: Object to form.

A. Yes.

Q. In your e-mail that you author, the first paragraph, second-to-last sentence reads, "I guess KT is spearheading a new paradigm at Schein." Strike that. "I guess KT is spearheading a new paradigm at HSD -- participating in buying groups."

Did I read that correctly?

A. Yes.

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MS. FINCHER: Object to the form.

Go ahead.

A. Yes.

Q. The new paradigm at HSD is participating in buying groups?

MS. FINCHER: Object to the form.

Asked and answered. Mischaracterizes the testimony.

You can answer it again.

A. No, we were already participating in the buying groups.

Q. Do you understand your e-mail to say that participating in buying groups is a new paradigm at HSD?

MS. FINCHER: Object to the form.

Asked and answered.

A. I understand that KT is creating a better focus on the buying groups within the HSD segment.

Q. What do you mean by "a new paradigm at HSD -- participating in BGs"?

MS. FINCHER: Object to the form.

Asked and answered.

A. As we were already participating in

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 2 Floss, which was under HSD, by the way, and now
 3 with Smile Source, again, she's simply creating
 4 programs around the buying groups that are
 5 more -- that could be transported and documented
 6 to other field reps.

7 Q. So your understanding of the phrase
 8 "participating in BGs" means creating a
 9 systematic program for buying groups?

10 A. Yes, a more systematic, documented way
 11 of dealing with buying groups, how to sell to
 12 them.

13 Q. And that's what you were communicating
 14 with the phrase "participating in BGs"?

15 A. Yes.

16 Q. Is that your understanding of what Mr.
 17 Muller and Mr. Harrison would have taken away
 18 from what you were writing?

19 MS. FINCHER: Object to the form.

20 A. Yes.

21 Q. Where do you say in your e-mail a
 22 systematic form of doing business with buying
 23 groups?

24 MS. FINCHER: Object to the form.

25 A. The fact that Kathleen is spearheading

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 2 something, based on all of our knowledge of
 3 working with Kathleen, would mean that she's
 4 taking under her control and establishing rules
 5 and ways of interacting with buying groups and
 6 how to build that business.

7 That's typical of Kathleen. She has
 8 that capability. So it's an assumption that
 9 it's a new -- that she's spearheading a new
 10 paradigm. She's asking a lot of questions about
 11 all the buying groups, and she's meeting with
 12 the reps and regional managers. So they're on
 13 the move.

14 Q. You mention that this is an assumption
 15 about Kathleen Titus. This is an assumption
 16 that you're making, correct?

17 A. Yes, based on information I've been
 18 hearing from the field that Kathleen is -- and
 19 questions from Kathleen to me about buying
 20 groups, she's working on a plan, a business
 21 plan, to further our presence with buying
 22 groups.

23 Q. And you're trying to relay this
 24 assumption about Kathleen creating a systematic
 25 plan to Hal Muller and Bill Harrison?

1 CONFIDENTIAL - RANDALL FOLEY
 2 MS. FINCHER: Object to the form.

3 A. Yes, I am happy that we are coming up
 4 with a more specific plan and we'll have this
 5 more in black and white terms, and Hal is
 6 responding that Brian Brady is working on this
 7 too.

8 Q. I guess I'm having a difficult time
 9 seeing where you see these messaging conveyed
 10 about a systematic approach to buying groups.

11 MS. FINCHER: Object to the form.

12 Asked and answered about three or four
 13 times.

14 You can answer it again.

15 A. I'm seeing that in the terminology
 16 that she's spearheading a new paradigm for them.
 17 We're already there. It's not brand new to us,
 18 but she's spearheading a new way of working with
 19 them. Something to enhance it. That's how I
 20 read that. That's how I meant -- what I meant
 21 that to mean.

22 Q. And after the dash, "participating in
 23 buying groups," how does that relate to this new
 24 paradigm?

25 MS. FINCHER: Object to the form.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Asked and answered.

3 Jasmine, respectfully, if you could
 4 please be -- Mr. Foley has answered the same
 5 question at least five or six times now.

6 A. That how HSD works with the buying
 7 groups.

8 Q. Going back a sentence or two, you're
 9 referring to Breakaway and you say, "It's really
 10 a BG competing with Gator and SS and appears
 11 that HSD is okay with these."

12 Did I read that correctly?

13 A. That's correct.

14 Q. So, referring to Breakaway, you say
 15 "it appears that HSD is okay with these."

16 Was HSD previously not okay with
 17 buying groups?

18 MS. FINCHER: Object to the form.

19 Asked and answered.

20 Answer it again.

21 A. They had buying groups. There were --
 22 again, this goes back to my statement that it
 23 seems that when there was a buying group under
 24 my division, Special Markets, there seemed to be
 25 an issue, some issues. When they're under HSD,

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2 the issues seemed to disappear.

3 Breakaway was now underneath them.
4 All of a sudden, there's no problems with
5 Breakaway or issues. It's a frustration that
6 the issue wasn't that they're a buying group; it
7 was that they fell under Special Markets, and
8 I'm talking to all Special Markets personnel in
9 this e-mail whining.

10 Q. HSD was moving into the buying group
11 model?

12 MS. FINCHER: Object to the form.
13 Mischaracterizes the testimony.

14 A. They were already in the buying group
15 and they were enhancing how they would grow that
16 business.

17 Q. You wouldn't say that HSD was moving
18 into the buying group model?

19 MS. FINCHER: Object to the form.
20 Asked and answered.

21 You can answer it again.

22 A. They were already in the buying group.
23 They were already dealing with buying groups and
24 getting more involved with them.

25 Q. You can put that document aside.

1 CONFIDENTIAL - RANDALL FOLEY
2 I'm going to hand you a new document
3 that has been premarked for identification as
4 CX2095. The Bates stamp is Henry
5 Schein-000105142.

6 Please take a moment to review this
7 document and let me know when you're finished.

8 (Exhibit CX2095-001 through 002, a
9 document bearing Bates Nos. Henry
10 Schein-000105142 through 143, marked for
11 identification, as of this date.)

12 (Document review.)

13 THE WITNESS: Okay.

14 BY MS. ROSNER:

15 Q. You've reviewed CX2095?

16 A. Yes.

17 Q. This is an e-mail chain between you
18 and Hal Muller with Bill Harrison copied. The
19 last e-mail in time is on January 28, 2016; is
20 that right?

21 A. That's correct.

22 Q. You drafted an e-mail in this chain as
23 part of your job?

24 A. Yes.

25 Q. It's part of your job to communicate

1 CONFIDENTIAL - RANDALL FOLEY
2 with Hal Muller and Bill Harrison about buying
3 groups?

4 MS. FINCHER: Object to the form.

5 A. Yes.

6 Q. You have knowledge of the contents of
7 CX2095?

8 A. Yes.

9 Q. You drafted the e-mail in CX2095 at or
10 near the time that Hal was referencing the
11 assignment of buying groups in Schein?

12 MS. FINCHER: Object to the form.

13 A. Yes.

14 Q. You drafted e-mail in CX2095 and
15 maintained it in the course of regularly
16 conducted business of Schein?

17 A. Yes.

18 Q. CX2095 is a true and correct copy of
19 your e-mail correspondence?

20 MS. FINCHER: Object to the form.

21 A. Yes.

22 Q. The last line of your e-mail to Hal
23 Muller and Bill Harrison reads, "We should be
24 okay with HSD moving into the BG model. We
25 should focus on C suite personnel versus

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2 wannabes."

3 Did I read that correctly?

4 A. Yes.

5 Q. At this time, HSD was moving into the
6 buying group model?

7 MS. FINCHER: Object to the form.

8 Mischaracterizes the document and prior
9 testimony.

10 Go ahead.

11 A. At this time, HSD was wanting to take
12 control of nearly all buying groups that we had
13 at Schein, take them out and move them from
14 Special Markets. They were going to take over
15 the segment.

16 Q. What did you mean by HSD moving into
17 the buying group model?

18 MS. FINCHER: Object to the form.

19 A. That they were going -- that they
20 were -- if they had the systems in place that
21 they could -- that they would now handle the
22 buying groups versus us having to handle all the
23 buying groups. They had -- they had a share.
24 We had a share.

25 They were, based on the e-mail below,

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2 they were asking about other -- that they should
3 move these other ones over to HSD now too.

4 Q. But previous to this e-mail, HSD did
5 not have the systems in place for buying groups.

6 MS. FINCHER: Object to the form.

7 Mischaracterizes the testimony.

8 A. They didn't have all the capabilities
9 that Special Market had that some of the buying
10 groups liked, so they had developed some more
11 systems to better monitor and they had set up a
12 division for buying groups to better track them
13 because they really did not have a system in
14 place to do that.

15 Q. What were the some of the capabilities
16 that HSD lacked prior to this e-mail that would
17 be useful for a buying group customer?

18 MS. FINCHER: Object to the form.

19 A. Special Markets had a more -- had more
20 flexibility in the price and how it attached
21 pricing plans to multiple sites associated with
22 a similar group. It also had -- hold on one
23 sec -- a better way to create a central site and
24 do reporting for all the sub-sites. They were
25 developing that technology. We were sharing

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2 that technology over -- over our platforms
3 finally.

4 Q. Anything else?

5 A. Not that I can think of.

6 Q. When you say, "We should focus on C
7 suite personnel versus wannabes," what do you
8 mean by "wannabes"?

9 A. Since there's no equity ownership in
10 the buying groups, the buying groups are really
11 wanting to be DSOs but don't have the financial
12 investment money to become, and the C suite is
13 referring to the C suite at our big DSOs.

14 I'm saying we should -- it would be
15 nice for us now to focus -- for us in Special
16 Markets to focus back on our DSOs and not so
17 much on the, what I call "wannabes" or buying
18 groups.

19 MS. ROSNER: We've been going for
20 about an hour. Do you want to take a quick
21 break or do you want to keep going?

22 MS. FINCHER: Do you need a couple of
23 minutes?

24 THE WITNESS: Yeah, that would be
25 fine.

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2 MS. ROSNER: We'll go off the record.

3 THE VIDEOGRAPHER: The time is 3:57
4 p.m. We're going off the record.
5 (Recess.)

6 THE VIDEOGRAPHER: The time is 4:09
7 p.m. We're on the record.

8 BY MS. ROSNER:

9 Q. Given your experience with Smile
10 Source and Dental Gator, HSD taking on buying
11 groups seemed hypocritical?

12 MS. FINCHER: Object to the form.

13 A. You'll have to repeat that.

14 Q. Given your experience with Smile
15 Source and Dental Gator, HSD taking on buying
16 group customers seemed hypocritical?

17 MS. FINCHER: Object to the form.

18 A. Not them taking on Dental Gator. The
19 fact that they were bidding on Smile Source
20 seemed hypocritical to me that because when it
21 was in Special Markets, there was issues with
22 FSCs.

23 Q. You found it hard to answer questions
24 about buying groups when you didn't know HSD's
25 new policy on buying groups?

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2 MS. FINCHER: Object to the form.

3 Mischaracterizes the testimony. Asked and
4 answered.

5 You can answer it again.

6 A. Toward the end of my time at Schein,
7 and the formation of more of a focus on the
8 buying groups, I was -- I would simply direct
9 any calls I got about buying groups moving
10 forward to Brian Brady. I didn't --

11 Q. Do you --

12 A. Go ahead.

13 Q. Do you recall saying you found it hard
14 to answer questions about buying groups when you
15 didn't know HSD's new policy on buying groups?

16 MS. FINCHER: Object to the form.

17 A. I would simply refer any questions to
18 Brian Brady to answer for me.

19 Q. I'm going to hand you a document
20 that's been premarked as CX2096. The Bates
21 stamp is Henry Schein-000952713.

22 Please take a moment to familiarize
23 yourself with CX2096.

24 (Exhibit CX2096-001 through 006, a
25 document bearing Bates Nos. Henry

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2 Schein-000952713 through 718, marked for
3 identification, as of this date.)

4 MS. FINCHER: And Randy, I know it's
5 getting late in the day, but there's text on
6 the very back of that.

7 THE WITNESS: I'm sorry?

8 MS. FINCHER: So make sure you read --

9 THE WITNESS: Right here?

10 MS. FINCHER: Yes. So make sure you
11 read from the bottom up in the chain.

12 THE WITNESS: Thank you.

13 (Document review.)

14 THE WITNESS: Okay.

15 BY MS. ROSNER:

16 Q. You've had an opportunity to review
17 CX2096?

18 A. Yes.

19 Q. CX2096 is an e-mail string with
20 multiple e-mails. The top e-mail is last in
21 time from you dated January 29, 2016; is that
22 right?

23 A. That is correct.

24 Q. The e-mails in this e-mail chain are
25 drafted by you as part of your job?

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2 A. Yes.

3 Q. It's part of your job to communicate
4 with those inside Schein about Henry Schein's
5 customers?

6 A. Yes.

7 Q. You have knowledge of the contents of
8 CX2096?

9 A. Yes.

10 Q. You drafted the e-mails that are part
11 of CX2096 at or near the time that there were
12 discussions about the particular customers?

13 A. Yes.

14 Q. You drafted the e-mails in CX2096 and
15 kept them in the course of regularly conducted
16 business at Schein?

17 A. Yes.

18 Q. CX2096 is a true and correct copy of
19 your e-mail correspondence?

20 MS. FINCHER: Object to the form.

21 A. Yes.

22 Q. I want to direct you to the second
23 page, CX2096-002.

24 A. Uh-huh.

25 Q. You have an e-mail that you wrote on

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2 January 29, 2016, at 9:09 a.m.

3 A. Hold on.

4 Okay. Got it.

5 Q. Do you see that?

6 A. Uh-huh.

7 Q. The second paragraph of your e-mail
8 says, "It is hard to understand" -- strike that.

9 The second paragraph of your e-mail
10 says, "It is hard to answer a question when one
11 doesn't know our new policy on BGs. Now HSD is
12 moving ahead with a plan when just one year ago
13 they were asking me to dissolve DG."

14 Did I read that correctly?

15 A. Yes.

16 Q. "BGs" refers to buying groups?

17 A. No, it refers to Dental Gator.

18 Q. "BGs" refers to buying groups in the
19 first sentence?

20 A. Yes, I'm sorry.

21 Q. And "DG" in the second sentence refers
22 to Dental Gator?

23 A. Yes.

24 Q. Thank you.

25 So you're saying it's hard for you to

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2 answer a question about buying groups when you
3 don't know what the new policy on buying groups
4 is?

5 A. That's --

6 MS. FINCHER: Objection to form.

7 A. Yes, that's what I'm saying.

8 Q. That's the new policy on buying
9 groups?

10 MS. FINCHER: Object to the form.

11 A. I'm not sure because the rest of the
12 e-mail also approaches Benevis, which is a Kool
13 Smiles buying group that we're working with.
14 I'm not sure where either one of these should
15 fall under Special Markets or should it fall
16 under HSD.

17 So, on the Benevis one, we were
18 actually working with that buying group arm,
19 even though we're not a prime vendor to them,
20 and here on Tralongo, HSD is saying are we
21 taking Tralongo. So I'm confused still at this
22 point as to which division is this falling in; I
23 don't understand the policy. Are all buying
24 groups going to HSD now?

25 Q. You're second sentence says, "Now HSD

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2 is moving ahead with a plan when just one year
3 ago today they were asking me to dissolve Dental
4 Gator."

5 So it seems as if there's been a shift
6 in HSD's view of buying groups?

7 MS. FINCHER: Object to the form.

8 A. Yes, I believe there's been more of an
9 understanding that this is a strong and viable
10 market that deserves attention, and they're
11 giving it to it now.

12 Q. Whereas, previously that was not the
13 case?

14 MS. FINCHER: Object to the form.

15 Mischaracterizes the testimony.

16 A. They did have buying groups under
17 them. I believe that now they are being more --
18 they're being more focused on that, that
19 segment, compared to in the past and less for us
20 to be focused on it.

21 Q. And in the past, they were asking you
22 to dissolve Dental Gator?

23 MS. FINCHER: Object to the form.

24 A. I was never --

25 MS. FINCHER: Asked and answered.

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2 THE WITNESS: I'm sorry.

3 MS. FINCHER: Go ahead.

4 THE WITNESS: Yeah, I was never asked
5 to dissolve Dental Gator. It's an
6 exaggerated word.

7 BY MS. ROSNER:

8 Q. You write, "They were asking me to
9 dissolve Dental Gator."

10 Are you saying that that was
11 incorrect?

12 A. Yeah, that is -- that is a wrong way
13 to say that. I was never asked to dissolve
14 Dental Gator; and it continued as of this date,
15 when I left still in full play.

16 Q. Why would you include an inaccurate
17 statement in an e-mail to Hal Muller, your boss?

18 MS. FINCHER: Object to the form.

19 A. Because Hal would understand my
20 sarcasm, that here -- here HSD is now really
21 focused on the buying groups, and to think just
22 a year ago they were frustrated with Dental --
23 with Dental Gator, if I were to clarify that.
24 Because there were many e-mails where they were
25 frustrated with Dental Gator.

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2 Q. You can put that document aside.

3 I'm going to switch gears now and talk
4 a little bit about Schein's set of Worldwide
5 Business Standards.

6 Are you familiar with those?

7 A. Yes.

8 Q. As a senior executive of the company,
9 you were required to be trained on these
10 business standards?

11 A. Yes.

12 Q. While at Schein, you took the
13 Worldwide Business Standards training annually?

14 A. If that was the time period, I took it
15 whenever it was required, and I believe it was
16 annually.

17 Q. Part of the training on Worldwide
18 Business Standards involved collusion and
19 communications with competitors?

20 A. That is correct.

21 Q. What did you learn about
22 communications with competitors from the
23 training?

24 A. That we were not to share business
25 practices with any competitor.

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2 Q. Anything else?

3 MS. FINCHER: Object to the form.

4 A. It's been a year and a half, so I
5 don't -- I -- off the top of my head, that would
6 be that we're to -- that we're not to work with
7 any competitor on any type of business plan,
8 plans, practices, et cetera.

9 Q. Anything else that you recall?

10 A. No.

11 Q. Have you ever communicated with
12 anybody at a competitor?

13 A. Yes.

14 Q. Have you ever communicated business
15 information with anybody at a competitor?

16 MS. FINCHER: Object to the form.

17 A. Yeah, again, say that again.

18 Q. Have you ever communicated business
19 information with anyone at a competitor?

20 MS. FINCHER: Object to the form.

21 A. No; I have not communicated business
22 information to them.

23 Q. Have you ever received business
24 information from anyone at a competitor?

25 A. I --

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2 MS. FINCHER: Object to the form.

3 THE WITNESS: I'm sorry.

4 MS. FINCHER: Go ahead.

5 THE WITNESS: Yes, I did once.

6 BY MS. ROSNER:

7 Q. What was the circumstance under the
8 one time you received information from a
9 competitor about business information?

10 MS. FINCHER: Object to the form.

11 A. I received a call from Pat Ryan at
12 Benco Dental. It was on my landline at the
13 house. I was working out of the home office.

14 I saw Benco come across the screen,
15 was surprised at the call, and actually thought
16 that they may be offering me a job. Instead,
17 Pat Ryan -- and this is vague, I mean, this is a
18 while ago, so I don't remember the details of
19 it. It was a very short call, and he basically
20 was making a statement -- it was around the
21 Smile Source time -- that they didn't like
22 working with buying groups and wasn't going to
23 bid on it.

24 I kept quiet. I wasn't getting a job.
25 But based on our business standards, I knew to

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2 keep my mouth shut and not agree or say
3 anything. But the call was very brief, it was
4 done.

5 I reported the call to Hal Muller
6 because, under the business standards, I am
7 supposed -- I am supposed to report anything
8 that I felt would be against our Worldwide
9 Business Standards. So I left a note for Hal
10 that he had called me and what he had said.

11 MS. FINCHER: And Randy, make sure you
12 listen to her question. Make sure you're
13 answering it.

14 THE WITNESS: Okay.

15 BY MS. ROSNER:

16 Q. There was only one call with Pat Ryan?

17 A. Yes.

18 Q. Did you ever see Pat Ryan in person at
19 a trade show or elsewhere?

20 A. Yes, I would run into Pat Ryan on
21 occasion at trade shows.

22 Q. In the times that you would run into
23 Pat Ryan, would you ever have a discussion about
24 business activities?

25 A. No.

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2 Q. The call that you are discussing, did
3 that take place on October 1, 2013?

4 MS. FINCHER: Object to the form.

5 A. I believe it took place in 2013, yes.

6 Q. You mentioned that he called you on
7 your house line?

8 A. Which is my business line, yes. Same
9 thing.

10 Q. What's that phone number?

11 A. What's that phone number?

12 248-582-1529.

13 Q. How did he get your phone number?

14 MS. FINCHER: Object to the form.

15 A. I am not sure.

16 Q. How long was the call with Pat Ryan on
17 October 1, 2013?

18 MS. FINCHER: Object to the form.

19 A. I am not sure, but it was a brief
20 call. I would think it was no more than 30
21 seconds, 45 seconds.

22 Q. You mentioned that Pat Ryan said Benco
23 didn't like buying groups and that Benco was not
24 going to bid on a buying group.

25 Did he say anything else?

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2 MS. FINCHER: Object to the form.

3 Mischaracterizes the testimony.

4 A. All I remember is that it was they did
5 not want to bid I think specifically on Smile
6 Source because they did not want -- they did not
7 like doing business with buying groups.

8 Q. He didn't say anything else?

9 A. Not that I recall. Other than, hey,
10 how are you doing?

11 Q. Did you shoot the breeze at all?

12 A. Not --

13 MS. FINCHER: Object.

14 A. Maybe at the --

15 THE WITNESS: I'm sorry.

16 MS. FINCHER: Object to the form.

17 Go ahead.

18 THE WITNESS: I can't remember, but it
19 would be normal of me to say, "Hi. How ya
20 doing? What's up? What do you want?"

21 BY MS. ROSNER:

22 Q. An exchange of pleasantries?

23 A. Minor, if anything.

24 Q. Did you talk about sports or anything?

25 MS. FINCHER: Object to the form.

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2 A. I don't know him very well. As a
3 matter of fact, I think I recently ran into him
4 at a trade show in Chicago.

5 Q. And what did you talk about at the
6 trade show in Chicago?

7 A. I think that's when I -- when they --
8 when I said, "Hey, how are you?" And he
9 introduced himself to me.

10 Q. Is Pat Ryan a talkative kind of guy?

11 MS. FINCHER: Object to the form.

12 A. My -- my experience with Pat is very
13 limited. I was very competitive with Benco. I
14 very seldom would talk to any of the guys, more
15 or less joking, kibitzing while at a trade show
16 or when we bumped into each other.

17 Q. So while you were on this phone call
18 with Pat Ryan on October 1, 2013, you were
19 simply being quiet on the line?

20 MS. FINCHER: Object to the form.

21 Go ahead.

22 A. When Pat -- when Pat started to
23 discuss Smile Source and the customer and what
24 their plan was, I kept quiet at that point.

25 Q. How soon in the conversation did Pat

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2 begin to discuss Smile Source and their plans
3 for the bid?

4 A. I believe very fast, because our
5 pleasant- -- we just said, "How ya doing?
6 What's up?" is what I said, and that led into
7 it. I said, "Oh." I let him say what he had to
8 say. "I'll talk to you later."

9 Q. You felt uneasy on the phone call?

10 A. Yes.

11 MS. FINCHER: Object to the form.

12 THE WITNESS: I'm sorry.

13 Yes.

14 BY MS. ROSNER:

15 Q. You don't remember saying anything
16 other than pleasantries and ending the call?

17 A. Correct, I barely -- I barely remember
18 the call, and the only reason I remember the
19 call is because I thought they were calling me
20 about a job.

21 Q. You mentioned that you reported the
22 call to your boss, Mr. Muller?

23 A. Yes.

24 Q. You didn't report the call
25 immediately, correct?

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2 MS. FINCHER: Object to the form.

3 A. Not -- I don't know the timing, but I
4 don't think so. I think it -- it was shortly
5 after that.

6 Q. You waited over a week before sending
7 Mr. Muller an e-mail about your call?

8 MS. FINCHER: Object to the form.

9 A. Yeah, I don't -- with Hal, I don't --
10 with Hal, I don't really communicate --
11 communicate with him all the time, on a regular
12 basis, so when an opportunity arose and I was
13 there, I said, "By the way, I got a call by Pat
14 Ryan." I think I actually said, "Don't worry.
15 I didn't collude. I'll tell you about it
16 later," so...

17 Q. Did you ever tell him about it later?

18 A. No, he never -- he never called me.

19 Again, Hal and I very seldom would
20 talk on the phone as much as we would
21 communicate through e-mail.

22 Q. Why did you wait over a week to tell
23 Mr. Muller about your call with Mr. Ryan?

24 MS. FINCHER: Object to the form.

25 A. I didn't feel there was an urgency to

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2 report that Pat had called, number one. Number
3 two, I absolutely had nothing to do with the
4 Smile Source being bid on, so I really
5 wanted -- there was nothing to share, other than
6 this guy had given me a call. I wrote myself a
7 note remember next time I talk to Hal remind him
8 that this happened.

9 It's the only time something like this
10 has ever happened, so I had to remember that I'm
11 supposed to -- you know, it didn't come up, hey,
12 I need to also tell my boss, but I did.

13 Q. Are you generally friends with Pat
14 Ryan?

15 A. No.

16 Q. Are you generally friends with anyone
17 in Pat Ryan's family?

18 A. I do not know Pat Ryan or any of his
19 family, if he's married, or anything about him.

20 Q. If you had to estimate how much time
21 you have spent with Pat Ryan, would you estimate
22 it in days, hours, or minutes?

23 A. Minutes.

24 Q. Would it surprise you to know that the
25 call with Pat Ryan was 18 minutes long?

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2 MS. FINCHER: Object to the form.

3 A. Yes. Very surprised.

4 Q. Handing you a document that has been
5 marked as an excerpt of CX1000. This is a
6 document that has been produced with the Bates
7 stamp BDS-FTC00039536.

8 (Exhibit EXCERPT OF CX1000-001 through
9 005, a document bearing Bates Nos.

10 BDS-FTC00039536 through 540, marked for
11 identification, as of this date.)

12 BY MS. ROSNER:

13 Q. I will represent to you that this is a
14 excerpt from Pat Ryan's phone records, and I
15 would like you to confirm the phone number on
16 page CX10,000-03.

17 MS. FINCHER: And Jasmine, I'm going
18 to note that this e-mail is Bates-labeled
19 "Confidential." It was not produced by
20 Schein. It appears by the Bates label that
21 it was produced by Benco.

22 This is not a document that the
23 witness authored or would have received.
24 It's my understanding under the Protective
25 Order that you're not allowed to ask him

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2 about it.

3 If you want to ask him whether a
4 particular number is his phone number,
5 you're welcome to do that.

6 MS. ROSNER: We have redacted all of
7 the confidential information. The piece of
8 information that is not confidential as to
9 Mr. Foley is the unredacted portion on page
10 1000-003 to confirm his telephone number.

11 MS. FINCHER: Respectfully, Jasmine,
12 this was not your document to produce and
13 determine what's confidential and what's
14 not, but based on how this document is
15 Bates-labeled and what is provided in the
16 Protective Order, it's my understanding that
17 Mr. Foley is not allowed to view it.

18 BY MS. ROSNER:

19 Q. Mr. Foley, I'm going to read to you
20 from CX1000. It reports a call on October 1 at
21 11 a.m. The call was to phone number
22 248-582-1529.

23 That's your phone number, correct?

24 A. Yes.

25 Q. And the call originated in Dallas,

1 CONFIDENTIAL - RANDALL FOLEY
2 Pennsylvania, and the destination of the call
3 was Royal Oak, Michigan.

4 Is that where you reside?

5 A. Yes.

6 MS. FINCHER: Object to the form.

7 A. I'm sorry.

8 Q. And the call was 18 minutes long?

9 MS. FINCHER: Object to the form.

10 Again, you're asking him about a
11 document that he's not allowed to see. I
12 suggest you move on, Jasmine. You have
13 already asked him about his understanding
14 about how long the call is, which he's
15 answered.

16 MR. YOON: Jasmine, this is Benco's
17 document pertaining to Patrick Ryan. You
18 can ask about this call through Patrick
19 Ryan, how long this conversation is to this
20 phone number, but I don't think it's
21 appropriate for Mr. Foley to answer this
22 question.

23 BY MS. ROSNER:

24 Q. Mr. Foley, how do you describe or
25 explain that the call with Patrick Ryan lasted

1 CONFIDENTIAL - RANDALL FOLEY

2 18 minutes?

3 MS. FINCHER: Object to the form.

4 A. I have no idea what we talked about
5 for 18 minutes. As I mentioned a minute ago,
6 I'm very surprised that we were on the phone
7 that long.

8 Q. Is there anything that you could
9 review that would refresh your recollection as
10 to why the call was 18 minutes long?

11 MS. FINCHER: Object to the form.

12 A. No, I don't know if we talked about
13 pleasantries more than I -- or anything else.

14 Q. Do you have any reason to dispute why
15 the call was 18 minutes long?

16 MS. FINCHER: Object to the form.

17 A. If you show that it's 18 minutes, I
18 guess it's 18 minutes. I can't dispute that.

19 Q. Do you recall speaking about
20 pleasantries for 18 minutes?

21 MS. FINCHER: Object to the form.

22 Asked and answered.

23 A. I do not remember the call, the
24 details of the call.

25 Q. Well, earlier you said you did. You

1 CONFIDENTIAL - RANDALL FOLEY
2 said you remembered that Benco said that they
3 were anti buying group and that they were not
4 going to bid on Smile Source?

5 MR. YOON: Objection.

6 MS. FINCHER: Object to the form.
7 Mischaracterizes the testimony.

8 THE WITNESS: I did recall those two
9 items because I sent an e-mail to Hal
10 stating that's what he talked about, but I
11 do not remember -- and I did not remember
12 that until I was shown that e-mail that I
13 did get a call from Benco years ago.

14 BY MS. ROSNER:

15 Q. Did you ever talk to anyone at Benco
16 about Atlantic Dental Care?

17 A. No.

18 Q. We discussed today how Schein thought
19 that Atlantic Dental Care was a buying group,
20 correct?

21 MS. FINCHER: Object to the form.

22 A. That is correct.

23 Q. Benco, however, was telling you that
24 Atlantic Dental Care is not really a buying
25 group?

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2 MS. FINCHER: Object to the form.

3 MR. YOON: Objection.

4 THE WITNESS: No, Benco did not tell
5 me. A customer told me that Benco was doing
6 business with them and that Benco told them
7 they were a -- they were a DSO.

8 BY MS. ROSNER:

9 Q. I'm going to refer you to a document
10 we've already looked at today.

11 A. Okay.

12 Q. Which is CX2088. I'm going to hand
13 you --

14 A. Okay.

15 Q. -- a copy of that document.

16 Feel free to refresh your recollection
17 on that document, and once you have, just let me
18 know.

19 (Document review.)

20 A. Okay.

21 Q. You've had a moment to look --

22 MS. FINCHER: Can you tell me again
23 what the number was, Jasmine?

24 Q. You've had a moment to look at CX2088?

25 MS. FINCHER: I'm sorry, I can't hear

1 CONFIDENTIAL - RANDALL FOLEY
2 you.

3 THE WITNESS: 2088.

4 MS. FINCHER: 2088.

5 THE WITNESS: Yes.

6 BY MS. ROSNER:

7 Q. In the fourth and fifth line from the
8 top of -- excuse me, in the fourth and fifth
9 line up from the bottom of the first paragraph,
10 you write, "Benco, however, is telling me that
11 they are not really a BG."

12 Did I read that correctly?

13 A. You did.

14 Q. You are referring to Atlantic Dental;
15 is that right?

16 A. Yes.

17 MS. FINCHER: Object to the form.

18 A. Yes.

19 Q. And you're saying that Benco is
20 telling you that Atlantic Dental is not really a
21 buying group, correct?

22 MS. FINCHER: Object to the form.

23 A. That is correct.

24 Q. Who at Benco told you that Atlantic
25 Dental is not really a buying group?

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2 MS. FINCHER: Object to the form.

3 Asked and answered.

4 MR. YOON: Object to the form.

5 MS. FINCHER: You can answer again.

6 THE WITNESS: It is my -- I had a
7 vendor partner, it was either Dentsply or
8 Danaher on the phone, telling me why are we
9 not the prime vendor for Atlantic Dental,
10 they're a large DSO, and I said I heard that
11 they're a buying group. And the Dentsply
12 rep or Danaher -- I can't tell you exactly
13 which rep it was -- said, "No, according to
14 Benco, they are not a buying group because
15 our vendor partners would not extend pricing
16 to buying groups."

17 So they told me that Benco said that.
18 Why I said it this way, I don't understand.
19 But I remember the call from the vendor
20 partner at my home, at my desk, telling me
21 that, per Benco, they have a relationship
22 with, that this is a DSO and not a buying
23 group.

24 BY MS. ROSNER:

25 Q. So you're saying that when you wrote

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2 Benco is telling you that ADC is a buying group,
3 that was an inaccurate statement?

4 A. Yes.

5 Q. Why would you have written an
6 inaccurate statement to Hal Muller and Bill
7 Harrison?

8 MS. FINCHER: Object to the form.

9 A. I did not get into the detail that a
10 vendor called me and told me that, and it maybe
11 is a bad choice of words saying, from what I
12 heard from a vendor partner, that, per Benco,
13 they're not a buying -- they're a DSO. I didn't
14 get to that level with it.

15 Q. Why wouldn't you get to that level of
16 detail with your boss?

17 MS. FINCHER: Object to the form.

18 Go ahead.

19 A. The issue alone is that Atlantic
20 Dental is not a buying group and that it -- that
21 I found out that it's a DSO. It doesn't make --
22 why I said how I found that out, I don't -- I
23 don't know why, but I did not have a
24 conversation with Benco about, hey, is that a
25 buying group or not a buying group.

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2 Q. At any point in time did you go back
3 to Hal and Bill to say, by the way, it wasn't
4 Benco that told me about ADC, I heard that from
5 a vendor partner?

6 A. Nope. Never told them.

7 Q. You can put that document aside.

8 Did you ever talk to anyone at Benco
9 about Great Expressions Dental Centers?

10 A. John Klavon, who called on Great
11 Expressions, and I would run into each other on
12 occasion, and he was friends with Jack Allen,
13 who was the director of purchasing, so John and
14 I may have said how things are going -- how's it
15 going with your friend Jack? Because both of us
16 kind of worked that account. I don't really
17 recall anything else. I don't recall anything
18 specific.

19 Q. Sorry. Can you say that again?

20 A. I don't recall anything specific about
21 talking to anybody at --

22 What was the question again?

23 MS. FINCHER: Yes, just make sure you
24 listen --

25 THE WITNESS: I'm sorry. Yes.

1 CONFIDENTIAL - RANDALL FOLEY

2 MS. FINCHER: -- to the question and
3 answer it.

4 BY MS. ROSNER:

5 Q. I apologize. I didn't hear what you
6 said earlier. I asked whether you had spoken to
7 anyone at Benco about Great Expressions Dental
8 Centers.

9 A. Not that I am aware of or remember.

10 Q. And then you mentioned John Klavon?

11 A. Yes.

12 Q. Can you please repeat what you
13 mentioned about John Klavon?

14 A. John Klavon flies out of Detroit
15 Metro, as well as I do, so I may have ran into
16 John and asked how things are going with Jack
17 Allen, because we both are -- he's a friend, a
18 personal friend of Jack Allen, who works with
19 Great Expressions, and Great Expressions was a
20 Schein account.

21 Q. Jack Allen works at Great Expressions?

22 A. Yes.

23 Q. Other than the call with Mr. Ryan on
24 October 1, 2013, have you ever had any other
25 discussions with a competitor about substantive

1 CONFIDENTIAL - RANDALL FOLEY

2 business?

3 MS. FINCHER: Object to the form.

4 Mischaracterizes the testimony.

5 Go ahead.

6 A. No.

7 Q. Have you ever bumped into a competitor
8 at a client's location and discussed substantive
9 business?

10 A. Rephrase it. Say that again.

11 Q. Have you ever bumped into an employee
12 from a competitor at a customer's location and
13 discussed substantive business?

14 MS. FINCHER: Object to the form.

15 A. No.

16 Q. Have you ever sat next to an employee
17 of a competitor on a plane and discussed
18 substantive business?

19 MS. FINCHER: Object to the form.

20 A. One time I sat next to John -- we were
21 both in first class coming back from New Orleans
22 from a long night out, both of us, but we didn't
23 talk. We just talked pleas- -- you know, as --
24 just kibitzed with each other about his family.

25 Q. Who is ADP?

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2 A. I'm sorry?

3 Q. Who is ADP?

4 A. American Dental Partners.

5 Q. Is ADP a customer?

6 A. No, it's a Patterson customer.

7 Q. Has Schein competed to win the ADP
8 business?

9 A. Yes, we tried on numerous occasions to
10 win the -- about every three years, they would
11 go out to bid, and we would aggressively bid on
12 it and never won it.

13 Q. Would Schein compete against Patterson
14 and Benco for ADP's business?

15 MS. FINCHER: Object to the form.

16 A. Yes.

17 I'm sorry. Yes.

18 Q. You had a discussion with John Klavon
19 about ADP?

20 MS. FINCHER: Object to the form.

21 A. No, I don't recall any discussion with
22 John about ADP.

23 Q. Handing you a document that's been
24 marked as CX2147. It bears the Bates number
25 Henry Schein-000757280.

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2 Please take a moment to review that
3 document and let me know when you're finished.
4 (Exhibit CX2147-001 through 002, a
5 document bearing Bates Nos. Henry
6 Schein-000757280 through 281, marked for
7 identification, as of this date.)

8 (Document review.)

9 THE WITNESS: Okay.

10 BY MS. ROSNER:

11 Q. You've had a moment to review CX247?

12 A. Yes.

13 Q. This is an e-mail chain with you and
14 Hal Muller?

15 A. Yes.

16 Q. The e-mail chain, last-in-line e-mail
17 is from March 18, 2015.

18 You wrote the e-mails in CX2147 as
19 part of your job?

20 A. Yes.

21 Q. It's part of your job to communicate
22 with Hal Muller about Schein matters?

23 A. Yes.

24 Q. You have knowledge of the contents of
25 CX2147?

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2 A. Yes.

3 Q. You drafted the e-mails in CX2147 at
4 or near the time of the events described
5 therein?

6 A. Yes.

7 Q. You drafted this e-mail and kept it in
8 the ordinary course of Schein's business?

9 A. Yes.

10 Q. CX2147 is a true and correct copy of
11 your e-mail correspondence?

12 MS. FINCHER: Object to the form.

13 A. Yes.

14 Q. On the second page, CX2147-002, the
15 e-mail at the top of the page is from you. You
16 write, "Good luck. I'm in 19C and Klavon is in
17 19A. It is his understanding that ADP will be
18 sticking with PDCO with PDCO losing their
19 shirt."

20 Did I read that correctly?

21 A. Yes.

22 Q. "ADP" refers to American Dental
23 Partners that we just discussed; is that
24 correct?

25 A. Yes.

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2 Q. And "PDCO" refers to Patterson; is
3 that correct?

4 A. That's correct.

5 Q. And John Klavon told you that it was
6 his understanding that Patterson won the ADP
7 bid?

8 MS. FINCHER: Object to the form.
9 Mischaracterizes the document.

10 A. Yes.

11 Q. And John Klavon told you that it was
12 his understanding that Patterson was losing
13 their shirt over the ADP bid?

14 MS. FINCHER: Object to the form.

15 A. Yes.

16 MS. FINCHER: Mischaracterizes the
17 document.

18 A. Yes, that's what he stated.

19 Q. What does it mean to lose your shirt?

20 MS. FINCHER: Object to the form.

21 A. He's stating that PD -- PDCO had to go
22 in very low to keep the business, meaning
23 basically give away the product is his
24 understanding.

25 Q. This is information that you learned

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 2 from John Klavon?
 3 MS. FINCHER: Object to the form.
 4 A. Yes.
 5 Q. What did you share with John Klavon in
 6 this conversation?
 7 MS. FINCHER: Object to the form.
 8 A. I don't remember the conversation at
 9 all. We were coming back from a -- like based
 10 on the date, we're coming back from a dental
 11 meeting called the Academy of Group Dental
 12 Practice Meeting, and based on the date, also,
 13 that would be when -- in January and February is
 14 usually when we would bid on ADP, so he --
 15 basically, he's informing me that neither of us
 16 won it.
 17 PD -- PDCO, they're staying with PDCO,
 18 with Patterson.
 19 Q. What else did you discuss with John
 20 Klavon during this plane ride?
 21 MS. FINCHER: Object to the form.
 22 A. I -- I don't remember.
 23 Q. Is there anything that would refresh
 24 your recollection?
 25 MS. FINCHER: Object to the form.

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 2 Benco all refuse to bid on their business when
 3 they entered the GPO buying group world."
 4 Did I read that portion of that
 5 sentence correctly.
 6 MS. FINCHER: Object to the form.
 7 A. Yes, you read that correctly.
 8 Q. In that sentence you're saying Schein,
 9 Patterson and Benco refused to bid on Tralongo
 10 when Tralongo entered the buying group world?
 11 MS. FINCHER: Object to the form.
 12 Mischaracterizes the document.
 13 A. That's what I'm stating.
 14 Q. At the time that Schein refused to bid
 15 on Tralongo, was it aware that Patterson and
 16 Benco were also going to refuse to bid on
 17 Tralongo?
 18 MS. FINCHER: Object to the form.
 19 A. I am not sure how I would know that
 20 Patterson and Benco refused to bid on this.
 21 Q. In the e-mail, you state that all
 22 three companies refused to bid on Tralongo; is
 23 that correct?
 24 MS. FINCHER: Object to the form.
 25 A. That is what I'm stating, yes.

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 2 A. Not -- not that I would think of.
 3 Q. What other conversations did you have
 4 with competitors about substantive business?
 5 MS. FINCHER: Object to the form.
 6 A. None that I can -- that I recollect.
 7 MS. ROSNER: We can go ahead and take
 8 a break. Go off the record.
 9 THE VIDEOGRAPHER: The time is 4:44
 10 p.m. We're off the record.
 11 (Recess.)
 12 THE VIDEOGRAPHER: The time is 5:06
 13 p.m. We're on the record.
 14 BY MS. ROSNER:
 15 Q. Mr. Foley, I'm going to direct your
 16 attention to CX2094. I'm handing you the
 17 document. It's a document that we have already
 18 discussed today. The top e-mail in the document
 19 is dated October 28, 2015. Your e-mail appears
 20 directly below that.
 21 This is about a bid on the Tralongo
 22 buying group portion?
 23 A. Okay.
 24 Q. The second -- or, excuse me, third
 25 sentence of your e-mail says, "Schein, PDCO and

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 2 Q. Where would you normally get
 3 information of that nature?
 4 MS. FINCHER: Object to the form.
 5 A. I'm not sure where I would have gotten
 6 that type of information. It could have been
 7 from a local rep. I'm not sure.
 8 MS. ROSNER: No further questions.
 9 I'll reserve the rest of my time.
 10 EXAMINATION BY
 11 MR. LAVERY:
 12 Q. Mr. Foley, I'm Will Lavery. I
 13 represent Patterson. I only have a few
 14 questions for you.
 15 Mr. Foley, did you ever enter an
 16 agreement with anyone at Patterson to refuse to
 17 deal with buying groups?
 18 A. No.
 19 Q. Are you aware of anyone at Schein
 20 entering an agreement with Patterson to refuse
 21 to deal with buying groups?
 22 A. No.
 23 Q. Did you ever enter into an agreement
 24 with anyone from Patterson regarding any
 25 customers?

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2 A. No.

3 Q. Are you aware of anyone at Schein
4 entering into an agreement, arrangement, or
5 understanding of any kind with someone from
6 Patterson regarding any customer?

7 A. No.

8 Q. Have you ever had any discussions with
9 anyone from Patterson regarding refusing to do
10 business with buying groups?

11 A. No.

12 Q. Have you ever had a discussion with
13 anyone at Patterson regarding refusing to offer
14 discounts to any customers because they might be
15 a buying group?

16 A. No.

17 Q. Have you ever had a discussion with
18 anyone from Patterson about Patterson's policies
19 regarding who or -- strike that.

20 Have you ever had a discussion with
21 anyone at Patterson about Patterson's policies
22 about who they do business with?

23 A. No.

24 Q. Have you ever discussed with anyone at
25 Patterson whether any customer is a buying

1 CONFIDENTIAL - RANDALL FOLEY

2 group?

3 A. No.

4 Q. Have you ever had any discussion with
5 anyone at Patterson regarding the definition of
6 the term "buying group"?

7 A. No.

8 Q. Do you know of anyone at Patterson
9 coordinating their conduct with anyone at Schein
10 regarding any customer?

11 A. No.

12 Q. Ms. Rosner asked you a bunch of
13 questions today about the customers she referred
14 to as buying groups, correct?

15 A. Yes.

16 Q. Were all of Schein's decisions with
17 respect to those customers made independently?

18 A. Schein alone, yes.

19 Q. Patterson had nothing to do with any
20 of those decisions, correct?

21 MS. ROSNER: Objection. Leading.

22 A. Correct.

23 Q. Go ahead.

24 Schein didn't coordinate any of its
25 decisions with respect to buying groups with

1 CONFIDENTIAL - RANDALL FOLEY

2 Patterson, correct?

3 MS. ROSNER: Objection. Leading.

4 A. No.

5 Q. Was Patterson one of Schein's
6 competitors?

7 A. Yes.

8 Q. And while you were at Schein, you
9 competed with Patterson for customers?

10 A. Yes.

11 Q. And was competition for customers
12 between Schein and Patterson intense?

13 MS. ROSNER: Objection.

14 A. Yes.

15 Q. And when given the opportunity --

16 MS. FINCHER: Make sure you give her
17 an opportunity to object, okay?

18 THE WITNESS: I'm sorry.

19 Go ahead.

20 MR. LAVERY: Sorry.

21 BY MR. LAVERY:

22 Q. When given the opportunity, Schein
23 took customers away from Patterson?

24 MS. ROSNER: Objection.

25 Q. Right?

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2 A. Yes.

3 Q. That was your job, correct?

4 MS. ROSNER: Objection. Leading.

5 A. Yes.

6 Q. Was there ever a point that Schein did
7 not compete against Patterson for customers?

8 A. No.

9 Q. What were some of the ways that Schein
10 competed against Patterson for customers?

11 A. We would -- there were numerous bids
12 that would go out to some of our biggest groups
13 where Patterson was trying to bid on the
14 business and we would be bidding on the
15 business, whether it was a DSO, community health
16 center.

17 Q. Did Schein offer rebates to customers
18 in an attempt to take them away from Patterson?

19 A. We would offer whatever we could to
20 beat Patterson's pricing or to win the business.

21 Q. And did Schein ever lose customers to
22 Patterson?

23 A. Yes.

24 Q. Did Schein lose a lot of customers to
25 Patterson?

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A. From the Special Markets point of view, we lost one of our biggest customers to Patterson.

Q. Schein lost a number of customers to Patterson, right?

MS. ROSNER: Objection. Leading.

A. Yes, a number of customers.

Q. Did any customer ever tell you that they were giving Patterson their business because Patterson offered them a lower price?

A. Can you rephrase that?

Q. Sure. Did any customer ever tell you that they were giving Patterson their business because Patterson offered them a lower price than Schein?

A. Yes.

Q. Did Schein ever take -- strike that. Did Schein ever successfully take customers away from Patterson by offering lower prices of their own?

A. Yes.

MR. LAVERY: I'm just going to mark a couple of documents.

I don't know what exhibit number we're

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on. Do you, Lauren?

MS. FINCHER: I'm sorry?

MR. LAVERY: Do you know what number we left off on?

MS. FINCHER: I don't.

MS. ROSNER: Can you mark this as Foley Exhibit 1 then.

(Foley Exhibit 1, an e-mail bearing Bates Nos. Henry Schein-0000756968, marked for identification, as of this date.)

THE WITNESS: Okay.

BY MR. LAVERY:

Q. Mr. Foley, this is an e-mail that you sent to Hal Muller on April 20, 2015, correct?

A. Yes.

Q. And it has the subject line "Call me about Scott"?

A. Yes.

Q. Do you recall who Scott is?

A. No, it doesn't ring a bell.

Q. You write, "Just hung up with him. PDCO offer is too good," correct?

A. Correct.

Q. Would this indicate that Patterson

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offered a customer -- made an offer to a customer that was good?

A. That was better than what we were offering, yes.

Q. And is this an example of Patterson competing with Schein for customers?

A. Yes.

Q. Is this one of many examples of Patterson competing with Schein for customers?

A. Yes.

Q. Did that happen every day?

A. Yes.

Q. You can put that aside. That's actually the last document I'm going to mark.

Did you ever contact anyone at Patterson to learn whether they would be competing for any customers or offering discounts to any customers?

A. No.

Q. Do you know of anyone at Schein communicating with anyone at Patterson about whether or not Schein was going to offer discounts for any specific customers?

A. No.

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Q. Did you -- strike that.

Did you ever enter into an agreement with anyone to refuse to deal with buying groups?

A. No.

MR. LAVERY: That's all I have.

EXAMINATION BY

MR. YOON:

Q. Mr. Foley, my name is Eric Yoon, and I represent the Benco Dental Supply Company, and I'll refer to the word "Benco" as shorthand for Benco, the full name company. I'm going to make this very simple.

Are you aware of any agreement between Schein and Benco not to compete against one another for any segment of the customer base?

A. No.

Q. At any point in time, including the October 1, 2013 call, did Pat Ryan at Benco ask you to agree not to do business with any buying group, including, specifically, Smile Source?

A. No.

Q. At any point in time did anyone at Benco, including John Klavon, including the trip

1 CONFIDENTIAL - RANDALL FOLEY
2 on March 18, 2015, on a flight that you shared
3 with John Klavon, ask you to agree not to do
4 business with any buying group, including,
5 specifically, Smile Source?

6 A. No.

7 Q. Are you aware of any agreement between
8 Benco and Schein not to do business with any
9 buying group, including, specifically, Smile
10 Source?

11 A. No.

12 MR. YOON: That's all I have.

13 EXAMINATION BY
14 MS. FINCHER:

15 Q. Mr. Foley, I have a few questions for
16 you.

17 If you wouldn't mind grabbing those
18 exhibits right there, and if you could take a
19 look, please, at exhibit Complaint Counsel 2112.

20 A. Yes.

21 Q. You see that? And if you could look,
22 please, at the e-mail from Hal Muller to
23 yourself and Rick Heysquierdo at 3 p.m. on
24 September 14, 2012.

25 A. Okay.

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2 Q. My question for you: Were you
3 personally aware of any pressure by anyone at
4 HSD to drop Smile Source as an account?

5 A. No.

6 Q. To your knowledge, did Schein ever
7 drop Smile Source as an account?

8 A. They did not drop it.

9 Q. If you could turn, please, to exhibit
10 Complaint Counsel 2157.

11 Do you have it in front of you?

12 A. Okay. I'm sorry. Yes.

13 Q. If you, please, take a look at the
14 e-mail from you to Hal Muller at 7:54 a.m. at
15 the top of the chain. Do you see that?

16 A. Yes.

17 Q. Do you recall being asked questions
18 earlier today about the statement in your e-mail
19 that says, "Does Tim Sullivan want us to shut
20 down this \$900,000 account?"

21 A. Yes.

22 Q. To your knowledge, did Schein ever
23 shut down Smile Source as an account?

24 A. No.

25 Q. Did Tim Sullivan ever ask you to shut

1 CONFIDENTIAL - RANDALL FOLEY
2 down Smile Source as an account?

3 A. No.

4 Q. You can put that one down.

5 If you could take a look, please, at
6 Complaint Counsel Exhibit 2158. Do you have see
7 that in front of you?

8 A. Yes.

9 Q. Do you recall being asked questions
10 about this document earlier?

11 A. Yes.

12 Q. Do you recall anyone at HSD ever
13 asking you to dismantle Smile Source?

14 A. No.

15 Q. Did anyone at Schein ever dismantle
16 Smile Source?

17 A. No.

18 Q. Did Schein continue to do business
19 with Smile Source after the date of this e-mail?

20 A. Yes.

21 Q. You can put that aside.

22 If you could turn, please, to Exhibit
23 2154.

24 Do you recall looking at this e-mail
25 earlier today?

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2 A. Yes.

3 Q. Did Smile Source ever meet with HSD?

4 A. Yes.

5 Q. At that meeting, did HSD have the
6 opportunity to learn more about Smile Source's
7 business model?

8 A. Yes.

9 Q. Did HSD begin to do business with
10 Smile Source after this meeting with Smile
11 Source?

12 A. Yes.

13 Q. You can put that aside.

14 Take a look at Exhibit 2084, Complaint
15 Counsel 2084.

16 A. Hold on. I'm off on that.

17 2084. Got it. I was looking at the
18 wrong number.

19 Q. Do you recall testifying earlier today
20 that at some point in time you recall the Thorup
21 group becoming a procurement company?

22 A. Yes.

23 Q. What did you mean by that?

24 A. That they were no longer a buying
25 group; that they were more simply based off --

1 CONFIDENTIAL - RANDALL FOLEY
2 they were simply somebody based on price and
3 more helping customers procure the cheap- -- a
4 product from multiple vendors.

5 Q. Do you have an opinion of why a
6 procurement model -- of whether a procurement
7 model would be a good fit for Henry Schein?

8 A. Why it would be?

9 Q. Do you have an opinion on whether it
10 would be?

11 A. No, I believe that it's, because it's
12 based on price only, it's not a good fit.

13 Q. Why not?

14 A. Because we offer -- we want to offer
15 full service to our end-users.

16 Q. You can put that aside.

17 If you could take a look at Exhibit
18 2099.

19 A. Uh-huh.

20 Q. Do you recall being asked questions
21 about this document earlier?

22 A. Yes.

23 Q. Do you have any knowledge as to Joe
24 Cavaretta's views on the group Smile Source?

25 A. No.

1 CONFIDENTIAL - RANDALL FOLEY

2 Q. Do you have any knowledge as to John
3 Chatham's views on the group Smile Source?

4 A. No.

5 Q. You can put that aside.

6 If you can take a look, please, at
7 exhibit Complaint Counsel 2061?

8 A. Okay.

9 Q. Do you recall being asked questions
10 earlier today about Advantage Dental and
11 references in this e-mail and others to
12 ownership?

13 A. Yes.

14 Q. Do you recall earlier today
15 distinguishing the Advantage Dental DSO from the
16 Advantage Dental buying group?

17 A. Yes.

18 Q. When you were referring to ownership
19 in this e-mail and similar e-mails, were you
20 referring to Advantage, the DSO, or Advantage,
21 the buying group?

22 A. To Advantage, the DSO.

23 Q. To your knowledge, did Schein provide
24 discounts to Advantage Dental, the buying group?

25 A. Yes.

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2 Q. You can put that aside.

3 Can you take a look at Complaint
4 Counsel Exhibit 2092, please.

5 A. Uh-huh.

6 Q. If you can please take a look at your
7 e-mail on September 14, 2015 at 11:02 a.m.
8 Do you see that?

9 A. Yes.

10 Q. Do you recall being asked about the
11 line in the e-mail that says, "SM has Dental
12 Gator, but their growth has been minimal since
13 we moved them to a more restrictive PG plan,
14 unlike Breakaway, who is on an aggressive P
15 plan."

16 Do you see that?

17 A. Yes.

18 Q. To your knowledge, did Dental Gator's
19 growth have anything to do with the specific
20 sales plan used by Schein?

21 A. No.

22 Q. Put that to the side.

23 Can you take a look at Complaint
24 Counsel Exhibit 2103, please.

25 A. Uh-huh.

1 CONFIDENTIAL - RANDALL FOLEY

2 Q. Can you take a look at your e-mail on
3 the bottom of the first page of the document --

4 A. Uh-huh.

5 Q. -- to Debbie Torgersen at 11:18 a.m.
6 on April 21.

7 You see that?

8 A. Yes.

9 Q. Can you take a look at the last line
10 of your e-mail where you say, "I don't care if
11 this is a buying group, but HSD usually does
12 when their accounts join it to get reduced
13 supply costs."

14 Do you see that?

15 A. Yes.

16 Q. Do you recall being asked questions
17 about that earlier today?

18 A. Yes.

19 Q. To your knowledge, did HSD ever
20 provide reduced supply costs to buying groups?

21 A. Yes.

22 Q. You can put that aside.

23 If you could take a look at Complaint
24 Counsel Exhibit 2079.

25 A. Okay.

1 CONFIDENTIAL - RANDALL FOLEY
2 Q. If you look at your e-mail dated
3 September 14, 2014 to Hal Muller and Peter
4 Jugoon on the first page, do you see that, at
5 4:27 p.m.?

6 A. Yes.

7 Q. Do you recall being asked questions
8 earlier today about your statement, "As with
9 other buying groups, we continue to say no (at
10 least try to)"?

11 A. Yes.

12 Q. What kind of buying group has Schein
13 said no to in the past?

14 A. Those that focus only on price and
15 nothing more.

16 Q. And why is that?

17 A. It would -- again, we prefer -- we
18 prefer to offer our full solution to our end --
19 to the end-user.

20 Q. Okay. Put that aside.

21 Would you take a look at Complaint
22 Counsel 2072 exhibit.

23 A. Uh-huh.

24 Q. Take a look at your e-mail to Philip
25 Toh on August 1, 2013 at 3:28 p.m.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Okay.

3 Q. Do you see the statement in that
4 e-mail where you write, "No on Sunrise, as they
5 are more of a buying group"?

6 A. Yes.

7 Q. Do you recall being asked questions
8 about that earlier today?

9 A. Yes.

10 Q. What did you mean by that statement?

11 A. That they are based on price only, no
12 other -- no other features.

13 Q. To your knowledge, did Schein
14 ultimately do business with Sunrise?

15 A. Yes.

16 Q. Put that to the side.

17 If you could take a look at Complaint
18 Counsel Exhibit 2073.

19 This is an e-mail chain, including an
20 e-mail at the top from you to Francis Keefe on
21 December 20, 2013. Do you see that?

22 A. Yes.

23 Q. At the time of this e-mail, did Schein
24 do business with buying groups?

25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
2 Q. Did Schein continue to do business
3 with buying groups after the date of this
4 e-mail?

5 A. Yes.

6 Q. Put that to the side.

7 Take a look at Complaint Counsel
8 Exhibit 257.

9 A. Yes.

10 Q. Do you recall being asked questions
11 about this document earlier today?

12 A. Yes.

13 Q. Are you aware of anyone at Schein
14 giving marching orders or instructions to
15 Kathleen Titus to dismantle buying groups?

16 A. No.

17 Q. Are you aware of Joseph Cavaretta ever
18 instructing Kathleen Titus to dismantle buying
19 groups?

20 A. No.

21 Q. Would you describe Kathleen Titus'
22 efforts to engage in diligence on buying groups
23 an effort to dismantle them?

24 A. No.

25 Q. To your knowledge, did Ms. Titus work

1 CONFIDENTIAL - RANDALL FOLEY
2 to build relationships with buying groups?

3 A. Yes.

4 Q. Did she in fact do that?

5 A. Yes.

6 Q. You can put this document to the side.

7 Please take a look at Complaint
8 Counsel Exhibit 2074.

9 A. Uh-huh.

10 Q. If you take a look at your e-mail at
11 the top of the chain, latest in time, dated
12 March 5, 2014 at 9:57 a.m.?

13 A. Got it.

14 Q. If you could please look at the second
15 paragraph, the second-to-last sentence, where it
16 says, "We stay clear of these, as they only
17 erode our margins."

18 Do you see that?

19 A. Yes.

20 Q. Do you recall being asked questions
21 about that statement earlier today?

22 A. Yes.

23 Q. What type of groups were you referring
24 to in this statement?

25 A. To those that -- to those -- to buying

1 CONFIDENTIAL - RANDALL FOLEY
2 groups that only focus on price and nothing
3 more.

4 Q. Did that apply to all buying groups
5 that Schein worked with or encountered?

6 A. No.

7 Q. Okay. Put that to the side.

8 If you could take a look at Complaint
9 Counsel Exhibit 238.

10 A. Okay.

11 Q. And if you could -- I could direct
12 your attention to your e-mail to Debbie Foster
13 on February 20, 2012 at 1:30 p.m. at the top of
14 the chain, latest in time. Do you see that?

15 A. Yes.

16 Q. Can you please take a look at the last
17 sentence of the first paragraph of your e-mail?

18 A. Yes.

19 Q. Which states, "Tim Sullivan is happy
20 that we are one less" -- strike that. "Tim
21 Sullivan is happy that we are less one more BG."

22 Do you see that?

23 A. Yes.

24 Q. Did Tim Sullivan ever tell you that he
25 was happy about losing any buying group?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. No.

3 Q. If you could take a look at the second
4 paragraph of that e-mail.

5 A. Okay.

6 Q. The second sentence, which states,
7 "When existing Schein customers enroll, it
8 simply erodes margins." Do you see that?

9 A. Yes.

10 Q. Do you recall being asked about that
11 statement earlier today?

12 A. Yes.

13 Q. What type of group were you referring
14 to with that statement?

15 A. A buying group that just focuses on
16 price.

17 Q. Were you referring to all buying
18 groups, generally, with that statement?

19 A. No.

20 Q. If you could please look at the last
21 sentence of that paragraph. "So this is a
22 corporate decision, not to produce -- not to
23 participate in these." Do you see that?

24 A. Yes.

25 Q. Are you aware of any corporate

1 CONFIDENTIAL - RANDALL FOLEY
2 decision at Schein not to participate in buying
3 groups?

4 A. No.

5 Q. Sitting here today looking at that --
6 at this e-mail, do you believe that sentence to
7 be an accurate statement?

8 A. Yes, I believe it to be inaccurate.

9 Q. To be inaccurate?

10 A. Inaccurate, yes.

11 Q. If you can turn to Complaint Counsel
12 Exhibit 2062.

13 A. Okay.

14 Q. If you could take a look at your
15 e-mail dated December 21, 2011 at 1:52 p.m. on
16 the bottom of the first page?

17 A. Got it.

18 Q. Do you see that?

19 A. Uh-huh.

20 Q. To your knowledge, did Schein work
21 with buying groups at the time of this e-mail?

22 A. Yes.

23 Q. To your knowledge, did Schein continue
24 to work with buying groups after the time of
25 this e-mail?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Yes.

3 Q. Please take a look at the first full
4 paragraph of that e-mail, with the first
5 sentence, do you recall being asked about the
6 sentence that says, "Unfortunately, unless you
7 have some ownership of your practice, Henry
8 Schein considers your business model as a buying
9 group, and we no longer participate in buying
10 groups." Do you see that?

11 A. Yes.

12 Q. Were you intending with that statement
13 to refer broadly to all buying groups?

14 A. No.

15 Q. What type of groups were you referring
16 to specifically there?

17 A. Buying groups that focused on price
18 and nothing else.

19 Q. Okay. You can put that one aside.

20 If you could take a look at Complaint
21 Counsel Exhibit 2063.

22 A. Uh-huh.

23 Q. Look at your e-mail from December 21,
24 2011 at 12:56 p.m.

25 A. Okay.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. To Hal, Debbie and copying John
 3 Boresi. Do you see that?
 4 A. Yes.
 5 Q. Do you recall being asked questions
 6 about the sentence in your e-mail that states,
 7 "I just sent the former owners of GEDC a note
 8 explaining that we cannot participate in their
 9 company, Unified Smiles, as it is basically a
 10 buying group."
 11 Do you see that?
 12 A. Yes.
 13 Q. What did you mean when you said
 14 "basically a buying group"?
 15 A. That they're a buying group based on
 16 price only.
 17 Q. Could you take a look at Complaint
 18 Counsel Exhibit 2089, please.
 19 A. Okay.
 20 Q. I'd like to direct your attention to
 21 your e-mail to Hal and Bill Harrison on July 1,
 22 2015 at 8:19 a.m.
 23 A. Got it.
 24 Q. Do you see that?
 25 A. Got it.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. So it's not a buying group?
 3 A. Not a buying group.
 4 Q. To your knowledge, was the information
 5 shared with you by Klavon referenced in this
 6 e-mail confidential?
 7 A. No.
 8 Q. And why not?
 9 A. ADP is a public company, and the bid
 10 would be public that -- it would be published
 11 that both of us lost that bid.
 12 Q. Did you share any information with
 13 John Klavon at this time or any other time
 14 regarding Schein's business?
 15 A. No.
 16 Q. Did you ever have any agreement with
 17 John Klavon regarding any customer?
 18 A. No.
 19 Q. Did you ever discuss with anyone at
 20 Patterson or Benco whether Schein would bid on
 21 Tralongo?
 22 A. No.
 23 Q. Did you ever have any agreement with
 24 anyone at Benco or Patterson regarding whether
 25 Schein would bid on Tralongo?

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. As of the date of this e-mail, so
 3 2015, approximately how many years had Schein
 4 been doing business with buying groups?
 5 A. I started in 2003, and we were doing
 6 business with buying groups I would say since
 7 2000, I think some of those customers started as
 8 buying groups, so we're at least 15 years at
 9 this time.
 10 Q. Thank you. If you could go to Exhibit
 11 2147.
 12 A. Uh-huh.
 13 Q. Do you see that?
 14 A. Yes.
 15 Q. Do you recall being asked questions
 16 about this document earlier today?
 17 A. Yes.
 18 Q. If you could turn over to the second
 19 page, please, on the e-mail that you write,
 20 where you state, "It is his understanding that
 21 ADP will be sticking with PDCO and PDCO losing
 22 their shirt." Do you see that?
 23 A. Yes.
 24 Q. What kind of entity is ADP?
 25 A. It's a DSO.

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. No.
 3 Q. You talked a lot about Smile Source
 4 earlier today. In your opinion, were there
 5 aspects of the relationship with Smile Source
 6 that HSD could manage better than Special
 7 Markets?
 8 A. There were, yes, there were aspects
 9 that they could manage better and there were
 10 aspects that we could manage better.
 11 Q. And what were some of the aspects that
 12 you believe HSD could manage better about the
 13 Smile Source relationship?
 14 A. HSD had more programs geared to the
 15 private practitioner, especially -- especially
 16 progressive ones, so they could actually
 17 introduce the end-users to those programs.
 18 Q. You testified earlier today that there
 19 were times that you did consider doing business
 20 with buying groups that were focused on price,
 21 correct?
 22 A. Yes.
 23 Q. Can you provide a general description
 24 of what that decision-making process looked
 25 like?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Can you repeat it? I'm sorry.

3 Q. Yes. Sure. So I asked you just a
4 moment ago about testifying earlier today that
5 there were times that you did consider doing
6 business with buying groups that were focused on
7 price, and you answered yes.

8 My question is just can you provide a
9 general description of what that decision-making
10 process looked like.

11 A. Sure. I mean, if there was an
12 opportunity for good revenue, we would go ahead
13 with it, and I think an example would be
14 Advantage Dental.

15 Q. Is it fair to say that you didn't have
16 any across-the-board practice about how to deal
17 with buying groups that focused on price?

18 A. I'm sorry. Say that again.

19 Q. Sure. Is it fair to say that you
20 didn't have any across-the-board practice about
21 how to deal with buying groups that focused only
22 on price?

23 A. Yes.

24 Q. And you did business with buying
25 groups while at Schein, correct?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Yes.

3 Q. Would you --

4 A. Sorry.

5 Q. A lot?

6 A. Yes, we had -- I -- I guess right in
7 Special Markets we had at least \$10 million a
8 year in revenue just from buying groups.

9 Q. Did anyone at Schein ever instruct you
10 not to do business with buying groups?

11 A. No.

12 Q. Did Schein ever have a policy, written
13 or otherwise, regarding doing business with
14 buying groups?

15 A. No.

16 Q. And you testified a moment ago about
17 Special Markets, but to your understanding,
18 Henry Schein Dental also did business with
19 buying groups, correct?

20 A. Yes.

21 Q. If you could just let me finish my
22 question.

23 A. Oh, sorry.

24 Q. How would Schein determine whether to
25 do business with a buying group?

1 CONFIDENTIAL - RANDALL FOLEY

2 A. We would meet with the buying group
3 and ask questions about their business model,
4 and if it wasn't based just on price and we had
5 options to meet with the end-users and could
6 build their practices, it was a -- it would be a
7 good fit. We were determining whether they
8 would be a good fit for us.

9 Q. Did Schein have any one-size-fits-all
10 criteria for whether it would do business with a
11 buying group?

12 A. No.

13 Q. You were asked today a number of
14 questions about some, quote, push-back you got
15 from HSD. Do you recall that?

16 A. Yes.

17 Q. Who specifically in HSD do you recall
18 gave some push-back?

19 A. Generally, from field sales
20 consultants.

21 Q. Anyone else other than field sales
22 consultants that you can recall sitting here
23 today?

24 A. Perhaps the regional managers that
25 those field sales consultants reported to.

1 CONFIDENTIAL - RANDALL FOLEY

2 Q. But no one else?

3 A. Nobody else.

4 Q. You were asked a series of questions
5 earlier today about the potential benefits to
6 Schein of working with buying groups, generally.

7 Do you recall that?

8 MS. ROSNER: Objection. Leading.

9 Q. You can answer.

10 Do you want me to rephrase -- restate
11 it?

12 A. Yes, please. I'm sorry.

13 Q. You were asked a series of questions
14 earlier today about the potential benefits of
15 Schein of working with buying groups, generally.

16 Do you recall that?

17 A. Yes.

18 MS. ROSNER: Objection. Leading.

19 A. Yes.

20 Q. Randy, you need to give her a second
21 to object, okay?

22 A. Oh, okay. I got it. Okay.

23 Q. Do you recall that?

24 A. Yes.

25 Q. Did your answers to those questions

1 CONFIDENTIAL - RANDALL FOLEY
2 apply to all buying groups in the market?

3 A. I -- could you read back the question?
4 I'm sorry.

5 Q. Yes. Sure. I asked you if you were
6 asked a series of questions earlier today about
7 potential benefits to Schein of working with
8 buying groups.

9 Do you recall that?

10 A. Yes.

11 Q. My question for you is do you think
12 that those benefits would apply equally to every
13 single buying group in the market?

14 A. No, they would be different based on
15 each buying group.

16 Q. And is that something that Schein
17 considered in determining whether to do business
18 with any particular buying group?

19 A. Yes.

20 Q. You were asked questions earlier today
21 regarding ownership of certain groups. Do you
22 recall that?

23 MS. ROSNER: Objection. Leading.

24 A. Yes.

25 Q. Were there ever any requirements, to

1 CONFIDENTIAL - RANDALL FOLEY
2 your knowledge, at Schein regarding percentage
3 of ownership of buying groups in order to
4 provide discounts to those buying groups?

5 A. No.

6 Q. You were asked earlier today about
7 Tralongo.

8 Did Schein ever consider doing
9 business with Tralongo's buying group?

10 A. Yes.

11 Q. And your understanding is that Schein
12 did not end up doing business with the Tralongo
13 buying group?

14 MS. ROSNER: Objection. Leading.

15 A. It is my understanding that --

16 I'm sorry. We did get a relationship
17 on the equipment side and on the service side,
18 but not on the merchandise side. On the buying
19 group side.

20 Q. On Tralongo's buying group side?

21 A. Yes.

22 MS. ROSNER: Objection. Leading.

23 Q. With respect to the merchandise side,
24 do you have an understanding of why Schein did
25 not do business with Tralongo buying group on

1 CONFIDENTIAL - RANDALL FOLEY
2 the merchandise side?

3 A. Yes; we lost the bid against Darby.

4 Q. Did Schein ever decide not to work
5 with the Tralongo buying group -- let me
6 rephrase that.

7 Did Schein's decision not to work
8 with -- let me start over.

9 Did the fact that Schein did not work
10 with the Tralongo buying group have anything to
11 do with Tralongo's ownership structure?

12 MS. ROSNER: Objection. Form.

13 A. No.

14 Q. Did the fact that Schein did not work
15 with Tralongo's buying group on the merchandise
16 side have anything to do with any competitors of
17 Henry Schein?

18 MS. ROSNER: Objection. Form.

19 A. The fact that we didn't get it is
20 because we lost it to Darby, but it had nothing
21 else to do with anybody else that I know of.

22 Q. You referred earlier today to certain
23 vendor requirements regarding extending rebates
24 to DSO customers. Do you recall that?

25 MS. ROSNER: Objection. Leading.

1 CONFIDENTIAL - RANDALL FOLEY

2 A. Yes.

3 Q. Did those vendors' requirements apply
4 to whether Schein could offer discounts to any
5 buying groups?

6 A. Yes.

7 Q. And in what way?

8 A. That they did not want to extend their
9 chargebacks, their reduced cost of the supply to
10 any buying groups. Only for the DSO and other
11 segments.

12 Q. Did those vendor requirements prevent
13 Henry Schein from providing discounts to buying
14 groups?

15 A. No.

16 Q. Did Schein in fact provide discounts
17 to buying groups?

18 A. Yes.

19 Q. Did Schein in fact provide discounts
20 to Advantage Dental's buying group?

21 A. Yes.

22 Q. Do you recall seeing a number of
23 e-mails earlier referring to ownership of
24 Advantage Dental?

25 A. Yes.

1 CONFIDENTIAL - RANDALL FOLEY
 2 Q. What did the ownership discussion
 3 refer to?
 4 A. It referred to the DSO component of
 5 Advantage Dental.
 6 Q. Did that discussion have anything to
 7 do with Advantage Dental's buying group?
 8 A. No.
 9 Q. Did Schein do business with Dental
 10 Gator?
 11 A. Yes.
 12 Q. Did Schein set up a special pricing
 13 plan to offer discounts to Dental Gator
 14 customers?
 15 A. Yes.
 16 Q. To your knowledge, did Henry Schein
 17 Dental work with Dental Gator?
 18 A. Yes.
 19 Q. Did anyone from Henry Schein Dental
 20 ever instruct you not to work with Dental Gator?
 21 A. No.
 22 Q. Have you ever had any communications
 23 with anyone at Patterson about any customers?
 24 A. None.
 25 Q. You recall being asked earlier today

1 CONFIDENTIAL - RANDALL FOLEY
 2 about a conversation that you had with Pat Ryan
 3 about Smile Source? Do you recall that?
 4 MS. ROSNER: Objections. Leading.
 5 A. Yes.
 6 Q. Do you recall being asked questions
 7 earlier today about a conversation that you had
 8 with John Klavon on an airplane?
 9 A. Yes.
 10 Q. Setting aside those two conversations,
 11 have you ever had a conversation with anybody at
 12 Benco regarding any customer?
 13 A. No.
 14 Q. Have you ever had an agreement with
 15 anyone at Benco or Patterson about doing
 16 business with any customer?
 17 A. No.
 18 Q. How frequently did you compete against
 19 Benco and Patterson for business?
 20 A. Could you say that again?
 21 Q. How frequently did you compete against
 22 Benco and Patterson for business?
 23 A. All the time. Every day.
 24 Q. Are you aware of any policy at Henry
 25 Schein regarding doing business with buying

1 CONFIDENTIAL - RANDALL FOLEY
 2 groups?
 3 A. No.
 4 Q. Has Henry Schein ever had any policy
 5 against doing business with buying groups?
 6 A. No.
 7 Q. While at Schein, what was your opinion
 8 about doing business with buying groups?
 9 A. I had no -- I was favorable to buying
 10 groups. And again, I would analyze each one of
 11 them, and I had a number of buying groups and
 12 made good revenue from them.
 13 MS. FINCHER: No further questions.
 14 MS. ROSNER: Can we take a break?
 15 MS. FINCHER: Sure.
 16 MS. ROSNER: Off the record.
 17 THE VIDEOGRAPHER: The time is 5:41
 18 p.m. We're off the record.
 19 (Recess.)
 20 THE VIDEOGRAPHER: The time is 5:58
 21 p.m. We're on the record.
 22 FURTHER EXAMINATION BY
 23 MS. ROSNER:
 24 Q. Mr. Foley, before this last break,
 25 your attorney reviewed a number of documents

1 CONFIDENTIAL - RANDALL FOLEY
 2 with you, correct?
 3 A. Yes.
 4 Q. And she asked you a number of
 5 questions about the documents that we had
 6 already discussed today, correct?
 7 A. Correct.
 8 Q. Did you review those documents with
 9 her during your prior break?
 10 MS. FINCHER: Object to the form.
 11 Jasmine, you know good and well that I
 12 am not going to allow you to ask him
 13 questions about what he discussed with
 14 counsel outside of that room. That is not
 15 appropriate. It's attorney-client
 16 privileged. It's also attorney-client work
 17 product.
 18 Please move on.
 19 BY MS. ROSNER:
 20 Q. Have you met with counsel for either
 21 Benco or Patterson at all today?
 22 A. No.
 23 Q. Patterson counsel showed you a
 24 document that was marked Foley Exhibit 1.
 25 Do you recall that document?

1 CONFIDENTIAL - RANDALL FOLEY
 2 A. No. I'm tired.
 3 Q. I hand you a copy of Foley Exhibit 1.
 4 Do you recall this document?
 5 A. Now I do, yes.
 6 Q. Is there anywhere on this document
 7 that makes clear that they're talking about
 8 competition for a buying group?
 9 MS. FINCHER: Object to the form.
 10 A. That it -- no, it does not show that
 11 it relates to a buying group.
 12 Q. Okay. You can put that document
 13 aside.
 14 You testified earlier that the
 15 discussion you had with John Klavon regarding
 16 ADP was not confidential because ADP was a
 17 public company, correct?
 18 A. Correct.
 19 Q. Do you regularly discuss public
 20 customers with competitors?
 21 A. No.
 22 MS. FINCHER: Object to be form.
 23 THE WITNESS: I'm sorry.
 24 MS. FINCHER: Just give me a moment to
 25 object, Randy.

1 CONFIDENTIAL - RANDALL FOLEY
 2 THE WITNESS: No.
 3 BY MS. ROSNER:
 4 Q. Why not?
 5 A. I'm not to share any information about
 6 our company with anybody else based on our
 7 business world standards, whether they're public
 8 or not.
 9 Q. You earlier testified when your
 10 attorney was asking you questions that Dental
 11 Gator's growth was not affected by the change in
 12 discount rate that Schein provided, correct?
 13 MS. FINCHER: Object to the form.
 14 Mischaracterizes the testimony.
 15 A. Yes. Correct.
 16 Q. What's your basis for that statement?
 17 A. That there would have to be an
 18 analysis done whether to change the buying group
 19 plan to a PG resulted in them not winning more
 20 business or whether they just -- their model was
 21 failing, that they couldn't land more business.
 22 Q. Did you do such an analysis?
 23 A. Not that I'm aware of.
 24 Q. So you have no basis for the statement
 25 that the change in discount rate did not affect

1 CONFIDENTIAL - RANDALL FOLEY
 2 their growth?
 3 MS. FINCHER: Object to the form.
 4 Mischaracterizes the testimony.
 5 Go ahead.
 6 A. Correct.
 7 Q. Earlier today we talked about the
 8 Thorup buying group out of Utah, correct?
 9 A. Uh-huh.
 10 MS. FINCHER: Randy, you need to
 11 answer to her question yes or no instead of
 12 "uh-huh" for the record.
 13 A. Oh. Yes.
 14 Q. And when your attorney was asking you
 15 questions about Thorup, you said that it was a
 16 procurement company, correct?
 17 MS. FINCHER: Object to the form.
 18 Mischaracterizes the testimony.
 19 A. That at the end it was a procurement
 20 company.
 21 Q. What's your basis for saying that it
 22 was a procurement company?
 23 A. I believe it's based on information I
 24 received from Kathleen Titus.
 25 Q. You had no personal knowledge about

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 2 whether Thorup was a procurement company?
 3 MS. FINCHER: Object to the form.
 4 A. No, not personally.
 5 Q. You never talked to the owners of
 6 Thorup?
 7 A. That is correct.
 8 Q. Your attorney reviewed with you a
 9 number of documents that we previously reviewed
 10 today, correct?
 11 Let me rephrase. Your attorney before
 12 the break asked you a number of questions about
 13 documents that we previously reviewed today,
 14 correct?
 15 A. Correct.
 16 Q. And in a number of those documents you
 17 were quoted as saying that Schein does not do
 18 business with buying groups?
 19 MS. FINCHER: Object to the form.
 20 Mischaracterizes both the documents and also
 21 his prior testimony.
 22 A. Hard to remember everything exactly
 23 what I said and what -- exactly what you're
 24 asking me. I -- I -- I don't remember
 25 everything.

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 2 Q. A number of the documents quoted
 3 language saying Schein does not do business with
 4 buying groups, and you explained to your counsel
 5 that you meant buying groups that focused only
 6 on price or were price-focused?

7 MS. FINCHER: Object to the form.

8 Mischaracterizes the documents and the prior
 9 testimony.

10 If you have a document and you want to
 11 show him, you're welcome to do that.

12 Go ahead.

13 A. Okay. Yes.

14 Q. I'm sorry. What does your "yes" refer
 15 to?

16 A. Pardon me?

17 MS. FINCHER: Do you want to reask
 18 your question so it's clear?

19 A. I do recall those types of statements,
 20 if that was the question. That's what I
 21 gathered the question to be.

22 Q. And your testimony is that when those
 23 statements Schein did not business with buying
 24 groups, you meant price-only buying groups?

25 MS. FINCHER: Object to the form.

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2 Go ahead.

3 A. Yes.

4 Q. But nowhere in those documents does
 5 the term "price only" appear?

6 MS. FINCHER: Object to the form.

7 A. Correct.

8 Q. We earlier discussed document CX2062.
 9 If you want to take a moment to pull it out of
 10 your pile. Take your time.

11 A. In this pile here?

12 Q. It's an e-mail at the top of the chain
 13 it's an e-mail from you of December 21, 2011.

14 And if you would like, I can take half
 15 of your pile to help you look.

16 MS. FINCHER: Did you say 2062?

17 MS. ROSNER: 2062.

18 MS. FINCHER: You need to look at the
 19 bottom in the corner --

20 THE WITNESS: I am.

21 MS. FINCHER: -- to try to find the
 22 number.

23 MS. ROSNER: It should be a stapled
 24 together.

25 THE WITNESS: And of course it's one

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 2 of the last ones I got to, but here it is.
 3 20 -- I'm sorry. 2062, correct?

4 BY MS. ROSNER:

5 Q. Yes.

6 A. Okay.

7 Q. In the second e-mail down to Jan from
 8 you, we earlier discussed the sentence that had
 9 the phrase, "Henry Schein considers your
 10 business model as a buying group and we no
 11 longer participate in buying groups." Do you
 12 see that phrase?

13 A. Yes.

14 Q. Earlier today, you testified you don't
 15 know why you made the statement because it was
 16 inaccurate; do you remember that?

17 MS. FINCHER: Object to the form.

18 Mischaracterizes the earlier testimony.

19 Go ahead.

20 A. Yes.

21 Q. When your attorney asked you about
 22 this document, you just responded that in this
 23 e-mail you were referring to price-only buying
 24 groups; is that correct?

25 MS. FINCHER: Object to the form.

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2 Go ahead.

3 A. Correct.

4 Q. So your testimony changed from this
 5 morning to when your attorney was asking you
 6 some questions about CX2062?

7 MS. FINCHER: Object to the form.

8 Mischaracterizes the testimony at all times
 9 today.

10 Go ahead.

11 A. I don't know what I -- how I answered
 12 this particular e-mail earlier today.

13 Q. You answered that you didn't know why
 14 you made that statement.

15 MS. FINCHER: Object to the form.

16 Q. Was there something that you looked at
 17 that refreshed your recollection that you made
 18 that statement to refer to price-only buying
 19 groups?

20 MS. FINCHER: Object to the form.

21 A. Because the statement "we no longer
 22 participate in buying groups" is inaccurate. We
 23 participate in buying groups. I have. Always
 24 have. Still do. I don't understand why I would
 25 make that statement other than that this

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2 business model would be price-only. Perhaps
3 that's why I made that statement.

4 Q. You testified when your attorney was
5 asking you questions that Schein has always
6 evaluated each buying group opportunity as it
7 came along, correct?

8 MS. FINCHER: Object to the form.

9 A. To my understanding, yes.

10 Q. And that that general idea didn't
11 change; Schein has always evaluated each
12 individual opportunity?

13 A. To the best of my knowledge, yes.

14 Q. And that Schein does not work with
15 buying groups that are price-only focused?

16 MS. FINCHER: Object to the form.

17 Mischaracterizes the testimony.

18 Go ahead.

19 A. No, that we do have some that are
20 price only, such as Advantage and maybe a couple
21 others.

22 Q. Do you remember testifying at your
23 investigational hearing in July of 2017?

24 A. Can you repeat that?

25 Q. Do you remember testifying at your

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2 investigational hearing in July of 2017?

3 A. I remember being there.

4 Q. And at that investigational hearing,
5 you were sworn by an oath to tell the truth?

6 A. Yes.

7 Q. And you told the truth?

8 A. Yes.

9 Q. At that investigational hearing, you
10 said there was definitely a change in the
11 general idea about when to work with buying
12 groups?

13 MS. FINCHER: Object to the form.

14 Jasmine, as he just said, that was a
15 long time ago. If you have the transcript
16 or some portion of the transcript you want
17 to show him, you're welcome to do that.

18 A. I don't recall saying that. Could you
19 say it again?

20 Q. At your investigational hearing, you
21 said that there was definitely a change in the
22 general idea about when to work with buying
23 groups?

24 MS. FINCHER: Object to the form.

25 A. Yeah, I don't remember that comment.

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2 Q. I'm going to hand you a copy of your
3 transcript. It has been premarked for
4 identification as CX9000.

5 A. Uh-huh.

6 Q. And I'm going to refer you to page 164
7 to 166.

8 (Exhibit CX9000-001 through 90,
9 Transcript of Randy Foley, marked for
10 identification, as of this date.)

11 MS. FINCHER: Can you help him out,
12 Jasmine, to where he's supposed to be
13 looking for those numbers?

14 THE WITNESS: I got it right here.

15 MS. FINCHER: You got it?

16 THE WITNESS: Yeah. Okay. What was
17 the numbers?

18 BY MS. ROSNER:

19 Q. 164 to 166.

20 A. Okay.

21 MS. FINCHER: If you need a minute to
22 read it over and refresh your recollection,
23 go ahead.

24 A. I see the pages. Do you want me to
25 read the whole thing?

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2 MS. FINCHER: Take as much time as you
3 need to recall it.

4 THE WITNESS: Okay.

5 MS. FINCHER: She mentioned it was
6 over a year ago.

7 (Document review.)

8 BY MS. ROSNER:

9 Q. I apologize. It's to 167.

10 A. Oh, to 167? Okay.

11 (Document review.)

12 A. Okay. I've ended at 167 reading.

13 Q. So Mr. Solomon was asking you about
14 Schein's policy on buying groups, and you say,
15 "It's not a policy, it's a general rule or just
16 an idea," and then on page 167, line 6, he asks
17 you, "Did that idea ever change?" And you
18 answered, "Oh, definitely"; is that correct?

19 MS. FINCHER: Object to form.

20 Mischaracterizes the transcript.

21 Go ahead.

22 A. That's what it says.

23 Q. And you were telling the truth at the
24 time?

25 A. Yes.

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Q. And you say, "As the years went on, we saw the value of the buying groups," and further in that answer you say, "There were a number of them who were very basic. Would come and say, hey, I can do better pricing. Those are the ones that we would say, well, this doesn't have any value; move on."

You're referring to price-only buying groups there, correct?

A. Correct.

Q. And you're saying that Schein did not do business with price-only buying groups?

MS. FINCHER: Object to the form.

A. No, we did have some that were price only, but that was not the goal.

Q. My question is you say that the idea about doing businesses with buying groups had changed. How did that change?

MS. FINCHER: Object to the form.

A. As I mentioned, Brian Brady in this response, towards the end, towards the end of my time at Schein, 2015-2016, we had added Brian and others on the team to focus on buying groups more than we had in the past to help build this

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line of business.

So we added or appointed resources in the HSD side and were working on -- and they were developing their plans.

Q. That's not the idea of how Schein does business with buying groups, though.

MS. FINCHER: Object to the form.

If you have a question, Jasmine, please ask it.

Q. On page 166, lines 12 through 18, you say we had a "general rule as to when to engage -- not even rule; just a general idea when somebody -- when should be a buying group or whether they should -- are they just based on price," and that that idea changed.

So how did it change?

MS. FINCHER: Object to the form.

Mischaracterizes the document.

Go ahead.

A. Well, we're at -- let me clarify this. You're talking over a 16- -- I'm sorry, a 14-year period for me, right, or -- and so I can't tell you at this -- to me this part of this question in part 166 is saying how -- this

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is how we dealt with buying groups. It was a general, you know, market that we were after. No specific written rules.

And here I'm stating that we are making changes to our -- to focus more on the buying groups and coming up with a more structured plan on doing that, and Brian Brady is part of that.

So there was a change from the way it was in 2003 when I started to how it ended in 2015 -- '16, when I ended -- when I started and when I ended.

Q. So Ronnie Solomon is asking you about how the idea around buying groups changed, and you're answering it with how Schein's systems about buying groups changed?

MS. FINCHER: Object to the form.

(Continued on the next page to include the jurat.)

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A. That's how I read this.

MS. ROSNER: No further questions.

MS. FINCHER: Anybody else?

MR. YOON: No.

MS. FINCHER: No further questions.

MS. ROSNER: Close the record.

THE VIDEOGRAPHER: This concludes today's deposition. The time is 6:16 p.m. We're off the record.

(Whereupon, the deposition concluded.)

oOo

RANDALL FOLEY

Subscribed and sworn to before me this day of 2018.

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2

3 CERTIFICATE

4 STATE OF NEW YORK)

5 : ss

6 COUNTY OF NEW YORK)

7 I, Kathy S. Klepfer, a Registered

8 Merit Reporter and Notary Public within and

9 for the State of New York, do hereby

10 certify:

11 That RANDALL FOLEY, the witness whose

12 deposition is herein before set forth, was

13 duly sworn by me and that such deposition is

14 a true record of the testimony given by such

15 witness.

16 I further certify that I am not

17 related to any of the parties to this action

18 by blood or marriage and that I am in no way

19 interested in the outcome of this matter.

20 In witness whereof, I have hereunto

21 set my hand this 2nd day of July, 2018.

22

23 _____

24 KATHY S. KLEPFER, RPR, RMR, CRR, CLR

25

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2 INDEX (Cont'd.)

3 COMPLAINT COUNSEL EXHIBITS: PAGE

4 Exhibit CX2060-001 through 004, a document 120

5 bearing Bates Nos. Henry Schein-000167221

6 through 223

7 Exhibit CX0238.001 through 003, a document 130

8 bearing Bates Nos. Henry Schein-000178482

9 through 484

10 Exhibit CX2074-001 through 002, a document 151

11 bearing Bates Nos. Henry Schein-001491116

12 through 117

13 Exhibit CX2075-001 through 004, a document 160

14 bearing Bates Nos. Henry Schein-000165626

15 through 629

16 Exhibit CX257.001 through .003, a document 176

17 bearing Bates Nos. Henry Schein-000166442

18 through 444

19 Exhibit CX2153-001 through 004, a document 198

20 bearing Bates Nos. Henry Schein-000819067

21 through 070

22 Exhibit CX2061-001 through 002, a document 211

23 bearing Bates Nos. Henry Schein-000167180

24 through 181

25 Exhibit CX2062-001 through 006, a document 227

bearing Bates Nos. Henry Schein-000176969

through 6974

Exhibit CX2094-001 through 008, a document 237

bearing Bates Nos. Henry Schein-001490215

through 222

Exhibit CX2066-001 through 002, a document 242

bearing Bates Nos. Henry Schein-000178511

through 512

Exhibit CX2069-001 through 002, a document 251

bearing Bates Nos. Henry Schein-000164080

through 081

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2 INDEX

3 EXAMINATION OF R. FOLEY PAGE

4 By Ms. Rosner 7, 420

5 By Mr. Lavery 381

6 By Mr. Yoon 389

7 By Ms. Fincher 390

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9 COMPLAINT COUNSEL EXHIBITS: PAGE

10 Exhibit CX2150-001 through 11, a document 53

11 bearing Bates Nos. Henry Schein-000130321

12 through 331

13 Exhibit CX2112-001, a document bearing Bates 61

14 Nos. Henry Schein-001563754

15 Exhibit CX2099-001, a document bearing Bates 66

16 Nos. Henry Schein-001517611

17 Exhibit CX2158-001, a document bearing Bates 70

18 Nos. Henry Schein-00683482

19 Exhibit CX2157-001 through 004, a document 73

20 bearing Bates Nos. Henry Schein-001563733

21 through 736

22 Exhibit CX2156-001 through 007, a document 79

23 bearing Bates Nos. Henry Schein-001563773

24 through 779

25 Exhibit CX2084-001, a document bearing Bates 94

Nos. Henry Schein-00758034

Exhibit CX2107-001 through 004, a document 98

bearing Bates Nos. Henry Schein-000104677

through 680

Exhibit CX2103-001 through 006, a document 112

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3 COMPLAINT COUNSEL EXHIBITS: PAGE

4 Exhibit CX2063-001 through 005, a document 256

5 bearing Bates Nos. Henry Schein-000177549

6 through 553

7 Exhibit CX2073-001 through 003, a document 260

8 bearing Bates Nos. Henry Schein-000171851

9 through 851-002

10 Exhibit CX2067-001 through 002, a document 264

11 bearing Bates Nos. Henry Schein-000177564

12 through 565

13 Exhibit CX2065-001 through 003, a document 272

14 bearing Bates Nos. Henry Schein-000167972

15 through 974

16 Exhibit CX2071-001 through 003, a document 277

17 bearing Bates Nos. Henry Schein-000164541

18 through 543

19 Exhibit CX2072-001, a document bearing Bates 282

20 Nos. Henry Schein-000165168

21 Exhibit CX2079-001 through 004, a document 285

22 bearing Bates Nos. Henry Schein-000150250

23 through 253

24 Exhibit CX2078-001, a document bearing Bates 296

25 Nos. Henry Schein-001516940

Exhibit CX2091-001 through 004, a document 301

bearing Bates Nos. Henry Schein-000179530

through 533

Exhibit CX2081-001 through 005, a document 310

bearing Bates Nos. Henry Schein-000104625

through 629

Exhibit CX2088-001, a document bearing Bates 318

Nos. Henry Schein-000191074

Exhibit CX2092-001 through 003, a document 327

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 4 Exhibit CX2089-001, a document bearing Bates 331
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 5
 6 Exhibit CX2095-001 through 002, a document 339
 bearing Bates Nos. Henry Schein-000105142
 through 143
 7
 8 Exhibit CX2096-001 through 006, a document 346
 bearing Bates Nos. Henry Schein-000952713
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 9
 10 Exhibit EXCERPT OF CX1000-001 through 005, a 362
 document bearing Bates Nos. BDS-FTC00039536
 through 540
 11
 12 Exhibit CX2147-001 through 002, a document 375
 bearing Bates Nos. Henry Schein-000757280
 through 281
 13
 14 Exhibit CX9000-001 through 90, Transcript of 432
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 16 FOLEY EXHIBITS: PAGE
 17 Exhibit 1, an e-mail bearing Bates Nos. Henry 387
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1 ERRATA SHEET
 2 Case Name:
 3 Deposition Date:
 4 Deponent:
 5 Pg. No. Now Reads Should Read Reason
 6 _____
 7 _____
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 22 Signature of Deponent
 23 SUBSCRIBED AND SWORN BEFORE ME
 24 THIS ____ DAY OF _____, 2018.
 25 _____
 (Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

DEPOSITION OF: Randall Foley

DATE DEPOSITION: June 20, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
8	21	Delete "16,"	Clarification/misspoke
11	20	Change "uh-huh" to "yes"	Clarification
21	12	Change "they don't serve as organizations" to "they are Dental service organizations"	Typographical error
24	11	Change "reduce" to "reduced"	Typographical error/clarification
27	13	Change "That it's more that" to "It's more that"	Typographical error
44	20	Change "that" to "there"	Typographical error
45	22	Change "control" to "controlling"	Clarification
48	19	Change "offer help with" to "offer to help"	Typographical error/clarification
64	25	Change "I would not, as a generalization" to "I would not, make a generalization"	Clarification
68	17	Change "That I know of, correct." to "Not that I know of, correct."	Clarification/typographical error
69	14	Change "may have" to "never"	Typographical error/misspoke
77	14	Change "\$9,000 [sic]" to "\$900,000"	Clarification/misspoke
91	22	Delete "what"	Typographical error
96	20	Change "be" to "be a"	Clarification
101	2	Change "it" to "I"	Clarification
103	23	Change "Yes, when" to "Yes, generally when"	Clarification
106	9	Change "call" to "say"	Clarification
116	25	Change "flat" to "flack"	Typographical error
120	3	Change "asking" to "ever"	Clarification/typographical

			error
128	25	Change “mature” to “maturing”	Typographical error/clarification
147	23	Change “Atlantic” to “Atlanta”	Typographical error
149	24-25	Delete “we, as a company decided— not as a company”	Clarification
150	16	Delete “We did not”	Clarification
151	7	Change “I” to “you”	Clarification
154	10	Change “DDA” to “TDA”	Typographical error
157	22	Change “but price” to “but if it was price only”	Clarification/misspoke
164	6	Change “in two” to “into”	Typographical error
181	21	Change “discovery” to “discovering”	Typographical error
182	19	Change “on a” to “or a”	Typographical error
206	7	Change “what we’re” to “where we’re”	Typographical error/clarification
210	17	Change “351” to “51”	Typographical error
221	18	Change “our” to “any”	Typographical error
271	3	Change “the buying” to “them”	Clarification
271	14	Change “numbers” to “P&L”	Clarification
275	10	Change “see” to “agree”	Typographical error
280	18-19	Change “I’m not getting into the level that that response to Chad Thompson” to “I’m not getting into that level of a response with Chad Thompson”	Clarification
290	6	Change “know” to “not”	Typographical error/clarification
294	20	Change “that” to “than”	Typographical error/clarification
307	16	Change “working at” to “working on”	Typographical error
308	7	Change “From my knowledge, yes.” to “To my knowledge, yes.”	Typographical error/clarification
314	6	Change “west Dallas” to “West Allis”	Typographical error
317	24	Change “them” to “that”	Typographical error
338	22	Change “buying group.” to “buying group model.”	Clarification

369	8	Change “telling” to “asking”	Clarification
404	8	Change “Yes, I believe it to be inaccurate.” to “No, I believe it to be inaccurate.”	Clarification/misspoke

I, Randall Foley, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 30th day of July, 2018.

at Royal Oak, MI
(City) (State)

Randall Foley
Randall Foley

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CX8005

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CONFIDENTIAL - HAL MULLER

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of Docket No. D09379

Benco Dental Inc., et al.

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* * *CONFIDENTIAL* * *

VIDEOTAPED DEPOSITION OF HAL MULLER

New York, New York

June 21, 2018

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 142915

1 CONFIDENTIAL - HAL MULLER
 2 June 21, 2018
 3
 4 ***CONFIDENTIAL***
 5
 6 Videotaped deposition of HAL
 7 MULLER, held at Proskauer Rose LLP,
 8 Eleven Times Square, New York, New York,
 9 before Kathy S. Klepfer, a Registered
 10 Professional Reporter, Registered Merit
 11 Reporter, Certified Realtime Reporter,
 12 Certified Livenote Reporter, and Notary
 13 Public of the State of New York.
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1 CONFIDENTIAL - HAL MULLER
 2 A P P E A R A N C E S:
 3
 4 FEDERAL TRADE COMMISSION
 5 Attorneys for the Federal Trade Commission
 6 600 Pennsylvania Avenue, NW
 7 Washington, D.C. 20580
 8 BY: JASMINE ROSNER, ESQ.
 9 RONNIE SOLOMON, ESQ. (Telephonically)
 10 KAREN GOFF, ESQ. (Telephonically)
 11
 12 LOCKE LORD
 13 Attorneys for Henry Schein Dental and the Witness
 14 2200 Ross Avenue, Suite 2800
 15 Dallas, Texas 75201
 16 BY: LAUREN FINCHER, ESQ.
 17 JOHN McDONALD, ESQ.
 18
 19
 20
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 22
 23
 24
 25

1 CONFIDENTIAL - HAL MULLER
 2 A P P E A R A N C E S: (Cont'd.)
 3
 4 BUCHANAN INGERSOLL ROONEY
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 6 Two Liberty Place
 7 50 S. 16th Street
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 11 BAKER BOTTS
 12 Attorneys for Patterson Dental
 13 1299 Pennsylvania Avenue, NW
 14 Washington, D.C. 20004
 15 BY: WILLIAM LAVERY, ESQ.
 16 KRISTEN LLOYD, ESQ.
 17
 18 ALSO PRESENT:
 19 MATTHEW SMITH, Videographer
 20
 21
 22
 23
 24
 25

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 2
 3 IT IS HEREBY STIPULATED AND
 4 AGREED, by and between the attorneys for
 5 the respective parties herein, that the
 6 filing and sealing be and the same are
 7 hereby waived.
 8 IT IS FURTHER STIPULATED AND
 9 AGREED that all objections, except as to
 10 the form of the question, shall be
 11 reserved to the time of the trial.
 12 IT IS FURTHER STIPULATED AND
 13 AGREED that the within deposition may be
 14 sworn to and signed before any officer
 15 authorized to administer an oath, with
 16 the same force and effect as if signed
 17 and sworn to before the Court.
 18
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1 CONFIDENTIAL - HAL MULLER
 2 THE VIDEOGRAPHER: This begins media
 3 labeled number 1 of the video-recorded
 4 deposition of Hal Muller in the matter of In
 5 re Benco Dental, Incorporated, et al.
 6 This deposition is being held at 11
 7 Times Square in New York, New York, on June
 8 21, 2018, at approximately 8:20 a.m.
 9 My name is Matthew Smith for TSG
 10 Incorporated. I'm the legal video
 11 specialist. The court reporter is Kathy
 12 Klepfer, in association with TSG Reporting.
 13 Will counsel please introduce yourself
 14 for the record.
 15 MS. ROSNER: Jasmine Rosner for
 16 complaint counsel.
 17 MR. McDONALD: John McDonald for Henry
 18 Schein and the witness.
 19 MR. LAVERY: Will Lavery for
 20 Patterson.
 21 MS. LLOYD: Kristen Lloyd for
 22 Patterson.
 23 MR. YOON: Eric Yoon for Benco Dental
 24 Supply Company.
 25 THE VIDEOGRAPHER: Counsel on the

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 2 much like the investigational hearing that you
 3 did in June of 2017. So all the same rules from
 4 your investigational hearing will apply today.
 5 The two most important rules are that you tell
 6 the truth today and that you and I cooperate to
 7 make the court reporter's job as easy as
 8 possible. That we try not to speak over each
 9 other.
 10 From time to time, your attorney may
 11 speak up. Please don't speak over your
 12 attorney. And we'll keep the record as clean as
 13 possible. Does that sound okay?
 14 A. That's sounds fine.
 15 Q. Great.
 16 Where are you employed?
 17 A. Henry Schein.
 18 Q. You were previously the Director of
 19 Special Markets within the Dental business at
 20 Henry Schein; is that right?
 21 MR. McDONALD: Object to the form.
 22 A. No. I am the president, or was up
 23 until very recently the president, of Special
 24 Markets, which is not part of the Dental
 25 Division, but it is part of Henry Schein.

1 CONFIDENTIAL - HAL MULLER
 2 phone?
 3 MS. GOFF: Karen Goff for complaint
 4 counsel.
 5 THE VIDEOGRAPHER: Thank you.
 6 Will the court reporter please swear
 7 in the witness.
 8 * * *
 9 HAL MULLER, called as a
 10 witness, having been duly sworn by a Notary
 11 Public, was examined and testified as
 12 follows:
 13 EXAMINATION BY
 14 MS. ROSNER:
 15 Q. Mr. Muller, my name is Jasmine Rosner
 16 from the Federal Trade Commission.
 17 We've never met, correct?
 18 A. Correct.
 19 Q. I understand that you have previously
 20 had an investigational hearing in this matter.
 21 It was very similar to today's setting as a
 22 deposition.
 23 Do you recall that?
 24 A. Yes.
 25 Q. And today is going to proceed very

1 CONFIDENTIAL - HAL MULLER
 2 Q. Henry Schein has a variety of business
 3 units; is that right?
 4 A. Correct.
 5 Q. Medical, Dental, Veterinarian, maybe
 6 some other ones; is that right?
 7 A. Correct.
 8 Q. And of the -- in the Dental Business
 9 Unit, there is a group called Special Markets?
 10 A. Correct.
 11 Q. And there's a group called Henry
 12 Schein Dental?
 13 A. Correct.
 14 Q. And you were the president of the
 15 Special Markets Group within the Dental Business
 16 of Henry Schein?
 17 A. Correct.
 18 Q. When did you leave that role?
 19 A. About the first of the year.
 20 Q. What's your current title?
 21 A. Global President of Special Markets of
 22 Henry Schein.
 23 Q. Is your current title limited to the
 24 dental industry?
 25 A. Yes.

1 CONFIDENTIAL - HAL MULLER
 2 Q. How is your current role different
 3 from your prior role?
 4 A. I really don't have much to do with
 5 the United States anymore.
 6 Q. Is Global President of Special Markets
 7 of Henry Schein a promotion from your prior
 8 role?
 9 A. Not really. It's to allow -- I'm
 10 phasing out and it was allowed for the new team
 11 to come in. So my title could easily be
 12 "international" as opposed to "global," which
 13 would include the U.S.; but it's just something
 14 to get the new team going as I head towards
 15 retirement.
 16 Q. When do you anticipate retiring from
 17 Henry Schein?
 18 A. Somewhere in the next year or two.
 19 Q. Did you seek out the new role of
 20 Global President of Special Markets of Henry
 21 Schein?
 22 A. I made it known that I was ready to
 23 gear down.
 24 Q. Who replaced you as President of
 25 Special Markets?

1 CONFIDENTIAL - HAL MULLER
 2 dental business, is that all right?
 3 A. Okay.
 4 Q. When we talk about Special Markets, my
 5 understanding is that sometimes Special Markets
 6 is referred to as "SM"; is that correct?
 7 A. Correct.
 8 Q. Sometimes Special Markets is referred
 9 to as "HSSM"?
 10 A. Correct.
 11 Q. We mentioned earlier the group Henry
 12 Schein Dental. Henry Schein Dental is sometimes
 13 referred to as "HSD"?
 14 A. Correct.
 15 Q. Tim Sullivan oversees HSD?
 16 A. Correct.
 17 Q. Traditionally, independent private
 18 practice dentists' customers fall within HSD's
 19 domain?
 20 A. Correct.
 21 Q. Special Markets' customers include
 22 nontraditional dental practices?
 23 A. Correct.
 24 Q. I want to go over what some of those
 25 nontraditional dental practices are.

1 CONFIDENTIAL - HAL MULLER
 2 A. There isn't an official president
 3 right now. There are two or three people that
 4 have that role. AJ Caffentzis is the senior
 5 person, and then there's a sales person and an
 6 internal person leader, vice presidents, that
 7 are running the day-to-day operations.
 8 Q. In addition to AJ, who are those other
 9 two people?
 10 A. Bill Harrison on the inside and Jake
 11 Meadows on the outside.
 12 Q. When you retire from Henry Schein, do
 13 you anticipate continuing some sort of formal or
 14 informal working relationship with the company?
 15 A. It's possible if we can work something
 16 out.
 17 Q. Do you anticipate going to a
 18 competitor of the company?
 19 A. No.
 20 Q. If I say "Schein" today, will you
 21 understand that I'm referring to the company
 22 Henry Schein?
 23 A. Yes.
 24 Q. And when we talk about Schein today,
 25 we're only going to talk about Henry Schein's

1 CONFIDENTIAL - HAL MULLER
 2 What is a DSO?
 3 A. A dental support organization is a
 4 group of private practice dentists that are
 5 affiliated with a corporate entity.
 6 Q. You mentioned they're private practice
 7 dentists. Is that to say they're not non-profit
 8 dentists?
 9 MR. McDONALD: Object to the form.
 10 A. You're using a double negative.
 11 Q. What do you mean by "private practice
 12 dentists"?
 13 A. Private practice dentists is what you
 14 would traditionally consider a dental office,
 15 where you would walk in and there would be a
 16 dentist, a hygienist, and stuff like that.
 17 So, in most cases, you wouldn't know
 18 whether you were walking into a DSO office or a
 19 solo practitioner's office.
 20 Q. When you say "you" wouldn't know,
 21 you're referring to the patient wouldn't know?
 22 A. A consumer, right.
 23 Q. DSOs have some ownership interest in
 24 the dental offices that are associated with
 25 them; is that right?

1 CONFIDENTIAL - HAL MULLER
2 MR. McDONALD: Object to the form.

3 A. There's many different corporate
4 structures in DSOs.

5 Q. What are the corporate different --
6 what were the different corporate structures in
7 DSOs?

8 A. Some have owner doctors. Some
9 actually own everything in the office and the
10 doctor has his own LLC. Because in most states
11 a corporation can't own a dental office, so
12 there's different structures. There are
13 franchise -- franchises out there. There are
14 ones where there's profit sharing from each of
15 the doctors in the structure.

16 So, as -- as the old expression if you
17 have seen one DSO, you have seen one. There's
18 probably ten or fifteen different structures.

19 Q. What are some of the other structures?

20 A. You know, just -- just a total
21 affiliate model. You know, we want to look like
22 a group, we want to be able to negotiate
23 stronger with an insurance company, so we're
24 banding together, things like that.

25 Q. DSOs typically have infrastructure

1 CONFIDENTIAL - HAL MULLER
2 built around supporting the various offices?

3 A. Correct.

4 Q. DSOs typically aren't dentists just
5 being pulled together to get a lower price?

6 MR. McDONALD: Object to the form.

7 A. I can't define them all, right? There
8 are -- that may be the exact reason some of them
9 have gotten together.

10 Q. There's usually an ownership and a
11 management team for the DSO?

12 MR. McDONALD: Object to the form.

13 A. There is usually a management team.

14 Q. There's usually ownership?

15 MR. McDONALD: Object to the form.

16 A. There is a management team. Ownership
17 in what is -- I'm not privy to all the ways
18 people own or get revenue from an organization.

19 Q. There's a huge difference between a
20 buying group and a DSO?

21 MR. McDONALD: Object to the form.

22 A. Depends how you define "buying group."

23 Q. How do you define "buying group"?

24 A. I think it's a very general term. It
25 could have many meanings. I'll give you some

1 CONFIDENTIAL - HAL MULLER
2 examples.

3 I'm -- we have buying groups that are
4 a bunch of dentists that are -- have come
5 together as an association. Let's say the New
6 York State dentists may pull together and say,
7 hey, let's form a group and see if we can get
8 better pricing and can we get better payment.

9 The biggest problem right now in
10 dentistry is -- is reimbursement from insurance
11 companies, so people are banding together to try
12 to negotiate better, which is really why the
13 DSOs were stronger back in the day. And so
14 there's one definition.

15 There are somebody like Hal Muller
16 decides that I'm going to make 3 percent on a
17 whole bunch of people's purchases, and I'll call
18 some people and see if I can negotiate better
19 prices and call it Hal's Buying Group.

20 There are DSOs that are, especially as
21 they keep evolving, that may just be a buying
22 group. There are large groups like Alpha Omega,
23 which is almost around the world, but let's say
24 in the U.S. that Henry Schein has been selling
25 their members for years and offering them a

1 CONFIDENTIAL - HAL MULLER
2 discount because they're part of Alpha Omega
3 even though Alpha Omega may not have come to
4 Schein, but still you could say that's a buying
5 group.

6 We sell NYU Dental School. We offer a
7 discount to their professors that are also in,
8 quote/unquote, private practice. So you could
9 call those all buying groups.

10 Q. I want to explore that a little bit
11 more, but I want to step back and talk about
12 something you mentioned.

13 You talked about if New York State
14 Dentists Association got together and created a
15 group to get better pricing, that would be
16 considered buying group.

17 Do you know of other state
18 associations that have created buying groups?

19 A. For private practice dentists?

20 Q. Correct.

21 A. I mentioned New York. I'm not sure
22 they even have one. I was just using that as an
23 example.

24 I don't know if a whole state -- I
25 know that California was thinking of it. I know

1 CONFIDENTIAL - HAL MULLER
2 that Georgia was thinking of it. I don't know
3 how those proceeded or -- or what happened or if
4 there's any others.

5 Q. What about Texas?

6 A. I know there are some issues in Texas
7 that have been around -- yeah, I would say that
8 they came together and tried to create a buying
9 group.

10 Q. Is that the TDA Perks Group?

11 A. I wouldn't --

12 MR. McDONALD: Object to the form.

13 A. I'm sorry.

14 I wouldn't know the name of it.

15 Q. Is it your understanding that a DSO
16 has infrastructure built around supporting
17 offices, not just being pulled together to get a
18 lower price?

19 MR. McDONALD: Object to the form.

20 A. Can you ask that again?

21 Q. Is it your understanding that a DSO
22 has infrastructure built around supporting
23 offices, not just being pulled together to get a
24 lower price?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER

2 A. I can't attest that that's always the
3 case, but many of the times that's the case.

4 Q. So your understanding there's usually
5 ownership and a DSO for locations and a
6 management team?

7 MR. McDONALD: Object to the form.
8 Asked and answered.

9 A. I'm not -- it's not always ownership.

10 Q. Are you objecting that there's usually
11 ownership?

12 MR. McDONALD: Object to the form.

13 A. The word "usually"? "Sometimes" would
14 be a better word.

15 Q. There's a huge difference between a
16 buying group and a DSO?

17 MR. McDONALD: Object to the form.
18 Asked and answered about five minutes ago.

19 A. It all depends how you define "buying
20 group."

21 Q. You wouldn't say there's a huge
22 difference between a buying group and a DSO?

23 MR. McDONALD: Object to the form.

24 A. It depends.

25 Q. Do you remember giving an

1 CONFIDENTIAL - HAL MULLER
2 investigational --

3 MR. McDONALD: Hang on. Why don't you
4 let him finish his answer before you
5 interrupt him.

6 A. The reason I was answering the way I
7 was is there are buying groups that take a fee,
8 a monthly fee. There are buying groups that
9 take a percentage of revenue. There are DSOs
10 that take a percentage of revenue as their fee.

11 In those two cases, you can see
12 they're both the same, and a buying group may
13 have a structure, an infrastructure, as a DSO
14 has an infrastructure.

15 Q. Do you recall giving testimony at your
16 investigational hearing in this matter?

17 A. I don't recall what I spoke about last
18 time.

19 Q. You recall giving testimony?

20 A. I -- yes, I was in a forum like this.

21 Q. And do you recall that you told the
22 truth while you gave your testimony?

23 A. Yes, I told the truth.

24 Q. Do you have any reason to doubt why
25 what you said may not have been accurate?

1 CONFIDENTIAL - HAL MULLER

2 MR. McDONALD: Object to the form.

3 If you have a specific passage you
4 want him to look at, then you should do
5 that.

6 Q. Do you understand my question?

7 A. I'm -- I'm hesitant to answer the
8 question because you're implying that I might
9 have said something different then than I'm
10 saying now because I'm more knowledgeable a year
11 later of -- of this whole issue.

12 Q. So you're refusing to answer my last
13 question?

14 MR. McDONALD: No. Object to the
15 form. He just answered it.

16 A. I just answered it.

17 Q. I'm going to hand you a document
18 that's been premarked as CX9002. This is a copy
19 of your transcript of your investigational
20 hearing.

21 I'm going to reference you to page 82,
22 lines 14 through 17.

23 (Exhibit CX9002-001 through 084,
24 Transcript of Hal Muller dated June 29,
25 2017, marked for identification, as of this

1 CONFIDENTIAL - HAL MULLER
 2 date.)
 3 BY MS. ROSNER:
 4 Q. Are you familiar with how to read a
 5 transcript?
 6 A. Yes.
 7 What page? I'm sorry. 68?
 8 Q. The page numbers are at the top of the
 9 small four squares, so we're going to page 82.
 10 Page 82 appears on page CX9002-022.
 11 Take a moment to review, and let me
 12 know when you're finished.
 13 MR. McDONALD: To be fair, Jasmine,
 14 you just want him to read page 82, or is
 15 there some question and answer you want him
 16 to look at?
 17 MS. ROSNER: I believe I said I was
 18 going to reference lines 14 through 17. If
 19 not, I apologize.
 20 MR. McDONALD: I'm sorry. I missed
 21 that.
 22 (Document review.)
 23 THE WITNESS: Okay.
 24 BY MS. ROSNER:
 25 Q. You've had an opportunity to review

1 CONFIDENTIAL - HAL MULLER
 2 A. I'm saying today that things could
 3 continue to change. We had 50 DSOs as little as
 4 18 months ago, and today there are hundreds. So
 5 the definitions are starting to cross a lot
 6 more.
 7 Q. In the time period from 2012 to 2015,
 8 were the definitions more similar to your
 9 testimony from June 2012?
 10 MR. McDONALD: Object to the form.
 11 Q. Excuse me. From June 2017?
 12 MR. McDONALD: Object to the form.
 13 It's vague and an unfair question, unless
 14 you want him to read the entire transcript
 15 and tell you whether or not what he has in
 16 there is accurate and also give him a copy
 17 of his errata sheet to see what, if
 18 anything, he changed.
 19 But you can answer the question if you
 20 understand it.
 21 THE WITNESS: Could you ask the
 22 question again?
 23 BY MS. ROSNER:
 24 Q. Thinking back to the time period from
 25 2011 to 2015.

1 CONFIDENTIAL - HAL MULLER
 2 page 82 of CX9002?
 3 A. Yes.
 4 Q. I'm going to read from lines 14
 5 through 17.
 6 "There is a huge difference between a
 7 buying group and a DSO, so it becomes a little
 8 bit obvious in just their conversations that
 9 they're actually in an ownership or management
 10 agreement with locations."
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. Your testimony is that there's a huge
 14 difference between a buying group and a DSO?
 15 MR. McDONALD: Objection.
 16 Q. Is that right?
 17 MR. McDONALD: Object to the form.
 18 Asked and answered.
 19 A. That's what you're reading, yes.
 20 Q. Are you changing that testimony today?
 21 A. I'm just expanding on it.
 22 Q. Is the expansion any different in
 23 meaning from what you testified to in June 2017?
 24 MR. McDONALD: Object to the form.
 25 The testimony speaks for itself.

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: So now you're changing
 3 the time period?
 4 Q. Would the testimony about being a huge
 5 difference between a buying group and a DSO be
 6 accurate?
 7 MR. McDONALD: Object to the form.
 8 A. I would say there's a difference
 9 between then and today, yes, in the fact that
 10 there are so many more DSOs and so many more
 11 buying groups that they're -- they're looking a
 12 lot more similar.
 13 Q. So, just so I understand you, it
 14 sounds like your definition of "DSO" has changed
 15 over time?
 16 MR. McDONALD: Object to the form.
 17 A. Yes, because DSOs have changed
 18 their -- again, the number has -- has changed
 19 dramatically.
 20 Q. That makes sense.
 21 And at the time of 2011 through 2015,
 22 the differences between buying groups and DSOs
 23 are reflected in your testimony from June 2017?
 24 MR. McDONALD: Object to the form.
 25 A. To the best of my knowledge, yes.

1 CONFIDENTIAL - HAL MULLER
 2 Q. You can put that aside.
 3 Are you familiar with the term "CHC"?
 4 A. I am. It stands for community health
 5 center.
 6 Q. CHCs are not made up of private
 7 practitioners?
 8 MR. McDONALD: Object to the form.
 9 A. A community health center has medical,
 10 dental and mental health. The people that work
 11 at them may be private practitioners that donate
 12 their time on a day of a week or something like
 13 that. So, in that regard, there are private
 14 practitioners who work at CHCs, but a CHC is a
 15 community health center.
 16 Q. CHCs care for indigent populations?
 17 A. Primarily, yes.
 18 Q. Do they care for anyone else?
 19 A. Yes; they care for anybody. Some CHCs
 20 are in very remote areas where there may be the
 21 lack of dentists, so they will always say that
 22 they cater to everybody.
 23 Q. CHCs are non-profit entities?
 24 A. Yes.
 25 Q. CHCs sometimes join together to create

1 CONFIDENTIAL - HAL MULLER
 2 buying groups?
 3 A. Yes.
 4 Q. CHC buying groups allow the CHC
 5 members to gain better pricing on supplies?
 6 A. Correct.
 7 Q. You're familiar with the term "GPO"?
 8 A. I am.
 9 Q. "GPO" stands for group purchasing
 10 organization?
 11 A. Yes.
 12 Q. GPOs are common in many industries
 13 such as medical, vision, and others?
 14 A. Yes.
 15 Q. GPOs pool volume of members to
 16 negotiate discounts with manufacturers and
 17 distributors?
 18 A. Yes.
 19 Q. GPOs, as that term is used in the
 20 medical industry, currently do not have a large
 21 presence in dental?
 22 A. Correct.
 23 Q. You distinguish between GPOs that
 24 exist in medical and groups that pool volume for
 25 prices in dental?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 Is that a question? Why don't you
 4 read it -- why don't you say it again,
 5 Jasmine, it goes -- a little slower. You're
 6 talking very fast this morning.
 7 A. So can you repeat the question?
 8 Q. You distinguish between GPOs that
 9 exist in medical and groups that pool volume for
 10 lower prices in dental?
 11 A. They're two different terms and
 12 structures for buying groups. You could easily
 13 say a GPO is a buying group.
 14 Q. Unlike medical GPOs, buying groups in
 15 dental have not historically negotiated with
 16 manufacturers directly for lower prices?
 17 A. Correct.
 18 Q. Historically, buying groups in dental
 19 have negotiated for discounts with distributors
 20 only?
 21 A. Correct.
 22 Q. Although GPOs and buying groups in
 23 dental refer to different entities, sometimes
 24 you refer to buying groups as GPOs?
 25 A. I think Schein as an organization it

1 CONFIDENTIAL - HAL MULLER
 2 is, yes, the terms are interchangeable.
 3 Q. When others in the dental industry use
 4 the term "GPO," you understand them to mean
 5 buying groups?
 6 MR. McDONALD: Object to the form.
 7 A. All GPOs have a buying group
 8 component, so if somebody says a GPO, you would
 9 infer that there's also a buying group
 10 component.
 11 Q. To the extent that Schein works with
 12 buying groups, buying groups would be Schein
 13 customers?
 14 A. If we're working with the buying
 15 group, then the customer of the buying group
 16 that we sell would be a Schein customer.
 17 Q. When Schein works with buying groups,
 18 it has a contract or negotiates price with a
 19 buying group?
 20 A. I can't attest to there's always a
 21 contract.
 22 Q. It negotiates prices with a buying
 23 group?
 24 A. Yes.
 25 Q. The buying group would be a Schein

1 CONFIDENTIAL - HAL MULLER
2 customer as opposed to a competitor?

3 A. I have a problem with the way you're
4 asking the question. You're -- the buying group
5 is really not our customer. The person who's
6 buying the supplies is our customer. The buying
7 group is -- is in between us, but the customer
8 is still Schein's. I don't know if the buying
9 group is Schein's.

10 Q. The buying group brings you customers?

11 A. Sometimes.

12 Q. Are buying groups competitors of
13 Schein?

14 MR. McDONALD: Object to the form.

15 A. They're competitors of Schein only if
16 they're working with a competitor of ours.

17 Q. Do buying groups sell dental products?

18 A. No.

19 Q. Do buying groups offer services for
20 dental equipment?

21 A. No.

22 Q. I understand your testimony is likely
23 to be that Schein has always done business with
24 buying groups.

25 Without talking about specific groups,

1 CONFIDENTIAL - HAL MULLER

2 I want to better understand which division
3 within Schein's dental business has had
4 responsibility for buying groups and when. I
5 know this changed over time, so I want to walk
6 through it step-by-step.

7 When, to your knowledge, did Schein
8 first start doing business with buying groups?

9 A. Probably before I was there, and I've
10 been there for 28 years.

11 Q. So when you joined Special Markets,
12 who had responsibility for buying groups,
13 Special Markets or Henry Schein Dental?

14 MR. McDONALD: Object to the form.

15 A. I created Special Markets. So, before
16 Special Markets, it was Henry Schein Dental.

17 Q. And when you created Special Markets,
18 did the assignment of buying group
19 responsibility change?

20 MR. McDONALD: Object to the form.

21 A. No, buying groups have been in both
22 divisions throughout the whole period.

23 Q. So, prior to your creating Special
24 Markets, buying groups resided within HSD?

25 A. Correct.

1 CONFIDENTIAL - HAL MULLER

2 Q. And when you created Special Markets,
3 Special Markets shared the responsibility for
4 buying groups?

5 A. Right. I'm not even sure there were
6 official buying groups 25 years ago, except for
7 people like Alpha Omega and some other groups
8 that I don't remember that actually Schein had
9 offered discounts to because they were part of
10 an association.

11 Q. What is Alpha Omega?

12 A. Alpha Omega is a -- almost a
13 fraternity of Jewish dentists. I'm not sure
14 it's completely just dentists, but people that
15 have almost joined while they were in college.

16 Q. And does Alpha Omega get discounts on
17 supplies through Schein?

18 A. Yes, they do.

19 Q. Is there any ownership structure been
20 Alpha Omega and any of the dental practices?

21 A. I don't know the structure.

22 Q. Who would know?

23 A. That's a good question. I would hope
24 somebody like Tim Sullivan, but I'm not sure.

25 Q. So when you created Special Markets,

1 CONFIDENTIAL - HAL MULLER

2 did Special Markets then share in the
3 responsibility for buying groups with HSD?

4 A. I would say that it was not something
5 we discussed in the creation.

6 Q. At any point, did Special Markets gain
7 some responsibility for buying groups?

8 A. For formal buying groups, yes.

9 Q. When was that?

10 A. I have no idea.

11 Q. Was it in the 2000s? Was it in the
12 1990s?

13 A. As I said, I have no idea.

14 Q. Who was the first buying group that
15 Special Markets had responsibility for?

16 MR. McDONALD: Object to the form.

17 A. I don't know.

18 Q. It's your testimony that Special
19 Markets at some point in time did have
20 responsibility for buying groups?

21 A. For formal contract-looking groups,
22 yes, they would be sent to me if the sales team
23 in dental wanted to share that information.
24 There are a lot of buying groups that exist in
25 our Dental Division that I'm totally unaware of.

1 CONFIDENTIAL - HAL MULLER
 2 Q. What do you mean by "formal
 3 contract-looking groups"?
 4 A. If -- if a group wanted to come to
 5 Schein and had a formal proposal and could prove
 6 that they were in fact a buying group and had a
 7 list of members and stuff like that, then I
 8 think that they would probably head my way.
 9 Q. So if a buying group could prove that
 10 they were a buying group and had a formal list
 11 of members, they would go to Special Markets.
 12 What types of buying groups would then
 13 stay in HSD?
 14 A. Ones that were -- some were created by
 15 our sales teams and others could have just been
 16 that they were aware of a group and they were
 17 trying to break into it. A lot of times that
 18 did not come to Special Markets.
 19 Q. Why would that not come to Special
 20 Markets?
 21 A. Because Special Markets is not paid
 22 full commission to our sales team, so many
 23 customers are kept in Henry Schein that could
 24 have fit the Special Markets definition.
 25 Q. These groups that HSD was trying to

1 CONFIDENTIAL - HAL MULLER
 2 break into, would they have had -- strike
 3 that -- would they have been formal
 4 contract-looking groups?
 5 A. I'm not sure.
 6 Q. I guess I don't really understand the
 7 distinction you're making between the types of
 8 groups that would come to HSD versus the types
 9 of groups that would go to Special Markets.
 10 A. Okay. If -- let's go -- use the
 11 term -- go back to GPO.
 12 If something was as organized as a
 13 GPO, where they have many more services than
 14 just the price of merchandise, then they would
 15 traditional come to us. If somebody was just
 16 looking for a better price and it might have
 17 been regional, it would -- could easily have
 18 stayed in Henry Schein Dental.
 19 And as a matter of fact, there are
 20 lookalikes that have come out through this --
 21 these proceedings -- that we thought were DSOs
 22 that were in fact sophisticated buying groups.
 23 Q. So one characteristic that you used to
 24 distinguish what goes to Special Markets versus
 25 which buying groups go to HSD is whether or not

1 CONFIDENTIAL - HAL MULLER
 2 the group offers more services than just price?
 3 A. Correct.
 4 Q. Are there other characteristics that
 5 would help you distinguish where a buying group
 6 should fall?
 7 A. Most of the time if it was part of a
 8 network organized group already, so when you --
 9 we talked about CHCs, right? So CHCs already
 10 exist, the Illinois Primary Care Association
 11 already exists, and then out of that
 12 organization, they say, ew, wouldn't it be good
 13 to get better prices on insurance, better prices
 14 on supplies and equipment?
 15 Those were traditionally the types of
 16 groups that would come to Special Markets.
 17 Q. So you're referring to a group that
 18 exists and creates a buying group on the side?
 19 A. Pretty much, yes.
 20 Q. Any other characteristics that may
 21 help you distinguish whether a buying group goes
 22 to Special Markets or HSD?
 23 A. I'm sure there are some others, but
 24 they don't come to mind right now.
 25 Q. What about if a buying group has

1 CONFIDENTIAL - HAL MULLER
 2 ownership in the offices?
 3 A. If there was such a thing, and I'm not
 4 sure there is, then, yes, that would probably
 5 come to us.
 6 Q. Why are you not sure that there's such
 7 a thing as a buying group having ownership in
 8 offices?
 9 A. Because I couldn't tell you -- I
 10 couldn't name one.
 11 Q. You don't know of any buying groups
 12 that have ownership in the offices?
 13 A. Correct.
 14 Q. What about if a buying group provided
 15 management services such as payroll, HR,
 16 accounts receivable, accounts payable, would
 17 that distinguish whether or not the buying group
 18 should be in Special Markets versus HSD?
 19 A. Yes.
 20 Q. And where would that buying group
 21 fall?
 22 A. If it was still called --
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I'm sorry.
 25 MR. McDONALD: I think when you're

1 CONFIDENTIAL - HAL MULLER
2 asking him these questions, to be fair,
3 Jasmine, as you started this all out, it
4 changed over time, and so when you're asking
5 him where does it fall, you need to tell him
6 the time period.

7 So, go ahead. You want to ask the
8 question again? I interrupted you. I'm
9 sorry.

10 MS. ROSNER: Can you read back my
11 question, please?

12 MR. McDONALD: It was a really good
13 question.

14 (Record read as follows:

15 "Q And where would that buying group
16 fall?")

17 THE WITNESS: Can you go back one more
18 step?

19 (Record read as follows:

20 "Q What about if a buying group provide
21 management services such as payroll, HR,
22 accounts receivable, accounts payable, would
23 that distinguish whether or not the buying
24 group should be in Special Markets versus
25 HSD?")

1 CONFIDENTIAL - HAL MULLER
2 MR. McDONALD: Object to the form.
3 Vague as to time.

4 THE WITNESS: Okay. Not only is --
5 would the time have been a factor; I don't
6 know if there is such a thing. To me you're
7 defining a management company, not a buying
8 group.

9 BY MS. ROSNER:

10 Q. You make a distinguish -- strike that.

11 You distinguish between management
12 companies and buying groups?

13 A. Yes.

14 Q. Where would a management company fall,
15 either HSD or SM?

16 A. Depending on the size of the business,
17 it would fall in either group.

18 Q. What's the size threshold that would
19 determine where it falls?

20 MR. McDONALD: Object to the form.

21 Hang on. Object to the form. Vague
22 as to time.

23 A. Sorry. I need to ask you the time
24 there.

25 Q. In the 2011 to 2015 timeframe, who

1 CONFIDENTIAL - HAL MULLER
2 would take responsibility for management groups?

3 MR. McDONALD: Object to the form.

4 A. From '11 to '14, it would have been
5 Special Markets. In '15, it would be in either
6 group, depending on the size of the
7 organization.

8 Q. So you have indicated that there was
9 some change in the 2014 to 2015 timeframe.

10 Can you describe to me what that
11 change was?

12 A. Yes. The industry was changing and
13 consolidating, and it got to the point where
14 what Special Markets was doing and what Henry
15 Schein was doing -- Henry Schein Dental was
16 doing started crossing paths a lot.

17 So I started the ball rolling to
18 create -- to start moving some of the smaller
19 management companies into HSD because I felt
20 that that's the future of the industry.

21 So Special Markets took the top 50
22 dental support organizations and moved anything
23 below that into HSD. The way -- the broad
24 definition of "buying groups" meant that there
25 was then most of them would have fallen into

1 CONFIDENTIAL - HAL MULLER
2 Henry Schein Dental because even the community
3 health center GPOs went to Henry Schein Dental
4 at that time. So it wasn't just the DSOs.

5 But because we moved certain resources
6 that had expertise in the community health
7 center business, we moved those as well.

8 Q. So, starting in 2015, did Special
9 Markets relinquish all responsibility for buying
10 groups, or did it maintain some responsibility?

11 MR. McDONALD: Object to the form.

12 A. Depending on the size of them, some of
13 them stayed in Special Markets.

14 Q. Just a minute ago we went over a
15 variety of characteristics that allowed you to
16 determine whether or not a buying group would go
17 into Special Markets versus HSD.

18 One of the things you mentioned was
19 that if it was a buying group that offered more
20 services than just price, it went to Special
21 Markets; and if it was just price, it went to
22 HSD.

23 Did I understand that correctly?

24 A. I don't think so. I think that both
25 divisions didn't really embrace buying groups

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1 CONFIDENTIAL - HAL MULLER
 2 just solely on putting a bunch of people
 3 together for a better price. I mean, we like
 4 there to be some growth for our organization.
 5 Q. What specific characteristics
 6 distinguish a buying group that can bring growth
 7 to the organization versus buying groups that do
 8 not?
 9 A. I'll give you a perfect example, and
 10 maybe this will help.
 11 I got a call a couple years ago from a
 12 graduate student from a school in Pennsylvania
 13 who called and said that he was going to put a
 14 bunch of dentists together to form a buying
 15 group that would help Henry Schein's market
 16 share grow because we didn't have 60 percent of
 17 the market.
 18 That is -- could be a very typical
 19 phone call. It's kind of hard to say to that
 20 person, okay, great, nice meeting you, why don't
 21 you just give me that list of dentists and we'll
 22 give you a discount, we'll give those offices a
 23 discount. You know, that -- those are the kind
 24 of characteristics that we would not really
 25 entertain; somebody just going in the business

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1 CONFIDENTIAL - HAL MULLER
 2 Q. Anything else?
 3 A. No, I think that's a good general
 4 description.
 5 Q. So you've mentioned groups can add
 6 value and make themselves more attractive to
 7 Schein by offering management services,
 8 education, activities to help grow practices.
 9 Are there other characteristics that
 10 Schein looks for when evaluating a buying group
 11 opportunity?
 12 MR. McDONALD: Object to form.
 13 THE WITNESS: Sorry.
 14 MR. McDONALD: Go ahead.
 15 THE WITNESS: There may be. I'm just
 16 giving you the ones that come to the top of
 17 my head.
 18 BY MS. ROSNER:
 19 Q. Is there anything that you could look
 20 at to refresh your recollection about what some
 21 of these other characteristics might be?
 22 A. I don't -- I'm sure if I read
 23 characteristics of a bunch of buying groups, it
 24 would help me, it would help. You know, again,
 25 all buying groups aren't the same, right? Some

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1 CONFIDENTIAL - HAL MULLER
 2 to get a bunch of dentists that already buy from
 3 us at a lower price. It's almost, you know,
 4 counterintuitive to good business practices.
 5 Q. So, to use your example, what are some
 6 things that that dentist could have added to its
 7 group that would make that group more attractive
 8 for Henry Schein?
 9 A. Okay. So that individual wasn't a
 10 dentist. He was just a person. Had he said
 11 that he was going to do some management services
 12 to help with insurance rates, to help with phone
 13 rates, to help with, you know, technology and
 14 education to the members, it would be much more
 15 of a help to Schein and to the customer.
 16 Q. Other than offering management
 17 services and education, are there other things
 18 that this individual could have provided to make
 19 the opportunity more attractive to Schein?
 20 MR. McDONALD: Object to the form.
 21 A. Yeah, a way -- I guess the big thing
 22 for us would be what is that buying group doing
 23 to help grow the practices. So, you know, I
 24 don't remember the whole list, but that to me
 25 would be the primary thing.

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1 CONFIDENTIAL - HAL MULLER
 2 charge a monthly fee. Some charge a percentage
 3 of revenue.
 4 Q. Do buying groups have to have all of
 5 these characteristics that we've discussed in
 6 order for Schein to do business with them?
 7 A. No.
 8 Q. Do buying groups have to have some
 9 magic combination of these characteristics in
 10 order for Schein to do business with them?
 11 MR. McDONALD: Object to the form.
 12 A. I can't list you all of our buying
 13 groups. So, you know, there are those in
 14 Special Markets that I could give that
 15 definition, but there are those in HSD that may
 16 have different definitions the way they
 17 categorize them.
 18 Q. Is one of these characteristics
 19 sufficient for Schein to do business with a
 20 buying group?
 21 MR. McDONALD: Object to the form.
 22 A. In Special Markets, we would want a
 23 multitude of those. In Henry Schein Dental, I
 24 can't answer what they use.
 25 Q. How is Schein able to objectively

1 CONFIDENTIAL - HAL MULLER
2 measure whether or not a buying group adds
3 enough value to warrant doing business with
4 Schein?

5 MR. McDONALD: Object to the form.

6 A. I don't know if I could answer that
7 question.

8 Q. How do you objectively measure whether
9 a buying group adds enough value to warrant
10 doing business?

11 A. Again, in my division, we traditional
12 worked with people that had already formed for
13 some other reason and that buying group was a
14 component thereof. So we have, you know, a
15 buying group in -- it happens to be in the State
16 of Georgia. It's a bunch of offices that got
17 together, primarily for insurance purposes, to
18 negotiate better prices in insurance.

19 Those people are in a geographical
20 area that they probably don't compete with each
21 other, and they then came to us and asked for a
22 buying group component or could we give a
23 discount to that group. And so to me that's
24 more of a Special Markets customer that they,
25 again, exist as a different organization,

1 CONFIDENTIAL - HAL MULLER
2 primarily.

3 Q. So my question was how do you
4 objectively measure whether a buying group adds
5 value, and your answer provided an example of a
6 group that was preexisting and added a buying
7 group on the side.

8 Are you saying that any group that's
9 preexisting and adds a buying group on the side
10 Special Markets would do business with?

11 MR. McDONALD: Object to the form.

12 A. It would have been one of the
13 characteristics that would have steered it
14 towards us.

15 Q. It would have been a characteristic
16 that steered it towards Special Markets versus
17 HSD?

18 A. Correct.

19 Q. Is it one of the characteristics that
20 would have prompted Special Markets to enter
21 into a contract with that group?

22 A. If we came to terms with each other,
23 it would help to do a contract, yes.

24 Q. Are there other characteristics that
25 you look for when evaluating a buying group?

1 CONFIDENTIAL - HAL MULLER

2 MR. McDONALD: Object to the form.

3 Asked and answered.

4 A. The only other characteristic that I
5 can think of would be are their members buying
6 from competition versus buying from us
7 completely.

8 Q. It's important for you to understand
9 whether or not the buying group is able to bring
10 Schein new volume?

11 A. Correct.

12 Q. Anything else?

13 A. Not that comes to mind.

14 Q. I want to switch gears a little bit
15 and talk about Smile Source.

16 You're familiar with the entity Smile
17 Source?

18 A. Yes, I am.

19 Q. Smile Source is a customer of Schein?

20 A. Today?

21 Q. Yes.

22 A. I'm not sure they are today.

23 Q. Smile Source was previously a customer
24 of Schein?

25 A. Yes.

1 CONFIDENTIAL - HAL MULLER

2 Q. Smile Source first became a customer
3 of Schein around 2005?

4 A. Somewhere in that area.

5 Q. Schein's relationship with Smile
6 Source was started by a man name Glenn Meltzer?

7 A. Okay.

8 Q. Is that your understanding?

9 MR. McDONALD: Well, is that "yes," or
10 you're accepting what she's telling you?

11 A. Glenn Meltzer was my VP of Sales, so
12 it's possible that it came through the -- I
13 mean, Glenn was around at that time, so, yes, I
14 would say that he probably worked with that
15 account.

16 Q. You don't have personal knowledge, but
17 you're assuming that's correct?

18 A. Correct. Thank you.

19 Q. Initially, Smile Source was a Special
20 Markets customer?

21 A. Yes.

22 Q. Smile Source is a buying group?

23 A. Correct.

24 Q. Smile Source is a membership-based
25 organization?

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1 CONFIDENTIAL - HAL MULLER
 2 A. Yes.
 3 Q. Smile Source's members are independent
 4 private practice dentists?
 5 A. As far as I know.
 6 Q. Smile Source provides a variety of
 7 services and benefits to its members?
 8 A. Correct.
 9 Q. Smile Source assists its members with
 10 marketing?
 11 A. Correct.
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Sorry.
 14 BY MS. ROSNER:
 15 Q. Smile Source assists its members with
 16 practice management?
 17 MR. McDONALD: Object to the form.
 18 A. I don't believe they did at the time.
 19 Q. What time are you referring to?
 20 A. At the beginning when they were in
 21 Special Markets.
 22 Q. At any point did Smile Source begin
 23 assisting its members with practice management?
 24 MR. McDONALD: Object to the form.
 25 A. I'm not aware of them being in the

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1 CONFIDENTIAL - HAL MULLER
 2 Q. What's the average discount that Smile
 3 Source received with Schein initially?
 4 MR. McDONALD: Object to the form.
 5 A. 20 percent.
 6 Q. Are you familiar with discounts that
 7 private practice dentists are able to get on
 8 their own through HSD?
 9 A. I am. It's a -- I'm aware that the
 10 field sales consultant has the rein of what that
 11 percentage is.
 12 Q. What's the range, typically, for an
 13 independent private practice dentist?
 14 MR. McDONALD: Object to the form.
 15 Lack of foundation.
 16 A. Yeah, I find out more and more that
 17 some discounts are greater than I ever expected.
 18 Q. You don't know the average --
 19 A. No.
 20 Q. -- discount?
 21 A. No.
 22 Q. Smile Source is not a DSO?
 23 A. Correct.
 24 Q. Smile Source does not have an
 25 ownership stake in any of its members'

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1 CONFIDENTIAL - HAL MULLER
 2 practice management business.
 3 Q. Smile Source provides educational
 4 opportunities for its members?
 5 MR. McDONALD: Object to the form.
 6 A. Yes.
 7 Q. Smile Source provides group purchasing
 8 opportunities?
 9 MR. McDONALD: Object to the form.
 10 A. Yes.
 11 Q. Group purchasing allows Smile Source
 12 to leverage its members' purchasing volume?
 13 A. Yes.
 14 Q. By leveraging its members purchasing
 15 volume, Smile Source is better able to negotiate
 16 discounts for its members?
 17 MR. McDONALD: Object to the form.
 18 A. Yes.
 19 Q. The discounts that Smile Source
 20 negotiates for its members are larger than any
 21 individual member can negotiate on his or her
 22 own?
 23 MR. McDONALD: Object to the form.
 24 Lack of foundation.
 25 A. Yes, I could not attest to that.

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1 CONFIDENTIAL - HAL MULLER
 2 practices?
 3 MR. McDONALD: Object to the form.
 4 A. Not that I know of. They didn't at
 5 that time. I do not know if they do now.
 6 Q. Smile Source is not a CHC buying
 7 group?
 8 A. Correct.
 9 Q. I want to focus on the time prior to
 10 2012. At that time, Smile Source was a Special
 11 Markets customer.
 12 While Smile Source was a Special
 13 Markets customer, it was a great partner?
 14 MR. McDONALD: Object to the form.
 15 A. I would say we had a very good
 16 relationship.
 17 Q. Through Smile Source, Henry Schein
 18 gained customers that it didn't have previously?
 19 A. Correct.
 20 Q. These customers were private practice
 21 dentists?
 22 A. Correct.
 23 Q. Through Smile Source, Henry Schein
 24 gained customers who were previously customers
 25 of other distributors?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 A. Yes, some of them were Schein
 4 customers; some of them were not.
 5 Q. Through Smile Source, Henry Schein
 6 took customers from its competitors?
 7 A. Yes.
 8 Q. Through Smile Source, Henry Schein
 9 gained dentist customers who were previously
 10 with Patterson?
 11 MR. McDONALD: Object to the form.
 12 A. I believe so.
 13 Q. Through Smile Source, Henry Schein
 14 gained customers who were previously with Benco?
 15 MR. McDONALD: Object to the form.
 16 A. I do not -- I'm not sure.
 17 Q. Smile Source enabled Henry Schein to
 18 grow its customer base?
 19 A. Yes.
 20 Q. In some instances, Henry Schein
 21 dentists split their purchase volume among
 22 multiple distributors?
 23 A. Now we're talking about a general
 24 comment?
 25 Q. Generally.

1 CONFIDENTIAL - HAL MULLER
 2 A. There was a period in there that I
 3 decided to suggest that moving this account into
 4 Henry Schein Dental.
 5 Q. When was that?
 6 A. I don't know. Prior to them going
 7 into Henry Schein Dental.
 8 Q. Smile Source offered its members
 9 discounts with Schein, and only Schein, prior to
 10 2012?
 11 A. While they were with us, yes.
 12 Q. Smile Source offered its members
 13 reduced healthcare insurance?
 14 MR. McDONALD: Object to the form.
 15 A. I don't know.
 16 Q. Smile Source offered its members a
 17 marketing fund pool?
 18 MR. McDONALD: Object to the form.
 19 A. Yes.
 20 Q. Smile Source offered its members
 21 website design?
 22 MR. McDONALD: Object to the form.
 23 A. I think that was under the marketing
 24 services. I don't know if I knew the exact
 25 items.

1 CONFIDENTIAL - HAL MULLER
 2 A. Yes, many dentists buy from various
 3 distributors.
 4 Q. Through Smile Source, Henry Schein
 5 gained purchase volume from its existing
 6 customers that it did not previously have?
 7 MR. McDONALD: Object to the form.
 8 A. That was the premise, yes.
 9 Q. Smile Source enhanced Henry Schein's
 10 opportunity to win 100 percent of some of
 11 Schein's existing customer base?
 12 MR. McDONALD: Object to the form.
 13 A. It gave us that ability, yes.
 14 Q. Smile Source was expanding its
 15 membership when you were working with them prior
 16 to 2012?
 17 A. Correct.
 18 Q. You wanted to continue Special
 19 Markets' relationship with Smile Source?
 20 MR. McDONALD: Object to the form.
 21 A. No.
 22 Q. Prior to 2012, you didn't want to
 23 continue Special Market's relationship with
 24 Smile Source?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Smile Source was a value-added buying
 3 group?
 4 A. To their members, yes.
 5 Q. Smile Source had a great model?
 6 MR. McDONALD: Object to the form.
 7 A. If that's your opinion.
 8 Q. Is it your opinion that Smile Source
 9 had a great model?
 10 A. I don't think I walked around saying
 11 they have a great model. I did like their
 12 model.
 13 Q. You don't recall saying Smile Source
 14 had a great model?
 15 A. I do not. You can show me that I said
 16 it, and I wouldn't be surprised. So you don't
 17 need to spend the time to do that, but... At
 18 the time, I could have used that word.
 19 Q. At the time, you would have thought
 20 that Smile Source had a great model?
 21 MR. McDONALD: Object to the form.
 22 A. What I'm saying is I don't know if the
 23 word "great." I liked their model, so we're --
 24 it's semantics.
 25 Q. Continuing Henry Schein's relationship

1 CONFIDENTIAL - HAL MULLER
 2 with Smile Source was the right thing to do for
 3 the future?
 4 MR. McDONALD: Object to the form.
 5 A. That was Hal Muller's opinion.
 6 Q. You are Hal Muller?
 7 A. I am.
 8 Q. That was your opinion?
 9 A. That was my opinion.
 10 Q. Special Markets anticipated that HSD
 11 might run into issues with Smile Source?
 12 A. Say that again.
 13 Q. Special Markets anticipated that HSD
 14 might run into issues with Smile Source?
 15 A. The reason that I suggested moving the
 16 business to Henry Schein Dental was because of
 17 what they were starting to preach as their
 18 marketing message, which was that they -- that
 19 dentists should join them instead of joining a
 20 DSO, and seeing as I headed up the DSO movement
 21 with a couple of other people, I felt it was
 22 better for it not to be in our division.
 23 Q. If Smile Source recruited existing
 24 Schein customers, FSCs might complain?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 A. For Henry Schein total, correct.
 3 Q. Smile Source -- strike that.
 4 Special Markets was afraid that if
 5 Schein dropped Smile Source, it would lose Smile
 6 Source's business to a competitor?
 7 MR. McDONALD: Object to the form.
 8 A. Well, that would be natural, yes.
 9 Q. Special Markets feared that it could
 10 lose Smile Source to Patterson or Benco?
 11 A. That's always a threat.
 12 Q. You received some push-back from HSD
 13 regarding Smile Source?
 14 MR. McDONALD: Object to the form.
 15 A. From people in HSD, yes.
 16 Q. Who in HSD gave you push-back about
 17 Smile Source?
 18 A. Originally, field sales consultants.
 19 Q. Do field sales consultants reach out
 20 to you directly?
 21 A. They have.
 22 Q. Did field sales consultants reach out
 23 to you directly about Smile Source?
 24 A. They did.
 25 Q. Who reached out to you directly about

1 CONFIDENTIAL - HAL MULLER
 2 A. That would be true. FSCs complain
 3 about anything.
 4 Q. You understand "FSCs" to mean field
 5 sales consultants?
 6 A. Correct.
 7 Q. And those are the sales
 8 representatives housed in HSD?
 9 A. Correct.
 10 Q. FSC issues aside, you thought that
 11 Smile Source was good for Schein in the long
 12 run?
 13 MR. McDONALD: Object to the form.
 14 A. Correct.
 15 Q. Smile Source was a \$1 million account,
 16 and growing?
 17 A. Okay. I mean, I don't -- I don't know
 18 what their dollars were when -- it sounds about
 19 right that the timeframe is. To be very honest
 20 with you, the timeframe that you're giving for
 21 Smile Source is actually longer than I even
 22 remember, so my guess is they were growing
 23 towards that.
 24 Q. You didn't want to lose Smile Source
 25 as an account for Schein?

1 CONFIDENTIAL - HAL MULLER
 2 Smile Source?
 3 A. I have no idea what their names were
 4 this -- this far after. I just remember some
 5 wild conversations about their customers getting
 6 deep discounts without them being involved in
 7 it.
 8 Q. Why do you describe those as wild
 9 conversations?
 10 A. Well, because if you were selling to
 11 Dr. Smith today and making X amount of dollars,
 12 and tomorrow Dr. Smith joined Smile Source, and
 13 your revenue just dropped 20 percent because of
 14 the discount, you might be upset. And I took
 15 some of those upset calls.
 16 Q. Other than calls from field sales
 17 consultants, did you receive push-back from
 18 anyone else within HSD about Smile Source?
 19 A. There were -- there was always a
 20 friction between Henry Schein Dental and Special
 21 Markets on percentage of margin, so we sold at
 22 lower prices. So we many times got push-back
 23 from sales leadership as well as marketing and
 24 stuff like that.
 25 Q. When you say sales leadership, who are

1 CONFIDENTIAL - HAL MULLER
2 you referring to?

3 A. People like John Chatham and -- and
4 Tim, probably, as well as their regional people,
5 Joe Cavaretta, Jake Meadows, Jeff Riecker. I
6 mean, people that were in management that sell
7 the greater Schein portfolio.

8 Q. When you say "Tim," you're referring
9 to Tim Sullivan giving you push-back on Smile
10 Source?

11 MR. McDONALD: Object to the form.

12 A. I don't remember if Tim exactly was
13 the person, but this was a common discussion
14 about discounting.

15 Q. It was your opinion that Smile Source
16 could force compliance among its membership?

17 MR. McDONALD: Object to the form.

18 A. They couldn't force it, but because
19 the doctor was paying a percentage of revenue,
20 it would be foolish for a doctor to be paying a
21 percentage of revenue and not giving their
22 business to the -- to the entities that were
23 supported by Smile Source.

24 Q. You, Randy Foley, Tim Sullivan, and
25 Dave Steck previously agreed that Schein would

1 CONFIDENTIAL - HAL MULLER
2 entertain organizations that could force
3 compliance?

4 MR. McDONALD: Object to the form.
5 Vague.

6 A. Yeah, I mean, the reason that Special
7 Markets existed was around the policy or the
8 philosophy of centralized decision-making with
9 multiple locations. So centralized
10 decision-making would -- part of that is
11 compliance.

12 Q. Is it your understanding that Tim
13 Sullivan knew that Smile Source was a buying
14 group?

15 A. Yes.

16 Q. Tim Sullivan didn't think the buying
17 group formula worked for HSD; is that correct?

18 MR. McDONALD: Object to the form.

19 A. That would be Tim's opinion.

20 Q. Is it your understanding that Tim
21 Sullivan didn't think the buying group formula
22 worked for HSD?

23 MR. McDONALD: Object to the form.

24 A. I don't know.

25 Q. Is it your understanding that Tim

1 CONFIDENTIAL - HAL MULLER
2 Sullivan didn't want Henry Schein to be
3 associated with a buying group?

4 MR. McDONALD: Object to the form.

5 A. I don't -- I don't know if we're ever
6 that defined. I think that Henry Schein Dental
7 and Special Markets are very different. Special
8 Markets only gets credit for merchandise. Henry
9 Schein Dental gets their -- P&L is based on all
10 business with the dentists. So somebody who is
11 just carving out the merchandise is not really
12 our model in HSD, so I could see anybody in HSD
13 saying we're not just interested in merchandise.
14 And then a buying group coming on just the
15 merchandise play doesn't really fit that as
16 well.

17 Q. Is it your understanding that Tim
18 Sullivan didn't think that buying groups fit
19 within Schein?

20 MR. McDONALD: Object to the form.

21 A. So that's the same question you just
22 asked. I don't know the answer to that.

23 Q. Did Tim Sullivan ever express his fear
24 to you that working with buying groups risked
25 margin erosion?

1 CONFIDENTIAL - HAL MULLER

2 MR. McDONALD: Object to the form.

3 A. I don't, but the whole concept of a
4 buying group would erode margin.

5 Q. Sorry. I don't understand your
6 answer. Are you saying you don't recall whether
7 Tim Sullivan ever expressed his fear about
8 margin erosion?

9 A. We always talk about margin erosion.
10 So a buying group in the fact that entering into
11 an agreement with a buying group would in fact
12 erode margin percentages.

13 Q. Is it possible that a buying group
14 could also increase profitability?

15 MR. McDONALD: Object to the form.

16 A. Yes.

17 Q. How?

18 A. By increasing sales faster than the
19 percentage discount.

20 Q. Did Smile Source ever express his fear
21 that working with buying groups risked affecting
22 Schein's image?

23 MR. McDONALD: Object to the form.

24 A. I don't remember that.

25 Q. Did Tim Sullivan ever express his fear

1 CONFIDENTIAL - HAL MULLER
 2 that working with buying groups risked
 3 competitors following suit?
 4 MR. McDONALD: Object to the form.
 5 A. I don't know if we had such formal
 6 discussions.
 7 Q. Did Tim Sullivan ever express his fear
 8 that working with buying groups risked a huge
 9 price war?
 10 MR. McDONALD: Object to the form.
 11 A. We're always in a price war with
 12 Patterson and Benco.
 13 Q. Tim Sullivan never expressed a fear
 14 about a price war?
 15 MR. McDONALD: Object to the form.
 16 A. We're always in a price war with Benco
 17 and Patterson.
 18 Q. Let me hand you a document that was
 19 previously marked as CX2113. The first page of
 20 the document bears the Bates number Henry
 21 Schein-00740470.
 22 Please take a moment to review the
 23 document and let me know when you've had a
 24 chance to review CX2113.
 25 (Exhibit CX2113-001, a document

1 CONFIDENTIAL - HAL MULLER
 2 Q. It is your understanding that Tim is
 3 recapping a conversation that you and he had; is
 4 that right?
 5 A. Yes.
 6 Q. And the bullets that he lists are
 7 things that you and Tim discussed?
 8 A. That's what it's -- how it's written.
 9 Q. Is that how you understand it?
 10 A. That's how I understood the e-mail,
 11 yes.
 12 Q. And so you discussed the risk to
 13 overall HSI.
 14 Does "HSI" stand for Henry Schein
 15 Inc.?
 16 A. Correct.
 17 Q. The risk of margin erosion, that was
 18 discussed?
 19 MR. McDONALD: Object to the form.
 20 Are you asking him if, outside the
 21 con- -- this e-mail, he recalls that?
 22 Q. Do you understand the question?
 23 A. I'm reading the e-mail, and this is a
 24 recap from Tim of the conversation.
 25 Q. Do you have any reason to suggest that

1 CONFIDENTIAL - HAL MULLER
 2 bearing Bates Nos. Henry Schein-000740470,
 3 marked for identification, as of this date.)
 4 (Document review.)
 5 THE WITNESS: Okay.
 6 BY MS. ROSNER:
 7 Q. You've had a chance to review CX2113?
 8 A. Go ahead.
 9 Q. This is an e-mail from Tim Sullivan on
 10 September 15, 2010 to Jim Breslawski, yourself,
 11 and a couple of others.
 12 Who is Jim Breslawski?
 13 A. He is the president of Henry Schein
 14 and the CEO of Dental, meaning he is Tim and my
 15 boss.
 16 Q. I'm going to go down to the first
 17 bullet and read. "Neither of us support concept
 18 of buying groups. Whereas it may benefit SM to
 19 some extent, the risk to overall HSI (due to
 20 having 40 percent share in market) for margin
 21 erosion, image, as well as other competitors
 22 then following suit and huge price war breaks
 23 out."
 24 Did I read that correctly?
 25 A. You are.

1 CONFIDENTIAL - HAL MULLER
 2 Tim incorrectly summarized your conversation?
 3 A. That happens at times.
 4 Q. That happened this time?
 5 A. I don't know. This was eight years
 6 ago.
 7 Q. Tim is saying that you and Tim
 8 discussed how buying groups could lead to margin
 9 erosion for Henry Schein; is that right?
 10 MR. McDONALD: Object to the form.
 11 A. Yes; this concept of buying groups
 12 could erode our percentage of margin, right.
 13 Q. Tim is saying that working with buying
 14 groups could affect Schein's image; is that
 15 right?
 16 A. Tim put that in there, yes. I don't
 17 know if I would agree with the image part.
 18 Q. Why wouldn't you agree?
 19 A. Because I don't know if people run
 20 around going, oh, my God, people -- Henry Schein
 21 or our competitors sell to any segment of the
 22 business.
 23 Q. What did you understand to mean Tim
 24 saying that buying groups could affect Schein's
 25 image?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 A. I don't know what -- what the image
 4 part here is.
 5 Q. Do you recall discussing how buying
 6 groups could affect Schein's image?
 7 A. No.
 8 Q. Tim wrote that working with buying
 9 groups could cause a huge price war; is that
 10 right?
 11 A. I -- I could imagine Tim saying
 12 something like that, yes.
 13 Q. Why is it that you can imagine Tim
 14 saying something like that?
 15 A. Because it -- it's a discount. It
 16 starts discounting off, especially in 2010 when
 17 we were really building our full service
 18 business, that we were going in with the full
 19 service structure as same as Benco, Patterson,
 20 Burkhart did, and the fact that, you know, full
 21 service is less of a discounting marketplace,
 22 whereas my marketplace is all around discounts.
 23 Q. I can take that document back.
 24 A. Sure.
 25 MS. ROSNER: We've been going about an

1 CONFIDENTIAL - HAL MULLER
 2 A. I probably had a lot of businesses
 3 that we set up that Tim didn't love because we
 4 discounted heavily.
 5 Q. I want to focus on Smile Source
 6 specifically.
 7 Did you recall receiving pressure from
 8 Tim Sullivan to drop Smile Source?
 9 A. I think the requests came from the
 10 field, and Tim voiced the opinion that the field
 11 wasn't happy about the deep discount.
 12 Q. You disagreed with Tim about dropping
 13 Smile Source because Smile Source added value
 14 and charged members a percentage of revenue?
 15 A. I liked their model.
 16 Q. Why was it important that Smile Source
 17 charged a percentage of revenue?
 18 A. To gain compliance. The issue with
 19 buying groups for this industry has
 20 traditionally been that somebody represents
 21 customers to a distributor, and at the end of
 22 the day, the people who are buying from the
 23 distributor continue to buy at a lower price and
 24 the rest of the business stays with the
 25 competitors.

1 CONFIDENTIAL - HAL MULLER
 2 hour. Do you want to take a break or keep
 3 going?
 4 MR. McDONALD: Up to you.
 5 THE WITNESS: I'm fine.
 6 BY MS. ROSNER:
 7 Q. Tim Sullivan was applying pressure to
 8 drop Smile Source as he felt it was a buying
 9 group?
 10 MR. McDONALD: Object to the form.
 11 Is that a question? Again, ma'am,
 12 Jasmine, is that a question? You made a
 13 statement. Is that a question?
 14 Q. Do you understand the question, Mr.
 15 Muller?
 16 A. You're asking me --
 17 MR. McDONALD: Object to the form.
 18 Go ahead.
 19 A. You're asking me did Tim want to drop
 20 Smile Source. I think that we eventually moved
 21 this into Henry Schein Dental. I think it was
 22 more the percentage of discount that was a
 23 problem than Smile Source itself.
 24 Q. Do you recall receiving pressure to
 25 drop Smile Source from Tim Sullivan?

1 CONFIDENTIAL - HAL MULLER
 2 I'll give you an example. I offered
 3 50,000 members of MetLife Dental, their
 4 insurance company, a discount, probably 15 or 20
 5 years ago. We did not gain one new customer out
 6 of 50,000 dentists. So that was what was going
 7 on with buying groups. They would come to you
 8 and there would be no confor- -- no compliance,
 9 which would have given Tim and anybody else,
 10 including me, like why are we doing this?
 11 Right? They're not bringing us any new volume.
 12 With the Smile Source example, as I
 13 stated before, if somebody is paying a
 14 percentage of their revenue, and they're not
 15 using the offers that the -- that the partner
 16 comes with, it would be pretty foolish. So I
 17 felt that compliance would be much stronger in
 18 this model than all the other models we had seen
 19 prior.
 20 Q. Tim Sullivan was applying pressure to
 21 drop Smile Source, and you felt you were losing
 22 the battle; is that right?
 23 MR. McDONALD: Object to the form.
 24 A. That is in an e-mail that I sent, so
 25 if you're referring to that, yes, I felt like I

1 CONFIDENTIAL - HAL MULLER
2 was losing the battle against buying groups.

3 Q. Do you feel like you were losing the
4 battle against keeping Smile Source as a
5 customer?

6 MR. McDONALD: Object to the form.

7 A. I felt that at that time, but again,
8 we did keep them.

9 Q. Tim eventually got on the phone with
10 the folks from Smile Source?

11 MR. McDONALD: Object to the form.

12 A. Okay. So you're -- I know why John is
13 objecting to form; because you're not asking me
14 a question. You're stating something.

15 Am I supposed to agree or disagree
16 with your statement, or are you asking me a
17 question?

18 Q. Do you understand the question?

19 MR. McDONALD: He just asked you for
20 clarification.

21 A. I understand what you're -- what
22 you're trying to say, but you're not asking me a
23 question, so I don't know if I'm supposed to
24 answer because it's not a question.

25 Q. Is it your understanding that Tim

1 CONFIDENTIAL - HAL MULLER
2 Sullivan eventually had a phone call with the
3 folks from Smile Source?

4 A. I believe that the Dental Division got
5 involved with them, yes.

6 Q. And after that phone call, Tim
7 Sullivan was open to seeing how Schein and Smile
8 Source could work together?

9 A. I don't remember the exact phone call
10 or when.

11 Q. Initially, Tim Sullivan was reticent
12 about Smile Source's advertising a discount on
13 supplies?

14 MR. McDONALD: Object to the form.

15 A. We object to anybody publically saying
16 that there's a discount, no matter who they are.

17 Q. Was there a specific objection to
18 Smile Source?

19 MR. McDONALD: Object to the form.

20 A. Thank you. Smile Source put out a
21 YouTube video about their offer, but they never
22 mentioned Henry Schein in it. So I think there
23 was a time that people told us about this video
24 before we had seen it; that it implied that
25 there was this video with a percentage and who

1 CONFIDENTIAL - HAL MULLER
2 it was. And so during that time period, I think
3 we were all a little confused and upset.

4 Q. After speaking with the folks from
5 Smile Source, Tim Sullivan grew to like the
6 other aspects of Smile Source?

7 MR. McDONALD: Object to the form.

8 A. Okay.

9 Q. Is that your understanding?

10 A. I don't know if -- where Tim flipped,
11 but I could assume that, yes, that they took on
12 that customer.

13 Q. Is it your understanding that Tim
14 liked the practice management aspect of Smile
15 Source?

16 A. I don't know if Smile Source has
17 practice management, but the additional features
18 Tim would have liked.

19 Q. Is it your understanding that Tim
20 Sullivan wanted Schein to be involved in smile
21 Source's monthly calls, meetings, and study
22 clubs?

23 A. Yes.

24 Q. Is it your understanding that Tim
25 Sullivan recognized that Smile Source was

1 CONFIDENTIAL - HAL MULLER
2 focused on large practices to perform more
3 efficiently?

4 MR. McDONALD: Object to the form.

5 A. I don't ever remember the large
6 practice component.

7 Q. Is it your understanding that Tim
8 Sullivan understood that Smile Source had plans
9 for growth?

10 MR. McDONALD: Object to the form.

11 A. I would assume so.

12 Q. After Tim spoke to the folks at Smile
13 Source on the phone, do you recall whether he
14 asked you to provide an update on current
15 pricing to Smile Source?

16 MR. McDONALD: Object to the form.

17 A. I don't remember the specifics, no.

18 Q. You suggested that any pricing that
19 Smile Source's offices can get on their own with
20 a local FSC would be heading down the wrong
21 path; does that sound right to you?

22 A. That would make sense.

23 Q. Why does that make sense?

24 A. Because it would differ whether it's
25 higher or lower from the agreement.

1 CONFIDENTIAL - HAL MULLER
 2 Q. You guessed that Schein needed to
 3 price Smile Source at least 8 to 10 percent
 4 below any standard offering, correct?
 5 A. I could have said something like that,
 6 sure.
 7 Q. What is a standard offering?
 8 A. I don't know what HSD offers.
 9 Q. When you guessed that Schein needed to
 10 price 8 to 10 percent below any standard
 11 offering, what are you referring to?
 12 MR. McDONALD: Object to the form.
 13 A. I'm referring to whatever they would
 14 normally be selling. That's why I didn't set an
 15 actual percentage.
 16 Q. Why would Schein need a price 8 to 10
 17 percent below the standard offering?
 18 A. Because there's no reason for anybody
 19 to join a buying group if it's at the same price
 20 they would normally get.
 21 Q. What would you predict would happen if
 22 Schein offered Smile Source a discount of 7
 23 percent off the standard offering?
 24 MR. McDONALD: Object to the form.
 25 A. I don't know. It -- I'm just saying

1 CONFIDENTIAL - HAL MULLER
 2 Q. While Smile Source was a customer of
 3 Special Markets, Schein had a high percentage of
 4 its spend?
 5 A. Of -- of Smile Source's members'
 6 spend, yes.
 7 Q. I think you mentioned earlier that
 8 when Smile Source was with Schein, they had
 9 somewhere between an 18 to 20 percent discount?
 10 A. Yes.
 11 Q. After Smile Source was transferred to
 12 HSD, HSD weakened the program?
 13 MR. McDONALD: Object to the form.
 14 A. They changed the program.
 15 Q. How did they change it?
 16 A. They offered more services and
 17 discounts across a broader offering.
 18 Q. Would you say that they weakened the
 19 program in any way?
 20 MR. McDONALD: Object to the form.
 21 A. I think they changed it. Did they
 22 weaken it on just merchandise alone? Possibly.
 23 Q. HSD's program for Smile Source wasn't
 24 as strong with HSD as it was when Smile Source
 25 was with Special Markets?

1 CONFIDENTIAL - HAL MULLER
 2 that it needs to be a substantial discount.
 3 Q. Discounts that are not as great as 8
 4 to 10 percent off the standard offering probably
 5 wouldn't be taken seriously?
 6 MR. McDONALD: Object to the form.
 7 A. I think the issue is that Special
 8 Markets was at 18 to 20 percent off.
 9 Q. And how is that an issue?
 10 A. Well, if you go from 18 to 20 to 2, I
 11 would think that that would be an issue.
 12 Q. How would that be an issue?
 13 A. Because it wouldn't be as -- as
 14 tempting for their members to join.
 15 Q. At some point, Special Markets
 16 transferred the Smile Source relationship to
 17 HSD?
 18 A. Correct.
 19 Q. When was that?
 20 A. I have no idea.
 21 Q. While Smile Source was still part of
 22 Special Markets, Schein a high percentage of
 23 spend with Smile Source?
 24 MR. McDONALD: Object to the form.
 25 A. Say that again.

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 Asked and answered.
 4 A. Right; only on merchandise.
 5 Q. After the transfer to HSD, at some
 6 point the Smile Source relationship with Schein
 7 ended, right?
 8 A. Correct.
 9 Q. When was that?
 10 A. I don't know.
 11 Q. After the relationship with Smile
 12 Source and Schein ended, Smile Source continued
 13 to grow its business, correct?
 14 A. Correct.
 15 Q. At some point, Smile Source received
 16 private equity funding and grew to almost 500
 17 offices?
 18 A. Correct.
 19 Q. You anticipated -- strike that. After
 20 Smile Source left -- strike that.
 21 After Smile Source and Schein were no
 22 longer working together, Smile Source aligned
 23 with Burkhart; is that right?
 24 A. Right; I thought they aligned with
 25 various distributors.

1 CONFIDENTIAL - HAL MULLER
 2 Q. You anticipated that Smile Source was
 3 going to outgrow Burkhart, and Schein might have
 4 a shot again at taking back the account?
 5 A. Yes.
 6 Q. You conferred with Tim Sullivan
 7 because Smile Source is made up of individually
 8 owned practices?
 9 A. Correct.
 10 Q. Smile Source is a sophisticated buying
 11 group?
 12 MR. McDONALD: Object to the form.
 13 Q. Correct?
 14 A. At the time, they were more
 15 sophisticated than some of them, than the
 16 traditional just buying group.
 17 Q. Tim Sullivan thought that it would be
 18 difficult to accept Smile Source back at Schein;
 19 is that right?
 20 MR. McDONALD: Object to the form.
 21 A. I don't know.
 22 Q. Did Smile Source ever say to you that
 23 it would be difficult to accept Smile Source
 24 back at Schein?
 25 A. I don't remember.

1 CONFIDENTIAL - HAL MULLER
 2 actress.
 3 Q. Did I read that correctly?
 4 A. You read it great.
 5 Q. Thank you.
 6 Tim is saying this will be difficult.
 7 What's your understanding of what he's
 8 referencing?
 9 MR. McDONALD: Object to form.
 10 A. I don't know.
 11 Q. In this e-mail, further down you're
 12 proposing reconsidering working with buying --
 13 with Smile Source, correct?
 14 A. Correct.
 15 Q. And he's responding by saying, "This
 16 will be difficult"; is that right?
 17 A. That's what he said, right.
 18 Q. You can set this aside.
 19 In the 2013-2014 timeframe, Smile
 20 Source reached out to Henry Schein to renew its
 21 partnership; is that right?
 22 A. I don't know. I wasn't involved at
 23 that part.
 24 Q. Is it your understanding that Smile
 25 Source needed a distributor with a national

1 CONFIDENTIAL - HAL MULLER
 2 Q. I'm going to hand you a document that
 3 has been previously marked for identification as
 4 CX2119.
 5 The document bears the Bates label on
 6 the first page Henry Schein-001544704.
 7 Please take a moment to review CX2119
 8 and let me know when you're finished.
 9 (Exhibit CX2119-001 through 002, a
 10 document bearing Bates Nos. Henry
 11 Schein-001544704 through 705, marked for
 12 identification, as of this date.)
 13 (Document review.)
 14 THE WITNESS: Okay. I've read it.
 15 BY MS. ROSNER:
 16 Q. You have reviewed CX2119?
 17 A. Yes.
 18 Q. The top of CX2119 starts with an
 19 e-mail from Tim Sullivan dated January 14, 2013,
 20 and I'm just going to read his first e-mail,
 21 which is last in time.
 22 "Ahhhh.... This is the Vision Source
 23 people.... Now I remember. This will be
 24 difficult. Let's discuss live."
 25 MR. McDONALD: You should be an

1 CONFIDENTIAL - HAL MULLER
 2 footprint?
 3 A. I would assume that to be correct.
 4 Q. Why would you assume that to be
 5 correct?
 6 A. Because they were growing outside
 7 of -- if they were just working with Burkhart,
 8 as I said, I thought they were dealing with
 9 multiple ones. If they were just dealing with
 10 Burkhart, they're a West Coast distributor. It
 11 would have a tough time going elsewhere.
 12 Q. In the 2000 to -- excuse me, in the
 13 2013-2014 timeframe, Special Markets was willing
 14 to work with Smile Source; is that right?
 15 A. I think I proposed that we could, but
 16 I really didn't want somebody who was then
 17 advertising that they were a DSO competitor.
 18 Q. You understood that some dental
 19 product manufacturers were giving discounted
 20 prices to buying groups; is that right?
 21 A. I had heard that through other people.
 22 Q. P&G and Colgate are dental product
 23 manufacturers?
 24 A. Yes.
 25 Q. P&G was selling direct with special

1 CONFIDENTIAL - HAL MULLER
 2 pricing for buying groups like Smile Source?
 3 MR. McDONALD: Object to the form.
 4 A. That's what I was told by Colgate.
 5 Q. And Colgate wanted to offer the same
 6 buying groups a competitive price on Colgate
 7 items to be offered through HSD?
 8 A. Correct.
 9 Q. In the 2013-2014 timeframe, you
 10 thought Smile Source would be a good customer?
 11 MR. McDONALD: Object to the form.
 12 A. Yes.
 13 Q. In the 2013-2014 timeframe, you
 14 thought it made sense to deal with Smile Source?
 15 MR. McDONALD: Object to the form.
 16 Asked and answered.
 17 A. Yes.
 18 Q. If it was up to you, Schein would have
 19 continued working with Smile Source; is that
 20 right?
 21 MR. McDONALD: Object to the form.
 22 Improper foundation. Mischaracterizes the
 23 record.
 24 A. Yeah, I -- I'd have to have a tough
 25 time making a decision for a different division.

1 CONFIDENTIAL - HAL MULLER
 2 stamp Henry Schein 000043181. Take a moment to
 3 review CX2149 and let me know when you're ready.
 4 (Exhibit CX2149-001, a document
 5 bearing Bates Nos. Henry Schein-000043181,
 6 marked for identification, as of this date.)
 7 (Document review.)
 8 THE WITNESS: I've read it.
 9 BY MS. ROSNER:
 10 Q. You've had an opportunity to review
 11 CX2149?
 12 A. Yes.
 13 Q. This is an e-mail written by you at
 14 the top dated October 2, 2014; is that right?
 15 A. Yes.
 16 Q. You wrote this e-mail as part of your
 17 job?
 18 A. Yes.
 19 Q. It's part of your job to respond to
 20 questions about Schein customers?
 21 A. Yes.
 22 Q. You wrote this e-mail at or near the
 23 time you got this question about Smile Source?
 24 A. Yes; from our lab people.
 25 Q. You wrote this e-mail and maintained

1 CONFIDENTIAL - HAL MULLER
 2 Q. Because Smile Source could have sold
 3 offices, it was HSD's decision whether to work
 4 with Smile Source?
 5 MR. McDONALD: Object to the form.
 6 A. In this --
 7 MR. McDONALD: Mischaracterizes the
 8 evidence.
 9 Go ahead.
 10 A. In this case, yes, because of the
 11 messaging they were giving.
 12 Q. And HSD didn't want to meet Smile
 13 Source's requirements?
 14 MR. McDONALD: Object to the form.
 15 Mischaracterizes the evidence.
 16 A. I have -- what their decision was or
 17 how it didn't work out, I have no idea what the
 18 issues were.
 19 Q. Are you saying that HSD wanted to meet
 20 Smile Source's requirements?
 21 MR. McDONALD: Object to the form.
 22 A. I don't know. I wasn't involved.
 23 Q. Let me hand you a document that was
 24 previously marked for identification as CX2149.
 25 The first page of the document bears the Bates

1 CONFIDENTIAL - HAL MULLER
 2 it in Schein's regular course of conducting
 3 business?
 4 MR. McDONALD: If you're trying to
 5 establish the authenticity, we are not going
 6 to contest the authenticity of Henry
 7 Schein's e-mails that we produced to you.
 8 Okay? It's just silly.
 9 A. This appears to be an e-mail from Hal
 10 Muller to -- or, from me to two of our lab
 11 people, yes.
 12 Q. This is a true and accurate copy of
 13 CX2149?
 14 A. I have no reason to doubt that unless
 15 somebody has changed it or I never -- it was
 16 never sent.
 17 Q. There's nothing about it that looks
 18 changed to you?
 19 A. I would have no idea.
 20 Q. I'm going to read your e-mail at the
 21 top of the page. "As the old expression goes,
 22 'been there - done that.' We used to be SS
 23 supplier. I think they are good, but HSD does
 24 not want to meet their requirements.
 25 Personally, I think it makes sense to deal with

1 CONFIDENTIAL - HAL MULLER
 2 them... but they are solo offices in the end."
 3 Did read that correctly?
 4 A. Yes.
 5 Q. It was your understanding that HSD did
 6 not want to meet Smile Source's requirements?
 7 A. That's what the --
 8 MR. McDONALD: Object to the form.
 9 A. That's what the e-mail says.
 10 Q. Is that what your understanding was?
 11 A. At -- from reading this, yes.
 12 Q. You can put that aside.
 13 At one point, you offered to allow
 14 Special Markets to take Smile Source back; is
 15 that right?
 16 A. I would imagine that if there were
 17 issues that couldn't be resolved and we could, I
 18 thought they would be a good customer.
 19 Q. You raised a possibility of pursuing
 20 Smile Source with Special Markets pricing?
 21 A. This late in the game? In 2014?
 22 Q. Yes.
 23 A. It's possible. Again, I did think
 24 they would be a good customer, but I also had
 25 objections to their marketing.

1 CONFIDENTIAL - HAL MULLER
 2 Smile Source was made up of private customers,
 3 correct?
 4 MR. McDONALD: Object to the form.
 5 A. It's possible.
 6 Q. Special Markets often does business
 7 with companies that are made up of private
 8 customers; is that right?
 9 MR. McDONALD: Object to the form.
 10 A. We do business with offices that
 11 appear to be private.
 12 Q. I want to use the example of a DSO.
 13 A DSO is a corporate entity, correct?
 14 A. Correct.
 15 Q. And as DSOs grow, they often acquire
 16 what were previously independent private
 17 practice dentists; is that right?
 18 A. Correct.
 19 Q. Did you ever get push-back from Tim
 20 Sullivan about the fact that Smile -- the fact
 21 that Schein did business with DSOs?
 22 A. Only at the very beginning.
 23 Q. Why only at the very beginning?
 24 A. Because DSOs were considered the devil
 25 in the industry and, you know, we -- some

1 CONFIDENTIAL - HAL MULLER
 2 Q. You offered to get Smile Source back
 3 through Special Markets' rules of play; is that
 4 right?
 5 MR. McDONALD: Object to the form.
 6 A. It's possible. I'm also referring
 7 back to the e-mail you just had me read where I
 8 basically said it's up to HSD, so...
 9 Q. Special Markets' rules of play refer
 10 to Special Markets' lower priced model; is that
 11 right?
 12 A. It's a lower priced model and a lower
 13 commission model.
 14 Q. For you in the 2013-2014 timeframe,
 15 Smile Source's rapid growth and the fact that it
 16 was with a competitor justified using Special
 17 Markets' lower pricing to win back Smile Source;
 18 is that right?
 19 MR. McDONALD: Object to the form.
 20 A. In my opinion.
 21 MR. McDONALD: We've been going about
 22 an hour and a half, whenever you get to a
 23 good point.
 24 Q. Tim Sullivan pushed back on using
 25 Special Markets pricing for Smile Source because

1 CONFIDENTIAL - HAL MULLER
 2 dentists probably didn't like the fact that
 3 Schein was selling to those corporate entities
 4 that they felt was a threat to their future.
 5 Q. You mentioned you got push-back from
 6 Tim Sullivan only in the beginning.
 7 Is there something that changed?
 8 MR. McDONALD: Object to the form.
 9 A. Yes, the realization that these
 10 weren't going to go away.
 11 Q. What's your understanding of why Mr.
 12 Sullivan no longer complained about DSOs but was
 13 complaining about Smile Source?
 14 MR. McDONALD: Object to the form.
 15 A. Because the account stayed as it was,
 16 so Dr. Smith was still Dr. Smith. Everything
 17 about Dr. Smith was the same, except he could
 18 then buy products from our own company at a
 19 lower price, with nothing else changing but them
 20 signing a piece of paper.
 21 Q. How was that different from the DSO?
 22 A. Dr. Smith is no longer Dr. Smith. Dr.
 23 Smith's billing address is now a corporate
 24 entity.
 25 Q. What's important about the billing

1 CONFIDENTIAL - HAL MULLER
2 address and the corporate entity?

3 MR. McDONALD: Object to the form.

4 A. If somebody joins a DSO, they have in
5 fact sold their practice or a portion of their
6 practice or some part of their practice, where a
7 buying group traditionally -- well, almost
8 always doesn't really own that practice, so
9 there is a difference. There's a difference in
10 the market.

11 Q. And why is that difference important
12 to Schein?

13 A. A lot of it has to do with compliance.
14 Again, in Special Markets' world, we are calling
15 on the corporate entity, not the locations
16 themselves. Thus, it's a lower cost to market
17 strategy.

18 Henry Schein Dental has a high value
19 and a high cost to the market, so it's -- it's
20 two totally -- it's like I ran Chevrolet and Tim
21 ran Cadillac and so there were a lot more
22 features in the Cadillac than there were in the
23 Chevy. So, in this case, you're saying, you
24 know, would we be selling Chevy prices on a
25 Cadillac? So, I'm trying to use examples to

1 CONFIDENTIAL - HAL MULLER
2 help you.

3 Q. This will be sort of my last area of
4 questioning and then we can take a break. I
5 just want to make sure I fully understand it.

6 It sounds like Special Markets no
7 longer got push-back on DSOs because there was a
8 recognition that DSOs could enforce compliance;
9 is that right?

10 MR. McDONALD: Object to the form.

11 A. Yes, they were also solely in Special
12 Markets.

13 Q. Special Markets no longer received
14 push-back on DSOs because DSOs required less of
15 a full service touch?

16 MR. McDONALD: Object to the form.

17 A. Correct.

18 Q. It was your understanding that Smile
19 Source could enforce compliance among its
20 members; otherwise, the franchise fee didn't
21 make sense?

22 MR. McDONALD: Well, object to the
23 form.

24 A. I don't think Smile Source could force
25 compliance. I think the dentists would be

1 CONFIDENTIAL - HAL MULLER
2 foolish not to buy from the distributor partner,
3 no matter who they were.

4 MS. ROSNER: We can take a break.

5 Off the record.

6 THE VIDEOGRAPHER: The time is 9:57
7 a.m. We're off the record.

8 (Recess.)

9 THE VIDEOGRAPHER: The time is 10:12
10 a.m. We're on the record.

11 BY MS. ROSNER:

12 Q. Mr. Muller, before the break, when we
13 were talking about DSOs, you made a comment
14 that, throughout these proceedings, you learned
15 that Schein had something you called lookalikes,
16 companies that you thought were DSOs but
17 actually ended up being buying groups.

18 Do you recall that?

19 A. No, I don't think I've used the term
20 "lookalikes" at all.

21 Q. Do you recall the idea of discovering
22 that companies you thought were DSOs were
23 actually buying groups?

24 A. Yes.

25 Q. What companies are you referring to?

1 CONFIDENTIAL - HAL MULLER
2 A. IDA and one of the groups in Georgia.
3 I'm sorry, I forget the name.

4 Q. Is it Dental Partners of Georgia?

5 A. I think so, yeah.

6 Q. Anyone else?

7 A. Those are the two that come to mind.

8 Q. When did you discover that IDA was a
9 buying group?

10 A. When we were doing the handoff of Mid
11 Market and, you know, the new groups in 2014.

12 Q. When did you discover that Dental
13 Partners of Georgia was a buying group?

14 A. At the same time.

15 Q. I want to return back to talking about
16 some of the push-back that Special Markets
17 received in dealing with Schein and in dealing
18 with Smile Source and maybe some other buying
19 groups.

20 You were hesitant to take on buying
21 group accounts because you didn't want the
22 Sullivan headache?

23 MR. McDONALD: Object to the form.

24 A. I didn't want to take on buying --
25 yes, buying groups, again, it's so broad that if

1 CONFIDENTIAL - HAL MULLER
2 somebody was just putting some offices together
3 and calling themselves a buying group, I didn't
4 think it was really a good idea for Schein to
5 just start discounting, and I didn't want to
6 make decisions for a different division.

7 Q. What does the "Sullivan headache"
8 refer to?

9 MR. McDONALD: Object to the form.

10 A. I'm sure I was just referring to Tim.

11 Q. Why would you be referring to Tim in
12 referencing the Sullivan headache?

13 A. Can you -- I mean, I guess at the
14 timing, this could have been Sullivan dental or
15 Tim. I don't know. It's kind of out of
16 context.

17 Q. I'm going to hand you a document
18 that's been premarked as CX2137.
19 It's an e-mail string. The first page starts with
20 Henry Schein-000192488.

21 Please take a moment and review CX2137
22 and let me know when you're done.

23 (Exhibit CX2137-001 through 018, a
24 document bearing Bates Nos. Henry
25 Schein-000192488 through 494 with

1 CONFIDENTIAL - HAL MULLER
2 attachment, marked for identification, as of
3 this date.)

4 THE WITNESS: What part do you want me
5 to read?

6 BY MS. ROSNER:

7 Q. I'm going to refer you to your e-mail
8 on the bottom of the first page with the
9 CX2137-001. I understand this is a multi-page
10 string, so you can feel free to review as much
11 of it as you like, but I will only focus on your
12 e-mail.

13 (Document review.)

14 A. Okay.

15 Q. You've had an opportunity to review
16 CX2137?

17 A. Yes.

18 Q. The e-mails in CX2137 authored by you
19 were written as part of your job at Henry
20 Schein?

21 A. Yes.

22 Q. Turning to the e-mail at the bottom of
23 CX2137-001 dated February 8, 2015, you're
24 talking about a group called DentMall and you
25 say, "Not sure we should move this back to

1 CONFIDENTIAL - HAL MULLER
2 Elite. I never felt good about the account, and
3 if it's a BG, I don't want the Sullivan
4 headache."

5 Did I read that correctly?

6 A. You did.

7 Q. When you referred to "BG," you're
8 referring to buying group?

9 A. Correct.

10 Q. If DentMall is a buying group, you
11 don't want the Sullivan headache; is that right?

12 A. That's what it says.

13 Q. Was that accurate at the time you
14 wrote it?

15 A. It could have been. It was three
16 years ago.

17 Q. Do you have any reason to suggest that
18 this was not accurate at the time that you wrote
19 it?

20 A. No.

21 Q. Why would you have a Sullivan headache
22 for working with a buying group?

23 MR. McDONALD: Object to the form.

24 A. Again, all buying groups that really
25 affect a different division, you know, is going

1 CONFIDENTIAL - HAL MULLER
2 to cause problems because we're stepping over
3 divisional lines. So I just didn't want to get
4 into that if we were doing fine in the other
5 division.

6 Q. So in this e-mail you're saying you
7 didn't want to appear as if you were dealing
8 with customers that rightfully belonged in HSD?

9 A. Right, as a matter of -- yes, that
10 would characterize the statement.

11 Q. That's because buying groups belonged
12 in HSD?

13 MR. McDONALD: Object to the form.

14 A. No, it depended on what the buying
15 group was. We both had them.

16 Q. So if you both had buying groups, why
17 would HSD complain about Smile Source -- strike
18 that.

19 If both HSD and Special Markets did
20 business with buying groups, why would you get a
21 Sullivan headache from dealing with this buying
22 group?

23 A. Because if this was in their division,
24 this e-mail, then trying to take it back would
25 be moving volume again from division to division

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2 as well as the fact that the offices here, which
3 I'm still not, from reading this, sure whether
4 this was a buying group or not, but in either
5 case, it was in their division, and I didn't
6 feel that we needed to, again, try to move a
7 close to a million dollar account from a
8 division to a division.

9 Q. You mentioned you didn't know whether
10 this was in their division or not.

11 You're referencing you didn't know
12 whether the DentMall account was in HSD?

13 MR. McDONALD: Object to the form.
14 Mischaracterizes testimony.

15 A. Right. This -- this is stating that
16 it is in Henry Schein Dental and that we were
17 considering whether we wanted to move this back
18 because of the person that owned this group.

19 Q. You can put that aside.

20 You thought the time was coming for
21 Henry Schein to enter the buying group business
22 in a very announced way in 2014; is that right?

23 MR. McDONALD: Object to the form.

24 If you have a document, you ought to
25 show it to him.

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2 A. Did I? I think Henry Schein Dental
3 decided that. That's about the time we were
4 setting up the split division or setting up the
5 new segment, and buying groups were part of
6 that.

7 Q. So Schein was not previously in the
8 buying group business in a very announced way?

9 MR. McDONALD: Object to the form.

10 A. So the reality is buying groups
11 weren't a big thing in the industry. It's
12 important to know that the consolidation of the
13 industry in 2008, before, you know, the economic
14 slowdown, dentists did not accept a lot of PPO
15 business. People stopped going to the dentist.

16 So, coming out of it, dentistry has
17 not been growing, and a way for the dentists to
18 keep his profits is to try to find supplies at a
19 lower cost. As a result of that, buying groups,
20 DSOs, everything that could help dentists save
21 so that he did not lose his income became much
22 more prevalent.

23 So today there's something like four
24 locations a week that move from private practice
25 into a DSO or working with a buying group or

1 CONFIDENTIAL - HAL MULLER
2 something like that because they're seeing that
3 their patient base is not growing. That's why
4 you can see the timing is that it accelerated.

5 Q. Special Markets tried to convince HSD
6 to address buying groups that brought more than
7 price to their members; is that right?

8 MR. McDONALD: Object to the form.

9 A. I believe in doing anything that's
10 changing the marketplace.

11 Q. Is that because HSD did not believe in
12 doing business with buying groups that brought
13 more than price to their members?

14 MR. McDONALD: Object to the form.

15 A. What their philosophies and how they
16 decided to open people up was not part of my
17 world.

18 Q. But you were making suggestions to how
19 HSD should consider changing its business; is
20 that right?

21 A. I make suggestions lots of times.

22 Q. You thought HSD would have to come up
23 with a buying group plan?

24 MR. McDONALD: Object to the form.

25 Vague.

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2 A. Right, I believed that -- I think they
3 were there on their own, and I'm sure I was just
4 helping to move it along.

5 Q. What makes you think they were there
6 on their own?

7 A. Because we had assigned a new person
8 to this in Brian Brady came, who from the West
9 Coast, and he had seen very much so that buying
10 groups were part of the business and that they
11 had opened up local ones over the years. And
12 that was then, as I said, the new phenomenon
13 that these things were coming up and growing,
14 and so I think it was the time for them to do it
15 and I think it was a good idea.

16 Q. When did Brian Brady come onboard in
17 this role that you're describing?

18 A. In the 2014-15 period, I believe.

19 Q. In the 2014 period, Tim Sullivan was
20 reticent to doing business with buying groups,
21 is that your understanding?

22 MR. McDONALD: Object to the form.
23 Mischaracterizes the testimony and the
24 evidence.

25 A. I don't know.

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 2 Q. You called Tim Sullivan a dying breed;
 3 is that right?
 4 MR. McDONALD: Object to the form.
 5 A. If you have that in writing, I could
 6 have said that.
 7 Q. You don't remember calling Tim
 8 Sullivan a dying breed?
 9 A. Off the top of my head, no, but I can
 10 see myself.
 11 Q. Why can you see yourself saying that?
 12 A. Because Tim likes the concept of the
 13 private practitioner and supporting their
 14 growth, and I believe that things were changing
 15 in the marketplace that he, like a lot of other
 16 people, were hoping wouldn't happen, you know.
 17 So the one thing to realize is when
 18 you take all of these buying groups, even if you
 19 use the broadest definition, it's probably less
 20 than 10 percent of the marketplace. Pure buying
 21 groups, I mean, just people trying to get better
 22 pricing and stuff like that, I would guess is
 23 probably less than 5 percent of the marketplace.
 24 So I think that Tim was the dying
 25 breed saying like, okay, this isn't going to

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 2 How do they compete?
 3 A. Every office, dental office, that's
 4 out there is a potential customer for not only
 5 us three, but for everybody. The full-service
 6 model, we are the -- the big -- the biggest, and
 7 now I would say that Benco is national too. So,
 8 you know, the three national players.
 9 Q. Do they also compete on price?
 10 A. Yes.
 11 I also think that, and I don't know
 12 that this has anything to do with this, but
 13 nowhere in the Smile Source thing were we
 14 talking about Benco and Patterson. It was
 15 really Burkhart, and so it just seemed weird
 16 that we were going down that path when it --
 17 so -- so vividly when it has nothing to do with
 18 where -- why we're here, in my estimation,
 19 but...
 20 Q. I want to come back to what you're
 21 saying here, but first I want to hand you a
 22 document that's been premarked for
 23 identification as CX2144.
 24 This is an e-mail chain between you,
 25 Tim Sullivan and Jim Breslawski. The first page

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 2 happen, and that's -- that would be a -- would
 3 have been the referral, the reference.
 4 Q. You started your answer by saying that
 5 Tim was the kind who liked the private practice
 6 dentist and helping the private practice dentist
 7 to grow their business model.
 8 How is doing business with buying
 9 groups inconsistent with that philosophy?
 10 MR. McDONALD: Object to the form.
 11 A. Buying groups, traditionally, and
 12 again, that's why I said it's a really broad
 13 thing, if it's just about price, if it's just
 14 about price of merchandise, that is not who we
 15 are. I mean, that is -- that's -- I hate to say
 16 it -- that's who Amazon is. That's who Darby
 17 Dental is.
 18 It's not who Patterson, you know,
 19 Benco, Burkhart and us are. We're full-service
 20 distributors. And so just carving out that
 21 little piece of discounted price is not in the
 22 vision of people who really work for Henry
 23 Schein Dental, including their management team.
 24 Q. Earlier you referenced that Benco,
 25 Patterson and Schein compete fiercely.

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 2 of the document is Henry Schein-000195206.
 3 Please take a moment to review that document and
 4 let me know when you have finished.
 5 (Exhibit CX2144-001 through 002, a
 6 document bearing Bates Nos. Henry
 7 Schein-000195206 through 207, marked for
 8 identification, as of this date.)
 9 BY MS. ROSNER:
 10 Q. I apologize. That's the wrong
 11 document.
 12 I can take back that document. I
 13 apologize.
 14 I'm going to hand you CX244. The
 15 first page of this e-mail chain is Henry
 16 Schein-000043192. It is an e-mail chain between
 17 yourself, Tim Sullivan, at some point John
 18 Chatham is also copied.
 19 Please take a moment to review CX244.
 20 (Exhibit CX244.001 through 002, a
 21 document bearing Bates Nos. Henry
 22 Schein-000043192 through 193, marked for
 23 identification, as of this date.)
 24 (Document review.)
 25 MS. ROSNER: I apologize once again.

1 CONFIDENTIAL - HAL MULLER
2 This is not the right document. We're going
3 to look at CX245. I'm positive this is the
4 document I want at this time.

5 MR. McDONALD: Third time's a charm.

6 MS. ROSNER: Third time's a charm.
7 I'll take back 244, please.

8 The first page of this e-mail string
9 is Henry Schein-000043184.

10 Please take a moment to review CX245,
11 and let me know when you're finished.

12 (Exhibit CX0245.001 through 003, a
13 document bearing Bates Nos. Henry
14 Schein-000043184 through 186, marked for
15 identification, as of this date.)

16 (Document review.)

17 THE WITNESS: Okay.

18 BY MS. ROSNER:

19 Q. You've had an opportunity to review
20 CX2450?

21 A. Yes.

22 Q. This is an e-mail string. The
23 last-in-time e-mail is October 22, 2014. The
24 subject of the string is "your MSO in a box."
25 In this e-mail chain, the e-mails that

1 CONFIDENTIAL - HAL MULLER
2 you wrote, you wrote these as part of your job;
3 isn't that right?

4 A. Yes.

5 Q. You're referring to a program that HSD
6 is considering putting together, and you say,
7 "Just nervous about this. Don't want to look
8 like we're in competition."

9 I'm sorry. I'm reading at the top of
10 page CX245-002.

11 Is that right?

12 MR. McDONALD: Hang on. He wasn't
13 with you when you were reading, so...

14 Why don't you ask your question again
15 now that he knows where you are.

16 Q. At the top of page CX2450-002 that
17 begins your -- the text of your e-mail, where
18 you say, "Just nervous about this. Don't want
19 to look like we are in competition."

20 Did I read that correctly?

21 A. Yes.

22 Q. You're nervous about a new program
23 that HSD is putting together that you referred
24 to as HSD's MSO in a box; is that right?
25 A. Correct.

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2 Q. Is that right?

3 A. Correct.

4 Q. And Tim Sullivan responds, "Like with
5 GPOs, right? Sorry, I couldn't resist."

6 Did I read that right?

7 A. You read it right. Correct.

8 Q. Tim Sullivan is joking there, is that
9 your interpretation of what he's saying?

10 MR. McDONALD: Yeah, I'll represent to
11 you that the "J" in all these e-mails like
12 that is a smiley face.

13 A. Right. Yes.

14 Q. And he's joking that HSD is in
15 competition with Special Markets with GPOs?

16 MR. McDONALD: Object to the form.

17 Q. Is that right?

18 A. This e-mail chain is about competing
19 with dental support organizations. I don't know
20 why Tim jumped into the GPO because it had
21 nothing to do with this, so I really don't know
22 what this thing was meant to -- why he brought
23 that up.

24 Q. You have no understanding of his
25 comment, "Like GPOs, right? Sorry, I couldn't

1 CONFIDENTIAL - HAL MULLER
2 resist"?

3 A. Right. I mean, he's grabbing
4 something from outside the memo just to kid
5 around with me.

6 Q. Did you understand what he meant at
7 the time?

8 MR. McDONALD: Object to the form.

9 A. I understood it enough to write the
10 following e-mail, which said, "You are a dying
11 breed," that we just talked about.

12 Q. So if you understood it enough to
13 write the following e-mail, what is it that you
14 understood Tim Sullivan was saying?

15 MR. McDONALD: Object to the form.

16 To be clear, you're asking him what he
17 understood when he read this e-mail in
18 October of 2014?

19 All right. If you recall what you
20 understood it to mean in 2014, tell her.

21 THE WITNESS: Right. And all I'm
22 doing is reading the same way you are. Tim
23 said a joke, and I came back with a retort.

24 BY MS. ROSNER:

25 Q. And your retort is that Tim is going

1 CONFIDENTIAL - HAL MULLER
2 to be a dying breed soon; that's right?

3 A. That's what I wrote, yes.

4 Q. "We are going to have to come up with
5 a buying plan."

6 Does that mean that Schein did not
7 have a buying group plan?

8 A. We did not have a formal plan, no.

9 Q. You were suggesting in this e-mail
10 that Mr. Sullivan thought that Henry Schein
11 Dental could avoid buying groups?

12 MR. McDONALD: Object to the form.

13 A. I wrote here, "It is hard to think we
14 can avoid." So, yes, I'm saying it's something
15 that I felt we should do.

16 Q. Why was -- what's your understanding
17 of why Henry Schein Dental was trying to avoid
18 buying groups?

19 MR. McDONALD: Object to the form.

20 Mischaracterizes the document.

21 Mischaracterizes his testimony.

22 A. As I've said a few times already, the
23 whole "buying group" term is so broad that I --
24 even I think that defining what a buying group
25 is for something that we could plan to work with

1 CONFIDENTIAL - HAL MULLER
2 needed to be accomplished.

3 I don't think that Henry Schein Dental
4 or Special Markets was anti buying group. We
5 were always questioning the value of a group of
6 whether it was truly a buying group or truly a
7 management company.

8 As I've said a few times, some people
9 just call up and say I have a bunch of people
10 here and we're calling ourselves a buying group.

11 MR. McDONALD: Why don't you pause a
12 second.

13 Move your microphone up because you're
14 hitting it with your hand, I think.

15 There you go.

16 Q. You mentioned that sometimes you would
17 get calls from people saying we want to start a
18 buying group.

19 What was Henry Schein's policy towards
20 those types of calls?

21 A. I don't know what Henry Schein
22 Dental's policy was. My policy would have been
23 you have to be more than that.

24 Q. At the top of this e-mail, you say,
25 "Okay. See you later alliGATOR," with "gator"

1 CONFIDENTIAL - HAL MULLER
2 in all caps.

3 Were you trying to send a message with
4 that response?

5 A. Chances are, and this is probably a
6 very good assumption, that somewhere around this
7 same timing, we were talking about Dental Gator.

8 Q. You can put this e-mail aside.

9 With times changing, you thought
10 Schein might need to start thinking of a buying
11 group strategy; is that right?

12 A. A plan, yes.

13 Q. Are you familiar with the Kois buying
14 group?

15 A. I'm not if they actually got to the
16 point of creating one.

17 Q. Tim Sullivan did not agree with you
18 that Schein needed to start thinking about a
19 buying group strategy; is that right?

20 MR. McDONALD: Object to the form.

21 A. I don't know.

22 Q. Is it your understanding that Tim
23 Sullivan thought that buying groups were a
24 slippery slope?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER

2 A. I know he put that in an e-mail, yes.

3 Q. Is it your understanding that Tim
4 Sullivan did not plan to take the lead role in
5 doing business with buying groups?

6 MR. McDONALD: Object to the form.

7 A. Sorry. I'm chewing an ice cube.

8 I, you know, the businesses are so
9 different that you're asking me many times over
10 what Tim's thinking is, even if he put it in an
11 e-mail, is and what -- how he's defining buying
12 groups as opposed to how I'm defining buying
13 groups.

14 So you're asking me a lot of questions
15 of what I think Tim Sullivan thinks, even if
16 they're in an e-mail exchange. So my feeling is
17 we both know that buying groups are around, and
18 if we have to start discounting with no value,
19 then we're pretending to be somebody we're not,
20 which is a full-service distributor; that we
21 have a lot of things -- service techs that we
22 need to pay for, and the more we discount, then
23 we have to charge people in other ways.

24 Q. What I'm asking is to understand
25 whether or not there was ever disagreement

1 CONFIDENTIAL - HAL MULLER
2 between you and Tim Sullivan about how to deal
3 with buying groups.

4 Is it your understanding that there
5 was some disagreement between you and Tim
6 Sullivan?

7 A. Tim and I disagree on business
8 principles all the time.

9 Q. I'm asking you purely about buying
10 groups.

11 Did you and Tim Sullivan disagree
12 about the strategy for pursuing buying groups?

13 MR. McDONALD: Object to the form.

14 A. We had a difference of opinion.

15 Q. And what was your opinion?

16 MR. McDONALD: Object to the form.
17 Vague as to time.

18 Go ahead.

19 A. Yeah, depending on the timing of this
20 and depending on the industry, I am somebody who
21 embraces change and wants to do anything to
22 disrupt the industry. That is not who Tim
23 Sullivan is.

24 As a -- as a result, even with buying
25 groups, we had differences of opinion of how

1 CONFIDENTIAL - HAL MULLER
2 quick to get into new business opportunities.

3 Q. When Tim Sullivan says he did not plan
4 to take the lead role in doing business with
5 buying groups, what's your understanding of what
6 he meant?

7 MR. McDONALD: Object to the form.
8 Go ahead.

9 A. Yeah, one of -- that you're asking, I
10 could come up with one or two things. It either
11 means as Henry Schein Dental versus the rest of
12 the community or whether it's Special Markets
13 that should be taking the lead and not Henry
14 Schein Dental.

15 Q. I'm going to hand you a document that
16 has been previously marked as Exhibit CX2130.
17 This is an e-mail chain. The first page is
18 labeled HS-00012399.

19 Please take a moment to look at CX2130
20 and let me know when you have familiarized
21 yourself.

22 (Exhibit CX2130-001 through 002, a
23 document bearing Bates Nos. HS-00012399
24 through 400, marked for identification, as
25 of this date.)

1 CONFIDENTIAL - HAL MULLER
2 (Document review.)

3 THE WITNESS: Are you going to be
4 asking me about the first page or the
5 second? Because they're two totally
6 different subjects.

7 BY MS. ROSNER:

8 Q. I'm not going to refer at all to the
9 e-mail about Kois. I'm going to refer to only
10 CX2130-001.

11 A. Okay.

12 (Document review.)

13 A. Okay.

14 Q. You've had an opportunity to review
15 CX2130?

16 A. Yes.

17 Q. This is an e-mail chain. You have
18 written some responses in the e-mail chain.

19 You wrote these responses as part of
20 your job?

21 A. Yes.

22 Q. And you had knowledge of the contents
23 of these e-mails that you wrote in CX2130?

24 A. Yes.

25 Q. At the bottom of CX2130, you write in

1 CONFIDENTIAL - HAL MULLER
2 the second line from the bottom, "The times are
3 changing. We might need to start thinking of a
4 buying group strategy."

5 Did I read that correctly?

6 A. Yes.

7 Q. Up one e-mail to the Tim Sullivan
8 e-mail at 7:17 p.m., the last -- second-to-last
9 sentence of his e-mail says, "I still believe
10 this is a slippery slope and have yet to see a
11 successful one in dental and don't plan to take
12 the lead role."

13 Did I read that correctly?

14 A. Yes.

15 Q. So Tim Sullivan does not plan to take
16 the lead role in dealing with buying groups, is
17 that what you interpret him as saying?

18 MR. McDONALD: Object to the form.

19 A. That's what he's saying here.

20 Q. What does it mean to not take the lead
21 role?

22 MR. McDONALD: Object to the form.

23 A. I'm guessing that he means not just
24 jumping in with both feet to reach out to a
25 whole bunch of buying groups and -- and go after

1 CONFIDENTIAL - HAL MULLER
 2 them, as traditionally buying groups come to us.
 3 So there have been plenty of buying
 4 groups over the years, so -- and I think, as Tim
 5 says in this e-mail, none of them have really
 6 worked; and so if they're not working, why would
 7 we jump into it?
 8 Q. Is it your understanding that Tim
 9 Sullivan doesn't want to be the first company to
 10 work with buying groups?
 11 MR. McDONALD: Object to the form.
 12 Mischaracterizes the evidence.
 13 A. He doesn't want to take the lead role.
 14 There are plenty of -- by '14, we were very
 15 heavily into buying groups, as were all of our
 16 competitors, as far as I know.
 17 Q. I can take that document back.
 18 You continued to question whether
 19 Schein should do business with buying groups in
 20 the 2014 and 2015 period; is that right?
 21 MR. McDONALD: Object to the form.
 22 A. I don't know if I questioned -- you're
 23 making it sound like it's a negative. I was --
 24 I was pro dealing with buying groups.
 25 Q. You wanted to do business with buying

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 2 So if people could prove to us that
 3 they had a method of moving volume, then I
 4 couldn't see why we wouldn't do that.
 5 Q. By saying no to buying group
 6 customers, you feared that Schein was losing
 7 business?
 8 MR. McDONALD: Object to the form.
 9 A. Had the potential to lose business.
 10 And I'm not sure why they said no at Henry
 11 Schein Dental to some groups and yes to others.
 12 Q. You wanted to know how solid a stance
 13 Schein should take on buying groups?
 14 MR. McDONALD: Object to the form.
 15 Vague.
 16 Q. Is that right?
 17 A. You'd have to show me that.
 18 Q. Was Schein taking any sort of stance
 19 on buying groups?
 20 MR. McDONALD: Object.
 21 Q. To your knowledge?
 22 MR. McDONALD: Object to the form.
 23 A. We may have been saying that, but we
 24 never did, as evidenced by we constantly had
 25 more and more buying groups every year.

1 CONFIDENTIAL - HAL MULLER
 2 groups?
 3 A. Yes.
 4 Q. And you wanted to know why Schein kept
 5 saying no to buying groups; is that right?
 6 MR. McDONALD: Object to the form.
 7 A. I wanted to know why we weren't moving
 8 quicker.
 9 Q. Schein was moving slow with buying
 10 groups, in your mind?
 11 A. Yes; because of who I am. Schein, as
 12 an organization, does not move very quickly.
 13 Q. You wanted to see Schein adopt more
 14 buying group customers faster than Schein was
 15 doing?
 16 A. Right, if they were true buying
 17 groups.
 18 Q. What do you mean by "true buying
 19 groups"?
 20 A. Again, I keep coming back to the fact
 21 that many buying groups add absolutely no value
 22 except for lowering price, and what I think the
 23 industry and why Tim has actually said haven't
 24 worked is we don't gain new business. We just
 25 lower price to our current customers.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Why would you have said that Schein
 3 was taking a stance on buying groups?
 4 MR. McDONALD: Object to the form.
 5 Mischaracterizes what he just said.
 6 A. Right, I don't ever remember us taking
 7 a stance and saying no to buying groups if
 8 people came to us.
 9 You were talking about Smile Source
 10 before a lot. They left us, we didn't get rid
 11 of them, and so that showed that we continued to
 12 want to deal with people like them.
 13 Q. Let me hand you a document that's been
 14 previously marked as CX2135, an e-mail string
 15 that's multi-page. The first page begins with
 16 the Bates number Henry Schein-000601936.
 17 Please take a moment to review CX2135
 18 and let me know when you're done.
 19 (Exhibit CX2135-001 through 003, a
 20 document bearing Bates Nos. Henry
 21 Schein-000601936 through 939, marked for
 22 identification, as of this date.)
 23 (Document review.)
 24 THE WITNESS: Go ahead.
 25 BY MS. ROSNER:

1 CONFIDENTIAL - HAL MULLER
 2 Q. You had an opportunity to review
 3 CX2135?
 4 A. Yes.
 5 Q. It's an e-mail chain. The top
 6 latest-in-time e-mail is from Jim Breslawski
 7 dated May 20, 2015. You write a couple of
 8 e-mails throughout the chain.
 9 You wrote these e-mails as part of
 10 your job; is that right?
 11 A. Yes.
 12 I could -- I could say to you that any
 13 e-mail that I write from HenrySchein.com on
 14 these e-mails is something I wrote as part of my
 15 job.
 16 Q. And you had some knowledge of the
 17 information contained in the e-mails?
 18 MR. McDONALD: Well, object to the
 19 form.
 20 Are you talking about his, his
 21 e-mails, or the entire e-mail?
 22 Q. Your e-mails. Anything that you
 23 wrote, you had knowledge --
 24 A. Yes.
 25 Q. -- of the contents?

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 2 In your e-mail, which is one down from
 3 Jim Breslawski's e-mail on the first page, in
 4 the second full paragraph that starts "Dental
 5 Gator." The last sentence, I think, is, "The
 6 real question we need to answer (and maybe for
 7 the offsite) is how solid a stance do we want to
 8 have?"
 9 Did I read that correctly?
 10 A. Yes.
 11 Q. You wanted to know how solid a stance
 12 Schein wanted to have on buying groups; is that
 13 right?
 14 MR. McDONALD: Object to the form.
 15 A. Yes.
 16 Q. What kind of stance did Schein have on
 17 buying groups at that time?
 18 MR. McDONALD: Object to the form.
 19 A. I believe the reason I'm saying a
 20 solid, you know, stance is we had -- we didn't
 21 have a formal one way or the other. We were
 22 opening buying groups all the time, and, you
 23 know, I think people were trying to ignore that
 24 we were. I don't know, so I'm just saying here
 25 that I think we need to have a stance to say

1 CONFIDENTIAL - HAL MULLER
 2 that we accept buying groups because we do.
 3 Q. Now, this is in the 2015 period where
 4 Mid Markets should have already been
 5 established.
 6 Why did there need to be clarification
 7 on stance?
 8 MR. McDONALD: Object to the form.
 9 Q. For buying groups?
 10 MR. McDONALD: Object to the form.
 11 A. I don't know why I would have stated
 12 that at this point. This is the -- the start of
 13 really building those buying clubs and groups
 14 and stuff like that. So I don't remember why
 15 I'm saying it that way.
 16 Q. Is there anything that could refresh
 17 your recollection as to why you would say it
 18 that way?
 19 A. No; it's just a topic that just kept
 20 coming up and I think would have been nice just
 21 to say we've always been dealing with buying
 22 groups, let's just state it.
 23 Q. If you have always been dealing with
 24 buying groups, why would you need to state it?
 25 A. Because we have 1,000 to 2,000 people

1 CONFIDENTIAL - HAL MULLER
 2 in the field that I don't know if we ever set a
 3 direction one way or another.
 4 Q. Was Henry Schein trying to hide the
 5 fact that it was dealing with buying groups?
 6 A. I don't think it was being hidden, no.
 7 Q. Why wouldn't you tell your salespeople
 8 that you deal with buying groups?
 9 MR. McDONALD: Object to the form.
 10 A. I think I have said before that
 11 there's certain things that we want to bring up
 12 and that salespeople who are being paid on
 13 commission don't like to hand out sales fliers
 14 sometimes, don't like to acknowledge anything
 15 that would take their gross dollars away from
 16 their pocket.
 17 So coming out with a -- a blanket
 18 statement over something for the national sales
 19 force, I don't know if this is one that we
 20 needed to do, but we did create in this
 21 timeframe positions to deal with more buying
 22 groups, again, because of the knowledge Brian
 23 brought out of the West Coast.
 24 Q. So, with the creation of this group
 25 that was tasked with dealing with buying groups,

1 CONFIDENTIAL - HAL MULLER
2 why wouldn't it be common knowledge that Schein
3 does business with buying groups?

4 MR. McDONALD: Object.

5 A. Well, eventually --

6 I'm sorry.

7 MR. McDONALD: Object to the form.

8 A. Eventually, I believe we did by
9 creating the group. I still don't know if we
10 came out with a formal announcement, but the
11 fact that we have people that this is their
12 full-time job, I would say it was a pretty good
13 statement.

14 Whether we put something out
15 officially, I don't know if we have ever done
16 that.

17 Q. To the extent that you know, at what
18 point did it become common knowledge within
19 Schein that the company did business with buying
20 groups?

21 MR. McDONALD: Object to the form.

22 A. I don't know if it is common. I don't
23 know when -- whether everybody in the
24 organization knows we deal with buying groups or
25 what buying groups are.

1 CONFIDENTIAL - HAL MULLER
2 talk about business with competitors.

3 Q. Why is that?

4 A. Because it's not a good business
5 practice.

6 Q. Do you abide by the business standards
7 of Schein?

8 A. Yes.

9 Q. Do you expect your employees and those
10 who report to you to abide by the business
11 standards of Schein?

12 A. Yes.

13 Q. What do you do when you learn that
14 employees under your watch have violated the
15 business standards of Schein?

16 MR. McDONALD: Object to the form.

17 A. I whip them. No.

18 (Laughter.)

19 A. The -- what do I do? I, you know,
20 just tell them let's, you know, be careful that
21 we're not talking about business. There's many
22 times that we're in an environment where we're
23 sitting with a competitor on a plane with a
24 competitor, and I think we all, you know, try to
25 do our best to talk about the weather and things

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2 Q. When we started to talk about this
3 e-mail, you mentioned earlier that there were
4 some within Schein who ignored the fact that
5 Schein did business with buying groups.

6 Who would those people be?

7 MR. McDONALD: Object to the form.

8 A. Did I say "ignored the fact"?

9 MR. McDONALD: Object to the form.

10 Q. You said "ignored the fact."

11 A. I don't know how to characterize what
12 I said.

13 Q. What did you mean by saying there were
14 some within Schein who ignored the fact that
15 Schein did business with buying groups?

16 MR. McDONALD: Object to the form.

17 A. If I said that, the context would be I
18 just think that people, you know, just it was
19 happening and just didn't want to address it.

20 Q. Who would those people be?

21 A. Sales management.

22 Q. I can take back CX2135, please.

23 Does Schein have any rules against
24 speaking with competitors?

25 A. It's in our business standards not to

1 CONFIDENTIAL - HAL MULLER

2 like that. I don't expect people to tell me
3 that they have had that kind of a conversation
4 because it happens in conventions and elevators
5 and whatever that we're cordial to each other.

6 Q. Just to be clear, you don't expect
7 people to tell you when they have what kind of
8 conversations?

9 A. The, "Hi. How are you? How's life"
10 conversations.

11 Q. Do you expect people who report to you
12 to tell you when they have conversation about
13 substantive business with competitors?

14 A. Yes.

15 Q. Why?

16 A. Because it's in our practice. I
17 forget the name of it, but it's -- we have a
18 whole bunch of video trainings that we get and,
19 you know, competition and good ethics is part of
20 that.

21 Q. Is there a consequence for violating
22 the good ethics standards of Schein?

23 A. I have never seen anything to the
24 point of disciplinary action, but it could have
25 happened. I don't know.

1 CONFIDENTIAL - HAL MULLER
 2 Q. You're unaware of consequences when
 3 someone violates the ethical code of Schein?
 4 MR. McDONALD: Object to the form.
 5 A. On the ethical stuff, yes, I have seen
 6 consequences. On the talking to a competitor
 7 about something, I am unaware of any.
 8 Q. Is that because Schein does not have
 9 consequences for employees who talk about
 10 business to competitors?
 11 MR. McDONALD: Object to the form.
 12 A. No, I'm saying I am unaware of any.
 13 Q. Are you aware of any employees that
 14 report to you ever speaking to competitors about
 15 business subjects?
 16 A. I am aware of my team and having
 17 conversations, yes.
 18 Q. What conversations are you aware of?
 19 A. I'm aware that Randy Foley often runs
 20 into somebody in Benco because they fly out of
 21 the same airport. I'm not aware of any, you
 22 know, real business things on that. I think
 23 Randy has spoken -- has heard from people at a
 24 convention about, you know, somebody winning a
 25 customer, not winning a customer after the fact.

1 CONFIDENTIAL - HAL MULLER
 2 Anyone else on your team have
 3 conversations with competitors about substantive
 4 business?
 5 MR. McDONALD: Object to the form.
 6 Mischaracterizes his testimony.
 7 A. I am not aware of. I would imagine
 8 Glenn -- I shouldn't say. People like myself,
 9 Glenn Meltzer and Randy Foley have been in
 10 proximity. I have sat at a table with my
 11 counterpart at Patterson at an event. I'm sure
 12 we both said to each other, How's business? And
 13 we both probably said it's great, whether it was
 14 or not.
 15 So I can't say that those discussions
 16 don't happen all the time. We do talk about the
 17 fact that we will never collude with any of
 18 our -- our competitors, and I think our team is
 19 very, very aware that we wouldn't even entertain
 20 anything about talking with competitors about an
 21 approach to a customer.
 22 Q. Are you familiar with the group
 23 Atlantic Dental Care?
 24 A. I wasn't until I looked at some of the
 25 documents yesterday when I was preparing.

1 CONFIDENTIAL - HAL MULLER
 2 I've heard of things like that.
 3 We're always willing to listen to
 4 people who want to tell us stuff, but we don't
 5 go out there and ask people about things.
 6 Q. Do you think it's okay for your
 7 employees to have conversations with competitors
 8 about substantive business so long as your
 9 employees are not divulging any information?
 10 MR. McDONALD: Object to the form.
 11 A. I don't think we should be probing it,
 12 but if somebody comes up to us and says, hey, I
 13 heard X just won this account, we could be
 14 saying, you know, I don't see any objection to
 15 something like that. I don't know whether that
 16 always has to be reported.
 17 We lost our largest customer to
 18 Patterson. I'm sure that people both in
 19 Patterson and in Schein said: Hey, we just won
 20 this. Did you hear about that? And our people
 21 go: Oh, shit, we lost this account. And to
 22 talking to a Benco person about Heartland
 23 because everybody in the industry knew it.
 24 Q. You mentioned Mr. Foley had some
 25 conversations.

1 CONFIDENTIAL - HAL MULLER
 2 Q. And what is your understanding of what
 3 Atlantic Dental Care is?
 4 MR. McDONALD: Object to the form.
 5 A. I believe it's a buying group, but not
 6 one I remembered, even though I think there was
 7 some e-mails with my name on it.
 8 Q. Benco told -- someone from Benco told
 9 Mr. Foley that Atlantic Dental Care was not a
 10 buying group; is that right?
 11 MR. McDONALD: Object to the form.
 12 A. I only know that through an e-mail,
 13 yes.
 14 Q. Is it strange to you that Mr. Foley
 15 would be speaking with someone from Benco about
 16 Atlantic Dental Care?
 17 MR. McDONALD: Object to the form.
 18 Mischaracterizes the testimony from
 19 yesterday, and you know it. So just don't
 20 misrepresent the record to him. Okay?
 21 Q. Do you understand?
 22 MR. McDONALD: That is improper --
 23 that is improper of you, Jasmine, to
 24 misrepresent the testimony.
 25 Q. If you were to receive an e-mail where

1 CONFIDENTIAL - HAL MULLER
2 Mr. Foley says that he was talking with Benco
3 and Benco told them that Atlantic Dental Care
4 was not really a buying group, what would be
5 your reaction?

6 A. Thank you for letting me know that you
7 had that conversation and who cares.

8 Q. Because you don't care whether or not
9 your direct reports are speaking to competitors
10 about customers?

11 A. No, he did --

12 MR. McDONALD: Object to the form.

13 A. No, he did the right thing in telling
14 me, due to our business standards, that he spoke
15 with somebody and that an account had come up,
16 but what I'm saying is in -- in relevancy
17 whether somebody is a DSO, a buying group or
18 whatever, I don't know if it would have been
19 that important to me.

20 Q. It doesn't raise a red flag for you
21 when one of your direct reports speaks to a
22 competitor about business issues?

23 A. It's always going to happen that
24 somebody says something about business when
25 you're sitting across from somebody. I mean,

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2 it's hard not to. I don't care who you are.

3 You know, I'm going to ask, you know,
4 people, hey, I see your stock's up, your stock's
5 down. I mean, it's just -- it's just
6 conversation.

7 There was nothing in that conversation
8 from the way it was reported to me that had any
9 relevance, except what is this? Are they a
10 buying group? Are they a DSO? Are they -- I
11 mean, by the company name, it could be a
12 distributor.

13 Q. When your direct reports have
14 conversations with employees of competitors, do
15 you like to confirm that your direct reports are
16 not revealing information about Schein?

17 A. I trust them that they're not.

18 Q. Did you tell Mr. Foley to cease
19 discussions with Benco after 2013?

20 MR. McDONALD: Object to the form.

21 A. Not that I remember.

22 MS. ROSNER: We've been going for an
23 hour. Do you want to take a quick break
24 before the lunch session?

25 MR. McDONALD: Sure. Let's take a

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2 quick break.

3 MS. ROSNER: Off the record.

4 THE VIDEOGRAPHER: The time is 11:13
5 a.m. We're off the record.

6 (Recess.)

7 THE VIDEOGRAPHER: The time is 11:25
8 a.m. We're on the record.

9 BY MS. ROSNER:

10 Q. Before the break, we were discussing a
11 company Atlantic Dental Care, correct?

12 A. Yes.

13 Q. Schein eventually put in a bid for
14 Atlantic Dental Care's business, is that your
15 understanding?

16 A. I don't remember Atlantic Dental Care.

17 Q. You have no recollection of whether or
18 not Schein has ever bid for Atlantic Dental
19 Care?

20 A. No.

21 Q. I'll hand you a document that's been
22 produced and marked as CX2020. This is a e-mail
23 with the first page Bates Henry Schein-001398295
24 and it attaches a document.

25 Please take a moment to review CX2020?

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2 (Exhibit CX2020-001 through 007, a
3 document bearing Bates Nos. Henry
4 Schein-001398295 through 301, marked for
5 identification, as of this date.)

6 (Document review.)

7 MR. McDONALD: For the record, he's
8 not on this e-mail.

9 MS. ROSNER: I understand.

10 MR. McDONALD: So, I mean, I'm going
11 to let you show it to him, but I'm going to
12 object to him answering a bunch of questions
13 about it.

14 Since he's a current employee, I'm
15 going let you show this to him, but under a
16 protective order, you shouldn't be showing
17 documents to people that they're not on.

18 THE WITNESS: Okay.

19 BY MS. ROSNER:

20 Q. Based on this document, which is
21 CX2020, is it your understanding that Henry
22 Schein submitted a bid for the Atlantic Dental
23 Care business?

24 A. By this, I don't know whether there
25 was a bid or not.

1 CONFIDENTIAL - HAL MULLER
2 Q. I want to turn to the third page,
3 which is CX2020-003. To the extent you know,
4 what does this represent, starting with page
5 003?

6 MR. McDONALD: Object to the form.
7 Lack of foundation.

8 Q. Let me withdraw the question.
9 Are you familiar with how Henry Schein
10 bids for customers, generally?

11 A. Using the word "bid" to me is a very
12 formal process and it's usually done in my
13 division, so how Henry Schein Dental acquires
14 their customer base, whether it's through
15 personality or price or relationships, I don't
16 know how they get this. Even looking at this, I
17 still don't know whether this -- what Atlantic
18 Dental Care is.

19 Q. Have you ever seen a document drafted
20 by Henry Schein Dental that purports to be a
21 proposal to win business?

22 A. From their Equipment Group that is
23 tied to mine, yes. But, no, I don't see
24 documents traditionally that they would go after
25 a customer.

1 CONFIDENTIAL - HAL MULLER
2 Q. You're not asked to consult about
3 certain large customers within Henry Schein
4 Dental?

5 A. Not usually, no.

6 Q. I'll represent to you that this
7 document CX2020 starting with page 003 is a
8 proposal from Henry Schein Dental to Atlantic
9 Dental Care.

10 I'd like you to turn to the next page,
11 CX2020-004, and I'm going to focus on the last
12 section of that page under the heading
13 Contract/Disclosure.

14 You can take a moment to review that
15 and let me know when you're done reviewing that
16 section.

17 MR. McDONALD: And are you
18 representing to him that this was the actual
19 proposal that was made to Atlantic Dental
20 Care?

21 MS. ROSNER: I'll represent that this
22 was a proposal that was sent to a man named
23 Landy Damsey who represents Atlantic Dental
24 Care, yes.

25 MR. McDONALD: Okay.

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2 (Document review.)

3 THE WITNESS: Okay. I've looked at
4 it.

5 BY MS. ROSNER:

6 Q. You have reviewed at the last section
7 on page CX2020-004?

8 A. Yes.

9 Q. I'm going to read from the
10 "Contract/Disclosure" section.

11 "This agreement can be terminated with
12 30 day notice if any of the following occur."
13 The third bullet says, "If this turns out to be
14 purely a buying group, defined as 'pooling
15 individual volume purely to obtain lower prices
16 from suppliers of good and services.'"

17 Did I read that correctly?

18 A. Yes.

19 Q. Why would Schein include this bullet?

20 MR. McDONALD: Object to the form.
21 Lack of foundation.

22 If you know, tell her, but don't
23 speculate.

24 A. I don't. I don't. And it seems to me
25 that the first page of this says that this is --

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2 can be passed on to its group. Isn't that
3 saying that this is already almost like a flyer?
4 Not the actual bid?

5 So, anyway, I -- I can't answer why
6 they would have put that in.

7 Q. You drafted this language, correct?

8 MR. McDONALD: Object to the form.

9 A. I drafted what language?

10 Q. You drafted the third bullet point
11 that says, "If this turns out to be purely a
12 buying group, defined as 'pooling individual
13 volume purely to obtain lower prices from
14 suppliers of good and services,'" correct?

15 MR. McDONALD: Object to the form. If
16 you have a document to show him, show him.

17 A. Not that I know of.

18 Q. What do you interpret this third
19 bullet to mean?

20 A. This has nothing to do with me, so
21 you're asking me to -- in Hal Muller's opinion,
22 what does this mean on a document that somebody
23 else wrote? I could read it out loud and assume
24 that that's what it means.

25 Q. You would attach the plain meaning --

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 2 plain language meaning to bullet number 3?
 3 MR. McDONALD: Object to the form.
 4 A. What number -- all I can do is read it
 5 and say out loud what it says here.
 6 Q. So you understand it to mean that if
 7 ADC is a buying group, Schein would then have
 8 the right to terminate its agreement with ADC;
 9 is that right?
 10 MR. McDONALD: Object to the form.
 11 A. Under this definition. That's what it
 12 says.
 13 Q. And that's what you understand it to
 14 mean?
 15 A. Yeah, I'm intelligent. I can read
 16 something and understand what it means.
 17 Q. Do you dispute that you wrote the
 18 third bullet on page CX2020-004?
 19 A. This is not a document I would have
 20 written.
 21 Q. Do you dispute that you provided the
 22 language that was used in the third bullet of
 23 CX2020-004?
 24 MR. McDONALD: Are you making a
 25 representation to him that he did and asking

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 2 him if he disputes that fact, or are you
 3 asking him if he recalls doing it?
 4 THE WITNESS: I do not --
 5 MR. McDONALD: Don't answer the
 6 question. I made an objection and asked
 7 counsel.
 8 Are you making that representation to
 9 him, or is that a question to him?
 10 BY MS. ROSNER:
 11 Q. Do you understand my question, Mr.
 12 Muller?
 13 A. You're asking me if I supplied that
 14 one sentence to Henry Schein Dental for Atlantic
 15 Dental Care? I don't remember it.
 16 Q. I'm going to hand you a document
 17 that's been previously marked for identification
 18 as CX2021. This is a multi-page e-mail. The
 19 first page begins with Henry Schein-001398309.
 20 Please take a moment to review CX2021.
 21 The relevant language that I'm going to focus on
 22 is on the first page, CX2021-001.
 23 (Exhibit CX2021-001 through 29, a
 24 document bearing Bates Nos. Henry
 25 Schein-001398309 through 337, marked for

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 2 identification, as of this date.)
 3 MS. ROSNER: CX2021-001. And I noted
 4 that there was just a beep on the phone.
 5 Did somebody join us?
 6 MS. GOFF: Yes. Sorry. This is Karen
 7 Goff. I got cut off earlier.
 8 THE WITNESS: Instead of me reading
 9 this, is there a place besides that one
 10 comment that says anything?
 11 BY MS. ROSNER:
 12 Q. I'm going to refer you to the first
 13 e-mail on the first page, which is CX2021-001.
 14 There are also e-mails that I would refer you to
 15 on page -006, -012 and -013, but I'll start off
 16 on -001.
 17 And if you would like additional time
 18 before we get to the next sections, I'm happy to
 19 provide it.
 20 (Document review continues.)
 21 A. So you can ask a question.
 22 Q. Have you had an opportunity to review
 23 CX2021?
 24 A. Yes.
 25 Q. On the first page of CX2021-001,

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 2 there's an e-mail from Michael Porro.
 3 Do you know who Michael Porro is?
 4 A. Yes.
 5 Q. Who is he?
 6 A. I think at this time he was the
 7 Director of Sales of Henry Schein Dental.
 8 Q. Could he have been the Atlantic Coast
 9 Zone General Manager?
 10 A. If that's what he was, that's what he
 11 was.
 12 Q. Does that sound right to you?
 13 A. Yes; that could be, yes.
 14 Q. The last line before the closing in
 15 his e-mail reads -- the last paragraph of his
 16 e-mail before the closing reads, "I added some
 17 of the fine print at the end -- I'm not a legal
 18 writer," happy face, "so maybe it needs to be
 19 cleaned up. Does the 'buying group' note that
 20 Hal added needed to be softer or is it fine?"
 21 Did I read that correctly?
 22 A. Yes.
 23 Q. So Mr. Porro was attributing the
 24 buying group note to you; is that right?
 25 MR. McDONALD: Object to the form.

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 2 A. That's what this says.
 3 Q. Does that refresh your recollection
 4 that you wrote the third bullet point in the
 5 Atlantic Dental proposal?
 6 A. Not in the least.
 7 Q. Do you have any reason to dispute the
 8 fact that Michael Porro is saying you wrote
 9 that, that bullet point?
 10 MR. McDONALD: Object to the form.
 11 A. I don't know where this came from or
 12 where it might have been pulled from, so I can't
 13 really attest to anything, but that's what the
 14 sentence says.
 15 Q. Is there anything that would refresh
 16 your recollection to suggest that the language
 17 in bullet 3 came from anywhere else?
 18 MR. McDONALD: Object to the form.
 19 A. No, I don't.
 20 Q. Turning to page CX2021-012. In the
 21 middle of the page, Michael Porro writes a
 22 question at 10:55 p.m. referring to Atlantic
 23 dental saying, "There's still a little bit of
 24 gray on this and how tied together they are...we
 25 Can go this route or just go right to the

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 2 formulary...but that is deep."
 3 What's your understanding of what he
 4 means by the "formulary"?
 5 A. The formulary would be prices that I
 6 think were attached to this. Or "formulary" is
 7 just pricing.
 8 Q. Does it refer to a -- does "formulary"
 9 refer to a specific set of pricing?
 10 A. Yes, it does.
 11 Q. What specific set of pricing does
 12 "formulary" refer to?
 13 MR. McDONALD: Object to the form.
 14 A. The set of pricing that would be
 15 attached to the document.
 16 Q. Does "formulary" refer to a standard
 17 set of pricing that's common in Schein?
 18 MR. McDONALD: Object to the form.
 19 Vague.
 20 A. Not in Special Markets. I don't know
 21 what it means in Dental.
 22 Q. You respond to Mr. Porro saying,
 23 "Mike, as you probably know, the big issue is
 24 compliance. That question should be answered
 25 before we know how to quote."

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 2 Did I read that correctly?
 3 A. Yes, you did.
 4 Q. You were saying we shouldn't bid until
 5 we figure out whether this is a group that can
 6 force its members to buy from Schein; is that
 7 right?
 8 A. I don't know if I would use the word
 9 "force." That's what my sentence says, is that
 10 the question that we should ask is can they move
 11 the volume.
 12 Q. When you say "move the volume," you
 13 mean move volume to Schein?
 14 A. Correct.
 15 Q. Turning forward a couple of pages to
 16 CX2021-006, I'm going to refer you to Tim
 17 Sullivan's e-mail at the bottom of the page sent
 18 on April 5, 2013 at 4:10 p.m.
 19 Tim writes, "Gut reaction... This
 20 smells bad. I think we have as much to lose for
 21 winning the bid as we do for losing (or not
 22 bidding). Hal's right in that this is Vision
 23 Source all over again. We got plenty of grievance
 24 from FSCs also when we were attempting to work
 25 with them."

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 2 Did I read that correctly?
 3 A. Yes.
 4 Q. Did you think that ADC was Vision
 5 Source all over again?
 6 A. First of all, I don't remember
 7 anything about this customer or this buying
 8 group, and any formal buying group is going to
 9 have the same reaction from the field that we
 10 had with Smile Source.
 11 Q. Reading these comments from Tim
 12 doesn't refresh your recollection about ADC?
 13 A. No.
 14 Q. What do you understand Tim to say when
 15 he says, "We have as much to lose for winning
 16 the bid as we do for losing or not bidding"?
 17 MR. McDONALD: Object to the form.
 18 A. I don't know what Tim was thinking.
 19 Q. I don't know what Tim was thinking
 20 either, but how do you interpret what he's
 21 saying?
 22 MR. McDONALD: Object to the form.
 23 Why don't you ask him when you depose him in
 24 a few weeks?
 25 A. This is saying we can win or lose.

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 2 Win or lose, I mean, that's what it's saying.
 3 We could -- we could gain something here or we
 4 could lose something here.
 5 Q. What is Schein likely to lose by
 6 winning the ADC bid?
 7 MR. McDONALD: Object to the form.
 8 A. If there's no compliance, we would
 9 lose margin.
 10 Q. Anything else?
 11 A. That's how I would interpret it.
 12 Q. You can put this document aside.
 13 To your knowledge, was ADC getting
 14 pricing from Special Markets?
 15 A. I do not remember ADC.
 16 Q. If ADC was getting pricing from
 17 Special Markets, would you know about it?
 18 A. I should have, but there was a few
 19 layers in here during that time that I may not.
 20 Q. If ADC was getting pricing from
 21 Special Markets and you didn't know about it,
 22 who would know about it within Special Markets?
 23 MR. McDONALD: Object to the form.
 24 A. Our Bid Department. Our -- I mean,
 25 Randy, Collin. Collin Rogers.

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 2 themselves.
 3 Q. Why would you put such an agreement
 4 into your contracts with DSOs?
 5 A. Because it would be a
 6 misrepresentation of who they were.
 7 Q. Why does that matter?
 8 A. Because one has to do with compliance
 9 and management and one is just price.
 10 Q. I don't think I'm following.
 11 A. So I'll give you an example. We had a
 12 customer called MB2. They started up a
 13 buying -- a pure buying group called Dental
 14 Gator. They offered the prices that we gave
 15 them that we knew we were getting a minimum of
 16 80 percent of their purchases, as the contract
 17 states, for the offices from MB2.
 18 Offering those prices to customers we
 19 didn't even know and that didn't agree to buy 80
 20 percent of their purchases through Henry Schein
 21 is in violation of the agreement.
 22 So, in this case, and in cases past
 23 that, we tried -- we prevented that by actually
 24 stating it, that these are for your offices; not
 25 that you can go to the corner and offer them to

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 2 Q. Anyone else?
 3 A. The person who did the bid. I don't
 4 know who that would have been, but...
 5 Q. Anyone else?
 6 A. Not that I know.
 7 Q. Do you think it's strange that the ADC
 8 bid would have a clause saying that if ADC was a
 9 buying group, Schein could cancel the agreement?
 10 MR. McDONALD: Object to the form.
 11 Mischaracterizes the document.
 12 A. In general terms, I would say if
 13 somebody represented themselves as not a buying
 14 group, in other words, like a dental support
 15 organization, and it wound out that they were,
 16 then I could see why that would be added.
 17 We did have an instance where -- or a
 18 couple of times where people had taken their
 19 agreement with us as a dental support
 20 organization and tried to use it as a buying
 21 group, so we did start adding that verbiage. So
 22 even though I don't remember where this --
 23 writing this clause for this contract, that is a
 24 clause that we put into agreements with DSOs to
 25 make sure that the person wasn't misrepresenting

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 2 somebody else.
 3 Q. Why does Henry Schein care who they
 4 offer the lower prices to if that results in
 5 purchases through Henry Schein?
 6 MR. McDONALD: Object to the form.
 7 A. Good business practices. I mean,
 8 you're saying that -- I mean, the way you're
 9 asking the question is kind of like if we sell
 10 to a dentist and the dentist wants to sell all
 11 of his products, all his toothpaste that he's
 12 getting from us to people on the street, that
 13 he's got special dentist pricing for it, he can
 14 sell it to a consumer, that that's okay.
 15 It's the same thing. I mean, you have
 16 to watch where your distribution of products
 17 goes.
 18 Q. Henry Schein is still making the sale
 19 in the first instance, so I'm hoping you can
 20 help me connect why it's a problem.
 21 MR. McDONALD: Object to the form.
 22 Asked and answered.
 23 A. Right, it's -- it's very important.
 24 If I sell products to a customer who then sells
 25 them to Iran, I'm culpable.

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 2 Q. That adds a whole lot of other issues,
 3 I'm sure. But in this instance, why does Henry
 4 Schein care if ADC is a buying group if Henry
 5 Schein is interested in winning the volume from
 6 ADC?

7 MR. McDONALD: Object to the form.

8 A. As long as the terms have been written
 9 for a buying group, I don't see any problem. If
 10 ADC represented that they weren't a buying group
 11 and that they were in fact a DSO, then we have
 12 different rules of engagement.

13 Q. So there are different rules of
 14 engagement for DSOs than buying groups?

15 A. Correct.

16 Q. What are the different rules of
 17 engagement for DSOs?

18 MR. McDONALD: Object to the form.
 19 Overly broad.

20 A. I think we discussed this in the first
 21 five minutes, that there are differences.
 22 There's percentage -- again, there's percentage
 23 of compliance, which is a very big thing for us.
 24 It's also how our name is used, how the
 25 partnership is used, how if they have national

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 2 conventions, what is our support of those.

3 You know, discounts and restrictions
 4 on certain products that Schein is a -- an agent
 5 of. There's just a list of different things
 6 that say that we just don't ask people -- you're
 7 almost implying reselling or quoting our stuff
 8 that we don't know about, which just isn't --
 9 isn't right.

10 Q. But working with a buying group is not
 11 working with a reseller; is that right?

12 A. Correct; the billing and the shipping
 13 is to us to the individual member, but most, if
 14 not all of our DSOs the billing is done to one
 15 entity. So, I mean, the way we realize that
 16 Dental Gator was part of MB2 is they were using
 17 their contract, but meanwhile, we were billing
 18 other entities, which means that we then have
 19 that whole cost of worrying about receivables of
 20 people we don't even -- that we haven't even
 21 checked out whether they can pay their bills or
 22 not.

23 Q. Was there some aspect of the ADC bid
 24 pricing that was tied to ADC not being a buying
 25 group?

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2 A. I don't remember anything about ADC.

3 Q. Schein negotiates with buying group
 4 customers, correct?

5 A. Correct.

6 Q. Why wouldn't Schein, instead of
 7 terminating an ADC contract, not simply
 8 negotiate with ADC if it found out that ADC was
 9 a buying group?

10 MR. McDONALD: Object to the form.
 11 Assumes facts not in evidence. Improper
 12 hypothetical.

13 A. It may terminate this agreement, but
 14 it doesn't say that we couldn't have another
 15 one.

16 Q. After our last break, you wanted to
 17 clarify something about Smile Source, and I
 18 think you tried to clarify that you weren't
 19 aware of Smile Source -- strike that -- you
 20 weren't aware of Schein being in competition
 21 with Patterson and Benco for Smile Source.

22 Did I understand that correctly?

23 MR. McDONALD: I don't think --

24 A. Right, I was asking you if we're here
 25 because of some improprieties of collusion

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2 between our three companies that we spent so
 3 much time on Smile Source that Schein was
 4 negotiating with Smile Source, who eventually
 5 went with Burkhart, and there was no mention
 6 anywhere about our competing with the other two
 7 companies, if we ever were.

8 Q. Is it your understanding that you were
 9 competing with Patterson and Benco for Smile
 10 Source?

11 MR. McDONALD: Object to the form.

12 A. After it left Special Markets, I don't
 13 know what it was, but there was nothing in that
 14 we were reading that ever talked about our
 15 competitors.

16 Q. Is that because Patterson and Benco
 17 didn't compete for Smile Source?

18 MR. LAVERY: Objection.

19 A. I have no idea.

20 Q. If you dropped Smile Source as a
 21 customer in the 2010 through 2012 timeframe, you
 22 wouldn't be surprised if they took their
 23 business to Patterson or Benco?

24 MR. LAVERY: Objection.

25 MR. McDONALD: Objection to the form.

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 2 Mischaracterizes the evidence.
 3 Mischaracterizes the testimony. It's an
 4 improper question.
 5 THE WITNESS: I would have no
 6 intention of not selling to Smile Source.
 7 BY MS. ROSNER:
 8 Q. There was some push-back. Others
 9 wanted to drop the Smile Source account. We've
 10 already discussed that.
 11 If Schein decided to drop the Smile
 12 Source account, would you have been surprised if
 13 Smile Source then went to Patterson or Benco?
 14 MR. LAVERY: Objection.
 15 MR. YOON: Objection.
 16 MR. McDONALD: Object to the form.
 17 Mischaracterizes the evidence.
 18 Mischaracterizes the testimony.
 19 THE WITNESS: I don't know who they
 20 were going to talk with, if anybody.
 21 BY MS. ROSNER:
 22 Q. I'm not asking you who they were going
 23 to talk with. I'm asking if you would have been
 24 surprised if Smile Source would have gone to
 25 Patterson or Benco?

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 2 BY MS. ROSNER:
 3 Q. Including Benco?
 4 A. Including Benco.
 5 Q. You have never heard that Benco
 6 doesn't do business with buying groups?
 7 MR. YOON: Objection.
 8 MS. ROSNER: Basis?
 9 THE WITNESS: No, I have never heard
 10 that.
 11 MR. YOON: To form.
 12 BY MS. ROSNER:
 13 Q. You have never heard that Patterson
 14 didn't do business with buying groups?
 15 MR. LAVERY: Objection.
 16 A. I've never heard that.
 17 MR. McDONALD: So, like yesterday, can
 18 we agree that an objection by one is good
 19 for all?
 20 MS. ROSNER: Yes.
 21 MR. McDONALD: Thank you.
 22 MS. ROSNER: I am agreed.
 23 I was going to switch gears for a
 24 minute. It's just about 12 o'clock. Did
 25 you want to take an early lunch, or should

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Same objections.
 3 A. Right, I wouldn't have been surprised
 4 if they called every distributor in the country.
 5 Q. Would you have been surprised if
 6 Patterson or Benco accepted Smile Source's
 7 business?
 8 MR. LAVERY: Objection.
 9 A. I wouldn't know if they wanted to deal
 10 with them or not.
 11 Q. You don't know whether they would have
 12 wanted to deal with them or not, but would it
 13 have surprised you if Benco accepted Smile
 14 Source as a customer?
 15 MR. YOON: Objection.
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: It wouldn't surprise me
 18 if anybody tried to do business with
 19 somebody.
 20 BY MS. ROSNER:
 21 Q. Including Patterson?
 22 MR. LAVERY: Objection.
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Including any
 25 distributor, Patterson being one of them.

1 CONFIDENTIAL - HAL MULLER
 2 we press through?
 3 MR. McDONALD: Why don't we keep going
 4 because I'm not sure lunch is here yet for
 5 us.
 6 BY MS. ROSNER:
 7 Q. So I'm going switch gears to talk a
 8 little bit about Dental Gator.
 9 You're familiar with the entity known
 10 as Dental Gator?
 11 A. Yes.
 12 Q. Dental Gator for a time -- strike
 13 that. Dental Gator is a customer of Henry
 14 Schein's?
 15 A. It was.
 16 Q. When did Dental Gator become a
 17 customer of Henry Schein's?
 18 A. I don't know the dates.
 19 Q. Is Dental Gator no longer a customer
 20 of Henry Schein's?
 21 A. I don't -- I'm not sure that Dental
 22 Gator still really exists. They may, but I'm
 23 not aware of it.
 24 Q. If Dental Gator exists, would you know
 25 it to be a customer of Henry Schein's?

1 CONFIDENTIAL - HAL MULLER
 2 A. It would be a customer of Henry
 3 Schein's, yes.
 4 Q. Dental Gator is the buying group arm
 5 of MB2; is that right?
 6 A. Yes.
 7 Q. MB2 is a Special Markets customer?
 8 A. Yes.
 9 Q. MB2 is a top 50 Special Markets
 10 customer?
 11 A. Yes.
 12 Q. MB2 has an ownership interest in its
 13 affiliate dental practices?
 14 MR. McDONALD: Object to the form.
 15 Q. Let me restate that.
 16 MB2 has an ownership interest in MB2's
 17 affiliate dental practices?
 18 MR. McDONALD: Same objection.
 19 A. It's --
 20 MR. McDONALD: If you know, then tell
 21 her.
 22 THE WITNESS: I'm going to say it's a
 23 different model. They state it's a
 24 different model, but I'm sure there is some
 25 percentage of ownership.

1 CONFIDENTIAL - HAL MULLER
 2 ownership stake in any of its members'
 3 practices; is that right?
 4 MR. McDONALD: I'll object to the
 5 form.
 6 A. Not --
 7 MR. McDONALD: Lack of foundation.
 8 A. Yeah, not that we know of. However,
 9 if they became part of MB2, which we believe the
 10 mission was, then there may have been a point in
 11 time where they had an ownership position.
 12 Q. When you say "they," you're referring
 13 to if an individual member of Dental Gator had
 14 an investment from MB2, an ownership investment,
 15 at that point, the member would become part of
 16 MB2?
 17 A. Correct.
 18 Q. Dental Gator is not a CHC buying
 19 group; is that right?
 20 A. Correct.
 21 Q. Special Markets did not originally
 22 pursue Dental Gator as a customer; is that
 23 right?
 24 MR. McDONALD: Object to the form.
 25 A. Dental Gator did not exist.

1 CONFIDENTIAL - HAL MULLER
 2 BY MS. ROSNER:
 3 Q. MB2 is a DSO?
 4 A. Correct.
 5 Q. Dental Gator was a vehicle for MB2 to
 6 become familiar with private practice dentists
 7 that it could acquire?
 8 MR. McDONALD: Object to the form.
 9 A. That was our assumption, yes.
 10 Q. Dental Gator is a membership-based
 11 organization; is that right?
 12 A. Yes.
 13 Q. Dental Gator's members are independent
 14 private practice dentists?
 15 MR. McDONALD: Object to the form.
 16 A. The list that we have got, yes.
 17 Q. Dental Gator provides group purchasing
 18 opportunities for its members?
 19 MR. McDONALD: Object to the form.
 20 A. They represented lower pricing to
 21 their members, yes.
 22 Q. Dental Gator is not a DSO; is that
 23 right?
 24 A. It is part of a DSO.
 25 Q. But Dental Gator doesn't have an

1 CONFIDENTIAL - HAL MULLER
 2 Q. Special Markets never submitted a bid
 3 for Dental Gator's business; is that right?
 4 MR. McDONALD: Object to the form.
 5 A. Correct.
 6 Q. Dental Gator became a customer of
 7 Schein without Special Markets' knowledge; is
 8 that right?
 9 MR. McDONALD: Object to the form.
 10 A. Yeah, you're asking in a weird way.
 11 It's just easy to say that, as I said a few
 12 minutes ago without knowing you were heading
 13 here, that MB2 developed a buying group arm
 14 without talking to Henry Schein about whether
 15 they could use their agreement to customers that
 16 weren't part of MB2.
 17 Q. So this wasn't a relationship --
 18 strike that.
 19 So Special Markets didn't pursue the
 20 relationship with Dental Gator; it just came
 21 into existence?
 22 A. Correct.
 23 Q. But Special Markets wanted to keep the
 24 Dental Gator relationship; is that right?
 25 A. Yes.

1 CONFIDENTIAL - HAL MULLER
 2 Q. The Dental Gator relationship was
 3 beneficial for Schein?
 4 MR. McDONALD: Object to the form.
 5 A. Our division felt that MB2 -- I don't
 6 even know if there's a true entity called Dental
 7 Gator. I believe it had one employee. So I
 8 don't know if that employee got a paycheck from
 9 Dental Gator. It was a spinoff of one of our
 10 customers of another way of them gaining revenue
 11 and to see under the covers of some other
 12 offices that they may in the future purchase.
 13 Q. Is it your opinion that the Dental
 14 Gator relationship was beneficial for Schein?
 15 A. As a way of keeping MB2, yes. I don't
 16 know whether Dental Gator was big enough on its
 17 own to warrant anything being beneficial.
 18 Q. The Dental Gator relationship resulted
 19 in new customers for Schein; is that right?
 20 MR. McDONALD: Object to the form.
 21 A. I'm not positive of it. It could
 22 have.
 23 Q. Henry Schein was picking up accounts
 24 that it did not previously have through Dental
 25 Gator's buying group; is that right?

1 CONFIDENTIAL - HAL MULLER
 2 would have gotten some customer accounts without
 3 did Dental Gator relationship; isn't that right?
 4 MR. McDONALD: Object to the form.
 5 A. If you're reading my testimony, I
 6 guess that's true.
 7 MR. McDONALD: Well, don't -- don't
 8 assume anything and don't assume that she's
 9 making proper representations to you.
 10 THE WITNESS: Okay.
 11 MR. McDONALD: You're entitled to see
 12 the line and page of your prior testimony
 13 before you adopt it. Unless you have a
 14 clear recollection, I would suggest that you
 15 do that so that you can read it in context.
 16 MS. ROSNER: I would also ask that you
 17 testify from your personal knowledge.
 18 MR. McDONALD: Right. So she's asking
 19 you --
 20 THE WITNESS: Correct. Okay.
 21 MR. McDONALD: -- to forget your IH.
 22 BY MS. ROSNER:
 23 Q. Is it your understanding that some
 24 FSCs admitted that they never would have gotten
 25 some customer accounts without the Dental Gator

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 Asked and answered. Lack of foundation.
 4 A. Sitting here right now, I'm not sure
 5 if that's true. I would hope it was true.
 6 Q. During your investigational hearing,
 7 you testified that the good news is that they
 8 were picking up accounts that weren't Henry
 9 Schein into their buying group. Because of the
 10 small amount of customers that Dental Gator
 11 actually would get, most of them were not Henry
 12 Schein customers.
 13 Based on that testimony, do you
 14 understand that Dental Gator added new customers
 15 to Henry Schein?
 16 MR. McDONALD: Object to the form.
 17 A. If that's what I said, then I was more
 18 knowledgeable at the time; and, yes, I would
 19 agree with that.
 20 Q. Why were you more knowledgeable at the
 21 time?
 22 A. Because it was a year and a half ago,
 23 and I haven't really talked about Dental Gator
 24 since then.
 25 Q. Some FSCs admitted that they never

1 CONFIDENTIAL - HAL MULLER
 2 relationship?
 3 A. Yes.
 4 Q. The relationship with Dental Gator
 5 brought Henry Schein increased purchase volume;
 6 is that right?
 7 A. Yes.
 8 Q. Some existing Schein customers split
 9 their purchases between Schein and competitors;
 10 is that correct?
 11 MR. McDONALD: Object to the form.
 12 Are you talking about Dental Gator?
 13 Q. In general?
 14 A. In general, many private practice
 15 offices buy from our competitors as well as us.
 16 Q. As a result of joining Dental Gator,
 17 some customers of Schein who previously split
 18 their purchases among other distributors were
 19 able to consolidate their purchases with Schein;
 20 is that right?
 21 MR. McDONALD: Object to the form.
 22 Lack of foundation.
 23 A. Traditionally, that would be true.
 24 Q. Was that true here?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 Lack of foundation.
 3 A. Yeah, I'd have to see it.
 4 Q. I'm handing you a document that's been
 5 premarked for identification as CX2140.
 6 The document is a one-page e-mail that attaches an
 7 Excel spreadsheet. The first page of the e-mail is
 8 Bates-stamped Henry Schein-000195352.
 9 Please take a moment to review CX2140
 10 and let me know when you're finished.
 11 (Exhibit CX2140-001 through 004, a
 12 document bearing Bates Nos. Henry
 13 Schein-000195352 through 353, marked for
 14 identification, as of this date.)
 15 MR. McDONALD: While he's looking at
 16 that, Jasmine, our lunch is here, so
 17 whenever you want to break, we can break.
 18 MS. ROSNER: Okay. Okay.
 19 (Document review.)
 20 BY MS. ROSNER:
 21 Q. You've had an opportunity to review
 22 CX2140?
 23 A. I did.
 24 Q. This is an e-mail written by you dated
 25 December 9, 2014. You see that?

1 CONFIDENTIAL - HAL MULLER
 2 record and break for lunch.
 3 THE VIDEOGRAPHER: The time is 12:11
 4 p.m. We're off the record.
 5 (Luncheon recess.)
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1 CONFIDENTIAL - HAL MULLER
 2 A. Yes.
 3 Q. I'm just going to read from the
 4 e-mail. "Before we go too far down the road to
 5 cut off Dental Gator --
 6 "So stats --
 7 "There are 24 locations.
 8 "11 of these are new, not Schein
 9 customers.
 10 "Of the 13, they are up in aggregate
 11 at 54 percent of sales per month volume -- there
 12 are some that are not doing as well and others
 13 doing great.
 14 "That 54 percent is without the 20
 15 percent discount, so they are up even more in
 16 volume."
 17 Did I read that correctly?
 18 A. Yes.
 19 Q. Is your understanding from this e-mail
 20 that existing Schein customers who joined Dental
 21 Gator had increased volume with Schein after
 22 joining Dental Gator?
 23 A. Yes.
 24 Q. I can take that document back.
 25 MS. ROSNER: And we can go off the

1 CONFIDENTIAL - HAL MULLER
 2 AFTERNOON SESSION
 3 THE VIDEOGRAPHER: The time is 1:06
 4 p.m. We're on the record.
 5 HAL MULLER, resumed and
 6 testified further as follows:
 7 EXAMINATION BY (Cont'd.)
 8 MS. ROSNER:
 9 Q. Mr. Muller, there were some at Schein
 10 who wanted to cut off Dental Gator; is that
 11 right?
 12 MR. McDONALD: Object to the form.
 13 A. I think there were people that
 14 questioned us of why we were selling to them.
 15 Q. There were people at Schein who wanted
 16 to end Schein's relationship with Dental Gator;
 17 is that right?
 18 MR. McDONALD: Object to the form.
 19 A. We, under the current -- the agreement
 20 where they were misusing our agreement.
 21 Q. Who were those people?
 22 A. Well, even I was upset with the fact
 23 that they were using an agreement that it was
 24 not intended for. I would imagine others were
 25 as well.

1 CONFIDENTIAL - HAL MULLER
 2 Q. You didn't want to cut off Dental
 3 Gator, though; is that right?
 4 A. No, I just wanted to change the
 5 agreement.
 6 Q. But there were others who did want to
 7 cut off Dental Gator?
 8 A. There might have been.
 9 Q. Who might have been someone who wanted
 10 to cut off Dental Gator?
 11 MR. McDONALD: Object to the form.
 12 A. Usually it would be salespeople that
 13 had been losing commission on something that
 14 another division had done.
 15 Q. Anyone else?
 16 A. Sales management in Henry Schein
 17 Dental, possibly.
 18 Q. Tim Sullivan and others within Henry
 19 Schein Dental brought up issues regarding Dental
 20 Gator with you multiple times; is that right?
 21 MR. McDONALD: Object to the form.
 22 A. I've seen those in e-mails, yes.
 23 Q. You grew tired of HSD's calls to shut
 24 down Dental Gator?
 25 A. I thought it was a little ridiculous

1 CONFIDENTIAL - HAL MULLER
 2 for 20 locations that we were having discussions
 3 over a customer of ours?
 4 Q. Why was it ridiculous?
 5 A. No, just of all the things we have to
 6 work on to be worrying about things. Remember
 7 that, as with other things, you know, our
 8 salespeople are needed in the full-service
 9 business and it's important that our management
 10 team protect those salespeople.
 11 Q. You wanted to give it a rest on the
 12 discussions about Dental Gator; is that right?
 13 MR. McDONALD: Object to the form.
 14 A. I think I like a lot of things to --
 15 to give it a break. I don't question what the
 16 way our other division does stuff, but I think
 17 that we got we questioned how we did things, so
 18 I think sometimes it was frustrating.
 19 Q. I want to talk about specifically
 20 Dental Gator.
 21 A. Okay.
 22 Q. You wanted to give it a rest on
 23 discussing Dental Gator?
 24 A. I'm sure I --
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 THE WITNESS: I'm sorry.
 3 I'm sure I was like, yes, I've had
 4 enough of comments from the field.
 5 BY MS. ROSNER:
 6 Q. Tim Sullivan didn't appreciate your
 7 telling him to give it a rest on Dental Gator;
 8 is that right?
 9 MR. McDONALD: Object to the form.
 10 A. I don't remember that.
 11 Q. I'm going to hand you a document
 12 that's previously been marked as CX2142. It's a
 13 multi-page e-mail chain. The first page has
 14 been Bates marked Henry Schein-000151635.
 15 Please take a moment to review CX2142
 16 and let me know when you're ready.
 17 (Exhibit CX2142-001 through 004, a
 18 document bearing Bates Nos. Henry
 19 Schein-000151635 through 638, marked for
 20 identification, as of this date.)
 21 (Document review.)
 22 THE WITNESS: Okay.
 23 BY MS. ROSNER:
 24 Q. You've had an opportunity to review
 25 CX2142?

1 CONFIDENTIAL - HAL MULLER
 2 A. I have.
 3 Q. This is an e-mail chain where the
 4 last-in-line e-mail is from you on January 18,
 5 2015. I'm going to reference page CX2142-002,
 6 second page of the e-mail chain from the front.
 7 In the middle of the page, you write,
 8 "Can we give it a rest already?"
 9 We have already discussed that, right?
 10 A. Right.
 11 Q. And right after that -- right above
 12 that, I should say, there is an e-mail response
 13 from Tim Sullivan, and Tim Sullivan in the first
 14 line of his e-mail says, "Please don't speak to
 15 the leadership team like this."
 16 Do you see that?
 17 A. I do.
 18 Q. This e-mail is about Dental Gator, and
 19 further in Tim Sullivan's e-mail he says, "No...
 20 we cannot give this a rest while customers and
 21 reps continue to bring it to our attention.
 22 This is an issue that doesn't go away by telling
 23 the team to simply accept it. Until that is our
 24 strategy, we cannot give this a rest."
 25 Did I read that correctly?

1 CONFIDENTIAL - HAL MULLER
 2 A. You did.
 3 Q. So there's a disagreement here between
 4 you and Tim Sullivan?
 5 A. Yes.
 6 Q. What's the nature of that
 7 disagreement?
 8 A. The biggest part of this disagreement
 9 is me talking to his team, which I've done once
 10 in a while, and he doesn't like it.
 11 Q. Is there any other disagreement that's
 12 happening between you and Tim Sullivan in this
 13 e-mail chain?
 14 A. He is bringing to my attention that
 15 customers and his reps are bringing Dental Gator
 16 to their attention.
 17 Q. And how is that a disagreement?
 18 A. That we're selling them and -- and
 19 under our division, and it's going -- it's
 20 affecting customers in his division as well as
 21 his reps.
 22 Q. That's creating a conflict for Tim; is
 23 that your understanding?
 24 A. Right. Again, it's because it's a
 25 reduced commission for the sales team.

1 CONFIDENTIAL - HAL MULLER
 2 DSO customers, the -- you know, using those
 3 contracts for non-DSO customers created a
 4 problem, so what we did is we went back and --
 5 and renegotiated with MB2 on their Dental Gator
 6 business that we would continue to give a
 7 discount, but it couldn't be as deep because we
 8 weren't getting support from the manufacturers.
 9 Q. When did you renegotiate the discounts
 10 for Dental Gator with MB2?
 11 A. I'm not sure of the timing.
 12 Q. Was it after 2014?
 13 MR. McDONALD: Object to the form. If
 14 you know, tell her, but don't guess.
 15 A. No, I don't know.
 16 Q. So after you renegotiated the
 17 discounts with Dental Gator, the discounts that
 18 Dental Gator could offer its members were lower
 19 than what it could offer its members under the
 20 MB2 program; is that right?
 21 A. That is true.
 22 Q. Returning back to CX2142, at the very
 23 top of the e-mail, the last in line, you write,
 24 "I think he didn't like how I talked to his
 25 team. I need to stop e-mailing them like I have

1 CONFIDENTIAL - HAL MULLER
 2 Q. He notes, "This is an issue that
 3 doesn't go away by telling team to simply accept
 4 it. Until that is our strategy, we cannot give
 5 it a rest."
 6 What does that mean?
 7 MR. McDONALD: Objection to form.
 8 Q. What do you understand that to mean?
 9 A. I'm reading to this, until we have a
 10 strategy about what to do with Dental Gator,
 11 they're not going to accept it.
 12 Q. Was there not a strategy about what to
 13 do with Dental Gator?
 14 MR. McDONALD: Object to the form.
 15 Vague as to time.
 16 A. Yeah, I mean, again, I'm -- I'm not
 17 sure of the timing of whether it is the Dental
 18 Gator new program or old program, but they did
 19 have lower prices on those customers than
 20 others.
 21 Q. What do you mean by the Dental Gator
 22 new program versus the old program?
 23 A. Because Dental Gator used our contract
 24 that we get have better compliance and we get
 25 better pricing from the manufacturers for our

1 CONFIDENTIAL - HAL MULLER
 2 some authority. So I will stop. But I am sick
 3 of him thinking the world is flat."
 4 Did I read that correctly?
 5 A. Yeah. Which page are you on? I did
 6 read it so, I...
 7 Q. I'm so CX2142-001.
 8 MR. McDONALD: The front page.
 9 A. The front page.
 10 MR. McDONALD: Maybe you should reask
 11 your question again now that he's in the
 12 same place.
 13 Q. I'll read it again. I'm looking at
 14 the top e-mail the top of that page. It's from
 15 you. "I think he didn't like how I talked to
 16 his team. I need to stop e-mailing them like I
 17 have some authority. So I will stop. But I am
 18 sick of him thinking the world is flat."
 19 Did I read that correctly?
 20 A. You did.
 21 Q. You were sick of Tim Sullivan thinking
 22 the world is flat; is that right?
 23 A. Yes.
 24 Q. What do you mean by that comment?
 25 A. I think, as I've said a couple of

1 CONFIDENTIAL - HAL MULLER
 2 times today, the Henry Schein Dental business
 3 was moving very slowly into new territory, and
 4 again, there's a difference between me wanting
 5 to rush on a smaller business with a lot less
 6 people and Tim's opinion of dealing with, you
 7 know, 50,000 customers and 2,000 salespeople as
 8 opposed to somebody like me who has 8
 9 salespeople.

10 So I viewed the world as round, and
 11 maybe he was in some other shape, where Tim was,
 12 hey, this is a -- our business isn't changing as
 13 fast as you think it is, Hal.

14 Q. You have disagreements with Sullivan
 15 from time to time, I imagine; is that right?

16 A. With Tim or the Sullivan team?

17 Q. I'll withdraw the question.

18 You have disagreements with Tim
 19 Sullivan from time to time? That's only
 20 natural; is that right?

21 MR. McDONALD: Object to the form.

22 A. We have them. I don't know if it's
 23 natural, but we have them.

24 Q. Do you always accuse Tim of thinking
 25 the world is flat?

1 CONFIDENTIAL - HAL MULLER

2 A. No, I don't use that comment very
 3 often. I have used other comments in our
 4 e-mails today that -- that refer that way, but
 5 he's right in the fact that their bus- -- that
 6 the traditional dental business is a very
 7 high-touch business, where I view -- I'm looking
 8 forward, and he knows what he has. He knows the
 9 business is changing, but it's changing slowly.

10 Q. And it's your opinion that he's not
 11 reacting to change in the way that he should be?

12 A. That's Hal Muller's opinion. It's not
 13 necessarily the right way, but it's mine.

14 Q. You can put that document aside.

15 After HSD repeatedly raised concerns
 16 about Dental Gator, Special Markets took steps
 17 to address some of those concerns; is that
 18 right?

19 A. Correct.

20 Q. We just talked about how Special
 21 Markets took Dental Gator off of the MB2 price
 22 plan, right?

23 A. Okay. I need to go back.

24 You asked if we changed it because of
 25 Henry Schein Dental. We changed it because we

1 CONFIDENTIAL - HAL MULLER
 2 found out that they were doing it wrong, and so
 3 it was as much a concern of mine as it was Henry
 4 Schein Dental that they were taking an
 5 agreement, written in a certain way, and using
 6 it another way, where we weren't getting support
 7 from manufacturers that was full commissions and
 8 stuff like that.

9 And that's why that sentence that you
 10 found afterwards was put in all of our
 11 agreements, was to make sure that our agreements
 12 were for DSOs and to be used for DSO businesses.

13 Q. You mentioned the sentence that I
 14 found. What are you referring to?

15 A. You were -- you had questioned
 16 something on if this is purely a buying group,
 17 then the terms of this agreement aren't the
 18 same.

19 Q. You were referring to the ADC
 20 contract?

21 A. Correct.

22 Q. Okay. I just want to make sure I
 23 understand what you're referring to.

24 So when Special Markets found out that
 25 Dental Gator was using the MB2 pricing, Special

1 CONFIDENTIAL - HAL MULLER
 2 Markets wanted to change that?

3 A. Correct.

4 Q. In addition to changing the pricing
 5 for special -- strike that.

6 In addition to changing the pricing
 7 offered to Dental Gator, Special Markets also
 8 put restrictions on how Dental Gator could
 9 advertise those savings; is that right?

10 MR. McDONALD: Object to the form.

11 A. Any of the buying groups that we had
 12 agreements with, we asked not for them to
 13 publicly promote where their discounts were.
 14 And as a matter of fact, most buying groups just
 15 list who they're dealing with in logos under
 16 their pages and stuff like that. So we were
 17 just watching to make sure that they were doing
 18 what most people do.

19 Q. Why do you prefer for customers not to
 20 list the savings that they can get with Schein
 21 by joining the buying group?

22 A. Because we don't have a
 23 one-price-fits-all strategy. Depending on
 24 volumes and locations and stuff like that, we
 25 have multiple things that we wouldn't want

1 CONFIDENTIAL - HAL MULLER
2 everybody to know every different price that was
3 out there.

4 Q. So Dental Gator couldn't be putting on
5 the Web that people could save money on Henry
6 Schein and stating those savings as well?

7 MR. McDONALD: Object to the form.

8 A. They could say that without the
9 percentage number involved. I think that would
10 be much more agreeable.

11 Q. You had a meeting about this very
12 topic; is that right?

13 A. It's possible.

14 Q. Who would you have met with regarding
15 whether Dental Gator could advertise its savings
16 through Schein?

17 A. I don't remember.

18 Q. Let me hand you a document that's
19 premarked as CX2081. It is a multi-page e-mail
20 chain. The first page e-mail is Bates-labeled
21 Henry Schein-000104625.

22 Please take a moment to review CX2081
23 and let me know when you're finished.

24 (Exhibit CX2081-001 through 005, a
25 document bearing Bates Nos. Henry

1 CONFIDENTIAL - HAL MULLER
2 Schein-000104625 through 629, marked for
3 identification, as of this date.)

4 (Document review.)

5 THE WITNESS: Okay.

6 BY MS. ROSNER:

7 Q. You've had an opportunity to review
8 CX2081?

9 A. Yes.

10 Q. This is an e-mail chain. The
11 last-in-time e-mail is from you dated November
12 10, 2014.

13 I'm going to refer you to page 4, so
14 it's CX2081-004. It's the page that begins, "We
15 have to come up with a plan on how to deal with
16 all of this as it is becoming very explosive."

17 Do you see that page?

18 A. Yes.

19 Q. I'm going to refer you to the e-mail
20 at the bottom of the page, which is from you at
21 11:23 a.m. The subject is Dental Gator.

22 The first line of your e-mail reads,
23 "They can't be putting on the Web that people
24 can save money on Henry Schein and stating
25 savings as well. If you look at their website,

1 CONFIDENTIAL - HAL MULLER
2 it doesn't say it, but if you check LinkedIn."

3 And then the last page, the last line
4 of your e-mail reads, "I am in a meeting about
5 this -- help."

6 Did I read that correctly?

7 A. Yes.

8 Q. So you were in a meeting about --
9 scratch that.

10 You were in a meeting where you were
11 discussing whether Dental Gator could advertise
12 the savings that it got through Schein?

13 MR. McDONALD: Object to the form.

14 A. Yes.

15 Q. Who were you meeting with?

16 A. I don't know.

17 Q. Is there anything that would refresh
18 your recollection as to who you were meeting
19 with?

20 A. If you gave me a document that said
21 who I was meeting with, then I would remember.

22 Q. You're sending an e-mail to Randy
23 Foley so it seems likely that you were not in a
24 meeting with Randy Foley at the time, correct?

25 A. Correct.

1 CONFIDENTIAL - HAL MULLER

2 Q. Who would you normally meet with about
3 Dental Gator?

4 MR. McDONALD: Object to the form.

5 A. This could have been any meeting where
6 this was -- had come up in the meeting. I don't
7 remember having Dental Gator meetings, so it
8 came up in a meeting. So I don't know who was
9 in that meeting.

10 Q. Is there a universe of employees at
11 Schein who would generally be involved in
12 discussing things about Dental Gator?

13 MR. McDONALD: Object to the form.

14 A. My team.

15 Q. Is there anyone outside of your team
16 who might be involved in discussing Dental
17 Gator?

18 MR. McDONALD: Object to the form.

19 Calls for speculation.

20 A. Yeah, unfortunately, I can't tell you
21 who was in this meeting.

22 Q. Is there anyone at Schein who wanted
23 to change the way Dental Gator was advertising
24 the savings that it could give its members
25 through Schein?

1 CONFIDENTIAL - HAL MULLER
 2 A. There may have been. I don't know who
 3 it was. This e-mail chain talks about the
 4 buying groups that are in Henry Schein Dental as
 5 a positive thing, and so I'm not really sure
 6 what the issue still was around Dental Gator
 7 when the other ones that are in Henry Schein
 8 Dental seem to be in a positive manner.
 9 Q. I don't understand why you're raising
 10 that.
 11 A. I'm raising it because you're grabbing
 12 one sentence, and I was trying to grab the other
 13 sentences that were in the same e-mail that you
 14 brought up.
 15 Q. So you're saying that there's some
 16 sort of inconsistency happening within HSD?
 17 MR. McDONALD: Object to the form.
 18 Misstates his testimony.
 19 A. Right; I'm saying that this e-mail
 20 basically says, yes -- and I think we've said
 21 it. There are different buying groups of
 22 different fashions, and this e-mail states just
 23 as much that they're doing business with -- they
 24 we're doing business with other buying groups as
 25 much as it does Dental Gator.

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 2 Gator to not advertise themselves as a buying
 3 group?
 4 MR. McDONALD: Object to the form.
 5 Asked and answered.
 6 A. Right. Not that I know of.
 7 Q. If that occurred, who would have been
 8 the natural person to have delivered that
 9 message?
 10 MR. McDONALD: Object to the form.
 11 Calls for speculation. That is an
 12 inappropriate hypothetical question. He
 13 just told you he didn't know if it ever
 14 happened.
 15 Don't guess.
 16 A. I don't know.
 17 Q. Who was responsible for the Dental
 18 Gator account?
 19 A. Daniel Hobson.
 20 Q. Did Daniel Hobson have the most
 21 contact with the folks at Dental Gator of anyone
 22 at Schein?
 23 A. Okay. With MB2, yes. There really
 24 wasn't a team at Dental Gator.
 25 Q. Other than Daniel Hobson, did anyone

1 CONFIDENTIAL - HAL MULLER
 2 Q. But you were getting push-back on
 3 Dental Gator?
 4 MR. McDONALD: Object to the form.
 5 A. On Dental Gator, right, on the
 6 messaging.
 7 Q. Did Henry Schein have a conversation
 8 with someone at Dental Gator to stop them from
 9 advertising the savings that their members could
 10 get with Schein?
 11 A. I believe somebody on my team would
 12 have done that.
 13 Q. Did someone from your team tell Dental
 14 Gator that they could no longer advertise
 15 themselves as a buying group?
 16 A. Dental Gator is a buying group.
 17 Q. Did anyone from Schein ever tell
 18 Dental Gator that they could not advertise
 19 themselves as a buying group?
 20 A. Not that I know of.
 21 Q. Who would know?
 22 MR. McDONALD: Object to the form.
 23 A. Well, if they are a buying group, how
 24 can they not tell people they're a buying group?
 25 Q. Did anyone from Schein instruct Dental

1 CONFIDENTIAL - HAL MULLER
 2 have substantive contact with the team at MB2 in
 3 regards to Dental Gator?
 4 A. Probably Randy.
 5 Q. That's Randy Foley?
 6 A. Right.
 7 Q. Anyone else?
 8 A. They -- those were the people involved
 9 with this customer.
 10 Q. Okay. If it weren't for the
 11 relationship with MB2 --
 12 Sorry, you can set the document aside.
 13 If it weren't for the relationship
 14 with MB2, Schein likely would not have done
 15 business with Dental Gator; is that right?
 16 MR. McDONALD: Object to the form.
 17 Inappropriate hypothetical.
 18 A. Right; if somebody had come to us and
 19 said we have ten customers and we would like a
 20 better price for those ten customers, it would
 21 have been tough to just give them better pricing
 22 on the fact that they had ten customers.
 23 Q. Are you trying to suggest that Dental
 24 Gator was some sort of price-only buying group?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 A. Yeah, no, I'm not. I'm just saying
 3 that, as I looked at that, it looked like there
 4 were -- in the other document that there were no
 5 more than 20 customers of Dental Gator. So, for
 6 that, it's just the volume more than anything
 7 else.
 8 MR. McDONALD: So pause for a second.
 9 (Discussion off the record.)
 10 Q. You were nervous that -- strike that.
 11 You understood that others within
 12 Schein were nervous that doing business with
 13 Dental Gator would open the floodgates on buying
 14 groups; is that right?
 15 A. At the time of Dental Gator, we had a
 16 lot of buying groups we were selling.
 17 Q. So would it be strange for someone to
 18 fear that doing business with Dental Gator would
 19 open the floodgates on buying groups?
 20 MR. McDONALD: Object to the form.
 21 A. I think there were some people that
 22 were nervous if we sold one buying group that it
 23 would open the floodgates. By this point, we
 24 were selling a lot of them.
 25 Q. Why would someone be nervous that

1 CONFIDENTIAL - HAL MULLER
 2 selling to one buying group would open the
 3 floodgates?
 4 MR. McDONALD: Object to the form.
 5 If you know, tell her.
 6 A. Yeah, I don't --
 7 MR. McDONALD: But don't make
 8 something up.
 9 THE WITNESS: Okay. Thank you.
 10 I won't make something up.
 11 BY MS. ROSNER:
 12 Q. You agree that you didn't want to open
 13 the floodgates on buying groups; is that right?
 14 A. I may have put that in an e-mail.
 15 Q. You put that in an e-mail because you
 16 agreed with it?
 17 A. I think life has proved that opening
 18 up buying groups over the last 20 years hasn't
 19 really opened any floodgates as the fact that
 20 it's still a small part of the business. So I
 21 think we used terms and fears that the sky was
 22 falling on a lot of things that happened in the
 23 industry.
 24 Q. But you had a fear that doing business
 25 with buying groups would open the floodgates?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Object to the form.
 3 A. If I have said that, I've said that,
 4 but it just keeps proving that it's not true
 5 whether I said it or not; that selling to buying
 6 groups has not opened up any floodgates for --
 7 for the change in the industry.
 8 Q. We've talked about Jim Breslawski
 9 today.
 10 He was your boss, right?
 11 A. He -- he still is.
 12 Q. When you communicate with Jim
 13 Breslawski, you don't have a habit of making
 14 things up out of whole cloth, right?
 15 A. Right.
 16 Q. You try to be accurate in your e-mails
 17 to Jim Breslawski; that's right?
 18 A. Obviously.
 19 Q. Let me hand you a document that was
 20 previously marked as CX2145. This is a
 21 multi-page e-mail chain. The first page has the
 22 Bates label Henry Schein-000195765.
 23 Take a moment to review CX2145 and let
 24 me know when you're ready.
 25 (Exhibit CX2145-001 through 004, a

1 CONFIDENTIAL - HAL MULLER
 2 document bearing Bates Nos. Henry
 3 Schein-00195765 through 768, marked for
 4 identification, as of this date.)
 5 (Document review.)
 6 THE WITNESS: Okay.
 7 BY MS. ROSNER:
 8 Q. You've had an opportunity to review
 9 CX2145?
 10 A. I did.
 11 Q. I'm going to refer you -- CX25145 is
 12 an e-mail chain. The last-in-time e-mail is
 13 written by Jim Breslawski on January 28, 2015.
 14 I'm going to refer you to the bottom
 15 of the first page, where there's an e-mail from
 16 Jim written at 6:49 a.m.
 17 Jim writes, "Thanks. It is important
 18 that while accommodating for unique reasons
 19 here, we don't help open the floodgates on
 20 buying groups," exclamation point.
 21 Did I read that correctly?
 22 A. You did.
 23 Q. Jim is concerned about opening the
 24 floodgates on buying groups in 2015, is that
 25 your understanding?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Objection to the form.
 3 A. That's what he wrote.
 4 Q. Do you understand something different
 5 from what he wrote?
 6 A. No; it's a concern.
 7 Q. At this time in 2015, Schein's already
 8 doing business with buying groups?
 9 A. Correct.
 10 Q. Jim is the president of the business
 11 in Schein dealing with all of dental; is that
 12 right?
 13 A. Correct.
 14 Q. And Jim should know that his business
 15 unit is doing business with buying groups,
 16 right?
 17 A. Yes.
 18 Q. It's part of your job to keep Jim
 19 informed about the types of customers that
 20 Special Markets accepts, right?
 21 A. Correct.
 22 Q. Why is Jim concerned -- what is your
 23 understanding of why Jim doesn't want to open
 24 the floodgates on a customer segment he already
 25 does business with?

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 2 If you know tell her, but don't guess.
 3 THE WITNESS: I won't guess on why he
 4 used that term.
 5 BY MS. ROSNER:
 6 Q. You say you agree -- "but I agree,"
 7 you write in all caps in the e-mail right above.
 8 You agree that you don't want to open
 9 the floodgates on buying groups.
 10 MR. McDONALD: Object to the form.
 11 Q. Is that correct?
 12 A. I don't say here I agree with the
 13 floodgate comment.
 14 Q. Is there another comment in Mr.
 15 Breslawski's e-mail that you agree with?
 16 A. Well, he doesn't bring up Darby
 17 either, so I don't -- which I did, so I'm not
 18 sure.
 19 Q. You're agreeing with something. What
 20 are you agreeing with?
 21 MR. McDONALD: If you recall, tell
 22 her.
 23 A. I don't know what I'm agreeing with.
 24 Q. Is there anything that might refresh
 25 your recollection about what you're

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 2 MR. McDONALD: Object to the form.
 3 A. First of all, I'm confused on your
 4 last questioning because you were asking if I
 5 was concerned about the floodgates and you were
 6 going to prove that I was, and these are Jim's
 7 words, not mine, but -- I shouldn't say "but."
 8 There is -- I'm sure every buying
 9 group that we started doing business with at a
 10 lower cost than we normally would do with
 11 customers kept trickling through, and I can
 12 imagine some people were concerned that buying
 13 groups would become more prevalent, which they
 14 haven't, and they haven't because of us because
 15 we keep opening them. And so he might have been
 16 concerned that the trickling would go faster.
 17 Q. But if Schein is already dealing with
 18 buying groups, he's already accepted that Schein
 19 is going to pay lower prices to some customers;
 20 isn't that right?
 21 A. That's right.
 22 Q. So what's the floodgates? The
 23 floodgate sounds like he's trying to hold
 24 something back.
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - HAL MULLER
 2 enthusiastically agreeing with, in all caps?
 3 MR. McDONALD: Object to the form.
 4 A. No.
 5 Q. You can put this document aside.
 6 We talked about Brian Brady today. He
 7 is the head of the Mid Market Group once it was
 8 formed; is that right?
 9 A. Correct.
 10 Q. When hearing that Schein -- scratch
 11 that.
 12 When hearing that Special Markets was
 13 going to designate someone to be dedicated to
 14 buying groups, that caused you to say "wow";
 15 isn't that right?
 16 MR. McDONALD: Object to the form.
 17 If you have a document, show it to
 18 him. I want don't play games.
 19 A. I don't remember saying "wow," but...
 20 Q. You were worried that Schein might
 21 include buying groups in Mr. Brady's title?
 22 A. I wouldn't have been worried, no.
 23 Q. You would not have been worried if
 24 Schein included buying groups in Mr. Brady's
 25 title?

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 2 A. Correct; I would not have been
 3 worried.
 4 Q. I'm going to hand you a document that
 5 has been premarked as CX2129. It is an e-mail
 6 on one page. The first page Bates is Henry
 7 Schein-001386139.
 8 Please take a moment to review this
 9 e-mail and let me know when you finished.
 10 (Exhibit CX20129-001 through 002, a
 11 document bearing Bates Nos. Henry
 12 Schein-001396139 through 140, marked for
 13 identification, as of this date.)
 14 (Document review.)
 15 THE WITNESS: Okay.
 16 BY MS. ROSNER:
 17 Q. You've had an opportunity to review
 18 CX2129?
 19 A. Yes.
 20 Q. I'm going to start at the bottom of
 21 the page, the earliest in time e-mail that's
 22 written from you. The subject matter of the
 23 e-mail is "wow."
 24 "So you have a dedicated person for
 25 buying groups. I guess our stance has changed."

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 2 Did I read that correctly?
 3 A. Yes.
 4 Q. What stance are you referring to that
 5 has changed?
 6 A. That we're open to the fact that
 7 buying groups are more prevalent and that we're
 8 dedicating people to work on them.
 9 Q. Tim Sullivan responds, "Brian B,"
 10 question mark. And then above there, you write,
 11 "Yep -- just worried that might be in the
 12 person's title or something."
 13 Did I read that correctly?
 14 A. Yes. Better than I would have written
 15 it, but go ahead.
 16 Q. You were worried that "buying groups"
 17 would be in Brian Brady's title; is that right?
 18 A. Yes.
 19 Q. Why would the word "buying groups" in
 20 Brian Brady's title worry you?
 21 A. Because there were so many more
 22 important things that Brian is leading than
 23 having buying groups in his title. He was
 24 taking over a big part of the business that was
 25 my responsibility, where buying groups was a

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 2 small part of it. It was always there, but a
 3 small part of it, but it wouldn't have been in
 4 my title or his title when he was selling DSOs,
 5 community health centers, you know, emerging
 6 different businesses.
 7 So I was just saying I, you know, I
 8 hope "buying groups" isn't in his title because
 9 he was so much more than that.
 10 Q. Tim Sullivan responds, "No way we
 11 would make it part of the title. It's also not
 12 a focus rather a defensive position."
 13 And you respond, "Just want to be
 14 given the same message. See you then. Have a
 15 nice weekend."
 16 Did I read that right?
 17 A. You did.
 18 Q. So you wanted to be giving the same
 19 message that having someone dedicated to buying
 20 groups was a defensive position?
 21 MR. McDONALD: Object to the form.
 22 A. No; for me it wasn't a defensive
 23 position. For Tim it might have been, but it
 24 wasn't for me.
 25 Q. What would it mean to have someone

1 CONFIDENTIAL - HAL MULLER
 2 assigned to buying groups as a defensive
 3 position?
 4 MR. McDONALD: Object to the form.
 5 A. That's Tim's writing, not mine.
 6 Q. You said for you it wasn't a defensive
 7 position. So what would it have meant for you?
 8 MR. McDONALD: Object to the form.
 9 A. For me it would have been that we were
 10 putting buying groups in the same place under
 11 one group. And I was cool with that, but, you
 12 know, I didn't want it to be the major focus
 13 just because it was so small.
 14 Q. What do you understand "defensive
 15 position" to mean?
 16 A. That's --
 17 MR. McDONALD: Object to the form.
 18 Go ahead. If you know, tell her.
 19 THE WITNESS: Huh?
 20 MR. McDONALD: If you know, tell her.
 21 THE WITNESS: I was just starting to
 22 say that's Tim's words, not mine.
 23 BY MS. ROSNER:
 24 Q. Right, but he's communicating to you.
 25 He's not just talking out loud to talk hear

1 CONFIDENTIAL - HAL MULLER
 2 himself talk.
 3 What's your understanding of what he's
 4 trying to communicate to you?
 5 MR. McDONALD: Object to the form.
 6 If you had one, tell her.
 7 THE WITNESS: I don't know why he was
 8 using that term.
 9 MR. McDONALD: Don't guess.
 10 BY MS. ROSNER:
 11 Q. When you receive e-mails and you don't
 12 understand them, do you often not ask to clarify
 13 or follow up?
 14 MR. McDONALD: Object to the form.
 15 A. Many of the times I don't. I get
 16 hundreds of e-mails a day.
 17 Q. You can set this one aside.
 18 Actually, before you do that, is there
 19 anything that we could show you or that could
 20 help you better understand what Tim is referring
 21 to as "defensive position"? I understand you
 22 don't understand what he's saying here today.
 23 A. Right.
 24 Q. Is there anything that we could show
 25 you to help you better understand what he's

1 CONFIDENTIAL - HAL MULLER
 2 trying to say?
 3 A. Not unless he defines what he means.
 4 Q. There's nothing you can look at that
 5 would help you better understand what he's
 6 trying to communicate to you?
 7 A. If you have something that says what
 8 he's -- means, then I'm willing to read it.
 9 Q. There's nothing that you can think of
 10 in this moment?
 11 A. Correct.
 12 Q. We've talked about how Brian Brady was
 13 assigned to work with buying groups among many
 14 other things in his job?
 15 A. Correct.
 16 Q. At the same time, you noted that Brian
 17 Brady doesn't understand why we're not working
 18 with buying groups; is that right?
 19 A. I am not sure how to answer that
 20 question.
 21 Q. Did you ever say Brian Brady doesn't
 22 understand why we're not working with buying
 23 groups?
 24 A. Brian Brady was always pro selling to
 25 buying groups.

1 CONFIDENTIAL - HAL MULLER
 2 Q. I'm going to hand you a document that
 3 has been previously marked as CX2146. It's a
 4 multi-page e-mail. The first page begins with a
 5 Bates Henry Schein-000154121.
 6 Please take a moment to review CX2146
 7 and let me know when you are finished.
 8 (Exhibit CX2146-001 through 004, a
 9 document bearing Bates Nos. Henry
 10 Schein-00015421 through 124, marked for
 11 identification, as of this date.)
 12 (Document review.)
 13 THE WITNESS: Okay.
 14 BY MS. ROSNER:
 15 Q. You've had an opportunity to review
 16 CX2146?
 17 A. I have.
 18 Q. This is an e-mail where the
 19 last-in-line e-mail chain or the last-in-line
 20 e-mail from the e-mail is from Randy Foley on
 21 January 31, 2015.
 22 Going down one e-mail from the
 23 last-in-time e-mail is an e-mail from you at
 24 10:39 a.m. to Randy Foley, and I'll read the
 25 first sentence of your e-mail. It says, "BTW,

1 CONFIDENTIAL - HAL MULLER
 2 Brian Brady doesn't understand why we are not
 3 working with buying groups."
 4 Did I read that correctly?
 5 A. You did.
 6 Q. What did you mean by that statement?
 7 A. I don't remember. It could have meant
 8 a multitude of things why we, meaning Special
 9 Markets, haven't expanded on buying groups. It
 10 could mean why Henry Schein Dental, outside of
 11 the California market that he was in, aren't
 12 dealing with more buying groups.
 13 So, seeing as I wrote that, those
 14 probably would have been the things that came to
 15 my mind.
 16 Q. Did you instruct Brian Brady not to
 17 work with buying groups?
 18 A. Not at all.
 19 Q. Why was Schein not working with buying
 20 groups?
 21 MR. McDONALD: Object to the form.
 22 Mischaracterizes his testimony.
 23 He's told you I don't know how many
 24 times today that they did.
 25 A. Brian was pro buying groups and so was

1 CONFIDENTIAL - HAL MULLER
 2 I, so... I guess I would answer that.
 3 Q. I guess I don't understand then why
 4 you would write "we are not working with buying
 5 groups"?
 6 A. Again, I don't know in the context of
 7 this letter. I can't even fathom what this --
 8 Q. Well, you have the whole e-mail. Take
 9 some time, if you need, to read the entire
 10 chain.
 11 A. Well, I did. The whole chain has
 12 nothing to do with buying groups, so it's just a
 13 sentence in there that I must have run into
 14 Brian and he questioned it, that's all.
 15 Q. Is there anything that could refresh
 16 your recollection about why you would write,
 17 "Brian Brady doesn't understand why we are not
 18 working with buying groups"?
 19 A. I don't remember anything that would
 20 have pointed to which group he was talking about
 21 or which division he was talking about.
 22 Q. Okay. You can put this one aside.
 23 You're familiar with the entity
 24 Breakaway?
 25 A. I am.

1 CONFIDENTIAL - HAL MULLER
 2 Q. In 2015, Mid Markets signed a prime
 3 vendor agreement with Breakaway; are you
 4 familiar with that?
 5 A. I -- yes.
 6 Q. You understood Breakaway to be a
 7 buying group?
 8 A. I was never sure what Breakaway Dental
 9 was.
 10 Q. You questioned whether people were
 11 okay with signing a PDA with a buying group?
 12 A. From some of the e-mails that I've
 13 looked at today where Breakaway has been
 14 mentioned, it's always been mentioned in
 15 defending our position. If Henry Schein Dental
 16 was opening up Breakaway, then why were we
 17 getting questions on some of the other buying
 18 groups.
 19 Q. Let me hand you a document that's been
 20 premarked for identification as CX2133. It is a
 21 multi-page e-mail. The top page is
 22 Bates-stamped Henry Schein-000191298.
 23 Please take a moment to review CX2133
 24 and let me know when you're done.
 25 (Exhibit CX2133-001 through 003, a

1 CONFIDENTIAL - HAL MULLER
 2 document bearing Bates Nos. Henry
 3 Schein-000191298 through 300, marked for
 4 identification, as of this date.)
 5 (Document review.)
 6 THE WITNESS: Okay.
 7 BY MS. ROSNER:
 8 Q. You've had an opportunity to review
 9 CX2133?
 10 A. I have.
 11 Q. This is an e-mail chain with the
 12 last-in-time e-mail written by you on June 30,
 13 2015. I'm going to direct your attention to the
 14 second page of the document, CX2133-002.
 15 The very bottom of that page, you
 16 write about Breakaway: "This is a buying group.
 17 Are people okay with this?"
 18 Did I read that correctly?
 19 A. Yes.
 20 Q. You're questioning whether people
 21 within Schein would be okay with doing business
 22 with Breakaway; is that right?
 23 A. Correct.
 24 Q. You understand Breakaway at this time
 25 to be a buying group; is that right?

1 CONFIDENTIAL - HAL MULLER
 2 A. Correct.
 3 Q. Are there buying -- scratch that.
 4 Why wouldn't people in Schein be okay
 5 with doing business with a buying group?
 6 A. We keep going back to this. It's --
 7 it's -- first of all, this e-mail is really
 8 about why is this in Henry Schein Dental and not
 9 in Special Markets. This one sentence is -- is
 10 asking the question, almost sarcastically, about
 11 why are people okay with this buying group when
 12 they have questioned on smaller buying groups.
 13 Q. Why would you ask a sarcastic question
 14 about whether people would be okay with Schein
 15 dealing with a bigger buying group when it was
 16 not okay dealing with smaller buying groups?
 17 A. This is, again, a divisional struggle
 18 between the two divisions, but right here, this
 19 again proves that Henry Schein Dental was
 20 selling buying groups, and here was just another
 21 one, and yet when we had one that was previously
 22 being discussed with Dental Gator, which was 20
 23 locations at the max, that we got slack for it
 24 when they were -- continued to open buying
 25 groups in their division.

1 CONFIDENTIAL - HAL MULLER
 2 Q. At the top of this page, you write,
 3 "Last I heard about Breakaway, KT was going to
 4 close them down as a buying group."
 5 Did I read that correctly?
 6 A. Yes.
 7 Q. "KT" refers the Kathleen Titus?
 8 A. Correct.
 9 Q. It was your understanding that
 10 Kathleen Titus was going to close down Breakaway
 11 because they were a buying group?
 12 A. Correct.
 13 Q. Okay. You can put this document
 14 aside.
 15 Upon learning that Schein was doing
 16 business with Breakaway, you wanted to alert Tim
 17 Sullivan; is that right?
 18 A. I might have.
 19 Q. I'm going to hand you an e-mail that's
 20 been premarked as CX2132. It is a two-page
 21 e-mail. The first page is Bates-labeled Henry
 22 Schein-000191283.
 23 Please take a moment to review CX2132
 24 and let me know when you're finished.
 25 (Exhibit CX2132-001 through 002, a

1 CONFIDENTIAL - HAL MULLER
 2 document bearing Bates Nos. Henry
 3 Schein-000191283 through 284, marked for
 4 identification, as of this date.)
 5 (Document review.)
 6 THE WITNESS: Okay.
 7 BY MS. ROSNER:
 8 Q. You've had an opportunity to review
 9 CX2132?
 10 A. I have.
 11 Q. The top e-mail in the chain is from
 12 you written on July 1, 2015. Going down to the
 13 bottom e-mail in the chain, you write, "Buying
 14 Groups: Tim, I don't want you to get caught in
 15 saying one thing and the team doing something
 16 else."
 17 Did I read that correctly?
 18 A. You did.
 19 Q. And then in the following two
 20 paragraphs, you go on to describe how Mid Market
 21 is doing business with Dental Gator and
 22 Breakaway; is that right?
 23 A. Okay. The new Dental Gator accounts
 24 were in Mid Market, yes. And Breakaway was in
 25 Mid Market.

1 CONFIDENTIAL - HAL MULLER
 2 Q. And so the team is doing something
 3 different by working with Dental Gator and
 4 Breakaway than what Tim was saying; is that
 5 right?
 6 MR. McDONALD: Object to the form.
 7 A. Tim says in his e-mail that he was
 8 very aware of them. So I was just saying I
 9 wanted to make sure that we were saying what we
 10 were doing.
 11 Q. You were concerned that Tim was saying
 12 one thing and his team was doing something
 13 different; is that right?
 14 A. That was my concern.
 15 Q. And your understanding is the team was
 16 working with Dental Gator and Breakaway,
 17 correct?
 18 A. Correct.
 19 Q. And you wanted to raise that with Tim
 20 because that was contrary to what Tim was
 21 previously saying; isn't that right?
 22 A. He knew who they were, you know. I
 23 just wanted to refer back to something that was
 24 from a meeting. I'm just saying, you know,
 25 where are we with these and what divisions are

1 CONFIDENTIAL - HAL MULLER
 2 they going to be in.
 3 Q. You didn't know that Tim knew about
 4 Dental Gator and Breakaway; that's right?
 5 MR. McDONALD: Object to the form.
 6 A. Well, I knew definitely he knew about
 7 Dental Gator. I didn't know that much about
 8 Breakaway myself, so I just wanted to make sure
 9 he knew who...
 10 Q. You didn't know that Tim knew his team
 11 was working with Breakaway and Dental Gator.
 12 That's why you wrote the e-mail to alert him; is
 13 that right?
 14 MR. McDONALD: Object to the form.
 15 A. No, not necessarily. I'm saying what
 16 he's saying and what is happening, even if he
 17 knows what is happening, are two different
 18 things.
 19 Q. Okay.
 20 MS. ROSNER: I have no further
 21 questions at this time. We can take a break
 22 and go off the record.
 23 THE VIDEOGRAPHER: The time is 2:07
 24 p.m. We're off the record.
 25 (Recess.)

1 CONFIDENTIAL - HAL MULLER
 2 THE VIDEOGRAPHER: The time is 2:25
 3 p.m. We're on the record.
 4 EXAMINATION BY
 5 MR. McDONALD:
 6 Q. Mr. Muller, I have a few questions for
 7 you.
 8 We've talked about Patterson and Benco
 9 today several times. Do you recall that?
 10 A. I do.
 11 Q. Are they your competitors?
 12 A. Very much so.
 13 Q. And how would you describe your
 14 relationship with Patterson and Benco?
 15 A. I think they wish that I wasn't on
 16 this earth, and I wish they weren't on this
 17 earth.
 18 Q. Have you ever discussed buying groups
 19 with anyone at Patterson?
 20 A. No.
 21 Q. Have you ever discussed buying groups
 22 with anyone at Benco?
 23 A. No.
 24 Q. Have you ever discussed buying groups
 25 with any of your competitors?

1 CONFIDENTIAL - HAL MULLER
 2 groups?
 3 A. For as long as I remember, yes.
 4 Q. During your 25 years at Special
 5 Markets, have any of your superiors told you to
 6 not do business with buying groups?
 7 A. No.
 8 MR. McDONALD: That's all the
 9 questions I have.
 10 MR. LAVERY: Mr. Muller, I have no
 11 questions.
 12 MR. YOON: Likewise, I have no
 13 questions for you.
 14 THE WITNESS: Thank you.
 15 MS. ROSNER: Mr. Muller, I also have
 16 no followup questions for you.
 17 MR. McDONALD: Okay.
 18 THE WITNESS: Thank you.
 19 MR. McDONALD: So --
 20 MS. ROSNER: Can we go off the record?
 21 MR. McDONALD: Yes, let's go off the
 22 record.
 23 THE VIDEOGRAPHER: The time is 2:27
 24 p.m. We're off the record.
 25 (Pause in the proceedings.)

1 CONFIDENTIAL - HAL MULLER
 2 A. No.
 3 Q. The complaint in this case alleges
 4 that Patterson, Benco, and Henry Schein had an
 5 agreement regarding buying groups.
 6 Did you ever have any agreement with
 7 Patterson or Benco regarding buying groups?
 8 MS. ROSNER: Objection. Calls for a
 9 legal conclusion.
 10 A. I have never had a discussion with
 11 anybody having been told that, no.
 12 Q. Do you have any knowledge of the
 13 allegation made by the FTC that there's an
 14 agreement between Patterson, Benco and Henry
 15 Schein regarding buying groups?
 16 A. No.
 17 Q. How long have you worked in Henry
 18 Schein Special Markets?
 19 A. 25 years; since its creation.
 20 Q. During your 25 years in Special
 21 Markets, have you had a policy or practice to
 22 not do business with buying groups?
 23 A. No.
 24 Q. During your 25 years at Special
 25 Markets, have you done business with buying

1 CONFIDENTIAL - HAL MULLER
 2 (This concludes the deposition of Hal
 3 Muller in his individual capacity.)
 4 (Whereupon, the corporate
 5 representative portion of the deposition
 6 commences.)
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1 CONFIDENTIAL - HAL MULLER
2 THE VIDEOGRAPHER: The time is 2:32
3 p.m. We're on the record.

4 MR. McDONALD: So do we want to state
5 on the record, Jasmine, that we have
6 concluded Mr. Muller's deposition in his
7 individual capacity and we are now
8 proceeding with his deposition in his
9 corporate representative.

10 And to be clear, as we have discussed
11 in e-mails, Mr. Muller is being designated
12 as the corporate representative for Henry
13 Schein on topic 2 of the Notice of
14 Deposition to Henry Schein to the extent the
15 buying groups dealt in the Special Markets
16 space, and he's being tendered subject to
17 all the objections that we have made to the
18 deposition topic.

19 MS. ROSNER: I agree. And just for
20 clarity, I'll read specification 2 so that
21 everybody is on the same page.

22 Specific 2 says: "Schein's agreements
23 with any buying groups for dental products
24 during the relevant time period, including
25 the identities of the buying groups and the

1 CONFIDENTIAL - HAL MULLER
2 general -- excuse me, the general terms and
3 scope of each agreement, including, but not
4 limited to, general pricing and discounting
5 terms, ways to determine the members of the
6 buying groups, the Schein employees who
7 negotiated and entered in each agreement,
8 and the operative dates of each agreement."

9 That's the text of specification 2.

10 EXAMINATION BY

11 MS. ROSNER:

12 Q. Mr. Muller, you are aware that you
13 have been asked to speak on behalf of Schein as
14 a corporate representative on those topics?

15 A. Yes.

16 Q. And you have educated yourself on
17 those topics with respect to Special Markets
18 customers?

19 A. Yes.

20 Q. Let's start by providing a list of all
21 of the buying groups Schein did business with
22 from 2000 -- let me back up.

23 Let's start with providing a list of
24 all of the buying groups that Special Markets
25 did business with.

1 CONFIDENTIAL - HAL MULLER
2 MR. McDONALD: Well, we have lodged
3 objections. This is not some memory test.
4 We have provided you with tons of documents
5 that identify the buying groups done by
6 Henry Schein, both in Special Markets and
7 Henry Schein Dental.

8 He's not prepared here, he's not
9 some -- going to regurgitate all that again.
10 If you can -- you want to mark the
11 interrogatory answers we have given you, if
12 you want to mark anything else that we
13 provided to you on multiple occasions and
14 ask him which of those are Special Markets
15 and which are Henry Schein Dental, he's
16 prepared to do that.

17 Otherwise, he's not in a position to
18 sit here and identify all the specific dates
19 of all the buying groups that they have done
20 business with. We have lodged objections,
21 appropriate objections, to that topic in
22 doing so.

23 BY MS. ROSNER:

24 Q. Mr. Muller, have you educated yourself
25 on buying groups that Special Markets would have

1 CONFIDENTIAL - HAL MULLER
2 done business with?

3 A. Not enough to remember all of them off
4 the top of my head.

5 Q. Are there any that you remember?

6 A. Yes. The -- I know some of them. I
7 don't know the dates exactly, but I do know --

8 Q. Can you start by telling me the ones
9 you remember?

10 A. Commonwealth, which is a GPO on CHCs.
11 Council Connections, which is a CHC buying
12 group. I remember the easy ones.

13 I believe there's an Illinois Primary
14 and a Texas Primary on CHCs. We obviously have
15 the agreement that included Dental Gator. The
16 original Smile Source agreement I have to go
17 down the -- I would imagine you don't want the
18 list of all DSOs in this case?

19 Q. I'm not interested in the DSOs. I'm
20 just interested in the buying groups.

21 A. Okay.

22 Q. And buying groups as defined by the
23 private practice dentists buying groups?

24 A. Right.

25 MR. McDONALD: You don't have to

1 CONFIDENTIAL - HAL MULLER
 2 necessarily agree with her definition of
 3 "buying group." If there's an entity you
 4 consider to be a buying group and you
 5 recall, then you should tell her.
 6 THE WITNESS: Okay.
 7 We do have IDA.
 8 BY MS. ROSNER:
 9 Q. That Intermountain Dental Associates?
 10 A. Correct.
 11 We have Dental Practices of Georgia.
 12 MR. McDONALD: If you mumble, she's
 13 going to try to write it down, so don't do
 14 that.
 15 THE WITNESS: Correct. Correct.
 16 I'm sorry, I'm blanking on the rest.
 17 BY MS. ROSNER:
 18 Q. Is there anything that would help
 19 refresh your recollection about who some of the
 20 other buying groups might be?
 21 A. Totally, the list. And I can tell you
 22 when ones are Special Markets.
 23 Q. I'm going to hand you a document that
 24 has been premarked as Exhibit Complaint Counsel
 25 Exhibit 220.

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: I don't care. Just as
 3 long as it's clear on the record that that's
 4 not -- that wasn't part of our interrogatory
 5 answer to you.
 6 MS. ROSNER: You're exactly right.
 7 BY MS. ROSNER:
 8 Q. Page 6 and 7 begin where Schein has
 9 responded to the question about identifying all
 10 buying groups that have had agreements with
 11 Schein.
 12 Feel free to take a moment to
 13 familiarize yourself with the list that has been
 14 provided. There is also a separate list of
 15 group purchasers at Appendix A, which begins at
 16 page -- begins after page 18 and it is its own
 17 numbered document.
 18 So feel free to take a moment and let
 19 me know once your recollection has been
 20 refreshed.
 21 (Document review.)
 22 A. What page were you talking in the --
 23 in the appendix?
 24 Q. Appendix A begins after page 18, and
 25 it is its own enumerated document.

1 CONFIDENTIAL - HAL MULLER
 2 Complaint counsel Exhibit 220 --
 3 MR. McDONALD: So is this like CX220
 4 or is this something different, or what are
 5 we doing, Jasmine?
 6 MS. ROSNER: Let me restate the
 7 number. Just for identification purposes,
 8 this is going to be CX2200. 2200 is
 9 Respondent Henry Schein's Objections and
 10 Responses to Complaint Counsel's First Set
 11 of Interrogatories.
 12 I'm going to direct you to page --
 13 MR. McDONALD: 7.
 14 Q. 6 and 7.
 15 MR. McDONALD: And so, and for the
 16 record, Jasmine, there's handwriting on page
 17 7. I don't know if that's on other stuff
 18 too, but that certainly wasn't in what we
 19 provided to you.
 20 MS. ROSNER: Where do you see the
 21 handwriting on page 7?
 22 (Indicating.)
 23 MS. ROSNER: I apologize. You're
 24 correct. I will provide a separate copy for
 25 the court reporter for the record.

1 CONFIDENTIAL - HAL MULLER
 2 A. Okay. I'll start on the ones on 7,
 3 which are the major ones, unless you --
 4 Q. You've had a moment to refresh your
 5 recollection with CX2200?
 6 A. Correct.
 7 Q. Maybe we can just go down the list
 8 listed on page 7 of CX2200 and you can identify
 9 the customers that were Special Markets
 10 customers for me.
 11 A. Okay. Number 1 -- I mean, Advantage
 12 Dental Group. Arizona Association of Community
 13 Health Centers. Ascension Health. Children's
 14 Hospital Association. Colorado Community Health
 15 Network. Commonwealth Purchasing Group.
 16 Council Connections. Dental Gator. Dental
 17 Partners of Georgia. Illinois Primary
 18 Healthcare Association. Intermountain Dental
 19 Associates. Louisiana Primary Care Association.
 20 MMCAP. OrthoSynetics.
 21 Just so you know, the predecessor of
 22 OrthoSynetics is OCA, which is Orthodontics
 23 Centers of America. Smile Source, the first
 24 part. Texas Association of Community Health
 25 Centers. And the Washington Association of

1 CONFIDENTIAL - HAL MULLER
2 Community and Migrant Health Workers --
3 Healthcare Centers, sorry.

4 Q. Other than the entities that you have
5 named just now, can you think of any other
6 buying groups that Special Markets has done
7 business with?

8 A. There's -- one of our customers -- I
9 can't believe I just blanked out. Sorry.

10 MR. McDONALD: Well, to be clear, he
11 mentioned one in his deposition earlier
12 today. Alpha Omega.

13 THE WITNESS: Right, Alpha Omega.
14 That was not Special Markets. That's been
15 around at Schein before Special Markets.

16 Comfort General is a -- kind of like a
17 franchise model, so it's confusing to what
18 it really is. So I would say that a large
19 part of what they offer their members is a
20 reduced price.

21 BY MS. ROSNER:

22 Q. Are there any other groups -- are
23 there any buying groups that Special Markets has
24 done business with?

25 A. Not that I remember.

1 CONFIDENTIAL - HAL MULLER

2 Q. Are you familiar with the group
3 Premise Health?

4 A. Not in Special Markets, no.

5 Q. Are you familiar with the group Dental
6 Smart?

7 A. No.

8 Q. Are you familiar with the group Dental
9 Associates?

10 A. Do you know where that is? There's
11 Dental Associates in Connecticut. I'm not sure
12 if that's a buying group or not.

13 Q. Does Special Markets have a buying
14 group called Dental Associates in its fold?

15 A. I don't believe so, no.

16 Q. Are you familiar with a group called
17 Ciraden, C-I-R-A-D-E-N?

18 A. No.

19 Q. Are you familiar with a group called
20 Main Street Dental?

21 A. Yes.

22 Q. Is that a Special Markets buying
23 group?

24 A. The Main Street Dental that I know of
25 is no longer in existence.

1 CONFIDENTIAL - HAL MULLER

2 Q. Was Main Street Dental a Special
3 Markets buying group?

4 A. It may have been perceived as one. I
5 think it may be before your timeframe.

6 Q. Are you familiar with a group called
7 Take Care Health?

8 A. No.

9 Q. Are you familiar with any other or can
10 you think of any other Special Markets would
11 have done business with?

12 A. No.

13 Q. I'd like to go through each one of
14 these groups one-by-one --

15 A. Sure.

16 Q. -- you knew that was coming -- and see
17 what you can recall.

18 Do you have personal knowledge of
19 Schien's relationship with Advantage Dental
20 Group?

21 A. I do not.

22 Q. Who would have personal knowledge?

23 A. This is one that's flipped back and
24 forth. Kathleen Titus would and I would think
25 Brian Brady would. This has been around a long

1 CONFIDENTIAL - HAL MULLER

2 time. I'm just not sure which division it was
3 in or out. Sorry.

4 Q. When you say you're not sure which
5 division it was in and out, are you referring to
6 whether it was in Special --

7 A. Henry Schein Dental or Special Markets
8 at the time.

9 Q. Do you know Advantage Dental to be a
10 DSO?

11 A. No; this is one of those that we were
12 questioning which it was.

13 Q. Does Advantage Dental have ownership
14 in its practices?

15 A. Unfortunately, I can't answer that one
16 on Advantage.

17 Q. Is there anything that could refresh
18 your recollection as to whether or not Advantage
19 Dental has ownership in its practice?

20 A. Yes; if I saw the agreement.

21 Q. Do you typically refer to Advantage
22 Dental as a buying group?

23 A. I think we have learned it's a buying
24 group.

25 Q. How many members does Advantage Dental

1 CONFIDENTIAL - HAL MULLER
 2 have?
 3 A. I'm sorry. I'm not familiar enough
 4 with Advantage.
 5 Q. When did Schein enter into an
 6 agreement with Advantage Dental?
 7 A. 2009.
 8 Q. Is that -- what's that knowledge based
 9 on?
 10 A. It says it right here.
 11 Q. Apart from the statement in this
 12 document, do you have any other knowledge --
 13 A. No.
 14 Q. -- as to when Schein entered into an
 15 agreement with Advantage Dental?
 16 A. I'm sorry.
 17 No.
 18 Q. Is the agreement with Advantage Dental
 19 ongoing?
 20 A. Yes.
 21 Q. What type of discount plan is
 22 Advantage Dental on?
 23 A. I wouldn't know without seeing the
 24 agreement.
 25 Q. Have you ever received complaints from

1 CONFIDENTIAL - HAL MULLER
 2 members of HSD about Advantage Dental?
 3 A. No.
 4 Q. Arizona Association of Community
 5 Health Centers, that's a group that represents
 6 CHCs; is that right?
 7 A. Correct.
 8 Q. There are no private practice dentists
 9 that are members of the Arizona Association of
 10 Community Health Centers?
 11 A. The individual offices are not. There
 12 may be dentists that work in the association.
 13 Q. Ascension Health Resource and Supply
 14 Management Group, is that a medical GPO?
 15 A. It is -- it is primarily a medical
 16 GPO, yes, with a dental component.
 17 Q. What is the dental component?
 18 A. The dental component is for Catholic
 19 charities-run facilities. Hospitals, clinics,
 20 things like that.
 21 Q. Is that akin to a CHC?
 22 A. It could be. It could be indigent
 23 care.
 24 Q. Are there private practice dentists
 25 that are members of the dental portion of

1 CONFIDENTIAL - HAL MULLER
 2 Ascension Health resources?
 3 A. There may be. It -- as long as
 4 they're part of the Catholic charities, they
 5 would fall within that.
 6 Q. Children's Hospital Association, is
 7 that akin to a CHC buying group?
 8 A. Akin to, possibly. It really is
 9 hospital-based children's hospitals on the
 10 dental side, so chances are those hospitals have
 11 a number of chairs, dental chairs, within their
 12 facility, within the hospital.
 13 Q. So this -- so Children's Hospital
 14 Association does not represent private
 15 practitioner dentists --
 16 A. True.
 17 Q. -- in independent practice?
 18 A. Correct.
 19 Q. Colorado Community Health Network, is
 20 that a CHC buying group?
 21 A. Yes, it is.
 22 Q. Colorado Community Health Network does
 23 not have among its members private practice
 24 dental practitioners?
 25 A. Correct.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Commonwealth Purchasing Group, that's
 3 a CHC buying group?
 4 A. Correct.
 5 Q. Commonwealth Purchasing Group does not
 6 have among its members private practice dental
 7 practices?
 8 A. Correct.
 9 Q. Council Connections, is that a CHC
 10 buying group?
 11 A. Yes, it is.
 12 Q. Council Connections does not have
 13 among its members private dental practices?
 14 A. Right.
 15 Q. I'm sorry, did you say the Denali
 16 Group was one of your members?
 17 A. No.
 18 Q. Dental Gator is one of your members?
 19 A. Yes.
 20 Q. I'm going to come back to Dental
 21 Gator.
 22 Dental Partners of Georgia is --
 23 A. Yes, those are private practice.
 24 Q. Do you have personal knowledge of
 25 Schein's relationship with Dental Partners of

1 CONFIDENTIAL - HAL MULLER
 2 Georgia?
 3 A. My sales team called on them. I never
 4 visited them myself personally.
 5 Q. Who on your sales team visited them
 6 personally?
 7 A. Randy would have more knowledge about
 8 them, Randy Foley, and whoever our Special
 9 Markets salesperson at the time in that area.
 10 So that revolved a little bit.
 11 Q. Who were some of the SAMs that were
 12 assigned to DPGA?
 13 A. Becky Demers. David Muller. Back in
 14 the day, Rhonda, whatever her last name was this
 15 time.
 16 Q. Durante?
 17 A. Yes, Durante.
 18 Q. Durante?
 19 MR. McDONALD: Hers sounded fancier.
 20 THE WITNESS: Huh?
 21 MR. McDONALD: The way she said it
 22 sounded fancier.
 23 THE WITNESS: Right.
 24 BY MS. ROSNER:
 25 Q. Anyone else?

1 CONFIDENTIAL - HAL MULLER
 2 and it may have other group services, like
 3 insurance, like -- not only insurance, but
 4 provider pay, you know, to be able to negotiate
 5 better rates. As well as malpractice.
 6 Q. Are you familiar with the term "MSO"?
 7 A. Yes.
 8 Q. What is an MSO?
 9 A. An MSO and a DSO could really be said
 10 that they're synonymous. Some people say that
 11 it's just the services without any ownership. I
 12 haven't really seen that to be true in dental.
 13 Q. And you understand an MSO to stand for
 14 management service organization?
 15 A. Service organization.
 16 Q. Is Dental Partners of Georgia an MSO?
 17 A. I don't believe so.
 18 Q. How many members does Dental Partners
 19 of Georgia have?
 20 A. I do not know.
 21 Q. Do you have any personal knowledge
 22 about when Schein entered into an agreement with
 23 Dental Partners of Georgia?
 24 A. At least ten years ago.
 25 Q. Is the relationship with Dental

1 CONFIDENTIAL - HAL MULLER
 2 A. Zach Harrison may have had that for a
 3 time.
 4 Q. Anyone else?
 5 A. Not that I know of.
 6 Q. You mentioned you thought that DPGA
 7 was a group of private practice dentists?
 8 A. Yes.
 9 Q. Does the buying group DPGA have any
 10 ownership in its affiliate offices?
 11 A. I do not believe so.
 12 Q. Does the buying group DPGA have a
 13 separate MSO that it's connected to?
 14 A. I don't believe so.
 15 Q. Does the buying group DPGA contract
 16 with its affiliates for management services?
 17 A. I believe they're -- they do a lot of
 18 group things. Again, like I believe they banded
 19 together for insurance, originally, so this is
 20 one of the groups that was affiliated already.
 21 It hasn't expanded except for internal growth.
 22 Q. Does DPGA offer things like payroll,
 23 accounts receivable, accounts payable, practice
 24 management, any of those things?
 25 A. It definitely has the insurance arm,

1 CONFIDENTIAL - HAL MULLER
 2 Partners of Georgia ongoing today?
 3 A. Yes.
 4 Q. What discount plan is Dental Partners
 5 of Georgia on?
 6 A. I'm not familiar. I, just so you
 7 know, most --
 8 THE WITNESS: Can I just ask this
 9 question? These guys -- I mean, how does
 10 this play in?
 11 MR. McDONALD: It's confidential, so
 12 if you're worried about revealing
 13 confidential information, this deposition is
 14 confidential and they can't tell their
 15 clients about it.
 16 THE WITNESS: Okay.
 17 So most of our programs are similar in
 18 that they're approximately 20 percent off
 19 catalog, and then each of the organizations
 20 gives us what their most popular items are
 21 and we price those separately. So those
 22 items, their most used items, are greater
 23 than 20 percent.
 24 You're going to find that that's
 25 pretty true throughout. We try to stay

1 CONFIDENTIAL - HAL MULLER
 2 pretty constant with that.
 3 BY MS. ROSNER:
 4 Q. So Dental Partners of Georgia has a
 5 baseline discount of 20 percent off --
 6 A. Right, it would be 18 to 20 percent.
 7 It's one of those two, right.
 8 Q. So Dental Partners of Georgia has a
 9 baseline discount of 18 to 20 percent off
 10 everything, and then perhaps some additional
 11 discounts on some of the most used items?
 12 A. Correct.
 13 Q. Did you bid to win the business of
 14 Dental Partners of Georgia?
 15 A. Yes.
 16 Q. When did you last bid to win the
 17 business of Dental Partners of Georgia?
 18 A. You use the word "bid" as if the
 19 we're -- to me that means that other people are
 20 in on that at the same time. I do believe that
 21 with -- with them, we've been pretty constant in
 22 the fact that we've -- they have requested new
 23 pricing at times and we have given it, and but I
 24 don't remember ever bidding against anybody
 25 there.

1 CONFIDENTIAL - HAL MULLER
 2 A. Yes, it is.
 3 Q. The members of Illinois Primary
 4 Healthcare Association are not private dental
 5 practices?
 6 A. Correct.
 7 Q. Intermountain Dental Associates, does
 8 that entity have a DSO?
 9 A. I don't believe so. This is
 10 another -- I hate to say it. This is another
 11 one which we thought was a DSO. I personally
 12 never visited them, and it came out over a
 13 number of years that, oh, by the way, this is,
 14 you know, a buying group, and it didn't change
 15 our relationship with them at all.
 16 Q. So I want to back up for a minute.
 17 A. Go ahead. Sorry.
 18 Q. You don't have personal knowledge of
 19 Intermountain Dental Associates because someone
 20 else was responsible for that account?
 21 A. Right.
 22 Q. Who was responsible for that account?
 23 A. Our regional representative -- our
 24 SAMs in that area. Andrea Hight would have been
 25 the last one. Before that, Kathleen Titus may

1 CONFIDENTIAL - HAL MULLER
 2 Q. You don't recall Dental Partners of
 3 Georgia putting out an RFP or soliciting bids
 4 more broadly?
 5 A. I don't personally.
 6 Q. Were you with Special Markets when the
 7 relationship with Dental Partners of Georgia
 8 started?
 9 A. Yes.
 10 Q. How did that relationship begin?
 11 A. This may have come to us through an
 12 acquisition or through our fields at the Henry
 13 Schein Dental group. This is not something that
 14 Special Markets went out and acquired.
 15 Q. Special Markets inherited the Dental
 16 Partners of Georgia relationship?
 17 A. Correct.
 18 Q. Have you ever received complaints from
 19 anyone at HSD about Special Markets'
 20 relationship with Dental Partners of Georgia?
 21 A. Once -- once in a while. There are
 22 FSCs -- field salespeople attached to this
 23 customer. So we don't get many.
 24 Q. Illinois Primary Healthcare
 25 Association, is that a CHC buying group?

1 CONFIDENTIAL - HAL MULLER
 2 have been involved with that.
 3 Q. Andrea Hight now works for Mid Market,
 4 correct.
 5 A. Correct, as does Kathleen.
 6 Q. Who --
 7 A. I'm sorry. So I should say this. As
 8 of today, Andrea Hight does not work in Mid
 9 Market either. Okay? So she did work in Mid
 10 Market. Prior to that, she worked in Special
 11 Markets. She moved with the customers.
 12 Q. So Intermountain went from special
 13 market to Mid Market; is that what you're
 14 saying?
 15 A. I'm not sure of that, but the
 16 representation did. I don't remember if they
 17 made the top 50.
 18 Q. Okay. Okay. Over than --
 19 A. They were very close, okay.
 20 Q. Okay. Other than Andrea Hight and
 21 Kathleen Titus, are you aware of anyone else who
 22 has personal knowledge of the Intermountain
 23 Dental Associates relationship at Schein?
 24 A. No, I'm not.
 25 Q. You mentioned that at the time that

1 CONFIDENTIAL - HAL MULLER
 2 you were doing business with Intermountain
 3 Dental Associates, Special Markets believed IDA
 4 to be a DSO?
 5 A. Correct.
 6 Q. Special Markets believed IDA had
 7 ownership in its affiliates?
 8 A. Correct.
 9 Q. How many offices are affiliated with
 10 IDA?
 11 A. I do not know.
 12 Q. When did Special Markets enter into an
 13 agreement with IDA?
 14 A. Within the last ten years.
 15 Q. Was there a bid process to win the IDA
 16 account?
 17 A. Not that I remember, but I have a
 18 feeling there was.
 19 Q. And either Andrea Hight or Kathleen
 20 Titus would know more?
 21 A. Correct.
 22 Q. Is IDA on the same Special Markets
 23 plan that is 18 to 20 percent off everything,
 24 with perhaps some additional discounts on --
 25 A. Correct.

1 CONFIDENTIAL - HAL MULLER
 2 Q. -- select items?
 3 A. Sorry. Correct.
 4 Q. Have you ever received any complaints
 5 from HSD on IDA?
 6 A. No.
 7 Q. The Louisiana Primary Healthcare
 8 Association, is that a CHC buying group?
 9 A. Yes, it is.
 10 Q. The members of Louisiana Primary
 11 Healthcare Association are not private dental
 12 practices?
 13 A. Correct.
 14 Q. Minnesota Multi-State Contracting
 15 Alliance for Pharmacy sometimes goes by the
 16 acronym MMCAP; is that right?
 17 A. Yes.
 18 Q. Is MMCAP a CHC buying group?
 19 A. It's more than that. It's any state
 20 facility or state-funded facility amongst
 21 multiple states.
 22 Q. So it caters to a crowd that's more
 23 than just indigent populations?
 24 A. Correct. Correct. It could be
 25 emergency. It could be prisons. It could be

1 CONFIDENTIAL - HAL MULLER
 2 anything like that.
 3 Q. Private dental practices are not
 4 members of MMCAP; is that correct?
 5 A. To my knowledge, there's not. There
 6 may in some of these cases, even in the CHCs and
 7 in real rural areas, you could say it's a -- to
 8 meet the demand, but it wouldn't be a
 9 traditional dental office.
 10 Q. You mentioned Comfort Dental. Do you
 11 have personal knowledge of Schein's relationship
 12 with Comfort Dental?
 13 A. Yes.
 14 Q. Who do you have as a contact at
 15 Comfort Dental?
 16 A. I believe it's still Daniel Hobson.
 17 Q. I'm sorry, is there --
 18 A. I'm sorry.
 19 Q. Is there a person at Comfort Dental
 20 that you view as Schein's primary contact
 21 person?
 22 A. Yes. I mean, the owners of the group.
 23 Q. Do you know someone's name from
 24 Comfort Dental?
 25 A. I should, but I'm drawing a blank

1 CONFIDENTIAL - HAL MULLER
 2 right now.
 3 Q. We won't tell them.
 4 If you remember later --
 5 A. Right.
 6 Q. -- just let me know.
 7 A. Right. Okay.
 8 Q. Does Comfort Dental have ownership in
 9 its affiliate dental practices?
 10 A. It's a -- it has some that it owns
 11 completely and it has a franchise model as well.
 12 Q. So Comfort Dental has two parts?
 13 A. It -- yes.
 14 Q. In one part, it's a DSO; is that
 15 right?
 16 A. Correct.
 17 Q. And in the other part, it has a buying
 18 group; is that right?
 19 A. It has -- it's -- okay, I'll go back
 20 to it's like an MSO, but it -- they consider
 21 themselves a franchise. They can buy the name.
 22 They buy lab services. The offices pay for
 23 things, and they really have to -- just like a
 24 McDonald's or anything else, they have to use
 25 the approved suppliers to maintain the name.

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 2 Q. So just so I --
 3 A. And you wouldn't know -- you wouldn't
 4 know the difference between an owned and a
 5 franchise, so that's why it's not really two
 6 different agreements. It's really one
 7 agreement.
 8 Q. As far as the ownership structure
 9 goes, Comfort Dental looks like a DSO plus an
 10 MSO?
 11 A. Correct.
 12 Q. Is that right?
 13 A. Correct, that would be a very good way
 14 of...
 15 Q. How many members does Comfort Dental
 16 have?
 17 A. A few hundred. A couple hundred, I
 18 should say.
 19 Q. When did Schein enter into an
 20 agreement with Comfort Dental?
 21 A. It was in Henry Schein Dental for a
 22 long time, and meaning -- I mean, they probably
 23 have been in Special Markets for ten to twelve
 24 years, and before that, they were purely in
 25 Henry Schein Dental probably for another five or

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 2 six years.
 3 Q. Was there a bid process to win the
 4 Comfort Dental business?
 5 A. I don't know how it originally came to
 6 Henry Schein.
 7 Q. Since Comfort Dental has been in the
 8 Special Markets umbrella, has the business ever
 9 gone out for bid?
 10 A. It hasn't gone out to bid, but we
 11 did -- we've had pressure from Benco where we
 12 had to, you know, renegotiate our agreement to
 13 keep it.
 14 Q. Do you recall when it was that you had
 15 pressure from Benco that led you to renegotiate
 16 the Comfort Dental agreement?
 17 A. It was about four or five years ago.
 18 Q. Is Comfort Dental on an 18 to 20
 19 percent discount plan with additional discounts
 20 for certain items?
 21 A. Yes.
 22 Q. Have you ever received any complaints
 23 from HSD on Comfort Dental?
 24 A. No. There are salespeople assigned to
 25 this account.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Do you have personal knowledge of
 3 Schein's relationship with the entity Main
 4 Street Dental?
 5 A. I am not sure we're talking about the
 6 same Main Street, so I'm going to have take a
 7 pass on that.
 8 Q. Do you have personal knowledge of
 9 Schein's relationship with any entity called
 10 Main Street Dental?
 11 A. We did, but I believe the Main Street
 12 that I know about was purchased and wouldn't
 13 have been carrying its own name anymore.
 14 Q. When was the Main Street that you're
 15 thinking about purchased?
 16 A. Probably 12 years ago.
 17 Q. Who was Main Street Dental purchased
 18 by?
 19 A. Dental Care Associates. Well, they're
 20 now Dental Care Associates, but they would have
 21 been Northeast Dental Management, which is a
 22 DSO. That's why I'm questioning whether it's
 23 the same thing.
 24 Q. Northeast Dental Management is a DSO?
 25 A. Uh-huh.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Is General Care Associates a DSO?
 3 A. Uh-huh.
 4 MR. McDONALD: You have to say yes.
 5 THE WITNESS: Yes. I'm sorry. Yes
 6 and yes.
 7 BY MS. ROSNER:
 8 Q. Going on to OrthoSynetics, do you have
 9 personal knowledge of Schein's relationship with
 10 OrthoSynetics?
 11 A. Yes, I do.
 12 Q. Does OrthoSynetics have ownership
 13 interests in its affiliates' practices?
 14 A. No.
 15 Q. Does OrthoSynetics have a management
 16 agreement with its affiliate practices?
 17 A. Yes.
 18 Q. And under that management agreement,
 19 does OrthoSynetics provide services for its
 20 affiliates?
 21 A. Yes.
 22 Q. What types of services?
 23 A. Marketing. Insurance contracts.
 24 These are specialty orth -- these are
 25 orthodontic practices, so it would do -- you

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 2 know, it offers, not that everybody does it,
 3 payroll services, supplies, equipment. And it's
 4 not just Schein, because there are specialty
 5 products, orthodontic products, that they also
 6 offer. They also offer a practice management
 7 software program.
 8 Q. Does OrthoSynetics do the ordering on
 9 behalf of its affiliated practices?
 10 A. No --
 11 Q. Let me rephrase. Does OrthoSynetics
 12 order supplies for its affiliate practices?
 13 A. No, the practices order on their own,
 14 and it's billed and shipped to the locations.
 15 Q. Does OrthoSynetics have any means of
 16 enforcing compliance with Schein purchases?
 17 MR. McDONALD: Object to the form.
 18 A. The offices can buy from who they
 19 want. There is more than just Schein in their
 20 system.
 21 Q. Are there some products for which
 22 Schein is the exclusive supplier for
 23 OrthoSynetics' affiliates?
 24 A. Yes, but I do believe that Patterson
 25 has some business there as well.

1 CONFIDENTIAL - HAL MULLER
 2 because we had the OCA business I think before I
 3 got there.
 4 Q. At any point since OrthoSynetics was a
 5 Schein customer, has the OrthoSynetics business
 6 gone out to bid?
 7 A. We have been -- yes, we have competed
 8 against our competitors to keep that business.
 9 Q. Which competitors have you competed
 10 against to keep the OrthoSynetics business?
 11 A. I know at least Patterson. It could
 12 have been others as well.
 13 Q. When was it that you last competed
 14 with Patterson for the OrthoSynetics business?
 15 A. About three years ago.
 16 Q. Are --
 17 A. And constantly, sorry. You know, we
 18 get pressure on different product lines every so
 19 often on an account like this.
 20 Q. So at least three years ago you
 21 competed with Patterson. Since that time, have
 22 you competed with Patterson for the
 23 OrthoSynetics account?
 24 A. I would imagine that the -- I can say
 25 that the Patterson people have been in

1 CONFIDENTIAL - HAL MULLER
 2 Q. Is OrthoSynetics an MSO?
 3 A. Yes.
 4 Q. How many members does OrthoSynetics
 5 have?
 6 A. A couple. About 200.
 7 Q. When did Schein first enter into an
 8 agreement with OrthoSynetics?
 9 A. When Orthodontic Centers of America
 10 went under, which is -- which was in the mid
 11 2000s.
 12 Q. And is the relationship with
 13 OrthoSynetics still in existence --
 14 A. Yes, it is.
 15 Q. -- today?
 16 MR. McDONALD: Let her finish her
 17 question.
 18 THE WITNESS: I know. I just yelled
 19 at myself at the same time.
 20 MR. McDONALD: You're doing well, but
 21 you're getting anxious to get out of here.
 22 BY MS. ROSNER:
 23 Q. Did Schein win OrthoSynetics through a
 24 bid process?
 25 A. We had the -- I can't answer that

1 CONFIDENTIAL - HAL MULLER
 2 OrthoSynetics trying to sell them.
 3 Q. Prior to three years ago, did you also
 4 compete with Patterson for the OrthoSynetics
 5 account?
 6 A. I don't remember who we might have
 7 competed against.
 8 Q. Have you ever competed with Benco for
 9 the OrthoSynetics account, to your knowledge?
 10 A. To their corporate office, not that I
 11 know of.
 12 Q. Have you ever received complaints from
 13 HSD regarding Special Market's relationship with
 14 OrthoSynetics?
 15 A. Once in a while, a salesperson would
 16 say something, yes.
 17 Q. I forget if we have covered this, but
 18 is OrthoSynetics on the discount plan that is 18
 19 to 20 percent off everything with some
 20 additional discounts on select items?
 21 A. Yes. The only difference between --
 22 with OrthoSynetics and Comfort Dental is there's
 23 also a fee paid back to the corporate office.
 24 Q. Schein pays a fee back to the
 25 customer's corporate office?

1 CONFIDENTIAL - HAL MULLER
 2 A. Right. More like a buying group, like
 3 a traditional buying group. So that would be
 4 true on Comfort as well as OrthoSynetics.
 5 Q. Schein typically does not pay fees
 6 back to the customer for DSO customers?
 7 A. Right, because they're enjoying it all
 8 in the price.
 9 Q. Schein typically does not pay fees
 10 back to the customer when they are an MSO
 11 customer?
 12 A. When they're a DSO customer.
 13 Q. Is the same true for MSO customers?
 14 A. No, that's where OrthoSynetics and
 15 Comfort are more of an MSO model.
 16 Q. I got it. Thank you.
 17 For Smile Source, do you have personal
 18 knowledge of Schein's relationship with Smile
 19 Source?
 20 A. Its current relationship, no, I do
 21 not.
 22 Q. Do you have personal knowledge of
 23 Smile Source's relationship with Schein from the
 24 first time Smile Source --
 25 A. Yes.

1 CONFIDENTIAL - HAL MULLER
 2 in its affiliate dentists?
 3 A. Correct.
 4 Q. Smile Source is not a DSO?
 5 A. Correct.
 6 Q. Smile Source is not tied to a DSO in
 7 any way?
 8 A. No.
 9 Q. Smile Source is not an MSO?
 10 MR. McDONALD: Object to the form.
 11 A. They now offer more services than they
 12 did in 2008 to '12, so I'm not familiar with the
 13 new -- what their newest offering is. Back in
 14 that time, their only component -- well, I
 15 shouldn't say their only.
 16 They had connections with labs and
 17 marketing and education, so they were a -- an
 18 MSO-like, and like I said, it was the model that
 19 was a percentage of revenue as opposed to a
 20 percentage back, a percentage pay, or I should
 21 say a dollar paid per month. Sorry.
 22 Q. You referenced "back in that time."
 23 You're referring to the time period 2008 through
 24 2012?
 25 A. Correct.

1 CONFIDENTIAL - HAL MULLER
 2 Q. -- contracted with Schein?
 3 A. Sorry. Sorry.
 4 Yes, I did.
 5 Q. I want to step back. So at
 6 OrthoSynetics who is your contact at the
 7 customer?
 8 A. The purchasing agent, whoever that
 9 might be right now. I don't know. I haven't
 10 called on them in a long time, and I do believe
 11 they have changed the people.
 12 Q. Do you recall past contacts at
 13 OrthoSynetics?
 14 A. No. Sorry.
 15 Q. Who was your contact at Smile Source?
 16 A. Trevor.
 17 Q. Trevor Maurer?
 18 A. Yes. Thank you.
 19 Q. Anyone else?
 20 A. There may have been somebody in 2008.
 21 I just don't remember their name.
 22 Q. Smile Source is an entity whose
 23 members are private dental practices?
 24 A. Yes.
 25 Q. Smile Source does not have ownership

1 CONFIDENTIAL - HAL MULLER
 2 Q. How many members did Smile Source have
 3 when they were under the Special Markets
 4 umbrella?
 5 A. Around 50.
 6 Q. Did that number ever grow?
 7 A. It grew every year. Sorry.
 8 Q. How many members does Smile Source
 9 have today, to the extent you know?
 10 A. I do not know.
 11 Q. What discount plan was Smile Source on
 12 from the 2008 to 2012 time period?
 13 A. It was either 18 to 20 -- 18 or 20
 14 percent.
 15 Q. Are you familiar with the discount
 16 plan that Smile Source is on today?
 17 A. No, I don't believe they're still a
 18 customer of ours today.
 19 Q. Smile Source was a customer of Schein
 20 at a later point in time, but that was not in
 21 Special Markets?
 22 A. Correct.
 23 Q. Texas Association of Community Health
 24 Centers, is that a CHC buying group?
 25 A. Yes, it is.

1 CONFIDENTIAL - HAL MULLER
 2 Q. The members of Texas Association of
 3 Community Health Centers are not private dental
 4 practices; is that right?
 5 A. Correct.
 6 Q. Washington Association of Community
 7 and Migrant Health Centers, is that a CHC buying
 8 group?
 9 A. Yes. The only -- yes.
 10 Q. The members of Washington Association
 11 of Community and Migrant Health Centers are not
 12 private dental practices; is that right?
 13 A. For the most part. Okay? Again, this
 14 is very, very rural. So they do get some
 15 dentists in private practice to help out with
 16 migrant workers.
 17 Q. Are you familiar with contractual
 18 clauses for CHC buying groups?
 19 A. I am.
 20 Q. Does Schein have a contractual clause
 21 with CHC buying groups that requires the
 22 purchase of a certain level of volume?
 23 A. Of their members?
 24 Q. Correct.
 25 A. No.

1 CONFIDENTIAL - HAL MULLER
 2 Q. Can CHC buying groups force their
 3 members to buy Schein products?
 4 A. No.
 5 Q. I want to return to Dental Gator,
 6 which we skipped over earlier.
 7 We talked a lot about Dental Gator
 8 today in your personal capacity, but I just want
 9 to make sure I understand the corporate
 10 representative answers for Dental Gator.
 11 Schein does not have a separate
 12 contract with Dental Gator; is that correct?
 13 A. Schein did enter into a separate
 14 agreement or clauses on Dental Gator after the
 15 formation of Dental Gator.
 16 Q. The separate clauses on Dental Gator
 17 are with the entity MB2; is that right?
 18 A. Correct.
 19 Q. So Schein has a contract with MB2?
 20 A. Correct.
 21 Q. A part of Schein's contract with MB2
 22 addresses Dental Gator?
 23 A. Correct.
 24 Q. When was the agreement that references
 25 Dental Gator signed?

1 CONFIDENTIAL - HAL MULLER
 2 A. I don't have the date of that. It was
 3 probably around --
 4 MR. McDONALD: Well, don't guess.
 5 THE WITNESS: Okay. I can't guess.
 6 MR. McDONALD: We produced it to them.
 7 They have it.
 8 BY MS. ROSNER:
 9 Q. Schein did not separately bid for
 10 Dental Gator's business; is that right?
 11 A. Correct.
 12 Q. Schein did not seek out the Dental
 13 Gator account, that's correct?
 14 A. That's correct.
 15 Q. Dental Gator became a Schein customer
 16 without Schein's knowledge initially?
 17 A. Correct.
 18 Q. The MB2 contract initially included a
 19 "no buying group" clause; is that right?
 20 A. I am not sure of that.
 21 Q. Is there someone who would be familiar
 22 with whether or not the MB2 contract included a
 23 "no buying group" clause?
 24 A. It would be in their contract, but I
 25 would be as knowledgeable as anybody else.

1 CONFIDENTIAL - HAL MULLER
 2 Q. How many members does Dental Gator
 3 have?
 4 A. I'm not sure they have any anymore.
 5 Q. At its height, how many members did
 6 Dental Gator have?
 7 A. Around 20, 25.
 8 Q. Who was your contact at Dental Gator?
 9 A. The people at MB2.
 10 Q. Is Dental Gator a customer of Special
 11 Markets? Was Dental Gator ever transferred to
 12 HSD?
 13 A. No.
 14 Q. Can you describe the different pricing
 15 plans that Dental Gator took Advantage of?
 16 A. This would be a guess, so I should --
 17 I should not tell you.
 18 MR. McDONALD: Don't guess.
 19 THE WITNESS: Okay.
 20 MR. McDONALD: I mean, there are
 21 documents.
 22 THE WITNESS: It is in the documents
 23 that I believe you have. It was a different
 24 percentage than -- than MB2's offices had.
 25 BY MS. ROSNER:

1 CONFIDENTIAL - HAL MULLER
 2 Q. Initially, Dental Gator took Advantage
 3 of the MB2 prices?
 4 A. Correct.
 5 Q. Are the MB2 prices the same 18 to 20
 6 percent range discount with additional discounts
 7 on select items?
 8 A. Correct.
 9 Q. And then Dental Gator's pricing
 10 changed at some point?
 11 A. Correct.
 12 Q. And the discount level offered to
 13 Dental Gator was lower than the discount level
 14 offered to MB2?
 15 A. Right, depending on which way you say
 16 it. The number would be lower, right.
 17 Q. And the current Dental Gator pricing,
 18 or the last in time Dental Gator pricing, is
 19 represented in the contracts, but you just don't
 20 recall that number at this time?
 21 A. Correct.
 22 Q. Are there any other buying groups that
 23 we haven't mentioned that you recalled since we
 24 started this discussion that Schein did business
 25 with --

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: I'll object to the
 3 form. The documents speaks for themselves.
 4 I mean, he's not here to tell you the dates
 5 of every contract. We produced them to you
 6 already, so you have that information.
 7 If you know, tell her; but if you
 8 don't recall, then tell her you don't
 9 recall.
 10 BY MS. ROSNER:
 11 Q. Are you aware of any buying groups
 12 that Special Markets opened in 2013?
 13 A. No, I'm not.
 14 Q. Are you aware of any buying groups
 15 that Special Markets opened in 2014?
 16 A. No. I'm not saying that there aren't;
 17 I just don't know.
 18 Q. You're not aware?
 19 A. Correct.
 20 Q. Are you aware of any buying groups
 21 that Special Markets opened in 2015?
 22 A. No, those would probably have been
 23 opened in market from that period forward.
 24 Q. Fair enough.
 25 MS. ROSNER: We can take a break.

1 CONFIDENTIAL - HAL MULLER
 2 A. The only --
 3 Q. Excuse me. That Special Markets did
 4 business with?
 5 A. The only other one which also falls
 6 into the community health center/institutional
 7 type is Yankee Alliance outside of -- in
 8 Massachusetts.
 9 Q. Does Yankee Alliance have any members
 10 that are private dental practices?
 11 A. They had a few. I'm not sure if they
 12 still do. And I don't know how in Yankee
 13 Alliance they wound up with having some.
 14 So, again, I don't -- I don't know if
 15 it some point some of the members of some of
 16 these centers were allowed to have the discount
 17 for their private practice.
 18 Q. Is Yankee Alliance another one of
 19 those groups that serves a remote population?
 20 A. Yes.
 21 Q. What new buying groups did Special
 22 Markets open in 2011?
 23 A. I have no idea.
 24 Q. What new buying groups did Special
 25 Markets open in 2012?

1 CONFIDENTIAL - HAL MULLER
 2 MR. McDONALD: Yes.
 3 MS. ROSNER: Go off the record.
 4 THE VIDEOGRAPHER: The time is 3:24
 5 p.m. We're off the record.
 6 (Recess.)
 7 THE VIDEOGRAPHER: The time is 3:33
 8 p.m. We're on the record.
 9 BY MS. ROSNER:
 10 Q. Mr. Foley -- excuse me. Mr. Muller, I
 11 apologize, I just want to clarify a couple of
 12 things that we talked about earlier.
 13 Starting with Advantage Dental, you
 14 mentioned that Advantage Dental had two parts, a
 15 DSO part and a buying group part.
 16 Did I understand you correctly that
 17 the DSO fell within Special Markets and the
 18 buying group fell within HSD?
 19 A. No, it would have all been one.
 20 And just to clarify, this is something
 21 that we -- that just because we had inherited it
 22 at some point we thought was a DSO. We then
 23 heard it was a buying group, but it didn't
 24 change our relationship with them.
 25 Q. So it's your understanding that

1 CONFIDENTIAL - HAL MULLER
 2 Advantage Dental is just a buying group; there
 3 is no DSO component?
 4 A. Correct.
 5 Q. But at the time you did business with
 6 Advantage initially, you had thought that it was
 7 a DSO?
 8 A. Right. It was pretty controlled by a
 9 salesperson when we picked it up.
 10 Q. When did your understanding that
 11 Advantage became -- was a buying group and not a
 12 DSO, when did that understanding change?
 13 A. About in 2013.
 14 Q. How did you come to realize that
 15 Advantage was not a DSO?
 16 A. In the change of salespeople. So as a
 17 new sales -- as a new Special Markets person
 18 picked up that customer, they realized what it
 19 was, and it didn't mean anything -- it didn't
 20 change anything with us.
 21 Q. How did the Special Markets
 22 salesperson realize that Advantage Dental was
 23 not a DSO?
 24 A. When they co-called with the field
 25 salesperson from Henry Schein Dental.

1 CONFIDENTIAL - HAL MULLER
 2 Special Markets came to the realization or
 3 understanding that IDA was not a DSO but was a
 4 buying group.
 5 A. Correct. Similar to the Advantage
 6 Dental.
 7 Q. When did that occur?
 8 A. Probably about ten years ago.
 9 Q. Special Markets realized ten years ago
 10 that IDA was not a DSO?
 11 A. Correct.
 12 Q. How did you come to that
 13 understanding?
 14 A. Again, when Special Markets -- when
 15 the account got large enough that it moved into
 16 Special Markets.
 17 Q. So, previously, the account was with
 18 HSD?
 19 A. Correct.
 20 Q. And it was the understanding that
 21 while the account was with HSD it was a DSO?
 22 A. No, we never asked. I mean, I think
 23 that HSD knew Advantage Dental and IDA were
 24 buying groups run locally by the sales teams. I
 25 don't think they ever raised the flag or

1 CONFIDENTIAL - HAL MULLER
 2 Q. There was some realization that there
 3 was no ownership by Advantage Dental?
 4 A. Correct.
 5 Q. You mentioned Dental Partners of
 6 Georgia today. Does Special Markets have an
 7 agreement to supply merchandise to Dental
 8 Partners of Georgia, or just a service
 9 agreement?
 10 A. Oh, no, there's merchandise equipment
 11 and -- our full portfolio.
 12 Q. Is there a separate agreement on
 13 service for Dental Partners of Georgia?
 14 A. You mean technical service for fixing
 15 their equipment?
 16 Q. Correct?
 17 A. In almost all of our customers there's
 18 a separate agreement.
 19 Q. So there are two agreements with
 20 Dental Partners of Georgia, one on the service
 21 side and one for merchandise?
 22 A. Right. They're pretty much pulled
 23 together nowadays, but in the past, they have
 24 always been separate.
 25 Q. We talked earlier about IDA and how

1 CONFIDENTIAL - HAL MULLER
 2 anything like that.
 3 Q. I understand you to say that at some
 4 point Special Markets thought that IDA was a
 5 DSO?
 6 A. Correct; just because it hit our
 7 numbers in volume.
 8 Q. And how did Special Markets come to
 9 realize that IDA was not a DSO?
 10 A. When we went and visited them.
 11 Q. And you had discussions with someone
 12 from IDA?
 13 A. Correct.
 14 Q. And you asked about their ownership
 15 interest?
 16 A. Correct.
 17 Q. You mentioned Main Street Dental and
 18 Comfort Dental as having long-term relationships
 19 at Schein.
 20 When did the Main Street Dental
 21 relationship first start, to the extent you
 22 know?
 23 A. Probably about 2005-ish.
 24 Q. When did the Comfort Dental
 25 relationship start?

1 CONFIDENTIAL - HAL MULLER
 2 A. I'm only aware of when it came in to
 3 Special Markets, which was within the last eight
 4 years.
 5 Q. You mentioned that Yankee has some
 6 private practice dentists that may be part of
 7 its CHC buying group?
 8 A. Correct. It's minimal.
 9 Q. Are private practice dentists allowed
 10 to access the CHC pricing that Special Markets
 11 provides?
 12 A. Not unless they're a member of that
 13 organization.
 14 Q. Are there clauses in CHC buying group
 15 contracts with Schein that prohibit the CHC
 16 buying group from offering Special Markets
 17 pricing to private practice dentists?
 18 A. Yes.
 19 MS. ROSNER: No further questions.
 20 MR. McDONALD: I need to go off the
 21 record and talk to you for just one minute.
 22 MS. ROSNER: Okay. Go off the record.
 23 THE VIDEOGRAPHER: The time is 3:39
 24 p.m. We're off the record.
 25 (Recess.)

1 CONFIDENTIAL - HAL MULLER
 2 deposition. Thank you so much for coming in
 3 today, Mr. Muller. I hope you make your
 4 flight home, and have a nice anniversary
 5 dinner.
 6 THE WITNESS: Okay. We will tomorrow.
 7 THE VIDEOGRAPHER: This concludes
 8 today's deposition. The time is 3:42 p.m.
 9 We're off the record.
 10 (Whereupon, the deposition concluded
 11 at 3:432 p.m.)
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 19 HAL MULLER
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1 CONFIDENTIAL - HAL MULLER
 2 THE VIDEOGRAPHER: The time is 3:41
 3 p.m. We're on the record.
 4 EXAMINATION BY
 5 MR. McDONALD:
 6 Q. Mr. Muller, you identified a number of
 7 entities that are buying groups under Special
 8 Markets during the course of your corporate
 9 representative deposition. Do you recall?
 10 A. Correct.
 11 Q. To the extent there were -- there was
 12 equipment sold to these buying groups, was that
 13 under Special Markets?
 14 A. No; equipment is sold through Henry
 15 Schein Dental.
 16 Q. And was equipment sold to or was there
 17 an equipment agreement with these buying groups?
 18 A. Most buying groups have an equipment
 19 and service component of our agreements.
 20 Q. And that would have been under --
 21 A. And that would have been under Henry
 22 Schein Dental.
 23 MR. McDONALD: That's all I have.
 24 MS. ROSNER: Nothing further.
 25 With that, that will conclude your

1 CONFIDENTIAL - HAL MULLER
 2
 3 CERTIFICATE
 4 STATE OF NEW YORK)
 5 : ss
 6 COUNTY OF NEW YORK)
 7 I, Kathy S. Klepfer, a Registered
 8 Merit Reporter and Notary Public within and
 9 for the State of New York, do hereby
 10 certify:
 11 That HAL MULLER, the witness whose
 12 deposition is herein before set forth, was
 13 duly sworn by me and that such deposition is
 14 a true record of the testimony given by such
 15 witness.
 16 I further certify that I am not
 17 related to any of the parties to this action
 18 by blood or marriage and that I am in no way
 19 interested in the outcome of this matter.
 20 In witness whereof, I have hereunto
 21 set my hand this 3rd day of July, 2018.
 22
 23 _____
 24 KATHY S. KLEPFER, RPR, RMR, CRR, CLR
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3 EXAMINATION OF H. MULLER (Individual Capacity): PAGE
4 By Ms. Rosner 7
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7 By Ms. Rosner 226
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11 COMPLAINT COUNSEL EXHIBITS: PAGE
12 Exhibit CX9002-001 through 084, Transcript of 22
Hal Muller dated June 29, 2017
13
14 Exhibit CX2113-001, a document bearing Bates 67
Nos. Henry Schein-000740470
15 Exhibit CX2119-001 through 002, a document 83
bearing Bates Nos. Henry Schein-001544704
16 through 705
17 Exhibit CX2149-001, a document bearing Bates 88
Nos. Henry Schein-000043181
18
19 Exhibit CX2137-001 through 018, a document 99
bearing Bates Nos. Henry Schein-000192488
20 through 494 with attachment
21
22 Exhibit CX2144-001 through 002, a document 109
bearing Bates Nos. Henry Schein-000195206
23 through 207
24
25 Exhibit CX244.001 through 002, a document 109
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through 193

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4 Exhibit CX0245.001 through 003, a document 110
bearing Bates Nos. Henry Schein-000043184
5 through 186
6 Exhibit CX2130-001 through 002, a document 119
bearing Bates Nos. HS-00012399 through 400
7
8 Exhibit CX2135-001 through 003, a document 125
bearing Bates Nos. Henry Schein-000601936
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11 Exhibit CX2020-001 through 007, a document 141
bearing Bates Nos. Henry Schein-001398295
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14 Exhibit CX2021-001 through 29, a document 148
bearing Bates Nos. Henry Schein-001398309
15 through 337
16
17 Exhibit CX2140-001 through 004, a document 174
bearing Bates Nos. Henry Schein-000195352
18 through 353
19
20 Exhibit CX2142-001 through 004, a document 180
bearing Bates Nos. Henry Schein-000151635
21 through 638
22
23 Exhibit CX2081-001 through 005, a document 191
bearing Bates Nos. Henry Schein-000104625
24 through 629
25
26 Exhibit CX2145-001 through 004, a document 201
bearing Bates Nos. Henry Schein-00195765
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29 Exhibit CX20129-001 through 002, a document 206
bearing Bates Nos. Henry Schein-001396139
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32 Exhibit CX2146-001 through 004, a document 212
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3 COMPLAINT COUNSEL EXHIBITS: PAGE
4 Exhibit CX2133-001 through 003, a document 216
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6 Exhibit CX2132-001 through 002, a document 219
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1 CONFIDENTIAL - HAL MULLER
2 NAME OF CASE: In the Matter of Benco Dental
3 DATE OF DEPOSITION: June 21, 2018
4 NAME OF WITNESS: Hal Muller
5 Reason Codes:
6 1. To clarify the record.
7 2. To conform to the facts.
8 3. To correct transcription errors.
9 Page _____ Line _____ Reason _____
From _____ to _____
10
11 Page _____ Line _____ Reason _____
From _____ to _____
12
13 Page _____ Line _____ Reason _____
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14
15 Page _____ Line _____ Reason _____
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17 Page _____ Line _____ Reason _____
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19 Page _____ Line _____ Reason _____
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21 Page _____ Line _____ Reason _____
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23 Page _____ Line _____ Reason _____
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25

ERRATA SHEET

DEPOSITION OF: Hal Muller

DATE DEPOSITION: June 21, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

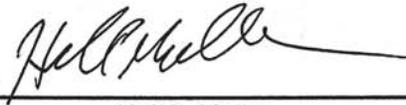
PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
10	10	Change “was” to “has”	Clarification
17	6	Change “We sell NYU” to “We sell to NYU”	Clarification
26	20	Change “there may be the” to “there may be a”	Typographical error
32	8	Delete “actually”	Typographical error/clarification
34	21	Change “is” to “does”	Typographical error/clarification
35	15	Change “traditional” to “traditionally”	Typographical error
42	19	Change “kinded” to “kind of”	Typographical error
46	11	Change “traditional” to “traditionally”	Typographical error
51	25	Delete “Yes.”	Clarification/misspoke
56	3	Delete “that”	Typographical error
59	19	Change “right that the timeframe is” to “right with what the timeframe is”	Clarification/typographical error
62	5	Change “Riecker” to “Reichardt”	Typographical error
77	14	Change “\$9,000 [sic]” to “\$900,000”	Clarification/misspoke
84	23	Change “part” to “point”	Typographical error/clarification
85	11	Change “elsewhere” to “eastward”	Typographical error
87	17	Change “I have—what their decision was or how” to “I have no idea what their decision was or why”	Clarification
102	8	Change “to a division” to “to another division”	Typographical error/clarification
103	10	Change “So the reality” to “No, the reality”	Clarification

105	10	Change “they” to “HSD”	Clarification
132	23	Delete “with a competitor”	Typographical error
154	25	Change “Colin. Colin” to “Colan. Colan”	Typographical error
177	23	Change “were using an agreement that” to “were using an agreement in a way that”	Clarification
196	24	Change “at” to “for”	Typographical error
217	12	Change “questioned on smaller” to “questioned us on smaller”	Clarification
230	11	Change “Practices” to “Partners”	Typographical error
234	16	Change “General” to “Dental”	Typographical error
256	19 & 20	Change “Associates” to “Alliance”	Clarification
272	16	Change “aren’t” to “weren’t”	Clarification/typographical error
272	23	Change “opened in market” to “opened in mid-market”	Clarification

I, Hal Muller, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 30th day of July, 2018.

at Wells, ME
(City) (State)



Hal S. Muller

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John C. Kois, DMD, MSD
UNITED STATES DISTRICT COURT
BEFORE THE FEDERAL TRADE COMMISSION
Office of the Administrative Law Judges

In the Matter of)
)
BENCO DENTAL SUPPLY CO., a)
corporation,) Docket No. 9379
)
HENRY SCHEIN, INC., a)
corporation, and)
)
PATTERSON COMPANIES, INC., a)
corporation,)
)
Respondents.)
_____)

CONFIDENTIAL DEPOSITION OF
JOHN C. KOIS, DMD, MSD
Seattle, WA
Wednesday, June 27, 2018

Reported by:
LISA TRONCOSO, RPR, CSR, CLR
JOB NO. 143125

Page 2

1 John C. Kois, DMD, MSD
 2 June 27, 2018
 3 8:16 a.m.

4
 5 Deposition of JOHN C. KOIS, DMD,
 6 MSD, held at the offices of Byrnes Keller
 7 Cromwell, LLP, 1000 Second Avenue, 38th Floor,
 8 Seattle, Washington, before Lisa Troncoso, a
 9 Registered Professional Reporter, Certified
 10 Livenote Reporter, and Washington Certified
 11 Shorthand Reporter Number 3090.
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Page 3

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Page 4

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 21 Washington, DC 20004
 22 BY: ADRIAN FONTECILLA, ESQ. (via telephone)
 23
 24 Also Present: John Kois, Jr.
 25

Page 5

1 John C. Kois, DMD, MSD
 2 JOHN C. KOIS, DMD, MSD,
 3 called as a witness, having first been sworn by
 4 the Certified Shorthand Reporter, was examined
 5 and testified as follows:
 6 -o0o-
 7 MS. BALBACH: Good morning, Mr.
 8 Kois. As we get started I would like to
 9 have the attorneys introduce themselves.
 10 I'm Jeanine Balbach on behalf of
 11 Complainant Counsel from the Federal Trade
 12 Commission. And with me is Danica Noble
 13 also from Complaint Counsel, the Federal
 14 Trade Commission.
 15 MR. GEORGE: I'm Andrew George. I'm
 16 from a law firm called Baker Botts in
 17 Washington, D.C., and we represent
 18 Patterson.
 19 MR. RACOWSKI: Ken Racowski from
 20 Buchanan, Ingersoll & Rooney representing
 21 Respondent, Benco Dental Supply Company.
 22 MR. RYAN-LANG: I'm Nick Ryan-Lang
 23 here for the witness, and I would just like
 24 to say for the record that we regard the
 25 testimony Dr. Kois is about to give as

1 John C. Kois, DMD, MSD
2 confidential pursuant to the protective
3 order.

4 MS. BALBACH: And on the phone we
5 have?

6 MR. FONTECILLA: Good morning
7 everyone. This is Adrian Fontecilla with
8 Proskauer Rose. I represent Henry Schein.
9 I'm calling from Washington D.C., here
10 today.

11 MS. BALBACH: Also in the room with
12 us we have John Kois, Jr., and are all okay
13 with the presence of Mr. John Kois, Jr.,
14 for this deposition of his father.

15 EXAMINATION BY:

16 MS. BALBACH:

17 Q. Could you state your name for the
18 record?

19 A. John C. Kois.

20 Q. Have you ever been deposed before?

21 A. Yes.

22 Q. In what circumstances?

23 A. Malpractice cases.

24 Q. When was your most recent
25 deposition?

1 John C. Kois, DMD, MSD

2 A. I believe two years ago, 2016.

3 Q. So you probably remember some of the
4 ground rules, but I'll go over them again for
5 today. If you answer a question, I'll assume
6 you understood it.

7 A. By the way, it wasn't a malpractice
8 case against me. I was testifying in a
9 malpractice case.

10 Q. Were you the expert witness?

11 A. Yes, expert witness.

12 Q. Back to the ground rules. If you
13 answer a question, I'll assume you understood
14 that; is that okay?

15 A. Yes.

16 Q. And if you don't understand a
17 question, please let me know and I'll be happy
18 to rephrase it. Please let me finish asking a
19 question before you begin to answer, and
20 likewise, I'll do my best to let you finish an
21 answer before I start the next question; is
22 that okay?

23 A. Yes.

24 Q. You must answer audibly. We have a
25 court reporter here today and she can't take

1 John C. Kois, DMD, MSD
2 down nods or shrugs, is that okay?

3 A. Okay.

4 Q. If you need a break at any point,
5 please let me know and I'll be happy to break
6 at the end of my line of questioning, but if
7 there's a question pending I'll hope you can
8 answer it before we take a break. Is that
9 okay?

10 A. Yes.

11 Q. From time to time today attorneys
12 may make objections to a question that's asked.
13 Typically, unless your attorney instructs you
14 not to answer, you will continue to answer the
15 question. Just try to not talk over the
16 objections, so when you get a question -- when
17 I give a question you might pause a little bit,
18 make sure they get their objections in if they
19 have them and then you can answer. Do you
20 understand that?

21 A. Yes.

22 Q. Is there any reason today that --
23 anything that would interfere with your ability
24 to testify under oath today?

25 A. No.

1 John C. Kois, DMD, MSD

2 Q. Dr. Kois, are you currently a
3 practicing dentist?

4 A. I am, yes.

5 Q. When did you start practicing
6 dentistry?

7 A. June of 1977.

8 Q. Did you start in your own practice
9 or were you employed by another practice?

10 A. No, I was in the Air Force for nine
11 years as a dentist.

12 Q. What year did you join the
13 Air Force?

14 A. I joined the Air Force actually as a
15 scholarship program in 1976, and then formally
16 graduated dental school in 1977.

17 Q. How long did you practice dentistry
18 then for the Air Force?

19 A. From 1977, then eight more years.

20 Q. Was that your primary assignment
21 with the Air Force, dentistry?

22 A. Yes, it was.

23 Q. What did you do after the Air Force?

24 A. I started my private practice and I
25 had a half-time teaching position at the

<p style="text-align: right;">Page 10</p> <p>1 John C. Kois, DMD, MSD 2 University of Washington. 3 Q. What year was that that you started 4 your private practice? 5 A. 1985. 6 Q. Were there any dentists in practice 7 with you or was it a solo practice? 8 A. Solo practice. 9 Q. Where was your practice located in? 10 A. In Fife, Washington. 11 Q. You mentioned you had a half time 12 teaching position at University of Washington. 13 What types of courses did you teach at 14 University of Washington? 15 A. I'm a duly trained specialist in 16 both periodontics and prosthodontics, and I 17 taught in the specialty program for 18 prosthodontics at the University of Washington, 19 and I still maintain assistant professor at the 20 University of Washington. 21 Q. Did you teach courses at the 22 University of Washington in this most recent 23 year? 24 A. No. 25 Q. How do you interact -- you mentioned</p>	<p style="text-align: right;">Page 11</p> <p>1 John C. Kois, DMD, MSD 2 you're an assistant professor with the 3 University of Washington. When was the last 4 time you taught a course? 5 A. I don't currently teach at the 6 University of Washington. Graduate students 7 and current students come to the teaching 8 center and I interact with them there. 9 Q. Are those students doing internships 10 with your son or -- 11 A. These are students attending the 12 University of Washington as graduate students, 13 and they come to the teaching center for 14 questions or short answers to cases. 15 Q. Do you continue to practice 16 dentistry in Fife, Washington? 17 A. I do. 18 Q. Today? 19 A. Yes. 20 Q. How many offices do you have where 21 you currently practice dentistry? 22 A. Two offices. 23 Q. I assume one is located in Fife? 24 A. Yes, it is. 25 Q. And where is the other office?</p>
<p style="text-align: right;">Page 12</p> <p>1 John C. Kois, DMD, MSD 2 A. Here in Seattle. 3 Q. On average, how many days a week do 4 you practice dentistry? 5 A. I practice 65 days a year. 6 Q. Are there other dentists who work 7 with you in the Fife office? 8 A. Yes, there are. 9 Q. How many? 10 A. One. They don't work with me 11 personally, they're on premises in a separate 12 practice. Or he doesn't, I should say. 13 Q. Are there other dentists in the 14 Seattle office? 15 A. Yes. 16 Q. How many dentists are in the Seattle 17 office besides yourself? 18 A. Three. 19 Q. Do those three also have separate 20 practices? 21 A. Yes. 22 Q. Are you currently also the director 23 of the Kois Center? 24 A. Yes. 25 Q. Can you tell me briefly what is the</p>	<p style="text-align: right;">Page 13</p> <p>1 John C. Kois, DMD, MSD 2 Kois Center? 3 A. The Kois Center is a teaching center 4 based program for practicing dentists. It is 5 -- the short version would be a graduate 6 program for practicing dentists. You have to 7 already be a dentist before you attend the Kois 8 Center, and we work with dentists from all over 9 the world. 10 Q. How long have you been the director 11 of the Kois Center? 12 A. Since its inception, which was 1994. 13 Q. Were you the sole founder of the 14 Kois Center? 15 A. Yes, I was. 16 Q. Why did you establish the Kois 17 Center? 18 A. I felt there was a need to help 19 practicing dentists get quality continuing 20 education with a curriculum based system, not 21 fragmented continuing education courses. 22 Q. You mentioned this curriculum based 23 system. Does that mean there is like a set 24 number of classes in this full curriculum? 25 A. Yes, it does. And we are approved</p>

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1 John C. Kois, DMD, MSD
 2 by the American Dental Association and the AGD,
 3 it's the Academy of General Dentistry.
 4 Q. How many courses are in the full
 5 curriculum of the Kois Center?
 6 A. There are nine different courses.
 7 Q. I assume it varies, but each of
 8 these nine courses is there a set number of
 9 days that each course lasts?
 10 A. Yes, there are.
 11 Q. On average, how many days does the
 12 course last?
 13 A. They are either in a three day
 14 format or a five day format where we combine
 15 certain courses to maximize the efficiency of
 16 people traveling from long distances.
 17 Q. You mentioned you have students from
 18 all over the world. Is there a primary
 19 location where your students come from?
 20 A. The dominant amount of students come
 21 from Canada. The second highest outside number
 22 of dentists come from Europe.
 23 Q. So a smaller group of students come
 24 from the United States then from Canada or
 25 Europe?

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1 John C. Kois, DMD, MSD
 2 A. No, the most students are still in
 3 the United States trained students, but -- I'm
 4 sorry, I may have misunderstood the question.
 5 The students coming from outside the United
 6 States most are from Canada, second most are
 7 from Europe.
 8 Q. If you had to estimate, what
 9 percentage of the students would you say are
 10 from the United States?
 11 A. I would say about two thirds.
 12 Q. And from the U.S. is there like a
 13 region, like the west, where most of your
 14 students would come from?
 15 A. I don't have exact data on that.
 16 We're actually trying to compile that at this
 17 time. I can tell you that we don't advertise
 18 our courses so they typically come from areas
 19 of dentists where they have word of mouth
 20 communication options, that's how the center
 21 grew historically.
 22 Q. Was your goal in establishing the
 23 center of this education program to help dental
 24 patients?
 25 A. Yes.

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1 John C. Kois, DMD, MSD
 2 Q. And how would you help dental
 3 patients through these courses?
 4 A. By improving the quality of dental
 5 health care.
 6 Q. Once a dentist takes one of the nine
 7 courses would they repeat a course ever or?
 8 A. We have had some dentists repeat a
 9 course, so they come back as an audit
 10 participant. Most of the dentists, once they
 11 take several courses they complete our entire
 12 series.
 13 Q. Do you have an estimate for the
 14 percentage of dentists that have taken a course
 15 that have completed the entire series?
 16 A. I wish I could answer that with
 17 accurate information because some dentists they
 18 have families and children and so it takes a
 19 long time for them to complete courses. Some
 20 dentists have taken nine or ten years to
 21 complete the series, and some dentists have
 22 completed the series within three months, but I
 23 would say the majority of dentists that take
 24 courses at the center complete the series.
 25 Q. Do you know how many dentists over

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1 John C. Kois, DMD, MSD
 2 the years, since 1949, have completed the
 3 series?
 4 A. I don't have an exact number, but I
 5 believe it's over 600 graduates.
 6 Q. Do you know how many dentists have
 7 taken at least one of the courses?
 8 A. It's in the thousands. Probably a
 9 better answer for my son, who is the CEO of the
 10 company, he has access to that kind of data.
 11 Q. I want to turn to your private
 12 practice right now. You mentioned that you're
 13 practicing 65 days a year now; is that correct?
 14 A. That's correct.
 15 Q. When did you -- I assume when you
 16 started in 1985 you were practicing five days a
 17 week or full time?
 18 A. That's correct.
 19 Q. When did you cut back on your
 20 practice?
 21 A. I first started continuing education
 22 lecturing all over the world, going from
 23 several times a year to up to 50 times a year
 24 around the world until we started to
 25 consolidate the educational process to the

Page 18	Page 19
<p>1 John C. Kois, DMD, MSD 2 center which started in 1994. At that time I 3 still practiced mostly full-time, and we had 4 only 10 or 12 courses per year as the demand 5 started to grow. 6 I would say the practice didn't move 7 to the 65 days a year until about 2003 when the 8 new teaching center opened here in Seattle. 9 But, in essence, my practice time has dwindled 10 and my teaching time has increased. 11 Q. I assume you must use dental 12 supplies in your private dental practice; is 13 that correct? 14 A. I do. 15 Q. Who is your distributor, current 16 distributor for dental supplies? 17 A. Burkhart. 18 Q. And how long have you used Burkhart 19 as your distributor? 20 A. Since the beginning in 1985. 21 Q. Have you ever bought supplies from 22 Henry Schein? 23 A. Yes. 24 Q. What kinds of supplies have you 25 bought from Henry Schein?</p>	<p>1 John C. Kois, DMD, MSD 2 A. I don't recall specific items. Over 3 the years I've purchased from all dental supply 4 companies. 5 Q. So you've purchased dental supplies 6 from Benco Distribution? 7 A. Yes. 8 Q. Have you purchased dental supplies 9 from Patterson Distribution? 10 A. Yes. 11 Q. What about equipment, have you 12 purchased equipment from Burkhart? 13 A. Yes. 14 Q. Have you purchased equipment from 15 Schein? 16 A. I don't recall any specific 17 equipment. Yeah, I don't recall. 18 Q. What about equipment from Benco? 19 A. I don't recall. I haven't purchased 20 equipment for building the practice in quite a 21 while. 22 Q. And purchased -- have you purchased 23 equipment from Patterson, that you recall? 24 A. No, I don't recall. 25 Q. Would you say you've purchased the</p>
Page 20	Page 21
<p>1 John C. Kois, DMD, MSD 2 majority of your supplies from Burkhart over 3 the years? 4 A. Yes. 5 Q. Could you characterize at all when 6 you've had to purchase from Schein, Benco or 7 Patterson? 8 A. When Burkhart would not carry a 9 certain item that I could -- it was a specific 10 item that I could get only through a different 11 supply company. 12 Q. And compared to the volume of 13 supplies you've purchased from Burkhart over 14 the years, what percentage of supplies do you 15 think you've had to turn to Schein, Benco or 16 Patterson to purchase? 17 A. Less than a few percent, ever. 18 Q. Does Burkhart offer full 19 distribution to your office? 20 A. Yes. 21 Q. I assume to both your office in Fife 22 and Seattle? 23 A. Yes. 24 Q. And what is a full service 25 distributor?</p>	<p>1 John C. Kois, DMD, MSD 2 A. They not only are helping me with 3 disposable inventory supplies, they also 4 service all of my equipment. 5 Q. When you say they help you with your 6 inventory of disposable supplies, what 7 specifically does a full service distributor -- 8 what does Burkhart do for you to help with 9 inventory? 10 A. I purchase the majority of the 11 supplies I use for treating patients through 12 Burkhart and a small percentage through direct 13 companies. 14 Q. Does a Burkhart representative come 15 to your office? 16 A. Yes. 17 Q. How often does a Burkhart 18 representative come to your office? 19 A. Every two weeks. 20 Q. When that Burkhart representative is 21 in your office do they inventory your 22 disposable supplies? 23 A. No. 24 Q. Does the Burkhart rep interact with 25 your office to determine that you -- which</p>

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1 John C. Kois, DMD, MSD
 2 disposable supplies you need to restock on?
 3 A. Yes. Typically a dental assistant
 4 might give the representative a few of the
 5 items that are needed because I don't practice
 6 that much the needs for many of the items are
 7 limited.
 8 Q. Does Burkhart have a distribution
 9 center in your offices in Fife and Seattle?
 10 A. I believe they do.
 11 Q. Do you know where the distribution
 12 center is?
 13 A. Not exactly.
 14 Q. Is the distribution center in the
 15 state of Washington?
 16 A. Yes.
 17 Q. Is the distribution center in the
 18 metropolitan area?
 19 A. I think it's not far from my
 20 practice.
 21 Q. Does the sales rep from Burkhart
 22 deliver supplies to your office?
 23 A. He has.
 24 Q. How fast do you get the supplies
 25 once the service rep has visited your office?

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1 John C. Kois, DMD, MSD
 2 company?
 3 A. I have not done that because of the
 4 time element. I don't have time or the
 5 employee resources to delegate that
 6 responsibility to a mail order system.
 7 Q. Does that relate to how you said the
 8 rep that comes to your office helps you with
 9 inventory?
 10 A. Yes. He can inform me of new
 11 products and I essentially know what I want and
 12 that's the most seamless way for me to
 13 replenish my inventory.
 14 Q. Do you also use your Benco rep to
 15 help you get your equipment services?
 16 MR. RACOWSKI: Objection to form. I
 17 think you misspoke.
 18 THE WITNESS: I do not have a Benco
 19 rep.
 20 BY MS. BALBACH:
 21 Q. Do you also use your Burkhart rep to
 22 help you with equipment servicing?
 23 A. I do use the rep to help notify when
 24 something is broken to help speed the service.
 25 Q. We've talked about inventory

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1 John C. Kois, DMD, MSD
 2 A. I would say within a day or two.
 3 Q. Have you ever bought supplies for
 4 your offices from a mail order company like
 5 Darby?
 6 A. I would say maybe historically, but
 7 I can't recall the last time that was ever
 8 done.
 9 Q. Have you -- has your office ever
 10 bought supplies from Amazon or other
 11 Internet-based retailers?
 12 A. I buy household items from Amazon,
 13 and recently a few disposable items from Amazon
 14 have been purchased mostly to try out their
 15 quality.
 16 Q. Other than these few recent
 17 purchases from Amazon -- or why haven't you
 18 bought from an Internet retailer?
 19 MR. FONTECILLA: Objection.
 20 THE WITNESS: I have purchased
 21 disposable items from Amazon because I
 22 thought the pricing was less expensive.
 23 BY MS. BALBACH:
 24 Q. Why haven't you purchased more
 25 supplies from a mail order distribution

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1 John C. Kois, DMD, MSD
 2 management, delivery that your Burkhart rep may
 3 facilitate, equipment servicing that your
 4 Burkhart rep may help facilitate. Is there
 5 anything else that you rely on your full
 6 service Burkhart representative for?
 7 A. No. I rely on the full service rep
 8 very little. I rely on my staff much more.
 9 Q. But without the full service rep
 10 would your staff have to do more work?
 11 MR. FONTECILLA: Objection.
 12 THE WITNESS: It would be just a
 13 phone call.
 14 BY MS. BALBACH:
 15 Q. I don't understand.
 16 A. In other words, having a direct
 17 person to place the order with they'd have to
 18 use a secondary device, telephone.
 19 Q. To call the distribution company?
 20 A. Yes, yes.
 21 Q. Why have you stayed with Burkhart as
 22 your distributor since 1985?
 23 A. There are a number of reasons.
 24 Number one, I've always liked the
 25 representatives that they've provided for me.

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1 John C. Kois, DMD, MSD
 2 I have personally treated some of the people
 3 that work in the company, the service has been
 4 excellent throughout my whole career, so I feel
 5 a certain loyalty to the company.
 6 Q. You mentioned that you had recently
 7 purchased a few products from Amazon to try out
 8 the quality. How was the quality?
 9 A. For the items I purchased, which
 10 were micro brushes, I couldn't determine any
 11 compromises in the quality; they were
 12 disposable items.
 13 Q. Are you planning to make a switch to
 14 Amazon to provide some of your supplies?
 15 A. No.
 16 Q. And why not?
 17 A. At the moment, it's not as
 18 convenient.
 19 Q. Why is it not as convenient?
 20 A. Because I have to go on Amazon.
 21 Q. I want to turn to the Kois Buying
 22 Group. How did you come about deciding to set
 23 up a buying group?
 24 A. The concept of the buying group were
 25 based on a few key principles. At the Kois

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1 John C. Kois, DMD, MSD
 2 Center we also have a research arm to help
 3 determine what might be the best product
 4 choices to use, and once I determined what
 5 would be the best choices and build protocols
 6 for how the product could be used we tried to
 7 go through different companies, the
 8 manufacturing companies, to see if there were
 9 ways to distribute the product throughout the
 10 group, to use the buying power of a collective
 11 group of people, because I deal with most of
 12 the dentists who are solo practitioners or very
 13 small group practices of one, two, maybe three
 14 dentists.
 15 So their way to get discounted
 16 supplies would be typically at dental meetings,
 17 but they'd have to buy too much inventory to
 18 really be able to get the price reduction that
 19 might be available to large group practices, so
 20 the beginning was mostly to have individual
 21 practices be more competitive with large group
 22 practices in buying power because they didn't
 23 have the inventory purchasing power like
 24 Costco. It was the Costco model to use for
 25 dental practice.

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1 John C. Kois, DMD, MSD
 2 MR. RACOWSKI: Apologies, counsel.
 3 This might be a good time to take a break to
 4 get the real time up and working.
 5 MS. BALBACH: Yes, let's take a
 6 break.
 7 (Break from 9:14 to 9:28 a.m.)
 8 BY MS. BALBACH:
 9 Q. We're back on the record. Dr. Kois,
 10 before I follow up on your last question, I
 11 asked you about the buying group you set up.
 12 Dr. Kois, I understand you wanted to
 13 update one of your answers? I had asked you
 14 how many graduates there were of the full
 15 curriculum at the Kois Center. How many
 16 graduates are there?
 17 A. Yes. I checked the data, it's 800.
 18 Q. Thank you. And I had asked you
 19 about your decision to set up the Kois Buying
 20 Group. You mentioned that you were interested
 21 in helping solo, small dental offices because
 22 they might have to purchase too much inventory.
 23 What would be the problem for a small practice
 24 having to purchase too much inventory, what did
 25 you mean by that?

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1 John C. Kois, DMD, MSD
 2 A. Well, there's several reasons for
 3 that particular answer. Number one, in a small
 4 practice, if they have to purchase a lot of
 5 inventory it will take a much longer time
 6 before they can run through the inventory and
 7 utilize it for their patients depending on the
 8 need for the practice.
 9 So I wanted to make sure that they
 10 didn't have to buy too much that would sit on
 11 the shelf unused before they get a chance to
 12 use it. Many of the products that we use also
 13 have expiration dates and they're time
 14 sensitive, so practitioners have to be careful
 15 how much inventory they create on the shelf
 16 that might become expired by the time they get
 17 to utilize it for their patients.
 18 The other reason was I wanted to try
 19 to ensure that it's not only the price that was
 20 important, it was also the convenience. So
 21 that we had many of the offices that they would
 22 maybe be able to purchase things because they
 23 would have some idea that these were quality
 24 items.
 25 Q. And you also mentioned you wanted to

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1 John C. Kois, DMD, MSD
 2 help the solo and small practices compete with
 3 large practices. What did you mean by that?
 4 A. Being able to compete based on how
 5 much time it would take to do all the research
 6 on many of the products, which I could expedite
 7 for them, and trying to ensure that at least
 8 they have competitive prices.
 9 Q. Do large offices get a better price
 10 or a price break?
 11 A. I've heard that from dentists that
 12 come to the center that belong to large groups.
 13 MR. FONTECILLA: I don't know if you
 14 heard my objection to that question.
 15 BY MS. BALBACH:
 16 Q. Did you belong to a buyers group
 17 before you set up KBG?
 18 A. No.
 19 Q. I'm sorry, I may have said -- strike
 20 that.
 21 Where did you get the idea to set up
 22 a buyers group?
 23 A. From a company called ProCare.
 24 Q. And who is ProCare?
 25 A. It's a Canadian company. I don't

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1 John C. Kois, DMD, MSD
 2 Qadeer?
 3 A. No, other than just trying to work
 4 through companies and helping any way they
 5 could.
 6 Q. And what do you mean by getting
 7 companies to help any way they could?
 8 A. Well, I know people from Benco, I
 9 know the ownership in Benco, I've lectured for
 10 the company, so I've had personal relationships
 11 with many of the dental supply companies, all
 12 good relationships.
 13 Q. Do you remember the approximate year
 14 that you met Qadeer Ahmed?
 15 A. Actually, I didn't meet him until he
 16 lectured at one of our symposiums, which was
 17 the first time I ever met him, and I believe
 18 that was 2015 or 2016, I don't recall the
 19 actual date.
 20 Q. When you say one of your symposiums,
 21 was this a course as part of the curriculum?
 22 A. No. We have an annual event that
 23 meets here in Seattle every July for graduates
 24 and above only.
 25 Q. And what is the purpose of an annual

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1 John C. Kois, DMD, MSD
 2 know actually much about the company other than
 3 they help facilitate things like this.
 4 Q. Is that company run by Qadeer Ahmed?
 5 A. Yes, it is.
 6 Q. When you say they help facilitate
 7 things like this, what did you mean?
 8 A. Well, turns out that one of our
 9 students who became a graduate knew of Qadeer
 10 and that's the referral, the introduction I
 11 received, that this is someone that has done
 12 things like this before and he might be able to
 13 help.
 14 Q. Do you know if Qadeer had done
 15 things like this before in dentistry?
 16 A. I do not know.
 17 Q. Do you know if he had set up buying
 18 groups for other industries?
 19 A. I don't know that.
 20 Q. Before you met ProCare and Qadeer
 21 Ahmed, had you done anything to start the
 22 process of trying to set up a buying group?
 23 A. No.
 24 Q. Had you talked to Benco about
 25 setting up a buying group before you met with

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1 John C. Kois, DMD, MSD
 2 symposium?
 3 A. It's an update of all the most
 4 current research that's been published in the
 5 last fiscal year.
 6 Q. What was Qadeer Ahmed's topic at the
 7 symposium he spoke at?
 8 A. It had to do with insurance and
 9 being able to provide better care options
 10 through insurance companies. It had nothing to
 11 do with the buyers club.
 12 Q. But one of your students let you
 13 know that Qadeer had worked with buyers clubs
 14 or buyers groups?
 15 A. No. Just let me know that he was a
 16 very good negotiator and that he might be able
 17 to help. I don't do those kind of things.
 18 Q. Prior to meeting Qadeer Ahmed at
 19 this symposium, do you remember when in
 20 conjunction or in relation to that symposium --
 21 do you remember when the student told you about
 22 Qadeer?
 23 A. I would think probably around 2014,
 24 about four years ago.
 25 Q. And was Qadeer's invitation to your

1 John C. Kois, DMD, MSD
 2 symposium based on that, your discussions with
 3 the student who knew him?
 4 A. Yes. We had exchanged e-mails and
 5 we had some telephone conversations prior to
 6 the symposium, but the symposium decision
 7 happened to turn out to be almost the last
 8 minute decision. We had a 30 minute time slot
 9 to fill at the symposium and he was able to
 10 come and do that.
 11 Q. So you were talking to Qadeer about
 12 buying groups before he appeared at the
 13 symposium?
 14 A. That's correct.
 15 Q. And you just hadn't met him in
 16 person until he was at the symposium?
 17 A. That's correct. That's correct.
 18 Q. When you started talking to Qadeer,
 19 what did he offer to do for Kois?
 20 A. He said that he could make contacts
 21 with many of the companies and reach out to
 22 them and see what he could be able to
 23 accomplish.
 24 Q. And what kind of instructions did
 25 you give to Qadeer about what you wanted?

1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: I don't recall the
 4 dates, I'm sorry.
 5 BY MS. BALBACH:
 6 Q. Do you remember if you were copied
 7 on any of the e-mails with either Benco,
 8 Schein, or Patterson that Qadeer had?
 9 MR. RACOWSKI: Objection, form,
 10 foundation.
 11 THE WITNESS: I remember being
 12 copied on many e-mails, but there are a lot
 13 of e-mails I received that I don't read and
 14 so I don't remember any specific e-mails.
 15 BY MS. BALBACH:
 16 Q. What did -- do you know what Qadeer
 17 asked Benco, Schein, or Patterson to do was --
 18 in relation to a buying group, setting up a
 19 buying group for Kois?
 20 MR. RACOWSKI: Objection to form.
 21 MR. FONTECILLA: Objection,
 22 foundation.
 23 THE WITNESS: I believe what he
 24 asked was to try to have dentists buy what
 25 he called at the time the sale price or

1 John C. Kois, DMD, MSD
 2 A. I didn't give him instructions.
 3 Q. Did you relate to him your concept
 4 of what you were looking for in a buying group
 5 that we just talked about?
 6 A. Actually, he was very perceptive
 7 because of the contact, so he was very familiar
 8 with dentistry and I did very little to
 9 influence his ability to reach out to these
 10 companies.
 11 Q. Do you -- so Qadeer made the first
 12 approaches to the distributors on behalf of the
 13 Kois Buyers Group; is that right?
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: Actually, to my
 16 knowledge, he referenced -- he did all the
 17 initiation of the contact and all the
 18 negotiation. I had nothing to do with any
 19 of that, so I don't actually know what the
 20 conversations were that he had with any of
 21 the companies.
 22 BY MS. BALBACH:
 23 Q. Do you know the dates about when he
 24 was -- this was taking place when he was
 25 talking to the companies?

1 John C. Kois, DMD, MSD
 2 black Friday price. So a dentist could buy
 3 an item at a sale price and not have to buy
 4 too many of the same items or the same item
 5 in order to get the same sale price.
 6 BY MS. BALBACH:
 7 Q. Do you know what the results of
 8 Qadeer's negotiations were with Benco?
 9 MR. RACOWSKI: Same objection.
 10 THE WITNESS: As far as I know, all
 11 of the negotiations with the companies that
 12 he interfaced with were all turned out to
 13 be negative. We had no response or no
 14 interest in the buyers club.
 15 BY MS. BALBACH:
 16 Q. Do you know why the -- all three,
 17 Benco, Schein and Patterson said they had no
 18 interest in the Kois Buyers Club or group?
 19 MR. RACOWSKI: Objection.
 20 MR. FONTECILLA: Objection, the
 21 witness has not testified who Mr. Qadeer
 22 had conversations with.
 23 THE WITNESS: It was my feeling, or
 24 my understanding, that it was because we
 25 were too small. And at the time the buyers

1 John C. Kois, DMD, MSD
2 club didn't even exist, so that many
3 companies would not want to take a risk on
4 engaging with something that isn't going to
5 even turn out to be anything. So we didn't
6 have the ability to negotiate with any of
7 the companies.

8 BY MS. BALBACH:

9 Q. Dr. Kois, I'd like to show you an
10 exhibit that's previously been marked CX4060,
11 and this is also Bates marked FTC-QA-0000001.
12 I'll ask the court reporter to mark that.

13 (Exhibit CX4060, marked.)

14 MR. RACOWSKI: Counsel, just a
15 housekeeping point. I see the Bates on
16 this document QA. I don't believe that's a
17 Bates prefix that's been produced by the
18 Kois Center in this case, and if it is
19 marked confidential, my understanding is
20 that the protective order is that no one
21 other than producing party should be able
22 to see this document without consent.

23 MS. BALBACH: Yes, and you see for
24 the -- that I have -- we have redacted the
25 part that Dr. Kois would not have seen.

1 John C. Kois, DMD, MSD

2 MR. RACOWSKI: So, I'm not aware of
3 an exception in the protective order
4 entered by Administrative Law Judge
5 Chappell in regards to the redaction in
6 this case, but if you can point us to that
7 we'll take a look at that.

8 MS. BALBACH: That's the standard
9 practice we've been using. Do you object
10 to the use of the exhibit at this point?

11 MR. RACOWSKI: Under the terms of
12 the protective order by Judge Chappell,
13 yes.

14 MS. BALBACH: My understanding is
15 this practice of redacting the part of the
16 exhibit that the witness has not seen is
17 acceptable under the protective order.

18 MR. RACOWSKI: Under what section?

19 MS. BALBACH: Under -- I would say
20 it's allowable under Section 7 where,
21 "Materials can be provided to the parties
22 who produced it or the parties whose
23 material it is or was."

24 MR. RACOWSKI: Right. I see that,
25 and it's a Bates stamped that is not the

1 John C. Kois, DMD, MSD
2 Kois Center. Producing party is not Kois
3 Center.

4 MS. BALBACH: If you look at
5 Section 7, point E there, "Any witness or
6 deponent who may have authored or received
7 the information in question."

8 Dr. Kois clearly received the
9 information that has not been redacted in
10 this exhibit.

11 MR. RACOWSKI: Okay. To the extent
12 you show that and have foundation for it.

13 BY MS. BALBACH:

14 Q. Dr. Kois, have you had a chance to
15 review what we've marked as CX4060?

16 A. I've just looked at it at this
17 moment.

18 Q. After the black box -- strike that.

19 Do you recognize this document,
20 CX4060?

21 A. I do not.

22 Q. After the black box, do you see the
23 e-mail header there from
24 qadeerahmed@hotmail.com?

25 A. I do.

1 John C. Kois, DMD, MSD

2 Q. Is that the Mr. Ahmed we've been
3 discussing?

4 A. I believe it is.

5 Q. And do you see the "to" line,
6 "Dr. Kois"?

7 A. I do.

8 Q. Do you have any reason to doubt that
9 that's you?

10 A. I do not.

11 Q. Do you believe that you received
12 this e-mail?

13 A. I do. This e-mail is -- appears to
14 be an update of a meeting that he had
15 previously with Patterson. It says, "Patterson
16 update" in the subject line.

17 Q. Do you see on the first page where
18 he writes, "John, this went out to Patterson
19 this morning"?

20 A. I do.

21 Q. Do you know what he's referring to
22 in that line?

23 A. I do not.

24 Q. Okay. Do you see what's marked as
25 page 5, CX4060-005?

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1 John C. Kois, DMD, MSD
 2 A. I do now.
 3 Q. Do you know what this document is
 4 from pages 5 to 13?
 5 A. I am familiar with the name
 6 Equalizer ProServices. In 2014 the buyers club
 7 really wasn't a real buyers club, we were just
 8 putting it together as a concept, and so that's
 9 one piece, and I don't know how long even
 10 Equalizer ProServices was in existence, but
 11 this is the beginning of when I became familiar
 12 with this company, around this time.
 13 Q. Do you know if Equalizer ProServices
 14 is Qadeer's company?
 15 MR. FONTECILLA: Objection, form.
 16 THE WITNESS: I don't know if it's
 17 his company, but I know he's involved in my
 18 understanding.
 19 BY MS. BALBACH:
 20 Q. Do you know if -- strike that.
 21 Had Qadeer shown you this part of
 22 the document that's marked -- starting at page
 23 CX4060, before he sent it to Patterson? I'm
 24 sorry, 4060, page 5.
 25 A. To be honest, even though I was sent

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1 John C. Kois, DMD, MSD
 2 the document, which is obviously what the
 3 e-mail says, I don't actually remember the
 4 document so I don't know the answer to that.
 5 Q. Did you help prepare the document
 6 that starts at page 5?
 7 A. I did not. I have nothing to do
 8 with the document.
 9 Q. Looking again at the first page of
 10 this document, at the e-mail, the e-mail is
 11 dated September 22, 2014. Does that refresh
 12 your memory as to when you were talking to
 13 Qadeer about setting up a Kois Buying Group?
 14 A. It would be consistent with the time
 15 frame of about four years ago.
 16 Q. And does this refresh your memory
 17 that Qadeer would have sent a proposal to
 18 distributor Patterson about the Kois Buying
 19 Group?
 20 MR. GEORGE: Object to form.
 21 THE WITNESS: When I review the
 22 e-mail I'm obviously aware of what was said
 23 in the e-mail, but I didn't keep track of
 24 whatever correspondence he had with any of
 25 the dental supply companies.

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1 John C. Kois, DMD, MSD
 2 BY MS. BALBACH:
 3 Q. And what was -- do you know the
 4 result of Qadeer's presentation of this
 5 proposal to Patterson -- what did Patterson
 6 say?
 7 MR. GEORGE: Object to form.
 8 THE WITNESS: I do not know the
 9 answer to that specifically.
 10 BY MS. BALBACH:
 11 Q. Would anyone else have kept track or
 12 know the answer to that question?
 13 A. Not to my knowledge. Not on my
 14 side. I just waited for whatever he would tell
 15 me as an outcome. So he would, from time to
 16 time, send me e-mails about the progress of
 17 meetings, and indicated there was some
 18 potential interest, but in the end there really
 19 wasn't enough interest for any of the other
 20 companies to move forward.
 21 Q. So would Qadeer know the outcomes of
 22 his negotiations with Patterson?
 23 MR. GEORGE: Object to form.
 24 THE WITNESS: I would suppose that
 25 would be -- yes.

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1 John C. Kois, DMD, MSD
 2 MS. BALBACH: I would like to
 3 introduce what we've marked as CX4061.
 4 This is previously also marked, Bates
 5 stamped FTC-QA-0000031. That's, I think,
 6 five zeros and a 31.
 7 (Exhibit CX4061, marked.)
 8 BY MS. BALBACH:
 9 Q. You can have a moment if you'd like
 10 to review what we've marked as CX4061. For the
 11 record, 4061 also contains a section at the top
 12 that's been redacted, and the document starts
 13 with what appears to be an e-mail that was sent
 14 to Dr. Kois. Do you recognize this document?
 15 A. I do.
 16 Q. What is this document?
 17 A. This document was regarding one of
 18 my clinical instructors that is part of the
 19 Kois Center, and some of the responses that he
 20 received I guess when he was looking at trying
 21 to implement the buying group in his practice.
 22 Q. Who is that student of your center?
 23 A. It says, "Dr. Scott Strommer" on the
 24 e-mail.
 25 Q. And what happened when he tried to

1 John C. Kois, DMD, MSD
2 implement the buying group in his practice?

3 A. I have to go back and read the
4 e-mail carefully. I guess part of the e-mail
5 indicates that there was concern on my part
6 that I would be involved in something like
7 this, because the Kois Center is known for not
8 having any commercial support.

9 We're not a foundation. We're a
10 completely private teaching organization and so
11 we don't use any commercial funds or
12 commercially generated funds to help in
13 furtherment of our educational research, so
14 this looked like, to whoever is mentioning this
15 in the e-mail, some conflict of interest.

16 Q. Do you see on page 2 of the
17 document, the bottom third where it says, "Hey,
18 Scott, your wisdom an advice. As this is a
19 long verbal conversation to discover what
20 Patterson Corporate has concluded "we will not
21 be entertaining participating in any buying
22 group of this nature." Did I read that
23 correctly?

24 A. Yes, you did.

25 Q. Do you understand -- is it your

1 John C. Kois, DMD, MSD
2 understanding of this e-mail that Patterson
3 Corporate had let Mr. -- or Dr. Strommer know
4 through some source that Patterson was not
5 likely to participate in the Kois Buying Group?

6 MR. GEORGE: Object to form.

7 THE WITNESS: That's my perception
8 in reading the e-mail.

9 BY MS. BALBACH:

10 Q. And turning back to the first page,
11 Qadeer's e-mail to you, it looks like the to
12 line it says, "Dr. John Kois." Do you believe
13 this e-mail is to you?

14 A. Yes.

15 Q. On October 13, 2014, he writes,
16 "Guys, according to this guy, Guggenheim has
17 already declined." Did I read that correctly?

18 A. Yes.

19 Q. Who is Guggenheim?

20 A. I don't know.

21 Q. Do you know if that's Paul
22 Guggenheim from Patterson?

23 MR. GEORGE: Object to form.

24 THE WITNESS: I have no idea.

25 BY MS. BALBACH:

1 John C. Kois, DMD, MSD
2 Q. Okay. We can put that one aside.
3 I'd like to introduce two more exhibits, and
4 I'll ask the court reporter to mark them
5 simultaneously because they relate to each
6 other. The first one is CX4063, and it has a
7 Bates stamp of FTC-QA-0000063 through 69, and
8 there's a second document, CX4064, which has a
9 Bates stamp of FTC-QA-0000053.

10 (Exhibit CX4063 and CX4064, marked.)

11 BY MS. BALBACH:

12 Q. I'd ask you, Dr. Kois, to take a
13 minute to review both of those documents. And
14 for the record, I will represent that what is
15 marked as CX4064 in our original production was
16 an attachment for what is marked as CX4063,
17 although the e-mail that is on CX4063 is not
18 referenced in the body of the e-mail that it
19 had an attachment. In the form it was produced
20 to the FTC that had an attachment which was
21 4064.

22 Dr. Kois, starting with CX4063 --

23 MR. FONTECILLA: Sorry to interrupt,
24 have you introduced the CX4064? I just
25 want to confirm.

1 John C. Kois, DMD, MSD
2 MS. BALBACH: I thought I did. It
3 was Bates marked FTC-QA-0000053.

4 MR. FONTECILLA: Okay. Thank you.

5 THE WITNESS: Sorry, can you repeat
6 the question?

7 BY MS. BALBACH:

8 Q. Yes. Looking at CX4063, do you
9 recognize this document?

10 A. I see my name in the CC column, but
11 I don't remember the document.

12 Q. What is this document?

13 MR. GEORGE: Object to form.

14 THE WITNESS: It -- just looking at
15 the subject line, it refers to a follow-up
16 call in the Equalizer program. That's all
17 I know.

18 BY MS. BALBACH:

19 Q. Is this an e-mail you received on
20 October 28, 2014?

21 A. It appears that's correct.

22 Q. And you were a CC on this e-mail?

23 A. That's correct.

24 Q. Is the e-mail to Tim Sullivan?

25 A. That's what it says in the e-mail.

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1 John C. Kois, DMD, MSD
 2 Q. Do you know who Tim Sullivan is?
 3 A. No.
 4 Q. Do you know if Tim Sullivan is
 5 employed with or a representative of Henry
 6 Schein?
 7 MR. RACOWSKI: Object to form.
 8 THE WITNESS: I've never heard that
 9 name.
 10 BY MS. BALBACH:
 11 Q. And is the e-mail from Qadeer Ahmed?
 12 A. Yes.
 13 Q. Do you see on the first page where
 14 it says, "Please find an attached proposal"?
 15 A. Yes.
 16 Q. Okay. Looking at CX4064, do you
 17 recognize this exhibit?
 18 A. I do not.
 19 Q. Do you see at the top where it says,
 20 "Proposal for Henry Schein. Initial Supply
 21 Deal"?
 22 A. I do.
 23 Q. Dated October 28, 2014. Do you see
 24 that?
 25 A. I do.

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1 John C. Kois, DMD, MSD
 2 this has been redacted, and starting on page 2
 3 there appears to be an e-mail from John Kois.
 4 Have you had a chance to review that?
 5 A. I have.
 6 Q. Do you recognize this document,
 7 CX0290?
 8 A. I do.
 9 Q. What is CX0290?
 10 A. At this time, what we were trying to
 11 do is figure out a way how the buyers club
 12 could actually be run. This was -- the content
 13 of this document was actually prepared by
 14 ProCare, and we were looking at the levels of
 15 different offices in terms of accumulating
 16 three tiers that they potentially would spend
 17 on inventory per month.
 18 And the basis of the document was
 19 trying to come up with a monthly fee, or what
 20 we would ultimately wind up charging for
 21 membership in the buyers club. This ultimately
 22 turned out to be a complete failure. I don't
 23 know where these numbers actually came from,
 24 and they never worked so they were never really
 25 utilized.

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1 John C. Kois, DMD, MSD
 2 Q. Do you know if this is a proposal
 3 that Qadeer Ahmed prepared for Henry Schein for
 4 the Kois Buying Group?
 5 MR. GEORGE: Object to form.
 6 BY MS. BALBACH:
 7 Q. Let me rephrase that question.
 8 Do you know if this is a proposal
 9 prepared by Qadeer Ahmed asking Henry Schein to
 10 be a distributor for Kois Buying Group?
 11 MR. GEORGE: Object to form.
 12 MR. FONTECILLA: Objection.
 13 THE WITNESS: To be very honest, I
 14 don't remember any of these documents. I
 15 don't pay attention to many documents of
 16 this nature because I don't understand a
 17 lot of data that's on these documents
 18 anyway.
 19 BY MS. BALBACH:
 20 Q. Now I'd like to introduce what we
 21 have marked as CX0290. This has a Bates number
 22 of PDCO00021741.
 23 (Exhibit CX0290, marked.)
 24 BY MS. BALBACH:
 25 Q. For the record, the first page of

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1 John C. Kois, DMD, MSD
 2 Q. This document is -- seems to be
 3 dated Wednesday, October 8, 2014. Do you see
 4 that?
 5 A. I do.
 6 Q. And it appears to be an e-mail to --
 7 well, first, let me ask. From John C Kois, and
 8 the e-mail address is koistrike@koiscenter.com.
 9 Is that your e-mail?
 10 A. It is not my e-mail.
 11 Q. Whose e-mail is that?
 12 A. Well, it was an e-mail that was set
 13 up to run the buyers club, but not my personal
 14 e-mail.
 15 Q. But the from John C Kois, is that
 16 you?
 17 A. Yes, it is.
 18 Q. This e-mail is sent to Jeff Gray,
 19 jgraydds@aol.com. Who is Jeff Gray?
 20 A. He is also one of our clinical
 21 instructors.
 22 Q. What was your purpose in sending out
 23 this e-mail?
 24 A. At this time we were trying to
 25 survey the upper echelon of our community of

1 John C. Kois, DMD, MSD
 2 dentists that have attended the Kois Center.
 3 Jeff is one of the individuals that has been
 4 involved in the Kois Center for quite a long
 5 period of time, and we trusted his feedback to
 6 be honest. So we were trying to get an idea of
 7 how this program might benefit private
 8 practitioners like himself.

9 Q. Did this e-mail go out to -- or
 10 versions of it go out to more than just Jeff
 11 Gray?

12 A. I don't recall that answer.

13 Q. So you don't know if this was like a
 14 form e-mail?

15 A. I don't -- I honestly don't remember
 16 that.

17 Q. Were you -- strike that.
 18 Did you announce a Kois Tribal
 19 membership program to a broader audience at
 20 this time?

21 A. I'm not sure I understand the
 22 question. You mean to other people at the
 23 center or?

24 Q. Did you communicate with -- well,
 25 strike that.

1 John C. Kois, DMD, MSD

2 Q. Do you see in CX0290, on the page --
 3 what is page 2, the first page of this e-mail?

4 A. I do.

5 Q. Where it says, "Step one: Save
 6 money"?

7 A. Yes.

8 Q. "One: Our data indicates that we
 9 buy \$153 million a year in supplies as a Tribe.
 10 The average office buys under 90,000 a year."
 11 Did I read that correctly?

12 A. You did.

13 Q. Where did those numbers come from?
 14 Where did you get the \$153 million?

15 A. They were put together again by
 16 ProCare and surveying dentists that he's worked
 17 with in his company through the individual that
 18 I was -- that introduced Qadeer to me.

19 And also, we sent out surveys to
 20 dentists, get an idea of what they spend
 21 through different supply companies, so we had
 22 limited resources to do that. I think at the
 23 time we might have surveyed about 100 dentists
 24 in terms of what their inventory spend per year
 25 would be, because we are trying to figure out

1 John C. Kois, DMD, MSD

2 I see references in your document to
 3 the Tribe. Who is the Tribe?

4 A. The Tribe are what we refer
 5 affectionately to the people that have --
 6 represent our community of dentists that take
 7 courses at the center and move on into graduate
 8 and above status, and so we have utilized that
 9 word Tribe from an author Seth Godin in his
 10 book called, "The Tribe." So we're a community
 11 of people to help support each other.

12 Q. What did you, in the fall of 2014,
 13 so like in October of 2014, what did you
 14 announce to the Tribe about setting up a buying
 15 group?

16 A. So at this time we were trying to
 17 come up with some sort of cost, monthly spend
 18 that might be appealing to dentists so that
 19 they could take advantage of the buyers club in
 20 some way, and this basically comes from
 21 ProCare, what they decided. We didn't --
 22 eventually we didn't continue on with ProCare.
 23 It was not consistent with our Tribe and so we
 24 separated our relationship, so this all went
 25 for nothing.

1 John C. Kois, DMD, MSD

2 how we could represent the buyers club also to
 3 other companies so we could become attractive
 4 as a buying group. Because at this time, as I
 5 mentioned, we didn't even exist as a true
 6 buying group, we only existed as a concept.

7 Q. Did you -- when you started working
 8 with Qadeer, did you share that survey
 9 information with him?

10 A. I did.

11 Q. What other types -- what other type
 12 of Kois Center information did you share with
 13 Qadeer when you started working with him?

14 A. We have no financial information at
 15 the Kois Center on any of the practices, so
 16 they had to volunteer data on what they might
 17 spend per month, and many people didn't reply
 18 to the request.

19 Q. How big was the Tribe in 2014?

20 A. I would say roughly in the five
 21 to -- well, I guess it depends on how you
 22 define the Tribe. At the moment, if we're just
 23 looking at the Tribe as graduates and above, I
 24 would say at that time it would be in the 5-600
 25 range.

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1 John C. Kois, DMD, MSD
 2 Q. For the buying group that you
 3 envisioned, would it -- the Tribe -- would the
 4 dentist you would invite to join have been just
 5 the graduates, or would it have been everybody
 6 who took courses?
 7 A. No. At the time we were even trying
 8 to define the level at which you would be able
 9 to belong to the group, and then it was decided
 10 that anyone that had attended a course could
 11 become part of the group because you would be
 12 exposed to the research that was done at the
 13 center.
 14 Q. And do you have an estimate for, at
 15 that time, how many had taken a course?
 16 A. I would say by that time it was at
 17 least 2,000 dentists.
 18 Q. Looking again at CX0290, under the
 19 paragraph -- so this is page 2 of the exhibit,
 20 the first page of the e-mail. Under the
 21 paragraph, "First the partners," do you see
 22 where it says, "I've been working on this plan
 23 with partners from ProCare Dental Services"?
 24 A. I do.
 25 Q. And then further down in that

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1 John C. Kois, DMD, MSD
 2 other than ways that he was organizing how
 3 some of the businesses could be set up.
 4 MS. BALBACH: Can we go off the
 5 record for a second?
 6 (Break from 10:21 to 10:23 a.m.)
 7 MS. BALBACH: I'm introducing what
 8 we've marked as CX4062, which has Bates
 9 number of FTC-QA-00000, so that's five
 10 zeros, 42. And it's 42 through 45.
 11 (Exhibit CX4062, marked.)
 12 BY MS. BALBACH:
 13 Q. For the record, CX4062 appears to be
 14 an e-mail dated October 21, 2014, from Qadeer
 15 Ahmed to Dr. John Kois. If you want a minute
 16 to review, Dr. Kois.
 17 A. That's correct.
 18 Q. Do you recognize this document,
 19 CX4062?
 20 A. Now that it's in front of me.
 21 Q. What is CX4062?
 22 A. It says the subject is, "Group
 23 purchase."
 24 Q. And what is this set of e-mails
 25 about?

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1 John C. Kois, DMD, MSD
 2 paragraph it says, "Their "hit list" includes
 3 multi-billion dollar "wins" in retail
 4 (Wal-Mart, Home Depot, Loblaws, Metro, Best
 5 Buy) media (Sony Music, CanWest) Distribution
 6 (Ingram, Globelle, Office Max) and Technology."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. Does that refresh your memory about
 10 the background of Qadeer Ahmed?
 11 MR. GEORGE: Object to form.
 12 THE WITNESS: Yes, I'm aware of
 13 this.
 14 BY MS. BALBACH:
 15 Q. What are you aware of?
 16 A. I'm aware of what this says, that he
 17 did engage in other business deals with
 18 companies like this only through what he's told
 19 me.
 20 Q. And do you have an understanding of
 21 were those buying groups he was setting up with
 22 businesses like that?
 23 MR. GEORGE: Object to form.
 24 THE WITNESS: I actually don't
 25 recall it being specifically buyers groups

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1 John C. Kois, DMD, MSD
 2 A. This appears to be correspondence
 3 with Benco regarding some potential involvement
 4 in the Buyers Group at the time. The only way
 5 that that would really work is if the center
 6 was able to make a group purchase. We didn't
 7 have any other way to do that and we didn't
 8 want to be involved in that way.
 9 I mean, I know Chuck personally.
 10 He's always been a good person for me and I
 11 enjoy his company, and so that's what I think
 12 this was in reference to, to see if they would
 13 have interest in the Buyers Group.
 14 Q. Let me direct your attention to the
 15 last page, CX4062-004, which appears to be an
 16 e-mail dated October 21, 2014. It's from
 17 johnkois@hotmail.com. Is that your e-mail
 18 address?
 19 A. Yes, it is.
 20 Q. The e-mail appears to be to Chuck
 21 Cohen?
 22 A. Yes.
 23 Q. Ccohen@benco.com?
 24 A. Yes.
 25 Q. Who is Chuck Cohen?

1 John C. Kois, DMD, MSD
 2 A. I believe he is the CEO of Benco.
 3 Q. You see on that last page where it
 4 says, "Hi Chuck, I have been approached by a
 5 company to organize our members for group
 6 purchase opportunities." Did I read that
 7 correctly?
 8 A. Yes.
 9 Q. What does that refer to?
 10 A. It refers to the whole concept of
 11 the buying group.
 12 Q. Is that Qadeer's -- the --
 13 A. Yes, it was in reference to Qadeer's
 14 company, Equalizer ProServices.
 15 Q. So in reference to the buying group
 16 that Qadeer was trying to set up for you,
 17 correct?
 18 A. Yes, yes.
 19 Q. And then it continues, "I know we
 20 tried this before, but I wanted you to talk to
 21 him to see if there would be an opportunity to
 22 work with your company." Did I read that
 23 correctly?
 24 A. Yes.
 25 Q. What were you writing about there?

1 John C. Kois, DMD, MSD
 2 A. When we have our annual symposium we
 3 were trying to figure out if we could find any
 4 particular items that we could make a group
 5 purchase, because there could be several
 6 hundred dentists in the audience and if they
 7 were willing to buy a particular product were
 8 we able to get a discounted price. And the
 9 problem was only if it was bought through the
 10 center, and the center could not afford to do
 11 it that way so we never went ahead with
 12 anything like that.
 13 Q. And were you using Qadeer to try to
 14 negotiate with Benco?
 15 A. Well, in the beginning, the way I
 16 remember is Qadeer was first talking to the
 17 companies we've already mentioned, Henry Schein
 18 and Patterson, because they were larger
 19 companies and we have a more global footprint
 20 and we were trying to look at a bigger company
 21 to help us in the buyers club, and then we went
 22 to ask Benco when we were turned down by the
 23 other companies.
 24 Q. And turning back to page 2, and then
 25 continuing on to 3, there's an e-mail that

1 John C. Kois, DMD, MSD
 2 appears to be from Chuck Cohen dated
 3 October 21, 2014, to johnkois@hotmail.com.
 4 And is it says on what is
 5 page 4062-003, the e-mail writes, "So, with
 6 your permission I'm going to politely give
 7 Qadeer our standard answer of thanks, but we
 8 don't do buying groups."
 9 A. Yes, I see that.
 10 Q. Do you understand what -- and then
 11 this e-mail is from Chuck Cohen. Do you
 12 understand what Chuck Cohen is writing there?
 13 MR. RACOWSKI: Objection to form.
 14 THE WITNESS: My understanding was
 15 he essentially is telling us that he's not
 16 going to be able to help in our buying
 17 group.
 18 BY MS. BALBACH:
 19 Q. And would this have been a buying
 20 group that -- where membership was eligible to
 21 the Tribe Members?
 22 A. Yes. It's the same Buyers Group
 23 that we've been talking about all along.
 24 Q. The same Buyers Group where we saw a
 25 proposal to Patterson and we saw a --

1 John C. Kois, DMD, MSD
 2 A. Yes, yes, yes.
 3 Q. -- proposal to Schein?
 4 A. Yes.
 5 Q. So your understanding -- is it your
 6 understanding from this e-mail that Benco said
 7 no then to setting up a Buyers Group with Kois?
 8 A. Yes.
 9 MR. RACOWSKI: Objection to form.
 10 That's not what it says.
 11 BY MS. BALBACH:
 12 Q. Why would a larger distributor be
 13 better for setting up a buying group?
 14 MR. GEORGE: Object to form.
 15 THE WITNESS: The reason that I was
 16 trying to have a larger distributor is that
 17 they would have more reach for servicing
 18 more of the dentists that are members of
 19 the Kois Center.
 20 BY MS. BALBACH:
 21 Q. And by more reach, do you mean for
 22 geographic reach?
 23 A. Yes.
 24 Q. Why is that important to have more
 25 geographic reach?

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1 John C. Kois, DMD, MSD
 2 A. Because many of the offices depend
 3 on the personal service that the dental supply
 4 companies offer and we were looking for a
 5 company that could have access to as many
 6 practices as possible.
 7 Q. Is this personal service through
 8 having a local representative that they would
 9 come to a dentist office?
 10 A. Yes, it is.
 11 Q. What about the number of SKUs or
 12 items that distributors might have, is that
 13 important?
 14 A. I'm sorry, SKU?
 15 Q. I think it's for shop keeping unit,
 16 you know, the different numbers of types of
 17 tooth brushes or gloves, or different numbers
 18 of products?
 19 A. That part of the business I'm not
 20 familiar with, that's why many of the e-mails
 21 that you're referring to look like a foreign
 22 language to me because I don't participate in
 23 any of that understanding.
 24 Q. This series of e-mails we've been
 25 talking about, would you have forwarded them to

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1 John C. Kois, DMD, MSD
 2 anybody else at Kois?
 3 MR. RACOWSKI: Objection, form.
 4 Which series?
 5 THE WITNESS: No.
 6 BY MS. BALBACH:
 7 Q. What was the result of Qadeer's
 8 negotiation on your behalf in setting up a Kois
 9 Buying Group?
 10 MR. FONTECILLA: Objection.
 11 THE WITNESS: Well, although I was
 12 very hopeful, because Qadeer is a very
 13 smart businessman, it doesn't result in any
 14 relationships in the companies that he was
 15 talking to at this point.
 16 BY MS. BALBACH:
 17 Q. Who were those companies?
 18 A. That was Henry Schein, Patterson,
 19 and Benco.
 20 Q. And ultimately you set up a buying
 21 group in the fall of 2014 -- or did you set up
 22 a buying group in the fall of 2014?
 23 A. We did set up a buying group. I
 24 believe it didn't happen until 2015, maybe,
 25 because then we asked also Burkhart, which is

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1 John C. Kois, DMD, MSD
 2 the distributor that I've worked with basically
 3 my whole time and practice to become a partner
 4 with us even though they were a very small
 5 company.
 6 Q. And did Qadeer negotiate with
 7 Burkhart on your behalf?
 8 A. Yes, he did.
 9 Q. What was the result -- you said you
 10 asked Burkhart to be the distributor and what
 11 did -- how did they respond?
 12 A. So at first they actually weren't
 13 very positive to Qadeer. They basically just
 14 responded on my behalf because of the
 15 relationship I had with the company, so it
 16 turned out that in the end we didn't use any of
 17 Qadeer's expertise. We relied more on my
 18 personal relationship and reputation that I
 19 built my whole life in practice and teaching.
 20 Q. Why didn't you start with Burkhart?
 21 A. My thinking at the time was, as I
 22 mentioned, they weren't able to service many
 23 dentists outside just the Pacific Northwest, so
 24 it would only have application to a very small
 25 number of dentists in our Tribe.

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1 John C. Kois, DMD, MSD
 2 Q. Ultimately, you did set up a buying
 3 group with Burkhart; is that correct?
 4 A. We did.
 5 Q. I would like to introduce what we've
 6 marked as CX1032, which has a Bates number of
 7 BD, so boy, David, FTC0000153, and it's pages
 8 153 through 159. I'll ask the court reporter
 9 to mark that.
 10 (Exhibit CX1032, marked.)
 11 BY MS. BALBACH:
 12 Q. I've introduced what appears to be
 13 an agreement. It says, "ProCare Dental
 14 Services" on the top. It's got an effective
 15 date of November 14, 2014, and it mentions
 16 Parties Burkhart Dental Supply and Dr. John
 17 Kois. Have you had a chance to review this?
 18 A. I have.
 19 Q. Do you recognize this document,
 20 CX1032?
 21 A. I do. Yes, I do.
 22 Q. What is CX1032?
 23 A. This actually is the agreement that
 24 I signed to initiate the relationship with
 25 Burkhart in the buying group.

1 John C. Kois, DMD, MSD
 2 Q. If I could direct your attention to
 3 page 4 of this document, CX1032-004.
 4 A. Yes.
 5 Q. Do you see the paragraph titled,
 6 "Renewal"?
 7 A. Yes.
 8 Q. "The parties will draft and execute
 9 a contract reflecting the terms of this LOI and
 10 any other necessary terms no later than 90 days
 11 from the effective date of this LOI." Did I
 12 read that correctly?
 13 A. Yes.
 14 Q. Do you know if there was a separate
 15 contract executed after this letter of intent?
 16 A. I don't recall.
 17 Q. And then I wanted to direct your
 18 attention to page 2 of the document under the
 19 paragraph marked, "Deferral of Margin and
 20 Written Guarantee of Savings." Do you see
 21 that?
 22 A. Yes.
 23 Q. It reads, "Burkhart agrees to limit
 24 its margins to 25 percent on any and all brand
 25 dental supplies and 36 percent on any Burkhart

1 John C. Kois, DMD, MSD
 2 Private Label dental supplies sold to Tribe
 3 Members." Did I read that correctly?
 4 A. Yes.
 5 Q. What does that sentence mean?
 6 A. I assume it means just what it says,
 7 but what it's referring to I don't actually
 8 know.
 9 Q. So is that paragraph meant to give a
 10 discount to the buying group members and it's
 11 setting out the different discounts on the
 12 different types of supplies, 25 and 36 percent?
 13 MR. RACOWSKI: Objection, form,
 14 foundation.
 15 MR. FONTECILLA: Objection, form.
 16 THE WITNESS: I assume so, but I
 17 think before we go much further we need to
 18 make sure that what's clear is at this
 19 point in time the dentists that are
 20 agreeing to be part of the buying group are
 21 only agreeing to be part of the buying
 22 group to support the Tribe and it had
 23 nothing more than that.
 24 So it was mostly to help support
 25 what we were trying to do, because at this

1 John C. Kois, DMD, MSD
 2 point nobody would have any assurance that
 3 anything would work for them because many
 4 of the dentists that actually even belonged
 5 to the buying group, they don't all use the
 6 buying group, so I don't know -- I don't
 7 really know what happens in the real world
 8 other than I know we have a group of very
 9 supportive people that have tried to create
 10 loyalty for the center.
 11 BY MS. BALBACH:
 12 Q. When you said this was to be for
 13 supporting the Tribe, what did you mean by
 14 support the Tribe?
 15 A. Hopefully, that if they could belong
 16 maybe more people would eventually belong to
 17 the Tribe and maybe that would be helpful
 18 because it would help to fund our research and
 19 our products and product development and
 20 protocols. It was a way to just give back to
 21 the center.
 22 Q. Were you interested in saving
 23 dentists money on their supplies?
 24 A. I was. I was, yes. I am.
 25 Q. And was it your hope that with the

1 John C. Kois, DMD, MSD
 2 savings that the dentist achieved they might be
 3 able to take more courses at the center?
 4 A. That's correct, yes.
 5 Q. Which would support the efforts of
 6 the center?
 7 A. Yes.
 8 Q. And were the dentists themselves,
 9 the Tribe Members interested on saving on their
 10 supplies?
 11 A. I would assume so.
 12 Q. In the first year of the roll out of
 13 the Kois Buyers Group with ProCare Dental
 14 Services, who ran sort of the day-to-day
 15 operations of the buying group?
 16 A. It's a little bit cloudy, so based
 17 on this agreement it was signed November of
 18 2014, but it was really rolling out -- 2015 is
 19 really when it got started, to my recollection.
 20 So all we were doing was tracking the people
 21 that would sign up through the buyers club
 22 through the center. We did that at the center
 23 and then relayed that information to ProCare.
 24 I think there may have been a time
 25 where they were thinking about having dentists

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1 John C. Kois, DMD, MSD
 2 sign up directly through ProCare, but since our
 3 dentists were not as familiar with that
 4 particular company they were not willing to do
 5 that.
 6 Q. You had said earlier -- you talked
 7 about the program didn't really work. I forget
 8 what you said. What did you mean by that?
 9 A. Well, at the time we initiated a
 10 buyers club we didn't really have the resources
 11 at the center to inventory payment methods and
 12 many of the other things that were necessary to
 13 have this actually work quite well because the
 14 center is burdened by all the education. This
 15 became a total distraction from the core
 16 business model of the center, so that's why
 17 it's a bit cloudy to me because we don't have
 18 the personnel to implement the program such as
 19 this.
 20 Q. Do you mean that the program as was
 21 described in CX1032?
 22 A. Yes, yes. And the way it was to be
 23 implemented it put too much responsibility and
 24 burden on the center to some degree.
 25 Q. Was the program as envision in

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1 John C. Kois, DMD, MSD
 2 CX1032, was it popular with the Tribe Members?
 3 A. No, it was not.
 4 Q. Why was it not popular?
 5 A. I think in the beginning they
 6 certainly didn't see the value of the program,
 7 because it's not just dental supply companies
 8 that dentists purchase from, it's also direct
 9 companies that they work with, and so until we
 10 enlisted other direct companies to be involved
 11 in our buyers club, then the appeal for the
 12 buyers club option became much greater.
 13 Q. Who do you mean by direct companies,
 14 would those be manufacturers?
 15 A. Yes, that don't actually sell
 16 through dental distributors. If I might add,
 17 dentists are a very unique group. They always
 18 think they have the best way, and when they
 19 have a particular preference for certain
 20 products and we weren't able to offer those
 21 products it tends to devalue the benefits of
 22 the buyers club.
 23 Q. What percentage of a dentists
 24 supplies are -- would you typically get from a
 25 manufacturer direct?

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1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection.
 3 THE WITNESS: I don't know the
 4 answer to that. I can tell you in my
 5 practice most of my disposable supplies
 6 come all from Burkhart, that then supply
 7 company, but the major spend on inventory
 8 comes from direct companies. Many of those
 9 companies sell items that are more
 10 expensive, like implant supplies, and
 11 things that are not sold directly through
 12 dental supply companies. So if you're
 13 looking at the number of dollars, I would
 14 say I spend more money from direct
 15 companies today than I spend from the
 16 dental supply company today.
 17 BY MS. BALBACH:
 18 Q. In the first year of 2015, when the
 19 program was rolling out, did you hear
 20 complaints from your Tribe Members about the
 21 buying group?
 22 A. I always heard complaints. They
 23 were complaints, for example, do I have to work
 24 with the supply company that you've listed
 25 because I've been working with my supply

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1 John C. Kois, DMD, MSD
 2 company and I like my supply representative,
 3 and I don't want to have to force -- I don't
 4 want to be forced to make a change.
 5 And that's why offering direct
 6 companies as an alternative in the Buyers Group
 7 became more appealing so you can maintain your
 8 relationship with your current supply, dental
 9 supply company, and then maybe take advantage
 10 of additional savings through direct companies.
 11 Q. And did they have to work with -- in
 12 that first year, did they have to buy through
 13 Burkhart?
 14 A. They did not.
 15 Q. Did they have to buy a certain
 16 minimum through Burkhart?
 17 A. They did not. There were no
 18 requirements on what they needed to purchase
 19 through the buyers club.
 20 Q. Can I turn your attention back to
 21 what we marked as CX1032.
 22 A. Yes.
 23 Q. And on page 3 of the document,
 24 probably about a third of the way up from the
 25 bottom it says -- there's a paragraph, "Tribe

<p style="text-align: right;">Page 78</p> <p>1 John C. Kois, DMD, MSD 2 Member minimum threshold of purchases with 3 Burkhart." 4 And it reads, "ProCare agrees that 5 Tribe Members must purchase dental supplies 6 from Burkhart above the minimum threshold 7 defined in Schedule 4 to maintain their status 8 as Tribe Members." Did I read that correctly? 9 A. You did. 10 Q. What does that mean? 11 A. So based on what you're saying, that 12 there was some minimum purchase necessary, but 13 we've never utilized that and that's why the 14 relationship with ProCare was disbanded because 15 we -- the dentists were uncomfortable being 16 directed of who they would have to buy from or 17 what they had to purchase and give an amount of 18 what they had to purchase. So that was never 19 something that was a worth while endeavor in 20 the buyers club. It was sabotaging what the 21 buyers club was really intended to do. 22 Q. Now, I'd like to introduce what 23 we've marked as CX4048, which has a Bates stamp 24 of KIOS001712. 25 (Exhibit CX4048, marked.)</p>	<p style="text-align: right;">Page 79</p> <p>1 John C. Kois, DMD, MSD 2 BY MS. BALBACH: 3 Q. I'm introducing CX4048, what appears 4 to be an e-mail from Qadeer Ahmed to John Kois 5 dated November 16, 2015. 6 A. Yes. 7 Q. And I'll give you a chance to review 8 it. 9 A. I have. 10 Q. Do you recognize this document? 11 A. Yes. 12 Q. What is CX4048? 13 MR. GEORGE: Object to form. 14 THE WITNESS: The title of the 15 e-mail says, "Update," and it basically 16 refers to what I've just said, that the 17 Burkhart special pricing alone is not 18 enough to entice new members because they 19 purchase from so many other companies, so 20 many other direct companies. We weren't 21 offering many times, in many cases, enough 22 incentive to be part of the buyers club. 23 BY MS. BALBACH: 24 Q. So I direct your attention to the 25 e-mail from John Kois to Qadeer Ahmed dated</p>
<p style="text-align: right;">Page 80</p> <p>1 John C. Kois, DMD, MSD 2 Monday, November 16, 2015, 6:51 p.m., "Hi Q." 3 Do you see where that is? 4 A. Yes. 5 Q. It then it says, "The center has 6 spoken to several dentists about the program 7 and their three occurring themes." Did I read 8 that correctly? 9 A. Yes. 10 Q. And then it reads, "The current 11 pricing is too high." Did I read that 12 correctly? 13 A. Yes. 14 Q. What do you mean by that? 15 A. The current pricing of the buyers 16 club, to become a member of the buyers club, I 17 was reacting to the artificial way that he set 18 up what it would require to become a member of 19 the buyers club that we've completely disbanded 20 because it didn't work. 21 Q. The next line reads, "No minimum 22 purchase quantity is a huge deal." Did I read 23 that correctly? 24 A. Yes. 25 Q. What did you mean there?</p>	<p style="text-align: right;">Page 81</p> <p>1 John C. Kois, DMD, MSD 2 A. What I referred to earlier, the idea 3 was they didn't have to purchase an item in 4 quantity to get a good competitive price. They 5 could buy one of something to get a competitive 6 price. 7 Q. So that was something the dentists 8 liked about the buyers club? 9 A. That's correct. 10 Q. And then it reads, "3. Burkhart 11 special pricing alone is not enough to" -- 12 A. "To entice new members." 13 Q. "To entice new members." Did I read 14 that correctly? 15 A. Yes, you did. 16 Q. What did you mean there? 17 A. At that point we were struggling 18 with very few -- the adoption rate of the 19 buyers club was very slow, and it was a very 20 small number, and a lot of it is based on what 21 I referred to earlier, there wasn't enough 22 versatility in what they could order. The 23 direct companies weren't participating at that 24 time, so there wasn't enough items that they 25 could purchase.</p>

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1 John C. Kois, DMD, MSD
 2 Q. In the next paragraph it reads, "Our
 3 tribal membership program is therefore
 4 struggling because we do not have a supply
 5 company that has enough reach to service enough
 6 of our members." Did I read that correctly?
 7 A. Yes.
 8 Q. When did you mean there?
 9 A. That was what we referred to
 10 earlier, to provide better customer service for
 11 equipment. Dentists, many times, are not
 12 always on top of their inventory and sometimes
 13 they need an item the very next day the patient
 14 is about to arrive.
 15 And they prefer to be within an area
 16 where a representative of a given company can
 17 drive a product to their practice in any given
 18 day, so they could not have to cancel the
 19 patient deployment because they weren't
 20 prepared. So that was an important incentive
 21 for dentists that Burkhart couldn't provide
 22 because they didn't have that kind of reach.
 23 Q. And by reach do you mean geographic
 24 reach?
 25 A. Geographic reach.

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1 John C. Kois, DMD, MSD
 2 already had.
 3 BY MS. BALBACH:
 4 Q. And then continuing on with that
 5 bottom paragraph of the e-mail, it says, "I
 6 want to propose a major change in the strategy
 7 to provide more opportunity even with the
 8 current supply chain." And it goes on on the
 9 next page to say, "We have been able to engage
 10 direct global companies to join in and offer
 11 substantial savings for our members that do not
 12 require service options or significant volume
 13 of product sales.
 14 "In order for that to work, I
 15 want to have a program at a much reduced cost
 16 of \$299 per year. This low fee would make
 17 it -- would make it make sense to many more
 18 people. The following is a list of companies
 19 that have already committed?"
 20 And then there's a list. "Zimmer,
 21 Brasseler, Straumann, Carifree, Keysmile." Did
 22 I read that correctly?
 23 A. Yes.
 24 Q. So what were you telling Qadeer
 25 here?

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1 John C. Kois, DMD, MSD
 2 Q. And the next sentence, you probably
 3 explained this, "The incentive, therefore, to
 4 join is reduced for those potential members
 5 that can only use it limited to certain
 6 supplies."
 7 A. Yes.
 8 Q. What did you mean there?
 9 A. In other words, basically what they
 10 could order given the timely way that were, for
 11 many practices, inefficient representations of
 12 what their needs would be.
 13 Q. What about the Tribe Members in the
 14 Pacific Northwest, how did they feel about the
 15 buyers club?
 16 A. So they were thrilled --
 17 MR. FONTECILLA: Objection.
 18 THE WITNESS: They were thrilled
 19 with the buyers club because many of them,
 20 or I should say probably most of them,
 21 although I don't know that for sure, were
 22 already purchasing from Burkhart. It's
 23 been one of the dominant dental supply
 24 companies here in the Pacific Northwest, so
 25 for them it just reinforced what they

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1 John C. Kois, DMD, MSD
 2 A. This is the beginning of the
 3 separation of the ProCare Services, because I
 4 felt that the cost to the dentist was too high.
 5 This was my proposal to try to change the value
 6 of the buyers club, and this is when ProCare
 7 decided to opt out of the buyers club and he
 8 was -- not long after this, I don't remember
 9 exactly, we separated our relationship.
 10 These are the companies that were --
 11 the first companies that I mentioned earlier
 12 that became part of the direct companies that
 13 created more appeal for the buyers club and our
 14 individual Tribe Members.
 15 Q. So today in the Kois Buyers Group
 16 you no longer have a relationship with Qadeer
 17 for the Buyers Group; is that correct?
 18 A. That's correct.
 19 Q. But you still -- are you still in
 20 some business relationship with Qadeer?
 21 A. I am not.
 22 Q. Are you -- did you work with Qadeer
 23 at developing a system to do risk assessment on
 24 dental patients?
 25 A. So the -- the entire teaching center

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1 John C. Kois, DMD, MSD
 2 has been developing a risk assessment model
 3 from the entire inception of the center, and
 4 it's what I'm known for throughout the world in
 5 building a risk assessment model for dentists
 6 and moving dentists to a medical based
 7 platform.
 8 I only exposed Qadeer to what a risk
 9 assessment model was about so that maybe he
 10 could look into what could be done to improve
 11 dental healthcare, because what we were
 12 interested in is building an outcome model for
 13 dental health care services so dentists could
 14 be compensated based on outcomes rather than
 15 what they advertised they can do.
 16 Real, real outcomes that were
 17 generated by data, and so my whole focus at the
 18 center has been attempting to collect the
 19 necessary data to give credibility to this
 20 whole concept. In other words, very few lay
 21 people, the public doesn't really know how to
 22 choose a dentist other than what they read on
 23 the Internet, which I think in many cases is
 24 irresponsible.
 25 And I'm trying to find a better way

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1 John C. Kois, DMD, MSD
 2 for dentists to be accountable for what they
 3 provide patients in care, and this is what the
 4 center is built on. It's built on a dentist
 5 being able to establish their worth based on
 6 their outcome, and until that's really going to
 7 be done it's very difficult to really trust the
 8 person that's working on you.
 9 Q. Okay. But you have no formal
 10 business relationship with Qadeer --
 11 A. I do not.
 12 Q. -- involving this risk assessment
 13 today?
 14 A. I do not.
 15 Q. Who runs the Buyers Group today?
 16 A. That would mostly be my son, the CEO
 17 of the company, Johnny Kois.
 18 Q. And by CEO of the company, do you
 19 mean the --
 20 A. Kois Center.
 21 Q. Do you have day-to-day roles with
 22 the buying group today?
 23 A. I do not.
 24 Q. Do you know how many members joined
 25 the buying group in 2015 when it was the

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1 John C. Kois, DMD, MSD
 2 program described in CX1032?
 3 A. I do not, no.
 4 Q. Do you know how many members there
 5 are in the buying group today?
 6 A. I do not know for sure. That would
 7 be a better question for Johnny Kois.
 8 Q. Do you have any knowledge of the
 9 types of savings that Tribe Members are
 10 realizing today as members of the buying group?
 11 A. Yes.
 12 Q. What do you know about savings?
 13 A. I only hear from the data from
 14 Burkhart. I shouldn't say actually Burkhart.
 15 I hear from dentists that are actually part of
 16 the buyers club that tell me they've saved
 17 money in a given year being part of the buyers
 18 club.
 19 Q. In your opinion, are you happy with
 20 the success or how the buyers club is running
 21 today?
 22 A. To be honest, I'm happy that it's
 23 helping dentists that are part of the buyers
 24 club, but I actually thought maybe we'd have
 25 more involvement, so I'm not thrilled.

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1 John C. Kois, DMD, MSD
 2 Q. When you say we'd have more
 3 involvement, who do you mean by we?
 4 A. The Tribe.
 5 Q. By more involvement, what do you
 6 mean?
 7 A. Maybe more dentists would be
 8 members.
 9 Q. Do you think if a national full
 10 service distributor was a partner instead of
 11 Burkhart you'd have more members today?
 12 MR. RACOWSKI: Object to form.
 13 MR. GEORGE: Object to form.
 14 THE WITNESS: At this point, I don't
 15 think so.
 16 BY MS. BALBACH:
 17 Q. And why don't you think so?
 18 A. I don't think so, because now we
 19 have so many direct companies that offer
 20 alternatives, because now the center is global.
 21 In fact, we're introducing our global footprint
 22 this year at the symposium and so I feel that
 23 relationships we have with all the current
 24 companies are very equitable, so I don't think
 25 a different supply company would make any

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1 John C. Kois, DMD, MSD
 2 difference.
 3 Q. By different supply company you mean
 4 a different distributor?
 5 A. Yes, correct.
 6 Q. Would a different distributor make a
 7 difference for Tribe Members who have offices
 8 perhaps on the east coast?
 9 MR. RACOWSKI: Objection to form.
 10 MR. FONTECILLA: Objection.
 11 THE WITNESS: I think for the
 12 offices that require more service that
 13 would definitely be more appealing.
 14 BY MS. BALBACH:
 15 Q. What would be appealing?
 16 A. To have more service. In other
 17 words, more local representation in a given
 18 location for the issues I've mentioned in --
 19 previously. But many of the offices don't seem
 20 to require that kind of service any more. We
 21 live in a new world today. I would add,
 22 dentists use the Internet now and they shop
 23 online, and so having maybe specific local
 24 representation is maybe less critical than it
 25 was when we started the group.

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1 John C. Kois, DMD, MSD
 2 to be an e-mail from Chuck Cohen to John Kois
 3 dated Saturday, December 26, 2015. Do you
 4 recognize CX1035?
 5 A. I do now.
 6 Q. What is this document?
 7 A. This document is notifying me of a
 8 new group option that Benco was putting
 9 together with Cain Watters at this time.
 10 Q. If I direct your attention to the
 11 second paragraph, "One more note: In addition
 12 to a check-on on how we're doing so far, and
 13 what we could be doing better together, my
 14 objective is to review the new GPO/Buying Club
 15 that we've put together with Cain Watters.
 16 "When I spoke with you guys
 17 previously, I told him that we weren't ready
 18 yet, but would be soon, on a buying club.
 19 We're ready. I remember at the time you were
 20 working with a consultant, whose name I don't
 21 recall, on putting your Tribe offering
 22 together." Did I read that correctly?
 23 A. Yes, you did.
 24 Q. What is the new GPO buying club that
 25 Benco was putting together?

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1 John C. Kois, DMD, MSD
 2 Q. Do you remember in late 2015 talking
 3 to Benco about a replacement buying group or
 4 doing a new relationship with Benco for a
 5 buying group?
 6 MR. RACOWSKI: Objection to form,
 7 foundation.
 8 THE WITNESS: I only recall the
 9 basis of the e-mail that we already looked
 10 at where I asked -- I reached out to Chuck
 11 to see if his company would be interested,
 12 and at that time he was not interested and
 13 I didn't reach out after that.
 14 MR. LANG: Can I just ask how much
 15 more time you have because I think we're
 16 butting up on your two and a half hours.
 17 MS. BALBACH: I'm basically on my
 18 last topic, my last page.
 19 BY MS. BALBACH:
 20 Q. I would like to introduce what we've
 21 marked as CX1035, and this has a Bates number
 22 of BDS00385252.
 23 (Exhibit CX1035, marked.)
 24 BY MS. BALBACH:
 25 Q. What we've marked as CX1035, appears

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1 John C. Kois, DMD, MSD
 2 A. As I recall, the details of the
 3 buying club are still fuzzy to me, but I
 4 couldn't engage with any other company at the
 5 time because we had a signed contract with
 6 Burkhart, so I made that clear to Chuck when we
 7 met, but they were working with Cain Watters.
 8 I think that's an investment
 9 company, and trying to work with maybe
 10 enhancing the buyers club option with some
 11 other way of utilizing the financial aspects of
 12 Cain Watters. I don't remember exactly what
 13 the details of that were because at that point
 14 we weren't interested.
 15 Q. Was it your understanding that the
 16 Tribe Members would be invited to join this
 17 buying group?
 18 A. That our Tribe Members would be
 19 invited? I don't remember moving forward with
 20 any relationship with this option.
 21 Q. So you didn't move forward with
 22 this?
 23 A. I did not.
 24 Q. But did you meet with Benco to talk
 25 about this opportunity?

1 John C. Kois, DMD, MSD
 2 A. There was a meeting. You know, I've
 3 also lectured for Benco in several
 4 opportunities, so I've met with Chuck
 5 personally on several occasions, and so from
 6 time to time we may talk about what option may
 7 be available, but after we started the buyers
 8 club there were no other options for us.

9 Q. And there were no other options
 10 because of your exclusive agreement with
 11 Burkhart?

12 A. Yes, and I wanted to honor that.

13 Q. I'd like to introduce CX4042. It's
 14 Bates number KOIS001039.

15 (Exhibit CX4042, marked.)

16 BY MS. BALBACH:

17 Q. CX4042 appears to be an e-mail from
 18 Chuck Cohen to johnkois@hotmail, Johnny Kois,
 19 dated January 8, 2016.

20 MR. RYAN-LANG: Can I just say for
 21 the record that I noticed this document is not
 22 marked confidential and that we produced this
 23 document at a time that we assumed everything
 24 we were giving to the FTC would be
 25 confidential, so even though this document is

1 John C. Kois, DMD, MSD
 2 not labeled that way, we regard it as
 3 confidential.

4 MS. BALBACH: I agree that -- this
 5 document --

6 MR. RYAN-LANG: I'm not blaming you,
 7 I'm just saying.

8 MS. BALBACH: -- is confidential
 9 under the protective order.

10 BY MS. BALBACH:

11 Q. Do you recognize this document?

12 A. Again, I see it now. I don't
 13 remember the document actually.

14 Q. I wanted to call your attention to
 15 the first bullet point there. So there's an
 16 opening. "Based on our conversation, I spoke
 17 with Darrell Cain, and we made the following
 18 changes to the proposal."

19 First bullet, "Assuming that the
 20 Kois Center wanted to participate, we would
 21 open membership to any member of the Tribe;
 22 however, we'd like to discuss potentially
 23 narrowing, if only slightly, the definition of
 24 Tribe Member." Did I read that correctly?

25 A. Yes.

1 John C. Kois, DMD, MSD
 2 Q. Does this e-mail relate to the last
 3 e-mail we were discussing about Benco setting
 4 up a buying group?

5 A. It seems it does.

6 Q. And do you -- is it your
 7 understanding that Benco's buying group, if you
 8 were to join, and I understand the exclusivity
 9 with Burkhart, but that Benco's buying group
 10 would be open to members of the Tribe?

11 MR. RACOWSKI: Objection to form.

12 THE WITNESS: That's what the e-mail
 13 says.

14 BY MS. BALBACH:

15 Q. Did your discussions with Benco
 16 about this buying group, did you have extensive
 17 discussions with him about the buying group?

18 A. I wouldn't say extensive
 19 discussions. I remember Chuck verbally trying
 20 to describe what the relationship would be with
 21 Cain Watters. It was very convoluted and
 22 wasn't clear to me. As I said, that's not my
 23 area of expertise and I was not interested in
 24 moving forward in that regard at all.

25 Q. Do you recall if it would be set up

1 John C. Kois, DMD, MSD
 2 at least in part as a buying group that would
 3 allow the Tribe Members to save money on their
 4 dental supplies?

5 A. I don't remember any details being
 6 discussed at this time other than he was
 7 letting me know their relationship that was a
 8 potential option with Cain Watters. Other than
 9 that, we never discussed any other details.

10 Q. And so how did you ultimately
 11 respond to Benco in early 2016?

12 A. We never went forward with any
 13 agreement and stayed with Burkhart.

14 Q. Did Benco follow up with you at --
 15 after this point, like a year or so later, to
 16 let you know how their buying group was going?

17 A. I don't know the answer to that.

18 Q. I guess I could rephrase it. Have
 19 you had any more recent conversations with
 20 Benco about a buying group -- with doing a
 21 buying group with Benco?

22 A. I don't actually recall when the
 23 last discussion was regarding a buyers club. I
 24 don't know the answer to that.

25 Q. You mentioned earlier that you did

1 John C. Kois, DMD, MSD
 2 have a relationship with Benco, a partnership
 3 that somehow involved the Kois Center. Can you
 4 describe what that agreement was?
 5 A. Yes, and I would assume I still have
 6 a relationship with Benco. They've always been
 7 good to us, and we agreed to do some lecture
 8 opportunities in their facility to help the
 9 dentists that were clients of Benco, and I was
 10 providing education for them and Benco
 11 sponsored the educational opportunity. They
 12 set up the room, they made all the
 13 arrangements. It was a very nice relationship.
 14 Q. Is the relationship limited to
 15 education and you speaking for them and it's
 16 not about supplies?
 17 A. That's correct. It's completely
 18 about education.
 19 Q. And do you still have a formal
 20 contractual relationship with them about the
 21 Kois Center?
 22 A. We do not, it expired.
 23 Q. And when did that relationship
 24 expire, do you know?
 25 A. I'd have to go back and look at the

1 John C. Kois, DMD, MSD
 2 document, but I think I would say probably
 3 September or October of 2016, or somewhere
 4 wherever -- whatever the contract had
 5 stipulated, when that expired it was never
 6 renewed, and I'm speaking of the teaching
 7 contract.
 8 MS. BALBACH: Can we go off the
 9 record?
 10 (Break from 11:22 to 11:29 a.m.)
 11 MS. BALBACH: I think we're going to
 12 stop at this point. We might want to come
 13 back with some redirect as I might have it.
 14 CROSS-EXAMINATION
 15 BY MR. RACOWSKI:
 16 Q. Good morning, Dr. Kois. My name is
 17 Ken Racowski. We've met this morning, I'm a
 18 lawyer for Benco Dental. I'm going to ask you
 19 some questions, and similar to the instructions
 20 and ground rules that you've discussed with
 21 Ms. Balbach, I would encourage you to follow
 22 those same instructions and guidelines. Do you
 23 understand that?
 24 A. I do.
 25 Q. You had testified earlier today that

1 John C. Kois, DMD, MSD
 2 you were the founder of the Kois Center; is
 3 that correct?
 4 A. Yes.
 5 Q. And when was that?
 6 A. Originally, in 1994.
 7 Q. And did you start teaching on a
 8 national level prior to 1994?
 9 A. I did.
 10 Q. Okay. And so at the time you
 11 founded the Kois Center in 1994, you were
 12 already a nationally established lecturer,
 13 teacher?
 14 A. That's correct.
 15 Q. And what was the purpose of founding
 16 the Kois Center?
 17 A. To provide a curriculum -- a
 18 graduate program for practicing dentists; that
 19 didn't exist anywhere in the world at that
 20 time.
 21 Q. It was the first of its kind?
 22 A. Yes, it was.
 23 Q. And since that time in 1994, has the
 24 Kois Center succeeded in meeting that goal?
 25 A. Yes, it has.

1 John C. Kois, DMD, MSD
 2 Q. And sitting here today, could you
 3 describe how the Kois Center has grown either
 4 in scale or scope and prominence?
 5 A. I can tell you in 1994 we would have
 6 no more than a dozen courses per year. There
 7 were only four core courses and we'd have
 8 anywhere from 12 to 16 participants. Now we've
 9 moved to nine core courses, there are
 10 additional auxiliary courses that we offer at
 11 the center.
 12 We have seating capacity for 38
 13 dentists at a time with additional capacity up
 14 to 65, and we've opened up a new facility, so
 15 we've grown enormously in the last 24 years.
 16 In fact, next month we are celebrating our 20th
 17 symposium anniversary; that's only when
 18 graduates come back. It took several years for
 19 students to become graduates.
 20 Q. And sitting here today, is it still
 21 accurate to say that the Kois Center is unique
 22 and that there's nothing like it in the world?
 23 A. I believe that's correct.
 24 Q. Are there other centers like the
 25 Kois Center that offer the same services to the

<p style="text-align: right;">Page 102</p> <p>1 John C. Kois, DMD, MSD 2 dental profession? 3 A. I would say there are other 4 services -- other centers, excuse me, but to my 5 knowledge those other centers are taught by a 6 variety of different people and they don't have 7 a common core philosophy, common core message. 8 In the Kois Center, I'm the core teacher for 9 all the courses. 10 Q. And is it fair to say that in the 11 time since 1994 that your reputation and demand 12 as a speaker and teacher of the dental industry 13 has only grown? 14 A. I believe that's correct. In fact, 15 now most of our new students are coming from 16 the siblings or associates of dentists I've 17 trained 20 years ago. 18 Q. You've mentioned earlier today that 19 you've known Chuck Cohen on the personal level. 20 When did you first meet Chuck Cohen? 21 A. I don't actually recall the original 22 meeting. I don't know the answer to that, but 23 I'm going to say at least five or six years 24 I've known him. 25 Q. Five or six years back from today?</p>	<p style="text-align: right;">Page 103</p> <p>1 John C. Kois, DMD, MSD 2 A. Yes. 3 Q. Okay. At the time of the founding 4 of the center in the '90s, you did not know him 5 at the time? 6 A. No. 7 Q. Did you know Larry Cohen? 8 A. No. I had met him only after I met 9 Chuck Cohen and I was at one of their 10 facilities. He came to one of the courses and 11 we also had a dinner together. You're speaking 12 about Chuck's father; is that correct? 13 Q. Correct. 14 A. Yes, yes. 15 Q. And so then prior to the first 16 meeting with Chuck did you have any 17 relationship with Benco Dental? 18 A. No. 19 Q. Did you have any knowledge of Benco 20 Dental before that meeting with Chuck? 21 A. I've heard of -- I always heard of 22 Benco Dental. 23 Q. If you can think about that time 24 period before you met Mr. Cohen, what is it 25 that you knew about Benco at that time?</p>
<p style="text-align: right;">Page 104</p> <p>1 John C. Kois, DMD, MSD 2 A. That it was primarily an east coast 3 dental supply company. 4 Q. And would you say that that 5 understanding is still true today, that Benco 6 is an east coast supply company? 7 A. I would say in general that's my 8 perception, although I know they branched out 9 to come to the west coast as well. 10 Q. What was the occasion when you first 11 met Chuck Cohen, if you recall? 12 A. I don't recall, I'm sorry. 13 Q. Did there come a time where the Kois 14 Center entered into a business relationship 15 with Benco Dental? 16 A. The only business relationship we 17 had with Benco Dental was the educational 18 opportunities that we had with Benco Dental. 19 And there was another option to see if we can 20 offer courses through their dental sales 21 representative. 22 Q. And when about did that business 23 relationship that you just described begin? 24 A. I'm assuming shortly after my 25 initial meeting with Chuck, so I'm thinking it</p>	<p style="text-align: right;">Page 105</p> <p>1 John C. Kois, DMD, MSD 2 would be prior to any of the buyers club 3 agreements that were established. So I'm 4 thinking also in that six year or five -- or 5 six year ago time frame. 6 Q. Did the Kois Center enter into any 7 written agreement formalizing this 8 relationship? 9 A. Yes, I did. 10 Q. Do you remember the date of that 11 first agreement? 12 A. I do not. 13 Q. Would you have reason to doubt that 14 agreement was first entered in May of 2012? 15 A. No, that's consistent with the time 16 frame that I've already reported. 17 Q. Can you tell me a little bit about 18 the nature of that business relationship? 19 A. The relationship was primarily 20 offering educational opportunities to many of 21 his existing clients, and I lectured in two 22 facilities, one on the east coast, another one 23 on the west coast, and I also did -- I think 24 they called it a spring fling, something like 25 that, where they have a bigger meeting, and</p>

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1 John C. Kois, DMD, MSD
 2 that was also held on the east coast.
 3 Q. And you understand that pursuant to
 4 this agreement you became what Benco calls a
 5 success partner?
 6 A. That's correct.
 7 Q. Do you know how many success
 8 partners Benco had at that time?
 9 A. I do not.
 10 Q. During the course of negotiating
 11 that agreement did you have discussions with
 12 Mr. Cohen about the agreement?
 13 A. Yes.
 14 Q. Do you recall Mr. Cohen ever telling
 15 you that it was important to have a
 16 relationship with the Kois Center due to Kois
 17 Center and your reputation nationally in the
 18 dental industry?
 19 A. I do.
 20 Q. That was the driving force why Benco
 21 wanted the relationship, correct?
 22 A. Correct.
 23 Q. Do you recall that Benco undertook
 24 marketing and promotion obligations to the Kois
 25 Center as part of the agreement?

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1 John C. Kois, DMD, MSD
 2 A. Yes.
 3 Q. Do you remember what they did from a
 4 marketing and promotion perspective?
 5 A. I believe they educated their sales
 6 force on what our courses were about, and so
 7 many of the individual sales personnel would
 8 provide opportunities for their clients to get
 9 some understanding of what the Kois Center was.
 10 Especially, at that time we were not
 11 as well known on the east coast, so it was an
 12 option for us to increase our visibility on the
 13 east coast as well because we don't advertise
 14 at all.
 15 Q. Right. You had said that earlier in
 16 your testimony this morning that the Kois
 17 Center didn't advertise and you primarily gain
 18 new students by word of mouth?
 19 A. That's correct.
 20 Q. Is this the first time there was
 21 marketing and promotion of the Kois Center from
 22 coast to coast?
 23 A. Yes.
 24 Q. And --
 25 A. It wasn't done through the Kois

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1 John C. Kois, DMD, MSD
 2 Center, it was done through what Benco did as a
 3 success partner.
 4 Q. Correct. I understand that. As
 5 part of that agreement, did Benco receive any
 6 compensation?
 7 A. No.
 8 Q. Was there any agreement to pay
 9 commission to Benco for new students that it
 10 drove to the Kois Center?
 11 A. Yes, there was an agreement to try
 12 to compensate their sales personnel for anyone
 13 that they would get to become a student at the
 14 center.
 15 Q. And is it fair to say though that
 16 during the course of the relationship that was
 17 a relatively small number?
 18 A. Yes.
 19 Q. Okay. It was difficult to track
 20 whether the new student came through Benco or
 21 other --
 22 A. Yes, it was very problematic in
 23 terms of the way to implement, so it was not
 24 continued.
 25 Q. But is it also fair to say from May,

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1 John C. Kois, DMD, MSD
 2 2012, to present, the Kois Center has expanded
 3 in terms of the number of students?
 4 A. Yes.
 5 Q. Earlier today Ms. Balbach showed you
 6 a document that appeared to be sales pitches
 7 from Mr. Ahmed to Patterson and Schein. Do you
 8 recall looking at those documents?
 9 A. I do.
 10 Q. Are you aware of Mr. Ahmed ever
 11 sending any kind of sales pitch similar to that
 12 to Benco?
 13 A. No.
 14 Q. Let's look back at one of the
 15 exhibits you were asked about earlier this
 16 morning. The exhibit number, I believe, is
 17 CX4062-001. It's got a big black box at the
 18 top.
 19 MR. RYAN-LANG: 406?
 20 MR. RACOWSKI: 2-001.
 21 BY MR. RACOWSKI:
 22 Q. The e-mail starting below the black
 23 box is starting from Qadeer Ahmed to Dr. Kois
 24 dated October 21, 2014. Do you have that one
 25 in front of you?

1 John C. Kois, DMD, MSD
 2 A. Yes.
 3 Q. If we go back to the end of the
 4 document, which is the first e-mail in the
 5 thread, that e-mail is dated October 21, 2014.
 6 Do you see that one?
 7 A. I do.
 8 Q. And in this e-mail you're
 9 introducing Qadeer Ahmed to Chuck Cohen; is
 10 that correct?
 11 A. That's right.
 12 Q. Do you have any understanding that
 13 prior to this e-mail that you sent to Mr. Cohen
 14 that Mr. Ahmed had any contact with Kois about
 15 the buying group?
 16 A. I don't believe so.
 17 Q. Why is it you sent this e-mail to
 18 Mr. Cohen, if you remember?
 19 A. Because I was not involved in any of
 20 the negotiations with any of the supply
 21 companies, that's what Qadeer was doing, and so
 22 I was just making the introduction.
 23 Q. And so then if we turn over to the
 24 second page of that document, to the e-mail in
 25 the middle of the page from Chuck Cohen to you,

1 John C. Kois, DMD, MSD
 2 CCing Julie Radzyninski. Do you see that one?
 3 A. Yes.
 4 Q. Mr. Ahmed is not on this e-mail. It
 5 appears Mr. Cohen had dropped Mr. Ahmed and
 6 inserted Julie Radzyninski in this response to
 7 you; is that right?
 8 A. Yes.
 9 Q. And he writes, "Confidentially,
 10 we're looking at buying club options and should
 11 have some ideas to discuss some time in early
 12 2015. That said, whatever we do, I don't think
 13 we'll need to involve an outside company like
 14 Equalizer ProServices or anyone else, they'll
 15 just take a cut of the savings." Did I read
 16 that right?
 17 A. Yes.
 18 Q. What did you understand that e-mail
 19 to be communicating to you?
 20 A. Exactly what it says.
 21 Q. And in the second paragraph, turn it
 22 over to next page, it continues, "So, with your
 23 permission I'm going to politely give Qadeer
 24 our standard answer of thanks, but we don't do
 25 buying groups. And then I'll make a note to

1 John C. Kois, DMD, MSD
 2 reconnect on this issue in early 2015." Did I
 3 read that correctly?
 4 A. Yes.
 5 Q. Did you understand Mr. Cohen to be
 6 saying we're interested in having this
 7 discussion about participating with your buying
 8 group but we don't need this third party
 9 involved?
 10 A. Yes.
 11 Q. And is that response consistent with
 12 your prior dealings and view of Mr. Cohen?
 13 MS. BALBACH: Objection.
 14 THE WITNESS: Yes, subsequent to
 15 this time, or referring from this time
 16 forward.
 17 BY MR. RACOWSKI:
 18 Q. Even before this time period you had
 19 an ongoing relationship with Benco in
 20 continuing education, correct?
 21 A. Yes.
 22 Q. I think you said that you had a
 23 positive relationship with Mr. Cohen, correct?
 24 A. Yes.
 25 Q. And here he's offering to have a

1 John C. Kois, DMD, MSD
 2 discussion with you in saying we don't need a
 3 third party to take a cut, correct?
 4 A. Yes.
 5 Q. That's consistent with everything
 6 you knew about Mr. Cohen and his personality?
 7 A. Absolutely. I never presented it
 8 from the previous time, that's all I'm saying.
 9 Q. Understand. If we look at the top
 10 e-mail in that thread from Mr. Ahmed back to
 11 you, the same date, October 21, 2014, he says,
 12 "Well I guess Chuck knows our secret plans
 13 better than you and I do. Anyway, life is too
 14 short to deal with guys who believe they know
 15 everything. Appreciate the intelligence, we'll
 16 proceed with people who want to make a
 17 difference and make money too." Do you see
 18 that?
 19 A. I'm sorry?
 20 Q. If we go back to the very first page
 21 of the document under the big black box.
 22 A. I see. I got it now. I picked up
 23 on it. Okay.
 24 Q. Sorry, I cut out a step. Let's go
 25 back to page 2. Mr. Cohen had wrote to you

1 John C. Kois, DMD, MSD
 2 dropping Mr. Ahmed, but then you forward the
 3 e-mail individually to Mr. Ahmed, correct?
 4 A. Yes.
 5 Q. Okay. And so then what I was
 6 focusing on and read a moment ago was
 7 Mr. Ahmed's response just to you. Do you see
 8 that now?
 9 A. Yes.
 10 Q. And it says, "Well I guess Chuck
 11 knows our secret plan better than you and I do.
 12 Anyway, life is too short to deal with guys who
 13 believe they know everything. Appreciate the
 14 intelligence, we'll proceed with people who
 15 want to make a difference and make money, too."
 16 Do I read that correctly?
 17 A. Yes.
 18 Q. What is your understanding Mr. Ahmed
 19 is communicating to you there?
 20 A. I don't know. That's the way he
 21 speaks? I don't know what to say.
 22 Q. Did you understand the thrust of
 23 that e-mail to be that Mr. Ahmed did not want
 24 to deal with Mr. Cohen or Benco?
 25 MS. BALBACH: Objection.

1 John C. Kois, DMD, MSD
 2 THE WITNESS: Well, there was an
 3 original e-mail that said they didn't do
 4 buyer buying groups, that was in 2014. But
 5 in early of 2015 there was an opportunity,
 6 that was my understanding as I go back,
 7 because we're going back four years ago,
 8 but I remember the e-mail that we looked at
 9 a couple of hours ago.
 10 BY MR. RACOWSKI:
 11 Q. Right. Apologies, bad question. I
 12 got us confused. Let's go back to the same
 13 document, pages 2 of the e-mail where Mr. Cohen
 14 wrote to you where he dropped Mr. Ahmed.
 15 He said, "Again, in summary, happy
 16 to have this discussion with you. We don't
 17 need a third party, so I'll tell the third
 18 party thanks, but we don't do buying groups."
 19 Do you see that that?
 20 A. Yes, that's correct.
 21 Q. Okay. So he never actually told you
 22 or the Kois Center that he was not interested,
 23 Benco was not interested in having any
 24 discussions about the buying group you were
 25 forming; is that correct? He just didn't want

1 John C. Kois, DMD, MSD
 2 THE WITNESS: It was my
 3 understanding he would not be able to
 4 proceed working with Chuck.
 5 BY MR. RACOWSKI:
 6 Q. And after the date of this e-mail,
 7 October 21, 2014, are you aware of Mr. Ahmed
 8 making any efforts to engage Benco in the
 9 buying group that the Kois Center was forming
 10 at this time?
 11 A. I am not.
 12 Q. Okay. So Mr. Cohen told you, "Happy
 13 to have the discussion, we don't need third a
 14 party." Then Mr. Ahmed, who is the third party
 15 says, "We don't need to talk to Chuck and
 16 Benco," correct?
 17 A. Correct.
 18 MS. BALBACH: Objection.
 19 BY MR. RACOWSKI:
 20 Q. Isn't it correct that at no time did
 21 Benco ever tell you or Mr. Ahmed, to your
 22 knowledge, that they didn't want to participate
 23 with you and the Kois Center in this buying
 24 group in 2014?
 25 MS. BALBACH: Objection, form.

1 John C. Kois, DMD, MSD
 2 to have them with Mr. Ahmed?
 3 MS. BALBACH: Objection, form.
 4 THE WITNESS: I'm a little confused.
 5 I thought -- could we just review this
 6 whole line of questioning again?
 7 BY MR. RACOWSKI:
 8 Q. Of course. Take all the time you
 9 need.
 10 A. I just want to make sure I'm
 11 answering this correctly. So, it is true that
 12 based on the date of this what you're saying is
 13 they were looking at buying club options, but
 14 this is now after the time we signed with
 15 Burkhart so we didn't have any other
 16 opportunities, and they said this would come in
 17 early of 2015, that is correct.
 18 Q. Okay. I think you lost me with that
 19 answer, but let's just try to wrap this up
 20 quickly if we can. So in this e-mail, in the
 21 center of the document, Mr. Cohen to you, he
 22 says to you, his success partner, who he has an
 23 agreement on continuing education with, "Happy
 24 to have this discussion with you and the Kois
 25 Center in 2015, but we don't need a third

<p style="text-align: right;">Page 118</p> <p>1 John C. Kois, DMD, MSD 2 party," correct? 3 A. Yes, yes, that's correct. 4 Q. And he then says in the second 5 paragraph, "I'll tell the third party thanks, 6 but no thanks." Did you understand that to 7 mean that then he could come back to you 8 without Mr. Ahmed in 2015? 9 A. Yeah, yeah, so that is correct. 10 Q. And then in the e-mail above that 11 that Mr. Ahmed wrote to you informative 12 substance he says, "I don't want to deal with 13 Chuck Cohen or Benco anymore," correct? 14 A. Yes. 15 MS. BALBACH: Objection. 16 BY MR. RACOWSKI: 17 Q. And so ultimately, during this time 18 period when Mr. Ahmed and ProCare were running 19 -- or attempting to form the buying group, the 20 supply company that was ultimately chosen was 21 Burkhart Dental, right? 22 A. That's correct. 23 Q. And you've testified earlier today 24 that Burkhart had been your primary supplier 25 since very early in your practice, correct?</p>	<p style="text-align: right;">Page 119</p> <p>1 John C. Kois, DMD, MSD 2 A. Yes. 3 Q. Okay. And you buy the large 4 majority of supplies from Burkhart over your 5 three plus decades in your career as a dentist? 6 A. Yes. 7 Q. Whose decision was it to select 8 Burkhart as the supply company or distributor 9 in late 2014 for the buying group? 10 A. That would be mine. 11 Q. So after Mr. Ahmed had attempted to 12 reach out to Schein and Patterson, and then the 13 attempt that we just looked at with Benco, you 14 stepped in and went to Burkhart, correct? 15 A. That's correct. 16 Q. And that was based on I think you 17 said your long history with them and your 18 personal relationship, right? 19 A. Yes. 20 Q. Earlier today you testified that one 21 of your students at the Kois Center brought 22 Mr. Ahmed and ProCare to your attention; is 23 that right? 24 A. Yes. 25 Q. Who was that student?</p>
<p style="text-align: right;">Page 120</p> <p>1 John C. Kois, DMD, MSD 2 A. Rob Capell (phonetic), Robert 3 Capell. 4 Q. And how did that come about? 5 A. He was a student. He came as a 6 student after attending a course I gave 7 somewhere in Toronto, and then during the 8 course he told me he had a history with this 9 business person and there's a group of dentists 10 that use Qadeer as a consultant for business 11 opportunities, and that's how I learned about 12 Qadeer. 13 Q. Did you first tell Mr. Capell that 14 you and the Kois Center wanted to form a buying 15 group, or was it Mr. Capell that came to you 16 with the idea of Mr. Ahmed to form a buying 17 group? 18 MS. BALBACH: Objection. 19 THE WITNESS: I'm not sure I 20 actually specifically recall that answer, 21 but I think it was my idea. 22 BY MR. RACOWSKI: 23 Q. Okay. And at that time did you have 24 any understanding of Mr. Ahmed's experience in 25 the dental industry?</p>	<p style="text-align: right;">Page 121</p> <p>1 John C. Kois, DMD, MSD 2 A. I did not. To my knowledge, he did 3 not have experience other than working 4 personally with other dentists. 5 Q. In what capacity? 6 A. I don't know. 7 Q. And is that still true today that 8 other than the Kois Buying Group and working 9 personally with other dentists, that your 10 understanding is Mr. Ahmed has no other dental 11 experience? 12 A. I don't know. 13 Q. Okay. Did you or the Kois Center do 14 any due diligence about Mr. Ahmed's background 15 prior to bringing him in to form the buying 16 group? 17 A. I did not. 18 Q. Did you have any discussion with 19 Mr. Ahmed on the phone before you signed an 20 agreement with ProCare? 21 A. I did. 22 Q. And do you recall what the substance 23 of any of those discussions were? 24 A. I thought he was a very bright 25 business person that was very skillful in</p>

1 John C. Kois, DMD, MSD
 2 negotiation. He seemed to be even very
 3 knowledgeable about dentistry even though he
 4 wasn't a dentist. He's very well read and he
 5 was impressive to listen to.
 6 Q. So very positive first impression he
 7 made?
 8 A. Yes.
 9 Q. So sitting here today and looking
 10 back on the course of the relationship between
 11 the Kois Center and the buying group and
 12 Mr. Ahmed, what's your impression of Mr. Ahmed
 13 and his business acumen?
 14 A. He is a very smart businessman.
 15 Q. Do you still believe he's a very
 16 good negotiator that might be able to help the
 17 Kois Center?
 18 A. I do.
 19 Q. Did he help the Kois Center?
 20 A. No. Ultimately.
 21 Q. What's your view of why he didn't
 22 help the Kois Center?
 23 A. I don't think we were big enough.
 24 Q. So is it your view that it wasn't
 25 anything Mr. Ahmed himself did, but that it was

1 John C. Kois, DMD, MSD
 2 the Kois Center's composition or existence
 3 itself at the point in time it was trying to
 4 form this buying group that led to the initial
 5 failure?
 6 MS. BALBACH: Objection, form.
 7 THE WITNESS: So let me think about
 8 that for a minute because it's an
 9 interesting question. I think Kois Center
 10 certainly has the reputation it has for
 11 education, but certainly doesn't have any
 12 track record regarding a buyers club.
 13 So at that point we were very new to
 14 the opportunity, so I think that was not so
 15 positive, and I think it's possible from
 16 maybe what I heard from Burkhart is the
 17 negotiation with Mr. Ahmed is not easy and
 18 so the relationship to the Kois Center was
 19 ultimately becoming the deciding factor.
 20 BY MR. RACOWSKI:
 21 Q. So ultimately the Kois Buying Group
 22 obtained a dental distributor, Burkhart,
 23 through your efforts, correct?
 24 A. That's correct.
 25 Q. And then your son, Johnny Kois,

1 John C. Kois, DMD, MSD
 2 ultimately took over for Mr. Ahmed running the
 3 buying group, correct?
 4 A. Yes.
 5 Q. When was that date, approximately?
 6 A. Johnny became the CEO of the Kois
 7 Center March of 2015, and since then he's taken
 8 care of all the responsibilities regarding the
 9 business aspects of the center, that includes
 10 the buyers club.
 11 Q. And I believe Mr. Kois testified
 12 earlier in this case that around March, 2015,
 13 there were approximately 170 members of the
 14 Kois Buying Group at the time; does that sound
 15 right to you?
 16 A. Yes, it does.
 17 Q. How many members are there today?
 18 A. As I said, I don't know an exact
 19 number. You can probably ask Johnny. I'm
 20 thinking it's around 600.
 21 Q. Fair enough. We will, but is it
 22 fair to say that from the time that Johnny took
 23 over from March of 2015 to present that the
 24 buyers club has been successful?
 25 A. Yes.

1 John C. Kois, DMD, MSD
 2 MS. BALBACH: Objection.
 3 BY MR. RACOWSKI:
 4 Q. Earlier today you testified that the
 5 Kois Center's separation with ProCare was
 6 because it, quote, wasn't consistent with our
 7 Tribe. Do you remember that?
 8 A. Yes.
 9 Q. What did you mean by that?
 10 A. It had too much of a business feel
 11 and not a feel -- a relationship feel that we
 12 have with our Tribe Members, so I was
 13 uncomfortable with the relationship.
 14 Q. Sorry. And isn't it true that one
 15 of the first things that Johnny did when he
 16 took over running the buying club is he slashed
 17 the cost to the dentist members?
 18 A. That's correct.
 19 Q. What were the financial terms of the
 20 relationship between the Kois Center and
 21 ProCare?
 22 A. Originally, I think it was intended
 23 to be a fifty-fifty split in the commission of
 24 the buyers club.
 25 Q. I'm sorry, what do you mean by

1 John C. Kois, DMD, MSD
2 commission of the buyers club?

3 A. In other words, there was --
4 dentists were initially going to pay based on
5 how much -- what level of inventory they were
6 purchasing, and from that relationship they
7 would establish what his company would get
8 versus what our company would get from that and
9 that never worked out.

10 Q. So is what you're describing some
11 type of split between the Kois Center and
12 ProCare of the membership fees that the member
13 dentist brought to the buying group?

14 A. Yes, only membership fees. We had
15 no relationship with any of the companies in
16 any of the products.

17 Q. Was there any other compensation or
18 financial incentives that the Kois Center
19 offered to Mr. Ahmed and ProCare other than the
20 split that you just described?

21 A. No.

22 Q. Ultimately, did the Kois Center wind
23 up paying Mr. Ahmed and ProCare any money?

24 A. Yes.

25 Q. How much?

1 John C. Kois, DMD, MSD

2 A. I'd have to go back and look at the
3 exact amount of money, but we did pay what he
4 was owed.

5 Q. And do you recall, recognizing you
6 don't remember the specific amounts, do you
7 recall whether what the Kois Center paid to
8 Mr. Ahmed and ProCare was substantially the
9 terms that you had agreed to with him up front,
10 the split of the membership fees?

11 A. Yes.

12 Q. And do you know when that payment
13 was made?

14 A. Sorry, I don't.

15 Q. And let's look at another exhibit
16 that you discussed with Ms. Balbach this
17 morning. Actually, it's two exhibits. First
18 one is CX1035 and next one is CX4042. Both are
19 e-mails involving you and Mr. Cohen and others.

20 A. Okay. I have it.

21 Q. The first exhibit, CX1035, that's an
22 e-mail dated December 26, 2015, from Mr. Cohen
23 to you, correct?

24 A. Yes.

25 Q. And so at that time, in December 26,

1 John C. Kois, DMD, MSD
2 2015, Burkhart was the exclusive supplier of
3 dental supplies to the Kois Buying Group,
4 correct?

5 A. The exclusive dental supply company,
6 but not of all the supplies.

7 Q. Right, because you had some direct
8 manufacturers?

9 A. Correct.

10 Q. But in terms of what I call
11 distributors and you seem to be calling supply
12 companies, Burkhart was the exclusive one of
13 those at the time?

14 A. Yes.

15 Q. And the agreement that the Kois
16 Center, the buying Group had with Burkhart
17 prevented the Kois Center and the buying group
18 from adding a second supply company or
19 distributor?

20 A. Correct.

21 Q. And that's why these discussions
22 that Mr. Cohen initiated in December of 2015
23 ultimately ended, correct?

24 A. Yes.

25 MS. BALBACH: Objection.

1 John C. Kois, DMD, MSD

2 BY MR. RACOWSKI:

3 Q. Is it fair to say that these two
4 exhibits show Benco approaching you and the
5 Kois Center with an opportunity, and the Kois
6 Center and Kois Center Buying Group politely
7 informing Benco they were not contractually
8 able to form such a relationship at that time
9 due to the Burkhart contract?

10 A. Correct.

11 Q. Okay. Who is Jerry Ritsema? Is
12 that a name you know?

13 A. Can you put a context around that?

14 Q. No, that's okay. Do you know who
15 Ovinia Gagsits (phonetic) is?

16 A. Yes, that's Linea. That's one of
17 the individuals at the Kois Center that was in
18 management.

19 Q. What role, if any, did she have in
20 the buying group?

21 A. She helped with just relaying
22 correspondence with Chuck or Julie, or any of
23 the folks that we were in contact with at
24 Benco. She was on the e-mail chain.

25 Q. I had asked if she had any role with

<p style="text-align: right;">Page 130</p> <p>1 John C. Kois, DMD, MSD 2 the buying group and I think you answered a 3 different question, so let me go back to the 4 question I asked. 5 A. The answer is no. 6 Q. So she had a role in the 7 relationship that the Kois Center had with 8 Benco regarding continuing education? 9 A. Yes, yes, because she's my outside 10 lecture coordinator. 11 Q. And, you know, just to close the 12 loop where we began with the relationship with 13 Benco, did there come a point in time when the 14 contractual relationship between Benco and the 15 Kois Center ended? 16 A. Yes. 17 Q. Do you recall approximately when 18 that was? 19 A. I don't remember exactly, but I'm 20 thinking in the fall of 2016 or 2017. It 21 probably would be in the fall of 2016 was 22 probably one of my last lectures. 23 Q. Okay. And you testified earlier 24 today that you believe, sitting here today, 25 that you still have a relationship with Benco,</p>	<p style="text-align: right;">Page 131</p> <p>1 John C. Kois, DMD, MSD 2 correct? 3 A. Absolutely. 4 Q. And do you recall Mr. Cohen 5 communicating to you that after the contract 6 ended that Benco was still going to honor their 7 side of the deal and try to direct students to 8 the Kois Center? 9 A. Absolutely. 10 MS. BALBACH: Objection. 11 BY MR. RACOWSKI: 12 Q. And didn't he tell you that's 13 because the Kois Center is unique in the world 14 and that it's a benefit to Benco's customers 15 and sales team to continue to go to courses at 16 the Kois Center? 17 MS. BALBACH: Objection. 18 THE WITNESS: Yes. 19 BY MR. RACOWSKI: 20 Q. Do you know who a Dr. Felipe 21 (phonetic) is? 22 A. Yes, he's one of our students. 23 Q. Do you know if Mr. Felipe was or is 24 a member of the buying group? 25 A. I don't know with certainty.</p>
<p style="text-align: right;">Page 132</p> <p>1 John C. Kois, DMD, MSD 2 Q. Okay. After March of 2015, when 3 Johnny took over running the buying group, what 4 role and involvement, if any, did you have in 5 the buying group? 6 MS. BALBACH: Objection. 7 THE WITNESS: In terms of the 8 implementation, the structure, none. Only 9 involved in what research we'd be doing for 10 the group. 11 BY MR. RACOWSKI: 12 Q. So in terms of the day-to-day 13 management, which dentists were in, which 14 dentist were out, whether it was growing, what 15 the relationships with the vendors were, that 16 was all Johnny and you didn't have any 17 involvement in any of that, correct? 18 A. That's correct. 19 Q. Who's Darrell Cain, if you know? 20 A. I'm assuming just by the last name 21 he's part of Cain Watters, an investment 22 company. 23 Q. Have you ever met Mr. Cain? 24 A. I have not. 25 Q. Have you ever had any discussions</p>	<p style="text-align: right;">Page 133</p> <p>1 John C. Kois, DMD, MSD 2 with Mr. Cain? 3 A. I have not. 4 Q. What's the relationship, if any, 5 between the Kois Center and Seattle Study Club? 6 A. A teaching relationship. I've done 7 many lectures for the Seattle Study Club groups 8 and been involved in many of their symposiums, 9 education only. 10 Q. Do you or the Kois Center have any 11 other business or financial relationship with 12 the Seattle Study Club other than teaching? 13 A. Absolutely not. 14 Q. What's Sinclair Dental Company, LTD? 15 A. That's a Canadian dental supply 16 company, Canadian based dental supply company. 17 Q. And whereas Burkhart is the 18 exclusive U.S. supply company for the buying 19 group, is Sinclair the exclusive Canadian 20 supply company for the buying group? 21 A. Yes. 22 Q. And do you know what role Arjang 23 Nowtash has at Sinclair? 24 A. I believe he's either one of the 25 owners or one of the principals in the company.</p>

1 John C. Kois, DMD, MSD
 2 I've never had any discussions with the
 3 company, that's completely with Johnny.
 4 Q. Do you know Frank Nowtash?
 5 A. The name I don't recall.
 6 Q. Do you have any dealings, you or the
 7 Kois Center, with Arnold Dental Company?
 8 A. I don't know the company.
 9 Q. In the time that you've been in the
 10 dental industry, have you known Patterson,
 11 Schein and Benco to behave as anything other
 12 than fierce competitors?
 13 MS. BALBACH: Objection.
 14 THE WITNESS: I have not.
 15 BY MR. RACOWSKI:
 16 Q. Are you aware that the FTC, in its
 17 complaint in this action, alleges that
 18 Patterson, Schein and Benco entered into an
 19 agreement not to do business with buying
 20 groups?
 21 A. I'm aware now.
 22 Q. Prior to my telling you that, were
 23 you aware of that?
 24 A. I've been aware, yes.
 25 Q. Okay. You don't have any personal

1 John C. Kois, DMD, MSD
 2 knowledge of any such agreement, do you?
 3 A. I do not.
 4 MR. RACOWSKI: Subject to any follow
 5 up questions after Ms. Balbach goes, I cede
 6 my time to Patterson and Schein's counsel.
 7 CROSS-EXAMINATION
 8 BY MR. GEORGE:
 9 Q. I'll be quick, so it probably makes
 10 sense to just keep going. Thank you, Dr. Kois.
 11 My name is Andrew George, again, and I
 12 represent Patterson. Do you understand that
 13 all the same ground rules apply that have
 14 already been discussed today?
 15 A. I do.
 16 Q. Great. You said the Kois Buying
 17 Group didn't exist before October, 2014; is
 18 that right?
 19 A. Correct.
 20 Q. And I believe you said that the
 21 buying group didn't actually start until 2015?
 22 A. I believe that's correct.
 23 Q. It definitely --
 24 A. Physically, yes. I believe that's
 25 correct.

1 John C. Kois, DMD, MSD
 2 Q. As more than a concept?
 3 A. Yes, yes.
 4 Q. With any members?
 5 A. Correct.
 6 Q. And it definitely didn't start in
 7 2013?
 8 A. Correct.
 9 Q. Didn't exist at all in 2013?
 10 A. Correct.
 11 Q. And so the Kois Buying Group didn't
 12 seek a supply contract with Patterson in 2013;
 13 is that right?
 14 A. Yes.
 15 Q. Nor before 2013?
 16 A. Correct.
 17 Q. Okay. I'd like to show you what
 18 we'd mark as Respondent's Kois Exhibit 1.
 19 (Exhibit 1, marked.)
 20 BY MR. GEORGE:
 21 Q. And if you could -- let me tell you
 22 what this is first. You're not on this
 23 document. This was a document that was
 24 submitted by complaint counsel, the FTC, during
 25 this matter. If you could flip to page 9.

1 John C. Kois, DMD, MSD
 2 MS. BALBACH: Can I ask a question?
 3 Is this a public version or?
 4 MR. GEORGE: This is not marked
 5 confidential. I have an extra to the
 6 appendix which was marked confidential.
 7 MS. BALBACH: Thank you.
 8 BY MR. GEORGE:
 9 Q. If you could please refer to the
 10 first full paragraph on the top of page 9. It
 11 starts, "Subject to and without waiving these
 12 objections." Do you see that?
 13 A. Yes.
 14 Q. Okay. And so the second sentence of
 15 that paragraph, I'm going to read it. It says,
 16 "Buying groups that continue to seek supply
 17 contracts with Patterson," end quote, "in 2013,
 18 as alleged in paragraph 51 of the complaint
 19 includes the Kois Buying Group." And then the
 20 sentence goes on to list other entities; is
 21 that correct?
 22 A. Yes.
 23 Q. That's just not true, right?
 24 A. Correct.
 25 Q. You can put that aside, thank you.

1 John C. Kois, DMD, MSD
2 If you could please take out complaint
3 counsel's Exhibit 4062, which is the one with
4 the big black box, and flip to the back side,
5 the last page.

6 Now, we discussed this a little bit
7 earlier. The reference to, quote, "I know we
8 tried this before," end quote. Second
9 sentence?

10 A. I see. Second sentence, okay.

11 Q. When you were referring to having
12 tried this before, this was the effort in which
13 the Kois Center would have itself bought high
14 volumes of inventory for its members; is that
15 right?

16 A. Yes.

17 Q. Okay. And the problem with that
18 approach was that the Kois Center just couldn't
19 afford it; is that right?

20 MS. BALBACH: Objection.

21 THE WITNESS: Yeah, we couldn't
22 implement it. We couldn't make such a
23 large purchase and then have to ship it to
24 all our members. It was not realistic.

25 BY MR. GEORGE:

1 John C. Kois, DMD, MSD
2 Q. Okay. So that would have been a
3 centralized commitment to purchase the
4 inventory on the Kois Center's part and not its
5 individual members; is that right?

6 A. Correct.

7 Q. And that's very different from what
8 ended up becoming the Kois Buying Group?

9 A. That's correct.

10 Q. Because the Kois Buying Group has no
11 buying power; is that right?

12 A. That's correct.

13 Q. And the Kois Buying Group members
14 have no commitment to buy anything, right?

15 A. That's correct.

16 Q. They don't have any commitment to
17 buy anything in any volume?

18 A. Correct.

19 Q. Or to buy exclusively from any
20 distributor or supplier?

21 A. Correct.

22 Q. And the Kois Buying Group members
23 can deal directly with distributors or
24 suppliers?

25 A. Correct.

1 John C. Kois, DMD, MSD
2 Q. And they can join other buying
3 groups?
4 A. Correct.
5 Q. Okay. Sticking with this exhibit
6 for one moment -- excuse me, let's move on from
7 that exhibit and turn to 4060, which is this
8 one. Can you turn to -- well, first of all, on
9 the first page of this exhibit, end of the
10 second paragraph of Qadeer Ahmed's e-mail do
11 you see the sentence, "What you see in this
12 deck is basically a replay of the face-to-face
13 I had with him last week"? Do you see that?

14 A. Yes.

15 Q. Okay. And when you got this e-mail,
16 did you understand this to mean that this was a
17 replay of what was told to Patterson during
18 their meeting -- during Qadeer Ahmed and
19 Patterson's meeting?

20 A. I would assume. Repeat the
21 question, please?

22 Q. Sure. I'm sorry about that. So
23 when you got this e-mail, did this e-mail mean
24 to you that what is included in it is basically
25 a replay of what -- of a face-to-face meeting

1 John C. Kois, DMD, MSD
2 Qadeer Ahmed and a person from Patterson had
3 had?

4 A. Yes.

5 Q. Okay. Can you turn to page -- it's
6 marked as page 007 of the exhibit, which I'm
7 holding up in case you have trouble.

8 A. I'm here.

9 Q. Okay. Great. And looking at the
10 second sentence -- excuse me, third sentence.
11 First bullet point it says, "We invite one
12 distributor to join our pilot program before
13 expansion across the industry." Do you see
14 that?

15 A. Yes.

16 Q. Did I read that correctly?

17 A. Yes.

18 Q. And, to your understanding, was that
19 accurate as far as what the Kois Buying Group
20 originally intended to do?

21 A. Yes.

22 Q. Can you please turn to Exhibit
23 CX0290. Let me know once you've got it.

24 A. Okay.

25 Q. So looking at page 003?

1 John C. Kois, DMD, MSD

2 A. Yes.

3 Q. You see the header in the middle,
4 quote, "How you order," end quote? Do you see
5 that in the middle of the page?

6 A. Yes.

7 Q. Do you see number one reads, "We
8 will pick one distribution partner from between
9 Patterson Dental, Henry Schein, and smaller
10 distributors"?

11 A. Yes.

12 Q. And this is also consistent with
13 your memory of what Kois -- the Kois buying
14 group originally intended to do?

15 A. Yes. I want to make sure what's
16 becoming clear is the name Kois Buyers Club or
17 Group. The only thing that's similar to other
18 groups of the same name, buying group, is the
19 name buying group. This is a very different
20 structure. All of the structures that had to
21 do with the business relationships that you see
22 on many of these forms were not actually what
23 happened because it was a failure in terms of
24 what we were able to implement.

25 So I hope what's becoming clear is

1 John C. Kois, DMD, MSD

2 it was just an opportunity to give dentists
3 another way, that's really what it was. And
4 unfortunately, it has the term buying club or
5 group, which gives it a very different
6 connotation than it was actually intended to be
7 in reality in my mind, and so it's hard for me
8 to look at this -- these papers and understand
9 the relationship that these infer to what the
10 current situation actually is, so I hope that
11 that's becoming very clear.

12 Q. As originally conceived at the time
13 when this e-mail was sent was the phrase, "We
14 will pick one distribution partner," accurate?

15 A. Yes.

16 Q. Could you flip to the previous page
17 of the exhibit. The reference to, "Buying
18 \$125 million per year in supplies as a
19 Tribe" --

20 A. Yes.

21 Q. Do you see that? We talked about
22 that a bit earlier.

23 A. I don't know where that came from.

24 Q. That's just what I was going to ask
25 you.

1 John C. Kois, DMD, MSD

2 A. Yeah.

3 Q. These were Mr. Ahmed's calculations,
4 not yours?

5 A. They have nothing to do with me.

6 Q. Right. And you have no idea whether
7 they're valid?

8 A. That's correct.

9 Q. If you can turn to Exhibit 1032,
10 which is this one, top of the second page, "The
11 exclusivity provision." Do you see that?

12 A. Yes.

13 Q. So, ultimately, the Kois Buying
14 Group went with Burkhart as its exclusive
15 distributor, correct?

16 A. Yes.

17 Q. And that was consistent with the
18 plan to have one distributor all along; is that
19 right?

20 A. Yes.

21 Q. And Kois Buying Group couldn't have
22 worked with another distributor as long as this
23 agreement was in effect?

24 A. Correct.

25 Q. I forgot to ask you one question

1 John C. Kois, DMD, MSD

2 about number 4060. This is the pitch that was
3 made to Patterson by Mr. Ahmed; is that right?

4 A. I assume so, because it says,
5 "Patterson update."

6 Q. You don't recall Patterson giving
7 any response to this; is that right?

8 A. I have no knowledge of working
9 specifically with any of the companies. I
10 didn't deal with them at all.

11 Q. And you don't even know what, if
12 any, response they gave to this pitch?

13 A. I do not. Other than what might
14 have been in an e-mail, I was not personally
15 involved.

16 Q. Right. In terms of what you
17 personally remember yourself?

18 A. Yeah, I don't know. I don't know.
19 I don't remember anything about that. I'm
20 not -- yeah, I have no information about that.

21 MR. GEORGE: I have nothing else.
22 Thank you.

23 CROSS-EXAMINATION
24 BY MR. FONTECILLA:

25 Q. Dr. Kois, my name is Adrian

1 John C. Kois, DMD, MSD
 2 Fontecilla. I'm on the phone from DC. As you
 3 know, I represent Henry Schein. Are you okay
 4 to continue?
 5 A. I am.
 6 Q. Or do you need a quick break?
 7 A. No, I'm fine.
 8 Q. Okay. I will endeavor to be quick
 9 and not ask anything that's already been asked;
 10 is that fair?
 11 A. Yes.
 12 Q. And if I can't -- if you can't hear
 13 me at all or I cut out because of the phone
 14 line please just ask me to repeat the question,
 15 okay?
 16 A. Yes.
 17 Q. Okay. Earlier you testified about a
 18 student who told you about Mr. Ahmed in 2014.
 19 Do you remember what month in 2014 that was?
 20 A. I do not. It would have been
 21 consistent with one of the courses he attended.
 22 Q. Okay. And how soon after that did
 23 you meet with Mr. Ahmed or talk -- I guess
 24 talked to him for the first time?
 25 A. I don't remember how long that would

1 John C. Kois, DMD, MSD
 2 be. I do remember we only had e-mail and phone
 3 conversation for -- somewhere between one and
 4 two plus years before we actually met
 5 face-to-face.
 6 Q. Right. When did you -- about how
 7 long after you heard about Mr. Ahmed did you
 8 end up finalizing a deal with his company?
 9 A. I want to say somewhere in the range
 10 of six months. Six, eight months maybe, at the
 11 most. I mean, at the outside. I don't recall
 12 exact dates, but since we signed the agreement
 13 in October of 2014, I would say something
 14 probably began earlier than that, obviously,
 15 and I remember most of it was in the earlier
 16 part of that same year.
 17 Q. Got it. So you signed an agreement
 18 with his company ProCare in October, 2014; is
 19 that right?
 20 A. No, I'm sorry. I signed an
 21 agreement with Burkhart that included the
 22 agreement with ProCare in the relationship in
 23 October of 2014.
 24 Q. Are you referring to the agreement
 25 with Burkhart that we looked at earlier?

1 John C. Kois, DMD, MSD
 2 A. Yes, I am.
 3 Q. And if you -- do you mind pulling
 4 that up just to confirm the date? I want to
 5 make sure you're staying accurate and
 6 consistent with what you've said before. I
 7 believe that is --
 8 MR. RYAN-LANG: CX1032.
 9 BY MR. FONTECILLA:
 10 Q. Yes. 1032, thank you. If you can
 11 flip to the signature page and take a look next
 12 to the signatures, you signed that agreement
 13 November, 2014, right?
 14 A. Yes. November 14th of 2014, that is
 15 correct, sorry.
 16 Q. Right. And so that was the first
 17 agreement you had signed with Mr. Ahmed?
 18 A. Yes.
 19 Q. And this is the agreement that
 20 contains the 50-50 commission split of
 21 membership fees that you referenced earlier?
 22 A. That was -- I don't know if we
 23 actually signed an agreement regarding that or
 24 that was just a verbal agreement regarding
 25 that.

1 John C. Kois, DMD, MSD
 2 Q. Sure. And I guess that's what I'm
 3 trying to get at is when did you and Mr. Ahmed
 4 come to an agreement or an understanding that
 5 you were going to try to turn this idea of a
 6 buying group into a reality?
 7 A. I would say earlier in the same
 8 year.
 9 Q. And that's exactly my question,
 10 about how much earlier before? I think we saw
 11 some e-mails from about September, October,
 12 2014. Does that refresh your recollection?
 13 A. Yes, but I think there could have
 14 been some discussion even in August, maybe.
 15 So, as I said, there was some discussion
 16 earlier on about what the intention was, but
 17 then I don't remember when he actually started
 18 negotiating with many of the individual supply
 19 companies.
 20 Q. But at the earliest, it was late
 21 summer 2014?
 22 A. Yes, that's correct.
 23 Q. And did you give him any
 24 instructions or directions regarding how to
 25 reach out to potential partners that were

1 John C. Kois, DMD, MSD
2 distribution companies?

3 A. No. Actually, he had all the
4 connections for Henry Schein and Patterson.
5 The only connection I made was the Benco
6 connection, and then ultimately the Burkhart
7 connection.

8 Q. Okay. And with regards to the
9 Burkhart agreement that you reached on
10 November 14, 2014, about how long did it take
11 to iron out that contract, if you can recall?
12 Was it a few weeks, a month?

13 A. You mean the one that was ultimately
14 signed?

15 Q. Yeah, the one that you have in front
16 of you.

17 A. That we're looking at in front of
18 us, I would say this did not take very long to
19 iron out once all the parties came together. I
20 think there may have been some early revisions.
21 I would say in the -- within a month this
22 document was completed.

23 Q. Within a month. If you can pull out
24 the stack of the documents next to you, a
25 document that is stamped Exhibit CX4063. Let

1 John C. Kois, DMD, MSD
2 me know when you have that in front of you.

3 A. I have it.

4 Q. Okay. And if you can go to the
5 third page of the document.

6 A. Excuse me, third page?

7 Q. Third page. It should have a stamp
8 at the bottom that ends in 65, and you see the
9 e-mail from Sullivan?

10 A. Tim Sullivan? Yes, I do.

11 Q. And do you see where it says, "I had
12 the initial internal team meeting to explore
13 the opportunity based on our brief
14 introductions last week." Do you see that?

15 A. Yes.

16 Q. And do you recall Mr. Ahmed ever
17 telling you that he had been introduced to
18 folks at Schein to discuss the opportunity?

19 A. I do.

20 Q. And do you recall him telling you
21 that Schein was interested in exploring the
22 opportunity?

23 A. I do.

24 Q. And do you see in the next sentence
25 of Mr. Sullivan's e-mail where he says, "The

1 John C. Kois, DMD, MSD
2 good news is that our interest continues to
3 remain high." Do you see that?

4 A. Yes.

5 Q. Was it your understanding in late
6 October, 2014, that Schein had a high interest
7 in exploring the opportunity of partnering with
8 the core buying group?

9 A. Yes, at that time.

10 Q. Okay. And did you instruct
11 Mr. Ahmed to pursue the opportunity with
12 Schein?

13 A. I was in agreement, yes.

14 Q. And what, if any, follow up
15 discussions do you know of that Mr. Ahmed had
16 with Schein about the opportunity?

17 A. I don't know of follow-up
18 conversations.

19 Q. So you don't know if Mr. Ahmed ever
20 followed up with Schein about their high
21 interest in pursuing an opportunity with the
22 core buying group?

23 A. I do not know what happened after
24 this e-mail.

25 Q. And, in fact, soon after this you

1 John C. Kois, DMD, MSD
2 actually agreed with Burkhart that they would
3 be your sole distributor; is that correct?

4 A. Yes, it is.

5 Q. Okay. After you reached that
6 agreement with Burkhart you never instructed
7 Mr. Ahmed to reach back out to Schein about
8 Mr. Sullivan's high interest in the
9 opportunity?

10 A. That's correct.

11 Q. Who is Terra Kois?

12 A. Terra? That's my daughter-in-law.

13 Q. Yeah, Terra. Does she work for you?

14 A. There was a time where she worked
15 within the practice, but she does not work for
16 me. She works with my son, that's her husband.

17 Q. Got it. And did Ms. Kois'
18 responsibilities when she worked with you at
19 the practice involve ordering dental supplies?

20 A. Never.

21 Q. Would it be possible that an account
22 with Schein would be in her name?

23 A. Yes.

24 Q. And who is Dean Kois?

25 A. That would be her husband, my son.

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1 John C. Kois, DMD, MSD
 2 Q. Okay. And did Dean also work at the
 3 practice?
 4 A. He works in the same location as the
 5 Seattle office, but has an independent
 6 practice.
 7 Q. Does that practice make purchases on
 8 its own or in coordination with your practice?
 9 A. On its own.
 10 Q. For dental supplies?
 11 A. That's correct.
 12 Q. I'm sorry, did you say on its own?
 13 A. On its own, correct.
 14 Q. And is your practice at 1001
 15 Fairview Avenue, Suite 2000?
 16 A. That is actually for my practice,
 17 the teaching center address, and my actual
 18 clinic practice location is the one at Fife,
 19 Washington, at 5615 Valley Avenue East. So my
 20 dental supplies come through the Tacoma office,
 21 Tacoma address, which is in Fife.
 22 Q. Got it. What dental supplies would
 23 be purchased for the 1001 Fairview Avenue
 24 office?
 25 A. Those would be supplies that ran --

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1 John C. Kois, DMD, MSD
 2 that building. I think they're also labeled,
 3 A, B, C, D, potentially, but all suite 2200.
 4 Q. And are you aware that those -- both
 5 those suites purchased dental supplies from
 6 Schein?
 7 A. I am.
 8 Q. And do you know if they have a
 9 Schein representative?
 10 A. I believe they do.
 11 Q. And do you have any understanding of
 12 why those suites purchased dental supplies from
 13 Schein?
 14 A. I think they like the dental supply
 15 representative.
 16 Q. And would it be fair to say they get
 17 competitive and fair pricing on the dental
 18 supplies that they purchase?
 19 A. To my knowledge, yes.
 20 Q. And do you have any understanding of
 21 whether the pricing that they get includes a
 22 discount?
 23 A. I have no idea. I would assume my
 24 son's capable of making smart purchases.
 25 Q. Are you aware that Schein offers

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1 John C. Kois, DMD, MSD
 2 that are used in the teaching center for the
 3 dentists that come as students of the center,
 4 and there may be also supplies that came to the
 5 same address that were used in my son's -- Dean
 6 and Terra's practice.
 7 Q. At that address, 1001 Fairview
 8 Avenue address, who would be responsible,
 9 generally, for purchasing dental supplies and
 10 managing relationships with the vendors?
 11 A. I guess it would depend on the
 12 specific invoice. It would either be from
 13 Dean's practice, that could involve Terra,
 14 which is his wife, could be responsible for
 15 ordering supplies that were used in his
 16 specific practice.
 17 If it was related to supplies used
 18 in the teaching center there would be other
 19 staff members on the teaching side involved.
 20 We have a clinical staff and we have a teaching
 21 staff and they don't really mix.
 22 Q. Sure. And is the clinical center,
 23 do you have two suites in that building,
 24 Suite 2000 and Suite 2200?
 25 A. We have several different suites in

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1 John C. Kois, DMD, MSD
 2 aggressive discounting to individual dental
 3 practices?
 4 A. Yes.
 5 Q. And have you ever availed yourself
 6 of the discounted pricing that Schein offers to
 7 dentists?
 8 A. I've purchased from Schein.
 9 Q. Okay. I'm just checking my notes to
 10 see if I have anything else.
 11 What is your understanding of the
 12 value that representatives from companies like
 13 Schein, Patterson, and Benco and Burkhart offer
 14 to dental practices and their staff?
 15 A. That's a pretty broad question. The
 16 value that you phrased it -- or framed it as
 17 the value, so my answer to that would be framed
 18 around competitive pricing, ethical business
 19 opportunities, knowledgeable customer service
 20 representatives, timely service, good service.
 21 All of the things that would
 22 normally require anyone from working with a
 23 company, especially companies that I've had
 24 loyalty service with for so many years, I think
 25 that would be standard in the industry.

1 John C. Kois, DMD, MSD
 2 Q. Of course. Sure. I think you
 3 mentioned earlier -- you talked about how
 4 purchasing through a representative would be
 5 more efficient for the practice; is that right?
 6 A. Yes.
 7 Q. And could the representative often
 8 provide consulting or advice beyond just
 9 purchasing supplies?
 10 A. Yes. Avail me of maybe new product
 11 opportunities, you know. I have a very small
 12 staff. I don't have time to be searching the
 13 web, so I rely on the supply representatives.
 14 Q. And, in fact, it's your
 15 understanding that distributor representatives,
 16 sale representatives actually come to the
 17 practice fairly regularly, right?
 18 A. Yes, mine comes once every two
 19 weeks.
 20 Q. And is it your understanding that
 21 these sales representatives, when they visit,
 22 can also offer practice solution services
 23 advising the practice on how to be more
 24 efficient or drive more patients or revenue; is
 25 that right?

1 John C. Kois, DMD, MSD
 2 confusing, because that's what dentists would
 3 do. They would pick one item and say I can get
 4 it cheaper at Schein, or I can get it cheaper
 5 at Patterson at one point in time, which would
 6 tend to devalue the idea, where the essence of
 7 the buyers club was just to have a company or a
 8 representation of what you could feel good
 9 about without having to shop and be competitive
 10 against pennies in the purchase and spend time
 11 devoting an employee to that kind of scrutiny.
 12 Q. Right. And the core buying group
 13 either in its initial phase, idea, form, or
 14 even today, doesn't actually maintain any
 15 central purchasing for its members, right?
 16 A. That's correct, we do not.
 17 Q. And it doesn't require any of its
 18 members and never has a purchase from any one
 19 supplier, right?
 20 A. That's correct. We built the center
 21 on being as generic as we can, so we pride
 22 ourselves on making decisions based on what's
 23 the best opportunities in the market, not based
 24 on just who we have alliances with.
 25 Q. And earlier you mentioned generally

1 John C. Kois, DMD, MSD
 2 A. Yes, they offer that.
 3 Q. Did you or Mr. Ahmed ever do any
 4 analysis of any Kois Tribe Members purchasing
 5 of dental supplies?
 6 A. Analysis in compared to what?
 7 Q. So did you ever, for example, ask a
 8 Tribe Member to submit their, you know,
 9 purchases of dental supplies and the pricing
 10 they had gotten different supplies at from
 11 their different suppliers of vendors and then
 12 compare it to what they were able to get with
 13 the Kois buyers discount for Burkhardt?
 14 A. I can tell you we did look at
 15 specific pricing on items and found it very
 16 difficult at one point in time any other
 17 companies would always have maybe a slightly
 18 more competitive price on a single item.
 19 We were looking for a cumulative
 20 pricing, so we stayed away from being concerned
 21 that one company had an item one dollar
 22 cheaper, or whatever it was, because in the
 23 long run it didn't make any difference.
 24 So we didn't look at -- we didn't
 25 look at specific items because it became very

1 John C. Kois, DMD, MSD
 2 that the pricing about other customers
 3 depending on their size, and I just want to be
 4 absolutely clear about what you have personal
 5 knowledge of.
 6 Do you have any personal knowledge
 7 of what discounts or pricing are offered by
 8 Patterson, Benco or Schein to larger group
 9 practices?
 10 A. No.
 11 MR. FONTECILLA: Okay. I have no
 12 further questions. And thank you for your
 13 time, Dr. Kois.
 14 MS. BALBACH: I have just a couple
 15 of clean up questions.
 16 REDIRECT EXAMINATION
 17 BY MS. BALBACH:
 18 Q. Take you back again to the fall of
 19 2014 when you were --
 20 A. Yes.
 21 Q. -- working at setting up the Kois
 22 Buying Group with Mr. Ahmed. Did you turn to
 23 Burkhardt to be the distributor only after you
 24 found out from Qadeer that Benco, Schein and
 25 Patterson were not willing to do a contract?

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1 John C. Kois, DMD, MSD
 2 MR. FONTECILLA: Objection,
 3 misstates the testimony.
 4 MR. GEORGE: Object to form.
 5 MR. RACOWSKI: Objection, misstates
 6 testimony.
 7 THE WITNESS: Yes.
 8 BY MS. BALBACH:
 9 Q. If Benco, Schein or Patterson had
 10 agreed to do a contract with ProCare with the
 11 Kois Buying Group would you have ever gone out
 12 to Burkhart?
 13 A. That's a great question.
 14 MR. FONTECILLA: Objection.
 15 THE WITNESS: It's a great question,
 16 because even at that time I was undecided.
 17 I dealt with Burkhart for so many years; I
 18 had such a strong personal relationship; I
 19 was actually very reluctant to move away
 20 from doing business with Burkhart because I
 21 owed them the heritage and the legacy that
 22 we had for -- for me now it's 32 years.
 23 So I actually was resistant on going
 24 to other companies because I didn't want to
 25 break my relationship with Burkhart. For

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1 John C. Kois, DMD, MSD
 2 manufacturers that sell through dental
 3 supply companies and so we wanted access to
 4 both.
 5 BY MS. BALBACH:
 6 Q. Do the companies that sell direct,
 7 do you know if they also sell through
 8 distributors?
 9 A. They do not.
 10 Q. Could you use a single manufacturer
 11 to supply all the needs of a dental practice?
 12 A. I do not believe so. I think that
 13 would be impossible.
 14 Q. Could you rely on multiple
 15 manufacturers to supply the needs of a dental
 16 practice?
 17 A. Well, if you multiply that number by
 18 enough, I would assume that would be the case,
 19 but it would be really inconvenient.
 20 Q. I'm sorry, what would be
 21 inconvenient?
 22 A. To have to go through so many
 23 different companies for all the inventory that
 24 dentists typically utilize.
 25 Q. So is that why a distributor becomes

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1 John C. Kois, DMD, MSD
 2 me to go to a buyers club and then not be
 3 able to work with Burkhart was not
 4 appealing to me, personally, but it was
 5 something that we were willing to at least
 6 look at as an opportunity for other members
 7 in the buyers club because of what maybe a
 8 bigger company could offer our members.
 9 BY MS. BALBACH:
 10 Q. Was that because of the full service
 11 national reach of the bigger distributor like
 12 Henry, Schein, or Patterson or Benco?
 13 A. Yes, yes.
 14 Q. Do manufacturers typically offer the
 15 same products directly and through
 16 distributors?
 17 MR. RACOWSKI: Objection to form.
 18 MR. FONTECILLA: Objection.
 19 THE WITNESS: So if I understand the
 20 question, there are companies that do not
 21 sell through dental distributors, they sell
 22 directly to dental practices and so they
 23 have their own sales force and their own
 24 marketing that they utilize to accomplish
 25 that endeavor. And then there are

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1 John C. Kois, DMD, MSD
 2 more efficient for a dental practice to use?
 3 A. I would say that's why I use a
 4 dental distributor. I don't want to spend
 5 time, as I said, on the Internet, the phone and
 6 searching the web. I work through a more
 7 efficient purchasing system.
 8 Q. Do manufacturers offer same day
 9 service?
 10 A. Manufacturers? Only -- no. There
 11 aren't any manufacturers that I'm aware of that
 12 are in close enough proximity that they
 13 could -- well, I shouldn't say that. Now that
 14 I think about it, yes, there are company reps
 15 that are local that work for direct companies
 16 and they have small inventory, and many times
 17 they can come within the same day, especially
 18 implant companies.
 19 Q. So it depends where the manufacturer
 20 is located and the customer is located?
 21 MR. GEORGE: Object to form.
 22 THE WITNESS: And where their
 23 service representation is.
 24 BY MS. BALBACH:
 25 Q. Do manufacturers offer same day

<p style="text-align: right;">Page 166</p> <p>1 John C. Kois, DMD, MSD 2 service for repairs? 3 A. Manufacturers? I get all my repairs 4 through the dental supply company. 5 Q. So you get all your repairs through 6 Burkhart? 7 A. Yes, I do. They service all my 8 equipment. 9 MS. BALBACH: That's all I have. 10 MR. GEORGE: I have one recross 11 question. 12 RECCROSS-EXAMINATION 13 BY MR. GEORGE: 14 Q. Dr. Kois, you were asked a moment 15 ago did you turn to Burkhart to be the 16 distributor only after you found out from 17 Qadeer that Benco, Schein and Patterson were 18 not willing to do a contract and you answered 19 yes. You told me earlier that you don't know 20 what Patterson's response to Mr. Ahmed was; 21 isn't that right? 22 A. That's correct. 23 Q. So you don't know that -- you never 24 found out from Mr. Ahmed that Benco, Schein and 25 Patterson were not willing to do a contract?</p>	<p style="text-align: right;">Page 167</p> <p>1 John C. Kois, DMD, MSD 2 A. Correct. I didn't have that 3 information with certainty. 4 Q. For all you know Benco could have 5 said it was willing? 6 A. Yes. 7 MR. GEORGE: Nothing further. Thank 8 you. 9 MR. FONTECILLA: I just have one 10 question. 11 RECCROSS-EXAMINATION 12 BY MR. FONTECILLA: 13 Q. Dr. Kois, along the same lines as 14 Mr. George's question, the answer you gave 15 counsel for the FTC about why you turned to 16 Burkhart, we went through the document where it 17 showed that since Kois had expressed high 18 interest on behalf of Schein and the 19 opportunity and you testified that you were 20 unaware of any response from Schein after that 21 or any follow up by Mr. Ahmed with Schein, so 22 just so the record is absolutely clear, when 23 you decided to turn to Burkhart and select 24 Burkhart as the distributor you had not heard 25 back from Schein; is that correct?</p>
<p style="text-align: right;">Page 168</p> <p>1 John C. Kois, DMD, MSD 2 MS. BALBACH: Objection, form. 3 THE WITNESS: That's correct. I did 4 not hear with any certainty. 5 BY MR. FONTECILLA: 6 Q. In fact, you personally didn't hear 7 back from anyone at Schein with regards to 8 whether they were interested in pursuing 9 partnership with the Kois Buying Group? 10 A. I never had any correspondence -- 11 any direct correspondence with any of the 12 dental supply companies. 13 Q. And you had no understanding -- at 14 that time when you selected Burkhart, you had 15 no understanding of whether Schein would 16 actually sign a deal or would not; is that 17 correct? 18 A. Yes, that's correct. Yes. 19 MR. FONTECILLA: Okay. No further 20 questions. Thank you. 21 MS. BALBACH: I have one redirect. 22 FURTHER REDIRECT EXAMINATION 23 BY MS. BALBACH: 24 Q. But, Mr. Kois, you did have some 25 understanding that Mr. Ahmed, who you hired, or</p>	<p style="text-align: right;">Page 169</p> <p>1 John C. Kois, DMD, MSD 2 you engaged to do this relationship, had told 3 you that they -- Benco, Schein and Patterson, 4 were not interested in setting up a buying 5 group with Kois? 6 MR. GEORGE: Objection, he never 7 said that. 8 MR. RACOWSKI: Objection, misstates 9 testimony. 10 MR. FONTECILLA: Objection. 11 BY MS. BALBACH: 12 Q. Let me rephrase. Dr. Kois, do you 13 have some understanding that Mr. Ahmed, whom 14 you hired to engage to set up a buying group, 15 do you have some understanding from him that 16 Benco, Schein and Patterson said they were not 17 interested in doing a buying group with Kois? 18 MR. GEORGE: Same objection. 19 MR. RACOWSKI: Objection to form. 20 Go ahead. 21 THE WITNESS: My understanding was 22 that it didn't look favorable from Ahmed 23 and so at that point we pursued the 24 relationship with Burkhart. 25 MS. BALBACH: Okay. I have nothing</p>

1 John C. Kois, DMD, MSD
 2 further.
 3 MR. RACOWSKI: Adrian?
 4 MR. FONTECILLA: No further
 5 questions. Thank you, Dr. Kois.
 6 (Time noted: 12:59 p.m.)
 7
 8

9 _____
 10 JOHN C. KOIS, DMD, MSD

11 Subscribed and sworn to before me this ____ day
 12 of _____ 2018.
 13
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1 John C. Kois, DMD, MSD
 2 C E R T I F I C A T E
 3 S T A T E O F W A S H I N G T O N)
 4) s s .
 5 C O U N T Y O F K I N G)
 6
 7

8 I, LISA TRONCOSO, a Certified
 9 Shorthand Reporter in and for the State of
 10 Washington, do hereby certify:

11 That, JOHN C. KOIS, DMD, MSD, the
 12 witness whose deposition is hereinbefore set
 13 forth, was duly sworn by me and that such
 14 deposition is a true record of the testimony
 15 given by such witness.

16 I further certify that I am not
 17 related to any of the parties to this action by
 18 blood or marriage; and that I am in no way
 19 interested in the outcome of this matter.

20 IN WITNESS THEREOF, I have hereunto
 21 set my hand this 11th day of July, 2018.
 22

23 _____
 24 LISA TRONCOSO, RPR
 25 Washington CSR 3090

1 I N D E X
 2 _____
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12 Exhibit CX4060:
 13 Complainant Counsel's Responses;
 14 27 pages.....38
 15 Exhibit CX4061:
 16 E-mail dated 10-13-15;
 17 Bates FTC-QA-000000-33.....45
 18 Exhibit CX4063:
 19 E-mail dated 10-28-14;
 20 Bates FTC-QA-0000063-69.....48
 21 Exhibit CX4064:
 22 Proposal for Henry Schein;
 23 Initial Supply Deal;
 24 Bates FTC-QA-0000053-54.....48
 25 Exhibit CX0290:
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4 Exhibit CX1032:
 5 ProCare Dental Distribution
 6 and Tribal Membership Program;
 7 Bates FTC00000153.....69
 8 Exhibit CX4048:
 9 E-mail dated 11-16-2015;
 10 Bates KOIS001712-14.....78
 11 Exhibit CX1035:
 12 E-mail dated 12-26-15;
 13 Bates BDS00385252-53.....91
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 15 E-mail dated 01-08-2016;
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 19 Respondent's Exhibit 1:
 20 E-mail dated 09-22-14;
 21 Bates FTC-QA-0000001-0000013.....136
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1 ERRATA SHEET FOR THE TRANSCRIPT OF:
 2 Case Name: In Re: Benco Dental
 3 Depo Date: June 27, 2018
 4 Deponent: JOHN C. KOIS, DMD, MSD
 5 CORRECTIONS:

6	Pg. Ln.	Now Reads	Should Read	Reason
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8	---	-----	-----	-----
9	---	-----	-----	-----
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17	---	-----	-----	-----
18	---	-----	-----	-----
19	---	-----	-----	-----

20 _____
 21 Signature of Deponent
 22 SUBSCRIBED AND SWORN BEFORE ME
 23 THIS ____ DAY OF _____, 2018
 24 _____
 25 (Notary Public) MY COMMISSION EXPIRES: _____

CONFIDENTIAL

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

In the Matter of

Benco Dental Inc., et al.

Docket No. D09379

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DEPOSITION OF DARCI WINGARD
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JUNE 27, 2018

REPORTED BY:

JANIS JENNINGS, CSR 3942, CLR, CCRR

ASSIGNMENT NO. 142921

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DEPOSITION OF DARCI WINGARD, taken on behalf of the U.S. Federal Trade Commission, at Locke Lord LLP, 44 Montgomery Street, Suite 2550, San Francisco, California, commencing at 9:11 a.m., Wednesday, June 27, 2018, before Janis Jennings, Certified Shorthand Reporter No. 3942, CLR, CCRR.

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APPEARANCES:

ON BEHALF OF THE U.S. FEDERAL TRADE COMMISSION:

FEDERAL TRADE COMMISSION

901 Market Street

San Francisco, California 94103

BY: KAREN GOFF, ESQ.

RONNIE SOLOMON, ESQ.

ON BEHALF OF HENRY SCHEIN, INC.:

LOCKE LORD

2200 Ross Avenue

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BY: JOHN McDONALD, ESQ.

PROSKAUER ROSE

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Washington, DC 20004

BY: COLIN KASS, ESQ.

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APPEARANCES:

ON BEHALF OF BENCO DENTAL SUPPLY CO.:

BUCHANAN INGERSOLL & ROONEY

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Minneapolis, Minnesota 55402

BY: SCOTT FLAHERTY, ESQ.

(Telephonic appearance)

ALSO PRESENT:

STELLA CHANG, Summer Intern

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I N D E X

DEPOSITION OF
DARCI WINGARD

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SAN FRANCISCO, CALIFORNIA; WEDNESDAY, JUNE 27, 2018;
9:11 A.M.

DARCI WINGARD,

The witness herein, was sworn and testified
as follows:

EXAMINATION

BY MS. GOFF:

Q. Good morning, Miss Wingard. My name is Karen Goff. I'm an attorney with the Federal Trade Commission. And with me are my colleagues Ronnie Solomon, who is an attorney at the FTC as well, and Stella Chang, who is an intern at the FTC this summer.

Have you ever given sworn testimony before?

A. No, I have not.

Q. Okay. So I'll just go over a few ground rules with you. I will be asking you a series of questions, and you will be giving me the answers, and the court reporter will be reporting all that we say here today. Because she can only record our words, please be sure to answer each question with a verbal response. Please do not nod or shake your head. Do you understand?

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A. I do.

Q. And it is helpful if you allow me to finish my question before you respond, and I will also try to let you finish your answer before I ask another question. Do you understand?

A. I do.

Q. If you don't -- if at any time you don't understand a question, you can ask me to rephrase, and I will attempt to do so. Do you understand?

A. I do.

Q. And if you need a break at any time, please let me know, and we can take one.

So today we are going to be talking about Henry Schein, the organization. It's my understanding that Henry Schein has a medical, dental, veterinarian division and maybe some others. And today when we talk about "Henry Schein" or "Schein," we are only talking about the dental business. Do you understand that?

A. I do.

Q. Is your current title Director of the Alternative Purchasing Channel at Henry Schein Dental?

A. Yes, it is.

Q. And have you had that title since May 2018?

1 A. Yes.
 2 Q. Is the Alternative Purchasing Channel
 3 sometimes called the "APC"?
 4 A. Yes, it is.
 5 Q. And so if I use the acronym APC today, will
 6 you understand what I mean?
 7 A. Yes, I do.
 8 Q. Okay. To whom do you currently report?
 9 A. Joe Cavaretta.
 10 Q. Okay. And do you have any direct reports?
 11 A. Joe Cava- -- oh, to me?
 12 Q. Yes.
 13 A. Direct report to me. Yes, I have one. Her
 14 name is Annika Swenson.
 15 Q. Okay. And what does Annika Swenson do?
 16 A. She is our manager of group strategy and
 17 development.
 18 Q. Okay. And how are you compensated for your
 19 current position as director of the APC?
 20 A. I'm on salary, and then I have an MBO. It's
 21 a bonus structure.
 22 Q. Okay. Do you -- are you paid on commission
 23 at all?
 24 A. No.
 25 Q. So prior to your current position, you were

1 the manager of group strategy and development; is
 2 that correct?
 3 A. That is correct.
 4 Q. And were you in that position from May of
 5 2016 until May of 2018?
 6 A. That is correct.
 7 Q. Okay. And was that position within
 8 Henry Schein Dental as well?
 9 A. Yes, it was.
 10 Q. Okay. It was not within Special Markets?
 11 A. It was not.
 12 Q. And then if I refer to Henry Schein Dental
 13 as "HSD," will you understand what I mean?
 14 A. I will.
 15 Q. So were you hired as manager of group
 16 strategy and development at HSD in May of 2016?
 17 A. Yes, I was.
 18 Q. And then did you officially start your
 19 position in May of 2016, or did you start in June?
 20 A. I started in May.
 21 Q. Okay. And to whom did you report as the
 22 manager of group strategy and development?
 23 MR. McDONALD: Objection to form.
 24 Go ahead.
 25 You need to be specific as to time.

1 MS. GOFF: She was the -- we established
 2 previously the manager of group strategy --
 3 BY MS. GOFF:
 4 Q. You were the manager of group strategy and
 5 development from May 2016 to May 2018; right?
 6 A. That is correct.
 7 MR. McDONALD: Right. But her -- hang on.
 8 Hang on, Karen. I object --
 9 MS. GOFF: I will -- I understand your
 10 objection, and I will rephrase my question.
 11 MR. McDONALD: Great. Thank you.
 12 BY MS. GOFF:
 13 Q. Okay. So when you first started in your
 14 position in May of 2016, to whom did you report?
 15 A. Brian Brady.
 16 Q. Okay. And how long did you report to
 17 Mr. Brady?
 18 A. Respectively, about six months.
 19 Q. What do you mean by "respectively"?
 20 A. So from May to December of 2016, I reported
 21 to Brian Brady.
 22 Q. Okay. And then who did you report to after
 23 that?
 24 A. January 1st, 2017 I reported directly to
 25 Joe Cavaretta.

1 Q. And have you reported to Joe Cavaretta ever
 2 since January 1st, 2017?
 3 A. Yes, I have.
 4 Q. And do you have an understanding of why
 5 your -- the reporting switched from Brian Brady to
 6 Mr. Cavaretta?
 7 A. I do.
 8 Q. What is your understanding?
 9 A. Brian was instrumental in really pioneering
 10 our Mid-Market Group Practice space division within
 11 Henry Schein Dental. So when I came on board, he
 12 was the individual that was going to really foster
 13 me, go through proper training, because a lot of the
 14 structural foundation of that Mid-Market Group
 15 Practice division would be very similar to a lot of
 16 the structure that I would be managing under the APC
 17 division within Schein.
 18 Q. Okay. So you mentioned the Mid-Market --
 19 Mid-Market Group. What is the Mid-Market Group?
 20 A. So we have a Group Practice division within
 21 Henry Schein, and they internally call it our
 22 Mid-Market Division.
 23 Q. And you are not a part of the Mid-Market
 24 Group; correct?
 25 A. I am not.

1 Q. And so am I correct in understanding that
2 you reported to Brian Brady when you first started
3 because he was to train you, and then the reporting
4 structure changed and you started reporting to
5 Joe Cavaretta?

6 A. I mean, yes. I -- part of it, yes, was
7 definitely training. He was my direct report, so he
8 was my manager. But as we developed and the -- you
9 know, the division through the APC division started
10 to grow, we decided I needed a direct report which
11 was a better direct report, Joe Cavaretta.

12 Q. When you say "direct report," you mean you
13 reported to Joe Cavaretta?

14 A. Yes.

15 Q. And why was Joe Cavaretta a better fit than
16 Brian Brady?

17 A. Our agreements and all the partnerships that
18 we would onboard, they have to be signed and
19 executed and approved by a VP or higher.

20 Q. And is -- Mr. Cavaretta is a VP?

21 A. He is.

22 Q. But Brian Brady is not?

23 A. He was not.

24 Q. Okay. And is there any other reason why the
25 reporting structure changed on January 1st, 2017?

1 A. Not to my knowledge.

2 Q. And when you were manager of group strategy
3 and development, did anyone report to you?

4 A. Can you rephrase that question, please.

5 Q. Did you have any direct reports? Did anyone
6 report --

7 A. When I first started in --

8 Q. Sure, yes.

9 A. -- May 2016?

10 Q. Yes. Let me just finish my question. I'll
11 re-ask it so I understand your answer.

12 So in May of 2016 when you first started,
13 did you have any direct reports?

14 A. No, I did not.

15 Q. And at some point as manager of group
16 strategy and development, did you have any direct
17 reports?

18 A. Can you rephrase that again.

19 Q. At any point when you were manager of group
20 strategy and development, did you have any direct
21 reports --

22 A. No, I did not.

23 Q. -- people that reported to you?

24 A. No, I did not.

25 MR. McDONALD: Pause in case I need to

1 object --

2 THE WITNESS: Yes. Sorry.

3 MR. McDONALD: Just slow down.

4 THE WITNESS: My apologies.

5 MR. McDONALD: No more coffee for you.

6 BY MS. GOFF:

7 Q. And when you were a manager of group
8 strategy and development, how were you compensated?

9 A. With salary and bonus.

10 Q. And were you paid on commission at all?

11 A. No, I was not.

12 Q. Okay. And what was your compensation when
13 you first started as manager of group strategy and
14 development?

15 A. Are you asking what my salary was?

16 Q. Yes.

17 A. Around 140K, to my knowledge.

18 Q. And then what was your -- what is your
19 current salary?

20 A. High 140s.

21 Q. Okay. And what about your bonus? Around
22 what amount is your bonus typically?

23 A. 30K.

24 Q. And is that paid annually?

25 A. It is.

1 Q. Other than the positions that we have
2 discussed, have you had any other positions at Henry
3 Schein Dental?

4 A. No, I have not.

5 Q. And let's talk about before you joined Henry
6 Schein. Did you work at Intuit? Is that right?

7 A. I worked for a company called Demandforce
8 that Intuit had acquired.

9 Q. Okay.

10 A. But when I was still there, Intuit had
11 divested Demandforce, and it was purchased by
12 another entity called Internet Brands.

13 Q. Okay. So prior to joining Henry Schein, you
14 worked for Demandforce?

15 A. I worked for a company called Demandforce
16 that was owned by Internet Brands.

17 Q. Okay. And what did you do for Demandforce?

18 A. Can you please be specific to what timing
19 when I was there.

20 Q. Sure. Immediately before you joined Henry
21 Schein, what was your job title at Demandforce?

22 A. I was their business development manager.

23 Q. And how long were you in that position?

24 A. I believe five years.

25 Q. Okay. And what generally were your duties

1 and responsibilities?

2 A. I was responsible for all of our
3 partnerships on the dental side of Demandforce.

4 Q. And was Henry Schein one of the partnerships
5 that you were responsible for?

6 A. Yes, they were.

7 Q. And so what was your role at Demandforce as
8 it related to Henry Schein?

9 A. They were our exclusive distribution
10 partner, so I worked to cultivate and strengthen
11 that relationship, educate their field sales reps on
12 our product, proper training, current development.
13 Sometimes I did co-travels with their reps. I would
14 go to their regional business development meetings,
15 present in front of their teams, again, to educate
16 them on our product, educate them on any new updates
17 with the systems, advancements.

18 I worked closely with the Henry Schein
19 Practice Solutions team as well and then corporate,
20 Henry Schein Dental corporate.

21 Q. And what was the product that you were
22 distributing or working on?

23 A. Demandforce was a software system, so SaaS.
24 It was an online patient communication and marketing
25 platform that integrated in seamlessly with any

1 dental practice managing software.

2 Q. Okay. And who were your contacts at Henry
3 Schein?

4 A. Can you please rephrase that question or be
5 more specific.

6 Q. Sure. So who at Henry Schein did you work
7 with?

8 MR. McDONALD: Object to the form. Vague as
9 to time.

10 BY MS. GOFF:

11 Q. So when you -- I'll rephrase the question.

12 When you were at Demandforce immediately
13 prior to joining Henry Schein, can you give me the
14 names of a few of the individuals at Henry Schein
15 that you worked with the most frequently.

16 A. I mean, I worked with a lot of individuals
17 with Henry Schein from their many different
18 divisions, whether it was their field sales reps to
19 regional managers to their zone managers to their
20 Practice Solutions division --

21 Q. So you did not --

22 A. -- to their upper sales leadership.

23 Q. Okay.

24 A. There is not one person at Henry Schein that
25 I directly spoke to on a daily basis more than other

1 individuals.

2 Q. Okay. Can you name the individuals that you
3 spoke with in their upper sales leadership.

4 MR. McDONALD: Ever? Is that your question?
5 BY MS. GOFF:

6 Q. I want to -- I'm not asking for anything
7 particularly difficult. I just want to know
8 generally who you interacted with the most at Henry
9 Schein.

10 A. Yeah. All their regional sales managers;
11 there's 54 of them. All their zone managers;
12 there's 8 of them at that time. And then on
13 probably a weekly or monthly cadence, I would speak
14 with their director of sales at the time.

15 Q. Okay.

16 A. And whether it was marketing needs or sales
17 education training needs, it just depends on that
18 week or day what we were working on, what we needed
19 to move forward.

20 Q. So there wasn't any particular individual
21 that you worked with more frequently than any
22 others?

23 A. No, there wasn't.

24 Q. Okay. Did you ever speak with Tim Sullivan?

25 A. On occasion.

1 Q. On occasion that you spoke with Tim Sullivan
2 when you were at Demandforce, generally what was the
3 topics?

4 A. I don't recall.

5 MR. McDONALD: Object to the form.
6 BY MS. GOFF:

7 Q. What about Joe Cavaretta? Did you ever
8 speak with him when you were at Demandforce?

9 A. Yes, I spoke with him.

10 Q. Okay. And what about Brian Brady? Did you
11 ever speak with him?

12 A. Yes, I did.

13 Q. And did you work closely with Brian Brady
14 when you were at Demandforce?

15 A. Not more than I worked with other respective
16 individuals within that company.

17 Q. Okay. Did you attend college?

18 A. Yes, I did.

19 Q. And did you go to CSU Chico?

20 A. I did.

21 Q. And did you obtain a degree?

22 A. Yes, I did.

23 Q. In what?

24 A. Business -- business and marketing.

25 Q. So let's discuss your position as manager of

1 group strategy and development at Henry Schein. Who
2 hired you?

3 A. Dave Steck.

4 Q. And what was Mr. Steck's role at the time
5 that you were hired?

6 A. I don't -- VP general manager. I don't
7 recall exact title.

8 Q. Okay. And when you were interviewing for
9 the position, did you interview with any other
10 individuals from Henry Schein?

11 A. I did.

12 Q. Who?

13 A. Kevin Burniston.

14 Q. Okay.

15 A. Brian Brady.

16 Q. Anyone else?

17 A. Not to my knowledge.

18 Q. Okay. And when you were the manager of
19 group strategy and development, you were responsible
20 for identifying and engaging strategic areas of
21 opportunity, including buying groups, MSOs and
22 dental associations; is that correct?

23 A. That's correct.

24 Q. And so let's -- first of all, other than
25 those that I just mentioned -- buying groups, MSOs

1 and dental associations -- were you responsible for
2 identifying and engaging strategic areas of
3 opportunity with any other types of groups?

4 A. Yeah. We call the division that I'm really
5 working with "APCs," which, again, stands for
6 "alternative purchasing channels." And that is a
7 very broad term for many different types of groups,
8 so, like you mentioned, buying groups, co-ops, state
9 associations, dental societies.

10 Q. Any other groups?

11 A. Hybrid DSOs. I mean, it's very hard to -- I
12 mean, it's in the eye of the beholder of the titles
13 of some of these partnerships or groups that I can
14 manage. They are very multifaceted, many different
15 layers, so it's hard to actually label some of these
16 groups.

17 Q. So when you started at Henry Schein, did the
18 term "APC" exist?

19 A. When I initially started in May of 2016, no,
20 it did not.

21 Q. Okay. And so just for when you first
22 started as manager of group strategy and
23 development -- I just want to make sure that I have
24 a clear record -- you were responsible for
25 identifying and engaging strategic areas of

1 opportunity for buying groups, MSOs and dental
2 associations; correct?

3 A. I mean, again, those are very strict titles.
4 I'm responsible for, I think, any type of group
5 that's comprised of individual private practices, so
6 whatever you would like to call that. There's many
7 different definitions depending on who you are. So
8 I don't know how I can better articulate that answer
9 for you.

10 Q. Okay. So --

11 A. I don't think it's --

12 Q. Go ahead.

13 A. Sorry. I just don't think it's fair to just
14 label one or two or three because there could be
15 groups that we're working with that call themselves
16 something different.

17 Q. Okay. So when you were hired as manager of
18 group strategy and development, you were responsible
19 for groups that were comprised of private practices;
20 is that correct?

21 A. Individual private practices.

22 Q. And that's private dental practices?

23 A. Correct.

24 Q. And examples of groups comprised of private
25 dental practices would include buying groups?

1 A. That would be one of them, yes.

2 Q. And dental associations?

3 A. Correct.

4 Q. And what about MSOs? What is an MSO?

5 A. I think the proper definition would be a
6 management service organization.

7 Q. And is a -- does a management service -- is
8 it a management support organization or a management
9 service organization?

10 A. People call them either/or.

11 Q. So is an MSO -- does it provide practice
12 management services to affiliated dentists?

13 A. For the most part, yes.

14 Q. And do MSOs typically have a common
15 ownership structure?

16 MR. McDONALD: Object to the form.

17 BY MS. GOFF:

18 Q. You can answer the question.

19 A. To my knowledge, most of the time, yes.
20 But, again, there's always rare cases and groups
21 that could have, like, a hybrid to where there's not
22 always that main ownership, but most of the time of
23 what we've seen that is usually the case. There are
24 always one-off instances or groups.

25 Q. Okay. And when we talk about "common

1 ownership structure," do you have an understanding
 2 of what that term means?
 3 A. I do.
 4 Q. What is your understanding?
 5 A. My understanding of that term is that the
 6 group would have some sort of equity stake or
 7 ownership within those respective practices.
 8 Q. Okay. And do MSOs typically have a
 9 management contract with their affiliated dentists?
 10 A. To my knowledge, yes.
 11 Q. Okay. And do MSOs typically have
 12 centralized purchasing and procurement on behalf of
 13 the members?
 14 MR. McDONALD: Objection to the form.
 15 THE WITNESS: Most of the time.
 16 BY MS. GOFF:
 17 Q. And do you have an understanding of what
 18 "centralized purchasing" means?
 19 A. I would say that they work together to buy
 20 the same type of supplies or consumables that their
 21 other locations are doing to draw out compliance.
 22 Q. So you're saying that the MSO works together
 23 to buy supplies and consumables on behalf of the
 24 locations?
 25 MR. McDONALD: Object to the form.

1 clinical, efficiencies, trainings, purchasing.
 2 Q. Okay. So that's how you use the phrase
 3 "drive compliance" in your job?
 4 A. Uh-huh.
 5 Q. Okay. So let's talk about buying groups.
 6 Is a buying group a collection of independent
 7 private dentist practices?
 8 A. In most cases.
 9 Q. Okay. Is there any cases where a buying
 10 group is not a collection of independent private
 11 dentist practices?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Again, in some cases. The
 14 word "buying group" can be used many different ways.
 15 Many people have a different interpretation of what
 16 an actual buying group is. So, again, when I say
 17 "buying group," yes, there -- I would say the
 18 majority of buying groups are comprised of
 19 individual independent private practicing dentists.
 20 BY MS. GOFF:
 21 Q. Okay. Do you know of any buying groups that
 22 are not comprised of independent private practice
 23 dentists?
 24 A. Yeah. I mean, I can't say for certain, list
 25 names of these groups off, but I know that from time

1 THE WITNESS: Can you restate that question,
 2 please.
 3 BY MS. GOFF:
 4 Q. Sure. You said, "They work together to buy
 5 the same type of supplies and consumables that their
 6 other locations draw out," and I wanted to
 7 understand what you meant by "they work together."
 8 A. The leadership team.
 9 Q. Of the MSO?
 10 A. Of the MSO.
 11 Q. Thank you.
 12 And can MSOs drive compliance?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: Yes, they have the ability to.
 15 BY MS. GOFF:
 16 Q. Okay. And have you ever used the phrase
 17 "drive compliance" in your job?
 18 A. Yes.
 19 Q. And what does that mean?
 20 A. When we would -- when I would say "drive
 21 compliance," it would be the definition that the
 22 respective locations under one group would all be
 23 able to drive the same type of purchasing --
 24 supplies, consumables -- do the same type of things
 25 within each location to standardize, whether that's

1 to time you will see multiple locations align with
 2 one of these groups.
 3 Q. Okay. So you can't say any examples --
 4 A. Huh-huh.
 5 Q. -- of buying groups that are not comprised
 6 of independent private dentist practices?
 7 A. Can you repeat the question, please.
 8 Q. You are not able sitting here today to
 9 provide any examples of buying groups that are not
 10 comprised of independent private dentist practices?
 11 A. So, again, the majority of your typical
 12 structured buying group are comprised 95 percent of
 13 the time of individual private practices. I'm just
 14 saying in most -- some cases, one-off-situation
 15 scenarios you might come across specialty dentists
 16 in those, group practices in those. So I just -- I
 17 can't say for all that's the way they all are
 18 comprised.
 19 Q. Okay. But, in your experience, the vast
 20 majority are comprised that way?
 21 A. Correct.
 22 Q. Okay. And when you say that there might be
 23 one-off scenarios where there is a dentist in that
 24 group, you're referring to a dentist that might join
 25 a buying group, and that dentist might be affiliated

1 with other dental practices?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: Please rephrase that question.

4 BY MS. GOFF:

5 Q. Sure. So you said -- I'm just trying to
6 make sure I have an understanding of what your
7 testimony was. You testified that there might be
8 some circumstances where -- some scenarios where a
9 specialty dentist in a group practice is not an
10 individual private dentist, and I want to know what
11 those scenarios can be.

12 A. Yeah, that can be correct, meaning you're a
13 dentist and you might own three or four locations or
14 you have equity in those four or another business
15 entity owns your locations and they might be part of
16 a buying group.

17 Q. Okay. But, sitting here today, you can't
18 tell me any specific --

19 A. No, I cannot.

20 Q. -- buying group that has that scenario?

21 A. No, I cannot.

22 Q. Okay. Thank you.

23 MR. McDONALD: Yeah. So -- so pause, let
24 her finish her question. You're still a little
25 quick.

1 THE WITNESS: Sorry.

2 MR. McDONALD: It's okay.

3 BY MS. GOFF:

4 Q. Okay. And then is it correct that buying
5 groups may offer a variety of services to
6 independent dentists?

7 A. Can you please rephrase that question.

8 Q. May buying -- do buying groups offer
9 services to independent dentists?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: That would depend on the
12 group.

13 BY MS. GOFF:

14 Q. Okay. Do some?

15 A. Some do, yes.

16 Q. And do some buying groups offer to -- strike
17 that.

18 Is one service offered by buying groups
19 negotiating lower prices for dental supplies on
20 behalf of their members?

21 A. Yeah. That would be one area.

22 Q. Okay. And is that a common area of service
23 offered for buying groups?

24 A. I would say that's correct.

25 Q. Okay. And buying groups pool together their

1 members' purchasing power to negotiate lower prices?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: That's, for the most part,
4 correct.

5 BY MS. GOFF:

6 Q. Okay. And why did you say "for the most
7 part"?

8 A. Because, again, that is a layer of some
9 groups.

10 Q. Do most groups offer that?

11 A. To my knowledge, yes.

12 Q. Okay. And do you sometimes refer to buying
13 groups as "BGs"?

14 A. I do.

15 Q. Okay. You mentioned dental associations
16 before. Do you work with dental associations in
17 your current position?

18 A. They do fall under my umbrella.

19 Q. Okay. And when we say "dental
20 associations," are we referring to things like state
21 dental associations?

22 A. That would be correct.

23 Q. And state dental associations sometimes
24 create buying groups for their members?

25 A. Some do.

1 Q. Okay. And is Georgia Dental Association an
2 example?

3 A. They would be one.

4 Q. And what about Texas Dental Association?

5 MR. McDONALD: Object to the form.

6 THE WITNESS: I believe they have one as
7 well.

8 BY MS. GOFF:

9 Q. Okay. And is that called "TDA Perks"?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: I don't -- I do not know
12 exactly what they call it.

13 BY MS. GOFF:

14 Q. Is Texas Dental Association's buying group
15 called "TDA Perks"?

16 MR. McDONALD: Object to the form.

17 THE WITNESS: I know they have a perks
18 program. I do not know if that is what they call
19 their actual buying group.

20 BY MS. GOFF:

21 Q. Okay. Thank you.

22 Did you mention the term "co-op" previously?

23 A. I did.

24 Q. And what's a co-op?

25 A. A co-op would be a very similar type of

1 group, like similar to a buying group.
 2 Q. Okay. Do you use the term "co-op" and
 3 "buying group" interchangeably?
 4 A. I would say that's correct.
 5 Q. Okay. Members of co-ops are independent
 6 dentists; right?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I would say yes.
 9 BY MS. GOFF:
 10 Q. And members of co-ops pool together their
 11 purchasing power to negotiate lower prices?
 12 A. On some cases, yes.
 13 Q. In most cases?
 14 A. Yes.
 15 Q. Can you think of any co-ops where that's not
 16 true?
 17 A. I cannot.
 18 Q. And what about study clubs? What's a study
 19 club?
 20 A. A study club would be another group of
 21 dentists that join together that are more regionally
 22 focused rather than have a more national pool or
 23 presence.
 24 Q. And members are also independent private
 25 practice dentists?

1 development, were your responsibilities limited to
 2 any particular geographic area?
 3 A. No, they were not.
 4 Q. Okay. So it was the entire United States?
 5 A. It's a national role.
 6 Q. And that's the same in your current position
 7 as director of APC?
 8 A. That is correct.
 9 Q. And as manager of group strategy and
 10 development, did you have any duties and
 11 responsibilities for DSOs?
 12 A. We had named some of our groups, like, a
 13 hybrid DSO, because they had a DSO comp- -- you
 14 know, a small DSO component to them, but I would not
 15 say that I managed true -- like a real DSO.
 16 Q. And so let's just make sure we're on the
 17 same page about what is a DSO. Is that a dental
 18 support organization?
 19 A. Yes. And some people will also call them
 20 "dental service organizations."
 21 Q. Okay. And do DSOs typically have ownership
 22 in their -- in the dental offices?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Yes, the majority of them do,
 25 as a standard.

1 A. For the most part, yes.
 2 Q. And can you think of any examples of study
 3 clubs that are not -- that the members are not
 4 independent private practice dentists?
 5 A. I cannot.
 6 Q. And the members of study clubs pool together
 7 their purchasing powers to negotiate lower prices?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: Again, that would be one layer
 10 of what they provide to their memberships.
 11 BY MS. GOFF:
 12 Q. Okay. And when you were the manager of
 13 group strategy and development, MSOs fell under your
 14 umbrella?
 15 A. I would say not as much, no. I would say
 16 MSOs respectively usually fall under the Group
 17 Practice Mid-Market Division.
 18 Q. Okay. Did any MSOs fall under your
 19 umbrella?
 20 A. Not that I'm aware of.
 21 Q. And what about in your current position as
 22 director of APC? Do any MSOs fall under your
 23 umbrella?
 24 A. No, not that I'm aware of.
 25 Q. As manager of group strategy and

1 BY MS. GOFF:
 2 Q. And do the majority of DSOs have centralized
 3 purchasing?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: For the most cases, yes.
 6 BY MS. GOFF:
 7 Q. DSOs are not typically made up of
 8 independent private practice dentists?
 9 A. That would be an accurate statement.
 10 Q. Okay. And DSOs can drive purchasing
 11 compliance?
 12 A. Most of the time; correct.
 13 Q. And who handles DSOs at Henry Schein
 14 currently?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: There's, I think, a few
 17 individuals at the leadership level that oversee
 18 DSOs.
 19 BY MS. GOFF:
 20 Q. Okay.
 21 A. Brian Brady, Jake Meadows, Kim Diamond.
 22 Q. Anyone else?
 23 A. I mean, as a direct report that manage
 24 those -- that division, that's the higher-level
 25 leadership team of Henry Schein Dental.

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1 Q. Okay. Does Kathleen Titus have any role
 2 with regard to DSOs?
 3 A. Yes, she does.
 4 Q. What's her role, as you understand it?
 5 A. To my knowledge, her current role is
 6 Director of Group Practice of the West.
 7 Q. And so when you say "Group Practice," is
 8 that a reference to the Mid-Market Group, or is
 9 there some distinction between those two?
 10 A. Group Practice and Mid-Market is one and the
 11 same.
 12 Q. How do you determine whether a group is
 13 within the APC, your group, or whether it's within
 14 the Mid-Market Group?
 15 A. I would say any dental practice that has
 16 three or more locations that are owned by the same
 17 entity would be a group practice.
 18 Q. And is that a rule that's written down
 19 somewhere?
 20 A. I can't recall. I don't manage the group
 21 practice space, so I don't know their actual
 22 terminology of what they would have written down or
 23 not.
 24 Q. Okay. But that's your understanding --
 25 A. That is my understanding.

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1 Q. And is that a community health center?
 2 A. Yes.
 3 Q. And are CHCs federally qualified community
 4 health groups that provide care for indigent
 5 populations?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't think --
 8 MR. McDONALD: Hang on.
 9 Object to the form. Lack of foundation.
 10 You need to pause.
 11 THE WITNESS: I don't have that type of
 12 knowledge. I don't manage CHCs.
 13 BY MS. GOFF:
 14 Q. Okay. So you're not responsible for
 15 interfacing with CHC groups?
 16 A. I am not.
 17 Q. And you're not responsible for interfacing
 18 with CHC GPOs or buying groups?
 19 A. I am not.
 20 Q. I mentioned the term "GPO." Are you
 21 familiar with that term?
 22 A. I am.
 23 Q. Does it stand for "group purchasing
 24 organization"?
 25 A. Yes, it does.

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1 Q. Okay. That's your understanding of how a
 2 buying group that would be within your purview is
 3 distinct from a group that's within the Mid-Market
 4 purview?
 5 A. Can you rephrase that.
 6 Q. Sure. So you said that three or more
 7 locations owned would be a DSO within Mid-Market; is
 8 that correct?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: In my definition, that is what
 11 I would call a Group Practice Mid-Market account.
 12 BY MS. GOFF:
 13 Q. Okay. If a group has fewer than three or
 14 more locations, then would it be within your
 15 purview?
 16 A. Yes, and also if there is no group ownership
 17 individually owned.
 18 Q. What do you mean by "no group ownership"?
 19 A. Meaning you don't have one doctor owning all
 20 the practices.
 21 Q. So you handle groups where there is no group
 22 ownership?
 23 A. For the most part, yes.
 24 Q. Okay. Have you heard the phrase "CHC"?
 25 A. I have.

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1 Q. And, in your view, do GPOs exist in the
 2 dental industry?
 3 A. You have groups that will call themselves a
 4 GPO. Again, "GPO" can mean many different things,
 5 and it can be defined many different ways, depending
 6 on who you're speaking with and speaking to. If you
 7 would refer to what a GPO would be in the healthcare
 8 medical space, it's very different than what you
 9 would call a GPO in the dental space.
 10 Q. Okay. So in the medical space do GPOs
 11 typically pool their volume of members to negotiate
 12 discounts with manufacturers?
 13 MR. McDONALD: Object to the form. Lack of
 14 foundation.
 15 THE WITNESS: I don't work in the medical
 16 field, so I don't know for sure. But from terms of
 17 how I would define it, that -- that would be an
 18 accurate statement.
 19 BY MS. GOFF:
 20 Q. Okay. And then have you ever used the
 21 phrase "GPO" to mean a buying group as we've defined
 22 "buying group" today?
 23 A. I have used the acronym or word "GPO" to
 24 define a buying group in dental. Yes, I have.
 25 Q. Okay. And have you seen other people at

1 Schein using "buying group" and "GPO"
2 interchangeably?

3 A. All the time.

4 Q. It's common for people at Schein to refer to
5 buying groups as "GPOs"?

6 MR. McDONALD: Object to the form.

7 THE WITNESS: It's common for, I think,
8 anyone within the dental industry to utilize the
9 word "GPO" and "buying group" interchangeably.

10 BY MS. GOFF:

11 Q. So what are your duties and responsibilities
12 in your current position as director of APC?

13 A. I foster and manage our current
14 partnerships. I will work through discovery to find
15 new potential APC relationships, do the discovery
16 process, the vetting of those to the proposals,
17 creating formularies, executing prime vendor
18 agreements. I'm responsible for the launch,
19 marketing creation and then the on-boarding
20 processes for those APC groups.

21 Q. Okay. Thank you.

22 And was your position -- your move to
23 director of APC a promotion?

24 A. Yes, it was.

25 Q. When you were the manager of group strategy

1 and development, what were your duties and
2 responsibilities?

3 A. It was very similar to the duties that I --
4 I am doing now.

5 Q. Okay. Are there any distinctions between
6 your current position and your prior position as
7 manager of group strategy and development?

8 A. I would say I have an individual reporting
9 to me now, and that would be one of the only
10 differences that I can recall at this time.

11 Q. Okay. Other than yourself and your direct
12 report, Annika Swenson, are there any other
13 employees in the APC group right now?

14 A. No, there's not.

15 Q. And prior to hiring Annika Swenson, were you
16 the only employee of the APC group?

17 A. Yes.

18 Q. When did you hire Annika Swenson?

19 A. January 2nd of 2018.

20 Q. So I think you testified earlier that the
21 term "APC" did not exist when you first started at
22 Schein; is that correct?

23 A. That is correct.

24 Q. When did that term come to exist?

25 A. I would say roughly within 30 to 40 days

1 after my hire date.

2 Q. Okay. Who coined that term?

3 A. It was a group, kind of, decision.

4 Q. Among who?

5 A. Brian Brady, Joe Cavaretta, Jake Meadows and
6 Dave Steck.

7 Q. Okay. And were you involved --

8 A. I was.

9 Q. -- in the decision?

10 And was there a meeting in which the phrase
11 "alternative purchasing channel" was coined?

12 A. Yes. We were at a strategy meeting.

13 Q. And what was the subject matter of the
14 strategy meeting?

15 A. On how to best cultivate and, I guess,
16 discuss strategies on this new division.

17 Q. So the APC was a new division when you first
18 arrived at Henry Schein?

19 A. Correct.

20 Q. Okay. So no one was in the role of group
21 strategy and development prior to you?

22 A. That is correct.

23 Q. That was just a new position?

24 A. That is correct.

25 Q. Okay. And so this strategy meeting that you

1 were talking about was within 30 days of your
2 arrival?

3 A. To what -- to what I can recall.

4 Q. Okay. And the subject matter was how to
5 best cultivate the groups that were within the APC?

6 A. It was -- again, it was more a strategy
7 meeting, a discussion of this role and what that
8 role looked like and the strategy behind it and what
9 type of partnerships that we would feel would align
10 underneath that umbrella.

11 Q. And when you say "this role," you mean your
12 role?

13 A. Correct.

14 Q. Okay. So before the strategy meeting, did
15 you have a sense of what your role at Henry Schein
16 was going to be?

17 A. For the most part, yes.

18 Q. And what was your understanding of what the
19 role was going to be?

20 A. To manage groups comprised of individual
21 private practices.

22 Q. Okay. And it was new for Henry Schein to be
23 working with groups comprised of individual private
24 practices?

25 MR. McDONALD: Object to the form.

1 Mischaracterizes the evidence.
 2 THE WITNESS: I would not say that's an
 3 accurate statement.
 4 BY MS. GOFF:
 5 Q. What is inaccurate about that statement?
 6 A. To my knowledge, Schein had been working
 7 with similar groups that would have a buying group
 8 structure to them before my on-boarding at Schein.
 9 Q. Okay. You started in May of 2016; correct?
 10 A. That is correct.
 11 Q. And so your -- how do you have knowledge of
 12 what occurred at Henry Schein prior to May of 2016?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: When I on-boarded, there were
 15 some accounts that had been managed by either
 16 individuals in the group practice, mid-market or
 17 special market space that they had educated me on
 18 and gave me examples of groups that they were
 19 working with prior to my on-boarding that fit that
 20 structure.
 21 BY MS. GOFF:
 22 Q. And who is "they" that educated you?
 23 A. Brian Brady, Joe Cavaretta, Jake Meadows.
 24 Q. Okay. And was that education -- did it
 25 occur at the strategy meeting that you were

1 just some; not all.
 2 BY MS. GOFF:
 3 Q. Okay. In June of 2016 when you joined Henry
 4 Schein Dental, it was your understanding that
 5 working with buying groups was new to Henry Schein
 6 Dental; correct?
 7 MR. McDONALD: Object to the form.
 8 Mischaracterizes evidence. Mischaracterizes her
 9 testimony.
 10 THE WITNESS: It was my understanding that
 11 at that time they had not had an individual within
 12 Schein solely focused on those type of partnerships.
 13 It did not mean that Henry Schein was not working
 14 with those groups prior to my role.
 15 BY MS. GOFF:
 16 Q. So it is your understanding that prior to
 17 your role there was no individual within Henry
 18 Schein Dental who was dedicated to working with
 19 buying groups?
 20 A. That's an accurate statement.
 21 MS. GOFF: Okay. And I would like to show
 22 you a document. It has been premarked as
 23 Exhibit CX2183.
 24 (Exhibit CX2183 introduced on the record.)
 25 ///

1 referring to?
 2 A. Portions of it.
 3 Q. Okay. And Jake, Brian Brady, Joe Cavaretta
 4 and Jake Meadows informed you of the groups that
 5 Schein was working with prior to your on-boarding?
 6 MR. McDONALD: Object to the form.
 7 Mischaracterizes her testimony.
 8 Go ahead.
 9 THE WITNESS: I mean, we discussed some
 10 groups. I'm sure it wasn't all of them.
 11 BY MS. GOFF:
 12 Q. But they informed you of the groups that
 13 Schein was working on?
 14 MR. McDONALD: Object to the form. You've
 15 mischaracterized and misstated what she just told
 16 you.
 17 Go ahead.
 18 THE WITNESS: A few of them.
 19 BY MS. GOFF:
 20 Q. They informed you of the few groups that
 21 Henry Schein was working on?
 22 MR. McDONALD: Object to the form.
 23 Mischaracterizes and misstates her testimony.
 24 THE WITNESS: We discussed a handful of some
 25 of the groups that they were working with. Again,

1 BY MS. GOFF:
 2 Q. Have you had a chance to review the email?
 3 A. I'm still reading.
 4 Q. Okay. Have you had a chance to review the
 5 document?
 6 A. I'm just finishing up.
 7 Q. Have you had a chance to review the
 8 document?
 9 A. Yes, I have.
 10 Q. Okay. This is an email chain. The latest
 11 in time is an email from you to Irfan Buddha with --
 12 and a few other individuals with a CC to
 13 Andrea Hight and a Rachele Belloit. It's dated
 14 September 1st, 2016.
 15 This top email is an email that you wrote;
 16 correct?
 17 A. Correct.
 18 Q. And you drafted it, this email, as part of
 19 your job?
 20 A. Yes.
 21 Q. And you have knowledge of the contents of
 22 the email?
 23 A. Yes.
 24 Q. And you drafted the email at or near the
 25 time of the events that occurred in the email?

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: I don't understand.
 3 BY MS. GOFF:
 4 Q. You drafted this email on September 1st of
 5 2016; correct?
 6 A. That's what it says.
 7 Q. Okay. And you kept it in the course of
 8 regularly conducted business?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't understand what you
 11 mean.
 12 BY MS. GOFF:
 13 Q. Did you maintain this email in your files in
 14 the course of regularly conducted business?
 15 MR. McDONALD: Object to the form.
 16 Karen, as I told you guys, we're not going
 17 to -- if this is a document produced by Henry
 18 Schein, it's a Henry Schein email, we're not going
 19 to contest the authenticity of the email.
 20 MS. GOFF: Okay. Thank you.
 21 BY MS. GOFF:
 22 Q. So, looking at this email, you were writing
 23 to a man or a person named Irfan Buddha; is that
 24 correct?
 25 A. That's what it says.

1 Dental. In fact, HSD working/partnering
 2 with GPOs/BGs is new for the organization
 3 in its entirety."
 4 Do you see that?
 5 A. I do.
 6 Q. So as of September 1st, 2016, you had the
 7 understanding that HSD working and partnering with
 8 buying groups was new for the organization; correct?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I think contextually what I
 11 was meaning is there's a division now dedicated to
 12 directly working with these groups.
 13 BY MS. GOFF:
 14 Q. Okay. But you informed Mr. Buddha that HSD
 15 working and partnering with buying groups is new for
 16 the organization in its entirety?
 17 MR. McDONALD: Object to the form. The
 18 document speaks for itself. If you're asking about
 19 what the sentence means, asked and answered.
 20 BY MS. GOFF:
 21 Q. Go ahead. You can answer the question.
 22 A. I mean, again, to the email, what I just
 23 answered is my context to the medical team was
 24 letting them know that we have a division now
 25 dedicated to managing these type of groups.

1 Q. And you were trying to get more information
 2 about a group called MedCost; is that right?
 3 A. That's what seems to be the case.
 4 Q. And MedCost was a GPO; is that right?
 5 A. From the email string and what the other
 6 individuals on here had wrote, that seems to be the
 7 case.
 8 Q. Okay. And do you have an understanding as
 9 you sit here today about what MedCost is?
 10 A. Not really, no.
 11 Q. And Mr. Irfan Buddha is -- was he within the
 12 Henry Schein Medical Division?
 13 A. To the best of my knowledge, yes.
 14 Q. And you informed Mr. Irfan as well as two
 15 other individuals, Heather and Rachele. Just for
 16 the record, it's Heather Davis and Rachele Belloit.
 17 Are those individuals also within the Henry Schein
 18 Medical Division?
 19 A. At that time I believe that to be the case.
 20 Q. Okay. And so as of September 1st, 2016, you
 21 had been in your role as manager of group strategy
 22 and development for at least three months; correct?
 23 A. That seems to be an appropriate timeline.
 24 Q. Okay. And you wrote here:
 25 "I am new in this role with Henry Schein

1 Q. But what you wrote was that HSD working with
 2 buying groups was new to the organization in its
 3 entirety; is that right?
 4 MR. McDONALD: Object to the form. Asked
 5 and answered for the third time now.
 6 MR. KASS: And mischaracterizes the
 7 document.
 8 BY MS. GOFF:
 9 Q. You can answer the question.
 10 A. I would say that's incorrect. That's not
 11 what the context was.
 12 Q. And where in this document did you give the
 13 context that the -- there was a new division
 14 dedicated to managing these types of groups?
 15 MR. McDONALD: Object to the form. The
 16 document speaks for itself.
 17 THE WITNESS: I've already answered that
 18 question three times.
 19 BY MS. GOFF:
 20 Q. No. I'm asking a different question. Where
 21 in the document can you point me to in this document
 22 that says that you gave the context of a new
 23 division?
 24 A. It doesn't say "division." That's what I
 25 was meaning.

1 Q. Okay. And "BG" refers to "buying groups";
2 correct?

3 A. In this email; correct.

4 Q. And "GPO" refers to "group purchasing
5 organizations"?

6 A. Which is the same as a buying group in my
7 context in this email.

8 Q. Okay. So nowhere in the email does it say
9 that there is a new group, a new division; correct?

10 MR. McDONALD: Object to the form. The
11 document speaks for itself.

12 If you want her to re-read it and tell you
13 if she thinks it's in there somewhere, then we can
14 spend the time to do that.

15 BY MS. GOFF:

16 Q. Is that correct?

17 MR. McDONALD: And I suggest you re-read the
18 email before you answer that question.

19 BY MS. GOFF:

20 Q. Do you need to re-read the email to answer
21 my question?

22 MR. McDONALD: She's going to listen to her
23 counsel and the instruction her counsel has given
24 her.

25 MS. GOFF: John, you are being

1 obstructionist. I'm entitled to ask questions.
2 Miss Wingard will give me the answers.

3 MR. McDONALD: You've answered -- you've
4 asked the same question four times. You clearly
5 don't like the answer she gave you, and so you keep
6 asking the same question.

7 And so I'm advising my client if you're
8 asking her if there is anywhere in this four-page
9 email along the lines of what you suggest, then she
10 should read it again before she answers the
11 question.

12 MS. GOFF: Then we can take a break, and
13 she can read it, because --

14 MR. McDONALD: No, we are not going to go
15 off the record and take a break while she reads it
16 again. You just don't like what she said.

17 MS. GOFF: I want to make sure that I have a
18 clean record.

19 MR. McDONALD: The record is clean that
20 she's explained to you what she meant by that
21 sentence.

22 MS. GOFF: Okay.

23 MR. SOLOMON: Do we have an answer to the
24 question before we move on?

25 MR. McDONALD: I don't know what the

1 question is.

2 MR. SOLOMON: I think, Karen, you have an
3 outstanding question, and we didn't get an answer,
4 so...

5 BY MS. GOFF:

6 Q. So where in the document can you point me to
7 that says that there was a new division?

8 MR. McDONALD: Take your time and read it
9 again.

10 BY MS. GOFF:

11 Q. Can you point me to anywhere in the document
12 where it says that you were referring to a new
13 division?

14 A. So there is nowhere in the document that
15 says "division," but in that first paragraph when I
16 write to Heather and Rachelle, that is my context.
17 That is what I was meaning, that we have an
18 individual, which is myself, that is now running a
19 division solely dedicated to these type of groups.

20 Q. Okay. But there's nowhere in there where
21 you mentioned the word "division"?

22 A. I just answered that.

23 MS. GOFF: Okay. I am going to hand you
24 another document. It's been premarked as CX2171.

25 MR. McDONALD: Don't look at the document

1 until she hands it to me and I say it's okay to look
2 at it.

3 (Exhibit CX2171 introduced on the record.)

4 MR. McDONALD: You should --- you should
5 learn something. You should give the document to
6 the lawyer first. That is a protocol that's
7 followed so I can ensure it's a document that's not
8 covered by some protective order and the witness can
9 see it. I would appreciate that courtesy. I will
10 extend you the same thing every deposition we ever
11 take. And don't smirk at me, Karen.

12 You can look at it.

13 You know darn well there are a lot of
14 documents in this case that this witness cannot see.

15 BY MS. GOFF:

16 Q. Have you had a chance to review this very
17 short two emails on one page?

18 A. Another minute, please.

19 Q. Okay.

20 Have you had a chance to read it?

21 A. Yes.

22 Q. You're finished?

23 A. Yes, I am.

24 Q. Thank you.

25 And is this an email chain between you and a

1 Jamie Povlich with a CC to Brad Fine dated
2 September 26, 2016?
3 A. That is what the email shows.
4 Q. Okay. And the latest-in-time email, you
5 drafted that email; is that correct?
6 A. It's what the email shows.
7 Q. And you drafted it as part of your job;
8 correct?
9 A. Yes.
10 Q. Okay. And who is Mr. or Mrs. Jamie Povlich?
11 A. I do not remember.
12 Q. Mr. or Mrs. Povlich worked at Henry Schein;
13 correct?
14 A. It seems to be the case.
15 Q. Okay. And he or she reached out to you and
16 said that they had a meeting with Kingsport Dental
17 Society about their buying group. Do you see that?
18 A. I do.
19 Q. And here she asks you to forward a
20 PowerPoint about the program. Do you see that?
21 A. I do.
22 Q. And then you responded that you did not have
23 a formal presentation to share on GPOs; correct?
24 A. Correct.
25 Q. And in this email were you using the term

1 A. That's what the --
2 MR. McDONALD: Hang on.
3 Object to the form.
4 Go ahead.
5 THE WITNESS: That is what the email states.
6 Again, it's being pulled out of context, saying that
7 this is still a new division within Schein.
8 BY MS. GOFF:
9 Q. Okay. And you did not inform Jamie Povlich
10 that what you meant was a new division; correct?
11 A. I don't remember what our call entailed or
12 discussed.
13 Q. In your email you did not inform Mr. Povlich
14 that what you meant was a new division; correct?
15 MR. McDONALD: Object to the form.
16 THE WITNESS: I mean, again, this was new to
17 the division that I was managing.
18 BY MS. GOFF:
19 Q. It was new to HSD in its entirety; right?
20 A. The division --
21 MR. McDONALD: Hang on.
22 Object to the form. It mischaracterizes the
23 document, her testimony and all the evidence.
24 Go ahead.
25 THE WITNESS: Referring to the APC division

1 "GPO" to refer to buying group?
2 A. Yes, I was.
3 Q. And then you wrote:
4 "As discussed we do not have a formal
5 presentation to share on GPOs and formulary
6 pricing. Working with these groups and
7 Alternate Purchasing Channels (APCs) is
8 still very new to HSD."
9 Do you see that?
10 A. I do.
11 Q. So as of September 26, 2016, you had been in
12 your role as manager of group strategy and
13 development for at least three and a half months;
14 correct?
15 A. It seems to be true.
16 Q. And you were informing a colleague of yours
17 at Henry Schein that working with buying groups was
18 still very new to HSD; correct?
19 MR. McDONALD: Object to the form.
20 THE WITNESS: New to this division that I
21 was running.
22 BY MS. GOFF:
23 Q. So you wrote, "Working with these groups and
24 Alternate Purchasing Channels is still very new to
25 HSD"; correct?

1 being new to the company.
2 BY MS. GOFF:
3 Q. That's what you meant? Sitting here today,
4 that's your understanding of what you meant when you
5 wrote this email?
6 A. Yes.
7 Q. Okay. But nowhere in email did you mention
8 a new division; correct?
9 A. I don't see the word "division" in there.
10 MS. GOFF: Okay. I'm handing you another
11 document. It has been marked as CX2184.
12 (Exhibit CX2184 introduced on the record.)
13 BY MS. GOFF:
14 Q. Please let me know when you have had a
15 chance to finish reviewing this email chain. It's,
16 again, on one page.
17 A. I will.
18 Q. Thank you.
19 Have you had a chance to review the email
20 chain?
21 A. Yes, I have.
22 Q. Okay. So this is an email -- the latest in
23 time is from you to Tim Griffin. It's dated
24 December 27, 2016; is that correct?
25 A. That's what the email says.

1 Q. And is this an email that you wrote?
 2 A. Yes.
 3 Q. And you drafted it as part of your job?
 4 A. Yes.
 5 Q. And you were writing to Tim Griffin. He was
 6 a field sales consultant at Henry Schein Dental at
 7 the time of this email; is that right?
 8 A. That's what the email shows.
 9 Q. And he reached out to you and said he had a
 10 couple doctors interested in forming a buying group.
 11 A. That's what the email shows.
 12 Q. And he asked what Henry Schein could offer
 13 them.
 14 A. That's what he asked.
 15 Q. And then you responded by saying:
 16 "The industry is definitely evolving, and
 17 we are seeing an influx of BGs forming.
 18 Formally Henry Schein has not played in
 19 this space, however we are now starting
 20 to properly assess these groups which we
 21 call Alternate Purchasing Channels
 22 (APCs)."
 23 Do you see that?
 24 A. I do.
 25 Q. So you informed Mr. Griffin that formally

1 Do you see that?
 2 A. I do.
 3 Q. And by "piloting," did you mean testing
 4 before introducing widely?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: At this time the role was
 7 still very new, and we had many different structures
 8 that we were looking at to maybe use as a cookie
 9 cutter or standard offering of what we would offer
 10 in initial discussions to some of these groups, and
 11 we had not vetted out a proper process yet.
 12 BY MS. GOFF:
 13 Q. Okay. So as of this time in December 2016,
 14 you were still vetting the processes of working with
 15 these types of buying groups; correct?
 16 A. To what I can remember, correct.
 17 Q. Okay. And then you wrote:
 18 "We are extremely selective in the groups
 19 we will entertain aligning with dependent
 20 on their vision and infrastructure."
 21 Do you see that?
 22 A. I do.
 23 Q. And what did you mean by "extremely
 24 selective"?
 25 A. Meaning that we are going to be picky. We

1 Henry Schein had not played in the buying group
 2 space; correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: No, I wouldn't say that's
 5 exactly what was said.
 6 BY MS. GOFF:
 7 Q. You wrote, "Formally Henry Schein has not
 8 played in this space," correct?
 9 A. In the APC buying group space when it's
 10 managed in a division.
 11 Q. Okay. So Henry Schein had not played in the
 12 APC buying group space?
 13 A. They had not had a formal division dedicated
 14 to managing those type of partnerships.
 15 Q. And you wrote, "Formally Henry Schein has
 16 not played in this space"; correct?
 17 A. That is what I wrote.
 18 Q. And when you wrote "space," you meant buying
 19 group space; correct?
 20 A. Buying group, APCs.
 21 Q. Okay. And then you wrote:
 22 "Currently we are piloting program
 23 offerings with a few APCs. We are still
 24 navigating and exploring how best to work
 25 with them."

1 want to make sure that we align with a partnership
 2 that echos our same sentiment with the vision and
 3 mission of helping these individual private
 4 practices grow and thrive.
 5 Q. Okay. And then you wrote:
 6 "...we do not want to encourage or consult
 7 Dentists on how to form these groups."
 8 Do you see that?
 9 A. I do.
 10 Q. And so you were saying that Schein did not
 11 want to encourage dentists to form buying groups?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: That's not what that means.
 14 BY MS. GOFF:
 15 Q. What does it mean?
 16 A. It means that right now I did not want to
 17 consult a doctor on how to start or form a group.
 18 That's not our job description, and we're not there
 19 to help these individuals structure one of these
 20 groups.
 21 Q. Why not?
 22 A. Can you --
 23 Q. Sorry. You said, "It means right now I did
 24 not want to consult a doctor on how to start or form
 25 a group. That's not our job description." Why not?

1 MR. McDONALD: Well, that's not her entire
2 answer. Her answer -- her entire answer was,
3 "That's not our job, and we are not there to help
4 these individuals structure one of these groups."

5 MS. GOFF: Sure. Thank you for clarifying.
6 BY MS. GOFF:

7 Q. So why not?

8 A. It's just not something I wanted to do. If
9 you see in that second paragraph, the top of the
10 page, we already had a Connection Program and a
11 formulary created to support these individual
12 private practices, and that program had been around,
13 to my knowledge, years before I came on board into
14 this role.

15 And so we'd much rather present them with a
16 program that we've already created that helps them
17 with every aspect of the practice. And there's no
18 reason they need to reinvent the wheel and start
19 their own group. We already have the tools for
20 them.

21 Q. Okay. So what is the Henry Schein
22 Connection Program?

23 A. So it's a program that outlines every facet
24 of our -- what we call our "Henry Schein Practice
25 Care Wheel" that brings in our supplies, our

1 technology, our practice management systems,
2 equipment, business solutions offerings, pretty much
3 everything that a full service vendor like Schein
4 can provide to these offices to help them with their
5 practice growth, whether it's business, clinical,
6 supplies, whatever it may be.

7 Q. Okay. So the Connection Program was an
8 offering to independent private practice dentists;
9 correct?

10 A. It is an offering.

11 Q. It still exists?

12 A. Yes, it does.

13 Q. Okay. And so you were saying that you would
14 rather have individual private practice dentists buy
15 products and services from Henry Schein through the
16 Connection Program rather than forming a buying
17 group?

18 MR. McDONALD: Object to the form.

19 THE WITNESS: I'm saying that we already
20 have a program created for these doctors and
21 dentists for what these guys are wanting to create.

22 BY MS. GOFF:

23 Q. And so there's no reason to create a buying
24 group?

25 A. That would be correct.

1 Q. Okay. And isn't it true that with a buying
2 group these same dentists could get discounted
3 prices from Henry Schein?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Can you -- can you please
6 rephrase that question.

7 BY MS. GOFF:

8 Q. Sure. Do -- does Henry Schein's offering to
9 buying groups -- is it -- does it offer lower prices
10 on products than what it offers in the Henry Schein
11 Connection Program?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: It's a very broad statement.
14 There are many different formularies that we have.
15 We don't work with every group the same, so I can't
16 answer that properly.

17 BY MS. GOFF:

18 Q. So it's not standard that the formularies
19 for buying groups are at lower prices than what
20 Henry Schein offers in the Connection Program?

21 A. There's --

22 MR. McDONALD: Object to the form.

23 Go ahead.

24 THE WITNESS: There's three levels within
25 the Connection Program, so I think it really depends

1 on what level these practices are on what
2 formularies they are looking at. So, again, I can't
3 answer that question properly.

4 BY MS. GOFF:

5 Q. Are you familiar with the Henry Schein
6 Connection Program formularies?

7 A. I mean, I'm aware of the levels. When
8 you're asking me what -- if -- the product makeup
9 and the product mix of them detailed, no, I'm not.

10 Q. What are levels?

11 A. There's three levels.

12 Q. What are they called?

13 A. It is Connection Program Level 1, 2 and 3.

14 Q. And which one offers the most significant
15 discount?

16 A. Our Level 3.

17 Q. And are the discounts offered by you to your
18 groups in the APC more significant or steeper than
19 the Level 3 discounts?

20 MR. McDONALD: Object to the form.

21 THE WITNESS: I can't -- again, I can't
22 answer that accurately. We have some groups, APC
23 groups, that are utilizing part of the Connection
24 Program as their offering where their members are
25 enrolled in the Level 3 program. So, again, there

1 are some that are similar. There are some
2 formularies that might be better discounts, more
3 aggressive, and some that aren't.

4 BY MS. GOFF:

5 Q. Okay. The last line -- or the last
6 paragraph of the email, you wrote:

7 "Please keep this email internal and do
8 not share externally."

9 Why were you instructing Mr. Griffin not to
10 share externally?

11 A. Because I would not want Tim Griffin, who is
12 an FSC --

13 Q. Uh-huh.

14 A. -- to share this with his customer.

15 DEPOSITION REPORTER: What was his role?

16 THE WITNESS: He's a field sales consultant,
17 FSC.

18 BY MS. GOFF:

19 Q. So going back to the Connection -- the Henry
20 Schein Connection Program, do you have an
21 understanding of when that program was created?

22 A. I do not.

23 Q. Okay. Was it -- is it fair to say that it
24 was started prior to your arrival at Henry Schein
25 Dental?

1 A. That's correct.

2 Q. And do you have an understanding of who
3 oversees that program?

4 A. It's in our private practice division, so
5 whoever manages at that time, who was ever in the
6 leadership role of the sales division --

7 Q. Okay.

8 A. -- I would assume.

9 Q. Okay. But you don't have personal
10 knowledge?

11 A. I do not.

12 MS. GOFF: Okay. We've been going for about
13 an hour and a half. Is it okay if we take a break
14 now?

15 MR. McDONALD: Sure.

16 (Off the record.)

17 MS. GOFF: Back on the record.

18 BY MS. GOFF:

19 Q. Miss Wingard, when you first started at
20 Schein, did you need to get up to speed on Schein's
21 practice with regard to APC groups?

22 A. Yeah. Absolutely. There was definitely an
23 on-boarding period and helping me -- or them helping
24 me, you know, better understand the space, and,
25 again, that's why I had a strategy meeting.

1 Q. Okay. And so I wanted to ask you some more
2 questions about the strategy meeting. Can you
3 refresh my memory. Who did you say was at that
4 meeting?

5 A. Brian Brady, Joe Cavaretta, Jake Meadows and
6 Dave Steck.

7 Q. Okay. And what did they inform you at that
8 meeting?

9 MR. McDONALD: Object to the form. Overly
10 broad.

11 THE WITNESS: I believe I answered this in
12 the beginning. Again, it was my first initial
13 meeting since taking that role and just getting
14 acquainted with the Henry Schein leadership team and
15 really us working together to understand our
16 strategy for managing the partnerships under the APC
17 umbrella.

18 BY MS. GOFF:

19 Q. Okay. And so the partnerships under the APC
20 umbrella -- strike that.

21 When you first -- sorry. Strike that.

22 So you were not within the Mid-Market Group;
23 is that correct?

24 A. That is correct.

25 Q. Okay. And so the phrase "APC group" did not

1 exist when you first started; is that right?

2 A. I answered it earlier this morning. That is
3 correct.

4 Q. Okay. But you were always -- you were
5 brought on board at Schein to work with these groups
6 that would later become named the APC group --
7 groups?

8 A. That is correct.

9 Q. And I think we talked earlier about what
10 those types of groups were. And it included buying
11 groups; is that correct?

12 A. Yes, that's one group.

13 Q. And dental associations?

14 A. Correct.

15 Q. Study clubs?

16 A. Correct.

17 Q. Co-ops?

18 A. Correct.

19 Q. And were there any others?

20 A. There could -- I mean -- yes, there's always
21 various type of groups: hybrid DSOs, et cetera. I
22 mean, again, that's why we labeled this division
23 APCs because we don't want to just label one group
24 that we would be working with.

25 Q. Okay. But all of the groups, in your

1 understanding, what they have in common is that they
 2 were comprised of independent dental practices; is
 3 that right?
 4 A. That is correct.
 5 Q. Okay. And there was no common ownership?
 6 MR. McDONALD: Object to the form.
 7 Go ahead.
 8 THE WITNESS: For the most part; correct.
 9 BY MS. GOFF:
 10 Q. So then going back to the strategy meeting,
 11 were you informed of groups that Schein -- did you
 12 testify previously that you were informed of groups
 13 that Schein had been working with that would fall
 14 under this APC umbrella?
 15 A. Yes. There was discussions of a handful of
 16 limited groups, not subjective to all, that Henry
 17 Schein was previously working with.
 18 Q. Okay. And what were those -- oh, sorry. Go
 19 ahead.
 20 A. That was it.
 21 Q. Okay. And what were those handful of
 22 limited groups that you discussed?
 23 A. I don't recall. There was many groups
 24 discussed during that meeting.
 25 Q. Okay. Do you recall any of the groups

1 discussed?
 2 A. Yes. Klear Impakt was one of them.
 3 "Klear," K-l-e-a-r; "Impakt" is I-m-p-a-k-t.
 4 You wouldn't have guessed that one if you tried.
 5 Q. And can you think of any other groups that
 6 were discussed at that strategy meeting?
 7 A. Another group discussed -- but, again, not
 8 limited to -- is Breakaway Practice Group.
 9 Q. Any others that you can think of, sitting
 10 here today?
 11 MR. McDONALD: It's "Breakaway."
 12 THE WITNESS: Not to my knowledge. I know
 13 that there were many groups that were discussed, but
 14 those, I think, were the only two that I can really
 15 remember.
 16 BY MS. GOFF:
 17 Q. Were you given any written materials?
 18 A. There were some shared documents that
 19 Brian Brady had created.
 20 Q. And that was -- you were given these shared
 21 documents when you first started as part of your
 22 on-boarding at Schein?
 23 A. Yeah.
 24 Q. Okay. And what shared documents can you
 25 recall right now?

1 A. Just kind of on-boarding processes of what
 2 the on-boarding would look like for these groups.
 3 Some structure processes of what -- again, what we
 4 envisioned some of the approval and vetting
 5 discovery to look like.
 6 Q. Okay. And were you given any other shared
 7 documents that you can think of right now?
 8 A. I can't. I mean, there were other
 9 documents. I can't remember exactly what those
 10 documents entailed.
 11 Q. Okay. And did you maintain those -- those
 12 on-boarding documents anywhere in particular in your
 13 system?
 14 A. I have -- again, they were hard files, hard
 15 file documents that were shared at the meeting, so
 16 I'm sure I still have those documents in binders
 17 somewhere living within my home office. And I'm
 18 sure through the various emails that you pulled,
 19 those attachments are somewhere in my emails.
 20 Q. But you have the binder that you received in
 21 advance of that strategy meeting in your office
 22 somewhere, you believe?
 23 A. I believe. And I don't even recall calling
 24 it a "binder."
 25 Q. Were the documents within the binder?

1 A. I don't remember.
 2 Q. Okay. Do you know if your hard copy
 3 documents were searched as a part of this
 4 litigation?
 5 A. I have no knowledge of that.
 6 Q. Okay. And so can you think of any other
 7 documents that were provided to you in advance of
 8 the strategy meeting or at the strategy meeting?
 9 A. I think there was a document that also
 10 listed, again, groups that we were currently working
 11 with or groups that we had spoken to, like
 12 definitely in the past prior to me coming on board.
 13 Q. And is it your understanding that
 14 Brian Brady created that document?
 15 A. I don't know who created that document.
 16 Q. Okay. And do you have a specific document
 17 in mind, though?
 18 A. Yes, I do.
 19 Q. Okay. And other than speaking with the
 20 individuals at the strategy meeting and reviewing
 21 the documents that we've discussed today, did you do
 22 anything else to get up to speed on Schein's
 23 practice with APC groups when you first arrived?
 24 A. I -- in my first, I think, couple weeks --
 25 or, I should say, first probably four weeks, there

1 were a couple individuals that I had made calls to
2 just to introduce myself, understand their roles
3 currently, how they were working with the company
4 and because I know that I would probably be relying
5 heavily on some of them for their duties to help
6 create a proper structure to vet support from the
7 groups that I would be on-boarding or managing
8 moving forward.

9 Q. Okay. And which individuals were those?

10 A. There were a handful. The best that I can
11 recall, I spoke with Kathleen Titus, director of
12 Group Practice. Scott Graversen, I believe he was
13 the director of equipment for Special Markets. I
14 spoke to Jason Krause. I think at that time he was
15 director of equipment as well -- I mean, director of
16 Group Practice. I think I also spoke to
17 Zach Harrison. I do not remember what his role is
18 at the time. And there were a handful of other
19 individuals that I just can't recall.

20 Q. Okay. But you named the individuals that
21 you can recall sitting here today?

22 A. At this time, yes.

23 Q. Okay. And so I just want to make sure I
24 have an understanding of what you did when you
25 arrived at Schein to get on board. And so you

1 attended the strategy meeting. You spoke with the
2 individuals at the strategy meeting. You received
3 the documents that you mentioned. And you then made
4 a handful of calls to the individuals that we
5 mentioned. Is there anything else that you can
6 think of sitting here today?

7 A. Yeah. The first week that I actually joined
8 with Henry Schein, I attended the California Dental
9 Association Meeting in Anaheim, California. And I
10 had met with Joe there, Joe Cavaretta, and I had a
11 meeting with him.

12 And then I had met with also Kathleen Titus
13 and Andrea Hight, and they had -- they kind of let
14 me -- I guess the proper terminology would be, like,
15 shadow them through the meeting. So they had
16 multiple manufacturer meetings throughout that
17 entire three-day meeting that I sat in on, whether
18 they were lunch meetings, breakfast meetings,
19 meetings throughout the trade show. So that was
20 probably part of that process.

21 Q. Did you meet with any APC groups during
22 that --

23 A. No.

24 Q. -- those days that you --

25 A. No, I did not.

1 MR. McDONALD: Let her finish. You have
2 been doing better, but let her finish.

3 BY MS. GOFF:

4 Q. And when you met with Joe Cavaretta, what
5 was the topic of your discussion?

6 A. It was more of a welcome meeting. We sat
7 down and just said "Welcome" and just kind of --
8 again, just discussed high-level roles of what the
9 division would entail.

10 Q. Okay. And did you attend any training, like
11 formal training, when you first started at Henry
12 Schein?

13 A. No, there is no formal training.

14 Q. And other than what we've discussed here,
15 can you think of anything else sitting here today
16 that you did to get up to speed regarding the APC
17 groups when you first started?

18 A. I mean, I'm sure there were some other
19 things that I just can't recall. It was over two
20 years ago.

21 Q. Okay. And so, sitting here today, are you
22 able to think of any other groups -- APC groups that
23 Schein worked with when you first started other than
24 the ones that you mentioned, Klear Impakt and
25 Breakaway?

1 MR. McDONALD: Object to the form.

2 THE WITNESS: Can you revise that question,
3 restate the question?

4 BY MS. GOFF:

5 Q. I can just ask it. So you mentioned that at
6 the strategy meeting you were informed that Henry
7 Schein worked with Klear Impakt and Breakaway; is
8 that correct?

9 A. So, again, there was many groups discussed
10 at that strategy meeting, many that we had been
11 working with for years past. Breakaway and Klear
12 Impakt were two that I know were discussed that I
13 can recall definitively today that I know that were
14 going to be groups that I was going to inherit
15 directly under my division. So those are the
16 reasons why those two stand out to me.

17 There were many groups that were discussed
18 that -- that would be a quintessential type of
19 buying group that Schein had worked with, like I
20 said, years before me coming into the role.

21 Q. Sitting here today, can you think of any of
22 those other groups that were discussed?

23 A. I can't.

24 Q. Okay. And so in your role you inherited
25 Klear Impakt and Breakaway; is that correct?

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1 A. That is correct.
 2 Q. And did you inherit any other groups?
 3 A. Can you confirm timeline?
 4 Q. At any point when you were within the APC,
 5 did you inherit any other groups?
 6 A. So, yes, just a month ago they just gave me
 7 another group that had been formerly being managed
 8 by the Special Markets team that is now going to be
 9 put under our umbrella.
 10 Q. Okay. What group is that?
 11 A. OrthoSynetics.
 12 Q. And can you think of any other groups that
 13 you've inherited?
 14 A. There's been a couple other, kind of, study
 15 clubs that we have been managing that have gone back
 16 probably close to ten years that were study clubs
 17 that had been managed at the local level that they
 18 had put under our umbrella as well.
 19 Q. And what are those study clubs?
 20 A. Advantage Dental, Dentists for a Better
 21 Huntington, Corydon Palmer, Stark County. I feel
 22 like I'm missing one, and I just can't recall at
 23 this time.
 24 Q. Did you mention Long Island Dental Society?
 25 A. I did not. That was the other one.

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1 leadership team is between HSD and the Special
 2 Markets and/or Mid-Market Group Practice. It's a
 3 collaborative effort.
 4 Q. Okay. So who is currently on the sales
 5 leadership team?
 6 A. Can you --
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Can you be more specific,
 9 please.
 10 BY MS. GOFF:
 11 Q. So you mentioned the word -- the phrase
 12 "sales leadership team." Is that a specific team at
 13 Henry Schein?
 14 A. Of the divi- --
 15 MR. McDONALD: Object to the form.
 16 Go ahead.
 17 THE WITNESS: Of the divisions.
 18 BY MS. GOFF:
 19 Q. And what divisions are you referring to?
 20 A. Special Markets, the Group Practice
 21 Mid-Market and then the Private Practice.
 22 Q. Okay. And so is there a leader of each of
 23 those three --
 24 A. Yes, there is.
 25 Q. -- that you just mentioned?

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1 Q. Okay. And so it's your understanding that
 2 Schein had worked with those groups for ten years?
 3 A. Again, I'm guessing. I know they were
 4 longstanding relationships. I don't know the time
 5 frames on any of them.
 6 Q. Okay. And who informed you that they were
 7 longstanding relationships?
 8 A. I -- from the documents that I received when
 9 they were transferred over to my division.
 10 Q. Okay. What type of documents did you
 11 receive?
 12 A. Documents that had signatures from mutual
 13 parties outlining what the program entailed of how
 14 we were supporting their group's members.
 15 Q. Do you have an understanding of who prepared
 16 those documents?
 17 A. I don't.
 18 Q. And who transferred them to your division?
 19 A. It was, I think, decided by the overall
 20 leadership with Brian Brady, Joe Cavaretta and
 21 Jake Meadows.
 22 Q. Okay. And so who is responsible for putting
 23 groups under your umbrella? Is it that group of
 24 individuals?
 25 A. It's whoever who the leader- -- sales

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1 Okay. And so those leaders of those three
 2 are who decides what goes -- what groups go under
 3 your umbrella?
 4 A. For -- for inherited groups that were
 5 transferred, yes.
 6 Q. Okay. What about new groups? Do they also
 7 decide what groups go under your umbrella?
 8 A. It's, again, a collaborative decision, so
 9 for the most part I would say this is what we would
 10 define as an APC, and it should be managed under my
 11 division. And I get buy-in from the sales
 12 leadership team.
 13 Q. Okay. And can you tell me the names of the
 14 sales leadership team.
 15 A. Joe Cavaretta, Glenn Showgren, Jake Meadows,
 16 Brian Brady.
 17 Q. That's the current sales leadership team?
 18 A. Of the multiple divisions under Henry Schein
 19 Dental.
 20 Q. Okay. And so let's just figure out who --
 21 who is in charge of which division. So
 22 Joe Cavaretta?
 23 A. Henry Schein Dental private practice.
 24 Q. And Glenn Showgren?
 25 A. Henry Schein Dental Private Practice.

1 Q. And Jake Meadows?

2 A. Special Markets.

3 Q. And Brian Brady?

4 A. Mid-Market Group Practice.

5 Q. Okay. And this is -- we are talking about
6 current day today; correct?

7 A. That is correct.

8 Q. Okay. And were there different people in
9 the sales leadership team when you first started at
10 Henry Schein?

11 A. It was mostly comprised of the same
12 individuals. They're just in different roles now.

13 Q. Okay. When you say "mostly," is there
14 some -- are there some ways in which it was
15 different?

16 A. So Jake Meadows used to be in sales
17 leadership in Private Practice. He is now Special
18 Markets. Glenn Showgren is -- backfilled that role.
19 We now have some other individuals that are in the
20 sales leadership team with Special Markets,
21 Kim Diamond.

22 Q. But is Kim Diamond one of the people that
23 are responsible for determining what goes under your
24 umbrella?

25 A. She would -- again, collective efforts. She

1 same group, but they were in different roles?

2 A. Correct.

3 Q. And do you make a recommendation to those
4 individuals as to which groups you think fall under
5 your umbrella?

6 A. Yes.

7 Q. And is that recommendation typically in
8 writing?

9 A. Not all the time.

10 Q. Sometimes it's orally?

11 A. Correct.

12 Q. Is there any formal process by which you are
13 supposed to determine which groups go into your
14 umbrella?

15 A. There's no formal process.

16 Q. Okay. And there's no formal process for you
17 to make a recommendation as to which groups go under
18 your umbrella?

19 A. No.

20 Q. At -- at what point did you inherit those
21 groups that had been around Henry Schein for, you
22 mentioned, ten years or more?

23 MR. McDONALD: Object to the form.

24 THE WITNESS: Can you be a little bit more
25 specific.

1 would have a say maybe sometimes.

2 Q. Okay. So I want a -- just a list of
3 everyone that has a say in what goes under your
4 umbrella.

5 MR. McDONALD: Currently?

6 BY MS. GOFF:

7 Q. Currently, yes.

8 A. So that's a very -- again, a very broad
9 statement. It's going to be the foundation of the
10 leadership team, which I just told you. And, again,
11 there can always be one-off case scenarios where we
12 will have a buy-in from maybe, like, Kim Diamond or
13 one of the other directors of Group Practice if they
14 were -- found a group or said, "We've been managing
15 this group. I think this actually -- now that
16 you're in this role, this could be managed under
17 you."

18 Q. Okay. But other than one-off, it's
19 typically Joe Cavaretta, Glenn Showgren,
20 Brian Brady, and who is the last one?

21 A. Jake Meadows.

22 Q. Jake Meadows. Thank you.

23 Is that correct?

24 A. That would be accurate.

25 Q. Okay. And when you first joined, it was the

1 BY MS. GOFF:

2 Q. Sure. The group of organizations that you
3 had mentioned previously, do you refer to those as
4 "legacy groups"?

5 A. Again, can you be more specific.

6 Q. Sure. The groups I'm referring to, you gave
7 me a list earlier: Advantage Dental Care, Corydon
8 Palmer, Dentists for a Better Huntington, Long
9 Island Dental Society and Stark County Dental
10 Society Group.

11 A. I would -- sorry.

12 Q. Do you refer to those as legacy groups?

13 A. I have in the past referred to them, yes, as
14 legacy study groups, club groups.

15 Q. Sitting here today, is there another phrase
16 that you would like to use for those groups?

17 A. No.

18 Q. Okay. So if I call them "the legacy
19 groups," you'll under- -- we'll be communicating and
20 you'll understand what I mean?

21 A. If you say "legacy study club groups."

22 Q. Sure.

23 Okay. So when were the legacy study club
24 groups transferred to -- under your umbrella?

25 A. I can't recall the exact time -- the exact

1 date. I would say it's safe to say within the first
2 six months of me being -- or with me joining Henry
3 Schein.

4 Q. Okay. And do you have an understanding of
5 why those were not under your umbrella, you know,
6 from the get-go, from day one?

7 MR. McDONALD: Object to the form.

8 THE WITNESS: I mean, I had just started
9 with Schein, so I don't think they wanted to
10 overwhelm me and, you know, just throw a bunch of
11 partnerships at me. So I think they just wanted me
12 to get my feet wet and really understand the role
13 and the space before they started handing me over
14 partnerships to manage.

15 BY MS. GOFF:

16 Q. Okay. And did they hand you any
17 partnerships to manage from the start?

18 A. Klear Impakt.

19 Q. Okay. But not Breakaway?

20 A. No.

21 Q. All right. We talked about study clubs, and
22 I know we discussed the definition of a study club
23 earlier. But -- so study clubs are comprised of
24 independent private practice dentists?

25 A. I would say the majority of the time, yes.

1 Q. Okay. And do you have an understanding of
2 whether study clubs offer services to dentists?

3 A. Some do; some don't.

4 Q. Okay. And what types of services might
5 study clubs offer?

6 MR. McDONALD: Object to the form.

7 THE WITNESS: I don't know. It's a very
8 broad question. Again, every study group is going
9 to be a little bit different and offer a different
10 type of value proposition or services to their
11 members, so I don't know. Partly it could be, you
12 know, some sort of structure formulary. Some could
13 be clinical, training, education. Some could be
14 more practice business-related training, education.

15 BY MS. GOFF:

16 Q. Okay. So there are a variety of services, I
17 guess, that different study clubs offer?

18 A. Always.

19 Q. Okay. You mentioned that OrthoSynetics was
20 recently transferred to you just last week. Is that
21 what you said?

22 MR. McDONALD: Object to the form.

23 THE WITNESS: I would definitely say within
24 the last 30 days; that would be an accurate
25 statement.

1 BY MS. GOFF:

2 Q. And it was the sales leadership team that
3 transferred it to you?

4 A. It was Jake Meadows' and Kim Diamond's
5 decision.

6 Q. Okay. Do you have an understanding of why
7 it was transferred to you?

8 A. Yes.

9 Q. Why?

10 A. Because at the structure foundation of
11 OrthoSynetics they are individual private practices.

12 Q. And do you have an understanding of why it
13 was not in your purview previously?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: Can you restate that question
16 or revise, please.

17 BY MS. GOFF:

18 Q. Do you have an understanding of why
19 OrthoSynetics was not put under your umbrella before
20 the last 30 days?

21 A. No.

22 Q. Did OrthoSynetics change their structure
23 recently?

24 A. Not to my knowledge.

25 Q. Okay. But previously where was -- where did

1 OrthoSynetics fall?

2 A. I believe I already mentioned this, and it
3 was under the Special Markets umbrella.

4 Q. Okay. Was Brian Brady the person that
5 you -- Brian Brady is who you reported to when you
6 first started; correct?

7 A. When I first took on this APC role with
8 Henry Schein in May of 2016, Brian Brady was my
9 direct report.

10 Q. When you say "direct report," you mean that
11 you reported to him?

12 A. Correct.

13 Q. And what was his job title when you were
14 hired? Do you know?

15 A. I would say his title was Director of Group
16 Practice, Mid-Market Division, something along that
17 line.

18 Q. Okay. So when you first started, you
19 reported to Brian Brady, and he was in the
20 Mid-Market Division.

21 A. Correct.

22 Q. But you were not within the Mid-Market
23 Division?

24 A. I was not.

25 Q. Okay. But the -- your division was new,

1 so -- is that right? Your division was new;
2 correct?

3 A. So my role was new when I joined Schein.

4 Q. And was the division new as well?

5 A. Yes.

6 Q. Okay. And so do you have an understanding
7 of why you were reporting to Brian Brady even though
8 he was in Mid-Markets?

9 A. Yes. I also answered that earlier this
10 morning. A lot of the APC division and the
11 structure that I believe that we were trying to
12 create was very similar to a lot of the way the
13 structure of the Mid-Market Group Practice division
14 started.

15 Q. So since they were similar, Schein felt that
16 Brian Brady would be a good person for you to report
17 to?

18 MR. McDONALD: Object to the form. Lack of
19 foundation.

20 THE WITNESS: I -- I would assume that to be
21 true.

22 BY MS. GOFF:

23 Q. Okay. And then after about six months, you
24 started reporting to Joe Cavaretta?

25 A. That is correct.

1 Brian Brady's general responsibilities as you --
2 when you first started at Henry Schein?

3 A. No. I mean, I was, again, not part of Group
4 Practice or Mid-Market, so I would not have any
5 knowledge of exactly what his day-to-day duties are
6 and what he did.

7 Q. Okay. So you don't have any understanding
8 of his duties and responsibilities?

9 A. I mean, that's a very broad statement. I
10 have an understanding of that he managed the Group
11 Practice Mid-Market Division. I know he had
12 multiple people that reported to him. I'm sure he
13 worked with customers. He helped, you know -- I
14 don't know what you're really asking.

15 Q. And do you have an understanding of how long
16 Brian Brady was in the position as director of
17 Mid-Markets before you arrived?

18 MR. McDONALD: Object to the form. Lack of
19 foundation.

20 THE WITNESS: I don't.

21 BY MS. GOFF:

22 Q. And is Brian Brady the person who was most
23 knowledgeable about Schein's practice with regard to
24 APC groups prior to your arrival?

25 MR. McDONALD: Object to the form. Lack of

1 Q. Okay. And what was his title at the time
2 that you reported to him?

3 A. He was --

4 Q. Started reporting to him.

5 A. Joe Cavaretta's title at that time was Vice
6 President of Sales for the western area.

7 Q. Okay. Do you have an understanding of why
8 you were reporting to Joe Cavaretta?

9 A. I do. I also believe I answered this
10 earlier. As we were able to develop the APC
11 division and we were on-boarding more partnerships,
12 I felt that it was more of Brian kind of just being
13 a bottleneck. The ultimate approval of a lot of
14 these groups, as I said before, had to have an
15 approval of VP or above, so it was more of I'd go to
16 Brian for approval, and Brian would say, "What did
17 Joe say?"

18 Q. So did you ask to switch reporting?

19 A. I did not.

20 Q. Okay. Do you have an understanding of who
21 made that decision?

22 A. I do.

23 Q. Who?

24 A. Joe Cavaretta.

25 Q. Okay. Do you have an understanding of

1 foundation.

2 THE WITNESS: I mean, I think that's in the
3 eye of the beholder. I would say he's very
4 knowledgeable, but there were other individuals like
5 Joe and Jake that were also very knowledgeable,
6 because Schein has been working with many of these
7 groups prior to my on-boarding with Schein. So I'm
8 sure there are many individuals, team Schein
9 members, that were very knowledgeable about buying
10 groups or APCs or whatever you want to call them.

11 BY MS. GOFF:

12 Q. Okay. And, in your opinion, who had the
13 most knowledge about Schein's practice with regard
14 to APCs?

15 MR. McDONALD: Object to the form. Calls
16 for speculation.

17 Go ahead.

18 THE WITNESS: I mean, again, it's a broad
19 question. Many of these type of buying groups,
20 structure groups, were under Special Markets or
21 Mid-Market before I on-boarded, so I would assume
22 whoever was directly responsible for and is -- still
23 are or still is managing those groups within those
24 respective divisions.

25 ///

1 BY MS. GOFF:
 2 Q. Okay. So have -- do you have your own
 3 opinion about who had the most knowledge of Schein's
 4 practice with regards to the APC sitting here today?
 5 If you don't, that's fine. I just want to know if
 6 you have an opinion.
 7 A. I would say Brian, again, yes. I would
 8 confirm that he was very knowledgeable, but it's not
 9 to say that there were other individuals that were
 10 just as knowledgeable that I had not have spoken
 11 with.
 12 Q. Okay. And you don't have personal knowledge
 13 of Schein's practice with regard to buying groups
 14 prior to May 2016 when you started at Schein?
 15 A. No, I do not.
 16 Q. And you -- prior to the creation of APC,
 17 it's your understanding that Schein did not have any
 18 group dedicated to working with buying groups;
 19 correct?
 20 A. To my knowledge, that's correct.
 21 Q. Okay. For those legacy study groups that
 22 are -- study club groups that are now under your
 23 umbrella, do you have an understanding of who was
 24 responsible for those partnerships before they came
 25 under your umbrella?

1 these buying group structured groups really starting
 2 to become more prevalent within the industry.
 3 BY MS. GOFF:
 4 Q. So did someone inform you that that was why
 5 the new group -- the new APC group was being formed?
 6 A. I mean, again, not directly. There were
 7 conversations that I had when I was being -- you
 8 know, through the interview process with Dave Steck
 9 and conversations when I on-boarded with Brian Brady
 10 and Joe Cavaretta and Jake Meadows where we
 11 discussed that we're seeing a lot more of these
 12 groups starting to form. And then even ones that
 13 had been around for decades, they were just starting
 14 to become a little bit more structured, have a
 15 little bit more formality around them.
 16 Q. Okay. So when you said that there were
 17 groups that had been around for decades that were
 18 starting to become a little bit more structured,
 19 were you referring to the legacy study groups?
 20 A. No.
 21 Q. What were you referring to?
 22 A. Groups that Henry Schein had managed under
 23 the Special Markets and Mid-Market divisions that
 24 had been managed and fostered by individuals before
 25 my on-boarding.

1 MR. McDONALD: Object to the form. Lack of
 2 foundation.
 3 THE WITNESS: I do. They were managed by
 4 the local regional manager for whatever region that
 5 those respective groups fall under in addition to
 6 one of the local field sales consultants. Again,
 7 that fell in that region where those groups were
 8 located.
 9 BY MS. GOFF:
 10 Q. Okay. And what about Klear Impakt? Do you
 11 have an understanding of who managed that before
 12 your arrival, that relationship?
 13 A. I do. Kathleen Titus.
 14 Q. Okay. And you mentioned Breakaway earlier.
 15 Do you know who managed that one?
 16 A. I do. Kathleen Titus, Andrea Hight and
 17 Kip Rowland.
 18 Q. Were you informed by anyone at Henry Schein
 19 of why they needed you or why they needed this new
 20 position that you were in?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't think it was actually
 23 discussed verbatim. From my understanding, is -- I
 24 believe, you know, we were seeing kind of a change
 25 within the industry. We were seeing a lot more of

1 Q. Are you thinking of any groups in
 2 particular?
 3 A. I mean, Breakaway would be an example. And
 4 I know, again, there's tons that Schein was working
 5 with and still is to this day.
 6 Q. And you said that there's tons that Schein
 7 is still working with and still is to this day, but
 8 are any of those tons under your umbrella?
 9 A. No, they're not.
 10 Q. Okay. So do you have personal knowledge of
 11 those other groups that are not under your umbrella?
 12 A. I mean, I know of some of them. We have
 13 documents and lists with them. I don't -- I can't
 14 list a bunch of names off for you right now.
 15 Q. Okay. So, sitting here today, you can't
 16 name any of them? Can you name some?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I mean, a couple -- like
 19 Council Connections is one that I think, again,
 20 would maybe fall under what we call a "CHC," but
 21 they do have a buying group limit. So
 22 OrthoSynetics, again, that was one actually, like we
 23 just said, that was put under my umbrella that has
 24 a buying group element. There's others.
 25 ///

1 BY MS. GOFF:

2 Q. Okay. But it's your understanding that all
3 of the groups that are comprised of individual
4 private practice dentists are within your umbrella;
5 is that right?

6 MR. McDONALD: Object to the form.
7 Misstates her testimony.

8 THE WITNESS: No. I mean, again, I don't --
9 there's other groups that still have some private
10 practices aligned underneath them that still to this
11 day are probably not under my umbrella yet.

12 BY MS. GOFF:

13 Q. Okay. And which groups are those?

14 A. I don't know.

15 MR. McDONALD: Object to the form.

16 BY MS. GOFF:

17 Q. So how do you know that such groups exist?

18 A. Because I know we have groups that the
19 Special Markets team is still managing.

20 Q. Whose members are individual private
21 practice dentists?

22 A. Not all of them, but some.

23 Q. Can you name any?

24 A. No, I can't.

25 Q. Okay. So how do you know that such groups

1 exist?

2 MR. McDONALD: Object to the form. Asked
3 and answered. She just answered it 30 seconds ago.

4 BY MS. GOFF:

5 Q. Can you please answer the question.

6 MR. McDONALD: Again. Answer it again.

7 THE WITNESS: Yes. I know of these groups
8 that we have because I know people have been
9 managing them.

10 BY MS. GOFF:

11 Q. And who has been --

12 A. I don't know the individuals. I don't work
13 with them on a daily basis.

14 Q. Okay. So you don't know who has been
15 managing them. Do you know -- have you seen these
16 lists that you're referring to?

17 A. Yes, I have.

18 Q. Okay. What is the -- what is the title of
19 the list?

20 A. It's an Excel document. I don't think
21 there's a title.

22 Q. How can I find that list?

23 A. I'm sure Brian Brady has a copy.
24 Jake Meadows has a copy.

25 Q. And you don't know what it's called?

1 A. I don't.

2 Q. And what is on the list exactly?

3 A. It's a list of groups that Special Markets
4 is managing.

5 Q. And does the list identify groups that are
6 comprised of private practice dentists?

7 A. I don't know what's exactly on that list.

8 Q. So how do you know that there are groups
9 comprised of private practice dentists that Special
10 Markets is managing?

11 A. I'm sure that there are some. Like,
12 OrthoSynetics is a prime example. That was managed
13 by Special Markets team, and they do have individual
14 private practices underneath OrthoSynetics. And,
15 again, like, that one was just transferred into me.
16 There could be more like that. I'm not aware of it.

17 Q. So you don't know either way?

18 A. I don't know. There --

19 Q. You're just speculating that there might be
20 some?

21 MR. McDONALD: Object to the form.
22 Mischaracterizes her testimony.

23 BY MS. GOFF:

24 Q. Go ahead.

25 A. There are -- like I said, there are some

1 documents. I don't know what they're called. We
2 don't have a list of every single group that we
3 manage that had this binder structure. I don't even
4 know if something like that exists. I just know
5 there are groups that we have been working with
6 since decades back Special Markets is still
7 managing, and I can't confirm nor deny if some of
8 those are private practices or not.

9 Q. Okay. Can you name, please, all of the
10 groups that you currently manage.

11 A. The groups currently that fall directly
12 under my umbrella that I manage on a daily basis
13 would be Klear Impakt, the Mastermind Group, Dental
14 Success Network, Smile Source. I'm trying to think
15 if there's any other -- OrthoSynetics.

16 And then we have the legacy study groups
17 that fall under my umbrella, the reporting and
18 P&L-wise, but they are still being managed at the
19 local regional level.

20 Q. What about Breakaway?

21 A. We no longer have a partnership with
22 Breakaway.

23 Q. Okay. What happened to Breakaway?

24 A. Dental Whale acquired Breakaway in January
25 of 2018, and Break- -- and Dental Whale was working

1 closely with Darby Dental. And due to that
2 relationship, when they acquired Breakaway, they
3 terminated our relationship.

4 Q. Dental Whale terminated the relationship
5 with Henry Schein?

6 A. When Dental Whale acquired Breakaway, when
7 the acquisition happened, that leadership group of
8 those teams terminated our current standing
9 agreement with Breakaway Practice group.

10 Q. And do you have an understanding of why they
11 terminated it?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: I just answered that question.
14 Because they were working with Darby Dental.

15 BY MS. GOFF:

16 Q. Okay. So because Dental Whale was working
17 with Darby Dental, they no longer wanted to work
18 with Schein?

19 A. We had many, many ongoing discussions to try
20 to keep or retain the Breakaway business when the
21 acquisition happened. And we sent in our proposals,
22 and they decided to move forward and stay with
23 Breakaway.

24 Q. And was there any ability for Schein to work
25 with Dental Whale or Breakaway in addition to

1 Darby -- in other words, for it not to be an
2 exclusive relationship?

3 A. To my knowledge, our relationship with
4 Breakaway was exclusive. Dental Whale's
5 relationship with Darby was exclusive, and that was
6 their business model and structure, to have a sole
7 source entity partner.

8 Q. Did -- so you said that Schein, like,
9 pitched Dental Whale to continue the relationship?

10 A. Yes.

11 Q. And did Schein suggest not having an
12 exclusive relationship?

13 A. I don't have -- I don't have knowledge of
14 that information.

15 Q. Were you involved in the discussions with
16 Dental Whale?

17 A. In some of them. Not at the high leadership
18 level.

19 Q. Did you know what was offered to Dental
20 Whale?

21 A. I do.

22 Q. Okay. What was offered?

23 A. We -- we dropped our formulary current
24 pricing for Breakaway by two points --

25 Q. Okay.

1 A. -- and gave them an equipment and technology
2 rebate, and they needed us to lower pricing again
3 even more.

4 Q. Okay. And that's -- and Darby went, I
5 guess, at a lower pricing than Schein?

6 A. That's what we --

7 MR. McDONALD: Object to the form.

8 THE WITNESS: That's what we assume.

9 BY MS. GOFF:

10 Q. Do you know whether it was discussed with
11 Dental Whale the idea of having both Darby and
12 Schein be suppliers?

13 A. I don't know if that was ever discussed.

14 Q. Okay. Would Schein be open to that kind of
15 a relationship?

16 MR. McDONALD: Object to the form.

17 THE WITNESS: If -- we're open to any
18 relationship or partnership if it makes business
19 sense for us.

20 BY MS. GOFF:

21 Q. Even if it's not exclusive?

22 A. If it makes business sense for us, we'll go
23 into it. We work with Smile Source, and they are
24 what you would also call shared source partnership
25 where they work with three top-tier -- what they

1 call a Tier 1 distribution partner.

2 Q. Okay. So just going back to the list you
3 gave me of the current groups that are under your
4 umbrella, I just want to make sure I had a complete
5 list. I don't think you mentioned Teeth Tomorrow.

6 A. Sorry. Correct. That's another one.

7 Q. Okay. So there's the legacy study groups,
8 Klear Impakt, Smile Source, Mastermind Group, Teeth
9 Tomorrow, and I think you mentioned one other group.

10 A. Dental Success Network.

11 Q. Okay.

12 A. And then OrthoSynetics.

13 Q. And that's a complete list?

14 A. To what I can recall right now.

15 Q. How long have you been working with Dental
16 Success Network?

17 A. I believe our prime vendor agreement is
18 dated for March 2018.

19 Q. And what type of organization structure do
20 they have?

21 A. The Dental Success Network, they call
22 themselves a network in a community.

23 Q. Are they comprised of individual private
24 practice dentists?

25 A. I would say 90 percent of their membership

1 is, yes.
 2 Q. What about the other 10?
 3 A. They have -- there's probably some groups
 4 that are in the Dental Success Network for the
 5 practice where there is one owner, multiple
 6 locations under the DSN umbrella.
 7 Q. Do you know that for sure, or are you just
 8 guessing --
 9 A. I know there are a few. I don't know how
 10 many.
 11 Q. Okay.
 12 MR. McDONALD: Good thing we're not on
 13 video.
 14 MS. GOFF: That is very distracting.
 15 MR. McDONALD: If that's going on, just be
 16 sure that she can hear you. So -- okay.
 17 THE WITNESS: Okay.
 18 BY MS. GOFF:
 19 Q. When you started at Henry Schein, what was
 20 your mandate with regard to the APC groups?
 21 MR. McDONALD: Object to the form. Vague.
 22 THE WITNESS: Yeah, can you please be more
 23 specific with your question.
 24 BY MS. GOFF:
 25 Q. Sure. What were you instructed to do with

1 to align with groups where it's not just the cost
 2 savings?
 3 A. Because we're not just about cheap supplies.
 4 I don't think Henry Schein would ever be the
 5 cheapest when it comes to supplies. There's a value
 6 to doing business with us. We offer much more than
 7 the supplies and consumable component.
 8 Q. And what value are you referring to?
 9 A. Our field sales consultants, our equipment
 10 and our technology consultants, our business
 11 solutions arm, our practice management solutions
 12 arm, our Henry Schein Practice Analytics tools, our
 13 Power Reportings, and the list goes on. A very big
 14 statement.
 15 Q. And how did you determine or how do you
 16 determine which groups offer that value?
 17 A. Through my discovery and exploratory phase.
 18 When I would have calls with the leaderships of
 19 these groups, I would ask them what is their value
 20 prop and what do they offer to members. And if they
 21 explain to me that they're all about pricing and "If
 22 you have the lowest discounted pricing, we'll
 23 partner with you," if they said that they really
 24 didn't have influence over their members and there
 25 was no compliance to be driven through any type of

1 APC groups?
 2 A. To manage, foster and then also hunt, find
 3 new opportunities and bring them on board.
 4 Q. Okay. And were -- was it your mandate or
 5 were you given instructions to find as many new
 6 groups as possible to work with?
 7 A. I think that's a very vague question. I
 8 think, again, what was expected of me is to look for
 9 groups that we felt that we aligned with well or we
 10 could be a better support to their membership. So
 11 if it made business sense, yeah, we would work with
 12 those type of groups all day long.
 13 Q. Okay. So how did you determine which groups
 14 it made business sense to work with?
 15 MR. McDONALD: Object to the form.
 16 Overbroad.
 17 Go ahead.
 18 THE WITNESS: With Henry Schein being a
 19 full-service dealer, you know, we want to make sure
 20 that we're aligning with an APC or a group that
 21 really offers additional value. And they have their
 22 own proposition of why a member would want to join
 23 their group, and it's not just for the cost savings.
 24 BY MS. GOFF:
 25 Q. Why is that the case? Why does Schein want

1 group purchasing, they also would say that they did
 2 not have any other type of services to really offer
 3 their members aside from, again, the discounted
 4 supplies, that's probably not a group I'm interested
 5 in aligning with.
 6 Q. Okay. So if a group says that they're all
 7 about price, that they don't offer other services
 8 and they have no influence or compliance over their
 9 members, you would not want to work with such a
 10 group?
 11 A. I don't think it makes --
 12 MR. McDONALD: Hang on.
 13 Object to the form.
 14 Go ahead.
 15 THE WITNESS: I don't think it would make
 16 proper business sense.
 17 BY MS. GOFF:
 18 Q. Why wouldn't it make business sense?
 19 A. Because there's -- they're not -- they just
 20 told me that they can't drive any type of compliance
 21 through their membership.
 22 Q. Okay. So is the compliance the most
 23 important factor, in your mind?
 24 A. There's many important factors. That's
 25 definitely one of them.

1 Q. Is that the most important?
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: It depends what group I'm
 4 talking with.
 5 BY MS. GOFF:
 6 Q. So if a group said that they're all about
 7 price, they don't offer any other services, but they
 8 do have influence over their members, is that a
 9 group that you would want to work with?
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: Influence, you know, means
 12 different things, and so -- and I think it's the
 13 compliance side that we would be really interested
 14 in. So, yeah, if a group told me that they had
 15 complete influence and compliance to where they'd be
 16 able to bring over 80 percent of their membership
 17 sales to us, yeah, I would be definitely interested
 18 in that.
 19 BY MS. GOFF:
 20 Q. Okay. And that's because Henry Schein could
 21 get potentially incremental sales from those new
 22 members?
 23 A. Incremental sales, new business, absolutely.
 24 Q. And just going back to groups that say that
 25 they don't have influence over their members, why

1 doesn't it make sense, business sense, to work with
 2 those groups?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: It would basically -- it would
 5 be them telling me that "We're asking you to heavily
 6 discount supplies in a formulary for us, but yet we
 7 can't promise that we're going to drive any sales
 8 your way." To me, that makes zero business sense.
 9 BY MS. GOFF:
 10 Q. And why doesn't that make business sense, in
 11 your opinion?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I don't -- I don't know why
 14 anyone would want to align with someone that says,
 15 "Give us the best discounts that you can give us,
 16 but we can't tell you that you're going to get any
 17 of the sales from our membership."
 18 BY MS. GOFF:
 19 Q. So Schein would have to lower its prices,
 20 but wouldn't -- potentially would not get
 21 incremental sales?
 22 A. Yeah. That makes zero business sense.
 23 Q. Okay. And were you told by anyone not to
 24 work with groups where they couldn't offer influence
 25 or compliance?

1 A. No.
 2 Q. That is just your decision and what you
 3 decided to do in the role?
 4 A. I mean, again, we had, like, high-level
 5 discussions, but there's been not one individual at
 6 Schein that told me, "Do not talk or speak or work
 7 with those type of groups."
 8 Q. Right. I'm not actually asking about
 9 talking or speaking. I'm just asking about working
 10 with groups. So --
 11 A. No.
 12 Q. -- I understand you might talk to a whole
 13 bunch of groups, but I want to know who you will
 14 work with. So was -- did anyone instruct you not to
 15 work with groups that didn't bring compliance?
 16 A. No.
 17 Q. Okay. But that is your general policy?
 18 A. Yes.
 19 Q. Okay. How can a group show you that they
 20 have influence over their members?
 21 MR. McDONALD: Object to the form.
 22 Overbroad.
 23 THE WITNESS: I think it's the way, again,
 24 that they're structured and the model of what
 25 they're able to currently provide for their members

1 and how they're working with those groups through
 2 that influence, some of the educational programs
 3 that they achieve too.
 4 BY MS. GOFF:
 5 Q. I mean, I just -- I'm trying to understand
 6 how you know whether a group has the ability to
 7 drive compliance.
 8 A. They will tell me that they can or cannot.
 9 Q. And do you take them at their word?
 10 A. Yeah.
 11 Q. Okay. And which groups have you spoken with
 12 that have said that they can drive compliance?
 13 A. Two individual groups that have told me
 14 that they cannot drive compliance or have influence
 15 over their membership is Synergy as well as
 16 UnifiedSmiles.
 17 Q. So those are groups that have told you that
 18 they don't drive compliance?
 19 A. Correct.
 20 Q. And so you did not want to do business with
 21 those groups?
 22 A. Correct.
 23 Q. Okay. And are there other groups that have
 24 told you that they do have influence over their
 25 members?

1 A. Yeah. I mean, there will be some people
2 that -- I mean, they won't say that "We will drive
3 100 or 80 percent compliance," but there's a lot of
4 groups out there, that, yes, they think they're very
5 influential over their membership and that they can
6 drive some sort of compliance. But there's no
7 accurate statement where they say, "We will drive
8 this much."

9 Q. Have you worked with -- have you engaged
10 a -- sorry. Strike that.

11 Have you worked with every group that has
12 said that they can drive compliance?

13 MR. McDONALD: Object to the form.

14 THE WITNESS: No. We haven't worked with
15 every group that have said that.

16 BY MS. GOFF:

17 Q. And for the ones that you have not worked
18 with, why didn't you work with those groups?

19 MR. McDONALD: Object to the form. Overly
20 broad.

21 THE WITNESS: Broad statement. There's many
22 different reasons as to why. Every group I have an
23 exploratory or discovery discussion with, it can be
24 for different reasons. They all have, you know,
25 maybe something a little bit different with them.

1 A. It makes poor business sense for Schein, in
2 my opinion.

3 Q. Okay. And then for the groups that tell you
4 that they can drive compliance, then do you do a
5 little bit of additional digging to determine
6 whether they can drive compliance? Is that how it
7 works?

8 A. Of course.

9 Q. And how do you determine whether they can
10 drive compliance?

11 A. So from my initial statement just five
12 minutes ago, like I said, there's many other reasons
13 why we have not aligned with other groups that I've
14 had discovery calls with that say, "Yeah, we have
15 influence over our membership," but they're -- it's
16 very hard for them to prove that.

17 And another reason, they say they would have
18 influence, but then they say they have 950 members,
19 and I ask them "Who" -- you know, "Who else are you
20 partnered with? What other value-add services do
21 you have," and they say they don't have anything,
22 so, to me, that makes zero sense right there.

23 Q. Okay. So let's talk about the value-add
24 services. Why is it important to you that these
25 companies have value-add services?

1 For an example, one reason would be
2 infancy. They are newer, and they just -- from the
3 structure that they explained to me, I didn't feel
4 that they had real compliance that they could drive
5 because they were not working with any other type
6 of partners.

7 BY MS. GOFF:

8 Q. So previously I thought that you had said
9 that you just take the -- you take the buying group
10 or the APC group at its word as to whether it can
11 drive compliance.

12 A. Well, I do.

13 Q. Is that true?

14 A. They tell me --

15 Q. Okay.

16 A. -- "We have influence over our membership,"
17 or they say they do not. And the ones that can
18 firmly tell me -- that will tell me "Our members
19 don't look to us for influence or guidance. They
20 just want us to provide the best and cheapest-most
21 pricing for them," those I can tell you are
22 groups -- they're telling me that point-blank. I
23 can tell you right there that's not a group at that
24 time that we're interested in aligning with.

25 Q. Okay.

1 A. I feel like it's important because, as I
2 stated in my testimony earlier, is we want to align
3 with groups that are truly helping these individual
4 private practices thrive and increase production and
5 grow their practices. And if all you're offering is
6 cost and cheap supplies, that's not helping a
7 practice grow.

8 Q. And why is it important to you that these
9 groups help the practice grow? Why does it matter
10 to Schein whether the practices grow or not?

11 A. That's our entire business and everything we
12 stand for. It's our entire culture. We're there --
13 that's why we have a field sales consultant team.
14 They're not in there just taking orders. They're in
15 there to really understand the practices and the
16 dentists' business, their goals, their vision, and
17 we want to copilot to their success.

18 Q. So if a group says that they're adding these
19 value-added services and they're helping dentists,
20 why, then, would Schein need to do that as well?
21 Wouldn't it be the case that the buying group itself
22 can offer those value-added services and so Schein
23 does not need to offer those services?

24 A. Not on -- not all cases. Sometimes there is
25 very limited other type of things that they offer,

1 basically just like on CEs or education, and we are
2 able to fill every other gap, whether it's OSHA
3 training, HIPAA, again, the business solution tools
4 that we offer, analytics, purchase analytics
5 reporting, helping them buy smarter, helping them
6 drive compliance.

7 Again, we have our equipment specialists,
8 our technology specialists. We have professionals
9 that can actually go in there and offer other
10 associated business services to these groups.

11 Q. For the groups that have told you that they
12 are price-only, have they said that they
13 affirmatively do not want Schein to offer these
14 other services to the members?

15 A. For Unified and Synergy, they said, you
16 know, at the time I don't think it's something
17 they're willing to explore. They were just firmly
18 interested in our supplies and our equipment.

19 Q. For the member -- the dentists that become
20 members of a price-only-type buying group, is there
21 any reason why Schein can't go in and still offer
22 the other services to those members?

23 MR. McDONALD: Object to the form.

24 THE WITNESS: So in most cases the way that
25 we work with buying groups or, I would say, other

1 distribution companies work with buying groups, the
2 agreement is between the distribution partner and
3 the group. There's no agreement that that
4 individual private practice is signing with those
5 preferred manufacturing partners that the leadership
6 of those groups have put forth.

7 So even if you're a doctor and you're
8 working with Synergy and you're under that buying
9 group or whatever, at the end of the day, you're a
10 private practice. That buying group has no say over
11 what you can and cannot do. You have the full
12 autonomy and freedom to buy from whomever you want.

13 Q. You can buy from whoever you want, and you
14 can get equipment and servicing from whoever you
15 want?

16 A. Correct.

17 Q. And you can get education from whomever you
18 want?

19 A. Correct.

20 Q. You can get any, like, HIPAA health from
21 whomever you want?

22 A. Correct.

23 Q. So the fact that an individual dentist is a
24 member of a buying group does not prevent them from
25 going to Schein to get all those other services?

1 A. It does not.

2 Q. Okay. So I'm still trying to understand,
3 then, why Schein wouldn't want to work with such a
4 buying group that's price-only if Schein can still
5 offer all their services to those individual
6 dentists.

7 MR. McDONALD: Object to the form. Asked
8 and answered.

9 THE WITNESS: Yeah. I have already said
10 that, but I think the other thing is too is if we're
11 still able to get their business, why do we need to
12 cannibalize our pricing.

13 BY MS. GOFF:

14 Q. Okay. So if Schein can still get the
15 business from those individual dentist practices,
16 why would Schein lower the prices for supplies?

17 A. Yeah. It makes zero business sense.

18 MR. McDONALD: Hang on.

19 Object to the form.

20 Please pause.

21 BY MS. GOFF:

22 Q. Okay. So is there any other reason why you
23 wouldn't want to work with the price-only buying
24 groups other than that you don't want to lower your
25 prices?

1 MR. McDONALD: Object to the form.

2 THE WITNESS: Again, we want to work with
3 groups that have influence over their membership
4 that offer true value.

5 BY MS. GOFF:

6 Q. Okay. And we've explored, I think, what you
7 mean by "true value." It's these extra services
8 that you've mentioned, a whole list of extra
9 services; is that correct?

10 A. Correct.

11 Q. Okay. And compliance is getting members to
12 buy from Schein?

13 A. Yes.

14 Q. Okay. I'm sorry if it seems like the
15 questions are repetitive, but I just need to make
16 sure for my purposes that the record is clear and
17 that I have a specific question and a specific
18 answer. So I'm sorry. I understand that you've
19 answered questions, in your mind, many times, but it
20 may have been a slightly different question from my
21 perspective, so...

22 Okay. So just going back to the price-only
23 buying groups, is it a hard-and-fast rule in your
24 practice not to work with price-only buying groups?

25 A. My --

1 MR. McDONALD: Hang on. Hang on.
2 Object to the form. Mischaracterizes her
3 testimony.

4 Go ahead.

5 THE WITNESS: In my opinion, within the
6 division that I'm running, I don't feel that it
7 makes proper business sense for Henry Schein Dental
8 to align with buying groups that are all about
9 discounted price that have zero influence over their
10 membership. I've stated that multiple times. I
11 don't even know what else I -- you need me to say.

12 Q. And so you wouldn't recommend those types of
13 groups to your superiors for Schein to work with?

14 A. No, I would not.

15 Q. Okay. When deciding which buying groups to
16 align with, do you consider how much incremental
17 business a group can bring?

18 A. Of course.

19 Q. That's important?

20 A. Very important.

21 Q. How do you assess how much incremental
22 business a group can bring?

23 A. It's always going to be a guess and a gauge
24 and an estimate. You're never going to know. But
25 we will -- there's multiple ways that we look at it,

1 and a lot of them is just testing out. "Let's put a
2 partnership together and agree. I have your word.
3 This is what you're going to offer. This is what
4 we're going to offer. Let's see if it works."
5 There's no guarantees.

6 Q. Okay. Is there anything that in the
7 exploratory discovery phase you ask for to get a
8 sense for how much incremental business a group
9 might bring?

10 A. I mean, yeah. I will ask leadership of how
11 many members they have. Out of their members, do
12 you know if they're currently working with Schein
13 today? Are they working with other dental
14 distribution companies?

15 Q. And is it important to know whether certain
16 members are already purchasing from Schein today?

17 A. I mean, it's always a good idea just to have
18 a better understanding, but, again, the leadership
19 team doesn't know. Again, the members that are
20 reporting to these buying groups, they don't have,
21 again, the full authority to tell them who to
22 purchase and where to purchase from. So they will
23 just be guessing from a sense from -- I would
24 assume, from speaking with their members who they're
25 hearing that they're purchasing mostly from.

1 Q. I see.

2 And do you make an effort to get a list of
3 potential members in the buying -- or members in the
4 buying group and then compare it to see who's
5 actually purchasing from Schein?

6 A. Yes, we do.

7 Q. Okay. And if a group -- if a group of
8 members are already in large part purchasing from
9 Schein, is that a group that you would want to work
10 with?

11 A. Yes.

12 Q. Why?

13 A. Because we have opportunity to win even more
14 business with them once we're partnered.

15 Q. Even more business from that particular
16 member?

17 A. Correct.

18 Q. Okay. Is it -- is it always the case that
19 you would want to work with one -- with that type of
20 group?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: If it makes proper business
23 sense to me, yes.

24 BY MS. GOFF:

25 Q. And when you are deciding whether to

1 recommend to work with a group or not, do you write
2 down why you want to work with that individual
3 group?

4 A. I have a -- I mean, I will outline the --
5 pretty much the structure and the group's, I guess,
6 claim to fame or value proposition of what they say
7 and who they are and then, yeah, kind of outline the
8 mutual conversation of what we say that we're going
9 ourselves, Henry Schein, accountable to bring to the
10 table to best support those members.

11 And then, in turn, the group leadership of
12 these groups will also say this is what they're
13 going to be holding, you know, themselves
14 accountable in their membership, and they will do
15 everything in their power to influence and endorse
16 Henry Schein to their members at the local level.

17 Q. And do you -- so is it your practice to make
18 notes of your, like, conversations with buying
19 groups?

20 A. Yeah. I don't make notes of every
21 conversation, but as a best practice, I try to jot
22 down some notes so I can always refer to them
23 post-conversations.

24 Q. And where do you maintain those notes?

25 A. I jot them down if I have a tablet nearby or

1 a piece of paper.

2 Q. So it's, like, hard copy?

3 A. Uh-huh.

4 Q. And do you ever, like, type up those notes
5 and provide them to your superiors?

6 A. Absolutely.

7 Q. Okay. And would that be by email?

8 A. Yes, it would.

9 Q. Always by email?

10 A. I would say 80 percent of the time, but I,
11 again, can't on any one off-case basis. But, yes,
12 for the majority of the time, I usually type up a
13 one-pager draft of my recommendation of what these
14 groups are and how they're structured and why I
15 think we need to do business with them.

16 Q. Okay. So is it possible that a buying
17 group -- just going back to the incremental
18 business, is it possible that a group could bring
19 you enough incremental business to offset the
20 discounted prices that Schein would need to give
21 that group?

22 A. Absolutely.

23 Q. Have you talked to any groups that you
24 considered to be these price-only groups?

25 A. Yes. I actually just answered that

1 question, I believe, like, ten minutes ago.

2 Q. So I think you gave me a couple of examples.
3 Can you give me a few more examples.

4 A. Those are the only two that I have -- that I
5 can recall right now that I have spoken to where in
6 the conversation the leadership teams of those
7 groups point-out blank said, "Our membership align
8 with us for our aggressive discounts and discounts
9 only. They don't care to hear from us. We don't
10 have any influence over what they do."

11 Q. So that was Synergy and UnifiedSmiles?

12 A. Correct.

13 Q. And you can't, sitting here today, think of
14 any other examples of buying groups that you talked
15 to that said that?

16 A. I mean, I'm sure there are some others, but
17 I can't think of them off the top of my head.

18 Q. Okay. So I think we've talked about this a
19 little bit here and there, but I just want to get a
20 clear record of the process involved for determining
21 whether to work with an APC group. Is the first
22 step that you speak with or meet with an APC group?

23 A. As a standard, correct.

24 Q. Okay. And do you speak with or meet with
25 anyone that -- any group that reaches out to you or

1 only certain groups?

2 A. I will set up a call with anyone that has
3 interest in aligning with us.

4 Q. Okay. And then after the call what is the
5 next step that occurs?

6 A. After that call I will take inventory of
7 what was discussed and understand the structure and
8 see if those things align with my -- with Henry
9 Schein's vision mission and, again, the things that
10 I think make proper business sense.

11 Q. Okay. And is there anything -- any part of
12 your analysis of what makes proper business sense
13 that we have not already discussed today?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: Not that I can recall.

16 BY MS. GOFF:

17 Q. Okay. And then is the next step that you
18 would make a recommendation to your superior?

19 A. Yeah. We would have a discussion about the
20 new opportunity and that, "Yeah, I think this is a
21 great group to do business with, and this is the
22 potential, you know, incremental business that we
23 can expect."

24 Q. Okay. So the potential incremental business
25 is, like, one of the things that you would discuss

1 when presenting an opportunity?

2 A. Uh-huh, correct.

3 Q. And then for groups that you decide, you
4 know, "We don't want to work with this group," do
5 you need to inform anyone of that fact?

6 A. Can you please clarify that question.

7 Q. Do you need to tell your superior, "I met
8 with this group, but I decided we should not work
9 with them"?

10 A. It's not, like, a standard. I don't have to
11 report to them on every discussion I have, but when
12 I do have, like, a weekly tag-up call with my
13 superior manager, usually those are things we
14 discuss. "Here are the groups in the pipeline, on
15 my radar. Here are the ones that we're working on
16 putting, you know, a proposal out to. And here is
17 maybe someone we talked to, and I don't think it's a
18 good fit and here's why."

19 Q. Okay. And then when we're talking about
20 your superior for present day, we are talking about
21 Joe Cavaretta? Is he the one that you would make
22 these recommendations to?

23 A. Correct.

24 Q. Okay. Anyone else?

25 A. Glenn Showgren.

1 Q. Okay. Anyone else?
 2 MR. McDONALD: Currently?
 3 BY MS. GOFF:
 4 Q. Yeah. Currently.
 5 A. I mean, no. That's probably it.
 6 Q. Okay. And then if you're -- if
 7 Joe Cavaretta or Glenn Showgren gives you approval
 8 to move forward with a group, then what happens
 9 next?
 10 A. I contact our legal department, and we start
 11 drafting up our prime vendor agreement.
 12 Q. And the prime vendor agreement is the
 13 agreement with the APC group; correct?
 14 A. Correct.
 15 Q. Is it sometimes called a "PVA"?
 16 A. Yes, it is.
 17 Q. And are there any other steps after that?
 18 A. Yeah. Then we would have to solidify the
 19 entire on-boarding process: launch date, marketing
 20 materials, internal education, making sure our
 21 internal organization from zone managers to the
 22 regional managers, top down all the way to field
 23 sales are educated of this new group that we would
 24 be forming in a partnership or an alliance with.
 25 Q. Okay. For the marketing materials, is Henry

1 the word out to, you know, sales reps at Schein that
 2 there's a new group that Schein is working with?
 3 A. There's various different ways. Again, it's
 4 not a solid structure. Monthly our regions, they
 5 have what they call a "business development
 6 meeting," or they have their business development
 7 workshop presentations. It's the same presentation
 8 content that is delivered and cascaded down to all
 9 of the respective regions, and so we have an APC
 10 component within that deck that shows who our
 11 current APC partners are and any new APC partners
 12 that we launched.
 13 We do work for -- when we do put a launch in
 14 place, there is an email that I create and send that
 15 goes out to Henry Schein Dental Private Practice
 16 corporate leadership, so Tim Sullivan, Dave Steck,
 17 Glenn Showgren, Joe Cavaretta, all of those
 18 individuals that would comprise of a VP or higher
 19 role. And our zone managers are on that email and
 20 then every single regional manager, operations
 21 manager, directors of equipment, technology. Anyone
 22 that you would call a leadership level status
 23 receives an email with the announcement of the
 24 launch.
 25 I create what we call a "group profile

1 Schein involved in preparation of marketing
 2 materials that go to the buying group members or the
 3 APC group members?
 4 A. Sometimes. Yeah, like drafting a welcome
 5 letter is standard process for us. We internally
 6 will draft a welcome letter that would be
 7 member-facing or customer-facing for that group's
 8 members that outlines the Henry Schein benefit
 9 package and what they can expect and the discounts
 10 they would receive as well as services that Schein
 11 would be providing to them because they are part of
 12 that group.
 13 Q. Is there any requirement placed on the APC
 14 groups that they show Schein their marketing before
 15 they market it to members?
 16 A. No. I mean, it's not written anywhere that
 17 says we have to see it, but it is obviously
 18 something that's discussed that it would be helpful
 19 for you to share with me anything that you -- before
 20 you do put it in front of your members.
 21 Q. Why would that be helpful to you?
 22 A. Just to make sure whatever information
 23 they're putting in front of their members is
 24 accurate and correct.
 25 Q. Okay. And then so internally how do you get

1 document" that's a one-pager that outlines who the
 2 group is, what they're made up of, what their value
 3 prop is, their structure, their website, any type of
 4 service that they offer. It also outlines what the
 5 Henry Schein benefit package is and what it entails.
 6 I also draft up another document that we
 7 call an "FAQ," which is just frequently asked
 8 questions that a sales rep or FSC might have, and we
 9 answer and outline questions on that. So, again,
 10 these are internal resource documents to better --
 11 that I created to better educate our -- our team
 12 Schein members.
 13 So that would be one way. And then
 14 sometimes when we have -- whether it's our national
 15 sales meetings that happen annually or manager
 16 meeting, sometimes I have a breakout, and I will
 17 present anyone that we have launched through there.
 18 My first year with Henry Schein in this
 19 role, there used to be what they called career
 20 development trainings, where they would have --
 21 anyone on the career development track, they would
 22 jump zone to zone to cover the entire country. And
 23 I would be on that track to discuss and present on
 24 our alternative purchasing channels and what this
 25 division is and who we are and the groups that we're

1 working with.

2 Q. Okay. So that was a long list of things
3 that you would do to get the word out to Schein
4 employees about new groups. Is it your
5 understanding that prior to your arrival at Henry
6 Schein that no such information was provided?

7 MR. McDONALD: Object to the form. Lack of
8 foundation.

9 THE WITNESS: I -- I wouldn't have any other
10 knowledge of that type of information.

11 BY MS. GOFF:

12 Q. Okay. So you only know what you -- what is
13 your practice to do. You don't know what was done
14 before you arrived?

15 A. That is correct.

16 Q. Okay. You mentioned Tim Sullivan. Have you
17 ever -- since joining Henry Schein, have you had any
18 conversations with Tim Sullivan?

19 A. Yeah. I mean, when we are at our national
20 sales meeting or I'm at one of the large trade show
21 meetings or if I'm actually in the office, yeah,
22 sometimes I'll see him and we chat.

23 Q. Okay. Other than sort of informal that you
24 see him at something and chat, have you had any
25 sit-down meetings specifically between you and

1 Mr. Sullivan to discuss your role at Henry Schein?

2 A. No, not to discuss my role.

3 Q. Is there anything that you're thinking of
4 that you had discussions with Mr. Sullivan about?

5 A. I mean, no. Sometimes he'll ask, like, "How
6 is this partnership going," and we'll discuss that.

7 Q. Which partnerships has he asked about?

8 A. Smile Source.

9 Q. Any others?

10 A. (Witness nods.)

11 MR. McDONALD: You need to say an answer.
12 You shook your head.

13 THE WITNESS: Oh, sorry. Not to my
14 knowledge.

15 BY MS. GOFF:

16 Q. Thank you.

17 Has Mr. Sullivan ever called you on the
18 phone?

19 A. Yes.

20 Q. In your current position has he ever called
21 you?

22 A. Yes.

23 Q. How frequently does Mr. Sullivan call you?

24 MR. McDONALD: Object to the form.

25 THE WITNESS: To my knowledge, I think I've

1 only -- he's only called me once.

2 BY MS. GOFF:

3 Q. And the entire time you've been at Schein?

4 A. To my knowledge.

5 Q. And when did he call you?

6 A. I don't recall.

7 Q. Was it -- I'll strike that.

8 What was the conversation about?

9 A. I don't think it had to do with anything in
10 particular. I think it was just to check in. "How
11 is everything going? Anything that I can help you
12 with?"

13 Q. Was that shortly after your arrival at
14 Schein?

15 A. That is correct.

16 Q. Okay. And did Mr. Sullivan give you any
17 direction about how to interact with APCs?

18 A. No, he did not.

19 Q. Did he ask you in that conversation about
20 any particular APCs?

21 A. Not that I can recall.

22 Q. Do you have an understanding of why he
23 called you?

24 A. I --

25 MR. McDONALD: Object to the form.

1 THE WITNESS: I think I just answered that.
2 I think it was just check in to see how everything
3 was going and if he could offer assistance or
4 guidance in any way.

5 MS. GOFF: So it's 12:17. Should we take a
6 break now? Or I can start on a new topic.

7 MR. McDONALD: Let's just go off the record.
8 (Luncheon recess.)

AFTERNOON SESSION

* * *

MS. GOFF: Miss Wingard, I'm handing you a document that has been marked as CX2202. (Exhibit CX2202 introduced on the record.)

BY MS. GOFF:

Q. It's an email with two attachments. The email is from you to Annika Swenson. It's dated December 27th, 2017, and the subject is "APC Presentation." And the email simply says, "Attachment forms."

If you can take a minute to familiarize yourself with the two documents that are attached, and I'm going to ask you a few questions about them.

Have you had a chance to review the first attachment?

A. I have.

Q. Okay. So it's titled BG and APC Discovery Questions. Is this something that you drafted?

A. Yes, it is.

Q. Okay. And when did you draft this document?

A. I would say respect- -- probably a couple months into my role with Schein when I started.

Q. Okay. And you prepared it as part of your job?

A. Uh-huh.

Q. "Yes"?

A. Yes. Sorry.

Q. And what is this document?

A. This is what we call, like, an APC discovery questionnaire. It's just something I use when I initially first started when I was having exploratory calls with potential APC partners, just a kind of a skeleton outline of questions that I would ask to better understand their model and structure and makeup.

Q. So you were sending this to Ms. Swenson in December of 2017. Do you have any understanding of why you were sending it to her then?

A. Yes. We had already extended her offer letter with her coming on board to the APC Division, so these were -- I was giving her just a couple documents for her to review before she formally started so just so she can better familiarize herself with some of the, you know, discovery questions, some of the training decks that I provided for -- or presented to at our career development trainings that year.

Q. Okay. And then so you mentioned the training decks. Is the second attachment, which is

a PowerPoint presentation titled "Alternate Purchasing Channels" -- is that a training presentation that you prepared?

A. Yes. This is a presentation deck that I used during the career development training facilitated by Henry Schein Career Development.

Q. And to whom did you present this to?

A. In my earlier statement right before I broke for lunch, I said part of the on-boarding process was educating our respective field sales teams, our regional managers of this APC division and what it's made up of and what do APCs look like. And so this was that deck that I presented in that career development presentation where we got in front of all of our eight zones throughout the country.

Q. And was that in person?

A. It was.

Q. Where was it?

A. We call it, like, a road show. We traveled throughout the entire year of 2017 to those actual zones or regions, so they were in a different location every time.

Q. Okay. Thank you.

But this was the same presentation that you provided or presented to all eight zones?

A. Correct.

Q. Okay. And then going back to the discovery questions, so you prepared this document. Was it based on any other documents?

A. Yes. When I first came on board in May of 2016 with Schein, Kathleen Titus had formed a couple of questions of her own that she used when she was managing discovery through potential groups. And so I used her document as a basis, and then I worked off of that to create what you see right now.

Q. Okay. And so did she -- did Miss Titus send you her questions by email, do you recall, or did she tell them to you orally?

A. I don't recall.

Q. Okay. And are you aware of any other document like this discovery questions for APC groups other than the one that you created?

A. I mean, there is another document that we utilized in the beginning that our legal prepared, which was much more higher level that actually talks about -- like, sets proper -- or proper structures when it comes to Sunshine Act, Anti-Kickback, just making sure that we understood if groups were dentist-owned, non-dentist-owned.

There is a lot of stuff when we have to

1 create our prime vendor agreement with these APCs,
2 just that we need to make sure that legal
3 understands fully their proper structure. So there
4 is another document that legal created that I use to
5 go along with this one.

6 Q. Other than that one that legal prepared,
7 were there any -- and the list of questions from
8 Miss Titus, was there anything else that you used to
9 prepare this discovery questions document?

10 A. Not that I'm aware of.

11 Q. Okay. A think a lot of the discovery
12 questions on this list we've already discussed, but
13 I just wanted to ask you a couple questions.

14 No. 8, it says, Influence/Members/
15 Compliance." Do you see that? Do you see that?

16 A. Yes, I do.

17 Q. Okay. Is there a difference, in your mind,
18 between influence and compliance?

19 A. Yeah. There's influence -- again, this is
20 my own personal definition -- of where some of these
21 groups will have influence saying, like, "We endorse
22 or we support our partner vendors that we have
23 negotiated and brought on your behalf." And then
24 you have compliance, which is where it's actually
25 when it comes down to driving purchasing power.

1 Q. Okay. And, in your understanding, how can a
2 group drive purchasing power?

3 MR. McDONALD: Object to the form. Asked
4 and answered.

5 THE WITNESS: This is exactly what we
6 discussed right before break. It is where they're
7 able to have their members come together
8 collectively and say they will buy 80 percent or
9 more of their merchandise supply spend through their
10 preferred manufacturers or distribution partners.

11 BY MS. GOFF:

12 Q. And does Schein ever put a clause in the PVA
13 that would require the members to purchase, you
14 know, say, 80 percent or more?

15 A. I believe there is some sort of terminology
16 in the PVA. I'm not confident in that. But I think
17 there is something in there when it talks about --
18 in Exhibit A with all the legality, that it says
19 that we are the prime or exclusive, sole partner and
20 that you will have your members purchase through
21 Schein.

22 Q. Okay. And is the PVA that you use for your
23 various groups within APC is it generally the same
24 PVA, or can the terms differ from PVA to PVA?

25 A. The Exhibit A respectively always pretty

1 much stays the same. And if we did have a change,
2 it would be due to legal, and then we would utilize
3 that updated or revised Exhibit A for all other PVAs
4 moving forward. The first page that outlines kind
5 of more, I would call it, marketing terms or
6 benefits that we would provide, though those change
7 all the time.

8 Q. Okay. That's helpful. Thank you.

9 So would you work with -- you know, earlier
10 we were talking about which groups you would work
11 with, and we talked about compliance and influence,
12 and I just want to make sure I understand. Would
13 you work with a company that could influence members
14 but couldn't drive compliance?

15 MR. McDONALD: Object to the form.

16 THE WITNESS: I mean, again, if it makes
17 good business sense for us, we would work with
18 anyone. So when I say there's influence, the
19 influence usually comes from those groups that are
20 extending type -- value-added type of services aside
21 from just the consumables and discounted pricing.
22 And usually when there is that influence, there is
23 trust and they are already buying into that group's
24 model and vision, so that usually does elicit some
25 sort of compliance component.

1 But, again, it's a very broad question, and
2 that won't happen in all cases, but in some cases it
3 does.

4 BY MS. GOFF:

5 Q. No. 14 on the list, it says, "What is it
6 like for" -- "What does it look like for us to win
7 together?"

8 What does that mean?

9 A. This would be something -- it would be more
10 of just, again, to understand their value prop and
11 what do you call a successful partnership. I want
12 to know from them and hear from them what they're
13 looking for in a distribution partner so I can
14 understand if it's a probable fit.

15 Q. And what are examples of responses that you
16 hear from potential APC customers?

17 A. I mean, a very broad question. I don't even
18 know if I used this question on my calls that I have
19 had, but I think a response would be anything that
20 would be complementing their groups of what they're
21 looking for. And every group is looking for
22 something a little bit different, so I can't provide
23 to you an example. I don't have anything like that
24 that I can just hand over to you.

25 Q. So you can't think of any examples of what

1 buying groups or APC groups have said to you?
 2 A. Yeah. So, I mean, I think -- we have had
 3 discussions with, like, Dental Success Network, for
 4 example. They are one of our newest groups that we
 5 just launched earlier this spring. And, for them,
 6 they wanted a full-service dealer, someone that can
 7 really offer their members every portion of what
 8 they would call building a successful practice.
 9 Q. Okay. And is that one of the reasons why
 10 they wanted to partner with Schein?
 11 A. I would assume so.
 12 Q. Okay. And the next -- and also in No. 14 it
 13 says, "How does your group complement HSDs GTM
 14 strategy?" Is "GTM" "go to market"?
 15 A. It is.
 16 Q. And what are some responses that you
 17 received to that question?
 18 A. I think it's, again, everything that we just
 19 discussed here today about being a full-service
 20 dealer and having a full service offering. It's not
 21 just about supplies and consumables. It's much more
 22 than that. So, again, when I say, "How does your
 23 group complement HSD's strategy," it's making sure
 24 that we are working with them to give their members
 25 the best tools that they can to grow a profitable

1 it varies from each partnership we're working with.
 2 Q. So are there any hard-and-fast rules that
 3 you can tell me today that if a group does not have
 4 a particular characteristic you will absolutely not
 5 work with them?
 6 A. Again, what has been stated, I believe,
 7 multiple times today is if a group I'm talking to is
 8 all about aggressive discounted pricing that cannot
 9 drive any sort of compliance within their group and
 10 that is all they're looking for in a vendor partner
 11 or distribution partner, that is, yes, probably a
 12 hard "I'm not" -- hard "no" to "I'm not interested
 13 in doing business with that partnership."
 14 Q. And do you have an understanding if that
 15 policy has always been in practice at Schein?
 16 MR. McDONALD: Object to the form.
 17 Mischaracterizes the testimony.
 18 THE WITNESS: Again, which I also have
 19 already answered, is this is my own opinion of when
 20 I go to our leadership and say, "This is a
 21 partnership I think would be -- makes great business
 22 sense for us," or would not. That is my opinion.
 23 No one has told me that we would not work with
 24 groups that did not have compliance.
 25 ///

1 practice.
 2 Q. Are there any groups that have offered, you
 3 know, infl- -- you think they have -- going back to
 4 the compliance-versus-influence thing, are there any
 5 groups that you think have offered compliance but
 6 not influence?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I mean, I would say, you know,
 9 I think there's -- that could be true for some of --
 10 most of the partners we are working with today. We
 11 evolve; they evolve. We -- the longer we work with
 12 them, the more compliance we see.
 13 BY MS. GOFF:
 14 Q. But so initially when you first start
 15 working with the group or when you first make a
 16 recommendation to work with the group, how do you
 17 test that compliance?
 18 A. I think if we rule out -- I mean, that's,
 19 again, a very broad question. I don't know that we
 20 have specific examples. It's all about, again, a
 21 partnership of working together to launch proper
 22 programs that perk the members' needs and what their
 23 interests are. And that can go, again, from any
 24 type of a value-added program to any of the
 25 consumables or supplies, but, again, I mean, I think

1 BY MS. GOFF:
 2 Q. So it has never occurred where someone from
 3 Schein told you that that is Schein's policy?
 4 A. As I answered earlier today, no.
 5 Q. Okay. Okay. Turning to the PowerPoint
 6 presentation. Just to be clear, so you prepared
 7 this training; correct?
 8 A. Correct.
 9 Q. And you prepared it as part of your job?
 10 A. Correct.
 11 Q. Thank you. Okay.
 12 So turning to CX2202-005.
 13 MR. McDONALD: And for people on the phone,
 14 you may want to tell them the Bates number if they
 15 are trying to find it, because they don't have your
 16 CX numbers, Karen.
 17 MS. GOFF: Oh, good point. So it's -- this
 18 document is Henry Schein -- it's Bates-stamped
 19 Henry Schein 00172401. And I'm referring to the
 20 second page of the PowerPoint presentation
 21 attachment.
 22 BY MS. GOFF:
 23 Q. So it says, "What is an alternate purchasing
 24 channel (APC)?" And then it lists some different
 25 types of organizations.

1 And I believe we've discussed most of these
 2 today, but I see the term "Franchises," which I
 3 don't know that we've discussed. What is a
 4 franchise?
 5 A. A franchise would be, again, another type of
 6 group that we have seen within the industry that we
 7 would say would probably fall underneath this APC
 8 umbrella. Smile Source, who is our current partner,
 9 they call themselves a franchise DSO. If you asked
 10 them what they are, if you had to label them, that
 11 is what they call themselves.
 12 Q. Other than Smile Source, have you ever heard
 13 of any other groups call themselves a franchise?
 14 A. From groups that I have done any discovery
 15 or exploratory with personally, no, I have not.
 16 Q. So basically when you -- here in this
 17 PowerPoint presentation when you are referring to
 18 "franchises," you are talking about Smile Source?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: No, I wouldn't say I was just
 21 speaking to Smile Source. I was just saying that
 22 would be another type of group that would be -- that
 23 would fall into an APC under this umbrella or
 24 division.
 25 ///

1 the APCs.
 2 Q. Okay. But the common characteristics of all
 3 the APCs is that they're comprised of private
 4 practice dentists?
 5 A. The majority, a foundation of the groups;
 6 correct.
 7 Q. So talking about Breakaway, I know you said
 8 that they have multiple layers. Can you tell me
 9 about those layers.
 10 A. Yeah. They had a membership arm that they
 11 actually had equity in. They owned some of their
 12 member offices.
 13 Q. Okay. And was that the largest arm or --
 14 A. It's their smallest arm.
 15 Q. Their smallest arm.
 16 And what was the largest arm?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Their largest arm would have
 19 been their support members. They call them their
 20 support members, which was similar to, like, a
 21 buying group arm.
 22 BY MS. GOFF:
 23 Q. Okay. And you said, I think, there were
 24 three arms. What is the other arm?
 25 A. The other one would have been their -- I'm

1 BY MS. GOFF:
 2 Q. Okay. In the notes at the bottom, it says,
 3 "Groups are complex and hard to label," and in
 4 parentheses, "DSO, MSO, BG components."
 5 Do you see that?
 6 A. I do.
 7 Q. So what did -- what does Schein do with
 8 groups that are hard to label?
 9 A. So, just for the record, just so you
 10 understand, these are notes that I just typed in
 11 before my presentations just so I could get a
 12 feeling of what my overall context and flow would be
 13 like.
 14 And what I think we've also stated earlier
 15 today is that is why we coined "APCs" and put
 16 together that acronym, is because we are seeing a
 17 lot of groups that have some sort of buying group
 18 arm or a cost savings plan component, and they don't
 19 all go by a buying group or a GPO title or even a
 20 franchise title.
 21 We used to work with Breakaway. I would
 22 call them, like, a hybrid DSO. They had various
 23 member layers. So a lot of these, as I say, they
 24 are hard to compartmentalize. We don't want to
 25 label something wrong, so we just put them under

1 not 100 percent clear on the exact name. They
 2 either called them their -- I think they were their
 3 affiliates and de novos, which were their startup
 4 practices. They had some members that would sign a
 5 contract with Breakaway to help them expand and grow
 6 and actually build practices from the ground up.
 7 Q. And did Breakaway have an ownership interest
 8 in those practices, do you know?
 9 A. No, they did not.
 10 Q. Turning to the next slide, slide 3, it says,
 11 "What does the ultimate APC look like?" And it is
 12 CX2202-006, and it's with a Bates stamp ending in
 13 404.
 14 MS. GOFF: Oh, I guess is -- this must have
 15 been a native produced document, for those that are
 16 on the phone.
 17 BY MS. GOFF:
 18 Q. So I think that, again, we talked about some
 19 of these characteristics earlier, but I wanted to
 20 ask a few follow-up questions. So am I correct in
 21 understanding from this slide that the ultimate APC
 22 for you would be value focus and not price focus?
 23 A. That's an accurate statement. I think it
 24 supports everything we discussed today.
 25 Q. And aren't all buying groups price-focused?

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: Again, all these groups that
 3 we're calling an APC, they all have some sort of
 4 cost savings program arm, so, again, that's an
 5 opinion in the eye of the beholder.
 6 BY MS. GOFF:
 7 Q. Whether they're price-focused or not?
 8 A. Uh-huh. Yes.
 9 Q. But if a group is price-focused, you don't
 10 want to work with them?
 11 A. So, again, that's one layer. This is --
 12 again, I'm trying to teach our team of what these
 13 groups look like and some of the ones that we would
 14 use as a basis when we're looking to do business
 15 with these type of groups.
 16 I mean, this is not verbatim saying we want
 17 it. This is just me training and giving education
 18 to our sales members on what the basis of these
 19 groups look like and the ones that right off the bat
 20 would be someone we would be very interested. It
 21 doesn't mean we would be or we wouldn't, just a
 22 foundation.
 23 Q. So for ones that are not price-focused,
 24 would you be interested in doing business with them?
 25 A. I answered this many times already. If it's

1 THE WITNESS: It just depends. We've gone
 2 over this, like, so many times. There are so many
 3 groups that have different types of structures.
 4 They offer different types of components. I don't
 5 know how you want me to answer this any differently.
 6 BY MS. GOFF:
 7 Q. So you can't give any specifics about what
 8 are the components?
 9 MR. McDONALD: Object to the form. Asked
 10 and answered.
 11 THE WITNESS: No. I have -- everything I
 12 told you has been my answer. I have nothing else to
 13 say.
 14 BY MS. GOFF:
 15 Q. It says in the third bullet point down that
 16 "HSD will NOT," and "not" is in all capital letters,
 17 "be a fulfillment service." Do you see that?
 18 A. I do.
 19 Q. What does that mean?
 20 A. Meaning that we are not just going to take
 21 orders on cheap supplies. We're not going to be
 22 just fulfillment. We are full-service. We offer
 23 more than just being an order-taker.
 24 Q. And wouldn't being a fulfillment-only allow
 25 Schein to lower its costs by eliminating the need

1 just about price and there was no compliance, we're
 2 probably not interested in aligning with that type
 3 of group.
 4 Q. Okay. So the price-focused ones are the
 5 ones you are not interested in doing business with?
 6 MR. McDONALD: Object to the form.
 7 BY MS. GOFF:
 8 Q. Oh, you can answer that question.
 9 A. I'm sorry. I didn't know that was a
 10 question. Please repeat.
 11 Q. Sure. The price-focused ones are the ones
 12 that you're not interested in doing business with?
 13 MR. McDONALD: Object to the form. Asked
 14 and answered.
 15 THE WITNESS: Yeah. I mean, again, it
 16 depends. There could be other variables. But most
 17 likely if that is all that they're about and that's
 18 the only value that they would offer their members,
 19 is just the aggressive low discounts, it's probably
 20 not a group we would be excited about doing business
 21 with.
 22 BY MS. GOFF:
 23 Q. And what are the other variables?
 24 MR. McDONALD: Object to the form. Asked
 25 and answered.

1 for FSCs or sales consultants?
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Then probably, yeah. But we
 4 are not fulfillment. We are full-service, and we do
 5 have FSCs and other specialists that bring the great
 6 additional value to our customers.
 7 BY MS. GOFF:
 8 Q. And so why is it important to Henry Schein
 9 not to be just a fulfillment service?
 10 A. Because it's not --
 11 MR. McDONALD: Object --
 12 Hang on.
 13 Object to the form.
 14 Go ahead.
 15 THE WITNESS: Because that is not who Henry
 16 Schein is.
 17 BY MS. GOFF:
 18 Q. Okay. But we established earlier, I
 19 think -- but I just want to make sure I'm clear --
 20 that for buying groups that have member -- strike
 21 that.
 22 Henry Schein could go in to buying groups
 23 that just wanted to negotiate a discounted price and
 24 still offer the additional value-added services to
 25 the members of those buying groups; correct?

1 A. Yeah.
 2 MR. McDONALD: Object to the form.
 3 Go ahead.
 4 THE WITNESS: Yes.
 5 BY MS. GOFF:
 6 Q. Okay. So why is it that Henry Schein didn't
 7 want to do business with groups -- with buying
 8 groups that were fulfillment-only when Henry Schein
 9 could still continue to go in and provide those
 10 value-added services to the members?
 11 MR. McDONALD: Object to the form. Asked
 12 and answered. You went over this a lot already.
 13 MS. GOFF: There have been a lot of
 14 different answers, so I just want --
 15 MR. McDONALD: You know what? You've asked
 16 the same question about three different times, and
 17 if her answer wasn't exactly the same every time,
 18 you know, it's substantively the same. This will
 19 now be at least the third time she's answered the
 20 question.
 21 BY MS. GOFF:
 22 Q. Can you please answer the question.
 23 A. Can you please repeat it again.
 24 Q. Yes. So for groups that were
 25 fulfillment-only -- for groups that were price-only,

1 Henry Schein could continue to service those
 2 members, you know, offer the value-added services
 3 that it wanted to; correct?
 4 A. Yes.
 5 Q. Okay. And so why is it that Henry Schein
 6 did not want to do business with those price-only
 7 groups?
 8 MR. McDONALD: Object to the form.
 9 MR. KASS: Mischaracterizes her testimony.
 10 MR. McDONALD: Asked and answered.
 11 THE WITNESS: Again, as I --
 12 MR. McDONALD: Go ahead.
 13 THE WITNESS: Again, which I mentioned
 14 multiple times, is we -- I don't feel that that is
 15 great business that we would want -- or a great way
 16 that we would want to do business. That does not
 17 make business sense to me.
 18 BY MS. GOFF:
 19 Q. Why not?
 20 A. Which I've explained multiple times. We are
 21 not going to discount our supplies and consumables
 22 and cannibalize pricing from customers that we're
 23 already getting when a buying group or an APC has no
 24 compliance to drive purchasing through their
 25 membership.

1 Q. What do you mean by "cannibalize pricing"?
 2 A. What I mean by "cannibalize" is from
 3 customers that we're already doing business with.
 4 Q. Right. Customers that you're already doing
 5 business with, you don't want to cannibalize the
 6 pricing. But what do you mean by "cannibalize"?
 7 MR. McDONALD: Object to the form. Asked
 8 and answered.
 9 Go ahead.
 10 THE WITNESS: So, again, as discussed before
 11 lunch, is we're not going to -- it would not make
 12 proper business sense to align with the group that's
 13 all about aggressive discounted pricing.
 14 BY MS. GOFF:
 15 Q. So when you say "cannibalize," is that what
 16 you mean, discounting --
 17 A. Well --
 18 Q. -- discounting prices?
 19 A. Sorry. If they're members -- yes, if we
 20 already had customers that were part of those groups
 21 and they were saying, "We can't really drive more
 22 influence, but just give us more aggressive
 23 discounts, that makes zero business sense."
 24 Q. Okay. Right. What about customers that
 25 were not already buying from Schein?

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: So, again, already answered.
 3 If these were not customer -- or if these were
 4 customers that were aligned with the group that was
 5 not buying from Schein and we still were giving them
 6 supplies at a discount and there was no compliance
 7 to drive purchasing power between their members,
 8 again, it does not make much business sense.
 9 BY MS. GOFF:
 10 Q. But how would you know -- okay.
 11 So in a situation where a group comes and
 12 they say that they do offer compliance and they do
 13 offer influence to members, then would you be
 14 interested in working with that type of group?
 15 A. Through the exploratory and discovery phase,
 16 yes, I would probably be interested.
 17 Q. Even if they were price-only?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: No. Sorry. I guess I didn't
 20 understand your question.
 21 MR. McDONALD: She changed the question.
 22 BY MS. GOFF:
 23 Q. Okay. So in no circumstances -- if a
 24 group comes to you and they are price-only, in no
 25 circumstances are you interested in working with

1 them?

2 MR. McDONALD: Object to the form.

3 MR. KASS: It mischaracterizes his
4 testimony.

5 THE WITNESS: Yeah, I would never say -- I
6 have never said in any circumstances -- I have said
7 multiple times Henry Schein is always willing to do
8 business with any type of group or customer, for
9 that matter, if it makes business sense.

10 What I've also mentioned multiple times is a
11 group that is just about aggressive, discounted
12 pricing and that is all they are offering to their
13 members and they cannot drive any type of
14 compliance, I don't think it makes great business to
15 do business with those type of groups.

16 BY MS. GOFF:

17 Q. Okay.

18 A. I do not know how more detailed I can get
19 for you.

20 Q. There is a possibility that a group that is
21 only price-focused could bring Henry Schein new
22 customers; correct?

23 A. Yeah. In some cases that could be correct.

24 Q. Okay. Because they could bring a customer
25 that was previously purchasing from a Patterson or a

1 Benco to Schein; correct?

2 A. That could be the case.

3 Q. And is that something that you consider when
4 determining whether to do business with an APC
5 group?

6 A. Yes, we determine everything. We look at
7 everything.

8 Q. Okay. Let's turn to page CX2202-009. And I
9 want to ask you about this reference on this page to
10 "Formulary Selling." Do you see that? It's, like,
11 the fourth bullet point down. It says, "Formulary
12 Selling," exclamation mark.

13 A. Yes, I do.

14 Q. Okay. Does Schein offer formulary selling
15 to APC groups?

16 A. Yes, they do.

17 Q. Okay. And how does it work?

18 A. By definition, formulary is where we create
19 a product mix of supplies, consumables, goops and
20 goos, and it's a contracted, like, some mix of those
21 products, that are set at various discounts.

22 Q. Okay. So it's a list that Schein offers of
23 various consumables and then the associated discount
24 with that consumable?

25 A. Correct.

1 Q. Okay. Is it a list of specific price, or is
2 it just a percentage discount?

3 A. It's a percentage blended discount.

4 Q. And what -- what do you mean by "blended"?

5 A. So it's not the same discounts on every
6 single item.

7 Q. For every product. Okay.

8 And what is it a discount off of?

9 A. The discount would always be off our catalog
10 pricing.

11 Q. Okay. And for the entire period that you've
12 been at Schein, is this how Schein offers its
13 discounts to buying groups, through a formulary?

14 A. I would say as a standard best practice,
15 yes, most of the time.

16 Q. Okay. In the notes at the bottom of the
17 page -- so you said that these are notes that you
18 typed up for just, like, kind of talking points for
19 each slide; is that right?

20 A. They're internal-facing notes.

21 Q. In other words, only you can see them?

22 A. Correct.

23 Q. Okay. So it says, "Leverage service to grow
24 business."

25 Do you see that? It's the fourth bullet

1 down.

2 A. Yes, I do.

3 Q. What did you mean by that?

4 A. Meaning leverage parts of our other
5 value-added solutions -- as you see, that's part of
6 that practice care wheel above -- to leverage our
7 pro repair and pro service.

8 Q. This is service on equipment?

9 A. Repair, service, large, small.

10 Q. Okay. And how does Schein leverage service
11 to grow business?

12 A. So, again, just the supplies, that's
13 supplies. We have found that our best customers and
14 the customers that buy the most supplies from us are
15 the customers that leverage other portions of our
16 wheel.

17 Q. That also use Henry Schein for its service,
18 for example?

19 A. That would be one example.

20 Q. Okay. And does Schein, do you know,
21 prioritize service to those dentists who buy
22 supplies from Schein?

23 MR. McDONALD: Object to the form. Lack of
24 foundation.

25 THE WITNESS: So, to my knowledge, some of

1 our most loyal customers, they will get discounts on
2 service -- expedited service if they are buying more
3 supplies than someone that's not a customer.

4 BY MS. GOFF:

5 Q. So, to your knowledge, dentists who don't
6 buy from Schein don't get the priority service?

7 A. Correct.

8 Q. Okay. So -- sorry. I was trying to find
9 what I was looking for.

10 So under -- also in your notes under
11 "Formulary Selling," there is -- the second hash tag
12 down, it says "Buying Power."

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. It says:

16 "HSD negotiates the pricing with the
17 vendors on your behalf and consolidate
18 purchases."

19 What does that mean?

20 A. So when you want to talk about real buying
21 power, Schein, I believe, in my opinion, we are the
22 largest buying group. You will get all the
23 customers that we have been selling to and are
24 customers, and if they are all in any type of
25 formulary where that's -- right there you're able to

1 see the hundreds, thousands of supply sales that
2 we've been able to bring in.

3 So for a better explanation, we will be able
4 to go back and negotiate with our manufacturer
5 partners and say we have X amount of customers
6 buying within this type of formulary, and it helps
7 us lower down pricing.

8 Q. Okay. And then the manufacturers give
9 Schein a discount on those products?

10 A. Correct.

11 Q. And that's based on the volume that Schein
12 promises the people will purchase?

13 A. Correct.

14 Q. And turning to the next page, it's
15 CX220-010. Again, looking at your notes, it says:

16 "Dentists join for the discounts...and
17 stay for the support/camaraderie."

18 Do you see that?

19 A. Yes.

20 Q. So as of the time that you gave this
21 presentation, was it your understanding that
22 dentists joined APC groups for the discounts?

23 A. In my opinion, from being within the space
24 and what I have learned, in my experience, the APC
25 groups that we're working with or the ones that we

1 are not, I have noticed that groups that -- that are
2 comprised just for the discounts, those don't seem
3 to be sustainable.

4 There's other things that those members will
5 need and want. They're always going to expect more.
6 You're always going to be able to find a lower price
7 somewhere else, always. So, in my opinion, the only
8 real sustainable model that an APC or a buying group
9 would have is if they offer something aside from
10 just a cost savings program component.

11 Q. Okay. Specifically to the first part,
12 "Dentists join for the discounts," so in your vast
13 experience dealing with APCs, is it your
14 understanding that that's the reason why dentists
15 typically join the buying group?

16 DEPOSITION REPORTER: Please repeat the
17 first part, "Dentists join for..." You were
18 reading.

19 BY MS. GOFF:

20 Q. Okay. So in -- in the notes you wrote,
21 "Dentists join for the discounts." And then I asked
22 whether in your experience that you have as the
23 leader of the APC group -- is it your understanding
24 that dentists join APCs for the discounts?

25 MR. McDONALD: Object to the form.

1 THE WITNESS: In my experience, I feel that
2 no matter how the groups are made up, no matter what
3 they offer, that's like the luster and the glitter.
4 That is what -- the first thing that draws, in my
5 opinion, any dentist to even look at a group, is
6 what kind of discounts is there.

7 BY MS. GOFF:

8 Q. Okay. And you mentioned that the buying
9 groups that you think are successful offer other
10 services other than just the discounts; is that
11 correct?

12 A. That is what I said.

13 Q. And are you aware of buying groups that have
14 been -- that have not been successful, that have
15 failed?

16 A. Not to my knowledge.

17 Q. Okay. Are you aware -- so how is it that
18 you're able to say that the one -- the buying groups
19 that are successful offer more than just discounts?

20 A. I -- from the groups that we've worked with,
21 my experience, they have a higher retention of their
22 membership if they offer other services to their
23 members aside from just the cost savings program
24 arm.

25 Q. Okay. Thank you.

1 And how are you aware of the retention rate?
2 Is that something that the APC group tells you, or
3 are you able to monitor that yourself somehow?

4 A. I don't think it's one specific example. I
5 think there's many different cases and things that I
6 have looked at to come to that conclusion or
7 assumption on my own.

8 I think it's dealing with the partners that
9 we have today that offer the true value proposition
10 to their members, and you see those groups continue
11 to grow their membership and flourish. And then,
12 again, just -- they told me that their members are
13 happy and they stay because of this, so there's --
14 there's many sources to why I have come to that
15 conclusion in my opinion.

16 Q. Okay. And when you wrote they stay --
17 "Dentists stay for the support/camaraderie," just
18 for the record, what did you mean by
19 "support/camaraderie"?

20 A. I think community. I think these private
21 practices right now, it's been very competitive with
22 them, or it's a very competitive time for them. And
23 they're looking for a group and a community and
24 support where they can talk amongst peers, discuss
25 best practices, and I think that's another big part

1 of why these buying groups are so attractive.

2 Q. And then turning to the next slide, which is
3 CX2202-011, it says, "Active APC Partners." So is
4 this a complete list of the active APC partners as
5 of December 2017?

6 A. No.

7 Q. Okay. What's missing?

8 A. Mastermind Group and Teeth Tomorrow.

9 Q. And did -- did Schein work with those two
10 groups in December of 2017?

11 A. Yes, they did.

12 Q. Do you have an understanding of why they're
13 not included on this list?

14 A. Because this deck was made in the beginning
15 of 2017, the -- I should say, the beginning half of
16 that year.

17 Q. And did Schein work with Master Mind and
18 Teeth Tomorrow at the time that you prepared the
19 deck in the beginning of -- or the first half of
20 2017?

21 A. No, they did not.

22 Q. So, talking about Breakaway -- I know we
23 mentioned them earlier -- but so far at least some
24 of Breakaway's dental practice members, there is
25 centralized ownership for at least some of them; is

1 that true?

2 A. That is -- correct. That's correct.

3 Q. And why was it within APC as opposed to
4 Mid-Markets or Special Markets?

5 A. So prior to me coming on board with Henry
6 Schein, this was being managed under Andrea Hight,
7 Kathleen Titus and Kip Rowland in the Mid-Market
8 Group Practice Division.

9 Q. And why did it get switched over to you, in
10 your understanding?

11 A. Because there was now a division and a
12 person dedicated to manage these type of
13 partnerships.

14 Q. But why was it -- since it has a element of
15 centralized ownership, why was it moved over to APC
16 as opposed to staying in Mid-Market?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: The majority of Breakaway's
19 membership were individual private practices.

20 BY MS. GOFF:

21 Q. So is it your understanding that that is why
22 it was moved over to APC?

23 A. Yeah. I would say that's correct.

24 Q. Do you have personal knowledge of that, of
25 why it was moved over to APC?

1 A. No one told me that's exactly why, but I
2 would assume that there's now a dedicated individual
3 to manage these type of groups that don't fit in a
4 direct market that we cover, which would be Special
5 Markets, Group Practice or Private Practice. These
6 are hybrids, and they have multifaceted layers. So
7 if they do not fall into those divisions as a
8 standard, then they usually give them over to the
9 APC division.

10 Q. Okay. When did Schein start working with
11 Breakaway? Do you know?

12 A. I do not.

13 Q. It was sometime before you arrived?

14 A. Correct.

15 Q. Do you know whether it was, like, right
16 around the time you arrived?

17 MR. McDONALD: Object to the form.

18 If you know, tell her, but don't guess --

19 THE WITNESS: I don't know.

20 MR. McDONALD: -- if you don't know the
21 date.

22 THE WITNESS: I don't know.

23 BY MS. GOFF:

24 Q. Do you know for the -- the arm of Breakaway
25 that the members are composed of independent private

1 dental practices, with regard to that arm, do you
2 know whether they offer any value-added services?

3 A. For their support members and all their
4 members, yes, they offered a handful of value-added
5 services.

6 Q. What services were those?

7 A. I don't know them all, but I know for a fact
8 they offered marketing programs, IT support, call
9 centers, insurance verifications and other various
10 programs. Those are the only ones I can think of
11 top of mind.

12 Q. Okay. And then for Breakaway, for the time
13 that you worked with Breakaway, so after you
14 started, was it an exclusive relationship, a sole
15 partnership?

16 A. Yes, it was.

17 Q. Okay. And do you know whether Breakaway was
18 able to drive compliance?

19 A. From my experience in managing that
20 partnership, yes, they -- they did drive compliance.

21 Q. And how did they drive compliance?

22 A. They would always influence their members to
23 buy from Henry Schein as their supported
24 distribution partner. We worked really closely with
25 the Breakaway leadership to partner with other

1 manufacturers. That way their members were buying
2 their cements or goops and goops from one or two
3 manufacturers rather than from five or ten different
4 ones. So, yes, they did work with us, and it was an
5 ongoing process that kept on evolving to offer
6 compliance.

7 Q. So is it common for you to work with an APC
8 group to ensure further compliance once they've been
9 brought on board?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: Yeah. I mean, I say as a
12 mutual partner it's a two-way street. We want to
13 make sure we are working with them and helping them
14 to better support their member needs.

15 BY MS. GOFF:

16 Q. Okay. So you mentioned that you worked with
17 manufacturers to help offer Breakaway members
18 discounts with manufacturers. Is that -- do I
19 understand that correctly?

20 A. We would -- yeah, I mean, we would work with
21 Breakaway, and if there were certain manufacturing
22 partners that they thought that their membership was
23 interested in, we would include those in the
24 formulary -- those manufacturers in the formulary,
25 and/or if they're already included, some of those

1 items, we would broaden their breadth of their
2 product mix to help drive compliance within that
3 manufacturer, again, to bring down pricing.

4 Q. Okay. "To help drive compliance" meaning to
5 ensure that the members of the buying group would
6 purchase from Schein?

7 A. Correct.

8 Q. Okay. Then turning to the Klear Impakt,
9 which is another listed active APC partner.

10 MR. McDONALD: Are you talking on the same
11 page?

12 MS. GOFF: Yeah. On the same page. I mean,
13 I actually -- oh, sorry. I have a couple more
14 questions about Breakaway.

15 BY MS. GOFF:

16 Q. Do you know who paid the bills on behalf of
17 the practices?

18 A. That's going to be a very broad question. I
19 believe, to my knowledge, what I've been told, was
20 when Breakaway first emerged they paid the bills on
21 behalf of their members. To my understanding, very
22 recently to right around the same exact time that I
23 came on board with Schein, Breakaway had changed
24 that model.

25 Q. And so they stopped paying on behalf of the

1 members?

2 A. To my knowledge, right around the time that
3 I started with Schein, in that time are -- that
4 specific time, Breakaway no longer paid their supply
5 orders on behalf of their members.

6 Q. Okay. So for the entire time that you
7 managed the Breakaway relationship, Breakaway was
8 not paying the supply orders --

9 A. On their individual private practice support
10 members, no.

11 Q. Okay. And so then the individual private
12 members paid Schein directly?

13 A. They were set up just like every other
14 private practice of ours; correct.

15 Q. Okay. And then did Breakaway order supplies
16 on behalf of the members?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: Again, to my --

19 MR. McDONALD: Hang on.

20 Are you talking about the individuals, the
21 individual members?

22 MS. GOFF: So I'll rephrase the question.

23 BY MS. GOFF:

24 Q. Did Breakaway order supplies on behalf of
25 the individual members, to your knowledge, during

1 the time period when you managed the relationship?

2 A. When I managed the relationship, no, they
3 never placed any orders or POs on behalf of their
4 support members.

5 Q. And prior -- do you have an understanding of
6 whether prior to your arrival at Schein they placed
7 orders on behalf of their support members?

8 A. I don't have knowledge of that.

9 Q. Okay. Now, turning to Klear Impakt. I'm
10 referring you to the Klear Impakt on the slide, but
11 I really am just wanting to know your information
12 that you have separate and apart from this slide.

13 Do you have an understanding of whether
14 Klear Impakt has centralized ownership of its
15 practices?

16 A. Can you clarify that question.

17 Q. Does Klear Impakt have equity ownership in
18 its practices?

19 A. No, they do not.

20 Q. Okay. And does Klear Impakt offer
21 value-added services, in your opinion?

22 A. Yes, they do.

23 Q. And what do they offer?

24 A. They offer marketing. They align with
25 various other type of vendor partners to offer

1 financial assistance. I believe they're aligned
2 with -- I'm trying to think offhand. They have an
3 array of other services and vendor partners that
4 they work with. I know, like, one is a bank. They
5 help with financial loans. I know marketing is one
6 of them.

7 Q. And does Schein offer any of the value-added
8 services to Klear Impakt?

9 A. Yeah. We offer a ton. In our entire
10 portfolio of benefits that we created for Klear
11 Impakt members, there's a lot of other things that
12 we offer aside from just the formulary pricing.

13 Q. Okay. And has it always been the case since
14 you managed the Klear Impakt relationship that
15 they've offered these value-added services to
16 members?

17 A. Yes.

18 Q. And is Klear Impakt -- is Schein's
19 relationship with Klear Impakt sole source?

20 A. It is.

21 Q. Meaning it's exclusive?

22 A. Yes.

23 Q. Okay. And does Klear Impakt drive
24 compliance, in your opinion?

25 A. Yeah.

1 Q. And how do they do that?

2 A. Again, through the influence of -- they
3 influence their members to work with Schein. The
4 more that their members work through Schein, the
5 more that they buy through Schein, the better
6 discounts, in turn, that we'll get.

7 Q. The more members buy from Schein, the higher
8 discounts Schein offers?

9 A. Yeah. I mean, again, they influence their
10 members to buy from Schein. They know if more of
11 their membership buys more through Schein we will be
12 able to, in turn, get better pricing through the
13 formulary.

14 Q. Okay. Do you update the pricing in the
15 formulary on some periodic basis?

16 A. There's no standard structure. But, as I
17 mentioned multiple times, these partnerships are
18 always evolving. The way we work with them is
19 always changing. So, yeah, formularies can always
20 be revised at any set time.

21 Q. And is there language in the PVA or
22 otherwise that states that if Klear Impakt members
23 buy a certain percentage of product or a certain
24 amount of product that Schein will offer an even
25 greater discount?

1 A. Not to my knowledge.

2 Q. Okay. So how -- you mentioned that that --
3 that Klear Impakt knew that if they offered more
4 members buying more products from Schein then Schein
5 would offer a greater discount. How would you know
6 that?

7 A. I said that -- you asked me how they're
8 driving compliance, and I said through their
9 influence and through their members. And they know
10 through our various discussions if we can truly see
11 compliance happen through their membership, we're
12 able to see growth in an incremental way, then, as a
13 standard, yes, we would revise the formulary.

14 Q. So is that something that you relayed to
15 Klear Impakt?

16 A. It's been in discussion a couple times
17 verbally.

18 Q. Okay. And when you said if you're able to
19 see growth in an incremental way, is that, again,
20 just referring to incremental sales?

21 A. Yes.

22 Q. Next on the list of active APC partners is
23 Smile Source. Smile Source, as we discussed, they
24 refer to themselves as a "franchise DSO."

25 A. That is correct.

1 Q. And they do not have ownership of the dental
2 practices; is that right?

3 A. They do not.

4 Q. Do you consider Smile Source to be a buying
5 group?

6 A. Smile Source has a cost savings program arm.
7 That's an opinion. I mean, everyone has an opinion.
8 They have a buying group cost savings program arm.
9 They have franchise agreements with their
10 membership, so I would call them a franchise DSO, is
11 what they call themselves.

12 Q. Do they have value-added services?

13 A. Yes, they do. They offer education to their
14 membership, various education, bring in other
15 keynotes, KOLs, which is a key opinion leader, CEs.
16 They host annual meetings and an annual exchange
17 where they have their members all come together and
18 they offer CE credits.

19 Q. Any other value-added services that you can
20 think of, sitting here?

21 A. I mean, they -- to my understanding, they
22 work with, I believe, like, a hundred-plus different
23 type of partners. I don't know what they all
24 entail, but I know a lot of them are aside from just
25 supply or manufacturing partners, so that's all I

1 can say.

2 Q. When you're assessing whether to work with a
3 buying group, are you looking for particular
4 value-added services that a group has to offer?

5 A. No. I just want to know that a group is
6 offering something aside from just the aggressive
7 discounts.

8 Q. But it could be anything that they would be
9 offering?

10 A. It could be anything.

11 Q. And does it matter whether it's something
12 that Henry -- whether the value-added service is
13 something that Henry Schein can offer or not?

14 A. It does not.

15 Q. Okay. So, in your mind, the benefit of the
16 value added service is because it helps drive
17 compliance?

18 A. Yes. As I already stated earlier, we have
19 found that our best customers and the customers that
20 buy the most from us are leveraging to other
21 portions of that value added practice care wheel.

22 Q. They are leveraging the other portions of
23 Schein's practice care wheel?

24 A. Correct.

25 Q. So it doesn't matter whether in your -- when

1 we are talking about customers, we are talking about
2 APC customers?

3 A. I'm talking about APC customers. I'm
4 talking about customers -- at the end of the day,
5 whether they are a customer aligned with the APC or
6 a Group Practice or Special Markets, they are a
7 customer. At the end of the day, they're our
8 customer, and so I'm referring to all customers.

9 Q. Okay. So I'm wondering about buying groups
10 driving compliance. And that's compliance to
11 Schein, driving sales to Schein; right?

12 A. Is that a question?

13 Q. Yes.

14 MR. McDONALD: Why don't you restate it.

15 THE WITNESS: Can you restate it. That
16 seems more like a statement.

17 BY MS. GOFF:

18 Q. Okay. So I just want to make sure. Why
19 don't you tell me what you mean by "driving
20 compliance."

21 A. We have found within just our -- any of our
22 customers -- if you want me to say just the
23 customers we are working with that are related
24 directly to these APC groups -- that if they are
25 using Schein for other areas outside of the

1 supplies, we do see a greater growth in those
2 supplies spend.

3 Q. Okay. The agreement with Smile Source is
4 not exclusive; correct?

5 A. Correct.

6 Q. It's shared with Darby and Burkhart?

7 A. Correct.

8 Q. And so why did Schein decide to do business
9 with Smile Source, even though it did not offer an
10 exclusive agreement?

11 A. We felt it made business sense.

12 Q. And did you personally feel that way?

13 A. We felt it made good business sense.

14 Q. Did you personally feel that way?

15 A. I personally felt that way.

16 Q. Okay. And so why did it make good business
17 sense, in your mind?

18 A. Because Smile Source is a very influential
19 group, and we know that their members were looking
20 for -- Smile Source as well as their members were
21 looking to align with a full-service distribution
22 partner. Darby and Burkhart could not offer their
23 members everything that Schein could and also have
24 that national presence.

25 Q. And so did you think they could bring

1 incremental sales?

2 A. Absolutely.

3 Q. Okay. Am I correct that Smile Source
4 negotiated rebates directly with several supply
5 partners?

6 A. That's correct.

7 Q. And "supply partners," does that refer to
8 manufacturers?

9 A. I would say they are one and the same.

10 Q. And are those manufacturers ones that also
11 sell through Schein, or are they ones that would go
12 directly to the buying group member?

13 MR. McDONALD: Object to the form.
14 Compound.

15 THE WITNESS: So Smile Source, again, they
16 do a lot of negotiations direct with manufacturer
17 partners or supplier partners, whatever you want to
18 call them. Some of those suppliers may be direct to
19 where they don't go through a distribution chain,
20 and others do go through a distribution chain.

21 BY MS. GOFF:

22 Q. Okay. So Smile Source does at least offer
23 discounts of manufactured products direct to the
24 customer, to the independent dental practice.

25 A. Can you clarify your question, please.

1 Q. Sure. So I just want to make sure I'm
2 understanding that Smile Source offers discounts
3 from Schein, and they, in addition, offer discounts
4 from manufacturers, like a buying group member could
5 buy directly from the manufacturer. Is that your
6 understanding?

7 MR. McDONALD: Object --

8 THE WITNESS: That's still --

9 MR. McDONALD: Hang on. Hang on. Hang on.
10 Object to the form. Lack of foundation. If
11 you know, tell her.

12 THE WITNESS: Well --

13 MR. McDONALD: Don't guess.

14 THE WITNESS: No, I'm not. But you're
15 just -- the way that you're asking the question,
16 it's very broad, and it's, like, three questions
17 into one, and --

18 BY MS. GOFF:

19 Q. Do you have an understanding -- I'll
20 rephrase.

21 Do you have an understanding of whether
22 Smile Source offers its members the ability to
23 purchase directly from a manufacturer?

24 A. So if a manufacturer is a direct
25 manufacturer, then, yes, they could purchase

1 directly. If it is not a direct manufacturer and
2 they have to purchase through distribution, the
3 Smile Source members would have to pick a
4 distribution partner to purchase that merchandise.

5 Q. Okay. Are you aware of which Smile Source
6 direct manufacturer partners that they have?

7 A. No.

8 Q. Let's go through the Legacy Groups on
9 CX2202-011. For Advantage Care Dental do they offer
10 value-added services, in your opinion?

11 A. Yes. I'm not too familiar with this group,
12 as this was a study -- like study club, study group
13 of sorts that was managed at the local level by the
14 regional manager at the time, so I personally have
15 not been involved in actual the management of this
16 partnership.

17 Q. Okay.

18 A. So a lot of my questions regarding their
19 infrastructure, makeup, how we work with them, I'm
20 not going to be able to give you proper answers.

21 Q. Okay. So --

22 A. I'm just not informed on those processes.

23 Q. So they're with- -- these groups fall within
24 your umbrella, but you don't directly manage them?

25 A. Yes.

1 Q. Do you know who manages Advantage Care
2 Dental?

3 A. It would be the regional manager for that
4 region. That would be Steve Gunson.

5 Q. And does he report to you?

6 A. He does not.

7 Q. Do you have an understanding of whether
8 Advantage Care Dental's relationship with Schein is
9 an exclusive relationship?

10 A. I don't know that.

11 Q. You don't know if it's still sole --
12 sole-sourced? No?

13 A. I don't know.

14 Q. And do you know whether it can drive
15 compliance?

16 A. I don't know.

17 Q. Okay. Is your answer the same for the other
18 legacy groups listed?

19 A. It would be, yes.

20 Q. Do you know who manages the Corydon Palmer
21 relationship?

22 A. Not -- I mean -- no, I don't.

23 Q. But it's managed at the local level?

24 A. Yes, it is.

25 Q. And do you know who manages the Dentists for

1 a Better Huntington relationship?
 2 A. I do not.
 3 Q. And what about Long Island Dental Society?
 4 A. I do not.
 5 Q. And Stark County Dental Society Group?
 6 A. I do not.
 7 Q. So why are they identified as APC partners
 8 if you don't directly manage them?
 9 A. Again, these were legacy groups that we had
 10 been working with, to my knowledge, years before I
 11 came on board with Schein to manage this division,
 12 and they're regional-based groups, meaning they do
 13 not have a national presence, so they are being
 14 managed at that local level. And it was our intent
 15 and best practice not to change up the way that
 16 they've been managed.
 17 Q. Okay. Were you informed of these legacy
 18 groups when you first -- of the existence of the
 19 legacy groups when you first started at Schein?
 20 A. This we discussed earlier this morning.
 21 Yeah, these -- this was -- this group of study clubs
 22 was something that was discussed with me within the
 23 first six months of me on-boarding with Schein.
 24 Q. Okay. And who discussed it with you?
 25 A. Brian Brady.

1 A. He came on board while he was a RAM, which
 2 is a regional account manager under the mid-market
 3 space back in 2017, and he assisted with the Smile
 4 Source partnership when it comes to fostering and
 5 managing the day-to-day needs.
 6 Q. Does he still play that role?
 7 A. No, he does not.
 8 Q. So are you the only one that manages that
 9 relationship now?
 10 A. No, I am not.
 11 Q. Who does besides you?
 12 A. Annika Swenson.
 13 Q. Is it your understanding that Matt Woodend
 14 managed the Smile Source relationship before you
 15 started?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: It was mutually. When we had
 18 the official launch with Smile Source, him and I
 19 worked together. I was more of the back-end
 20 processes, and he was more of the member-facing and
 21 Smile-Source-facing account manager.
 22 BY MS. GOFF:
 23 Q. Okay. And Smile Source launched while you
 24 were at Schein; right?
 25 A. That is correct.

1 Q. And what did he say about that?
 2 A. That "these are groups that we had been
 3 working with and fostering for years back. Now that
 4 we have a dedicated division to work with groups
 5 that are structured similarly, we are going to put
 6 them under your umbrella, but still let them be
 7 managed by who's been managing them."
 8 Q. And so are you aware of whether any of these
 9 groups offer value-added services?
 10 A. I don't know.
 11 Q. Who is Matt Woodend?
 12 A. Matt Woodend, I believe currently he is a
 13 SAM.
 14 Q. What's a SAM?
 15 A. Special -- I don't -- I don't know what the
 16 actual abbreviation is. I think "special accounts
 17 manager" or "select accounts manager."
 18 Q. Is he with the Mid-Market Group?
 19 A. He is.
 20 Q. The reason why I ask is his name is listed
 21 at the last page of this presentation. It's
 22 CX2202-019.
 23 A. Yes.
 24 Q. And I was just wondering why he was listed
 25 here.

1 MS. GOFF: I think we can put that document
 2 aside.
 3 MR. McDONALD: If you're switching
 4 documents, do you want to take a break? We have
 5 been going for a while.
 6 MS. GOFF: Oh, have we?
 7 MR. McDONALD: Yeah.
 8 MS. GOFF: Okay. Sure.
 9 (Off the record.)
 10 BY MS. GOFF:
 11 Q. Miss Wingard, we have been talking today
 12 about various groups that are within the APC
 13 channel, and I would like to know which of those
 14 groups that are within the APC channel you consider
 15 buying groups.
 16 A. Again, I think I stated earlier today all of
 17 them have some sort of a cost savings arm or
 18 buying-group type of arm, so all APCs that we're
 19 working with today in my division have sort of a
 20 buying group arm to them.
 21 Q. So would you consider them all to be buying
 22 groups?
 23 MR. McDONALD: Object to the form.
 24 Mischaracterizes her testimony.
 25 THE WITNESS: That's not what I said. I

1 said every APC group that we were working with today
 2 has some sort of a cost savings program buying group
 3 arm.
 4 BY MS. GOFF:
 5 Q. Okay. So do you consider Breakaway to be a
 6 buying group?
 7 A. So, again, I consider them to fall under my
 8 APC umbrella. They have a buying group arm. I
 9 would not classify or call them a buying group.
 10 Q. Okay. What about Klear Impakt?
 11 A. They have a cost savings program, a buying
 12 group arm.
 13 Q. Do they have any other arms?
 14 A. Yeah. They have the educational component.
 15 They also offer other value-added services to their
 16 members.
 17 Q. Would you call them a buying group?
 18 A. They have a buying group structure to them.
 19 Q. So you are the head of the APC; right?
 20 A. Yes.
 21 Q. So as part of your duties, is it necessary
 22 for you to have an understanding of what the term
 23 "buying group" means?
 24 A. So, again, "buying group," again, to whoever
 25 you are talking to will have a different definition.

1 form to their structure, but I wanted to know just
 2 more specifically: Do you consider them a buying
 3 group?
 4 MR. McDONALD: Object to the form.
 5 Are you asking are they only a buying group?
 6 BY MS. GOFF:
 7 Q. Do you understand my question?
 8 A. No.
 9 MR. McDONALD: Object to the form.
 10 BY MS. GOFF:
 11 Q. I asked you: Is Smile Source a buying
 12 group?
 13 A. That is --
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: That is --
 16 MR. McDONALD: Asked and answered.
 17 THE WITNESS: That is -- they have a buying
 18 group component. It is not all that they are.
 19 BY MS. GOFF:
 20 Q. Are you able to answer my question "yes" or
 21 "no"?
 22 MR. McDONALD: Object to the form. She just
 23 answered your question.
 24 BY MS. GOFF:
 25 Q. So Smile Source has a buying group

1 Q. I'm asking just you. You're the only one
 2 that's here today, so I'm just asking for you -- for
 3 your understanding, your definition of a buying
 4 group.
 5 A. Yeah. I would say a true definition of a
 6 buying group is a group that comprises private
 7 practices together or brings members together to
 8 get, you know, better discounts on pricing through
 9 group -- through any type of group purchasing power,
 10 compliance, et cetera.
 11 Q. Okay. And so would you consider
 12 Klear Impakt to be a buying group, using that
 13 definition?
 14 A. Yes. It's a part of their structure.
 15 Q. And Smile Source? Would you consider Smile
 16 Source to be a buying group?
 17 A. They have that part to their group
 18 structure.
 19 Q. So would you consider them to be a buying
 20 group?
 21 MR. McDONALD: Object to the form. Asked
 22 and answered.
 23 THE WITNESS: I just answered that.
 24 BY MS. GOFF:
 25 Q. You said that they would have part of that

1 component?
 2 A. Every APC group today that is under my
 3 umbrella that I manage has some sort of buying group
 4 component.
 5 Q. Okay. So -- and we've identified the APCs
 6 that you manage. Are there other groups that you're
 7 aware of at Schein that are buying groups?
 8 MR. McDONALD: Object to the form. Asked
 9 and answered.
 10 THE WITNESS: We work with many different
 11 groups and partnerships that have buying groups
 12 components -- buying group components.
 13 BY MS. GOFF:
 14 Q. Can you name any sitting here today other
 15 than the ones that you manage?
 16 MR. McDONALD: Object to the form. Asked
 17 and answered. She's identified them earlier today.
 18 THE WITNESS: Yeah.
 19 BY MS. GOFF:
 20 Q. Sorry. But you still have to answer my
 21 question.
 22 A. Yes. I've already said --
 23 MR. McDONALD: Well -- hang on.
 24 Object to the form. Asked and answered.
 25 ///

1 BY MS. GOFF:

2 Q. You still need to answer my question.

3 A. I answered all those earlier today.

4 Q. So let's go through and name the buying
5 groups -- the groups of buying group components that
6 you're in charge of. Breakaway, Klear Impakt,
7 Smile Source --

8 A. We no longer work with Breakaway. They're
9 not a -- we're not partnered with them anymore.

10 Q. Okay.

11 A. They terminated our agreement.

12 Q. Okay. So currently today -- well, why don't
13 you name them all for me.

14 A. Klear Impakt, Mastermind Group, Dental
15 Success Network, Teeth Tomorrow, OrthoSynetics and
16 then those legacy study groups.

17 Q. And are you aware of any other groups that
18 you can name, sitting here today, with -- that are
19 buying groups that Schein works with?

20 MR. McDONALD: Object to the form. Asked
21 and answered.

22 THE WITNESS: So I have already answered
23 this earlier today, and it's been asked so many
24 different times. Other groups that are managed
25 under Group Practice or Mid-Market or Special

1 Markets I know have some sort of a buying group
2 component to them. I don't know them all. I cannot
3 list for you all the ones that we currently work
4 with today.

5 I mentioned Council Connections earlier,
6 which is a CHC. I know that's one. But, again, I
7 don't -- I can't list off all the other groups that
8 have buying group components or which would be like
9 a buying group that we are managing outside of my
10 umbrella today.

11 BY MS. GOFF:

12 Q. Can you name any others?

13 MR. McDONALD: Object to the form. Asked
14 and answered.

15 THE WITNESS: No.

16 BY MS. GOFF:

17 Q. Okay. So let's talk about Teeth Tomorrow.
18 What type of a group is Teeth Tomorrow?

19 A. They are -- they would be almost kind of
20 similar to like a franchise model as well to the
21 fact that their value prop is to help these dentists
22 train on same-day dentistry, so it's like -- if
23 you're familiar with ClearChoice, that would be,
24 like, one of their probably -- not their
25 competitors, but the members or the private

1 practices that are aligned with Teeth Tomorrow would
2 be the same type of dentistry as, like, that
3 corporate chain.

4 Q. I'm not familiar with ClearChoice. What
5 type of dentistry is that?

6 A. Same-day dentistry.

7 Q. What does that mean?

8 A. For implants patients come in and can get
9 mouth reconstructive dentistry done in one day.

10 Q. Okay. And so does Teeth -- I am correct
11 that Teeth Tomorrow has a buying group component?

12 A. Yes, they do.

13 Q. And what value-added services do they have?

14 A. Just what I was saying to you. They have an
15 educational arm that teaches best practices on
16 certain clinical needs through full mouth arch
17 restoration, same day dentistry.

18 Q. And can they drive compliance?

19 A. In certain ways, but it evolves every day.
20 But yes.

21 Q. How do they drive compliance?

22 A. By supporting and endorsing our partnership.
23 They, you know, educate and influence their members
24 to purchase within their preferred partnering
25 channel.

1 Q. And how does that drive compliance? How
2 does that drive business to Schein?

3 A. In my opinion, I feel if they're able to
4 trust the leadership of Teeth Tomorrow and the
5 education, the programs that they are extending to
6 their membership, they will also look and lean to
7 Teeth Tomorrow on leadership of where to buy their
8 supplies from and other dental practice needs.

9 Q. Can you describe the buying group component
10 of Teeth Tomorrow. How does it work?

11 A. Can you -- their buying -- can you repeat
12 the question?

13 Q. Sure. So is Teeth Tomorrow a buying group?

14 A. They have a buying group component.

15 Q. Okay. Do they have any other components
16 other than a buying group component?

17 A. I've just answered that three times in the
18 last five minutes.

19 Q. Well, I'm sorry, but you'll have to answer
20 it --

21 A. They have -- they have an education
22 component. That is their -- to my knowledge, that
23 is their main value proposition and value that they
24 offer to their membership, is education and clinical
25 training.

1 Q. Okay. So what is the buying group
2 component? What does the buying group component
3 offer?
4 A. We offer a formulary to their members --
5 Q. So the buying --
6 A. -- on discounts on consumables and supplies.
7 Q. Okay. And do you know how many members
8 Teeth Tomorrow has?
9 A. Respectively, I would say around 45 to 50.
10 I don't know what their current count is right now.
11 Q. Did you recommend that Henry Schein work
12 with Teeth Tomorrow?
13 A. I directly did not launch that partnership.
14 Q. Who did?
15 A. Matt Woodend.
16 Q. And why, then, is it under your umbrella?
17 A. Because, again, it had a buying group
18 component.
19 Q. Okay. Do you -- are you happy with the
20 relationship?
21 A. I have not been solely responsible for
22 driving a lot of the partnership. It's one that
23 Annika Swenson now is starting to manage more of.
24 So, yeah, there's definitely room to grow.
25 Q. Do they bring in incremental sales?

1 component, yes.
2 BY MS. GOFF:
3 Q. And do they offer value-added services?
4 A. Yes. Their main value proposition is their
5 consulting and analytics that they offer their
6 membership.
7 Q. Okay. And do they drive compliance?
8 A. Yes, they do.
9 Q. How do they drive compliance?
10 A. Through the consulting and analytics that
11 they offer. They are able to dive in. They look at
12 the practice numbers. They look at inventory.
13 There's a lot of things through the analytics that
14 they look through. They say, "We're working with
15 Schein to help with overhead. You should buy within
16 formulary" --
17 Q. Okay.
18 A. -- "and the negotiated prices that we have
19 negotiated onto your behalf."
20 Q. And are you responsible for the Mastermind
21 Group?
22 A. Yes, I am.
23 Q. Did you bring that group into the APC?
24 A. Yes, I did.
25 Q. And why did you decide to work with

1 A. Yes, they do.
2 Q. And how do you know that?
3 A. Because we run a monthly report. We call it
4 an "APC snapshot report," that's ran every month
5 with every group that is under the APC umbrella, and
6 it shows their year-to-date sales, their previous
7 year sales, their member count and the variants on
8 merchandise as well as equipment technology.
9 Q. And what about the Elite Practice Mastermind
10 Group? What are they?
11 A. The Mastermind Group?
12 Q. Yeah.
13 A. They are -- I would call them a consulting
14 group.
15 Q. What's a consulting group?
16 A. They are -- the Mastermind Group offers
17 heavy consulting and analytics for practice growth
18 needs.
19 Q. Are they like a study club?
20 A. I would say they're like -- I don't know. I
21 would say they are more like a consulting group.
22 Q. Are they a buying group?
23 MR. McDONALD: Object to the form.
24 Go ahead.
25 THE WITNESS: They have a buying group

1 that group?
2 A. Because of their heavy education and
3 consulting.
4 Q. Why was that important to you?
5 A. It was very important because their vision
6 was aligned directly with ours of helping these
7 independent practices thrive and grow their
8 businesses.
9 Q. Do you have an understanding of how many
10 members they have?
11 A. Yes. They have 85.
12 Q. Okay. Do you have an understanding of
13 whether they brought incremental sales?
14 A. Yes, they have.
15 Q. The Smile Source relationship has -- have
16 they brought incremental sales to Henry Schein?
17 A. Yes, they have.
18 Q. Would you consider it to be a profitable
19 relationship for Henry Schein?
20 A. Yes, I would.
21 Q. What about Klear Impakt? Have they brought
22 incremental sales?
23 A. Yes, they have.
24 Q. And would you consider it to be a profitable
25 relationship?

1 A. Yes.

2 Q. Would you consider the legacy study clubs to
3 be profitable, or do you have knowledge of that?

4 A. I have not been looking at those numbers, so
5 I can't tell you if we've grown incremental business
6 on the legacy study club groups or not.

7 Q. Are they included in the reports that you
8 get?

9 A. Yes, they are.

10 Q. Okay. But how come you haven't been looking
11 at the numbers?

12 A. I just -- right now I can't tell you what --
13 the last report I had and what their growth was.

14 Q. Okay. Do FSCs get commissions on APC
15 accounts?

16 A. They do.

17 Q. And how do the commissions work?

18 A. To my knowledge, our field sales team are on
19 a commission structure. There's different tiered
20 commissions based upon the -- the GP, the margin,
21 gross margin of their sales, overall sales.

22 Q. Okay. So the FSC earns commission on the
23 margin?

24 A. So this is outside of my field. I don't
25 manage our sales team. I don't really understand

1 the way their commission works. I do know that
2 there's multiple tiers of commission structure, and
3 the higher their GP of their sales, the top or the
4 more commission that they get.

5 Q. Okay. And "GP" means --

6 MR. McDONALD: Hang on. Hang on.

7 Only tell her what --

8 BY MS. GOFF:

9 Q. -- "gross profit"?

10 MR. McDONALD: Hang on. I'm talking to my
11 witness. Okay?

12 Only tell her what you know. Don't guess.

13 There are many people being deposed that know about
14 this, so do not guess. But if you know, tell her.

15 THE WITNESS: Yeah. Again, I'm not
16 knowledgeable in the space. It's not my wheelhouse.
17 But I do know that there are multi-tiered commission
18 levels for FSCs.

19 BY MS. GOFF:

20 Q. And it's your understanding that it's based
21 on GP?

22 A. It's based on margin. The higher their
23 margins are, that's their top commission tier.

24 Q. Okay. And "GP" -- I just want to make sure
25 for the record -- is "gross profit"?

1 A. I don't know.

2 Q. Oh, okay. It is not a term that you use
3 regularly, I take it?

4 A. No.

5 Q. But it's a term that is used within Henry
6 Schein Dental?

7 MR. McDONALD: Object to the form.

8 BY MS. GOFF:

9 Q. "GP"?

10 A. Yes.

11 Q. Do you have an understanding of who might
12 know the definition of that term?

13 A. Anyone in sales leadership.

14 MS. GOFF: Okay. I'm handing you what has
15 been previously been marked as Exhibit 2168.

16 (Exhibit CX2168 introduced on the record.)

17 BY MS. GOFF:

18 Q. It is an email chain. The Bates stamp is
19 Henry Schein 00037220. It's dated -- the latest in
20 time is dated June 9th, 2016. The latest in time is
21 from you to Nick Barenz and Brian Brady. There are
22 several emails in the chain, and I'm actually going
23 to be asking you about the first email in the chain,
24 which is dated June 8th.

25 Have you had a chance to review this

1 document?

2 A. I have.

3 Q. Okay. So is this -- directing your
4 attention to the June 8th, 2016 email that's at
5 4:29 p.m., is this an email that you wrote?

6 A. That's what it looks like.

7 Q. Any reason to dispute that you wrote it?

8 A. Nope.

9 Q. And you drafted this email as part of your
10 job?

11 A. It seems to be so.

12 Q. And this was shortly after you started at
13 Schein; correct?

14 A. Yes.

15 Q. And so you're asking Nick Barenz to provide
16 you with the member count for active buying groups
17 and CHC buying groups; is that right?

18 A. Yep. That's what it looks like.

19 Q. And this was for -- you're compiling this
20 information for presentation slides for the managers
21 meeting at the NSM?

22 A. That's what the email states.

23 Q. And the NSM, is that the national sales
24 meeting?

25 A. Yes.

1 Q. And so you write that you were listing the
2 known active buying groups and the CHC buying
3 groups; correct?

4 A. That's what it seems.

5 Q. And the buying groups that you listed were
6 Klear Impakt and Breakaway?

7 A. Yes.

8 Q. Okay. And then the other groups that are
9 listed here, are they all CHC buying groups?

10 A. I can't answer that properly. I don't know.
11 I would say some are, but I don't know. That's not
12 my wheelhouse.

13 Q. Okay. But you -- when you drafted this
14 email, it was your understanding that the other
15 groups were CHC BGs?

16 A. From what I can remember, there was this
17 on-boarding snapshot which we just talked about that
18 I get monthly. This ongoing snapshot was being ran
19 prior to me coming to Henry Schein, so the members
20 that I listed here was from that actual on-boarding
21 snapshot at that time.

22 Q. Okay. So this on-boarding snapshot, have
23 you received -- is this a report that you receive?

24 A. We pull it monthly.

25 Q. And has that occurred since you started

1 at Schein?

2 A. Every month.

3 Q. And who pulls it?

4 A. It's pulled by whoever our main analyst is
5 at the time in our Special Markets division in
6 New York.

7 Q. Okay. And is it distributed to other
8 individuals other than just you?

9 A. Yes. It's distributed to Annika Swenson and
10 Brian Brady.

11 Q. Okay. And what types of groups are included
12 in the on-boarding snapshot?

13 A. It's the groups that are managed under the
14 APC division.

15 Q. So are CHCs included on the on-boarding
16 snapshot?

17 A. Not anymore.

18 Q. Okay. But at the time you wrote this email,
19 they were?

20 A. At that time, yes, they were.

21 Q. And at any point since you started at Henry
22 Schein, were you responsible for managing CHCs?

23 A. No, I was not.

24 Q. Okay. So at what point were they taken off
25 the on-boarding report?

1 A. I don't recall the exact time. Probably
2 within the first six months of me on-boarding.

3 Q. Okay. Because you aren't responsible for
4 them, so why would they be on the report. Correct?

5 A. Correct.

6 Q. When -- at what time of the month is the
7 report pulled?

8 A. Usually anywhere from two weeks post the
9 previous month, so the close of the month, usually
10 two weeks into the new month.

11 Q. And so you think that you pulled the
12 information for this email from the May --
13 May 2016's on-boarding snapshot report?

14 A. As I already answered, to the best of my
15 knowledge, that's where I would have gotten this
16 list, because I wouldn't have known otherwise. I
17 wouldn't have just made up this list.

18 MS. GOFF: Okay. You can put that one
19 aside.

20 Okay. I'm handing you another document that
21 was marked as CX2189.

22 (Exhibit CX2189 introduced on the record.)

23 BY MS. GOFF:

24 Q. Have you had a chance to review the
25 document?

1 A. I'm just wrapping up. Another minute,
2 please.

3 Q. Okay.

4 A. I'm finished.

5 Q. Okay. Thank you.

6 So this is an email chain. The latest in
7 time is from you to Michael Herrin and
8 Randall McLemore dated May 10th, 2017, and it's
9 Bates-stamped Henry Schein-001666376.

10 Is this an email that you wrote?

11 A. That's what it looks like.

12 Q. Any reason to dispute that you wrote it?

13 A. Nope.

14 Q. And did you write it in the course of your
15 duties at Henry Schein?

16 A. Yes.

17 Q. And who's Michael Herrin?

18 A. Michael Herrin is a regional manager in the
19 state of Texas.

20 Q. Okay. And so he was asking you about a
21 group called Synergy; is that right?

22 A. Synergy Dental Partners.

23 Q. Okay. And we discussed Synergy today
24 already; correct?

25 A. Yes, we have.

1 Q. So you wrote about Synergy, "This is a TRUE
 2 buying group," and "true" is in all caps, "focused
 3 strictly on discounts and driving buying power."
 4 Do you see that?
 5 A. I do.
 6 Q. And so it was your understanding, as I think
 7 you testified earlier, that Synergy was a price-only
 8 buying group?
 9 A. Correct.
 10 Q. And so why -- and so you did not want to
 11 work with Synergy Dental; correct?
 12 A. So, I mean, can you rephrase that question?
 13 Q. Sure. So you wrote in the next sentence:
 14 "From my initial conversations with their
 15 leadership there was not too much value
 16 they provide aside of aggressive price
 17 cuts and discounts. This is NOT a group
 18 I feel I would make a positive alliance
 19 with." [As read.]
 20 So am I correct in understanding that you
 21 did not want to work with Synergy Dental?
 22 A. From my initial discovery of the group, that
 23 is correct.
 24 Q. At any point did that change?
 25 A. It hasn't yet.

1 Q. Okay. And the reason why you didn't want to
 2 work with them was because they were a true buying
 3 group?
 4 MR. McDONALD: Object to the form.
 5 Misstates her prior testimony.
 6 THE WITNESS: Yeah. I mean, as I testified
 7 earlier, groups that are -- you know, their only
 8 value to their membership is the aggressive
 9 discounts that cannot drive compliance, it's not,
 10 you know, a proper group that I think would be worth
 11 good business or someone that we would want to
 12 partner or align with.
 13 BY MS. GOFF:
 14 Q. So is it possible that such a group might
 15 have members that are not already purchasing from
 16 Schein?
 17 A. We already discussed this earlier. Yeah,
 18 that's a true statement.
 19 Q. And so isn't it true that Schein could
 20 potentially get incremental sales from a price-only
 21 buying group?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: As also we've discussed
 24 multiple times is -- yeah.
 25 ///

1 BY MS. GOFF:
 2 Q. So why wouldn't that be a positive
 3 relationship for Henry Schein?
 4 MR. McDONALD: Object to the form.
 5 BY MS. GOFF:
 6 Q. I'm just trying to understand.
 7 MR. McDONALD: Object to the form. Asked
 8 and answered. Tell her again for maybe the third or
 9 fourth time.
 10 THE WITNESS: I've already discussed
 11 multiple times when you have a group that cannot
 12 drive compliance there is no way that we would feel
 13 that we would be able to get any type of incremental
 14 business from their influence at that level due to
 15 them -- the way their membership is structured or
 16 their partnership is structured.
 17 BY MS. GOFF:
 18 Q. And how did you -- so focusing on synergy
 19 specifically, how did you assess that they were not
 20 able to drive compliance?
 21 MR. McDONALD: Object to the form. Asked
 22 and answered.
 23 THE WITNESS: As mentioned earlier today, I
 24 have had multiple calls with their leadership team,
 25 and verbatim told me they do not have influence over

1 the membership. They told me that, which I said
 2 earlier in our discussions.
 3 BY MS. GOFF:
 4 Q. Okay. Is it the case that as a general rule
 5 you don't want to work with what you would consider
 6 true buying groups?
 7 MR. McDONALD: Object to the form.
 8 MR. KASS: Mischaracterizes testimony.
 9 THE WITNESS: So as mentioned many times
 10 today, in my opinion, I don't think it is good
 11 business to align with a group that is only -- that
 12 only offers their members aggressive discounts with
 13 no other value-added services that also cannot drive
 14 compliance or influence.
 15 BY MS. GOFF:
 16 Q. Did you ever meet -- you can put that one
 17 aside.
 18 Did you ever speak with Georgia Dental
 19 Association?
 20 A. Yes.
 21 Q. When was that?
 22 A. I cannot recall the actual date. If I had
 23 to say a timeframe, I would say anywhere from
 24 June 2016 to spring of 2017.
 25 Q. And who did you speak with at Georgia

1 Dental?

2 A. An individual named Frank.

3 Q. Do you recall his last name?

4 A. I do not.

5 Q. Was it Capaldo?

6 A. That sounds correct.

7 Q. And did you -- and was that conversation
8 regarding Schein potentially working with GDA?

9 A. We had a discovery, exploratory discussion
10 so I could better understand what he was trying to
11 put together.

12 Q. And what was the result of that discussion?

13 A. We just -- we -- I think we had a couple
14 discussions and never formalized anything.

15 Q. Why not?

16 MR. McDONALD: Object to the form.

17 THE WITNESS: Again, the best that I can
18 recall -- that was close to two years ago -- I just
19 didn't think that they had a model that would make
20 proper sense for us from the conversations that we
21 did have. I also felt that it was very unorganized
22 and there was nothing that they were going to be
23 able to do to really drive compliance with the
24 direction they were going.

25 ///

1 BY MS. GOFF:

2 Q. And so what specifically did Mr. Capaldo
3 tell you that gave you the impression that they
4 could not drive compliance?

5 A. That they were going to be working with
6 multiple manufacturer partners or distribution
7 partners.

8 Q. Okay. So it would not be an exclusive
9 relationship?

10 A. From what I recall, that was my
11 understanding.

12 Q. Okay. And so because it was not an
13 exclusive relationship, you felt that they could not
14 drive compliance?

15 A. I just think --

16 MR. McDONALD: Object to the form.

17 THE WITNESS: In my opinion, I just think
18 that's very challenging. It completely muddies --
19 muddies the message of driving any type of
20 compliance through members. I don't know how you
21 can have half of your members going through one
22 distribution partner and half going through another.

23 BY MS. GOFF:

24 Q. And did Mr. Capaldo tell you anything else
25 about GDA that gave you the impression that they

1 could not drive compliance?

2 A. Again, this conversation happened two years
3 ago. I do not recall the details of that
4 conversation. I just know that after our
5 discussions I did not feel that this was a
6 partnership that made great business sense to me.

7 Q. And did you document anywhere why you felt
8 that it was not a good business partnership for you?

9 A. To what I can recall, I don't think I
10 actually wrote anything that said, "I don't want to
11 do business with this individual," or, "I don't see
12 it viable." Again, that's the best I can recall.
13 This was two years ago. I'm sure I wrote down notes
14 on something, but I don't know if it specifically
15 outlined why.

16 Q. Do you know whether you have those notes
17 today?

18 A. I would assume I have them in one of my
19 notebooks.

20 Q. Is it your practice to maintain those notes?

21 A. When I have calls, exploratory calls with
22 people, I will always jot down notes.

23 Q. And you maintain them?

24 A. For the most part, yes.

25 MS. GOFF: I am going to hand you an exhibit

1 that was marked as CX2179.

2 (Exhibit CX2179 introduced on the record.)

3 BY MS. GOFF:

4 Q. Have you had a chance to review this
5 document?

6 A. I'm just wrapping up. I'm finished.

7 Q. Okay. So this is a document with the Bates
8 stamp Henry Schein-001670472. The latest email in
9 time is from you to Ted Dreifuss, and it's dated
10 July 29th, 2016, and the subject is "Mari's List
11 Buying Group." Do you see that?

12 A. I do.

13 Q. Did you write this email?

14 A. I did.

15 Q. And did you write it in the course of your
16 duties at Henry Schein?

17 A. I did.

18 Q. Who is Ted Dreifuss?

19 A. I believe he is -- I don't know his exact
20 title, but I believe he's high-up top leadership,
21 corporate, some level VP or above, of Henry Schein
22 Ortho.

23 Q. Okay. And so in the earlier emails in the
24 chain, it looks like Joe Cavaretta asked you to look
25 into Mari's List; is that right?

1 A. That's what it looks like.
 2 Q. And at this point, July 2016, was
 3 Mr. Cavaretta your boss?
 4 A. No, not yet.
 5 Q. Okay. Did you take direction from Joe at
 6 this point?
 7 A. I did not.
 8 Q. But he asked you to look into it, and you
 9 did?
 10 A. Yeah.
 11 Q. And you wrote in your email to Joe,
 12 "Interesting BG." That stands for "buying group"?
 13 A. Yes, it does.
 14 Q. Okay. So is Mari's List a buying group?
 15 A. Yeah. I had just started, so, yes, that's
 16 what I was referring to them. As you can tell, I
 17 did not do much research. I just pulled stuff off
 18 online. So in this email I was referring to them as
 19 just a buying group.
 20 Q. Do you know, sitting here today, anything
 21 more about Mari's List?
 22 A. Mari and I have had a couple of calls to
 23 better understand her model and to see if this was a
 24 potential partner we were interested in playing
 25 with.

1 there any kind of informal partnership with Mari's
 2 List?
 3 A. We had a relationship, and as you state, it
 4 wasn't formal. She reached out to us to see if we
 5 would be interested in offering her members a
 6 discount on an M11, which is, like, a sterilizer
 7 unit, for her members. She said that she had some
 8 that were really interested in it if we could get an
 9 aggressive price, if we would be interested if she
 10 could get enough members to make a purchase.
 11 Q. And did you end up offering a discount on
 12 that particular product?
 13 A. I worked with Scott Graversen and
 14 Rob Hulick, who manage our equipment.
 15 Scott Graversen, again, Special Markets; Rob Hulick
 16 was on the private practice side for equipment.
 17 And, yeah, I worked with them to get this program
 18 launched.
 19 Q. And so why did it make sense from a business
 20 standpoint for you to offer a discount on the M11 to
 21 Mari's List members?
 22 A. Mari told us that she would be able to get
 23 many members, probably over 20, to purchase this
 24 unit sterilizer M11 if we were able to get it down
 25 to an appropriate price. And we figured let's try

1 Q. And what was the result of those calls?
 2 A. Confirmed a lot of what's on here. They are
 3 heavily focused on the ortho specialist, and she
 4 works with a handful of manufacturing partners as
 5 well as other distribution partners. And, again,
 6 it's -- her, I think, main claim to fame -- she
 7 offers some other type of services, but -- is the
 8 low-cost, aggressive discounts that these vendors
 9 would be able to provide to her membership.
 10 Q. So was Mari's List a group that you wanted
 11 to work with?
 12 A. After vetting them out, it sounded like she
 13 had a -- kind of an already full breadth of
 14 manufacturer partners and distributor partners that
 15 they were already aligned with, and I didn't see
 16 value or business sense of formalizing any type of a
 17 partnership with her members or her group.
 18 Q. Okay. And so did you recommend that Schein
 19 not do business with Mari's List?
 20 A. Yeah. I talked to our upper leadership and
 21 told them that I just don't feel that this is a
 22 group that makes much business sense.
 23 Q. You mentioned that you didn't think it made
 24 sense, business sense, to formalize any type of
 25 partnership with the members of that group. Is

1 it. Let's see if it works and if it makes business
 2 sense.
 3 Q. And did it work?
 4 A. She was not able to bring us as much
 5 business as she told us she probably would. I do
 6 not recall how many units were actually sold through
 7 that small-lived promotion that we did for her or
 8 her members.
 9 I do know from talking with Rob Hulick and
 10 Scott Graversen -- we debriefed after this promotion
 11 was over -- that it did take a lot of hard work and
 12 heavy lifting internally to execute on it, and we
 13 just didn't feel that it was worth the heavy lifting
 14 for the outcome.
 15 Q. And have you done any similar type of
 16 informal discounting for buying group organizations?
 17 A. Not to my knowledge.
 18 Q. Okay. And did the program end?
 19 A. Yes. It was for a limited time. Again, I
 20 don't recall how long that was. I remember that we
 21 did put this promotion -- this one-time promotion
 22 centered around the AAO meeting, which is the large
 23 annual orthodontic meeting, so it was going to be
 24 also a show special that she could pitch it to her
 25 members at the ortho meeting. But it was a limited

1 time, and I don't remember how long it was for.

2 Q. So at the time that you negotiated with
3 Mari, you set up a time limit for -- like, the
4 discount expired at some point?

5 A. Correct.

6 Q. Okay. Turning to your -- the latest-in-time
7 email at the top, you forwarded, it looks like, your
8 email from -- to Joe Cavaretta to Ted Dreifuss; is
9 that right?

10 A. That's what it looks like, yes.

11 Q. And you asked him whether he had heard of
12 Mari's List, and you said, "I was told about this BG
13 from FSCs in Nevada. Apparently they lost a pretty
14 good-size account due to them joining Mari's List."

15 Do you see that?

16 A. I do.

17 Q. Have you -- so is it your understanding that
18 Schein lost a customer due to them joining Mari's
19 List?

20 A. From -- from just the contents of this email
21 and what was told to me by the FSC and the regional
22 manager on here, that's what it seems.

23 Q. Okay. And Mari's List, you wrote in the
24 next sentence, was "partnered with Darby and Benco";
25 is that right?

1 A. No, we did not.

2 Q. Do you know who are Schein's competitors for
3 buying group relationships?

4 MR. McDONALD: Object to the form. Vague as
5 to time.

6 THE WITNESS: Can you repeat that.

7 BY MS. GOFF:

8 Q. Sure. In your current job do you compete
9 with other entities for buying group relationships?

10 A. Let me rephrase. Are you asking: Today
11 does Henry Schein compete against buying groups that
12 we are not aligned with?

13 Q. No. I'm asking: Are there other companies
14 that pitch these buying groups, that they want to
15 work with these buying groups as well in addition to
16 Schein, and you and these other groups are competing
17 to win the buying group business?

18 A. To the best of my knowledge, yes, on certain
19 cases.

20 Q. And can you name some of those competitors?

21 A. Of who would be up for the same --

22 Q. Buying group business.

23 A. -- buying group business?

24 From my knowledge and the experience within
25 this APC division, for most groups that I am

1 A. That's what it says.

2 Q. And is it your understanding that that's
3 accurate?

4 A. To the best of my knowledge, that is -- to
5 the best of my knowledge, that is what I believe to
6 still be true.

7 Q. Okay. And so Schein lost business due to a
8 customer going to Mari's List, which was supplied by
9 a competitor?

10 A. That's, again, I guess, what it looks like.

11 Q. Any reason to dispute that?

12 A. Nope.

13 Q. And did Schein want to compete for that lost
14 business?

15 A. That's -- I mean, that's a very broad
16 statement. Yes, anytime we lose business, I think
17 we will always do whatever we can to compete to try
18 to get that business back.

19 Q. Okay. What did Schein do to try to get the
20 business that it lost in Nevada back?

21 A. In this instance?

22 Q. Yeah.

23 A. I don't know.

24 Q. Okay. But Schein then never partnered with
25 Mari's List in a formalized way, as you said before?

1 speaking with, usually it is Darby. They usually
2 are already working with that group or they're
3 competing against us to win that group's
4 endorsement.

5 Q. Okay. What about Benco?

6 A. I've heard their name a few times as well.

7 Q. And Patterson?

8 A. I have heard their name a few times as well,
9 but I will say I've not heard their name come up as
10 much as a Darby or Benco or a Burkhardt.

11 Q. Okay. Do you have an understanding of
12 whether Patterson partners with buying groups?

13 MR. McDONALD: Object to the form. Lack of
14 foundation.

15 THE WITNESS: Yeah, I wouldn't -- I wouldn't
16 know that.

17 BY MS. GOFF:

18 Q. You don't have any understanding?

19 A. I don't.

20 Q. Okay. And do you have an understanding of
21 whether Benco partners with buying groups?

22 MR. McDONALD: Object to the form. Lack of
23 foundation.

24 THE WITNESS: Again, I don't know. From,
25 you know, group-to-group research when I'm looking

1 into these, sometimes their name is there. Like in
2 this exhibit right here, it shows that Mari's
3 aligned with Benco and Darby, so Benco obviously
4 plays with Mari's List.

5 BY MS. GOFF:

6 Q. Got you.

7 And is it important for you to have an
8 understanding of what your competitors are doing
9 with regard to buying groups to do your job?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: No.

12 BY MS. GOFF:

13 Q. Why not?

14 A. Because a lot of our competitors are not
15 offering what we offer. Again, we are a
16 full-service, national-footprinted distribution
17 partner. So, to me, it doesn't really bother or I
18 don't need any understanding of how these groups are
19 working with some of these other -- or how some of
20 these distribution companies are working with these
21 groups today.

22 Q. Do you ever go up against manufacturers to
23 earn buying group relationships?

24 A. In my experience in this role, I have yet to
25 go head-to-head with any type of direct

1 manufacturer.

2 Q. Would you potentially want to go after
3 buying group business that one of your competitors
4 has won?

5 MR. McDONALD: Object to the form.

6 THE WITNESS: That's a broad statement. I
7 don't think that would be my target audience. If
8 they're already aligned with a distribution partner,
9 that's probably not the first groups that I would go
10 after to see if we could work on a relationship. I
11 would go off what I would call low-hanging fruit and
12 try to align with a group that is currently not
13 working with any distribution partner at that time.

14 BY MS. GOFF:

15 Q. And why wouldn't you want to go after one
16 that was already working with a distribution
17 partner?

18 A. I didn't say I wouldn't. That's just not my
19 target audience. That probably wouldn't be the
20 first group that I would go after.

21 Q. It's not your priority?

22 A. Correct.

23 Q. Why not?

24 MR. McDONALD: Object to the form.

25 THE WITNESS: As I just said, they're

1 already aligned and have an established relationship
2 with our competitor.

3 BY MS. GOFF:

4 Q. So -- but isn't it possible that Schein
5 could win incremental business by, you know, taking
6 a buying group business from your competitor and
7 bringing it over to Schein?

8 A. Yeah. Absolutely. Again, it's just I would
9 rather go after a group that is not aligned or does
10 not have an actual signed contract with another
11 distribution company.

12 Q. Is that just because you think it would be
13 an easier win, an easier group to get onboard at
14 Schein?

15 A. Yeah. I would say that's probably accurate.
16 I think it's much easier to get a group to drive
17 compliance and increase incremental business with a
18 group of doctors that are not currently aligned or
19 partnered or endorsed by any other type of APC or
20 buying group rather than align with a buying group
21 that was already working with one of our competitors
22 and then having to get them to switch from working
23 with that distribution partner that they have
24 endorsed for so long and say, "Never mind. We were
25 kidding. Schein's a better company. Now I'll go

1 work with Schein." I'm not saying it wouldn't
2 happen and we -- it wouldn't make profitable
3 business sense. That's just not the direction that
4 I would go at this point in time.

5 Q. And has anyone given you direction on that,
6 or is that just your personal opinion?

7 A. That's my personal opinion.

8 Q. Okay. Do you have an understanding of
9 whether competition for buying group business is the
10 same as competition for private practice dental
11 business?

12 MR. McDONALD: Object to the form. Lack of
13 foundation.

14 THE WITNESS: Can you be a little bit more
15 specific with your question, please.

16 BY MS. GOFF:

17 Q. Yeah. In private -- do you have an
18 understanding of who Schein's competitors are for
19 private practice dentist business?

20 MR. McDONALD: Object to the form. Lack of
21 foundation.

22 THE WITNESS: So, I mean, again, I would
23 call -- any private practice customer that we're not
24 getting 80 percent or more of their business, I
25 would call it they're working probably with one of

1 our competitors, and every day we will work at the
2 local level with our field sales team to try to win
3 a majority of their business.

4 BY MS. GOFF:

5 Q. So Schein always wants to win the majority
6 of business from any customer?

7 A. Always.

8 Q. Whether that's an individual dentist or a
9 buying group?

10 A. Correct.

11 MS. GOFF: Okay. I have another document to
12 show you. It's been marked as CX2172.

13 (Exhibit CX2172 introduced on the record.)

14 MR. McDONALD: Okay.

15 Karen, this is a really long email. She's
16 already talked about this M11 situation. Do you
17 want to direct her to something to speed this along?

18 MS. GOFF: Oh, yes. Sure. Thank you for
19 pointing that out. Sure.

20 BY MS. GOFF:

21 Q. The email that I'm going to be referring you
22 to is CX2172-002 to 003. It's an August 24th, 2016
23 email, and it starts "Hi, Scott and Team." It's
24 from you. And, for the record, the beginning Bates
25 number of this document is Henry Schein-000162811.

1 Have you had a chance to review?

2 A. Yes.

3 Q. So this is an email chain, again, referring
4 to about Mari's List; correct?

5 A. Yes.

6 Q. And so in this August 24th, 2016 email at
7 12:01 p.m., you are writing to Scott and team, and I
8 think you're responding to an email from
9 Scott Graversen. Does that look correct to you?

10 A. I don't know which -- I can't find the
11 12:01. I thought you told us to look at 002 and
12 003.

13 Q. Yeah, I did.

14 A. And I'm not seeing the proper --

15 Q. It's at the very bottom of 002.

16 A. Oh, there it is. Sorry. I didn't see that.
17 Yes.

18 Q. Okay. So I think you're responding to
19 Scott Graversen. Does that look right to you?

20 A. Correct.

21 Q. And you wrote that "We have an opportunity
22 to win some equipment business with this buying
23 group." And I believe you're referring to Mari's
24 List; is that right?

25 A. From reading this email just now, that's

1 what it appears to be.

2 Q. Okay. And you say:

3 "And at the very least win referral
4 business from Mari's List members which
5 Benco can't fulfill when it comes to region
6 support, or equipment needs."

7 And you go on to say:

8 "At this point it is still too soon to
9 know if this would be a positive
10 relationship for us to align with.

11 Definitely don't want to cannibalize
12 existing business."

13 Do you see that?

14 A. I do.

15 Q. So is it -- you're expressing in this email
16 that you did not want to cannibalize existing
17 business by partnering with Mari's List?

18 A. I don't know what I was meaning in this
19 email when it was written. All I can tell you is we
20 were still going through a vetting process and
21 discovery, so I don't...

22 Q. So talking about the not wanting to
23 cannibalize existing business in this email, you
24 don't have an understanding of what you meant when
25 you wrote that?

1 A. I would assume at that time what I was
2 meaning is I was aware of some business that Mari's
3 List already had that was our business, and we
4 didn't want to lower discounts on the business we
5 were already getting.

6 Q. Okay. And that assumption is based on your
7 understanding of what you wrote in this email,
8 sitting here today?

9 A. Correct.

10 Q. It's your understanding of the term
11 "cannibalize" in this email is that you didn't want
12 to offer lower discounts to business you were
13 already getting?

14 A. That seems to be the case in this email,
15 yes.

16 Q. Okay. And meaning that Schein's profit
17 margins would decline on that existing business?

18 A. If we lower pricing on products that we were
19 already getting, yes, that's what would probably
20 happen.

21 Q. Okay. You can put that one aside.

22 Do you know of an internal code "BG"? I
23 think it's a field within the Henry Schein Dental
24 system.

25 A. Yeah, I'm very aware of it.

1 Q. Were you involved in the creation of that
 2 code?
 3 A. That's a very broad question.
 4 Q. Let me -- then let me ask a different
 5 question. Do you know when that particular code was
 6 first -- started being used at Henry Schein?
 7 A. I do not.
 8 Q. Was it before your arrival?
 9 A. Unknown. I don't know.
 10 Q. So you don't know whether the BG code was
 11 used before you started at Schein?
 12 A. I do not know. I am not confident.
 13 Q. Okay.
 14 A. I can say with confidence that BG code has
 15 been heavily used since this division started, but I
 16 do not know for sure if that BG code was used before
 17 or after my -- I came on with Schein. I don't -- I
 18 do not know.
 19 Q. Do you know who would know the answer to
 20 that question?
 21 A. Brian Brady.
 22 Q. Going back to Klear Impakt, that
 23 relationship started before your arrival at Schein;
 24 correct?
 25 A. That is correct.

1 whose decision it was?
 2 A. I don't know everyone that was involved. I
 3 am confident that this relationship was managed by
 4 Kathleen Titus.
 5 Q. Okay. And do you have any understanding of
 6 when Schein started doing business with Klear
 7 Impakt?
 8 A. I believe I answered that earlier today. I
 9 don't know the exact dates, but I do believe it was
 10 close to the time that I was on-boarding. But
 11 I'm -- again, I'm not certain of the actual
 12 timeframe.
 13 Q. Okay. Were you involved in negotiating a
 14 PVA with Klear Impakt?
 15 A. I was not.
 16 Q. Who -- who was involved?
 17 MR. McDONALD: Object to form.
 18 BY MS. GOFF:
 19 Q. Was that Kathleen Titus as well?
 20 A. Again --
 21 MR. McDONALD: Hang on.
 22 Object to the form. Lack of foundation.
 23 THE WITNESS: Again, this was before my
 24 time. I am not aware of the specifics and what was
 25 discussed in those initial partnership discussions.

1 Q. And do you have any understanding of why
 2 Schein started doing business with Klear Impakt?
 3 A. I was not --
 4 MR. McDONALD: Hang on.
 5 Object to form. Lack of foundation.
 6 Go ahead.
 7 THE WITNESS: I was not involved in any of
 8 those discussions or partnership discussions,
 9 discovery, so I do not know the foundational
 10 elements of what was discussed by the people that
 11 put that agreement together of what their exact
 12 reasons were for aligning with Klear Impakt.
 13 BY MS. GOFF:
 14 Q. Okay. And so do you have any understanding
 15 of what any of the reasons were why Schein aligned
 16 with Klear Impakt?
 17 MR. McDONALD: Object to the form. Lack of
 18 foundation.
 19 THE WITNESS: I just answered that.
 20 BY MS. GOFF:
 21 Q. Well, you said you don't know what the exact
 22 reasons were, so I wanted to just make sure that you
 23 just didn't -- you don't know any reasons.
 24 A. I don't know the reasons why.
 25 Q. Okay. And do you have any understanding of

1 Kathleen Titus was the account manager or the
 2 individual managing and fostering the Klear Impakt
 3 relationship.
 4 BY MS. GOFF:
 5 Q. Okay. Earlier we talked about the Henry
 6 Schein Connection Program. Do you know -- is
 7 that -- am I correct in understanding that that's a
 8 program that's offered to individual private
 9 practice dentists?
 10 A. That's correct.
 11 Q. And do you know -- I know you said that
 12 there's three levels. Do you know what the
 13 percentage off catalog are for each of the three
 14 levels?
 15 MR. McDONALD: Object to the form. Vague as
 16 to time.
 17 THE WITNESS: Without having a document in
 18 front of me, I would have to guess. I know the top
 19 tier is 12 percent off non-formulary for the
 20 non-formulary items. I do not know the actual
 21 discount percentages. Again, I already said it's a
 22 blended discount within -- in contract formulary
 23 items, and I don't know what that is because it's
 24 different for every item within formulary.
 25 ///

1 BY MS. GOFF:

2 Q. When you said the top-level discount is
3 12 percent, is that -- are you saying that that's
4 the best discount that a private practitioner can
5 get?

6 A. So there's three levels, as stated, in the
7 Connections program with Schein. There is Level 1,
8 2 and 3. Level 3, as I've already stated multiple
9 times, is the top tier level where it gives the best
10 discounts off formulary. The off-formulary discount
11 is 12 percent.

12 Q. Thank you.

13 And is that -- got you.

14 And then for the on-formulary discount, it
15 just depends on the product?

16 A. Correct.

17 Q. But there is presumably a list somewhere of
18 all of the discounts offered in all of the various
19 levels for the Connection Program?

20 A. That would be correct.

21 MR. McDONALD: Object to the form.

22 THE WITNESS: That would be correct. It
23 would be managed under whoever our pricing analytics
24 managers are in New York.

25 ///

1 BY MS. GOFF:

2 Q. Do you know, is the Connection Program
3 offered to all dentists that Schein works with?

4 A. I'm not knowledg- --

5 MR. McDONALD: Hang on.

6 Object to the form. Lack of foundation.

7 THE WITNESS: I'm not knowledgeable of that.
8 I can tell you with confidence the Connections
9 Program, as I stated multiple times today, was
10 created for the private practice dentist.

11 BY MS. GOFF:

12 Q. Okay. But you don't know whether the
13 Connection Program is offered to all of the dentists
14 that Schein works with?

15 A. Correct.

16 Q. And you don't know, then, what a dentist
17 needs to do to become -- to have the Connection
18 Program discounts available to him or her?

19 A. They would work with their FSCs to get onto
20 that formulary pricing plan and enroll in the
21 Connections Program.

22 MS. GOFF: I would like to take a break. I
23 may have a few more questions, but I think that,
24 from our perspective, we are going to be able to
25 wrap up soon.

1 THE WITNESS: Great.

2 (Off the record.)

3 MS. GOFF: Back on the record.

4 So I don't have any more questions for you
5 at this time. I would like to reserve my time for
6 rebuttal if your counsel or anyone on the phone has
7 questions.

8 MR. McDONALD: Someone on the phone?

9 MR. FLAHERTY: This is Scott Flaherty. I
10 have no questions.

11 EXAMINATION

12 BY MR. YOON:

13 Q. Miss Wingard, my name is Eric Yoon. I
14 represent Benco. I only have a few questions for
15 you.

16 But before getting to them, just one
17 clarification question for you. I think you've
18 answered it previously, but for purposes of having a
19 clean record, I'm going to ask it again. You
20 yourself do not know, as a matter of fact, whether
21 or not Benco does or does not do business with
22 buying groups; correct?

23 A. Correct.

24 Q. Have you talked to anyone at Benco about
25

1 agreeing not to doing business with any APC or
2 buying groups?

3 A. No.

4 Q. Are you aware of any agreement between
5 Schein and Benco not to do business with any APC or
6 buying group?

7 A. No.

8 Q. You testified that for business reasons
9 Schein has sometimes chosen not to do business with
10 certain APC or buying groups. In such instances,
11 did Benco have any influence on Schein's decision?

12 A. No, not to my knowledge.

13 MR. YOON: That's all the questions I have.
14 Thank you.

15 THE WITNESS: Thank you.

16 MR. McDONALD: I have no questions. Thank
17 you.

18 MS. GOFF: Okay. I don't have any
19 follow-up, so I think we can close the deposition.
20 (Ending time: 4:11 p.m.)

1 I, JANIS JENNINGS, CSR No. 3942, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken
4 before me at the time and place therein set forth, at
5 which time the witness was duly sworn by me;

6 That the testimony of the witness, the
7 questions propounded, and all objections and statements
8 made at the time of the examination were recorded
9 stenographically by me and were thereafter transcribed;

10 That the foregoing pages contain a full, true
11 and accurate record of all proceedings and testimony.

12 Pursuant to F.R.C.P. 30(e)(2) before
13 completion of the proceedings, review of the transcript
14 [x] was [] was not requested.

15 I further certify that I am not a relative or
16 employee of any attorney of the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the
19 laws of California that the foregoing is true and
20 correct.

21 Dated this 10th day of July 2018.

22 _____
23 JANIS JENNINGS, CSR NO. 3942
24 CLR, CCRR
25

1 DEPOSITION ERRATA SHEET
2

3
4 TSG Reporting, Inc. Assignment No. 142921
5 Case Caption: In Re Benco Dental, Inc.
6

7
8 DECLARATION UNDER PENALTY OF PERJURY

9 I declare under penalty of perjury
10 that I have read the entire transcript of
11 my Deposition taken in the captioned matter
12 or the same has been read to me, and the same
13 is true and accurate, save and except for changes and/or
14 corrections, if any, as indicated by me on the
15 DEPOSITION ERRATA SHEET hereof, with the understanding
16 that I offer these changes as if still under oath.
17

18 Signed on the 10th day of July, 2018.
19

20 _____
21 Darci Wingard
22
23
24
25

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

- 5 1. To clarify the record.
- 6 2. To conform to the facts.
- 7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____
24
25 _____

ERRATA SHEET

DEPOSITION OF: Darci Wingard

DATE DEPOSITION: June 27, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
14	7	Change "my direct report" to "who I reported to"	Clarification
14	10-11	Change "I needed a direct report which was a better direct report" to "I should report to Joe Cavaretta"	Clarification
28	4	Change "Uh-huh" to "Yes"	Clarification
74	23	Change "was" to "were"	Typographical error
80	13	Change "is" to "was"	Typographical error
101	21	Change "limit" to "element"	Typographical error
105	3	Change "this binder structure" to "a buying group structure"	Typographical error
105	6	Change "back Special Markets" to "back that Special Markets"	Typographical error
118	25	Change "with" to "about"	Typographical error/clarification
137	17	Change "anyone" to "any group"	Typographical error/clarification
151	22	Change "perk" to "meet"	Clarification
184	6	Change "that we'll get." to "that they will get."	Clarification
205	7-8	Change "look and lean to Teeth Tomorrow on leadership of" to "look to and lean on Teeth Tomorrow leadership for"	Typographical error/clarification
207	4	Change "ran" to "run"	Typographical error
219	11	Change "good business" to "doing business with"	Typographical error/clarification
220	25	Change "verbatim told me" to "verbatim they told me"	Typographical error/clarification
224	12	Change "it viable." to "it as viable."	Typographical error

I, Darci Wingard, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 2nd day of August, 2018.

at Dublin, CA.
(City) (State)

Darci Wingard
Darci Wingard

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF BENCO DENTAL Action No.
INC., et al., D09379
-----x

DEPOSITION OF KATHLEEN TITUS

DATE: Friday, June 29, 2018
TIME: 9:02 a.m.
LOCATION: Locke Lord LLP
 44 Montgomery Street, Suite 2550
 San Francisco, California

Reported By: Lynne Ledanois, CSR 6811
Job No. 142922

1 APPEARANCES:
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3 On Behalf of the Federal Trade Commission:
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5 McLemore from Kathleen Titus dated
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8 Exhibit CX2205-001 Email chain, first on
9 page to Kathleen Titus from
10 Randall McLemore dated 7/15/14,
11 Bates Henry Schein-000002111-2113; 202
12 Exhibit CX2206.001 Email chain, first on
13 page to Joe Cavaretta from Kathleen
14 Titus dated 4/16/14,
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17 page to Kathleen Titus from Brian
18 Brady dated 1/22/15,
19 Bates Henry Schein-000003980-3981; 196
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22 Upchurch from Jeff Harmon dated
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1 San Francisco, California
2 Friday, June 29, 2018
3 9:03 a.m.

4
5 KATHLEEN TITUS,
6 having been duly sworn, testified as follows:
7 EXAMINATION
8 BY MS. GOFF:
9 Q Good morning, Ms. Titus. My name is
10 Karen Goff. I am an attorney with the Federal
11 Trade Commission. With me here today is
12 Michelle Lee, who's an intern at the Federal
13 Trade Commission. I expect that my colleague,
14 Ronnie Solomon, will join us shortly.
15 MS. GOFF: If I could just have all of
16 the counsel state their appearance for the
17 record, please.
18 MR. McDONALD: John McDonald with
19 Locke Lord on behalf of Henry Schein and the
20 witness.
21 MR. KASS: Colin Kass from Proskauer
22 Rose Henry Schein.
23 MR. FLAHERTY: Scott Flaherty with
24 Briggs & Morgan for Patterson companies.
25 MS. GOFF: Counsel on the phone?

1 MR. MANNING: Yes, Thomas Manning from
2 Buchanan Ingersoll & Rooney for Benco Dental
3 Supply.
4 MS. GOFF: Anyone else on the phone?
5 Okay. Thank you.
6 BY MS. GOFF:
7 Q Ms. Titus, have you ever given sworn
8 testimony before?
9 A No.
10 Q So I would just like to go over a few
11 ground rules.
12 A Sure.
13 Q I'll be asking you a series of
14 questions and you will be providing me with the
15 answers. As you can see, the court reporter is
16 recording all that we say here today. Because
17 she can only record our words, please be sure to
18 answer each question with a verbal response.
19 Please don't shake your head or say m-hm or
20 anything like that. Do you understand?
21 A I do.
22 Q And it is helpful if you allow me to
23 finish my question before you start your answer
24 and I'll also try to let you finish your answer
25 before I start my next question.

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1 Do you understand?

2 A I do.

3 Q If at any time you do not understand a

4 question, please let me know and I will attempt

5 to rephrase, okay?

6 A Thank you.

7 Q If you need a break at any time,

8 please let me know and we can take one.

9 A Thank you.

10 Q Okay. So today we're going to be

11 talking about Henry Schein, the organization,

12 and as I understand it, Henry Schein has a

13 medical, a dental, a veterinarian division. And

14 today we're only going to be talking about the

15 dental business. Do you understand that?

16 A I do.

17 Q Am I correct that you worked at Henry

18 Schein since 1994?

19 A Yes.

20 Q So I just want to run through your

21 work history at Schein. I understand that

22 you've probably had several different positions.

23 So if we could start with your current position

24 and then we'll work backwards in time.

25 So what is your current position?

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1 Mr. Cavaretta in your current position?

2 A Until 2017, December.

3 Q Okay. So it was about May 2014 to

4 December 2017 that you reported to

5 Mr. Cavaretta?

6 A Correct.

7 Q Then you started reporting to

8 Mr. Brady?

9 A Correct.

10 Q Do you have any understanding of why

11 you currently report to Mr. Brady and previously

12 you reported to Mr. Cavaretta?

13 A I do.

14 Q What is your understanding?

15 A My understanding is Mr. Cavaretta

16 accepted a position as vice president of the

17 eastern area for Henry Schein Dental. Formerly

18 he was in the west and a new vice president of

19 special markets, Jake Meadows, stepped into

20 play. A reorganization.

21 Q Understood. So when you said a new

22 vice president of special markets, Jake Meadows,

23 stepped into play, are you saying that

24 Mr. Meadows became the vice president of special

25 markets?

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1 A Currently I'm director of group

2 practice for the western area of the United

3 States.

4 Q Okay. And how long have you been in

5 that position?

6 A Four years.

7 Q So did you start in that position in

8 roughly 2014?

9 A Correct.

10 Q What month in 2014?

11 A May.

12 Q And who do you report to?

13 MR. McDONALD: Currently?

14 MS. GOFF: Yes.

15 A Brian Brady.

16 BY MS. GOFF:

17 Q Have you reported to Mr. Brady the

18 entire that you've been in your current

19 position, director of group practice for the

20 western area?

21 A I have not.

22 Q Did you report to Mr. Cavaretta before

23 that?

24 A Correct.

25 Q At what point did you report to

Page 13

1 A Correct.

2 Q And what is Mr. Brady's position?

3 A Senior director of group practice.

4 Q And is he in charge of group practice

5 for the entire country?

6 A He is, yes.

7 Q And so you're in charge of group

8 practice for the western area. Is there someone

9 who's in your same position for the eastern

10 area?

11 A There is.

12 Q Who is that?

13 A Marcy Roy.

14 Q Is your current position within Henry

15 Schein Dental or special markets?

16 A As of January 2018, special markets.

17 Q Prior to that, it was with Henry

18 Schein Dental?

19 A Correct.

20 MR. McDONALD: Well, object to the

21 form. To be clear, for a period of time she

22 was Henry Schein Dental.

23 THE WITNESS: Can I clarify?

24 BY MS. GOFF:

25 Q Sure, please do.

1 A In 2014 I transferred from special
 2 markets to Henry Schein Dental to accept the
 3 directorship.
 4 Q And was that in May of 2014?
 5 A Approximately.
 6 Q Was there a period of time before you
 7 transferred that -- before you officially
 8 transferred that you were working for Henry
 9 Schein Dental?
 10 MR. McDONALD: Object to the form,
 11 vague.
 12 BY MS. GOFF:
 13 Q I can rephrase the question.
 14 So you transferred in May of 2014 from
 15 special markets to Henry Schein Dental; correct?
 16 A Correct.
 17 Q Was there a period leading up to that
 18 May 2014 transfer that you were doing some work
 19 for Henry Schein Dental even though you were
 20 technically within special markets?
 21 A That's difficult to define because our
 22 businesses do overlap to some degree.
 23 Q Okay. When did you -- okay. So let's
 24 go to your prior position before May of 2014.
 25 What was your role then?

1 markets?
 2 A I'm not sure.
 3 Q Can you give me an approximate time
 4 frame?
 5 A I can't.
 6 Q Was it for many years?
 7 A Less than five.
 8 Q Okay. So some time in -- in or around
 9 2010 to 2014, is that when you were reporting to
 10 Mr. Randy Foley?
 11 A I would be guessing as to when he
 12 stepped into his role.
 13 Q Okay. Can you -- what was the role
 14 that you're referring to?
 15 A He was the national director of sales
 16 or vice president of sales.
 17 Q And when Mr. Foley stepped into that
 18 role, that's when you began reporting for him?
 19 A Correct.
 20 Q And then was there a time -- so you
 21 were within special markets for 15 years, then
 22 you were transferred to Henry Schein Dental.
 23 Before you were within special markets, what was
 24 your role before that?
 25 A I was a field sales consultant for

1 A I was the zone manager for special
 2 markets.
 3 Q Was that a national position or was it
 4 for a particular area?
 5 A For regional.
 6 Q Which region?
 7 A Western.
 8 Q How long were you in that position?
 9 A Fifteen years.
 10 Q So did you start in that position in
 11 the late '90s?
 12 A Correct.
 13 Q And when you were transferred from
 14 Henry Schein Dental to special markets,
 15 immediately prior to the transfer who was your
 16 supervisor?
 17 A Matt Maceri.
 18 Q Sorry, let me rephrase my question. I
 19 meant to ask you, when you were transferred from
 20 special markets to Henry Schein Dental in May of
 21 2014, immediately prior to that transfer who was
 22 your supervisor?
 23 A Randy Foley.
 24 Q Thank you. And how long did you work
 25 for Mr. Foley as zone manager of special

1 Henry Schein Dental.
 2 Q So you started your career in HSD,
 3 then you switched to special markets, then you
 4 went back to HSD. And as I understand it,
 5 you've recently switched back to special
 6 markets?
 7 A Correct.
 8 Q Okay. And when I say HSD, do you
 9 understand that I mean Henry Schein Dental?
 10 A I do.
 11 Q So let's talk about your duties and
 12 responsibilities when you were the director of
 13 group practice for the western area, which I
 14 understand is your current position?
 15 A Correct.
 16 Q First of all, when you were recently
 17 transferred back to special markets, have your
 18 duties and responsibilities changed at all?
 19 A They have.
 20 Q In what way have they changed?
 21 A One of our business units was assigned
 22 to a new director.
 23 Q What business unit is that?
 24 A Community health centers.
 25 Q Okay. So you're no longer responsible

1 for community health centers?

2 A Correct.

3 Q Who were they assigned to?

4 A We created a position with salespeople
5 that covered the United States and were
6 collaboratively with HSD and they report to Pam
7 Reece.

8 Q Other than that change, are your
9 duties and responsibilities as director of group
10 practice for the western area generally the same
11 as your current position?

12 A Generally.

13 Q So from May of 2014 to the present,
14 can you just tell me generally what your duties
15 and responsibilities are or were at Henry
16 Schein?

17 A From 2014?

18 Q Yes.

19 A To?

20 Q To the present.

21 A Okay. Knowing there is a change in
22 2018, so 2014 I had responsibility for the
23 western area community health centers, our
24 business unit, vocational schools and hygiene
25 schools, and group practice from three to 30

1 locations.

2 In 2018 we changed the size of the
3 group practice from three to 99.

4 Q Okay. Thank you.

5 You're referring to dental locations?

6 A Correct.

7 Q And so you were responsible for CHC's
8 vocational schools, hygiene schools and group
9 practice all within the western area?

10 A Correct.

11 Q How do you define group practice? Is
12 it anything beyond the number of locations?

13 A That's the identifier, three locations
14 or more.

15 Q So it's any type of organization that
16 has three or more locations, any type of
17 dental --

18 A Any type of dental office, yes.

19 Q And then prior to May of 2014, in your
20 previous position as zone manager in special
21 markets, can you tell me generally your duties
22 and responsibilities in that position?

23 A In addition to everything I had
24 responsibility in 2014, I also had
25 responsibility for national accounts. That

1 would be the key differentiator.

2 Q So in your position as zone manager
3 for special markets, you also had responsibility
4 for national accounts?

5 A I did.

6 Q Okay. Were you responsible for
7 national accounts for the entire time that you
8 were zone manager for special markets?

9 A I was.

10 Q And what is a national account?

11 A What do you mean what are national
12 accounts?

13 Q Can you just explain to me what a --

14 A Dental service organizations that have
15 a national footprint.

16 Q Are dental service organizations
17 sometimes called DSOs?

18 A They are.

19 Q So when you were zone manager for
20 special markets, did you also have
21 responsibility for the CHC vocational school,
22 hygiene school and group practice?

23 A I did.

24 Q And in addition to that, you had
25 responsibility for the DSOs?

1 A National DSOs.

2 Q Okay. Thank you for that
3 clarification.

4 Are there some DSOs that are more
5 regional?

6 A Yes.

7 Q Can you name an example for me?

8 A You mean name the actual DSO brand?

9 Q Yes.

10 A Gosh. Absolute Dental.

11 Q Okay. And what is the region that
12 that one is in?

13 A Southern Nevada.

14 Q And so who would be responsible for
15 regional DSOs?

16 A The same, I would.

17 Q Okay. So you were responsible for
18 both national DSOs and regional DSOs?

19 A Correct.

20 Q You were responsible for all DSOs?

21 A Correct.

22 MR. McDONALD: To clarify, Karen, I'll
23 kind of cut to the chase. I think the
24 difference was group practice was limited
25 from three to 30 locations, if that will

1 help you out, which she was zone in special
2 markets but you can ask her that. I'm
3 trying to speed this along.

4 MS. GOFF: Thank you.

5 BY MS. GOFF:

6 Q So your counsel stated that when you
7 were zone manager, group practice was not
8 limited to three to 30 locations; is that
9 correct?

10 A That's correct.

11 Q Okay. What was it at that point?

12 A It was everything that would be
13 considered a dental service organization or
14 group practice.

15 Q And how is group practice defined?

16 A They do not have a legal DSO entity.

17 Q What do you mean by that?

18 A You would have to ask a lawyer.

19 Q So your understanding in your
20 position, how do you distinguish between a DSO
21 and a group practice?

22 A There's very little distinction.

23 Q So for your day-to-day
24 responsibilities, there is no distinction?

25 A The larger the DSO becomes, they drive

1 their business operations nonclinical into a
2 corporate platform who manages the locations,
3 the regional locations, all nonclinical business
4 operations.

5 Q So is that the distinction between the
6 legal DSO and a nonlegal DSO as you understand
7 it?

8 A Not necessarily.

9 Q So what is the distinction as you
10 understand it?

11 A The distinction would be a legal
12 entity created with a law firm.

13 Q Okay. So going back to your transfer
14 from special markets to HSD in May of 2014, do
15 you have an understanding of why you were
16 transferred?

17 A To help address the growing emerging
18 group practice market. In fact, we called our
19 division mid-market.

20 Q Was mid-market a new division at the
21 time?

22 A It was a trend and a label that was
23 applied to the trend we were seeing in the
24 marketplace of consolidation.

25 Q And so was the mid-market division

1 within Henry Schein Dental?

2 A Can you clarify when you mean that?

3 Q Sure. At the time that you were
4 transferred in the May of 2014 period?

5 A Yes, the mid-market was then with
6 Henry Schein Dental.

7 Q What about today?

8 A Today it's back with special markets.

9 Q And when did that change occur?

10 A January of 2018.

11 Q And so are you within the mid-market
12 division currently?

13 A Special markets, mid-market.

14 Q Okay. And before that you were within
15 mid-market Henry Schein Dental?

16 A Correct.

17 Q And was the mid-market division
18 created in or around May of 2014?

19 A Can you clarify the question?

20 Q Sure. Was there a time when there was
21 no mid-market division at Henry Schein?

22 A There was a time when we did not make
23 a distinction between mid-markets emerging size
24 practices from three to 30 locations to national
25 accounts.

1 Q And at what point was that distinction
2 started to be made?

3 A In 2014 when we launched the Henry
4 Schein Dental mid-market division.

5 Q Okay. Thank you. And so were you
6 brought in to work in that new division?

7 A Correct.

8 Q Okay. And who do you know who
9 requested or placed you in that role as sort of
10 heading up the growing emerging group practice
11 market?

12 A Joe Cavaretta.

13 Q Why did Mr. Cavaretta place you in
14 that role?

15 MR. McDONALD: Object to the form. If
16 you know, tell her.

17 BY MS. GOFF:

18 Q Do you have an understanding?

19 MR. McDONALD: Object to the form. Go
20 ahead.

21 THE WITNESS: Based on my experience
22 working with groups, and as a response to
23 the trend in the marketplace, we needed to
24 bring expertise to Henry Schein Dental and
25 work collaboratively with our Henry Schein

1 Dental field sales force.
 2 BY MS. GOFF:
 3 Q And you felt that you had that
 4 expertise?
 5 A I did.
 6 Q And so why was the, you know,
 7 mid-market group put within the Henry Schein
 8 Dental organization rather than special markets?
 9 MR. McDONALD: Object to the form.
 10 BY MS. GOFF:
 11 Q Do you have an understanding of why
 12 that occurred?
 13 A I do.
 14 Q What is your understanding?
 15 A Special markets was formed to serve
 16 national DSOs as part of its business unit.
 17 National DSOs typically do not require nor do
 18 they want field salespeople calling on their
 19 stores or their offices. All of the sales
 20 compliance for sales -- initiatives for sales
 21 were driven from corporate headquarters.
 22 Mid-market was very different. They
 23 required a more holistic approach to selling to
 24 them. They wanted field sales consultant
 25 support and the tools and resources that we had

1 MR. McDONALD: So be sure to pause and
 2 let her finish.
 3 THE WITNESS: Okay.
 4 MR. McDONALD: You've been doing
 5 pretty well, but just pause.
 6 BY MS. GOFF:
 7 Q Did Mr. Cavaretta hire you for that
 8 position when you transferred in May of 2014 to
 9 Henry Schein Dental?
 10 A Yes.
 11 Q Did you interview for the position?
 12 A Yes.
 13 Q Did you interview with Mr. Cavaretta?
 14 A Yes.
 15 Q Anyone else?
 16 A No.
 17 Q And did you think it was a good idea
 18 to move over to Henry Schein Dental and work in
 19 this new mid-market group?
 20 A Yes.
 21 Q Why was that?
 22 A We needed to develop more
 23 infrastructure to support the emerging groups.
 24 We also needed to bring experience and expertise
 25 to our regional management team and our field

1 at Henry Schein Dental were appropriate for an
 2 emerging group.
 3 Q Why were the tools and resources that
 4 you had at Henry Schein Dental appropriate for
 5 the emerging group?
 6 A National DSOs had in-house HR,
 7 in-house counsel. Many of the tools and
 8 resources that would be required were in-house
 9 for national accounts. Due to their size it was
 10 a requirement. However, emerging groups would
 11 pull from the portfolio of business solutions
 12 that were sold through Henry Schein Dental.
 13 Q What particular portfolio of business
 14 solutions are you referring to?
 15 A PPO negotiation, credentialing, HR,
 16 marketing, equipment, technology. That's --
 17 Q Okay. And so the -- what you refer to
 18 as the emerging groups required that portfolio
 19 of business solutions?
 20 A One more time.
 21 Q The emerging groups that you've been
 22 referring to, they required the portfolio
 23 business solutions?
 24 A Correct. They weren't large enough to
 25 procure those services in-house.

1 sales force to understand the changing
 2 marketplace and what the new face of the
 3 customer looked like.
 4 Q What do you mean by the new face of
 5 the customer?
 6 A Henry Schein Dental sold primarily and
 7 still does sell primarily to a single-location
 8 private practice doctor. That was changing.
 9 Q And changing in what way?
 10 A Changing in that the single-location
 11 doctor was buying additional offices, becoming a
 12 group.
 13 Q Was there a period of time -- well,
 14 when did you interview for the position with
 15 Mr. Cavaretta?
 16 A Probably February, March, April of
 17 2014.
 18 Q Okay. And were you hired for the job
 19 right after the -- shortly after the interview?
 20 A I think our official launch was in
 21 late April or early May.
 22 Q Prior to the official launch, were you
 23 doing some work for Mr. Cavaretta?
 24 A No.
 25 Q So you did not report to Mr. Cavaretta

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1 at all prior to the official launch?
 2 A No.
 3 Q Okay. So were you reporting to
 4 Mr. Foley?
 5 A Foley.
 6 Q When you were reporting to Mr. Foley,
 7 did you ever have occasion or reason to work
 8 with Mr. Cavaretta?
 9 A I did.
 10 Q And what occasion would that be?
 11 A As I stated earlier, there is a lot of
 12 overlap in our business. So if you take group
 13 practice, for example, they may be tapping into
 14 operational resources like supply chain
 15 management and preferred product assortments,
 16 formularies and pricing through the special
 17 markets operations department. However, they
 18 would be maintained and called on by Henry
 19 Schein Dental.
 20 Q So what types of things would you need
 21 to work with Mr. Cavaretta on?
 22 A Coordinating how we went to -- how we
 23 engaged with those customers.
 24 Q Is there a name for those types of
 25 customers?

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1 Schein field sales teams to serve the customers.
 2 Q Okay. When you joined the Henry
 3 Schein Dental group in May of 2014, did you have
 4 direct reports?
 5 A We were just starting to hire the
 6 position in, so yes, I had two almost
 7 immediately and then we started adding
 8 positions.
 9 Q Who were the two that you had
 10 immediately?
 11 A Kip Rowland and Nicole Lena.
 12 Q So when you switched from special
 13 markets to HSD in 2014, were you responsible for
 14 any different entities when you switched?
 15 A No.
 16 Q It was the same entities, it's just
 17 you were working now in a different division?
 18 A Correct.
 19 Q Okay. And so did your job duties
 20 change at all when you switched?
 21 A They did.
 22 Q And in what way did they change?
 23 A My job was much more collaborative
 24 with the HSD teams.
 25 Q What do you mean by much more

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1 A Group practice.
 2 Q That's what you would refer to those
 3 customers as?
 4 A Correct.
 5 Q So this is group practice customers
 6 that require services that are only offered on
 7 the Henry Schein Dental side?
 8 A Primarily.
 9 Q And are those services, do they
 10 include like field sales consultants?
 11 A Partially.
 12 Q Are there other things?
 13 A The things that I had mentioned to you
 14 earlier.
 15 Q Okay. Thanks.
 16 Do you have -- as director of your
 17 practice, do you have any direct reports, people
 18 that report to you?
 19 A I do.
 20 Q How many?
 21 A Seven.
 22 Q And generally what are their duties
 23 and responsibilities?
 24 A To work collaboratively with the field
 25 sales consultants and other members of the Henry

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1 collaborative?
 2 A We worked with the regional managers
 3 at each of the centers, we worked with the zone
 4 general -- I worked with the zone general
 5 managers, we work with the equipment sales
 6 specialist, the digital technology specialist
 7 and the Henry Schein practice solutions
 8 specialist to holistically serve the emerging
 9 market.
 10 Q When you say emerging market, what are
 11 you referring to?
 12 A Emerging meaning that they were in a
 13 process of growing their number of locations.
 14 So one group may start off at three and end up
 15 at 15 in two years.
 16 They had a vision, a mission and a
 17 business plan to grow the number of locations
 18 and their footprint.
 19 Q And was this -- why do you refer to
 20 this as emerging?
 21 A It's a common business term.
 22 Q And what does that mean to you in this
 23 context?
 24 A If I looked it up in the dictionary, I
 25 think it would mean it's emerging, it's rising

1 up out of the status quo. It's a changing
 2 dynamic in the landscape of dentistry.
 3 Q So the -- when did this emerging
 4 market start to -- when did you start seeing
 5 this emerging market?
 6 A Me personally?
 7 Q Yes, you personally.
 8 A Seven years ago.
 9 Q And what occurred around seven years
 10 ago?
 11 MR. McDONALD: Object to the form. Go
 12 ahead.
 13 BY MS. GOFF:
 14 Q You can answer.
 15 A Consolidation of the dental industry.
 16 Q What do you mean by consolidation?
 17 A Individual businesses collaborating
 18 and becoming partnered, growing number of
 19 locations, businesses buying businesses,
 20 acquisitions.
 21 Q And so you noticed -- sorry. Was
 22 there anything else?
 23 A I don't think so.
 24 Q You noticed this trend started about
 25 seven years ago?

1 started to accelerate. We could measure it
 2 if they were starting to accelerate.
 3 BY MS. GOFF:
 4 Q Did Henry Schein in some way measure
 5 this acceleration?
 6 A I'm sure they did.
 7 Q Were you involved in that?
 8 A No.
 9 Q Have you seen any reports?
 10 A No.
 11 Q Why are you sure that they did?
 12 A Looking at our customer base, we were
 13 setting up new accounts for these group
 14 practices. They were calling Henry Schein and
 15 asking us to consolidate and acquisition, add a
 16 new location. Field sales consultants who were
 17 calling on one office discovered that that
 18 office had two more or three more and we were
 19 connecting the dots, understanding that they
 20 were actually part of one organism.
 21 Q Have you heard of the term "buying
 22 group"?
 23 A I have.
 24 Q Is it a collection of independent
 25 private practice dentists?

1 A It started to accelerate seven years
 2 ago.
 3 Q Okay. And was there -- sorry, strike
 4 that.
 5 Do you remember the first time that
 6 you noticed this consolidation in the dental
 7 industry?
 8 A No.
 9 Q But sitting here today, you recall
 10 that it was around seven years ago?
 11 MR. McDONALD: Object to the form,
 12 misstates her testimony.
 13 BY MS. GOFF:
 14 Q I'm just wondering -- the only reason
 15 why I'm asking is you answered the question that
 16 it was around seven years ago. And I just was
 17 wondering if there's some memory that you have
 18 approximately seven years ago that -- of this
 19 consolidation, if there's something specific.
 20 MR. McDONALD: Object to the form,
 21 misstates her testimony. Go ahead.
 22 THE WITNESS: We started to see an
 23 increased trend around seven years ago.
 24 There were always groups that were small
 25 groups and forming and acquisitions, but it

1 MR. McDONALD: Object to the form. Go
 2 ahead.
 3 THE WITNESS: It could be.
 4 BY MS. GOFF:
 5 Q And when you started seeing this
 6 consolidation in the dental industry, were
 7 buying groups starting to be formed around that
 8 time?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: No.
 11 BY MS. GOFF:
 12 Q And why not?
 13 MR. McDONALD: Object to the form.
 14 BY MS. GOFF:
 15 Q Sorry. Why is it your understanding
 16 that they were not starting to be formed around
 17 that time?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: I'm not sure what to do.
 20 MR. McDONALD: You can answer the
 21 question if you understand it.
 22 THE WITNESS: Okay.
 23 MR. McDONALD: Do you need her to
 24 restate it?
 25 THE WITNESS: Yes.

1 BY MS. GOFF:

2 Q Okay. Let's just step back.

3 We've been talking about consolidation
4 in the dental industry and you mentioned that
5 you saw that increasing around seven years ago;
6 is that right?

7 A Correct.

8 Q Okay. And was one of the things that
9 you saw around seven years ago an increase in
10 the number of buying groups?

11 A Based on your definition of a
12 collection of private practice offices?

13 Q Yes.

14 A No.

15 Q Okay. And what is your understanding
16 of the term "buying group"?

17 MR. McDONALD: Object to the form. Go
18 ahead.

19 THE WITNESS: It's many different
20 types of companies, it's many different
21 types of organisms. They cover more than
22 just a collection of private practice
23 dentists. They could be a gatekeeper
24 organization, membership group.

25 I have not seen the collection of -- I

1 have not seen buying groups start to emerge
2 or become a trend until approximately five
3 or so years ago.

4 BY MS. GOFF:

5 Q Okay. Is the one thing that buying
6 groups have in common -- I know there can be
7 different types of buying groups. Is the one
8 that they have in common that they are made up
9 of independent private practice dentists?

10 MR. McDONALD: Object to the form,
11 mischaracterizes her testimony.

12 THE WITNESS: No.

13 BY MS. GOFF:

14 Q That's not the one thing they have in
15 common?

16 A No.

17 Q Are most buying groups made up of
18 independent private practice dentists?

19 MR. McDONALD: Object to the form.

20 THE WITNESS: I could not answer that
21 question with any authority.

22 BY MS. GOFF:

23 Q You don't think that -- you don't have
24 an understanding of whether buying groups are
25 made up of independent private practice

1 dentists?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: They don't limit their
4 membership to private practice dentists.

5 BY MS. GOFF:

6 Q Okay. Have you seen any buying groups
7 in the course of your job duties at Henry
8 Schein?

9 A Yes.

10 Q Have you seen many of them, have you
11 interacted with many of them?

12 MR. McDONALD: Object to the form,
13 vague.

14 THE WITNESS: What do you define as
15 many?

16 BY MS. GOFF:

17 Q More than ten.

18 A Yes.

19 Q And are -- more than 20?

20 A No.

21 Q Okay. And the buying groups that
22 you've seen, are most of them collections of
23 independent private practice dentists?

24 MR. McDONALD: Object to the form.

25 THE WITNESS: I could not state their

1 membership profiles.

2 BY MS. GOFF:

3 Q You're not aware?

4 A Generally, no.

5 Q And if -- when you say generally, no,
6 what do you mean by that?

7 A Unless I have knowledge of their
8 member base, which I don't, I could not say with
9 any authority if they are a private practice
10 dentist.

11 Q Do you ever use the term "buying
12 group" in your job at Henry Schein?

13 A Yes.

14 Q You put it in emails sometimes?

15 A Sure.

16 Q What do you mean by it when you put it
17 in the email?

18 MR. McDONALD: Object to the form,
19 vague.

20 BY MS. GOFF:

21 Q You can answer.

22 MR. McDONALD: Same objection. Go
23 ahead.

24 THE WITNESS: It would have -- you
25 would have to help me understand in context

1 what I mean by it. I have to know if you're
2 talking about a specific buying group rather
3 than a general statement.

4 BY MS. GOFF:

5 Q So in your position as director of
6 group practice, are you responsible for buying
7 groups?

8 A No.

9 Q You're not responsible for buying
10 groups?

11 A No.

12 Q Are you responsible for group
13 purchasing organizations?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: The terminology is used
16 interchangeably. So the answer would be the
17 same.

18 BY MS. GOFF:

19 Q Were you ever responsible for buying
20 groups or group purchasing organizations?

21 A I was.

22 Q At what point?

23 A In my role with -- during my tenure
24 with HSD, I was responsible for Council
25 Connections, Washington Association of Community

1 Health Centers, Community -- Colorado Community
2 Health Network. I think that's it.

3 Q Okay. So when you said during your
4 tenure with HSD, do you mean when you were the
5 director of group practice in HSD from May of
6 2014 until sometime in 2018?

7 A Until 2017, December of 2017. As I
8 stated earlier, in January of 2018, we did a
9 reorg and I divested of the community health
10 centers and the schools.

11 Q So from May of 2014 until the end of
12 2017, you were responsible for the Council
13 Connections, Washington Association of Community
14 Health Centers and Colorado Community Health
15 Network; is that right?

16 A Correct.

17 Q Are those all CHCs?

18 A They are not CHCs.

19 Q What are they?

20 A They are buying groups.

21 Q What is a CHC?

22 A A community health center is more
23 properly termed as a safety net clinic that's
24 mission is to serve underserved populations
25 regardless of their ability to pay.

1 So it could be one clinic, one dental
2 clinic. It could be a community health center
3 with -- they call them delivery sites -- five
4 dental clinics. It could be a free clinic in an
5 urban center. They have a variety of different
6 identities, but they are dental offices.

7 Q And the Washington, Colorado and
8 Council Connections group that you just said
9 that you're responsible for do not fit within
10 that definition of a CHC?

11 MR. McDONALD: Objection, form.

12 THE WITNESS: They are not CHCs.

13 BY MS. GOFF:

14 Q Are they groups or buying groups whose
15 members are CHCs?

16 A They're an association whose members
17 are CHCs or safety net clinics, yes.

18 Q Okay. And do you consider them to be
19 buying groups?

20 A I do.

21 Q Do you consider them to be GPOs?

22 A If it's an interchangeable word, as I
23 stated earlier, is pretty common, yes.

24 Q Do you use the term "buying group" and
25 "GPO" interchangeably sometimes in your emails?

1 A Sometimes I do.

2 Q So the Washington, Colorado and
3 Council Connection groups, the members are not
4 independent private practice dentists; is that
5 right?

6 MR. McDONALD: Object to the form.

7 THE WITNESS: Can you define
8 independent private practice?

9 BY MS. GOFF:

10 Q In your job, do you ever refer to
11 independent private practice dentists?

12 A I'm not sure what your question is.

13 Q I'm just wondering if you're able to
14 define that term for me since you're in the
15 business?

16 A A solo provider, a solo practitioner
17 would be considered a private practice dentist
18 that does not receive any state, local or
19 government funds to help defray operating cost.

20 Q So using that definition, are the
21 Washington, Colorado and Council Connection
22 groups, are the members of those groups the solo
23 practitioners or solo providers that you
24 referred to?

25 A No.

1 Q If we use the term "independent
2 private practice dentists" today, can we define
3 it in the way that you just did, solo
4 practitioners or solo providers?

5 A Solo practitioners.

6 Q I'll try to use the term "solo
7 practitioners" if that's helpful. But if I ever
8 say "independent private practice dentists,"
9 will you understand that that's what I mean?

10 A Yes.

11 Q So let's go back to the term "buying
12 group" as you understand it. Can a buying group
13 sometimes be a collection of solo practitioners?

14 A It can.

15 Q Okay. And do you understand -- do you
16 have an understanding that it may be a
17 collection of -- it may be a collection of
18 members who are not solo practitioners?

19 A Correct.

20 Q And what are the types of memberships
21 that you understand a buying group could
22 include?

23 MR. McDONALD: Object to the form,
24 asked and answered. Go ahead.

25 THE WITNESS: It's up to the buying

1 group. I don't think that they put those
2 requirements on their member applications.
3 However, you would have to look at their
4 member list to verify that.

5 BY MS. GOFF:

6 Q Are you familiar with any buying
7 groups whose members are not solo practitioners?

8 A I am.

9 Q And can you name them?

10 A Breakaway.

11 Q Okay. Any others?

12 MR. McDONALD: Well, asked and
13 answered. You're excluding the CHCs that
14 she just told about you for ten minutes;
15 right? I assume you don't want her to name
16 all of those again.

17 BY MS. GOFF:

18 Q Can you name any others?

19 MR. McDONALD: Okay. Name all the
20 CHCs again. We'll play this game.

21 THE WITNESS: Okay. Washington
22 Association of Migrant & Community Health
23 Centers, Colorado Community Health Network,
24 Council of Community Clinics. Actually
25 there's one more, Louisiana Primary Care

1 Association. And Texas Association of
2 Community Health.

3 BY MS. GOFF:

4 Q So that was -- are there any others,
5 just to make sure I have the complete list?

6 A Going by my memory, yes. Those are
7 the ones.

8 Q Okay. So you added a few additional
9 groups that you had not mentioned previously.
10 Were you responsible -- were you in charge of
11 CHCs, were you responsible for those groups as
12 well?

13 A My territory shifted. I couldn't give
14 you the timeline, but at some point I was, yes,
15 responsible for that. In 2014, when I still had
16 the community -- responsibility for the
17 community health centers, I was responsible for
18 Louisiana, thus I had engagement with Louisiana
19 Primary Care Association.

20 Also for the same period of time
21 before 2018, I had responsibility for Texas,
22 thus I had engagement with Texas Association of
23 Community Health Centers.

24 Q Okay. Thank you.

25 So you mentioned that you were

1 responsible -- in the beginning when you were
2 describing your duties as the director of group
3 practice, you mentioned that at one point you
4 were responsible for CHCs. And then recently I
5 think those were --

6 A In 2018 we reorganized.

7 Q When you said you were responsible for
8 CHCs, what groups were you referring to?

9 A What do you mean what groups?

10 Q Which specific groups do you consider
11 CHCs that you had responsibility for?

12 A Can you define groups?

13 Q You were responsible for CHCs; right?

14 A Correct.

15 Q Okay. What CHCs were you responsible
16 for?

17 A There were hundreds of them.

18 Q You were responsible for all hundreds
19 of them?

20 A Not me personally. I was responsible
21 for the business unit and how we served that
22 business unit.

23 Q Okay.

24 A The distinctive offering that we had
25 for that business unit.

1 Q Okay. And do the Washington,
2 Colorado, Council of Community Clinics, Texas
3 Association, do those groups fall within the CHC
4 umbrella?

5 A Yes, those are gatekeeper
6 organizations that exist to support their member
7 group. And while buying groups -- a buying
8 component is part of their offering to their
9 member group, that's not the only thing that
10 they provide to their membership.

11 Q And their membership is CHCs?

12 A It could be any nonprofit safety net
13 clinic. So CHC is used again very
14 interchangeably with safety net clinics is the
15 safer terminology, meaning that these were
16 clinics that were designed to serve uninsured or
17 poverty populations with disregard for their
18 ability to pay.

19 Q Thank you. That's helpful.

20 You mentioned Breakaway. At one point
21 did you have responsibility for the group
22 Breakaway?

23 A I did.

24 Q What is Breakaway?

25 A Breakaway is a buying group. However,

1 that's only one component of who Breakaway is
2 and what they offer to their members.

3 For lack of a better term, they are a
4 virtual DSO, meaning they offer a corporate
5 platform for dentists, both groups and
6 individual dentists, to outsource their
7 nonclinical business services.

8 Q And Breakaway was an example of a
9 group whose members were not solo practitioners?

10 A Some were.

11 Q And some were not?

12 A That's right.

13 Q And the ones that were not, what type
14 of organizations were they?

15 A Small groups, two, three, four
16 locations.

17 Q At what point were you responsible for
18 Breakaway?

19 A In 2014 when I accepted the position
20 for the director for the area, I inherited our
21 territory. Anything that was not a national DSO
22 fell into my purview and Breakaway was on that
23 list.

24 Q Were there other groups that you
25 inherited that were on the list?

1 A Other groups, what do you mean?

2 Q You said that in 2014 you accepted a
3 position in the area and that you inherited some
4 groups?

5 A Many, yes. I mean, we made a
6 distinction between -- as I had stated earlier,
7 we had national groups. You asked about what
8 those looked like. They had a national
9 footprint, corporate headquarters, a single
10 point of contact driving compliance from a
11 corporate headquarters.

12 My new job, my division, took
13 everything else, everything between three and 30
14 locations.

15 Q So approximately how many new groups
16 did you inherit?

17 A I couldn't answer that.

18 Q Is it fair to say it was too many to
19 name?

20 A Too many to name.

21 Q And did you keep any of the groups
22 that you were previously responsible for?

23 A Yes, because we took business that had
24 originally fell under the P&L for the division
25 called special markets and we moved those

1 customers over to HSD. So, yes, they were part
2 of that.

3 You could almost call it divesting of
4 those customers and moving them over to HSD,
5 those business units. We made distinctions
6 internally and then we moved everything that fit
7 that profile over to the new emerging group
8 mid-market team.

9 Q Okay. So when you made the switch in
10 2014, there were some groups that you were
11 previously responsible for that you no longer
12 were responsible for?

13 A That's right.

14 Q There were some that you had
15 previously had responsibility for and you kept
16 those groups when you moved over to HSD?

17 A That's right.

18 Q And then there was some new groups
19 that you got when you moved over to HSD that you
20 were not previously responsible for in special
21 markets?

22 A Only if the geography changed, and it
23 did. My geographic responsibility changed.

24 Q Okay.

25 A It grew.

1 Q Okay. So previously you were the zone
2 manager for which zone again?
3 A The west.
4 Q Okay. And you were director of group
5 practice also for the west; right?
6 A Area, rather than region.
7 Q So the western area is bigger than the
8 western region?
9 A It's half the United States versus a
10 region within that area.
11 Q Okay. But -- okay. So talking about
12 the groups that you had previous responsibility
13 for in special markets and then you maintained
14 when you moved over to HSD, approximately how
15 many groups fit in that category?
16 A Couldn't answer that question.
17 Q You don't recall?
18 A There are too many to count.
19 Q Okay. And how was it determined which
20 groups would be placed within this new
21 mid-market division and which ones would remain
22 within special markets?
23 A So previously I stated to you that the
24 national accounts which had national footprints
25 had a corporate location that drove compliance

1 A Ask the question.
2 Q You would ask that question?
3 A Sure.
4 Q Of the group?
5 A Sure.
6 Q Is there any other way that you would
7 make that determination?
8 MR. McDONALD: Object to the form.
9 BY MS. GOFF:
10 Q Would you do any of your own research
11 or anything like that?
12 A Sure, look at their website, look at
13 branding, look for a full C-suite.
14 Q And if you looked at their website,
15 what would you be looking for?
16 A I would look for their C-suite about
17 us, I would look for a C-suite. I would also
18 call and talk to the field sales consultants
19 that were intimate with these customers.
20 Q What would you ask the field sales
21 consultant?
22 A Do they have a corporate headquarters,
23 are they driving compliance?
24 Q What do you mean by driving
25 compliance?

1 throughout all their stores. Those accounts
2 were kept in special markets and the bulk of the
3 group practices that were being maintained by
4 special markets were moved over, anything that
5 didn't fall into that national account category.
6 Q And so was it groups that could not
7 drive compliance?
8 A Many of them were.
9 Q It was -- was it groups that wanted
10 local FSCs to call on them?
11 A Correct.
12 Q Were there other characteristics of
13 these groups?
14 A Size.
15 Q What size?
16 A Three to 30.
17 Q Okay. Other characteristics?
18 A Emerging. I mean, they were in
19 evolution process of growing their business.
20 They did not have a firmly established corporate
21 headquarters that drove compliance throughout
22 their organization.
23 Q And how would Henry Schein determine
24 whether a group had a corporate headquarters
25 that drove compliance?

1 A So every office would be standardized
2 doing essentially the same things. And the
3 corporate office would be responsible for
4 billing, hiring, HR, credentialing PPO
5 negotiations, reimbursement, e-claims, software,
6 standardized equipment selections. They would
7 be run like a real company rather than a
8 collection of individual offices.
9 Q So the ones that could not drive
10 compliance as you defined it were moved over to
11 this mid-market group?
12 MR. McDONALD: Object to the form,
13 mischaracterizes her testimony. Go ahead.
14 THE WITNESS: There were both included
15 in the move.
16 BY MS. GOFF:
17 Q Some that could drive compliance and
18 some that could not?
19 A Correct.
20 Q So how -- I'm trying to understand how
21 did you determine which ones got moved and which
22 ones did not? What was the rule?
23 A I'm not sure that -- you're asking
24 that question probably for the fourth time.
25 Three to 30 locations.

1 Q That's -- that was the rule?
 2 A Whether they drove compliance from a
 3 corporate headquarters or not.
 4 Q I see. Okay. Thank you. That's
 5 helpful.
 6 So more than 30 locations, they stayed
 7 in special markets?
 8 A Generally.
 9 Q Going back to just sort of defining
 10 our terms, so you mentioned DSO, and I know it
 11 stands for dental service organization. Are
 12 there characteristics of DSOs that you can
 13 describe for me?
 14 A My opinion?
 15 Q Sure.
 16 A Okay. More highly evolved business
 17 acumen, C-suite, so they would hire a CEO. More
 18 sophisticated business professionals helping to
 19 run the business.
 20 Again, there is a process that they go
 21 through with a law firm to create a DSO entity
 22 and I believe that is the distribution of
 23 ownership allowing them to create affiliate
 24 contracts and such.
 25 Q Okay. So DSOs typically own the

1 Q Are you familiar with the Texas Dental
 2 Association?
 3 A No.
 4 Q Have you ever heard of the term
 5 "co-op"?
 6 A Yes.
 7 Q What is a co-op to you?
 8 A It's a term that I heard in
 9 association with an entity in Utah.
 10 Q Other than in association with the
 11 entity in Utah, have you ever heard of the term
 12 "co-op" generally?
 13 A No.
 14 Q Okay. What about a study club, have
 15 you ever heard of that term?
 16 A Yes.
 17 Q And what does that term mean to you?
 18 A A think tank for dentists that have a
 19 shared interest in a specific part of dentistry
 20 like implantology, periodontology or
 21 endodontics.
 22 Q Are the members typically solo
 23 practitioners?
 24 A I have no idea.
 25 Q What about an MSO, have you heard of

1 dental practices; correct?
 2 MR. McDONALD: Object to the form.
 3 BY MS. GOFF:
 4 Q That they --
 5 A I cannot answer that question.
 6 Q Why not?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I don't know the
 9 legal --
 10 BY MS. GOFF:
 11 Q Have you ever heard of dental
 12 associations?
 13 A Dental associations?
 14 Q Yes. I'll be more specific, state
 15 dental associations?
 16 A Of course.
 17 Q And do state dental associations
 18 sometimes create groups of buying associations
 19 for their members?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: I know of one.
 22 BY MS. GOFF:
 23 Q Which one is that?
 24 A It's a division of California Dental
 25 Association called TDSC.

1 that term?
 2 A I have.
 3 Q Is that a management service
 4 organization?
 5 A Yes.
 6 Q And what does an MSO do in your view?
 7 A MSO, DSO interchangeable word.
 8 Q Okay.
 9 A Or acronym.
 10 Q Okay. I just want to make sure I have
 11 a correct understanding of your understanding of
 12 the definition of buying group. So can a buying
 13 group in some cases be comprised of solo
 14 practitioners?
 15 A Yes.
 16 Q In your view, is that true in all
 17 cases?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: No.
 20 BY MS. GOFF:
 21 Q You're familiar with the group called
 22 Steadfast Dental?
 23 A I am.
 24 Q And so going back to 2014, did you
 25 start doing discovery on a group called

1 Steadfast Dental?
 2 A I did.
 3 Q And was that around the time that you
 4 were moved from special markets to HSD?
 5 A That's correct.
 6 Q And were you doing discovery on
 7 Steadfast Dental as part of your job for HSD?
 8 A Yes.
 9 Q So Steadfast Dental was not a group
 10 that you were responsible for when you were
 11 within special markets?
 12 A I was not responsible for Texas, so
 13 no.
 14 MR. McDONALD: So, Karen, you're
 15 moving on to Steadfast now, which is kind of
 16 a change in topic.
 17 MS. GOFF: I did change topics.
 18 MR. McDONALD: We've been going about
 19 an hour. Before you get into the meat of
 20 Steadfast that I suspect is going to take a
 21 little while, why don't we take a break. I
 22 think she wants a break too.
 23 MS. GOFF: Okay. Sure.
 24 (Recess taken.)
 25 BY MS. GOFF:

1 that group?
 2 A Correct.
 3 Q Dental Co-op of Utah was also a buying
 4 group?
 5 A They were, they had a buying group
 6 component in their organization, yes.
 7 Q Okay. And at some point you elevated
 8 the issue of whether to shut down Dental Co-op
 9 to your superiors?
 10 A Correct.
 11 Q After it was elevated, you got
 12 permission to shut down the Dental Co-op of
 13 Utah?
 14 A I didn't personally, no.
 15 Q You didn't get permission?
 16 A I did not personally shut them down.
 17 I made a recommendation that that happen, and
 18 someone else in the organization did. I don't
 19 know who.
 20 Q Okay. And -- but you do know that the
 21 issue of whether to shut down the Dental Co-op
 22 of Utah was elevated to your superiors?
 23 A Correct.
 24 Q And do you know that at some point it
 25 was shut down?

1 Q So we were talking about Steadfast
 2 Dental prior to the break. And you testified
 3 that you started doing some discovery on
 4 Steadfast Dental after you were transferred to
 5 HSD; is that right?
 6 A That's right.
 7 Q And then after you did some research,
 8 you determined that there is no question that
 9 Steadfast Dental was a buying group; is that
 10 right?
 11 A Yes, those were my official findings,
 12 yes.
 13 Q And eventually, you sought permission
 14 from your superiors to shut down Steadfast
 15 Dental; is that right?
 16 A I did.
 17 Q You got permission to shut it down;
 18 correct?
 19 A I did.
 20 Q And then you did shut it down?
 21 A Correct.
 22 Q Are you familiar with the group Dental
 23 Co-op of Utah?
 24 A I am.
 25 Q In 2014 you also did some discovery on

1 MR. McDONALD: Object to the form. Do
 2 you mean we stopped doing business with
 3 them?
 4 THE WITNESS: We stopped doing
 5 business with them.
 6 BY MS. GOFF:
 7 Q So it's your testimony that at some
 8 time Schein stopped doing business with the
 9 Dental Co-op of Utah?
 10 A That's right.
 11 Q Did you sometimes in your emails use
 12 the phrase "shut down" to refer to buying
 13 groups?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I may have.
 16 BY MS. GOFF:
 17 Q And if you used that phrase, what
 18 would that mean?
 19 A It would mean that it was no longer
 20 clear that the relationship was healthy in that
 21 we had no access to our customers, they were not
 22 acting as our advocate, they were not promoting
 23 Henry Schein. And in fact, we discovered that
 24 they had opened up a number of direct
 25 manufacturers and were redirecting Henry

1 Schein's business to those direct manufacturers.
 2 Q Okay. So it sounds like you're
 3 referring to a particular group right now?
 4 A I'm referring to the groups that you
 5 mentioned, Steadfast and Dental Co-op.
 6 Q Okay. And when you wrote in emails
 7 shut it down, does that mean stop doing business
 8 with those groups?
 9 A Yes, it does.
 10 Q And just to make sure I have a clear
 11 understanding, so you did not personally shut
 12 down the Dental Co-op of Utah?
 13 A That's correct.
 14 Q But you know that someone else in the
 15 organization did?
 16 A I do not know. I did not receive
 17 confirmation, but that was my recommendation.
 18 Q And you know that at some point Schein
 19 stopped doing business with Dental Co-op of
 20 Utah?
 21 A That's my understanding.
 22 Q Okay. Do you have an understanding
 23 of -- strike that.
 24 So who did you make a recommendation
 25 to that the Dental Co-op of Utah be shut down?

1 BY MS. GOFF:
 2 Q And which superiors did you seek
 3 permission from?
 4 A Joe Cavaretta.
 5 Q Anyone else?
 6 A It was a consensus and other people
 7 would take a look and verify that the research
 8 that I did was correct. So it would be Randall
 9 McLemore who covered Texas, Joe Cavaretta, those
 10 two primarily.
 11 Q Did you seek permission from Randy
 12 Foley?
 13 A Yes.
 14 Q He was the director of special markets
 15 at the time, is that right?
 16 A He was; however, this was so soon
 17 after the mid-market was created, we were still
 18 sharing a lot of P&L information with our
 19 special markets division.
 20 So it required that all stakeholders
 21 agree with my assessment, looked at the facts to
 22 verify and we reached a consensus that it was
 23 not a healthy relationship and ultimately we had
 24 repeatedly asked for an opportunity to sit down
 25 and negotiate a more healthy relationship with

1 A Those management -- members of the
 2 management, Henry Schein dental management team
 3 that would have been responsible for the
 4 geography that Dental Co-op resided in.
 5 Q Who specifically was that?
 6 A Kevin Upchurch, Jeff Harmon and Joe
 7 Cavaretta.
 8 Q And with regard to Steadfast Dental,
 9 you sought permission from your superiors to
 10 shut it down; correct?
 11 A After initially doing discovery to
 12 understand who they were, I went in thinking
 13 that we would optimize the relationship and
 14 continue to grow the relationship. However, the
 15 discoveries that I made subsequent to that led
 16 me to believe -- not just led me to believe, but
 17 I was able to verify that they were redirecting
 18 existing Henry Schein business to a competitor.
 19 Q Okay. I just want to make sure I have
 20 an answer to the question. So with regard to
 21 Steadfast Dental, am I correct that you sought
 22 permission from your superiors to shut it down?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Correct.
 25

1 the vice president; however, he went radio
 2 silent. He stopped responding to my request for
 3 an appointment.
 4 Q Did you shut down any other groups
 5 during the time that you were director of group
 6 practice within HSD?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: The word "shut down,"
 9 can you explain the context? Can you
 10 explain your intended meaning of shut down?
 11 BY MS. GOFF:
 12 Q Sure. I'll rephrase the question.
 13 Did you seek to stop doing business
 14 with any other groups at any point when you were
 15 group practice director for HSD?
 16 A No.
 17 Q Just those two?
 18 A M-hm.
 19 MR. McDONALD: You need to say yes.
 20 You need to say yes.
 21 THE WITNESS: Yes.
 22 MR. McDONALD: As opposed to m-hm.
 23 THE WITNESS: Gotcha.
 24 BY MS. GOFF:
 25 Q Thank you.

1 A Thank you.

2 Q Those two groups, Steadfast and Dental
3 Co-op of Utah, you recommended that Schein cease
4 doing business with them within the first few
5 months of coming over to HSD?

6 A Correct.

7 Q Was it within the scope of your job
8 duties to recommend that Schein stop doing
9 business with those two groups?

10 A It was not.

11 Q So you were doing something outside of
12 the scope of your job?

13 A No, I was addressing information that
14 resided in my sales data and identifying the
15 customers that existed, building a profile on
16 who and what they were and what they did.

17 Once I discovered that, it was my
18 intention to enhance those relationships, to
19 grow them and create a healthy sustainable
20 program that served all of the constituents.

21 However, in my discovery, I was able
22 to identify that business was being redirected
23 to our competitors and we were losing business
24 year over year from the same membership that
25 were Henry Schein customers prior to the buying

1 group coming on board.

2 Q And when you say the buying group
3 coming on board, you're referring to Steadfast
4 Dental?

5 A Correct.

6 Q And also the Dental Co-op of Utah?

7 A Also the Dental Co-op of Utah.

8 Q Did any of your superiors ask you to
9 look into Steadfast Dental?

10 A They did not.

11 Q Did any of your superiors ask you to
12 look into the Dental Co-op of Utah?

13 A Yes.

14 Q Which superior?

15 A Joe Cavaretta.

16 Q What did he ask you to do?

17 A Evaluate the business. There were
18 some things that we had discovered that the
19 Dental Co-op had not informed us of where they
20 had opened up Henry Schein competitors and were
21 promoting Henry Schein competitors to their
22 member base.

23 Q You mentioned competitors a few times.
24 What do you mean by competitors?

25 A Competitors in the context of

1 Steadfast. I don't know who the competitors
2 were, but I do know that our business was down
3 45 percent year over year for the same group of
4 membership.

5 Q So let's just stick with Steadfast.

6 So you did some discovery into
7 Steadfast and you discovered that business was
8 down 40 percent year over year?

9 A M-hm.

10 Q And you did not -- am I correct in
11 understanding that you did not confirm whether
12 that meant that business was going to
13 competitors?

14 A I did.

15 MR. McDONALD: Object to form. Hang
16 on. Object to the form. Go ahead.

17 THE WITNESS: I did confirm.

18 BY MS. GOFF:

19 Q Okay. And how did you confirm that?

20 A I asked the question of the Steadfast
21 staff.

22 Q And did they inform you that the
23 business was going to competitors?

24 A They did.

25 Q Did they inform you which competitors?

1 A I don't remember.

2 Q And did you ask?

3 A Probably. But I don't remember.

4 Q Do you have an understanding of
5 whether it was other distributors?

6 A I don't.

7 Q You mentioned direct selling
8 manufacturers earlier. Is it your understanding
9 that they were directing business -- they being
10 Steadfast was directing business to direct
11 selling manufacturers?

12 A I don't have any intimate knowledge of
13 that or I can't remember if I was told who they
14 were.

15 Q So you don't know -- you don't know
16 where the business was going, you just know that
17 Schein had lost 40 percent year over year?

18 A What the Steadfast staff told me is
19 they would receive the order from the customer,
20 they had an algorithm or software that would
21 look at the items on the list from the customer.

22 They had a variety of fulfillment
23 partners that would look at those items or they
24 would look at the items from the variety of
25 their partners and they would break up the order

1 and send items that were cheaper with company A
2 or company B and then Henry Schein would be left
3 with the ones that we had the best price on.

4 Q And just to confirm about which other
5 companies they were being sort of directed to, I
6 just want to make sure I understand. You're not
7 sure whether it was other distributors or direct
8 selling manufacturers?

9 A That's right.

10 Q And do you know whether the customers
11 could have gotten those same products from Henry
12 Schein?

13 A I do.

14 Q And could they have?

15 A They could have.

16 Q Okay. And did you, when you spoke
17 with -- who did you speak with at Steadfast?

18 A I don't remember the name of the
19 person that was in charge of the procurement
20 software.

21 Q But you spoke with the person who was
22 in charge of the procurement software?

23 A Correct.

24 Q And did you -- you mentioned earlier
25 that you attempted to make the business

1 relationship more healthy; is that correct?

2 A Yes. I wanted to find a way to
3 overcome the challenges that we were
4 experiencing and sit down with the vice
5 president and perhaps come up with better
6 pricing for the buying group or explain more
7 thoroughly some of the added benefit that we
8 brought to the table so that they would be
9 inclined to send those very same orders to Henry
10 Schein.

11 Q And did you ever, in fact, sit down
12 with the vice president?

13 A I did not. He stopped responding at a
14 certain point.

15 Q Who was the vice president?

16 A Jon -- I can't remember his last name.
17 I think it was Jon Staples.

18 Q And so you reached out to Mr. Staples
19 by email?

20 A Many times and by phone.

21 Q Okay. And when did you do this, this
22 reaching out to Mr. Staples?

23 A I'm going to say it was in May of
24 2014.

25 Q But it was some time around when you

1 transferred from special markets to HSD?

2 A Correct.

3 Q And so with regard to Steadfast, am I
4 correct in understanding that you were not
5 instructed by any of your superiors to look into
6 Steadfast?

7 A You're correct.

8 Q Okay. So Mr. Cavaretta never told you
9 to look into Steadfast?

10 A He did not.

11 Q And what prompted you to start doing
12 discovery on Steadfast?

13 A I was doing my job in understanding
14 who our customers were. This customer appeared
15 on my regional territory and they were in our
16 database and they were doing business with us.
17 So it was my job to understand who they were.

18 Essentially they were anonymous until
19 I made contact with them, with the intention of
20 fully understanding their business so we could
21 better serve them.

22 Q Was there anyone who was in charge of
23 the Steadfast relationship before you?

24 A Formerly it had been a special markets
25 customer, but it had moved over with the

1 nonnational accounts, the nonnational accounts
2 that were part of the mid-market.

3 Q And when it was a special markets
4 customer, was there any particular individual
5 who was in charge of it?

6 A I couldn't comment.

7 Q What about Rick Heysquierdo?

8 A Very likely.

9 Q It's very likely he was in charge of
10 it?

11 A Correct.

12 Q Do you think that at the time you
13 would have known who was in charge of this
14 relationship?

15 A I would have had to have an identity
16 for Steadfast, I would have had to have heard
17 the word "Steadfast" or somebody call out to me
18 that there was a customer called Steadfast and I
19 had no knowledge of them whatsoever until I saw
20 them on a territory run and wanted to know about
21 them and build a better relationship with them.

22 Q And why did you -- when you came over
23 to HSD, I think you mentioned that you had
24 hundreds of customers; right?

25 A Right.

1 Q Why were you focused on Steadfast?
2 MR. McDONALD: Object to the form,
3 mischaracterizes her testimony. Go ahead.

4 THE WITNESS: I believe it was one
5 that was a higher volume customer.

6 BY MS. GOFF:

7 Q Okay. And by higher volume you mean
8 that they did more business with Schein?

9 A Correct.

10 Q And so did you start doing discovery
11 on any other higher volume customers?

12 A I did.

13 Q And approximately how many others?

14 A I wouldn't be able to estimate. I
15 covered half of the United States. So it would
16 be difficult to say.

17 I would say that I would use a -- if I
18 could identify the parent corporation was doing
19 \$250,000 a year with Henry Schein, that would
20 qualify as an important customer to us. And it
21 would be my job to make sure that we know our
22 important customers and that we're serving them
23 well.

24 So as director, I wanted to know who
25 those people were not just in Texas, but in all

1 of my -- the states I was responsible for.

2 Q Did you look into all of -- did you
3 start doing discovery in all of the groups that
4 were \$250,000 or more?

5 A Either myself or members of my team.

6 Q And at the time your team was Kip and
7 Nicole?

8 A In 2014, yes.

9 Q Did anyone -- when you switched from
10 special markets to Henry Schein Dental, did
11 anyone ask you to start looking into buying
12 groups?

13 A No.

14 Q Did anyone give you marching orders to
15 shut down buying groups?

16 A Absolutely not.

17 Q When you first transferred from
18 special markets to HSD, did you have any
19 meetings with your new boss, Joe Cavaretta,
20 regarding what your new duties would look like?

21 I'll retract that question.

22 Did Mr. Cavaretta ever give you
23 instruction on what to do when you first started
24 with him at HSD?

25 A Grow the business.

1 Q Grow the business meaning?

2 A Meaning build on the foundation of the
3 customers that were currently part of my
4 responsibility, work collaboratively with our
5 field sales consultants, our regional managers
6 and other members of the sales team to sell
7 deeper into the customer environment, and sell
8 them holistically based on their needs.

9 Q Did you ever, prior to moving over to
10 Henry Schein Dental, when -- back when you're in
11 special markets, did you ever terminate a
12 relationship with any groups?

13 A No.

14 Q So other than these two groups,
15 Steadfast and the Dental Co-op of Utah, in your
16 entire career at Henry Schein, have you ever
17 terminated any other groups?

18 A No, not me personally.

19 Q Okay. So why don't we look at a
20 document just to orient ourselves.

21 I'm handing you what has been
22 premarked as Exhibit CX0171.

23 (Exhibit CX0171 was marked.)

24 MS. GOFF: This is a document that
25 bears the Bates stamp Henry

1 Schein-000003341. It's an email from you
2 to -- the email that's the latest in time is
3 from you to Joe Cavaretta and Randall
4 McLemore dated March 25th, 2014.

5 BY MS. GOFF:

6 Q Did you write this email?

7 A Yes.

8 Q And did you write it as part of your
9 job?

10 A Part of my job was communicating my
11 findings to the management team, the relevant
12 management team at HSD.

13 Q And the email that we're looking at
14 reflects your findings that you're communicating
15 to the relevant management team?

16 A No, not my findings because it clearly
17 states I'm still in discovery.

18 Q Well, it communicates your findings as
19 of the date of this email?

20 A There's not much here that would
21 suggest that I had any relevant information. I
22 just state that they did \$150,000 last year and
23 Rick H. was asked repeatedly to deal with it.

24 Q And you have knowledge of the content
25 of this email; right?

1 A Yes.
 2 Q And at the time that you wrote this
 3 email, were you reporting to Mr. Cavaretta?
 4 A I was.
 5 Q So this was in March 2014 and I think
 6 you testified earlier that you switched from
 7 special markets to HSD in May of 2014?
 8 A I think I was confused on the date. I
 9 misstated. I think it was March.
 10 Q Okay. And then what was
 11 Mr. McLemore's role at this time?
 12 A Regional manager for Texas where this
 13 particular parent organization was located.
 14 Q Okay. So it's fair to say that at the
 15 time of this email, Steadfast Dental was a
 16 customer of Schein's?
 17 A Correct.
 18 Q And so you wrote that they did
 19 \$150,000 last year?
 20 A Correct.
 21 Q Does that mean that they did \$150,000
 22 worth of business with Henry Schein?
 23 A That's right.
 24 Q So would you consider that to be a
 25 large client for Henry Schein?

1 A Correct.
 2 Q Then you forwarded that email on to
 3 Mr. Cavaretta and Mr. McLemore?
 4 A M-hm.
 5 Q Yes?
 6 A Yes.
 7 Q Thank you.
 8 Then you changed the subject matter
 9 from support to support-buying group Steadfast
 10 Dental, do we shut this down, question mark?
 11 A Right.
 12 Q So you were asking Mr. Cavaretta
 13 and Mr. McLemore whether to shut down Steadfast
 14 Dental?
 15 A Based on some very preliminary
 16 findings, the question is, was this actually a
 17 DSO that I was responsible for. And I said we
 18 think it's a DSO, so I hadn't completed my
 19 discovery yet.
 20 Q Okay. So at this point you did not
 21 know whether this was a group that you were
 22 responsible for?
 23 A Again, I was trying to identify who
 24 they were and what they were. Just by nature of
 25 their title, Steadfast Medical does not sound

1 A I would.
 2 Q And do you have an understanding of
 3 what year Schein started selling to Steadfast
 4 Dental?
 5 A I don't.
 6 Q You were not involved in the decision
 7 to start Steadfast?
 8 A I wasn't.
 9 Q And I think you already testified to
 10 this, but prior to the switch to certain
 11 customers becoming mid-market customers in 2014,
 12 this group Steadfast was within special markets;
 13 is that right?
 14 A Yes.
 15 Q And at the time that you wrote this
 16 email, you were responsible for Steadfast
 17 Dental, it was one of your customers; is that
 18 right?
 19 A It was part of my responsibility. In
 20 my role I didn't have face-to-face
 21 responsibility, but I was responsible for
 22 knowing who they were and making sure that we
 23 were serving them appropriately.
 24 Q So you received an email from Emily
 25 Kerr?

1 like a dental DSO.
 2 Q So at the time that you wrote this
 3 email, you were not sure whether you were
 4 responsible for this group?
 5 A I was doing inquiry to make sure.
 6 Q And you said something about Steadfast
 7 Dental, but in your email subject you wrote
 8 Steadfast Dental?
 9 MR. McDONALD: Object to form.
 10 BY MS. GOFF:
 11 Q Sorry. You said something about
 12 Steadfast Medical, but in your email you wrote
 13 Steadfast Dental?
 14 A I think it was just an error.
 15 Q Okay. Is it your understanding that
 16 the group is called Steadfast Medical?
 17 A It is.
 18 Q But did they have a dental arm?
 19 MR. McDONALD: Object to the form.
 20 BY MS. GOFF:
 21 Q Did they, at the time you wrote this
 22 email, have -- were they purchasing dental
 23 supplies from Schein?
 24 A They were serving the traditional
 25 dental market; however, the dental market they

1 were serving, the specialists they were serving
2 could be categorized as medical, oral,
3 maxillofacial surgery and periodontic surgery as
4 well as some implants. So that falls into a
5 little bit of a medical/dental area, thus the
6 name, I'm sure.

7 Q Gotcha. So you wrote -- as you
8 pointed out, you wrote: We think it's a DSO
9 called OMSP.

10 What is OMSP?

11 A Oral maxillofacial surgery partners.

12 Q What is that?

13 A DSO buying group.

14 Q And was -- is it your understanding
15 that Steadfast Medical is a subsidiary of some
16 kind of OMSP or what is the relationship?

17 A It is not. There is no relationship
18 whatsoever.

19 Q Why were you writing this email about
20 OMSP?

21 A Primarily because their customer base
22 or member base were all oral maxillofacial
23 surgeons.

24 Q Okay. I see. And then you wrote:
25 But there is no question this is a buying group.

1 Do you see that?

2 A Meaning that the private practice
3 offices that were part of their member group
4 were wholly owned private practice offices and
5 Steadfast Medical had no equity stake in the
6 individual offices, they were acting as agent,
7 procurement agent for their member base.

8 Q So the members of Steadfast were the
9 solo practitioners that we discussed earlier?

10 A I don't know if they had multiple
11 offices, but essentially even if they had two
12 offices, they would fall into the private
13 practice realm.

14 Q So why did you feel it was relevant to
15 inform Mr. Cavaretta and Mr. McLemore that this
16 is a buying group?

17 A Well, part of my job was reporting
18 back to my boss what my findings were with the
19 customer in the field and this Steadfast Medical
20 was a mystery and I was giving clarity to the
21 teams, again, so that we could serve them
22 relevantly with our field sales force.

23 Q Did you think that Mr. Cavaretta and
24 Mr. McLemore would think it was important that
25 this was a buying group?

1 MR. McDONALD: Object to the form.

2 THE WITNESS: I thought they would
3 think it was important that we were serving
4 the customer appropriately.

5 BY MS. GOFF:

6 Q But why specifically was it relevant
7 to write that it was a buying group, why was it
8 specifically relevant to inform Mr. Cavaretta
9 and Mr. McLemore that it was a buying group?

10 MR. McDONALD: Object to the form. Go
11 ahead.

12 THE WITNESS: Because we were
13 attempting to establish standards and
14 understanding of how the buying group went
15 to market so that they were aligned with
16 Henry Schein to help us grow our business,
17 to act as a marketing arm on our behalf and
18 not to redirect our business to a
19 competitor.

20 BY MS. GOFF:

21 Q So at this time you were trying to
22 establish standards with regard to buying
23 groups?

24 A Making sure that the business was not
25 only healthy for all stakeholders, especially

1 the end user and their patients, but that we
2 were also able to gain greater access to the
3 member base, access greater access and sell
4 holistically to their member base.

5 Q And did someone at Henry Schein
6 instruct you to do that?

7 A I think that was just good business
8 that we were making sure that since a lot of
9 thought and strategy wasn't giving -- given to
10 open these accounts, it was a mission to fully
11 understand who they were and how we could
12 complement each other.

13 Q By these accounts, do you mean buying
14 group accounts?

15 A This one in particular and Dental
16 Co-op.

17 Q And so what raised a flag for you
18 about Steadfast Dental in particular that made
19 you want to look into it further?

20 MR. McDONALD: Object to the form.

21 THE WITNESS: What raised a flag is
22 the year-over-year business was down
23 45 percent and the individual member groups
24 had no field sales consultants assigned to
25 each of the locations.

1 BY MS. GOFF:
 2 Q How did you know that the business was
 3 down?
 4 A I ran a report.
 5 Q Did you look into every group where
 6 the business was down year over year?
 7 A Every group?
 8 Q So after you ran the report --
 9 A Every office or every group?
 10 Q Let me ask a different question.
 11 When you ran a report to determine
 12 that business was down 45 percent, did you run a
 13 report to find out if any other offices were
 14 down in business, any other groups or customers
 15 were down in business?
 16 A I guess it's vague. I don't
 17 understand the relevancy.
 18 Q Okay. So you ran a report to find out
 19 that Steadfast was -- business was down; right?
 20 A Steadfast business wasn't down, the
 21 office -- the member base offices were down year
 22 over year.
 23 Steadfast business was \$150,000 a
 24 year, but when we looked at their member base,
 25 they had formerly had account numbers under the

1 business within that organization.
 2 BY MS. GOFF:
 3 Q Did you run reports for all of the new
 4 customers that you picked up when you went over
 5 to HSD?
 6 A We received reports, sales reports on
 7 all of them and we would look at the parent
 8 organization and look at the year-over-year
 9 reports. And certainly we had reports. Those
 10 that were down, we would take a harder look at,
 11 yes.
 12 Q Okay. And so were there other ones --
 13 when you transferred over to HSD, were there
 14 other accounts that were down?
 15 A Certainly.
 16 Q And did you look into those?
 17 A Of course.
 18 Q And were -- can you name the ones that
 19 were down that you looked into?
 20 A They are too numerous. This one had
 21 many, many members, so this one I would look at
 22 more -- with more of an intention of finding out
 23 why because they had so many locations, they
 24 should have been performing way over this
 25 \$150,000.

1 HSD umbrella with FSCs calling on them. New
 2 accounts were opened up and the FSCs weren't
 3 carried with them, nor was their former history.
 4 So when we looked at the history when
 5 they were a Henry Schein Dental account from
 6 when they migrated over to Steadfast as the
 7 parent with new account numbers, we found that
 8 they were down 45 percent year over year and our
 9 field sales consultants were not visiting those
 10 offices as they formerly had.
 11 Q What prompted you to do the -- run all
 12 those reports that you just mentioned?
 13 MR. McDONALD: Object to the form. Go
 14 ahead.
 15 THE WITNESS: Again, it was my job to
 16 understand what the business was and whether
 17 there was a starting point for a discussion
 18 with Steadfast.
 19 The goal was I went in with the
 20 intention of finding ways to work with the
 21 VP to enhance the relationship that we
 22 currently had, have more of a presence in
 23 their corporate office and find ways to work
 24 strategically together not only to serve the
 25 member group better but also to grow our

1 Q And so Schein was still making money
 2 off of these accounts; correct?
 3 MR. McDONALD: Object to the form.
 4 BY MS. GOFF:
 5 Q So even though you said that business
 6 was down year over year, Schein was still making
 7 money from these accounts?
 8 A Schein was losing significantly on
 9 these accounts, up to 45 percent of the
 10 business. And that 45 percent of the business,
 11 as I discovered from speaking to their director
 12 of procurement, was being redirected to the
 13 variety of vendors they had brought on board.
 14 In fact, what they did was they took
 15 an order, let's say they had 25 items, and they
 16 would divvy that order up to whatever vendor
 17 offered the cheapest price on that product.
 18 Q What about the other 55 percent? So
 19 you said the 45 percent of the business you were
 20 losing; right?
 21 A M-hm.
 22 Q But Schein was still able to sell
 23 products to some customers through the Steadfast
 24 relationship; right?
 25 A Yes.

1 Q And so Schein was still making money
2 off of those products that it was able to sell?

3 A We were not selling at a loss.

4 Q Going back to whether this was a
5 buying group, were you concerned that Steadfast
6 Dental was a buying group?

7 A I was not. I was concerned that it
8 was a buying group that had not been properly
9 negotiated, that we did not have a clear
10 understanding of each other's expectations and
11 that instead of enhancing not only the business
12 that Henry Schein had but was also enhancing the
13 service that they were providing to their member
14 group.

15 Q Okay. So at this point -- let's refer
16 back to your March 25th, 2014 email -- you were
17 still in discovery on the buying group; correct?

18 A Correct.

19 Q But you wrote: Do we shut this down?
20 So you're asking to shut it down?

21 MR. McDONALD: Object to form,
22 mischaracterizes her testimony.

23 THE WITNESS: At this point, no. I
24 mean, it was just -- I don't know. I
25 misspoke.

1 I don't know what I meant by that
2 because I wouldn't make that recommendation
3 unless I had done all of the research
4 necessary and provided a report back to the
5 leadership that this was a relationship we
6 wanted to continue to grow and empower.

7 BY MS. GOFF:

8 Q Did you have the impression that
9 Mr. Cavaretta wanted to shut down buying groups?

10 A I did not.

11 Q Is there any other reason why you
12 might have asked at this point when you're still
13 doing discovery on the group whether to shut it
14 down?

15 MR. McDONALD: Object to the form,
16 mischaracterizes her testimony.

17 THE WITNESS: I was alarmed that the
18 sales were down. I was alarmed that there
19 were no field sales consultants on the
20 account. Those two things alone were a
21 concern to me that demanded exploration.

22 BY MS. GOFF:

23 Q So why didn't -- did you write in your
24 email to Mr. Cavaretta or Mr. McLemore that
25 sales were down?

1 A I did.

2 Q Where is that?

3 A It's not in here.

4 Q It's not in this email?

5 A Correct.

6 Q You think it's in another email?

7 A Probably.

8 Q What makes you think that?

9 A I would have reported the sales. They
10 would want to know that.

11 Q Do you think that this is the first
12 email that you wrote to Mr. Cavaretta about
13 Steadfast?

14 A It's early, March 25th. But I would
15 be guessing.

16 Q But this was early in your reporting
17 to Mr. Cavaretta?

18 A Clearly. I'm still in discovery would
19 indicate such.

20 Q And then you also said that you were
21 alarmed that there were no field sales
22 accountants on the account.

23 Did you write that on your email to
24 Mr. Cavaretta and Mr. McLemore?

25 A I did not, but by virtue of forwarding

1 the copy, I let them know that.

2 Q That's because Ms. Kerr wrote that?

3 A That's right.

4 Q Did you write to Mr. Cavaretta that
5 you were concerned about the no FSCs assigned?

6 A I don't remember.

7 Q In this email that we're looking at,
8 did you write that you were concerned about the
9 lack of FSCs being assigned?

10 A I don't think so, no.

11 Q You wrote: Rick H. was asked
12 repeatedly to deal with it but nothing ever
13 happened.

14 Is Rick H., do you believe you're
15 referring to Rick Heysquierdo?

16 A Correct.

17 Q And do you know what his job title
18 was?

19 A He was a regional account manager for
20 special markets.

21 Q And what makes you say that Rick H.
22 was asked to deal with it?

23 A He was opening new accounts for the
24 Steadfast member group and not bringing over our
25 field sales consultants with them.

1 Q How did you know that?
 2 A Because I asked Emily Kerr.
 3 Q Who is Emily Kerr?
 4 A She was the inside sales rep -- she
 5 was assigned and responsible for taking care of
 6 the orders that came in from Steadfast.
 7 Q You wrote that Rick H. was repeatedly
 8 asked to deal with it.
 9 What was he asked to deal with?
 10 A Work across the aisle with Henry
 11 Schein Dental and bring the field sales
 12 consultants into the mix so that we were not
 13 losing the opportunity to sell directly to the
 14 end user.
 15 Q And who informed you that it was --
 16 was it Emily Kerr that informed you of the --
 17 that Rick H. was asked to deal with it?
 18 A I don't recall.
 19 Q Okay. Do you have an understanding of
 20 who asked Rick H. to deal with it?
 21 A I don't recall.
 22 Q So do you recall discussing Steadfast
 23 Dental with Rick H. yourself?
 24 A No.
 25 Q And do you know who Rick H.'s boss

1 doing business with that were Henry Schein
 2 customers.
 3 Q Is it possible that after -- that if
 4 Schein stopped doing business with Steadfast,
 5 that it could lose those customers all together?
 6 A Possibly.
 7 Q Was that a concern of yours at the
 8 time?
 9 A Yes.
 10 Q But you still recommend it be shut
 11 down?
 12 A I recommended that we reengage our
 13 field sales consultants with the member group,
 14 the offices. We had a record of all of their
 15 account numbers and we had field sales reps that
 16 were assigned to each of those accounts.
 17 So I recommend that we reengage that
 18 dynamic, that relationship with the field sales
 19 consultant and the actual end user.
 20 Q And after Schein shut down Steadfast,
 21 do you know whether Schein was successful in
 22 reengaging with the end user?
 23 A I do not.
 24 Q Why not?
 25 A Because it's no longer my

1 was?
 2 A Randy Foley.
 3 Q Do you think that it was Mr. Foley
 4 that asked Rick H. to deal with it?
 5 A I don't know.
 6 Q Okay. What did you mean by nothing
 7 ever happened?
 8 A There were still accounts set up in
 9 the system without FSCs and their account
 10 numbers that had formerly been set up in Henry
 11 Schein Dental were disabled.
 12 Q If Schein was doing \$150,000 worth of
 13 business with Steadfast, why did you want to
 14 shut it down?
 15 MR. McDONALD: Object to the form,
 16 asked and answered.
 17 THE WITNESS: For the reasons I
 18 stated, they were down 45 percent year over
 19 year.
 20 BY MS. GOFF:
 21 Q Is it possible that continuing to work
 22 with Steadfast could have brought new customers
 23 to Schein?
 24 A It's possible, however, we wanted to
 25 address the customers that they currently were

1 responsibility. It goes back to being a Henry
 2 Schein core dental customer.
 3 Q So after it was shut down, Steadfast
 4 was no longer your responsibility?
 5 A That's right.
 6 Q And the customers of Steadfast were no
 7 longer your responsibility?
 8 A Yes.
 9 Q And did you ever follow up to see
 10 whether Schein retained any of those customers?
 11 A I did not.
 12 Q It was not important for you to know
 13 that?
 14 MR. McDONALD: Hang on. Object to the
 15 form. Go ahead.
 16 THE WITNESS: It was not my
 17 responsibility.
 18 BY MS. GOFF:
 19 Q Would it have been within Joe
 20 Cavaretta's responsibility?
 21 A Yes, indirectly. He had people
 22 between him that would.
 23 Q So is it possible that Schein lost all
 24 of those customers that it previously had when
 25 it was working with Steadfast?

1 MR. McDONALD: Object to the form,
2 calls for speculation. She's told you she
3 doesn't know.

4 BY MS. GOFF:

5 Q Is it possible?

6 MR. McDONALD: Object to the form,
7 calls for speculation.

8 BY MS. GOFF:

9 Q You can answer the question.

10 MR. McDONALD: Object to the form,
11 calls for speculation.

12 THE WITNESS: I have no idea.

13 BY MS. GOFF:

14 Q Okay. So you said in your email when
15 you wrote "Do we shut this down," question mark,
16 that you misspoke. Is that right?

17 A I presented a question that was not
18 intended to be answered at the moment I wrote
19 it.

20 I presented the question as just food
21 for thought because I was still doing discovery
22 and still trying to understand who they were and
23 whether they were -- whether we were able to
24 work with their vice president and their
25 director to create a strategy that was a win/win

1 for all the stakeholders, Schein, Steadfast, the
2 customer and their patients.

3 Q At this point you're saying you were
4 still doing discovery?

5 A Yes.

6 Q And do you have an understanding of
7 when your discovery was completed?

8 A I could estimate.

9 Q Okay.

10 A Three months.

11 Q And what happened at the end of three
12 months?

13 MR. McDONALD: Object to the form. Go
14 ahead.

15 THE WITNESS: As I stated prior, the
16 vice president stopped responding to my
17 phone calls and my emails.

18 BY MS. GOFF:

19 Q And eventually you recommended to shut
20 down Steadfast?

21 A Correct.

22 Q And why did you make that
23 recommendation?

24 A After repeated attempts to get
25 Mr. Staples to meet with our vice president, Joe

1 Cavaretta, to find a way to make it a healthy
2 relationship, and being shut out, we had no
3 choice then to say if you're not open to
4 renegotiating the relationship and how -- and
5 the redirection of Henry Schein existing
6 business, we're going to assume that that's not
7 in your -- you don't desire that.

8 Q So you tried to reach out to
9 Mr. Staples, you did not get any response, so
10 you assume that he did not want to, as you said,
11 make it a healthy relationship?

12 A I did not assume anything. I could
13 not assume anything. He would not reply.

14 I made verbal attempts, unwritten
15 attempts in my communication that we were very
16 open to creating a healthy relationship and
17 wanted to sit down with him to find ways to find
18 winnable strategies to work with our collective
19 audience.

20 Q And so what would have been your -- if
21 Mr. Staples had been willing to engage, what
22 would you have wanted to see from Mr. Staples?

23 A I would have liked to have known why
24 they were taking existing Henry Schein business
25 and redirecting it to competitors. Whether they

1 were direct or distribution, I have no idea.

2 Q Anything else you would have liked to
3 know?

4 A How we could make Henry Schein more
5 central and a preferred partner perhaps, even an
6 exclusive partner.

7 Q One more question about this email and
8 then we can put it aside.

9 When you wrote "Do we shut this down,"
10 question mark, what did you mean to say instead
11 of that if you misspoke?

12 MR. McDONALD: Object to the form,
13 asked and answered. Go ahead.

14 THE WITNESS: I meant -- the intention
15 behind the statement was can you please look
16 at this and give this some thought as I
17 complete my discovery.

18 BY MS. GOFF:

19 Q And do you think that Mr. Cavaretta
20 and Mr. McLemore understood that was your
21 meaning?

22 A I do.

23 Q What makes you say that?

24 A Because there were many engagements
25 posted where Mr. Cavaretta had offered multiple

1 dates to come and meet with the vice president.

2 MS. GOFF: Okay. I'll hand you
3 another document that's been marked as
4 CX2216.

5 (Exhibit CX2216 was marked.)

6 THE WITNESS: Okay.

7 MS. GOFF: So just for the record,
8 this is a document with the Bates stamp
9 Henry Schein-00034704. The latest in time
10 email is from Joe Cavaretta to you and
11 several other individuals dated June 10th,
12 2014, subject Steadfast Medical GPO.

13 BY MS. GOFF:

14 Q And there are prior emails from you to
15 various individuals.

16 Did you write these emails?

17 A Yes.

18 Q And you drafted them as part of your
19 job at Henry Schein?

20 A Yes.

21 Q You acknowledge the contents of the
22 emails?

23 A Yes.

24 Q I guess why don't we start with the
25 email to Mr. Jon Staples dated June 10th, 2014

1 at 3:01 p.m.

2 A Okay.

3 Q So in this email, are you informing
4 Mr. Staples that -- basically are you
5 terminating the relationship with Steadfast?

6 A Yes.

7 Q And you wrote to Mr. Staples that:
8 After examination of your GPO business model, we
9 have concluded that continuation of our current
10 relationship is counter to our business
11 practices.

12 Do you see that?

13 A I do.

14 Q Did I read it correctly?

15 A M-hm.

16 Q And what did you mean by counter to
17 our business practices?

18 A So in context to his specific
19 Steadfast Medical business model, we have
20 concluded that continuation of the current
21 relationship is counter to our business
22 practices in that they were either unwilling to
23 talk or connect with us in regards to
24 redirection of existing Henry Schein business to
25 competitors.

1 And I wanted to let him know that also
2 if he would reconsider, we would welcome
3 revisiting a mutually beneficial partnership.

4 Q Specifically I'm wondering what you
5 meant by the relationship is counter to your
6 business practices. I'm focused on the business
7 practices part.

8 What business practices are you
9 referring to?

10 MR. McDONALD: Object to the form,
11 asked and answered. Go ahead.

12 THE WITNESS: Business practices would
13 be to qualify a mutually beneficial
14 partnership to all of the stakeholders,
15 meaning that we wanted to have an identity
16 to the member base, we preferred an
17 exclusive partnership if possible.

18 We wanted to be able to rely on the
19 partner to promote Henry Schein. We wanted
20 to align our philosophy about serving our
21 customers holistically, meaning that they
22 would visit -- they would have access to
23 your surgical sales consultants, our field
24 sales consultants, our dental technology
25 consultants, our software consultants, our

1 equipment specialists consultants.

2 This was purely procurement and
3 redirecting existing business.

4 BY MS. GOFF:

5 Q So was it a policy of Henry Schein
6 that any groups that Schein would work with were
7 required to have that set of characteristics
8 that you just explained?

9 MR. McDONALD: Object to the form.

10 THE WITNESS: We did not have a
11 requirement as we were still trying to
12 understand the landscape; however, we wanted
13 to sit down with our potential partners and
14 discuss what that would look like so all
15 parties could win.

16 BY MS. GOFF:

17 Q So there is no specific requirements
18 at this point; is that your testimony?

19 MR. McDONALD: Hang on. Object to the
20 form, asked and answered. Go ahead.

21 THE WITNESS: Strategically speaking,
22 we wouldn't take all-comers, we would
23 identify each of the entities on a
24 one-by-one basis and we would evaluate by
25 sitting down with them, looking at our

1 mutual goals and finding a way that they
2 could increase our scope of influence,
3 perhaps act as a third-party endorser, but
4 also carry a marketing mission forward to
5 their member group so that we could grow our
6 business collectively together.

7 BY MS. GOFF:

8 Q So right now you're speaking about
9 buying groups, or what type of groups are you
10 referring to?

11 A Buying groups.

12 Q Okay.

13 A GP, group purchasing, buying groups,
14 yes.

15 Q You mentioned that as of the time of
16 the email that we've previously looked at, the
17 March 25th, 2014 email, that you were still
18 doing discovery on Steadfast but you referred to
19 it as a buying group.

20 At any point did your understanding of
21 whether Steadfast was a buying group change?

22 A I would call them less a buying group
23 and more a procurement service.

24 Q What is a procurement service?

25 A There is an anonymity for where the

1 products come from so that they were fulfillment
2 neutral.

3 Their fulfillment of the client's
4 orders was neutral. They took the supplier out
5 of the equation and also took our field sales
6 consultants out of the equation.

7 Q That's your understanding of what a
8 fulfillment or what a procurement service is?

9 A It's a very small distinction but an
10 important one, yes.

11 Q When you say a very small distinction,
12 a distinction between what?

13 A We want customers to be exposed to
14 Henry Schein. We want an opportunity to build
15 our brand and to sell that customer.

16 We are a full-service supplier,
17 distributor. We want access to those customers
18 and exposure to those customers and we want our
19 brand to be represented appropriately to those
20 member groups.

21 Q Is the distinction that you're making
22 between a procurement service and buying group?

23 A Is that the where -- when the customer
24 sent their order in, it was completely anonymous
25 how it would be fulfilled.

1 Q Meaning the -- well, what do you mean
2 by it would be completely anonymous?

3 A They would receive the order from the
4 customer, and then they would direct the
5 order -- if I ordered ten Pepsis, ten 7Ups and
6 ten Dr. Peppers, they would send the Dr. Peppers
7 to company A, the 7Ups to company B and the
8 Coke's to company C. But their member would not
9 express a preference or even know where that
10 business was going.

11 Q Okay. Are you aware of any other
12 entities that you would refer to as a
13 procurement service?

14 A No.

15 Q Just Steadfast?

16 A M-hm.

17 Q And are the members of Steadfast
18 generally dental offices?

19 MR. McDONALD: Object to the form.

20 THE WITNESS: They are generally
21 specialty offices that have a stake in
22 medical procedures that are performed in a
23 dental environment.

24 BY MS. GOFF:

25 Q Okay. So then turning to your

1 June 10th, 2014 email at 5:46 p.m., you sent
2 your email to Jon Staples to a group of people
3 internally at Schein. Is that correct?

4 A Is this my meeting to Jon or the one
5 on the front page?

6 Q Sorry, it's the one on the front page.

7 A Okay.

8 Q CX2216-001, and I'm looking at the
9 5:46 p.m. email that starts "Greetings, folks."

10 MR. McDONALD: Are you with her?

11 THE WITNESS: M-hm.

12 BY MS. GOFF:

13 Q So here you referred to Steadfast
14 Medical as a GPO; correct?

15 A It's a group purchasing, yes.

16 Q Okay. And then you say that they are
17 cannibalizing existing business.

18 Do you see that?

19 A I do.

20 Q And what did you mean when you wrote
21 cannibalizing?

22 A So they were taking the business that
23 was formerly being sent directly to Henry Schein
24 through our field sales force and our eCommerce
25 site and they were reallocating that business to

1 our competitors. The very same products were
2 being reallocated to Henry Schein's competitors.

3 Q So do you have -- was there a change
4 at some point within Steadfast where previously
5 the -- all of the orders that were placed
6 through Steadfast were being directed to Schein
7 and then at some point some of them were being
8 directed to other competitors?

9 A No.

10 Q So the entire time of the
11 relationship, it was this relationship where
12 some of the goods were being directed to
13 competitors?

14 A Correct.

15 Q You said earlier you don't know when
16 the relationship started?

17 A I don't know when the relationship
18 started; however, when we ran a year-over-year
19 report, using the private practice accounts that
20 had been set up under Henry Schein Dental, we
21 looked at the business and then looked at the
22 Steadfast business for the same time period of
23 time for the following year and they were down
24 45 percent.

25 Q And then turning to the top email from

1 Joe Cavaretta to you.

2 A M-hm.

3 Q So Joe Cavaretta was your boss at this
4 point; right?

5 A Yes.

6 Q And he wrote that: GPOs are popping
7 up like crazy, so it is nice when we can shut
8 one down.

9 Do you see that?

10 A I do.

11 Q So he was praising you for shutting
12 down a GPO; correct?

13 MR. McDONALD: Object to the form,
14 mischaracterizes the document, incomplete
15 reading of it.

16 BY MS. GOFF:

17 Q You can answer the question.

18 MR. KASS: I'm going to do a fairness
19 designation because you cut off the
20 sentence.

21 It says: GPOs are popping up like
22 crazy, so it's nice when we can shut one
23 down and still keep the business from the
24 individual customers.

25 MS. GOFF: Okay. Sir, with regard to

1 Henry Schein, I believe that there's one
2 attorney representing Henry Schein. I
3 believe it is Mr. McDonald.

4 MR. McDONALD: If you want me to do
5 it, I'll do it. So I'll do it. I'll do it.

6 Object to the form, mischaracterizes
7 the document. I will make a complete
8 designation and read the sentence in
9 totality.

10 "GPOs are popping like crazy, so it's
11 nice when we can shut one down and still
12 keep the business from the individual
13 customers."

14 BY MS. GOFF:

15 Q My question, Ms. Titus is: One of the
16 things that Mr. Cavaretta was saying in this
17 email was that it was nice when Schein could
18 shut down a GPO; correct?

19 MR. McDONALD: Object to the form.

20 Again, mischaracterizes the document and
21 reads a half of a sentence.

22 BY MS. GOFF:

23 Q You can answer the question.

24 A When he says "nice when we can shut
25 one down," what he's referring to is that we are

1 still able to keep the business from the
2 individual customer.

3 So you can't read just the "shut one
4 down" because it's completely out of context and
5 changes the intent of his statement.

6 Q How do you know the intent of
7 Mr. Cavaretta's statement?

8 A Because he said "and still keep the
9 business from the individual customers."

10 Q He was saying two things, he was happy
11 that you shut down a GPO; correct?

12 MR. McDONALD: Object to the form,
13 mischaracterizes the document.

14 BY MS. GOFF:

15 Q He was happy that you shut down a GPO?

16 A He was happy --

17 MR. McDONALD: Hang on. Hang on.
18 Object to the form, asked and answered,
19 mischaracterizes the document.

20 BY MS. GOFF:

21 Q Go ahead.

22 MR. McDONALD: You can't just make
23 this stuff up, Karen.

24 BY MS. GOFF:

25 Q You can answer the question.

1 MR. McDONALD: You can answer it
2 again. So give her the same answer you gave
3 two minutes ago.

4 THE WITNESS: He was happy that we
5 were keeping the business.

6 BY MS. GOFF:
7 Q Okay. That is the second part of his
8 statement to you; correct?

9 MR. McDONALD: Object to the form,
10 mischaracterizes the document.

11 Unless you wrote it, then you can't
12 tell her what it means. She's telling you
13 what it means to her and you can't testify
14 for her. You just don't like her answer.

15 So ask her for a third or fourth time
16 if you want to. The clock is ticking.

17 BY MS. GOFF:
18 Q Ms. Titus, I'm going to ask you this
19 question one more time.

20 MS. GOFF: I would appreciate it if
21 counsel would stop with the speaking
22 objections.

23 MR. McDONALD: I'm going to object
24 however I feel I need to object. I asked
25 you to please ask one question one time and

1 not four or five times because you don't
2 like the answer.

3 BY MS. GOFF:
4 Q Ms. Titus --

5 MR. McDONALD: It's abusive of the
6 witness.

7 BY MS. GOFF:
8 Q Ms. Titus, are you aware of what
9 Mr. Cavaretta was thinking when he wrote this
10 email?

11 A No.

12 Q Okay. And Mr. Cavaretta wrote: It is
13 nice when we can shut one down and still keep
14 the business from the individual customers.

15 That's correct?

16 A You read what he said.

17 Q Let's turn to the Dental Co-op.
18 Actually, I have one more question, actually,
19 separate and apart from this email.

20 But since we're talking about
21 Mr. Cavaretta, was Mr. Cavaretta -- you worked
22 for him for several years; right?

23 A I worked for him for three years, yes.

24 Q And is it your understanding that he
25 was email weary?

1 MR. McDONALD: Object to the form.

2 THE WITNESS: I have no idea what
3 you're talking about.

4 BY MS. GOFF:
5 Q Was he nervous about putting things in
6 email?

7 MR. McDONALD: Object to the form.

8 THE WITNESS: If he was, he never
9 expressed that to me at any time.

10 BY MS. GOFF:

11 Q Okay.

12 A Are we finished with that one?

13 Q You can put that aside, yes.

14 MS. GOFF: I'm handing you what has
15 been marked as Exhibit CX2206.

16 (Exhibit CX2206 was marked.)

17 BY MS. GOFF:

18 Q Have you had a chance to review it?

19 A M-hm.

20 MS. GOFF: For the record, I'll just
21 say it bears the Bates stamp Henry Schein,
22 then 000003359.

23 BY MS. GOFF:

24 Q And the top email, the latest in time
25 is from you to Mr. Cavaretta dated April 16th,

1 2014.

2 And then do you see that you wrote in
3 this email: I know you are email weary.

4 Do you see that?

5 A I do.

6 Q Do you have an understanding as you
7 sit here today of what you meant by that?

8 A I thought you said email wary. It
9 sounded like you said email wary. Did you?

10 Q I was using this term, "email weary."

11 A Okay.

12 Q So what I'm asking you right now is:

13 Do you have an understanding of what you meant
14 by that?

15 A I do.

16 Q What is it?

17 A There are a lot of communication
18 emails that take a lot of time out of people's
19 workday. And I was empathizing with the fact
20 that a lot of the information that was coming at
21 him was additional to his normal
22 responsibilities and perhaps he was getting
23 weary of reading lots and lots of email, as we
24 all are.

25 Q Okay. Thank you.

1 Before I switch to Dental Co-op --
2 MR. KASS: So one thing just for the
3 realtime record, it says -- your answer was:
4 I thought you said email wary.

5 It sounded like you said email wary,
6 but it shows up in the realtime as "weary,"
7 so I just want to make sure that you're
8 actually getting what she said on the
9 record.

10 MS. GOFF: As you know, Ms. Titus will
11 have the opportunity to review the
12 transcript and --

13 MR. KASS: I have --

14 MS. GOFF: Thank you for noting that,
15 Mr. Kass.

16 MR. KASS: I have every right to make
17 sure that the record that's being created as
18 we sit here today is accurate.

19 BY MS. GOFF:

20 Q Just one more question about Steadfast
21 before we move on.

22 Mr. Foley, was he one of the
23 individuals that you spoke with about
24 Steadfast -- I'm not referring to a document, so
25 you can actually put that document aside.

1 Was Mr. Foley one of the individuals
2 that you spoke with about Steadfast?

3 A Yes.

4 Q And about shutting it down?

5 A And about whether it was a
6 strategically sound partner for Henry Schein.
7 Not specifically with the end goal of shutting
8 it down. About the strategic partnership that
9 existed for Henry Schein.

10 Q Did you seek permission from Mr. Foley
11 to end the relationship with Steadfast?

12 A I don't remember.

13 Q Do you have an understanding of
14 whether Mr. Foley was okay with Schein ending
15 the relationship with Steadfast?

16 A I think Mr. Foley wanted to do his own
17 research or at least verify mine.

18 Q Do you know whether he eventually
19 approved of ending the relationship at
20 Steadfast?

21 A I believe he did.

22 Q Thank you.

23 Okay. The Dental Co-op of Utah, let's
24 talk --

25 A Do we need this any more?

1 Q No, you can put that one aside. Thank
2 you.

3 MS. GOFF: Why don't we start with a
4 document. I'm going to hand you a document
5 that has been marked as CX2227-1. I'm
6 sorry, could you hand one of those to your
7 counsel?

8 (Exhibit CX2227-1 was marked.)

9 BY MS. GOFF:

10 Q Have you had a chance to review the
11 email?

12 A I have.

13 MS. GOFF: For the record, I will note
14 that it bears the Bates stamp Henry
15 Schein-000173088. The latest in time email
16 is from Hal Muller to you and Mr. Foley
17 dated February 10th, 2014.

18 I would actually like to look at an
19 earlier email in the chain first, though, so
20 it's on page that has the stamp CX2227-004.

21 BY MS. GOFF:

22 Q It starts with -- it's at the top of
23 this page. It starts with, "Peripherally
24 aware."

25 Do you see that?

1 A M-hm.

2 Q Is this an email that you wrote?

3 MR. McDONALD: Take your time to read
4 it.

5 Are you done?

6 THE WITNESS: Do you want me to read
7 it?

8 MR. McDONALD: Yes, you should read it
9 before you answer her questions.

10 THE WITNESS: Okay.

11 BY MS. GOFF:

12 Q So is this an email you wrote?

13 A M-hm.

14 Q And are you knowledgeable of the
15 content?

16 A Yes.

17 Q So just referring to your sentence
18 where you said: The decision of HSD to treat
19 them as a GPO is a legacy decision that I do not
20 believe, if presented with the same
21 circumstances today, HSD would have embraced.

22 Did I read that correctly?

23 A You did.

24 Q And are you talking about in this
25 sentence the Dental Co-op of Utah?

1 A I am.

2 Q And what did you mean by if presented
3 with the same circumstances today, you do not
4 think that HSD would have embraced?

5 A I think the HSD team did not have a
6 clear understanding of what would constitute a
7 healthy relationship between a GPO like Dental
8 Co-op and our company.

9 At the time that they put the program
10 in place for this -- for Dental Co-op, there
11 were no discussions regarding existing Henry
12 Schein business. In this case we have an
13 exclusive relationship to distribute Colgate.
14 Colgate is a very large part of our customer
15 business. It's toothbrush, floss and paste and
16 other preventives.

17 What we discovered -- and again, this
18 was a surprise to all of the stakeholders at
19 Henry Schein -- was that Dental Co-op was --
20 were going to Henry Schein customers and taking
21 them off the Colgate plan that they were
22 receiving from Henry Schein and redirecting them
23 to Procter & Gamble to buy their preventives at
24 below our cost.

25 Q And did Mr. Cavaretta ask you to look

1 into the Dental Co-op relationship?

2 A I don't think it was Joe Cavaretta, I
3 think it was the regional manager that was
4 managing the relationship.

5 Q Who would that be?

6 A Jeff Harmon.

7 Q But when you moved over to HSD in
8 2014, someone asked to you look into the Dental
9 Co-op relationship?

10 A They asked me to evaluate the Dental
11 Co-op relationship and help to create a
12 healthier, more win/win relationship with the
13 co-op.

14 Q And what did you -- what would a more
15 healthy win/win relationship look like?

16 A One was there was a tacit
17 understanding from the Henry Schein Dental folks
18 that the Dental Co-op was only promoting Henry
19 Schein.

20 However, when we were alerted by our
21 partner that there were over 300 offices in the
22 Utah market that were on a Colgate plan and they
23 were being taken off that Colgate plan by Dental
24 Co-op and redirected to Procter & Gamble, I was
25 asked to go in and negotiate with the general

1 co-op leadership to first address why and how we
2 could start bringing that business back. And in
3 the spirit of our relationship of reciprocity,
4 keep that business that we had established with
5 Henry Schein.

6 Q And were you successful in doing that?

7 A No.

8 Q Why not?

9 A Because the -- I guess he was the VP
10 of Dental Co-op refused to keep Schein exclusive
11 and had made commitments to direct sellers to
12 move business towards them.

13 Q And so then at some point the
14 relationship with the Dental Co-op of Utah
15 ended; correct?

16 A I'm assuming that is correct; however,
17 I was not a part of the process because the
18 offices that were enrolled in the Dental Co-op
19 were all private practice offices with field
20 reps again.

21 Q So did you make a recommendation to
22 anyone to end the relationship with the Dental
23 Co-op of Utah?

24 A I believe I did.

25 Q And who were those people again?

1 A It would be Kevin Upchurch, it was his
2 own manager, Jeff Harmon, and Joe Cavaretta.

3 Q But you don't know what happened
4 following your recommendation?

5 A I don't.

6 Q And the Dental Co-op, was that within
7 your area of responsibility when you switched
8 over to HSD?

9 A Technically, no, but my expertise was
10 needed to put a critical eye to the relationship
11 and act as a chief negotiator to bring the
12 relationship back to a healthy place.

13 Q Why was it technically not in your
14 area of responsibility?

15 A Because, again, the offices were
16 private practice offices.

17 Q But didn't you have other entities
18 that were within your area of responsibility
19 where the offices were private practice offices?

20 A The only time it was specifically my
21 responsibility is if they had been opened under
22 the special markets flag and I inherited them
23 with the launch of mid-market. This one always
24 resided with HSD.

25 Q But it had more than three offices;

1 correct?
2 MR. McDONALD: Object to the form.
3 BY MS. GOFF:

4 Q The Dental Co-op of Utah, did it have
5 more than three --

6 A Three members?

7 Q Three members, yes.

8 A It did.

9 Q But that would not fall within your
10 purview?

11 A They didn't own the offices. Members
12 and ownership are two completely different
13 things.

14 Q Thank you for the clarification.

15 So you said that you brought your --
16 you were asked to bring your expertise to
17 address the Dental Co-op situation?

18 A To negotiate with Dental Co-op.

19 Q Who asked you to do that?

20 A I think it was Jeff Harmon.

21 Q Okay. What was your expertise that he
22 was asking you to bring as you understood it?

23 A Looking at a parent organization who
24 has influence over Henry Schein business and
25 making sure that we're strategically aligned not

1 only with their mission and message but also
2 that there is a certain degree of assurance that
3 Henry Schein's brand will be promoted, that we
4 would have access to their members and that we
5 would have an opportunity to grow our business,
6 helping our customers thrive and bring quality
7 dentistry to their patient base.

8 Q Was the Dental Co-op a profitable
9 relationship for Schein?

10 A Not in my estimation.

11 Q Why not?

12 A They were doing a million dollars
13 worth of business collectively with their member
14 group. However, there were 400 members. That's
15 not a healthy ratio.

16 Q What do you mean by that's not a
17 healthy ratio?

18 A So if I took 400 members and divided
19 by a million and just assigned a number for each
20 location, that would be a pretty poor
21 representation of the potential of a single
22 dental office volume if they were treating Henry
23 Schein as their primary supplier.

24 Q If a DSO was doing a million dollars
25 worth of business with Henry Schein, would you

1 consider that to be profitable?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: That's not the
4 measurement that we would look at. We would
5 look at their number of locations and how
6 deep we were selling into the environment.

7 BY MS. GOFF:

8 Q So I just want to make sure I have an
9 answer to the question.

10 So if a DSO is doing a million dollars
11 worth of business, would you consider that to be
12 profitable?

13 MR. McDONALD: Object to the form,
14 asked and answered.

15 THE WITNESS: It depends on the number
16 of locations.

17 BY MS. GOFF:

18 Q And if there were 400 locations for a
19 DSO, would you consider that to be profitable?

20 MR. McDONALD: Object to form.

21 THE WITNESS: No.

22 BY MS. GOFF:

23 Q Did anyone at Schein -- did you ever
24 hear anyone at Schein say that they thought the
25 relationship with the Dental Co-op of Utah was

1 profitable?

2 A No.

3 Q You never heard that --

4 A I never heard anybody weigh either way
5 on it.

6 Q And did you ever tell anyone that you
7 didn't think that the relationship was
8 profitable?

9 A I don't think I said those words, but
10 what I said was they were redirecting existing
11 established Henry Schein business to a direct
12 seller that we couldn't compete with in two
13 major categories for our organization.

14 And the leadership at Dental Co-op
15 refused to reconsider their practices.

16 Q Why couldn't Henry Schein compete with
17 the direct selling manufacturer?

18 A We're a distributor, so there is a
19 profit margin that's worked in for distribution.
20 Direct sellers don't have that middleman. So
21 buying direct puts us at a disadvantage.

22 If you take Procter & Gamble, for
23 example, Oral-B, they sell both direct and they
24 sell to the professional trade through
25 distribution. If you buy from Procter & Gamble

1 direct, they are buying at below our cost.
 2 Q So Henry Schein couldn't compete
 3 because Henry Schein couldn't afford to lower
 4 its prices enough to compete with Procter &
 5 Gamble in that circumstance?
 6 A No, we could not.
 7 Q Turning back to the email, you wrote:
 8 As I see it, this portends the empowerment of
 9 the GPO infiltration in the dental space. And
 10 as this scenario illustrates, the dilution of
 11 the influence of distribution.
 12 Do you see that?
 13 A I do.
 14 Q So what did you mean by the dilution
 15 of the influence of distribution?
 16 A The GPO and their member base as a
 17 third party that is essentially standing between
 18 us and their customer and promoting a certain
 19 product list, goods, vendors, et cetera, they
 20 have the power to redirect our business by
 21 virtue of their -- the captive audience they
 22 have with their member group.
 23 Q And was this concerning to you?
 24 A It was concerning to me if we did not
 25 have a well negotiated agreement with them.

1 THE WITNESS: I have no idea.
 2 BY MS. GOFF:
 3 Q The members of the co-op were getting
 4 lower prices for the Procter & Gamble supplied
 5 products that Henry Schein could offer those
 6 members?
 7 A That's correct.
 8 Q Okay. So going back to what a well
 9 negotiated agreement would be from Schein's
 10 perspective, what were you looking for?
 11 MR. McDONALD: Object to the form,
 12 asked and answered. Go ahead.
 13 THE WITNESS: Ideally, exclusivity
 14 within reason, the ability to engage, reach
 15 and sell deeper into the member base, an
 16 opportunity to grow our scope of influence
 17 within the dental landscape, so as they add
 18 members, we want to be able to engage with
 19 those members.
 20 The ability to sell more holistically
 21 to their member base, meaning software
 22 equipment, dental technology, business
 23 solutions.
 24 BY MS. GOFF:
 25 Q So with regard to the Dental Co-op

1 Q And what would be a well negotiated
 2 agreement in your mind?
 3 A One that's mutually beneficial to all
 4 the stakeholders, the GPO, Henry Schein, the end
 5 user and the patients.
 6 Q And is it your understanding that the
 7 relationship between Henry Schein and the Dental
 8 Co-op of Utah was not mutually beneficial for
 9 all of the stakeholders?
 10 A Correct.
 11 Q It was beneficial for the co-op,
 12 though, wasn't it?
 13 MR. McDONALD: Object to the form.
 14 BY MS. GOFF:
 15 Q You can answer the question if you're
 16 able to.
 17 A I'm not sure what you mean.
 18 Q Well, it was beneficial to the members
 19 of the co-op; correct?
 20 MR. McDONALD: Object to the form.
 21 BY MS. GOFF:
 22 Q I'll ask a different question.
 23 The members of the co-op were getting
 24 the lowest possible price for goods; correct?
 25 MR. McDONALD: Object to the form.

1 relationship specifically, I understand that
 2 there was not an exclusive relationship, but
 3 were you able to offer all of the other things
 4 that you just mentioned to the Dental Co-op of
 5 Utah?
 6 A We never got that far.
 7 Q I mean in the relationship that Schein
 8 had with the Dental Co-op of Utah before you
 9 were involved?
 10 MR. McDONALD: Object to the form.
 11 BY MS. GOFF:
 12 Q Why don't I go through.
 13 Before you were involved, is it your
 14 understanding that Schein was able to reach and
 15 sell into the member base of Dental Co-op?
 16 A I have no knowledge of what that
 17 looked like.
 18 Q Okay. But you did research on the
 19 Dental Co-op of Utah and the relationship before
 20 you recommended that it be shut down; right?
 21 A I was only asked to come and address a
 22 red flag that was popping up where we had over
 23 300 dental plans existing, established dental
 24 plans with Henry Schein customers, and that
 25 member base and those dental plans were being

1 redirected by the co-op to our competitor.

2 Q So you were only asked to address that
3 one specific part of the relationship?

4 A I was asked to act as a negotiator to
5 help bring the relationship back to a healthy
6 place.

7 Q And so did you ask the co-op for an
8 exclusive relationship?

9 A I did.

10 Q And they said no?

11 A They did.

12 Q Was the co-op offering the ability for
13 Henry Schein's FSCs to call on the members of
14 the co-op?

15 A We did not have that discussion.

16 Q You don't know?

17 A I think they were, but we didn't have
18 that discussion.

19 Q Okay. That wasn't relevant to you?

20 MR. McDONALD: Object to the form,
21 mischaracterizes her testimony.

22 BY MS. GOFF:

23 Q Go ahead, you can answer.

24 A That wasn't part of the discussion.

25 Q Other than exclusivity, was there

1 anything else that you discussed with the Dental
2 Co-op of Utah?

3 A Not that I would recollect.

4 Q Then in the next paragraph, you wrote:
5 This needs to get on the radar of HSD leadership
6 (Joe Cavaretta and Dave Steck and Hal Muller)

7 A.S.A.P. Would you be okay with me sending them
8 an alert, question mark. Perhaps there is
9 something we can do to derail this gaining more
10 momentum.

11 Do you see that?

12 A I do.

13 Q Did I read it right?

14 A M-hm.

15 Q You're writing this email to Francis
16 Keefe?

17 A M-hm.

18 Q Who is Francis Keefe?

19 A Francis Keefe is the national sales
20 manager for Colgate.

21 Q Okay. And what did you want to get on
22 the radar of HSD leadership?

23 A That we had 300 preventative plans
24 with Henry Schein clients, because it's an
25 exclusive product, that were being redirected.

1 In essence the Dental Co-op, in conjunction with
2 P&G, Palmolive, was -- were going to our
3 customers and redirecting established business
4 to P&G.

5 Q How did you know that the business was
6 established?

7 A We had records of dental plans, of
8 preventive plans. The person that's writing
9 this has a list of contracts.

10 Q The Francis O'Keefe?

11 A M-hm.

12 Q So then you wrote: Perhaps there is
13 something we can do to derail this gaining
14 momentum.

15 Were you referring to the Dental Co-op
16 gaining momentum?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: No.

19 BY MS. GOFF:

20 Q What were you referring to?

21 A The redirection of our Colgate plans
22 to our competitor.

23 Q And at this point are you aware of how
24 long the plans had been redirected? In other
25 words, was this a recent change as of the date

1 that you wrote this email?

2 A I have no idea.

3 Q Okay. So you don't know whether the
4 plans had been buying from P&G for a long period
5 of time or not?

6 MR. McDONALD: Object to the form,
7 asked and answered.

8 THE WITNESS: This was brought to our
9 attention by Colgate, so clearly it was
10 something that had just started happening.

11 BY MS. GOFF:

12 Q But this issue was brought to your
13 attention from people within Schein as well;
14 right?

15 A No. This particular situation here
16 with the dental plans was brought to my
17 attention by our channel partner at Colgate.

18 Q Okay. I guess this was dated February
19 2014, so were you within special markets at this
20 time?

21 A Yes.

22 Q So were you working for Joe Cavaretta?

23 A No.

24 Q But then at some point when you did
25 move over to HSD, your testimony is that

1 Mr. Harmon asked you to look into the Dental
 2 Co-op?
 3 A He asked for my assistance.
 4 Q And that was because of this Colgate
 5 issue?
 6 MR. McDONALD: Object to the form. Go
 7 ahead.
 8 THE WITNESS: The Colgate issue but as
 9 well the expertise that I brought in
 10 negotiating with business entities like the
 11 Dental Co-op and others.
 12 BY MS. GOFF:
 13 Q Okay. And are there any other
 14 groups -- when you switched over to HSD, are
 15 there any other groups that anyone asked you
 16 specifically to look into?
 17 A No.
 18 MR. McDONALD: We've been going like
 19 an hour and 45 minutes.
 20 MS. GOFF: Okay.
 21 MR. McDONALD: So find a breaking
 22 point and we'll take a break.
 23 MS. GOFF: Okay. Why don't we take a
 24 break now then. Can we do our lunch -- off
 25 the record.

1 group?
 2 A Correct.
 3 Q And did you -- you were in favor of
 4 Henry Schein working with PGMS; is that right?
 5 A I was in favor of exploring a
 6 relationship with them to possibly create a
 7 buying arm for their consulting group.
 8 Q Did you feel that that could be a
 9 potentially profitable relationship for Schein?
 10 A I did.
 11 Q Did you think it could bring
 12 incremental sales?
 13 A I did.
 14 Q Did you negotiate an exclusive
 15 relationship with PGMS, between Schein and PGMS?
 16 A Unfortunately, they would not accept
 17 an exclusive relationship.
 18 Q So you were not able to negotiate an
 19 exclusive relationship for Schein?
 20 A I was not.
 21 MR. McDONALD: Pause. Let her finish.
 22 BY MS. GOFF:
 23 Q You were not?
 24 A I was not.
 25 Q So when you use the term "exclusive,"

1 (Recess taken.)
 2 BY MS. GOFF:
 3 Q Ms. Titus, switching gears now, are
 4 you familiar with a group called PGMS?
 5 A I am.
 6 Q And was that another group that you
 7 dealt with within the first few months of being
 8 transferred from special markets to HSD in 2014?
 9 A It was.
 10 Q Was that a buying group based in
 11 California?
 12 A It was not a buying group.
 13 Q What would you call it?
 14 A Consulting group that had aspirations
 15 to be a buying group.
 16 Q Okay. What is a -- what is your
 17 definition of a consulting group?
 18 A They would come in to an organization
 19 and assess the efficacy of their operations and
 20 make suggestions and work side by side with them
 21 to make improvements in their organization to
 22 increase revenue, to improve their operational
 23 efficiencies, et cetera.
 24 Q Okay. But it was your understanding
 25 that PGMS had aspirations to become a buying

1 what do you mean?
 2 A That as supply distribution goes,
 3 there are a handful of them that fit the profile
 4 of Henry Schein which would be full service,
 5 meaning that we have a full suite of field sales
 6 consultants, technicians, specialists, subject
 7 matter experts, specialists. And that we would
 8 not want to have another competitor also share
 9 that space with us.
 10 Q Okay. But even though it was not --
 11 even though it's your testimony that it was not
 12 an exclusive relationship, you were interested
 13 in working with PGMS?
 14 MR. McDONALD: Object to the form,
 15 mischaracterizes her testimony.
 16 THE WITNESS: I was interested in
 17 negotiating a possibility of creating a
 18 relationship.
 19 BY MS. GOFF:
 20 Q Was the decision of whether to work
 21 with PGMS eventually elevated to Tim Sullivan?
 22 A No.
 23 Q Let's look at some documents.
 24 MS. GOFF: I handed you what's been
 25 marked as CX2235.

1 (Exhibit CX2235 was marked.)
 2 BY MS. GOFF:
 3 MS. GOFF: It's a document with the
 4 Bates stamp Henry Schein-001453275. There
 5 is a cover email and then attachment and the
 6 email is from you to Glenn Showgren and
 7 Kevin Upchurch that's dated July 17th, 2014.
 8 BY MS. GOFF:
 9 Q Have you had a chance to look over the
 10 email?
 11 A Uh-huh.
 12 Q I don't think I'll be asking you any
 13 specific questions about the attachment, or the
 14 attachments rather. But if I do and you feel
 15 the need to review it, obviously feel free.
 16 A Okay.
 17 Q So you wrote in this email: We had a
 18 GPO prospect called PGMS.
 19 Is that the PGMS that we've been
 20 talking about today?
 21 A It is.
 22 Q You wrote: Very intriguing, willing
 23 to be exclusive.
 24 So in this email you were informing
 25 Mr. Showgren and Mr. Upchurch that PGMS was

1 Schein umbrella, but I was the mid-market
 2 business unit, they were the core private
 3 practice business unit, but we had overlap and
 4 collaboration.
 5 Q Okay. But were they superior -- were
 6 they your superiors at Henry Schein?
 7 A I would not call them superiors, no.
 8 Q Okay. In any event, they are your
 9 colleagues at least?
 10 A Colleagues is a good word.
 11 Q Okay. And you told them that PGMS was
 12 willing to be exclusive as of the date you sent
 13 this email?
 14 A That's correct.
 15 Q And you attached an agreement. Was
 16 this an agreement that you had negotiated with
 17 PGMS?
 18 A This was the agreement that I had sent
 19 to PGMS for signature.
 20 Q And you wrote: I created this and
 21 sent to Joe for review.
 22 Do you see that?
 23 A Yes.
 24 Q Is Joe Joe Cavaretta?
 25 A It is.

1 willing to be exclusive?
 2 A I was.
 3 Q And are you saying that this was
 4 inaccurate?
 5 A Post sending the attached agreement,
 6 the founding doctor, Dr. Juan Luque, could not
 7 assure that he would be exclusive with Henry
 8 Schein, nor could he assure their ten members
 9 would agree to as well.
 10 Q As of the time you wrote this email on
 11 July 17th, 2014 at 12:21 p.m., you believed that
 12 the PGMS entity was willing to be exclusive; is
 13 that correct?
 14 A At that point, yes.
 15 Q Before we continue, just to confirm,
 16 you did write this email; correct?
 17 A You did.
 18 Q You have knowledge of the contents?
 19 A I do.
 20 Q And Mr. Showgren and Mr. Upchurch,
 21 were they on the org chart above you?
 22 A Correct. Well, yes. They were, yes.
 23 Q They were your superiors?
 24 A They worked for Henry Schein Dental,
 25 not mid-market were both underneath the Henry

1 Q And then you said: It went to Tim and
 2 he shot it down.
 3 Is this a reference to Tim Sullivan?
 4 A I'm assuming that is the case.
 5 Q Okay. So you wrote this email; right?
 6 A I did.
 7 Q So sitting here today, are you able to
 8 tell me whether or not this Tim that you meant
 9 in this email is Tim Sullivan or not?
 10 A I'm sure it was.
 11 Q And so you're saying that Tim Sullivan
 12 shot down an agreement with PGMS?
 13 A Yes.
 14 Q And then you wrote: I think the meta
 15 message is officially GPOs are not good for
 16 Schein.
 17 Did I read that correctly?
 18 A I did.
 19 Q MSG is an abbreviation in this
 20 sentence for message; correct?
 21 A Correct.
 22 Q On the date you wrote this email, you
 23 felt that the message from above was that GPOs
 24 are not good for Schein?
 25 MR. McDONALD: Object to the form.

1 THE WITNESS: Yes, and that statement
 2 was not -- I did not have intimate
 3 knowledge, it was what I was thinking it
 4 meant.
 5 BY MS. GOFF:
 6 Q You were thinking it meant that the
 7 message from Tim is Sullivan was that GPOs are
 8 not good for Schein?
 9 A At least this one.
 10 Q But you wrote GPOs are not good
 11 Schein, it wasn't specific to this one?
 12 MR. McDONALD: Object to the form,
 13 mischaracterizes the document and her
 14 testimony.
 15 BY MS. GOFF:
 16 Q Did you write GPOs are not good for
 17 Schein?
 18 MR. McDONALD: Hang on. Object to the
 19 form. You're reading half a sentence. Go
 20 ahead.
 21 THE WITNESS: The context is PGMS
 22 agreement.
 23 BY MS. GOFF:
 24 Q So is it your testimony that at some
 25 point -- well, let me just back up.

1 A I don't know the timeline. I can't
 2 testify to the timeline.
 3 Q Well, in your email you wrote willing
 4 to be exclusive; right?
 5 A Yes, verbally, yes.
 6 Q And what you sent to Joe was the
 7 attachment that we see here; is that right?
 8 A Right.
 9 Q And that's what you sent to Joe for
 10 review?
 11 A Correct.
 12 Q So do you have an understanding of
 13 what Mr. Sullivan said about the PGMS agreement?
 14 A I do not.
 15 Q How did you come to understand that
 16 Tim shot it down?
 17 A I believe that the agreement that I
 18 had sent was not -- was not something that was
 19 appropriate for a ten-member group.
 20 Q So my question was: How did you come
 21 to understand that Tim rejected the PGMS
 22 agreement? Did someone inform that, did someone
 23 tell that to you?
 24 A I don't remember. It wouldn't have
 25 been anybody except for my boss. I never went

1 So as of the time that you wrote this
 2 email, it was your understanding that Tim
 3 Sullivan had shot down a PGMS agreement?
 4 A Yes.
 5 Q And as of the date of this email, it
 6 was your understanding that the agreement
 7 between Schein and PGMS would be an exclusive
 8 agreement?
 9 A No, because there was no signature,
 10 there was no final sit-down with the customer to
 11 discover the terms of the attached agreement.
 12 And when they did review and verbally we
 13 reviewed them, first and foremost, they could
 14 only assure us ten of their consulting members
 15 and none of those ten would commit to
 16 exclusivity or even compliance with the
 17 agreement, nor would the founding doctor,
 18 Dr. Juan Luque.
 19 Q Okay. I understand that at some point
 20 after you wrote this email, you came to the
 21 understanding that PGMS was not willing to be
 22 exclusive; is that right?
 23 A That's right.
 24 Q But when you wrote this email, you
 25 thought that they were willing to be exclusive?

1 over -- I never jumped rank over Joe. That
 2 would be as high as I would go.
 3 Q So you never personally had a
 4 conversation with Mr. Sullivan about this?
 5 A Never.
 6 Q But you think Joe would be the person
 7 that informed you that Tim was not in favor of
 8 it?
 9 A I think so.
 10 Q So did you have any understanding of
 11 the reasons why Tim was not in favor of it?
 12 A I may have, but at this moment in
 13 looking at this document, I'm not even sure why
 14 I sent it to these two gentlemen.
 15 Q So at this moment, you're not -- you
 16 don't recall the reasons why Tim shot down this
 17 agreement?
 18 A I don't.
 19 Q Is there anything that would refresh
 20 your recollection?
 21 A Maybe a timeline on the initial
 22 negotiations with PGMS.
 23 Q Did you maintain a timeline?
 24 A No.
 25 Q Okay. Is there any document that is

1 in existence today that would help refresh your
2 recollection of the reasons why Tim rejected the
3 PGMS agreement?

4 MR. McDONALD: Object to the form.

5 BY MS. GOFF:

6 Q That you're aware of?

7 A I have no idea.

8 Q Did you have an understanding of
9 whether Tim knew that as of at least July 17th,
10 2014, PGMS was willing to be exclusive?

11 MR. McDONALD: Object to the form.

12 THE WITNESS: I do not.

13 BY MS. GOFF:

14 Q So you don't know whether Tim thought
15 that this was an exclusive arrangement or not?

16 A No idea.

17 Q So the meta -- the next sentence where
18 you wrote, "The meta message is officially GPOs
19 are not good for Schein," was that a message
20 that you thought was coming from Tim Sullivan?

21 MR. McDONALD: Object to the form,
22 mischaracterizes the document.

23 THE WITNESS: I don't know.

24 BY MS. GOFF:

25 Q Where did you think the meta message

1 was coming from?

2 A I think this particular GPO was not a
3 good fit for the company based on some of the
4 things that we discovered. I was negotiating
5 with Nick Azar and Kathy Khalik, and Juan Luque
6 was the gentleman that needed to sign the
7 agreement and he was unwilling to commit to even
8 buying from Henry Schein, much less bringing
9 their ten members on board.

10 Q So the meta message about GPOs not
11 being good for Schein, where did you think that
12 message was coming from who did you think was
13 directing that message?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: I have no idea.

16 BY MS. GOFF:

17 Q When you said in your email GPOs are
18 not good for Schein, what is your understanding
19 of what you meant there?

20 A Poorly crafted GPOs where there is no
21 commitment from the customer for exclusivity or
22 for compliance with their member base.

23 Q So it's your testimony that what you
24 meant was poorly crafted GPOs?

25 A Yes.

1 Q Not GPOs in general?

2 A Not GPOs in general.

3 Q But you did not write that in your
4 email?

5 A I did not.

6 Q At some point did PGMS give you the
7 impression they were willing to be exclusive?

8 A I think they considered it.

9 Q I'm going to --

10 MR. McDONALD: Are you done with this?

11 MS. GOFF: Yes, you can put that one
12 aside.

13 I'm going to hand you another document
14 that was marked as CX2219.

15 (Exhibit CX2219 was marked.)

16 MS. GOFF: Okay. For the record, this
17 Bates stamp is Henry Schein-000082883. The
18 latest in time email is dated July 16th,
19 2014 from you to Glenn Showgren, Brian Brady
20 with a cc to Nicole Lena and Joe Cavaretta.

21 BY MS. GOFF:

22 Q Did you write this latest in time
23 email?

24 A I did.

25 Q Do you have knowledge of its contents?

1 A I do.

2 Q So you wrote: I S/W Joe today about
3 the agreement.

4 Is S/W "spoke with"?

5 A Spoke with.

6 Q Is that a term that you use in your
7 emails from time to time?

8 A It is.

9 Q And could it be referring to a
10 conversation on the phone or in person?

11 A As I stated earlier, I never spoke
12 with Tim.

13 Q Sorry. I'm talking about the "I S/W
14 Joe today."

15 A Yes, I spoke with Joe.

16 Q Would that be on the phone or in
17 person?

18 A Probably on the phone.

19 Q And then you wrote Tim -- "about the
20 agreement," and is the agreement that we're
21 talking about here the PGMS agreement?

22 A M-hm.

23 Q Yes?

24 A Yes.

25 Q Thank you.

1 Then you wrote: Tim was not in favor
2 of it.

3 Do you see that?

4 A I did.

5 Q So this is a another place where
6 you're informing your colleagues that Tim was
7 not in favor of the PGMS agreement; correct?

8 A I'm sharing with them what I spoke to
9 Joe about, yes.

10 Q Do you have an understanding of why
11 Tim Sullivan was involved in the decision of
12 whether or not to do business with PGMS?

13 A Additional context on this, Dr. Luque
14 had already started two of his dental projects
15 with our competitor and was unwilling to
16 reconsider Schein.

17 Q Sorry. Dr. Luque had already started
18 two dental projects with a competitor?

19 A Two complete builds from the ground
20 up. He was building surgical centers with our
21 competitor.

22 Q So do you have an understanding of why
23 Tim Sullivan was involved in the decision of
24 whether or not to do business with PGMS?

25 A That would be key. He wasn't voting

1 with his dollars, he was taking his business to
2 a competitor and yet talking to us about putting
3 a GPO together.

4 Q But why was Tim Sullivan involved in
5 this decision about whether or not to do
6 business with PGMS at all?

7 MR. McDONALD: Objection to form.

8 BY MS. GOFF:

9 Q Do you have any understanding?

10 A No, only that we were taking the --
11 each of the GPOs as they came up on our radar,
12 slowly, crafting them more carefully than we had
13 in the past and making sure that it met a
14 formalized criteria that created a healthy
15 sustainable relationship where Henry Schein
16 could promote and market itself to the member
17 base.

18 Q So was the fact that PGMS was a GPO
19 the reason why it got on Tim Sullivan's radar?

20 MR. McDONALD: Object to form. Go
21 ahead.

22 THE WITNESS: The fact was that it was
23 an unusual agreement that we were
24 formalizing. Prior to this we had not
25 formalized our agreement, thus, we weren't

1 giving expectations in writing to our GPO
2 partners on what the requirements were in
3 order for us to continue to support their
4 member base through their GPO.

5 BY MS. GOFF:

6 Q Okay. So the reason why this got on
7 Tim Sullivan's radar in your understanding is
8 that it was a formalized agreement with the GPO?

9 A It was a formalized agreement that did
10 not meet the standard that we were creating.

11 Q But it was a formalized agreement with
12 a GPO?

13 MR. McDONALD: Object to the form.

14 MS. GOFF: Specifically.

15 MR. McDONALD: Object to the form,
16 mischaracterizes her testimony.

17 BY MS. GOFF:

18 Q If this -- I'll ask a different
19 question.

20 If this company was not a GPO, do you
21 think it would have gotten on Tim Sullivan's
22 radar?

23 MR. McDONALD: Object to the form,
24 lack of foundation.

25 THE WITNESS: I don't know.

1 BY MS. GOFF:

2 Q Was it the fact that this was a GPO
3 that in your understanding was the reason why it
4 got on Tim Sullivan's radar?

5 MR. McDONALD: Object to the form,
6 lack of foundation.

7 THE WITNESS: I don't know.

8 BY MS. GOFF:

9 Q So when I asked you about why this got
10 on Tim Sullivan's radar, you said that prior to
11 this we had not formalized any agreements,
12 therefore we were not giving expectations in
13 writing to our GPO partners on what requirements
14 were in order for us to continue to support the
15 member base through their GPO.

16 So prior to this PGMS agreement, in
17 your understanding, Schein was not formalizing
18 in writing relationships with GPO partners; is
19 that correct?

20 MR. McDONALD: Objection to form, lack
21 of foundation.

22 BY MS. GOFF:

23 Q I'm just asking for your
24 understanding.

25 MR. McDONALD: Same objection.

1 THE WITNESS: From my experience, no.
 2 BY MS. GOFF:
 3 Q So in your experience, prior to this
 4 PGMS company, Schein had not been formalizing
 5 any agreements with GPOs?
 6 MR. McDONALD: Same objection, lack of
 7 foundation.
 8 THE WITNESS: Define formalized.
 9 BY MS. GOFF:
 10 Q So you mentioned the word "formalized"
 11 and I'm just --
 12 A Establishing a healthy expectation
 13 from the stakeholders, meaning that one of the
 14 things that we had discovered with some of the
 15 other ones that I had done discovery on is that
 16 they were not strategic. They redirected Henry
 17 Schein existing business, our business was being
 18 eroded and we did not have access to the member
 19 base.
 20 The intention was to carefully and
 21 strategically create a formalized type of
 22 conversation so that the expectations were
 23 clearly defined with both parties.
 24 Q So using that definition of
 25 formalized, in your understanding, was this the

1 BY MS. GOFF:
 2 Q Is it your understanding that this
 3 particular agreement was put on Tim Sullivan's
 4 radar because it was the first time that Schein
 5 was putting in writing an agreement to work with
 6 a GPO?
 7 A I don't know why it was put on Tim's
 8 radar. I do know that the standards were
 9 perhaps below expectations and that there
 10 were -- it was a consulting group, which I call
 11 out in this email.
 12 It was a consulting group that had
 13 aspirations to be a buying group. So they were
 14 not a fully formed GPO.
 15 And there was no expectation on our
 16 part that they would give us either exclusivity
 17 or compliance from their ten consulting members.
 18 Q As of -- turning back to the prior
 19 exhibit, which is dated July 17th, 2014.
 20 A This one?
 21 Q Yes. It's CX2235.
 22 A Okay.
 23 Q As of the date of this email, you
 24 thought that PGMS was willing to be exclusive?
 25 MR. McDONALD: Object to the form,

1 first time that anyone at Schein was formalizing
 2 an agreement with a GPO?
 3 MR. McDONALD: Object to the form,
 4 lack of foundation.
 5 THE WITNESS: I don't have direct
 6 knowledge of any written agreements other
 7 than the ones that I was involved with with
 8 Council Connections, Washington Association
 9 of Community Health Centers, Colorado
 10 Community Health Network.
 11 BY MS. GOFF:
 12 Q So you were not involved in putting
 13 any other GPO relationships in writing?
 14 A Not that I can think of.
 15 Q And prior to this PGMS agreement,
 16 you're not aware of any that were ever, you
 17 know, put in writing?
 18 A Again --
 19 MR. McDONALD: Hang on. Object to the
 20 form, lack of foundation. Go ahead.
 21 THE WITNESS: Again, we came across
 22 them so seldomly. And when we did, we found
 23 out that they were more on a handshake with
 24 a lack of understanding of the expectations
 25 for both parties.

1 asked and answered. If you need to read the
 2 agreement, read the agreement.
 3 BY MS. GOFF:
 4 Q I'm just looking at your -- nevermind.
 5 I'm going to withdraw that question.
 6 MR. McDONALD: Hang on.
 7 MS. GOFF: I withdraw my question.
 8 I'm going to ask another question. You
 9 don't need to look at that document.
 10 MR. McDONALD: So you actually don't
 11 want the truth and you're not going to allow
 12 her to correct her prior testimony, then
 13 I'll do it. But then fine.
 14 If you don't want her -- she saw
 15 something in this document that clearly
 16 refreshed her recollection. If you don't
 17 want to know about it and you want to burn
 18 all your time, then I'll fix it. Go for it,
 19 Karen. Up to you.
 20 BY MS. GOFF:
 21 Q Ms. Titus, I'm going to withdraw my
 22 last question and I'm going to ask you a
 23 different question.
 24 Prior to this PGMS agreement that you
 25 were working to craft, are you aware of whether

1 Schein had previously put any agreements with
2 GPOs in writing?

3 MR. McDONALD: Object to the form,
4 lack of foundation.

5 THE WITNESS: I have told you that
6 before. You've asked the question and I
7 answered it and I suggested to you that I
8 was personally involved with Council
9 Connections, Washington Association of
10 Migrant Health Workers, or health centers,
11 and Colorado Community Health Network.

12 They were no different than the
13 agreement that you're looking at that is
14 attached to this document.

15 BY MS. GOFF:

16 Q Thank you for that clarification and
17 for refreshing my recollection.

18 So other than that group that you just
19 mentioned, are there any others that you're
20 personally aware of -- I know you can only speak
21 to what you're aware of that were in writing.

22 A What date range? Prior to the July
23 2014 date?

24 Q Yes.

25 A I'm not sure of the timeline, but we

1 do have other ones that did promise us
2 exclusivity access to their member base that we
3 put in place during this period.

4 Q What ones?

5 A Clear Impact.

6 Q Okay. Any others?

7 A I think at that point we actually --
8 it was -- I was -- I had many other
9 responsibilities and so we actually needed to
10 hire somebody to give this their full attention.

11 So we hired someone for an alternative
12 purchasing channel because they -- all the GPOs
13 don't fit into the same bucket and we hired
14 somebody to be able to manage those exclusively.

15 Q Is that Darci Wingard?

16 A It is.

17 Q But sitting here today, other than
18 what you've named so far, can you think of any
19 others that have been -- any other agreements
20 with GPOs that have been reduced to writing
21 other than the ones that you testified to
22 already?

23 A No. Can I correct that?

24 Q Sure. Do you need a break?

25 A So Breakaway, we did sign an agreement

1 with Breakaway.

2 Q Okay.

3 A Before Darci Wingard's employment.

4 MS. GOFF: I'm going to hand you
5 another document. You can put the other two
6 away if you like. It's been marked as
7 Exhibit CX2220.

8 (Exhibit CX2220 was marked.)

9 MS. GOFF: This is a document that
10 bears the Bates stamp Henry
11 Schein-000003664. The latest in time is
12 from you to Joe Cavaretta and it's dated
13 August 29th, 2014.

14 BY MS. GOFF:

15 Q Have you had a chance to review this
16 email chain?

17 A M-hm.

18 Q And is this an email that you wrote?

19 A It is.

20 MR. McDONALD: Object to the form.
21 Are you talking about the top one because
22 there's some in here that she did not write.

23 MS. GOFF: Let me clarify.

24 BY MS. GOFF:

25 Q Let's first turn to -- I guess it's

1 the August 29th, 2014 at 10:48 a.m. email. It
2 appears as though it's written to Kristi
3 Tomlinson-Edstrom.

4 Do you see which one I'm talking
5 about?

6 A I do.

7 Q Did you write this email?

8 A I did.

9 Q You have knowledge of the contents?

10 A I do.

11 Q And you were writing to Kristi
12 Edstrom. Was she an employee of Henry Schein?

13 A She was.

14 Q Did she report to you?

15 A She does not.

16 Q She did not at the time of this email
17 either?

18 A No, she didn't.

19 Q Do you know what her position was?

20 A Field sales consultant.

21 Q Kristi was asking you for information
22 about the Denali Group; is that right?

23 A That's correct.

24 Q You said they were a consulting group?

25 A That's right.

1 Q And you wrote: Meaning that they sell
2 a suite of services to solo providers.

3 Do you see that?

4 A Correct.

5 Q So is that what you meant by
6 consulting group?

7 A As I previously stated, consulting
8 groups are common in the dental landscape. They
9 come into an individual office, they assess
10 their operations, their productivity, and they
11 come on site and coach and train the staff to
12 improve their operations and their efficiencies.

13 Q And then the members of the consulting
14 groups are solo dental providers generally?

15 A I could not comment on Denali.

16 Q I'm talking about your definition of
17 consulting group.

18 A Again, they could also consult with a
19 group.

20 Q Okay. So either solo providers or --

21 A Any dental entity they could consult
22 with.

23 Q Okay. And you then wrote: I don't
24 have any direct experience, but most of these
25 groups are attempting to bring a client list to

1 Schein or others to secure discounted pricing on
2 supplies/equipment.

3 Do you see that?

4 A I do.

5 Q And this is what a consulting group --
6 when you said most of these groups, are you
7 referring to consulting groups?

8 A Yes, in that the consulting groups --
9 the distinction on the consulting groups is that
10 their member base is extremely low.

11 Q Is a consulting group a buying group?

12 A No.

13 Q Could a consulting group be a buying
14 group?

15 A A consulting group could -- with
16 enough members and with some infrastructure
17 behind it could definitely develop a purchasing
18 arm within their organization.

19 Q And become a buying group?

20 A Sure.

21 Q And then a few sentences later you
22 write: This model is prevalent but very
23 unhealthy for distribution.

24 What model are you referring to?

25 A The consulting group model.

1 Q And you wrote: They erode our margin
2 on business we may already have.

3 Do you see that?

4 A I do.

5 Q So are you explaining that consulting
6 groups erode margin on customers who are already
7 buying from Schein?

8 A Correct.

9 Q Meaning when they join a consulting
10 group, they get a steeper discount?

11 MR. McDONALD: Object to form.

12 BY MS. GOFF:

13 Q On products; is that right?

14 A It would depend on the group.

15 Q How do they erode margin?

16 A They would erode margin by asking for
17 their consulting clients to receive some special
18 discount consideration.

19 Q And then you write: They compete with
20 us on business solutions sales.

21 Business solutions, is that a service
22 that Schein provides to dentists?

23 A It is.

24 Q Do some of these consulting groups
25 also provide business solutions to their

1 members?

2 A They do.

3 Q So Schein and the consulting groups
4 would compete for that business solutions work?

5 A In some areas.

6 Q Then you wrote a few sentences later:
7 I could give you a dozen reasons, but you get
8 the point.

9 What do you mean by "I could give you
10 a dozen reasons"? Reasons about what?

11 A It's dramatic flare and nothing more
12 and perhaps misspoke in that I was trying to
13 drive a point home.

14 Q What was the point?

15 A The point is is that they are not
16 loyal, the consulting groups have very little
17 influence over their members.

18 Q Okay. So the point was that you did
19 not think that Schein should do business with
20 consulting groups?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: I actually don't believe
23 that. I believe to the opposite. I believe
24 it depends on the consulting group.
25

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1 BY MS. GOFF:
 2 Q So in some cases it could be good for
 3 Schein to do business with consulting groups?
 4 A Sure.
 5 Q And what cases would those be?
 6 A Cases where there is a mutually
 7 beneficial relationship that allows us access to
 8 the member base to sell deeply into that
 9 business. It's good for the customer, it's good
 10 for the consulting group and that's good for
 11 their patients.
 12 Q So consulting groups could potentially
 13 bring Schein incremental sales?
 14 A I would say depending on the
 15 consulting group, that answer would be yes.
 16 Q In the next sentence you write: If it
 17 makes you feel better, PDCO is not on board for
 18 these type of GPO relationships either.
 19 Do you see that?
 20 A I do.
 21 Q Did I read that correctly?
 22 A You did.
 23 Q Okay. PDCO is that Patterson?
 24 A It is.
 25 Q And then GPO relationships, are you

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1 business with GPOs if it's a healthy business
 2 relationship?
 3 A I am.
 4 Q Okay. And so here you are informing
 5 Ms. Kristi Edstrom that Patterson is not on
 6 board for these type of GPO relationships
 7 either; correct?
 8 MR. McDONALD: Object to the form.
 9 The document speaks for itself.
 10 THE WITNESS: That's the statement.
 11 BY MS. GOFF:
 12 Q Why would it make Kristi feel better
 13 to know that Patterson was not on board for
 14 these type of GPO relationships either?
 15 A I said "if it makes you feel better."
 16 And when I say "Patterson is not on board for
 17 these types of relationships," I have never run
 18 across them in my conversations with the
 19 consulting or GPO groups.
 20 So I'm generally stating that I am not
 21 seeing Patterson in there as our competitor.
 22 Q Okay. Let me make sure I have an
 23 answer to my question and we can circle back to
 24 that.
 25 So why would it make Kristi feel

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1 using the terms "consulting group" and "GPO
 2 relationship" synonymously in this email?
 3 MR. KASS: Objection, mischaracterizes
 4 the document.
 5 MR. McDONALD: Object to the form,
 6 mischaracterizes the document and her
 7 testimony.
 8 THE WITNESS: I'm referring to GPO's
 9 where there is an unhealthy relationship
 10 between the GPO and the distribution
 11 partner.
 12 BY MS. GOFF:
 13 Q And what would make that relationship
 14 unhealthy?
 15 A For the reasons that I have stated
 16 multiple times, it would have to be a
 17 sustainable healthy relationship that offered us
 18 an opportunity to sell into their member base,
 19 to impact the end user and their patients, and
 20 create a win/win for the GPO, the distribution
 21 partner and, most importantly, the customer.
 22 Q That would be a healthy GPO
 23 relationship in your mind?
 24 A That's right.
 25 Q And you're supportive of Schein doing

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1 better to know that Patterson is not on board
 2 for these types of GPO relationships?
 3 MR. McDONALD: Object to the form,
 4 mischaracterizes the documents.
 5 THE WITNESS: I don't know. I was
 6 just making maybe a misstatement.
 7 BY MS. GOFF:
 8 Q Was -- if Patterson was not going
 9 after these types of GPO relationships, would
 10 that be beneficial to Kristi in some way?
 11 MR. McDONALD: Object to the form. Go
 12 ahead.
 13 THE WITNESS: Actually, I have no idea
 14 if Patterson is going after the GPO
 15 relationships. I had no intimate knowledge.
 16 BY MS. GOFF:
 17 Q I'm asking --
 18 A My statement was cursory in that I did
 19 not add these details. But I was not running
 20 into Patterson in my discussions as these
 21 discussions came up with a variety of GPOs like
 22 the ones I mentioned to you earlier. I had
 23 never run into Patterson before.
 24 Q So why did you even mention Patterson
 25 to Kristi Edstrom?

1 A In case she felt that we were
2 competing with Patterson for the same client.

3 Q So you wanted her to feel comforted
4 that Schein was not competing with Patterson for
5 the same clients?

6 MR. McDONALD: Object to form.

7 THE WITNESS: I wanted her to feel
8 comfortable that the fact that I had not run
9 into Patterson in these environments meant
10 that her business -- she could continue to
11 compete for her business at an FSC level.

12 BY MS. GOFF:

13 Q She didn't need to be worried about
14 not competing for the Denali Group business?

15 A That I don't know.

16 Q How does this relate to Denali Group?
17 That's what were talking about here; correct?

18 A I was making a general statement.

19 Q Was Ms. Edstrom -- did she indicate to
20 you that she wanted to work with Denali Group?

21 A She was just asking a question.

22 Q And were you telling her the reasons
23 why you did not think it would be a great idea
24 for her to work with Denali Group?

25 MR. KASS: Objection, mischaracterizes

1 the document.

2 THE WITNESS: Not at all.

3 BY MS. GOFF:

4 Q But you were giving her a list of
5 reasons why you felt that GPO relationships were
6 unhealthy for distribution?

7 MR. McDONALD: Object to the form,
8 mischaracterizes the document and her
9 testimony. Go ahead.

10 THE WITNESS: As I saw the consulting
11 group, Denali, I saw it as a consulting
12 group. I didn't see it as a GPO.

13 And when I use the word labeled "GPO,"
14 it wasn't in context to Denali Group but
15 only to help to communicate to Kristi what I
16 was talking about, where there is a list of
17 members or a group of members that come
18 together and present themselves as a group,
19 as someone who has a common link between all
20 of them. Consulting groups being very
21 different than a GPO.

22 BY MS. GOFF:

23 Q Okay. But that's what you meant by
24 GPO relationships?

25 A GPO being -- pointing to the

1 consulting group.

2 Q Okay. And so you were saying that
3 Patterson was not on board for that type of GPO
4 relationship?

5 MR. McDONALD: Object to the form.

6 THE WITNESS: Again, I have no
7 knowledge specific other than I had not run
8 into them in the past.

9 BY MS. GOFF:

10 Q Okay. So have you ever spoken with
11 anyone at Patterson about whether they are on
12 board with GPO type relationships?

13 A I have not.

14 Q Have you ever spoken with anyone at
15 Patterson whether they are on board with
16 consulting group relationships?

17 A I have not.

18 Q Have you ever spoken with anyone at
19 Patterson about whether they are on board with
20 buying group relationships?

21 A I have not.

22 Q So what is the basis for your
23 statement in this email that PDCO is not on
24 board for these types of relationships?

25 MR. McDONALD: Object to form, asked

1 and answered. Answer it again.

2 THE WITNESS: Only an observation that
3 I don't come across -- that I had not come
4 across them.

5 BY MS. GOFF:

6 Q Okay. So you had not come across PDCO
7 when you were doing what?

8 A In any of my discussions with any of
9 these either prospect consulting groups or GPOs.

10 Q Would you have expected to come across
11 them if they were doing business with GPOs?

12 A I don't know that I had an
13 expectation.

14 Q So you did not have an expectation
15 either way as to whether you would have come
16 across Patterson in your dealings with GPOs?

17 A It's just generally a question that
18 every salesperson asks when they are having a
19 conversation with a potential client or aspect.

20 Q What is the question?

21 A The question would be: Who are you
22 doing business with?

23 Q Did you ask that question of GPOs?

24 A Typically.

25 Q And what was the response?

1 A The response is that we asked for
2 exclusivity -- well, the statement is we asked
3 for exclusivity, do you see any problem with
4 that.

5 And we may even go a bit further and
6 ask them for some surveys to their member base
7 on, A, who are they buying from, who's their
8 business distribution partner; and, B, would
9 they be able to influence compliance or assure
10 compliance and also exclusivity.

11 Q So would the -- how did you know then
12 that PDCO was not on board for these types of
13 GPO relationships?

14 MR. McDONALD: Object to the form,
15 asked and answered.

16 THE WITNESS: So I did not have
17 intimate knowledge, but only an observation
18 that in the discovery process with other
19 GPOs, Patterson's name did not come up.

20 BY MS. GOFF:

21 Q And it did not come up in terms of the
22 that these GPOs were not working with Patterson?

23 A Correct.

24 Q Okay.

25 MR. McDONALD: I'm going to object to

1 the form to your last question. Double
2 negatives, so I'm not really sure what it
3 meant.

4 BY MS. GOFF:

5 Q Did you ever ask any GPOs whether they
6 were working with Patterson?

7 A I'm sure I did.

8 Q What about Benco, did you ever ask
9 whether the GPOs were working with Benco?

10 A No.

11 Q Why not?

12 A I considered them a small regional
13 player.

14 Q So do you have any understanding of
15 whether Benco was on board for these types of
16 GPO relationships?

17 A I don't.

18 MR. McDONALD: Hang on. Object to the
19 form. Go ahead.

20 THE WITNESS: I don't.

21 BY MS. GOFF:

22 Q So did you have an understanding that
23 Patterson was not competing for GPO customers?

24 MR. McDONALD: Object to the form,
25 asked and answered.

1 THE WITNESS: No.

2 BY MS. GOFF:

3 Q That was not your understanding?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: As I said, I had never
6 come across them, so I made an assumption.

7 BY MS. GOFF:

8 Q So you had assumed that they were not
9 competing for GPO relationships?

10 A Yes, I assumed.

11 Q Okay. And did other people at Schein
12 have the same understanding that Patterson was
13 not doing business with GPOs?

14 A I have no idea.

15 MR. McDONALD: Object to the form,
16 lack of foundation.

17 BY MS. GOFF:

18 Q Did you view Denali as a GPO?

19 A No.

20 Q Did you view it as a buying group?

21 A I viewed it as a consulting group.

22 Q Did you view it as a buying group?

23 A I did not have an opinion on whether
24 they were a buying group or not. I viewed it as
25 a consulting group.

1 Q What about others at Schein, do you
2 have an understanding of whether others at
3 Schein thought that Denali was a GPO?

4 MR. McDONALD: Object to the form,
5 lack of foundation.

6 THE WITNESS: I don't have any
7 knowledge of that.

8 BY MS. GOFF:

9 Q Okay. In what ways are consulting
10 groups different from buying groups?

11 MR. McDONALD: Object to the form.
12 Overly broad, vague.

13 THE WITNESS: So I think I've answered
14 that question. Consulting is a very
15 different animal. Consulting groups work
16 with customers, with clients one at a time.
17 Usually their relationship takes months and
18 usually the consultant will go on site.

19 Consulting groups don't have hundreds
20 of members. They literally have a handful
21 of members.

22 BY MS. GOFF:

23 Q And in your experience, do buying
24 groups have hundreds of members typically?

25 A They do.

1 Q And GPOs as well?

2 A Buying groups and GPOs, I consider
3 that an interchangeable term.

4 Q Okay. Turning to the top email in
5 this email chain, it looks like you forwarded
6 your conversation with Kristi Edstrom to Joe
7 Cavaretta. Do you see that?

8 A M-hm.

9 Q You asked him to make an inquiry on
10 your behalf. Do you see that?

11 A I do.

12 Q You wrote: I think if the inquiry
13 comes from you, it might give pause to the
14 people, and then in parentheses, SM, question
15 mark, question mark, who are empowering these
16 consulting groups.

17 Do you see that?

18 A I do.

19 Q So was it your understanding that
20 someone was empowering consulting groups,
21 someone at Schein?

22 A No.

23 Q So why did you write that?

24 A I discovered -- and I'm extrapolating
25 here. I discovered that Denali was opened under

1 the special markets umbrella and I was
2 disappointed that we opened up a consulting firm
3 rather than a real buying group.

4 Q Okay. So special markets had started
5 doing business with Denali Group?

6 A Apparently.

7 Q And then you wrote: It doesn't help
8 to have a GPO policy when SM is opening up these
9 consulting firms.

10 Do you see that?

11 A I do.

12 Q An SM means special markets?

13 A It does.

14 Q And then what did you mean by GPO
15 policy?

16 A GPO policy being that we agree that
17 there are a set of standards and those standards
18 are spelled out, either verbally or in writing,
19 that in order to apply to Henry Schein for
20 account numbers for the GPO and all of its
21 members, they would have to meet certain
22 criteria, which going back to my original
23 statement would have to be a healthy strategic
24 relationship that is a win for Henry Schein, a
25 win for the buying group and a win for its

1 members and their patients.

2 That would mean that we would ideally
3 like a certain amount of exclusivity, if not
4 complete exclusivity, and we would like access
5 to their member base in order to market our full
6 complement of products and services, as well as
7 promotion from the buying group to their members
8 that we're their trusted partner.

9 Q So the policy that you're referring to
10 in this statement is that Schein will only do
11 business with healthy GPO relationships; is that
12 correct?

13 MR. McDONALD: Object to the form,
14 mischaracterizes her testimony.

15 THE WITNESS: Can you reask the
16 question.

17 BY MS. GOFF:

18 Q Sure. I just want to understand what
19 GPO policy you were referring to here?

20 A Didn't I just say -- didn't I just
21 repeat that back to you?

22 MR. McDONALD: Yes, she did.

23 BY MS. GOFF:

24 Q You gave me a very long answer, and I
25 just want to make sure I understand what that

1 long answer was.

2 So the GPO policy, as you understood
3 it as of the date you wrote this email, was that
4 Schein would only do business with GPOs where
5 there was exclusivity access to member base and
6 promotion from the group?

7 MR. McDONALD: Object to the form to
8 the extent you mischaracterized her
9 testimony.

10 THE WITNESS: What I was stating is
11 that we were building the infrastructure
12 around what composed or comprised a good
13 healthy GPO relationship where all
14 stakeholders understood the expectations and
15 there was a reciprocity in the partnership.

16 The partnership would include those
17 things that you read back to me that I
18 stated.

19 BY MS. GOFF:

20 Q So was there a written GPO policy --

21 A No.

22 Q -- at Henry Schein as of the date you
23 wrote this email?

24 A No.

25 Q But you had an understanding that

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1 there was some GPO policy?
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I did not have an
 4 understanding that there was a GPO policy.
 5 I understood that we were building a GPO
 6 policy so that we could vet each GPO that
 7 approached us to determine whether they were
 8 a good fit for our company.
 9 BY MS. GOFF:
 10 Q So why in this email did you write
 11 that it doesn't help to have a GPO policy?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I'm not referring to any
 14 written document or anything official that
 15 came from corporate, but rather the process
 16 that we were going through when we were
 17 meeting face forward with these GPOs and the
 18 conversations that pursued after.
 19 BY MS. GOFF:
 20 Q Aside from a written policy, did you
 21 have an understanding that there was a GPO
 22 policy, written or not, at Schein as of the date
 23 that you wrote this email to Mr. Cavaretta?
 24 MR. McDONALD: Object to the form.
 25 Asked and answered.

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1 up an account with us.
 2 BY MS. GOFF:
 3 Q Why did you want Mr. Cavaretta to make
 4 an inquiry on your behalf about the Denali
 5 Group?
 6 A Mr. Cavaretta's title gave him access
 7 to information faster and got him answers
 8 quicker than if I went to special markets and
 9 asked myself.
 10 Q Did you think that Denali Group did
 11 not fit within this GPO policy that we've been
 12 discussing?
 13 MR. McDONALD: Object to the form. Go
 14 ahead.
 15 THE WITNESS: I asked for the inquiry
 16 so that I would learn more.
 17 BY MS. GOFF:
 18 Q Did Mr. Cavaretta ever tell you that
 19 there was a GPO policy at Henry Schein?
 20 A No.
 21 Q Have you ever spoken with anyone at
 22 Henry Schein about a GPO policy?
 23 A No.
 24 Q So when you wrote GPO policy to
 25 Mr. Cavaretta, did he ever correct you and say,

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1 THE WITNESS: I had an understanding
 2 and that understanding was building the
 3 identity of our GP -- giving an avenue to
 4 GPOs to apply to Henry Schein for an account
 5 for themselves and their members as long as
 6 it fit certain standards and expectations
 7 from both parties.
 8 BY MS. GOFF:
 9 Q And did the policy, as you understood
 10 it, include certain standards?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: You're calling it the
 13 policy, but it was not anything that I would
 14 pick up a document and show you this is my
 15 policy. The policy was we were evolving how
 16 we interfaced with GPOs so that we could
 17 create healthier relationships.
 18 In fact, pointing back to some of the
 19 earlier GPOs that I was part of like Council
 20 Connections and Washington Association and
 21 Council of Community Clinics, using those as
 22 an example, those were standards that we
 23 wanted to at least verbally apply to the
 24 face forward meetings that we were having
 25 with GPOs that approached us wanting to set

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1 we don't have a GPO policy?
 2 A No.
 3 Q Okay. Just to make sure I understand
 4 your testimony about your knowledge of Patterson
 5 not being on board for GPO relationships, did
 6 anyone at Schein ever tell you that Patterson
 7 was not on board for GPO relationships?
 8 A They did not.
 9 MR. McDONALD: Objection.
 10 MR. KASS: Objection, mischaracterizes
 11 the document, mischaracterizes her prior
 12 testimony.
 13 BY MS. GOFF:
 14 Q Go ahead.
 15 A They did not.
 16 Q As of the date you wrote this email,
 17 August 29th, 2014, you had an understanding,
 18 though, that Patterson was not on board for
 19 these types of GPO relationships?
 20 MR. McDONALD: Object to the form.
 21 Mischaracterizes her testimony.
 22 THE WITNESS: Karen, you keep asking
 23 me the same question over and over again and
 24 I keep clarifying that I had no intimate
 25 knowledge of Patterson whatsoever, that my

1 observation was that I wasn't running into
2 them in my particular job description
3 interfacing with any of the customers that I
4 interfaced with.

5 BY MS. GOFF:

6 Q I understand. I will apologize if it
7 seems that I'm asking the same questions.

8 For purposes of my job, I need to get
9 a very clear record. If I don't have a clear
10 record where I ask a question and you give an
11 answer, it is not useful to any of us.

12 So I just want to make sure that I
13 have clear answer to this question, which is
14 that: When you wrote this email -- I'm going to
15 be very careful with my words, okay?

16 A Okay.

17 Q On August 29th, 2014, when you wrote
18 this email, you had an understanding that
19 Patterson was not on board for these type of GPO
20 relationships?

21 A No, I did not.

22 Q Okay. Why did you write that in your
23 email then?

24 MR. McDONALD: Object to the form.
25 Karen, you have asked this question at

1 least five times. It's abusive of the
2 witness. And you know darn well if we were
3 in front of a judge, he would shut down.

4 MS. GOFF: All right.

5 MR. McDONALD: If you're not trying to
6 be abusive, then go on. She'll give you the
7 same answer again.

8 BY MS. GOFF:

9 Q Okay. Ms. Titus, when you write
10 things in emails, is it your practice to try to
11 be truthful when you write them in emails?

12 A Of course.

13 Q Let's move on.

14 MS. GOFF: Have we been going for a
15 little while? Is now a good time to take a
16 break?

17 MR. McDONALD: We've been going an
18 hour, so if you want to take a break, we
19 can.

20 THE WITNESS: I'm okay.

21 BY MS. GOFF:

22 Q Let's start -- you mentioned the
23 entity Clear Impact --

24 A M-hm.

25 Q -- previously. Do you have an

1 understanding or recollect -- were you involved
2 in discussions with Clear Impact?

3 A I was.

4 Q And do you have a recollection or
5 understanding of when those discussions started
6 taking place?

7 A I'm going to say September of 2015.

8 Q Why don't I give you an email to
9 orient you.

10 A That would be very helpful. Thank
11 you.

12 MS. GOFF: I'm handing you what's been
13 marked as CX2208.

14 (Exhibit CX2208 was marked.)

15 MS. GOFF: Let me state for the record
16 that this is Bates stamped Henry
17 Schein-000003980 and the top email, the
18 latest in time is from Brian Brady to you
19 with a cc to Joe Cavaretta. And then the
20 email I would like us to focus on is dated
21 January 22nd, 2015 at 10:54 a.m. and it's
22 from you.

23 BY MS. GOFF:

24 Q Do you see that?

25 A I do.

1 Q Was that email to Mr. Cavaretta and
2 Mr. Brady as you understand it?

3 A I'm assuming so.

4 Q That's because in the reply from
5 Mr. Brady, it has it's to you and to
6 Mr. Cavaretta?

7 A Correct.

8 Q Did you write this email?

9 A I did.

10 Q And you have knowledge of the
11 contents?

12 A I do.

13 Q So this is January 22nd, 2015 and it
14 looks like as of this date you were speaking
15 with Clear Impact; is that right?

16 A Uh-huh, yes.

17 Q And if you'd like to look at the prior
18 email, it's on CX2208-002.

19 A Is that the one on the back side of
20 this document?

21 Q Exactly.

22 It appears that you had met with Clear
23 Impact the day before, January 22nd. Am I
24 understanding that correctly?

25 A Yes.

1 Q So you met with Clear Impact and you
2 were impressed with them?
3 A I was.
4 Q And then you forward it up to
5 Mr. Brady and Mr. Cavaretta?
6 A Correct.
7 Q And you wanted to talk to them about
8 it?
9 A Yes, I did.
10 Q Okay. Now, why were you -- were you
11 in favor of working with Clear Impact?
12 A I was.
13 Q Why were you in favor of that
14 relationship?
15 A Those reasons are stated -- I've
16 stated those to you previous before and they are
17 also restated in the email body where it's 1, 2,
18 3.
19 Q Okay. So you're referring to here
20 where it says: Exclusive Schein will promote
21 our BS portfolio and members will be expected to
22 comply with prime vendor.
23 Is that what you're referring to?
24 A Correct.
25 Q Okay. And prime vendor, is that a

1 had not entered into any agreements with Clear
2 Impact; right?
3 A Correct.
4 Q Did you have an exploratory meeting
5 with them?
6 A Correct.
7 Q And when you were first negotiating
8 with Clear Impact, did they have any members?
9 A They did.
10 Q How many?
11 A 190.
12 Q Okay. So in January of 2015, is it
13 your understanding that they had that many
14 members?
15 A Yes.
16 Q So it's your understanding that they
17 came to you and said, we have 190 members?
18 A That's my recollection.
19 Q Okay. Did you get that information
20 from Clear Impact?
21 A As I recall, yes.
22 Q And did you think Clear Impact could
23 bring incremental business to Schein?
24 A I did.
25 Q And then do you recall whether at some

1 prime vendor agreement?
2 A That means that they choose us as
3 their primary supply partner, their members
4 will.
5 Q And you wrote: With penalties for
6 noncompliance?
7 A Correct.
8 Q Does that mean that members would be
9 penalized for noncompliance?
10 A That means that admin fees would be
11 reduced greatly.
12 Q So you're in favor of the Clear Impact
13 relationship because it had these three things
14 that you've listed in your email?
15 A Yes.
16 MS. GOFF: I think we're going to look
17 at a few other documents on this topic.
18 Let's take a break. My colleague just
19 stepped out, so let's take a break.
20 (Recess taken.)
21 MS. GOFF: Back on the record.
22 BY MS. GOFF:
23 Q Going back to your discussion about
24 Clear Impact and CX2208, at the time you wrote
25 this email to Mr. Brady and Mr. Cavaretta, you

1 point you entered into -- Schein entered into an
2 agreement with Clear Impact?
3 A We did.
4 Q Do you recall when that agreement was
5 entered into?
6 A Somewhere towards the end of summer or
7 early fall.
8 Q Of 2015?
9 A M-hm.
10 Q Okay. Did you seek approval from Tim
11 Sullivan regarding Clear Impact?
12 A I did not personally, but I'm assuming
13 that our vice president did.
14 Q Why is that your assumption?
15 A Because these are important
16 relationships and we were fairly new at signing
17 a formal agreement with an entity like this.
18 Q And what vice president are you
19 talking about?
20 A Joe Cavaretta.
21 Q So you did not personally speak with
22 Mr. Sullivan, but you assume that Mr. Cavaretta
23 did?
24 A Correct.
25 Q Did Mr. Cavaretta ever tell you either

1 way whether he spoke to Mr. Sullivan about Clear
2 Impact?

3 A I don't recall.

4 MS. GOFF: Okay. I would like to hand
5 you another document, it's marked CX2205.
6 (Exhibit CX2205 was marked.)

7 THE WITNESS: Are we done with Clear
8 Impact?

9 MS. GOFF: We're done with that
10 document, yes. Thank you.

11 So the email chain we're looking at
12 bears the Bates stamp Henry
13 Schein-000002111. The latest in time email
14 is from Randall McLemore to you dated
15 July 15th, 2014.

16 And then there is several other emails
17 below that.

18 BY MS. GOFF:

19 Q Referring to the email that you wrote
20 on July 15th, 2014 at 6:49 p.m. Do you see
21 that? It's like the second email down.

22 A M-hm.

23 Q Okay. You are responding to
24 Mr. McLemore who asked: Have you heard of this
25 buying group?

1 Do you see that?

2 A I do.

3 Q And what buying group was he referring
4 to?

5 A It's in the title called subject:
6 Unified Smiles.

7 Q Okay. And is Unified Smiles, what
8 kind of group is that in your view?

9 A No idea.

10 Q Did you ever deal with Unified Smiles?

11 A Not that I recollect.

12 Q But Mr. McLemore was asking you -- was
13 referring to Unified Smiles as a buying group,
14 is that your understanding?

15 MR. McDONALD: Object to the form.
16 The document speaks for itself.

17 THE WITNESS: That's how he's
18 describing them in the email time stamped
19 2:37 p.m.

20 BY MS. GOFF:

21 Q 12:37 p.m.?

22 A 12:37 p.m., yes.

23 Q Thank you.

24 Then you wrote -- you said that you
25 were not familiar with that group and you

1 offered to do a bit of digging; is that right?

2 A M-hm.

3 Q You wrote: Interestingly, these are
4 coming out of the woodwork.

5 When you said "these," is that a
6 reference to buying groups?

7 A Any variation of, yes consulting,
8 buying groups GPOs, you have it.

9 Q And then you wrote: They are on Tim's
10 radar and I believe we are working to establish
11 a policy as it applies to buying groups.

12 Did I read that right?

13 A You did.

14 Q Are you referring to Tim Sullivan in
15 this sentence?

16 A I'm referring to Tim Sullivan, yes.

17 Q And so you're saying to Mr. McLemore
18 that buying groups are on Tim's radar?

19 MR. McDONALD: Object to the form.
20 Mischaracterizes her testimony.

21 THE WITNESS: I'm saying they are on
22 Tim's radar.

23 BY MS. GOFF:

24 Q And "they" refers to buying groups?

25 MR. McDONALD: Object to the form.

1 THE WITNESS: "They" refers to Unified
2 Smiles.

3 BY MS. GOFF:

4 Q But "they" -- in this email, sitting
5 here today, it's your understanding that "they"
6 refers to Unified Smiles?

7 A Correct.

8 Q How did you know that Unified Smiles
9 was on Tim's radar?

10 A I can't remember.

11 Q And then what makes you say, sitting
12 here today, that the "they" refers to Unified
13 Smiles?

14 A Because he specifically is asking a
15 question, have you heard of this buying group,
16 and my reply is: They are on Tim's radar.

17 Q Okay. Then you wrote: And I believe
18 we are working to establish a policy as it
19 applies to buying groups.

20 Do you see that?

21 A I do.

22 Q So was it your belief as of the date
23 that you wrote this email that Schein was
24 working to establish a policy as it applied to
25 buying groups?

1 A As I recall, our intention was to grow
2 that segment of the business, the buying group
3 segment, and working on a policy would certainly
4 be part of that.

5 In addition to that, having resources
6 by which we would assign certain individuals
7 that worked at Henry Schein or would be hired at
8 Henry Schein to specifically handle this segment
9 of business.

10 Q So -- okay. I'll withdraw my
11 question.

12 Unified Smiles, were they a Schein
13 customer, are you aware?

14 A I have no idea. I don't recall.

15 Q And did Tim want to work -- Tim
16 Sullivan want to work with Unified Smiles?

17 A I have no idea.

18 Q But you -- how do you know then they
19 were on Tim's radar?

20 A As I said, I don't recall.

21 Q And how do you -- referring to PGMS --

22 A Should I pick up the document from
23 PGMS?

24 Q Sorry. I'll withdraw my question for
25 right now.

1 Is there anything that you can think
2 of that would refresh your recollection as to
3 how you knew at the time you wrote this email
4 that, quote, they are on Tim's radar?

5 A I'm sorry.

6 MR. McDONALD: Hang on. Object to the
7 form. Go ahead.

8 THE WITNESS: I'm sorry, I don't.

9 BY MS. GOFF:

10 Q You don't know of anything --

11 A There's nothing that I can think of.

12 Q Let's turn back to CX2235.

13 A I'm not finding that document.

14 Q Let's look at 2219 instead.

15 A That's way back.

16 Q So just turning back to this email
17 chain that was CX2219, I have a couple more
18 questions.

19 So in the first paragraph, this email
20 chain --

21 MR. McDONALD: Hang on. She was on
22 the wrong page.

23 MS. GOFF: Sorry.

24 MR. McDONALD: That's okay.
25

1 BY MS. GOFF:

2 Q The top email, July 16th, 2014, from
3 you and it starts: Hello, guys.

4 Do you see that?

5 A I do.

6 Q Are we on the same page?

7 A Yes.

8 Q And you wrote: I spoke with Joe today
9 about the agreement.

10 Is the agreement you're referring to,
11 just to reorient ourselves, the PGMS agreement?

12 A Correct.

13 Q And you said: Tim was not in favor of
14 it?

15 A Okay.

16 Q You said: I get that. We all had
17 similar reservations.

18 What were the reservations that you're
19 referring to here?

20 A So if you turn the page in the
21 following page, at the top of the page in that
22 email, I explained that there was a time in the
23 future that if they become an MSO, they would
24 demonstrate compliance. We would be pleased to
25 revisit. I offered her the compromise Tim

1 suggested and enroll them in a fully owned
2 location program, special markets program. She
3 is going to discuss it with her team and circle
4 back soon.

5 So the decision not to pursue the
6 agreement with PGMS was that they could not
7 provide us with compliance, not even for their
8 founding doctor that would be the signatory on
9 the document that you looked at. So no
10 exclusivity, no compliance.

11 Q And so were those the reservations you
12 were referring to here?

13 A Yes, we were beginning to get hints of
14 things that were disturbing about the
15 discussions.

16 Q And what is your understanding of why
17 Tim was not in favor of this agreement, if you
18 have one? Do you have any understanding of why
19 Tim was not in favor of the agreement?

20 A So I did not speak with Tim
21 personally. But when I passed on this
22 information, that they were unable to
23 demonstrate compliance and Dr. Luque, the
24 founding doctor, was actually doing his two
25 build-out projects with our competitor and was

1 unwilling to commit to exclusivity, those were
2 two red flags that put a stop to the
3 negotiations and a stop to signing any kind of
4 agreement with them.

5 Q So you did not speak with Mr. Sullivan
6 directly?

7 A As I said, I did not.

8 Q So do you have any understanding of
9 why he was not in favor of the agreement?

10 MR. McDONALD: Object to the form.
11 Asked and answered.

12 THE WITNESS: I thought I just read to
13 you that they were unable to demonstrate
14 compliance and the founding doctor, Dr. Juan
15 Luque, was building two build-outs with our
16 competitor and was unable to commit to
17 exclusivity.

18 BY MS. GOFF:

19 Q So is it your understanding that
20 that's why Tim was not in favor of it or that's
21 why you were not in favor of it?

22 A That would have been a poor start to a
23 healthy sustainable relationship that served all
24 of its stakeholders, yes.

25 Q So that's --

1 A That would be my assumption.

2 Q Thank you.

3 Further down in that email that you
4 just directed me to actually, CX2219-002, you
5 write: For what it's worth, I'm completely
6 comfortable with yours and Tim's decision.

7 Do you see that?

8 A I do.

9 Q Then you write: In fact, it's the
10 first time we have had the opportunity of having
11 Tim's input on something of this nature.

12 Do you see that?

13 A Yes.

14 Q So was it the first time that you had
15 had the opportunity of having Tim's input on a
16 GPO written agreement?

17 MR. McDONALD: Hang on. Object to the
18 form. Go ahead.

19 THE WITNESS: Anything that I was
20 personally involved in and my information
21 regarding Tim's input was by proxy through
22 my direct supervisor, Joe Cavaretta.

23 BY MS. GOFF:

24 Q So you're not aware either way of
25 whether Tim had given his input to Mr. Cavaretta

1 previously on other GPOs?

2 A No.

3 Q But just to make sure I understand,
4 but it was -- you're expressing in this email
5 that it was the first time that you were aware
6 of having Tim's input on something of this
7 nature?

8 A Anything that I was personally
9 involved in.

10 Q Did Joe Cavaretta ever inform you of
11 the reasons why he was not in favor of the PGMS
12 agreement?

13 A There would be a handful of reasons of
14 which that I just shared with you several times.
15 And that would be that it wasn't a healthy start
16 to a relationship with a lack of exclusivity, a
17 lack of compliance for their member group.

18 Q Those were -- in your understanding,
19 those were Joe's concerns about PGMS?

20 A Correct.

21 Q And did he express those concerns to
22 you?

23 A Yes.

24 Q You, though, at least at one point,
25 were in favor of doing an agreement with PGMS;

1 right?

2 MR. McDONALD: Object to the form.

3 THE WITNESS: All negotiations follow
4 a certain path or process. In the earliest
5 discussions, I was encouraged. As the
6 discussions proceeded, I became more and
7 more concerned.

8 BY MS. GOFF:

9 Q Okay. At some point, though, did you
10 recommend that Schein do business with PGMS?

11 A At some point I thought that there was
12 a cooperation on behalf of PGMS to comply with
13 our requirements.

14 Q And so was it at that point when you
15 thought there was cooperation to comply with
16 your requirements that you elevated it to Joe?

17 A I don't remember at what juncture it
18 was.

19 Q When you elevated it to Joe, were you
20 asking for his permission to enter into an
21 agreement or were you asking for his permission
22 to not enter into an agreement?

23 A I was asking for his insight into the
24 negotiations as they proceeded, or a better
25 explanation would be keeping him informed of the

1 process as it evolved.

2 Q Did it surprise you that he elevated
3 it to Tim Sullivan?

4 A I had just started working for Joe
5 very recently, so I don't know what his rapport
6 or process was with Tim.

7 I know he worked very close with our
8 headquarters in Wisconsin, Henry Schein Dental
9 headquarters in Wisconsin. So that may have
10 been part of his process. I would not have had
11 any exposure to that before 2014.

12 Q Were any other agreements elevated to
13 Tim Sullivan, to your knowledge?

14 A I have no idea.

15 Q So other than this PGMS agreement
16 during the 2014 period when you started working
17 for Joe until the period when you stopped
18 working for Joe, are you aware of any other
19 times when an agreement was elevated to Tim
20 Sullivan?

21 MR. McDONALD: Object to the form.
22 Mischaracterizes testimony.

23 THE WITNESS: Not personally aware,
24 no.
25

1 BY MS. GOFF:

2 Q And are you aware of any other times
3 when a decision about whether to work with a
4 customer was elevated to Tim Sullivan?

5 MR. McDONALD: Object to the form.
6 Asked and answered.

7 THE WITNESS: No idea.

8 BY MS. GOFF:

9 Q So what makes you say that the PGMS
10 was not willing to be exclusive?

11 A They told me.

12 Q Okay. But at some point at least you
13 thought that they were willing to be exclusive?

14 A There were three people that were part
15 of the negotiations, Nick Azar, Kathy Khalik and
16 Juan Luque.

17 Q At some point you had the impression
18 that PGMS was willing to be exclusive?

19 A Potentially, I thought there was a
20 partnership. But there had to be a consensus
21 among their own stakeholders and those three had
22 not come together to discuss the terms of our
23 agreement.

24 When they did, there was -- the word
25 came down from Dr. Luque that that was a

1 nonstarter, that they couldn't provide us with
2 any assurance of compliance or exclusivity.

3 Q Okay. You're looking at
4 Exhibit CX2219; correct?

5 A Yes, I am.

6 Q And that exhibit is dated July 16th,
7 2014?

8 A On the cover?

9 Q Yes.

10 A Yes.

11 Q Okay. And then do you also have
12 CX2235 somewhere? If you wouldn't mind handing
13 me that pile of documents, I can find it for
14 you.

15 Thank you. Here it is.

16 This email is dated -- CX2235 is dated
17 the day after, it's July 17th, 2014; right?

18 A M-hm.

19 Q And in this email you wrote that PGMS
20 was willing to be exclusive?

21 A I'm confused about my statement
22 because clearly I had already had a discussion
23 with Kathy Khalik where she declined our request
24 to be exclusive.

25 Q Why is that clear to you?

1 A On document number CX2219 or
2 000082883, in the email to Joe Cavaretta on
3 July 16th at 11:06 a.m., I spoke to the -- I
4 guess I spoke to both Kathy Khalik -- I guess
5 just to Kathy Khalik and explained there was a
6 time in the future that they would be an MSO
7 that they could demonstrate compliance. At that
8 point I had been told that they would not be
9 able to demonstrate compliance.

10 Q Okay. So you're confused why the
11 following day you informed her colleagues that
12 they were willing to be exclusive?

13 A Yes, I'm confused.

14 Q And do you think there's anything that
15 would refresh your recollection as to why you
16 wrote that in the email?

17 A No, I don't recall.

18 Q There's nothing that you can think of
19 right now?

20 A There's nothing I can think of.

21 Q Okay. Let me show you another
22 document. You can put those two aside.

23 MS. GOFF: Let me hand the court
24 reporter back all the exhibits.

25 I've handed you what's been marked as

1 Exhibit CX2234.
 2 (Exhibit CX2234 was marked.)
 3 THE WITNESS: Okay.
 4 MS. GOFF: This is an email chain that
 5 bears the Bates stamp Henry Schein, and then
 6 the last two digits are 34.
 7 BY MS. GOFF:
 8 Q Let me know when you have had a chance
 9 to review the document.
 10 A The entire document?
 11 Q I can tell you that I am going to be
 12 asking you about Mr. Cavaretta's email on
 13 November 12th, 2014 at 10:40 a.m., to you and a
 14 few other people. But if you want to
 15 familiarize yourself with the rest of the email,
 16 please feel free.
 17 A Okay.
 18 Okay.
 19 Q Mr. Cavaretta is responding to an
 20 email regarding Kois; is that right?
 21 A Correct.
 22 Q And he wrote to you and some others:
 23 I have not heard anything, but at this point we
 24 are not playing in the GPO space.
 25 Do you see that?

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: I'm not surprised. I
 3 don't know what it means exactly.
 4 BY MS. GOFF:
 5 Q Do you think you had an understanding
 6 of what it meant at the time you received this
 7 email?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: No.
 10 BY MS. GOFF:
 11 Q Do you recall ever asking
 12 Mr. Cavaretta what he meant by "we are not
 13 playing in the GPO space"?
 14 A I don't.
 15 Q Would it have been important for you
 16 to know what he meant by that?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I don't know.
 19 BY MS. GOFF:
 20 Q If it was Schein's policy not to play
 21 in the GPO space, would that have been relevant?
 22 A That wasn't our policy.
 23 Q To your understanding, that was not
 24 Schein's policy?
 25 A It was not.

1 A M-hm.
 2 Q Did I read it correctly?
 3 A You did.
 4 Q And Mr. Cavaretta was your boss when
 5 he wrote this email? You reported to him?
 6 A Correct.
 7 Q So he was informing you and
 8 Mr. Jacklin that Schein did not play in the GPO
 9 space?
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: I'm not certain if he
 12 meant this specific Kois Group and he was
 13 asking a question about it or even referring
 14 to Kois being a consulting group.
 15 BY MS. GOFF:
 16 Q So sitting here today, you don't have
 17 an understanding of what he meant by "At this
 18 point we are not playing in the GPO space"?
 19 A I don't because we had been working
 20 diligently to provide an avenue for these types
 21 of organizations to come to Henry Schein and
 22 have conversations about the appropriateness of
 23 a fit.
 24 Q So sitting here today, does it
 25 surprise you that Mr. Cavaretta wrote that?

1 Q Okay. Let me show you another
 2 document about Kois as well.
 3 A Okay.
 4 MS. GOFF: So this is another email.
 5 The Bates stamp is Henry Schein and then
 6 ending in 3828, and it's CX2230.
 7 BY MS. GOFF:
 8 Q So the email that's latest in time is
 9 from you to Dave Jacklin check dated
 10 October 18th, 2014. Do you see that?
 11 A M-hm.
 12 Q And Mr. Jacklin was in the other email
 13 as well. Who is Mr. Jacklin?
 14 A He is a regional manager for the
 15 Seattle area.
 16 Q Did you supervise him?
 17 A No.
 18 Q Do you know who did supervise him?
 19 A Kevin Upchurch.
 20 Q Okay. What was Mr. Upchurch's
 21 position in this time period?
 22 A Zone general manager for the
 23 northwest.
 24 Q Do you know what Kois is?
 25 A As I understand it, it was a

1 consulting group, is a consulting group.

2 Q And what makes you say that Kois is a
3 consulting group?

4 A As I recall checking their website,
5 they had the earmarks or characteristics of a
6 consulting group.

7 Q When did you check their website?

8 A It would have been when we were
9 conversing via email on this topic.

10 Q And did -- when you did some research
11 on Kois, did you learn that they had a lot of
12 members?

13 A The nature of consulting groups is
14 once they finish their period of consulting,
15 that customer is finished and they move on to
16 the next consulting client.

17 So they could be rotating through or
18 they are rotating through, but there is a finite
19 period where consulting clients finish and move
20 on.

21 Q Did you have an understanding that
22 Kois also had a buying group component?

23 A Based on what I'm seeing on my emails,
24 I must have, yes.

25 Q So is it possible that a group could

1 be a consulting group and have a buying group
2 component?

3 A Sure.

4 MR. McDONALD: Object to form.

5 BY MS. GOFF:

6 Q So turning to the email you wrote --
7 let's see if I can find it. It was towards the
8 end of the email. You wrote: This trend of
9 consulting groups trying to squeeze revenue out
10 of the distribution chain is not unique.

11 Do you see that?

12 A I do.

13 Q What did you mean by that?

14 A I mean that those consulting groups
15 that have a finite number of members and don't
16 offer ongoing support of services or member
17 benefits that are subscription based and
18 continual, they didn't offer those types of
19 members.

20 Q But Kois buying group did have
21 services that they offered members; right?

22 MR. McDONALD: Object to the form.

23 THE WITNESS: I don't know. I never
24 spoke to them.

25

1 BY MS. GOFF:

2 Q But you did research on them?

3 A I just looked at their website.

4 Q And so in this sentence you're
5 referring to consulting groups trying to squeeze
6 revenue out of the distribution chain. And I'm
7 still unclear of what you meant by trying to
8 squeeze revenue out of the distribution chain.

9 A So consulting groups as an entity
10 coming to a distribution company or distribution
11 companies and leveraging a discount of which
12 they want to take an administrative fee on the
13 back end for the volume.

14 Q So the consulting group leveraging the
15 members of the group, the buying power of the
16 members of the group to get a discount?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: Correct.

19 BY MS. GOFF:

20 Q When you say out of the distribution
21 chain, would Schein be a member of the
22 distribution chain?

23 A We are.

24 Q And then you wrote: We are getting
25 better at shutting them down before they get

1 traction with our assets.

2 Are you referring to getting better at
3 shutting down buying groups?

4 MR. McDONALD: Object to form.

5 THE WITNESS: Getting better at
6 discerning those that have the opportunity
7 for healthy relationship for all of the
8 stakeholders.

9 BY MS. GOFF:

10 Q But you wrote "getting better at
11 shutting them down."

12 MR. KASS: That mischaracterizes the
13 document.

14 MR. McDONALD: Objection,
15 mischaracterizes the testimony,
16 mischaracterizes the document. Go ahead.

17 BY MS. GOFF:

18 Q So what did you mean by "shutting them
19 down"?

20 MR. McDONALD: Asked and answered.
21 You can tell her again.

22 THE WITNESS: Looking with a strategic
23 critical eye at relationships and making
24 sure that the relationship was beneficial to
25 all of the stakeholders.

1 BY MS. GOFF:

2 Q And then stopping doing business with
3 ones that you did not feel were beneficial?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: It had nothing to do
6 with my feelings but more about whether we
7 had the minimal requirements in order to
8 make it beneficial for Henry Schein, meaning
9 access to their client base, promotions from
10 the buying group, exclusivity, compliance
11 amongst their members, other added value
12 services, being able to sell deeper into
13 their member base and have access and
14 promotion to their member base.

15 BY MS. GOFF:

16 Q So you were getting better at ending
17 business with the groups that did not meet those
18 minimal requirements that you've expressed?

19 MR. McDONALD: Hang on. I object to
20 the form. Go ahead.

21 THE WITNESS: Not necessarily ending
22 relationships. However, there were
23 circumstances where we did that. But not
24 going down the path with them if they did
25 not meet our minimum requirements for a

1 partnership.

2 BY MS. GOFF:

3 Q Not starting new relationships if they
4 didn't meet the minimum requirements?

5 A Correct. There would be people within
6 the organization that might choose to have a
7 conversation, but before we had random
8 conversations amongst the 875 field reps that
9 are out in the -- engaged with the dental
10 landscape, to make sure that we were having
11 someone who understood what a healthy
12 relationship looked like, having a conversation
13 with the parent entity.

14 Q Who would be the person that
15 understood what having a healthy relationship
16 looked like?

17 A We were forming up that process.
18 Myself, my counterparts were helping with the
19 process.

20 So we had a national footprint. I was
21 in the west, we had someone in the central and
22 someone in the east and all of us would --
23 ultimately the field reps would direct those
24 conversations to us so that we could vet that
25 entity for a viable relationship or pursuing the

1 possibility of a viable relationship.

2 Q I asked you your understanding of what
3 you meant by "shutting them down" in this email.

4 Then you stated -- my question was:
5 So you were getting better at ending business
6 with the groups that did not meet those minimal
7 requirements that you've expressed?

8 And you said: Not necessarily ending
9 relationships; however, there were circumstances
10 where we did that.

11 I just want to make sure I understand
12 the circumstances where you did that, that was
13 the Breakaway and the Dental Co-op of Utah?

14 MR. McDONALD: Objection to form,
15 mischaracterizes her testimony. She never
16 said anything about Breakaway.

17 BY MS. GOFF:

18 Q I'm so sorry. The Steadfast and the
19 Dental Co-op of Utah?

20 A Steadfast would be the one I had
21 intimate knowledge of the outcome. Dental
22 Co-op, I'm unsure what the outcome was.

23 Q Okay. But were those the two that you
24 were referring to?

25 A Yes.

1 Q Okay. Thank you.

2 You can put that document aside.

3 Talking about -- going back to your
4 CHC group relationships, the groups that you
5 mentioned, the Texas group, the Washington
6 group, the Colorado group, the Council
7 Connection group.

8 A M-hm.

9 Q Do those groups guarantee exclusivity?

10 A They do.

11 Q They do. Is that written in their
12 contract?

13 A It is.

14 Q And what is -- do you have a
15 recollection off the top of your head of what
16 the language in the contract says about
17 exclusivity?

18 MR. McDONALD: If you know, tell her,
19 but don't guess because they've got the
20 contracts.

21 THE WITNESS: No, I don't know.

22 BY MS. GOFF:

23 Q Okay. Did you -- talking about the
24 groups that -- the healthy relationship that
25 you've mentioned several times for groups that

1 you would want to work with, which groups fall
2 into that category of having a healthy
3 relationship between Schein and the group that
4 you wanted to work with? Can you name the
5 groups that fall into that category?

6 I'm talking about during the time that
7 you became -- that you started in HSD until the
8 present.

9 A Not including the community health
10 centers; correct?

11 Q Sure, yes.

12 A You do or do not want me to include
13 them?

14 Q You don't need to include the
15 community health centers.

16 A So Breakaway would be the first one.
17 And we have -- we signed a primary supply
18 partnership agreement with them. And they do
19 have a very large buying group component to
20 their business, meaning that they have certain
21 equity stake in some of the locations that their
22 DSO serves or their DSO platform serves.
23 However, the majority of their member base are
24 on retainer or subscription and they are not --
25 financially Breakaway is not -- does not have a

1 financial stake in those offices. That was the
2 buying group component.

3 So that was the first one that we
4 crafted and carefully and strategically put
5 language in the agreement that assured us of
6 those things that I mentioned to you earlier,
7 exclusivity, compliance, a sell-through for all
8 of our other products and services, promotion of
9 Henry Schein as their trusted supply partner and
10 their only supply partner, use of our eCommerce
11 site, including certain exclusive commerce
12 portal called Clixon, et cetera. That was
13 probably the largest agreement that we had.

14 MR. McDONALD: Let me interrupt you,
15 Kathleen. I'm trying to help her out. She
16 just asked you for the names. She is
17 running out of time. She's got 20 minutes
18 left.

19 If you want her to ramble on about
20 this, that's fine. But I think you just
21 asked her --

22 THE WITNESS: Okay. Do you just want
23 the names?

24 BY MS. GOFF:

25 Q For now, yes, could you provide me

1 with the names?

2 A Clear Impact and Breakaway.

3 Q Okay. Thank you.

4 And then are there groups that have
5 approached you that you've discussed that you
6 determined did not fall in this category of the
7 healthy relationship that you wanted to work
8 with and you said, no thank you, we don't want
9 to work with you?

10 A Beyond the ones we've discussed today
11 like PGMS, Dental Co-op.

12 Q Right.

13 A Steadfast.

14 Q Any others?

15 A No.

16 Q What about CDA, did you ever have
17 discussions with them?

18 A We did.

19 Q Did you decline to work with them?

20 A We wanted to work with them.

21 Q And there are no other groups, just
22 those three that you mentioned, that you have an
23 understanding that Schein declined to work with,
24 it was PGMS, Dental Co-op and Steadfast?

25 A Yes.

1 Q Okay. And are there any others that
2 fall in the category where you wanted to work
3 with the group but they did not want to work
4 with you?

5 A No.

6 Q You mentioned CDA. Is it your
7 understanding that Schein put in a bid to do
8 work for CDA?

9 A Again, we wanted an exclusive
10 partnership or primarily exclusive partnership.
11 We had a very large percentage of the business
12 in California.

13 The proposal from the CDA was for us
14 to have a finite number of products on their
15 formulary, which would have eroded the business
16 that we already had. So we declined their bid,
17 their product mix.

18 MS. GOFF: Okay. I would like to take
19 a short break and look over my notes and
20 then come back?

21 THE WITNESS: Okay.

22 MS. GOFF: Thanks.

23 (Recess taken.)

24 BY MS. GOFF:

25 MS. GOFF: I just wanted to show you

1 one final document. It's CX2211 and it's
2 Bates stamped Henry Schein 11417. The
3 latest in time email is from Jeff Harmon to
4 Joe Cavaretta and Kevin Upchurch with a cc
5 to you. It's dated July 18th, 2014.

6 Q Have you had a chance to review it?
7 (Exhibit CX2211 was marked.)

8 THE WITNESS: Do you want me to review
9 the entire document?

10 BY MS. GOFF:

11 Q I can direct you to the email that we
12 will be discussing, but I want you to feel free
13 to review as much as you need to.

14 A Okay.

15 Q I'll have questions about a couple of
16 emails. The first one is Mr. Upchurch's email,
17 it's CX2211-002 at the very top.

18 MR. KASS: Read the whole document.

19 MR. McDONALD: Take a second. It
20 starts there.

21 MS. GOFF: Sure.

22 THE WITNESS: Okay.

23 BY MS. GOFF:

24 Q So is this email chain discussing the
25 Dental Co-op of Utah?

1 A Are you asking is this discussing the
2 Dental Co-op of Utah?

3 Q Yes.

4 A It is, yes.

5 Q Thank you.

6 And so Mr. Cavaretta was asking
7 Mr. Upchurch and you and Mr. Harmon --

8 MR. McDONALD: Hang on. She's not
9 looking at what you're looking at, I don't
10 think. Do you want to direct her to where
11 you are, Karen?

12 MS. GOFF: Sure. Okay. So going to
13 CX2211-002.

14 BY THE WITNESS: Okay.

15 Q Mr. Upchurch is responding to some
16 questions from Mr. Cavaretta. Does that look
17 correct to you?

18 MR. McDONALD: At the top of the page.

19 THE WITNESS: But she said responding
20 to questions; right? Are these the
21 questions you're asking?

22 MR. McDONALD: She's asking about
23 Kevin's email at the top. I know you're
24 getting tired. That's responding to Joe's
25 email at the bottom.

1 THE WITNESS: I was reading the
2 question so I could see the context.

3 BY MS. GOFF:

4 Q Thank you.

5 Mr. Upchurch writes: The Co-op is
6 turning into a GPO.

7 Do you see that? It's the last
8 sentence of Mr. Upchurch's email.

9 A I do.

10 Q So I'll read the whole thing. The
11 co-op is turning into a GPO, in parentheses,
12 even if they don't think they are one now,
13 unparentheses, from what KT has observed in
14 Texas, NM, and from Tim S., HSD does not want to
15 enter the GPO world.

16 Do you see that?

17 A I do.

18 Q Did I read it correctly?

19 A You did.

20 Q Is KT in this sentence a reference to
21 you as you understand it?

22 A It is.

23 Q You're referred to as KT in emails
24 from time to time?

25 A Correct.

1 Q And Mr. Upchurch is saying that Tim
2 Sullivan does not want to -- HSD to enter the
3 GPO world, is that your understanding?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: I have no idea what was
6 in his mind.

7 BY MS. GOFF:

8 Q When you read this email, do you think
9 you have an understanding of what he meant?

10 MR. McDONALD: Object to the form.

11 THE WITNESS: I don't think I
12 understood what he meant because the Dental
13 Co-op is a buying group or GPO, not turning
14 into one.

15 BY MS. GOFF:

16 Q So you think that Mr. Upchurch was
17 incorrect when he wrote that the co-op was
18 turning into a GPO?

19 A I think he's uninformed about what a
20 GPO is and perhaps put Dental Co-op in another
21 category. However, I don't know what he meant.
22 I was not in his mind.

23 Q But from your understanding, the
24 Dental Co-op was a GPO?

25 A Yes, or buying group, yes.

1 Q And then what -- he wrote: From what
 2 KT has observed in Texas, NM.
 3 Do you have an understanding of what
 4 he meant by that?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I understand that in
 7 Texas and New Mexico, they were promoting to
 8 Henry Schein customers, selling direct to
 9 Komet, which makes rotary instruments. It's
 10 a very large category for any dental
 11 distributor, and Procter & Gamble, which was
 12 diverting established preventative plans
 13 from existing customers and there were, as I
 14 recall, flyers to that effect.
 15 BY MS. GOFF:
 16 Q So that was happening in Texas and New
 17 Mexico?
 18 A Correct.
 19 Q Was that problematic for Schein?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It was against the
 22 spirit of our partnership.
 23 BY MS. GOFF:
 24 Q Why was it against the spirit of the
 25 partnership?

1 A Because we were exclusive as their
 2 exclusive distributor partner for a number of
 3 years prior to this, so they had taken a
 4 completely different direction.
 5 Q Okay. And have you ever heard
 6 individuals at Schein say that Tim S. does not
 7 want to enter the GPO world?
 8 A Not that I recall.
 9 Q Did it surprise you that Mr. Upchurch
 10 wrote that Tim S. did not want to enter the GPO
 11 world?
 12 MR. McDONALD: Object to the form.
 13 BY MS. GOFF:
 14 Q If you recall?
 15 A I don't recall.
 16 Q Sitting here today, does that surprise
 17 you?
 18 A No.
 19 Q Why not?
 20 A Because I don't think he understands
 21 the GPO or buying group as well as he's
 22 presenting himself here.
 23 Q So it does not surprise you because
 24 you think Mr. Upchurch does not know what he's
 25 talking about?

1 A I'm sure that he has a great base of
 2 knowledge at this point. But the Dental Co-op
 3 existed for a number of years within Henry
 4 Schein and it was, by all intents and purposes
 5 and characteristics, a buying group.
 6 Q Have you ever heard, outside of this
 7 email, anyone say that Tim S. did not want to do
 8 business with GPOs?
 9 A I did not.
 10 Q Have you ever heard anyone say that
 11 Tim S. did not want to do business with buying
 12 groups?
 13 A No, I have not.
 14 Q Have you ever spoken directly to Tim
 15 Sullivan about GPOs or buying groups?
 16 A I have not.
 17 Q Have you ever spoken with him in
 18 person or on the phone about buying groups?
 19 A I have not.
 20 Q Have you ever communicated with him
 21 via email about GPOs or by in groups?
 22 A I don't think so. I don't recall. I
 23 don't think so.
 24 Q Okay. Have you ever heard anyone at
 25 Schein say that GPOs are a threat to Schein?

1 MR. McDONALD: Object to the form.
 2 THE WITNESS: It's too broad of a
 3 statement in that some GPOs would be.
 4 BY MS. GOFF:
 5 Q Some GPOs might be a threat to Schein?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: Some GPOs might present
 8 a threat in that they would redirect
 9 established customers and established
 10 business to competitors or direct sellers.
 11 BY MS. GOFF:
 12 Q Could GPOs be a threat because they
 13 lower Schein's margins?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: No.
 16 BY MS. GOFF:
 17 Q Is it your understanding that GPOs or
 18 buying groups can lower Schein's margins?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: The nature of GPO
 21 pricing is that the collective buying power
 22 of its member base qualifies the customer,
 23 the end user for a better price.
 24 BY MS. GOFF:
 25 Q Meaning a lower price?

1 A Correct.

2 Q Have you ever said that GPOs are a
3 threat to Henry Schein?

4 MR. McDONALD: Object to the form.

5 THE WITNESS: Not in a broad scope,
6 only poorly negotiated, poorly crafted
7 agreements where there is a lack of
8 understanding of expectations.

9 BY MS. GOFF:

10 Q Okay. So in -- referring back to
11 Mr. Upchurch's statement that HSD does not want
12 to enter the GPO world, did you ever respond to
13 Mr. Upchurch and tell him you did not understand
14 that statement?

15 A I did not.

16 Q Okay. Turning then to the next email
17 in time, it's from Mr. Cavaretta, it's on the
18 first page of the document. So it's CX2211-001.

19 So here Mr. Cavaretta is asking about
20 what happens to the customers of the Dental
21 Co-op if Henry Schein stopped doing business
22 with the Dental Co-op; is that correct?

23 MR. McDONALD: Take your time and read
24 it.

25 THE WITNESS: Ask your question again,

1 Karen please.

2 BY MS. GOFF:

3 Q Sure. Just to orient you, I'm talking
4 about the sentence where Mr. Cavaretta said:
5 Basically I want to have more confidence in the
6 plan we have with our customers after we cut
7 ties with the co-op.

8 So is Mr. Cavaretta asking about what
9 would happen after Schein cuts ties with the
10 co-op to Schein's relationships with its
11 customers?

12 A Yes.

13 Q And was he expressing concerns that
14 those customers might continue buying through
15 the co-op and not buying through Schein?

16 MR. McDONALD: Object to the form.

17 The document speaks for itself.

18 THE WITNESS: Yes. He says in here:
19 Whoever they align with.

20 BY MS. GOFF:

21 Q Sorry, were you finished?

22 A M-hm.

23 Q So is it possible that if Schein
24 stopped working with the Dental Co-op, that the
25 customers might go to a competitor?

1 A It's possible in every scenario that
2 the customer might go to a competitor, which is
3 why Joe is asking his managers, do you have a
4 plan in place for robust engagement with the
5 members of Dental Co-op?

6 Q When you say his managers, do you mean
7 Kevin Upchurch and Jeff Harmon?

8 A I do.

9 Q But they don't -- those two
10 individuals report to Joe Cavaretta?

11 A Correct.

12 Q Did you ever talk to Mr. Upchurch and
13 inform him that Tim Sullivan said that HSD does
14 not want to enter the GPO world?

15 A I did not.

16 Q Okay. And so do you have any
17 understanding where Mr. Upchurch got that
18 impression from?

19 A I do not.

20 MS. GOFF: Okay. So I'm going to
21 reserve the remainder of my time for
22 questions that I may have after your counsel
23 may have questions as well.

24 THE WITNESS: Okay.

25 MR. McDONALD: Let's just go off the

1 record for a minute.

2 (Recess taken.)

3 EXAMINATION

4 BY MR. McDONALD:

5 Q Ms. Titus, would you pull out
6 Exhibit 2235?

7 Do you have that in front of you?

8 A Yes.

9 Q This is a document that we looked at
10 earlier today regarding PGMS?

11 A Correct.

12 Q I want to focus on the attachment to
13 your email. What is this attachment?

14 A This would be terms of our agreement
15 with the parent entity.

16 Q Okay. I want you to look at the
17 second paragraph on page CX2235-002 and I want
18 you to read into the record the second sentence
19 of the second paragraph that begins: Schein
20 acknowledges.

21 A Schein acknowledges that PGMS cannot
22 guarantee that its members will purchase from
23 Schein, however PGMS will use its best efforts
24 to move this business over to Schein.

25 Q What does it mean when it's referring

1 to members?

2 A Consulting members. They are
3 consulting clients.

4 Q How many members did PGMS have?

5 A Ten.

6 Q So what does this sentence mean in lay
7 terms?

8 MS. GOFF: Objection to form.

9 BY MR. McDONALD:

10 Q Go ahead.

11 A This sentence means that the members
12 that would be identified as ^PGSM members would
13 not -- that PGMS as the parent entity would not
14 be able to guarantee that its members would buy
15 from Schein.

16 Q Does this have anything to do with
17 compliance?

18 A It does. It is compliance.

19 Q So what is this -- what does this mean
20 in regards to compliance?

21 A That they are lacking a key component
22 of a healthy relationship.

23 Q Is there compliance?

24 A No compliance.

25 Q That's all I have on that. If you'll

1 look at CX2211.

2 A Okay.

3 Q And I want to focus on CX2211-002,
4 this email.

5 MS. GOFF: Sorry, could you just give
6 me a second? I want to make sure. 22 --

7 MR. McDONALD: 2211, it's the last
8 thing you looked at with her, Karen.

9 MS. GOFF: Thank you.

10 MR. McDONALD: Are you ready?

11 MS. GOFF: Yes.

12 BY MR. McDONALD:

13 Q I want to focus, Ms. Titus, on this
14 email that you had discussions with Ms. Goff
15 about from Kevin Upchurch. It's on
16 Page CX2211-002. Are you with me?

17 A Okay.

18 Q You were asked a number of questions
19 about the second sentence in the second
20 paragraph. I want to focus on the last phrase:
21 HSD does not want to enter into the GPO world.
22 Do you see that?

23 A I do.

24 Q As of the date of this email,
25 July 18th, 2014, was HSD doing business in the

1 buying group world?

2 A They were.

3 Q Can GPO refer to entities like in
4 medical that negotiate directly with
5 manufacturers?

6 MS. GOFF: Objection, form.

7 THE WITNESS: In the medical world,
8 GPO is a different type of buying group or
9 different type of entity in that they, like
10 a distributor, would go directly to the
11 manufacturer and negotiate pricing.

12 BY MR. McDONALD:

13 Q Okay.

14 A And that pricing would then be
15 presented to the distributor and the distributor
16 would have to agree to that pricing in order to
17 apply to become a supplier to the GPO
18 membership.

19 Q Are there such entities in dental?

20 A There are not.

21 Q Is that type of GPO different than
22 what you have been referring to as a GPO
23 throughout your testimony today?

24 A It is.

25 Q That's all I have on that.

1 Have you ever had conversation with
2 anyone -- and when I say conversation,
3 telephonically, in person, by email, by text
4 message, anything, with anyone at Benco
5 regarding buying groups?

6 A I have not.

7 Q Using the same definition of
8 conversation, have you ever had any
9 conversations with anyone at Patterson regarding
10 buying groups?

11 A I have not.

12 Q The FTC alleges in its complaint
13 that's filed in this action that Henry Schein,
14 Patterson and Benco had an agreement to not do
15 business with buying groups.

16 Do you have any knowledge of such an
17 agreement?

18 A I do not.

19 MR. McDONALD: That's all I have.

20 MS. GOFF: Is anyone else planning to
21 ask any questions?

22 MR. FLAHERTY: I have no questions.

23 MR. McDONALD: Sorry, I cut you off.
24 Did you say you have no questions or you
25 have a question?

1 MR. MANNING: On the phone it's Thomas
2 Manning. I have no questions.

3 MS. GOFF: I have some follow-up.
4 REDIRECT EXAMINATION

5 BY MS. GOFF:

6 Q Turning back to the first document
7 that you looked at with your counsel, CX2235,
8 the language from the agreement that you read
9 into the record, it's the second paragraph,
10 CX2235-002. Are you with me?

11 A I am.

12 Q Is this language the same language
13 that is used in CHC agreements?

14 A Generally the terms are different with
15 CHCs.

16 Q Is there a paragraph similar to this
17 one in the CHC agreements?

18 MR. McDONALD: Object to form. If you
19 know, tell her.

20 THE WITNESS: I don't know.

21 BY MS. GOFF:

22 Q Were you responsible for negotiating
23 CHC agreements during your time at Schein at one
24 point?

25 A I was.

1 Q So did you at one point know the
2 answer to my question but you just cannot recall
3 as you sit here today?

4 A Most of our relationships are legacy
5 relationships and those relationships have
6 rolled over multiple times with just a
7 signature. So they are old enough that I would
8 not recall specifics of what's in the agreement.

9 Q Okay. So you did not negotiate the
10 relationships with the legacy groups that you're
11 referring to?

12 A I did.

13 Q Oh, you did, okay. So at one point
14 you had an understanding of what was in those
15 agreements?

16 A I did.

17 Q Today you just can't recall?

18 A I can't recall.

19 Q Okay. And then turning to this
20 language again, it says: Schein acknowledges
21 that PGMS cannot guarantee that its members will
22 purchase from Schein; however, PGMS will use
23 best efforts to move this business over to
24 Schein.

25 Do you see that?

1 A I do.

2 Q What does it mean that PGMS will use
3 best efforts to move the business to Schein?

4 A That was yet to be defined. The PGMS
5 group at the time of this conversation were ten
6 consulting clients.

7 A lot of work would have went in to
8 putting this agreement in place and getting it
9 all set up and the amount of effort that it
10 would have taken to do this with no guarantee
11 that those offices would bring their business to
12 Schein wasn't worth the investment.

13 Q Okay. That's your opinion that you're
14 giving me?

15 A That's the opinion of myself and my
16 superior.

17 Q That's Joe Cavaretta?

18 A Correct.

19 Q And you understand his opinion and
20 you're able to testify about his opinion because
21 he told it to you?

22 MR. McDONALD: Object to the form.

23 THE WITNESS: As I recall, but I think
24 there were somewhere in this email that I
25 stated that I spoke with Joe and --

1 BY MS. GOFF:

2 Q So is this agreement that we're
3 looking at, the attachment to CX2235, is that
4 the agreement that you negotiated with PGMS?

5 A It's the agreement that we verbally
6 negotiated; however, we did not present this to
7 them.

8 Q Your testimony is that you did not
9 present this agreement to PGMS?

10 A If we presented it, that's when we
11 were told by Kathy Khalik that they were unable
12 to comply and we offered them an alternative
13 option.

14 Q What was the alternative option?

15 A It's in here.

16 Q Okay.

17 MR. McDONALD: Karen, she's not done
18 answering your question. You asked her what
19 was the alternative option.

20 BY MS. GOFF:

21 Q Sorry, go ahead.

22 A I'm not sure it's in either one of
23 these documents.

24 MR. McDONALD: I'm not testifying for
25 you, but go ahead.

1 THE WITNESS: Should I find it?
 2 BY MS. GOFF:
 3 Q At one point today did you read into
 4 the record the alternative arrangement you were
 5 referring to?
 6 A Yes.
 7 Q So I still just want to make sure I'm
 8 on the same page. This agreement that we're
 9 looking at in CX2235 is one that Henry Schein
 10 drafted and sent to PGMS?
 11 MR. McDONALD: Mischaracterizes
 12 testimony.
 13 THE WITNESS: I'm not sure how it was
 14 presented, whether it was electronically
 15 sent or whether we reviewed it in a
 16 telephone call or in person. I don't
 17 recall.
 18 BY MS. GOFF:
 19 Q You testified that this is -- your
 20 counsel asked you, is there compliance, and you
 21 said no.
 22 Do you recall that testimony?
 23 A Correct.
 24 Q What did you mean by compliance?
 25 A Compliance in it reads: In this

1 agreement, PGMS cannot guarantee its members
 2 will purchase from Schein.
 3 Q Okay. And in other words, there was
 4 no compliance in your view because PGMS stated
 5 that they could not guarantee their members
 6 would purchase from Schein?
 7 A Correct.
 8 Q And so for there to be compliance in
 9 your mind, must there be a language in the
 10 contract that states that the members will
 11 purchase from Schein?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Yes.
 14 BY MS. GOFF:
 15 Q And are you aware of contracts that
 16 Schein has where the contract states that the
 17 members must purchase from Schein?
 18 A With a certain percentage of their
 19 projected volume, within a certain threshold of
 20 their projected volume.
 21 Q Okay. And are you thinking of any
 22 particular agreements?
 23 A DSO agreements, 80 percent of the
 24 supply business must come through Henry Schein
 25 exclusivity as Henry Schein being their primary

1 supply partner. Virtually every one of our
 2 agreements call out Henry Schein as the primary
 3 supply partner.
 4 Q Other than DSO agreements, are there
 5 agreements with GPOs or buying groups that
 6 you're aware of that require a certain
 7 percentage of volume purchased from Schein?
 8 A It's a difficult -- it's difficult to
 9 police that. It's difficult to police that.
 10 But if all of the other benefits and features
 11 are worked into the agreement and agreed upon by
 12 its members, it's probable.
 13 Q Okay. So it's difficult to police
 14 whether members will, in fact, buy from Schein?
 15 A Will treat Schein as their primary
 16 supply partner, meaning giving Schein the
 17 majority of their business.
 18 Q Okay. Is there language in any
 19 contracts with any GPOs or buying groups that
 20 you're familiar with that requires members to
 21 purchase from Schein?
 22 A I can't recall.
 23 Q And is that the only way in your mind
 24 to get compliance?
 25 MR. McDONALD: Object to the form.

1 THE WITNESS: I don't know.
 2 BY MS. GOFF:
 3 Q But in your view, this language in
 4 this contract, the PGMS contract, the best
 5 efforts language, that's not compliance in your
 6 mind?
 7 A It is not.
 8 MR. McDONALD: Object to the form.
 9 BY MS. GOFF:
 10 Q It would need to be something stronger
 11 than that?
 12 A It was inefficient to justify the
 13 offer that we had made to them.
 14 Q What do you mean by that?
 15 A Meaning that we were very generous in
 16 what we were offering them; however, it would
 17 have been a tremendous amount of work for ten
 18 locations, no guarantee that they would grow
 19 their member base and no assurance that their
 20 members would treat Henry Schein as their
 21 primary supply partner or even bring their
 22 business to us as new customers.
 23 Q When you say the offer you had was
 24 very generous, what did you mean? Is it the
 25 discounts you were offering?

1 A The discounts as well as some other
2 benefits.
3 Q If PGMS was able to offer compliance,
4 would you have -- would Schein have done
5 business with PGMS?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: I'm not certain.
8 BY MS. GOFF:
9 Q Would you have recommended it?
10 A I believe so.
11 Q And is that because then Schein would
12 get incremental sales?
13 A They showed a certain amount of
14 promise. They exhibited a quality that I was
15 impressed with. And their focus on very high
16 end digital dentistry was intriguing.
17 Q Did you draft this agreement that
18 we're looking at here?
19 A Based on a template, yes.
20 Q What was the template?
21 A Just something in our library that
22 we've used as standard language.
23 Q Used as standard language for what
24 types of organizations?
25 MR. McDONALD: Object to the form. If

1 you recall, tell her.
2 THE WITNESS: I don't recall.
3 BY MS. GOFF:
4 Q So this agreement you drafted based on
5 some agreement that Schein had entered into
6 previously?
7 MR. KASS: Objection, vague.
8 THE WITNESS: I don't know.
9 BY MS. GOFF:
10 Q Okay. But you said that it was based
11 on a template that you found?
12 A Right, which we could customize
13 certain things within the customers' names,
14 rebate amounts, certain discount structures.
15 Q Was the language in the second
16 paragraph pulled from the template?
17 MR. McDONALD: Object to the form.
18 THE WITNESS: I don't recall.
19 BY MS. GOFF:
20 Q Do you think that you drafted that
21 language in the second paragraph yourself?
22 A I don't recall.
23 Q So you're not aware of whether this
24 language in the second paragraph was included in
25 the template that you used?

1 A I do not.
2 Q Is there anything that would refresh
3 your recollection?
4 A No.
5 Q Is there anything that would refresh
6 your recollection as to what template you used?
7 A It would be one that we had in a
8 library from special markets.
9 Q Okay. So it's your recollection that
10 the template you used would have been something
11 that was used by special markets?
12 A Correct.
13 Q And would it have been for like a DSO
14 customer?
15 A Possibly.
16 Q Maybe a CHC customer?
17 MR. McDONALD: Objection to form.
18 THE WITNESS: A CHC GPO.
19 BY MS. GOFF:
20 Q A CHC GPO customer?
21 A M-hm.
22 Q Okay. It could have been either of
23 those two organizations?
24 A It could be.
25 MR. McDONALD: Object to form.

1 BY MS. GOFF:
2 Q And then do you have an understanding
3 of why you included that provision?
4 A This was a consulting group that did
5 not own their offices, their client offices.
6 And in our discussions, there were first and
7 foremost exclusivity, but also their ability to
8 move that business to Henry Schein.
9 Q Why did you include this provision if
10 you felt that this provision was unhealthy for
11 Schein?
12 A I would attribute that to I wanted to
13 move forward with hopes that we could help them
14 enlist or -- collaboratively with them to enlist
15 the business from their member groups and they
16 could exhibit great influence on them.
17 Q So you thought that PGMS could
18 influence the members?
19 A Certainly.
20 Q And you were hopeful that they would
21 be able to influence them to direct business to
22 Schein?
23 A That's right.
24 Q And so at the time that you drafted
25 this agreement, you were hopeful that Schein

1 would do business with PGMS?

2 A I was. There were some things that
3 were revealed that were disturbing like
4 Dr. Luque not willing to do business with Henry
5 Schein in his new builds.

6 I think that threw a red flag down
7 because he was the founding doctor and he would
8 be the signatory of this agreement.

9 Q Do you recall whether you passed on
10 that information to Mr. Cavaretta?

11 A I'm certain I did, but I don't recall
12 if it was verbal or written.

13 Q So at the time when you drafted this
14 agreement, did you think that the language in
15 the second paragraph was adequate to address
16 Schein's needs?

17 A It was not ideal.

18 Q Did you draft it in this way because
19 that was the agreement that you came to with
20 PGMS?

21 A As I recall.

22 Q Okay. Did you think it was adequate
23 enough to then send up the chain to your
24 supervisors?

25 A I clearly did because I did send it up

1 to my supervisors.

2 Q Was it only after you heard back from
3 your supervisors that you felt that this
4 language was no longer adequate?

5 MR. McDONALD: Object to the form.
6 Mischaracterizes her prior testimony.

7 THE WITNESS: In a vacuum, that would
8 have been one of the red flags, but the
9 other red flag was Dr. Luque's unwillingness
10 to move his own business to Henry Schein.

11 BY MS. GOFF:

12 Q Did your supervisors ever tell you
13 that they thought that this language was
14 inadequate?

15 MR. McDONALD: Object to the form.
16 Asked and answered.

17 THE WITNESS: I don't recall.

18 BY MS. GOFF:

19 Q Are you aware of whether your
20 supervisors reviewed this agreement that you
21 drafted?

22 A It's my impression they did.

23 Q And when we're talking about your
24 supervisors, who are we talking about?

25 A Joe Cavaretta.

1 Q Are we also talking about Tim
2 Sullivan?

3 MR. McDONALD: Object to the form.

4 THE WITNESS: I have no direct
5 knowledge of that.

6 BY MS. GOFF:

7 Q Okay. Do you have any direct
8 knowledge of the basis for Tim's decision not to
9 work with PGMS?

10 A Only through my direct supervisor
11 telling me that this was not the type of healthy
12 relationship we wanted to enter into.

13 Especially in consideration of some
14 additional facts that became clear as we
15 continued to talk with PGMS, i.e., Dr. Luque
16 doing two new builds with our competitor.

17 Q Okay. And at any point do you recall
18 expressing all of -- all or any of your concerns
19 about PGMS to Mr. Cavaretta by email?

20 A I don't recall.

21 Q Okay. Is there -- the template that
22 you may have used to create this, is there a
23 database somewhere of those templates or would
24 you need to have requested that someone send you
25 the template?

1 A There was a database somewhere.

2 Q Okay. Do you think that you pulled
3 the template from the database?

4 A Perhaps used one that existed or got
5 one from my colleague or counterpart.

6 Q And who would your colleague or
7 counterpart be?

8 A In this case I think it was Andrea
9 Hight.

10 Q Okay. Andrea Hight was your colleague
11 at Schein?

12 A Both in special markets and in the
13 Henry Schein Dental mid-market.

14 Q Okay. Did she come over from special
15 markets to Henry Schein Dental market at the
16 same time as you?

17 A She did.

18 Q Let's look at the other document that
19 your counsel directed you to. I guess it was
20 CX2211.

21 MS. GOFF: Am I correct?

22 MR. McDONALD: Yes.

23 MS. GOFF: Thank you.

24 BY MS. GOFF:

25 Q CX2211. So your counsel asked you to

1 look at the language Mr. Upchurch wrote ^from
2 Tim: HSD does not want to enter the GPO world.
3 Is that correct?

4 A That's correct.

5 Q And do you have any reason to believe
6 that when Mr. Upchurch was using the word "GPO,"
7 he was referring to medical GPOs?

8 A I do.

9 Q On what basis do you have to believe
10 that?

11 A If you look at the paragraph above
12 that starts with the first sentence: With their
13 newest decision to add partnerships with
14 companies like P&G and Komet and their desire to
15 develop competitive relationships to HSD.

16 Both of those companies were direct
17 sellers that they went directly to and
18 negotiated the pricing with, which is a very
19 different dynamic than going to a distributor.

20 Q Okay. So at the time that you
21 received this email, did you have an
22 understanding of what Mr. Upchurch said -- meant
23 when he wrote "HSD does not want to enter the
24 GPO world"?

25 MR. McDONALD: Object to the form,

1 asked and answered.

2 THE WITNESS: I don't.

3 BY MS. GOFF:

4 Q Sitting here today, do you know what
5 Mr. Upchurch was thinking when he wrote: HSD
6 does not want to enter the GPO world?

7 A I would be guessing.

8 Q Okay. But it is your guess sitting
9 here today that he was referring to medical
10 GPOs?

11 A That makes the most sense.

12 Q Okay. And the reason why that makes
13 the most sense to you sitting here today is why?

14 A Because both of the companies in
15 question mentioned in the former paragraph in
16 the first sentence are both direct negotiations.

17 Q Okay. And a medical GPO in your
18 understanding, how does that relate to direct
19 negotiations?

20 A In the medical world, the GPO entity
21 will go directly to the manufacturers, negotiate
22 prices and those prices would then be offered to
23 their member group.

24 Q Okay. Was Dental Co-op of Utah a
25 medical type GPO?

1 A It was not.

2 Q Okay. And this email chain was about
3 the Dental Co-op of Utah; right?

4 MR. KASS: Objection, mischaracterizes
5 the document.

6 THE WITNESS: This email chain is
7 about the Dental Co-op of Utah, yes.

8 BY MS. GOFF:

9 Q And today we have discussed buying
10 groups and GPOs repeatedly. And other than the
11 discussion you had with your counsel -- when you
12 used the term "GPO" during all of your testimony
13 today, were you referring to a synonym with a
14 buying group?

15 A Yes.

16 Q You mentioned -- you can put this
17 document aside.

18 You mentioned that Dr. Luque, going
19 back to PGMS, was doing a build-out with a
20 competitor; is that right?

21 A Correct.

22 Q Did Schein -- what was the build-out
23 that you're referring to?

24 A He was building an implant center in
25 San Francisco.

1 Q Okay. And what competitor was that
2 with?

3 A I don't know. I don't recall.

4 Q How did you come to learn that they
5 were doing a build-out with a competitor?

6 A He told me.

7 Q And did Schein work with Dr. Luque's
8 group in special markets?

9 A No.

10 Q Did anyone at Schein, any group at
11 Schein work with Dr. Luque's group?

12 A We wanted to, but I don't think we
13 ultimately were able to.

14 Q Okay. When you said we wanted to,
15 what were you referring to?

16 A We were giving him quotes, you know,
17 getting in front of him to talk about his
18 project, talking about our enhanced services or
19 offering, that kind of thing.

20 Q And what -- are we still talking about
21 the build-out project?

22 A We are.

23 MS. GOFF: I don't have any other
24 questions for you. And I think that --

25 MR. McDONALD: Give me a minute to

1 talk to her and I think we'll be done.
 2 MS. GOFF: Okay. Thank you.
 3 MR. McDONALD: No further questions.
 4 MS. GOFF: Thank you.
 5 (Time noted: 5:03 p.m.)
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21 _____
 Signature of Deponent

22
 23 SUBSCRIBED AND SWORN BEFORE ME
 24 THIS ____ DAY OF _____, 2018.

25 _____
 (Notary Public) MY COMMISSION EXPIRES: _____

1 REPORTER'S CERTIFICATE
 2 I, the undersigned, a Certified
 3 Shorthand Reporter of the State of
 4 California, do hereby certify:

5 That the foregoing proceedings were
 6 taken before me at the time and place herein set
 7 forth; that any witnesses in the foregoing
 8 proceedings, prior to testifying, were placed
 9 under oath; that a record of the proceedings was
 10 made by me using machine shorthand which was
 11 thereafter transcribed under my direction;
 12 further, that the foregoing is an accurate
 13 transcription thereof.

14 I further certify I am neither
 15 financially interested in the action nor a
 16 relative or employee of any attorney or party to
 17 this action.

18 IN WITNESS WHEREOF, I have this date
 19 subscribed my name.

20
 21 Dated: July 12, 2018

22 _____
 23 LYNNE MARIE LEDANOIS
 24 CSR No. 6811
 25

1 NAME OF CASE: In re Benco Dental
 2 DATE OF DEPOSITION: June 29, 2018
 3 NAME OF WITNESS: Kathleen Titus
 4 Reason codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page ____ Line ____ Reason ____
 9 From _____ to _____
 10
 11 Page ____ Line ____ Reason ____
 12 From _____ to _____
 13
 14 Page ____ Line ____ Reason ____
 15 From _____ to _____
 16
 17 Page ____ Line ____ Reason ____
 18 From _____ to _____
 19
 20 Page ____ Line ____ Reason ____
 21 From _____ to _____
 22
 23
 24
 25

 Signature of Deponent

ERRATA SHEET

DEPOSITION OF: Kathleen Titus

DATE DEPOSITION: June 29, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
15	5	Change "regional" to "a region"	Typographical error/clarification
18	5	Change "were" to "work"	Typographical error
19	24	Change "had responsibility in 2014" to "had responsibility for in 2014"	Typographical error
23	1	Change "their business operations nonclinical" to "their nonclinical business operations"	Typographical error/clarification
24	2	Change "that" to "by that"	Typographical error
29	16	Change "February, March, April" to "February, March, or April"	Clarification/misspoke
36	15	Delete "acquisition,"	Clarification
48	2	Change "Community Health" to "Community Health Centers"	Typographical error/clarification
52	23	Delete "had"	Typographical error
56	1	Change "Ask to the question" to "We would ask the question"	Clarification
61	23	Change "I am" to "Steadfast Medical, yes."	Clarification
72	9	Change "M-hm" to "45 percent, yes."	Clarification
77	1	Change "nonnational" to "non-national"	Typographical error
89	3	Delete "access greater access"	Typographical error/clarification
93	21	Change "M-hm" to Yes"	Clarification
94	12	Change "but was also" to "was Steadfast also"	Clarification/misspoke
100	17	Change "recommend" to "recommended"	Typographical error/clarification

104	3	Change “then to say” to “then but to say”	Typographical error/clarification
107	15	Change “M-hm” to “Yes”	Clarification
108	23	Change “your” to “our”	Typographical error/clarification
111	23	Delete “the where –”	Clarification/misspoke
112	16	Change “M-hm” to “Yes”	Clarification
113	4	Change “meeting” to “email”	Typographical error
115	2	Change “M-hm” to “Yes”	Clarification
120	19	Change “M-hm” to “Yes”	Clarification
123	5	Delete “And”	Typographical error/clarification
125	1, 13	Change “M-hm” to “Yes”	Clarification
139	14, 17	Change “M-hm” to “Yes”	Clarification
140	11	Change “M-hm” to “Yes”	Clarification
145	7	Delete “, specialists”	Typographical error/clarification
146	11	Change “Uh-huh” to Yes”	Clarification
147	17	Change “You did” to “I did”	Typographical error/clarification
152	5	Delete “, verbally, yes”	Clarification/misspoke
167	5	Change “Clear Impact” to “Klear Impakt”	Typographical error
168	17	Change “M-hm” to “Yes”	Clarification
177	14	Change “is” to “was”	Typographical error/clarification
181	19	Change “aspect” to “prospect”	Typographical error
186	8	Change “M-hm” to “Yes”	Clarification
190	18	Change “pursued” to “ensued”	Typographical error/clarification
195	24	Change “M-hm” to “Yes”	Clarification
201	9	Change “M-hm” to “Yes”	Clarification
202	22	Change “M-hm” to “Yes”	Clarification
204	8	Change “have” to “name”	Typographical error/clarification
219	1	Change “M-hm” to “Yes”	Clarification

221	11	Change "M-hm" to "Yes"	Clarification
223	19	Change "members" to "services"	Typographical error/clarification
229	8	Change "M-hm" to "Yes"	Clarification
232	2	Change "Clear Impact" to "Klear Impakt"	Typographical error
243	22	Change "M-hm" to "Yes"	Clarification
257	12	Change "inefficient" to "insufficient"	Typographical error
260	21	Change "M-hm" to "Yes"	Clarification
261	6	Change "were" to "was"	Typographical error/clarification

I, Kathleen Titus, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 8th day of August, 2018.

at Roseville, CA.
(City) (State)


Kathleen Titus

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CX8012

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 2 July 10, 2018
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 4 * * *CONFIDENTIAL* * *
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 6 Deposition of JAMES BRESLAWSKI,
 7 held at Proskauer Rose LLP, Eleven Times
 8 Square, New York, New York, before Kathy
 9 S. Klepfer, a Registered Professional
 10 Reporter, Registered Merit Reporter,
 11 Certified Realtime Reporter, Certified
 12 Livenote Reporter, and Notary Public of
 13 the State of New York.
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 18 ALSO PRESENT:
 19 MARGIE HAN, In-House Counsel, Henry Schein
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Page 3

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 14 Dallas, TX 75201
 15 BY: JOHN McDONALD, ESQ.
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1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 JAMES BRESLAWSKI, called as a
 3 witness, having been duly sworn by a Notary
 4 Public, was examined and testified as
 5 follows:
 6 EXAMINATION BY
 7 MS. ROSNER:
 8 Q. Good morning, Mr. Breslawski. How are
 9 you?
 10 A. Good morning. Well, thanks.
 11 Q. Great. I understand that you have
 12 taken a deposition -- you've been at a
 13 deposition before; is that right?
 14 A. Yes, that's correct.
 15 Q. You're familiar with how these things
 16 work?
 17 A. Yes.
 18 Q. I'm just going to review the two most
 19 important rules of the deposition today. The
 20 first one is that I want you to tell the truth;
 21 and if I ask a question and you don't know, you
 22 can just tell me that you don't know the answer
 23 to it.
 24 A. Uh-huh.
 25 Q. And everything else I presume you're

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 2 going to be telling me is the absolute truth.
 3 Do you understand that?
 4 A. Agreed. Yes.
 5 Q. And then the second rule is that we
 6 have a court reporter here who is recording
 7 everything that we say. Let's try to make her
 8 job easiest by not talking over each other and
 9 making sure all of our answers are verbal.
 10 A. I will do my best. I'm learning.
 11 Q. From time to time, your counsel may
 12 speak up, so try also not to talk over him.
 13 A. I will, again, I will do my best. I'm
 14 from New York from the Bronx, so there's a whole
 15 rhythm, but we'll try to work on it. Okay.
 16 MR. McDONALD: Just pause.
 17 THE WITNESS: Okay.
 18 BY MS. ROSNER:
 19 Q. Great. So we're here today to talk
 20 about Henry Schein's dental business. You
 21 understand that; is that correct?
 22 A. Yes.
 23 Q. We'll be talking about a couple of
 24 different types of customer segments in the
 25 dental business, and just to make sure we're on

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 2 the same page, I want to review some of the
 3 dental customer segments. Okay?
 4 Schein's largest dental customer
 5 segment by revenue and by number is Independent
 6 Private Practices; is that right?
 7 A. In the United States, the largest
 8 revenue segment in our dental business in the
 9 United States is Private Practice.
 10 Q. Is that also the largest dental
 11 segment by number of customers?
 12 A. Yes, it is.
 13 Q. What percentage of Schein's dental
 14 revenues come from Independent Private Practice?
 15 MR. McDONALD: Object to the form.
 16 A. I'm not sure.
 17 Q. Do you have a guesstimate? Is it more
 18 than half? Less than half?
 19 MR. McDONALD: Object to the form.
 20 A. So let me estimate. I would say, and
 21 again, I can get this information very
 22 specifically, but I would say that it is
 23 probably about two-thirds.
 24 Q. What is Schein's profit margin on the
 25 independent dental practice customer segment?

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 2 A. Depends on how you define "profit
 3 margin."
 4 Q. How do you define "profit margin"?
 5 A. Well, I'm not sure what your question
 6 is.
 7 Q. What's Schein's profit margin on the
 8 independent dental practice customer segment for
 9 merchandise?
 10 MR. McDONALD: Object to the form.
 11 A. We don't calculate Private Practice as
 12 a separate P&L. We have, in our United States
 13 dental business, we have three major segments.
 14 We have a segment that we call Special Markets,
 15 which is the most significant large customer,
 16 dental support organizations, government and
 17 other customers, and then we have Private
 18 Practice combined with large group practices
 19 that are not large dental support organizations.
 20 So we don't have a separate P&L just for our
 21 Private Practice.
 22 Q. Can you describe for me what are those
 23 large group practices that you combine with the
 24 Private Practice segment?
 25 A. So it's everything that is outside of

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 2 what we define as, first of all, Special
 3 Markets, which includes the largest dental
 4 support organizations, or DSOs, and those
 5 organizations -- again, I don't have these --
 6 I'm giving you my -- off the top of my head what
 7 I believe the splits are, but those
 8 organizations are typically central
 9 decision-making across many different locations,
 10 and then included in that Special Market segment
 11 is the federal government, dental schools, state
 12 and local institutions, and also such customers
 13 as community health centers. That defines the
 14 Special Markets segment.
 15 Within our Henry Schein Dental,
 16 non-Special Market segment in the United States
 17 we have carved out a separate team that focuses
 18 on large group practices that may be as small as
 19 just a few offices, but are under common control
 20 all the way up, perhaps, to dozens, a couple of
 21 dozen offices, maybe that's -- maybe a little
 22 bit less than that, that are under common
 23 control, and that segment of the business, the
 24 middle kind of market, is the fastest growing
 25 overall organic segment in the marketplace.

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 2 Q. Do you track the margins of that
 3 Middle Market segment?
 4 A. We don't track --
 5 MR. McDONALD: Hang on.
 6 Object to the form.
 7 Go ahead.
 8 A. We don't track the overall
 9 profitability of that particular segment. We
 10 track the profitability of a combined segment of
 11 Private Practice and the Middle Market, for lack
 12 of a better term, the Middle Market segment ex
 13 Special Markets.
 14 Q. How much in revenues does Schein
 15 generate in the independent and Mid Market
 16 segment of its business?
 17 MR. McDONALD: Object to the form.
 18 You're referring to the North America,
 19 United States?
 20 MS. ROSNER: North America.
 21 Everything we talk about today --
 22 THE WITNESS: I assumed that the scope
 23 was U.S.
 24 BY MS. ROSNER:
 25 Q. Sorry. Everything that we talk about

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 2 Q. So you have no idea what your profit
 3 margin is for a particular customer segment?
 4 A. Again, define what "profit margin" is.
 5 Q. How do you define "profit margin"?
 6 A. So profitability at the pretax level
 7 is for our Henry Schein Dental business. It
 8 would include all of the costs of all of our
 9 direct operating costs of our U.S. dental
 10 business, plus all of the infrastructure that
 11 actually services not only the dental business,
 12 but also services our medical business as well
 13 as our animal health business. So that's how we
 14 would, you know, define the profit margin.
 15 And again, this information is not
 16 public information.
 17 Q. I understand this information is not
 18 public information, but using your definition of
 19 "profit margin," what is Henry Schein's profit
 20 margin with respect to its HSD business?
 21 MR. McDONALD: Object to the form.
 22 That's a different question than you just
 23 asked him.
 24 THE WITNESS: I just want to
 25 understand what -- so this is actually not

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 2 today will be U.S., yes.
 3 A. Okay.
 4 MR. McDONALD: And the timeframe? You
 5 want to tell him the timeframe?
 6 BY MS. ROSNER:
 7 Q. Today what is Schein's revenues in the
 8 independent and Mid Market Division?
 9 A. Again, off the top of my head, I would
 10 say it's north of \$2 billion.
 11 Q. What is the profit margin in the
 12 independent and --
 13 A. Please define "profit margin."
 14 Q. Does Schein report its profit margin?
 15 A. No. We report -- we're a public
 16 company, so we report our profit margin for the
 17 company. We don't report this level of
 18 information.
 19 Q. What is Schein's profit margin for
 20 independent and Mid Market dentists with respect
 21 to merchandise sales?
 22 MR. McDONALD: Object to the form.
 23 A. Perhaps I'm not being clear, but we
 24 don't report or we don't track our P&L by these
 25 customer segments.

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 2 public information. It's not something that
 3 we disclose on a regular basis.
 4 We have segment reporting that does
 5 include the Special Markets and we have
 6 reporting that includes the HSD business.
 7 MR. McDONALD: So why don't we take a
 8 second. Let me talk to him.
 9 MS. ROSNER: Let's go off the record.
 10 MR. McDONALD: Because he's clearly
 11 wanting to discuss this.
 12 (Pause in the Proceedings. Time
 13 Noted: 9:25 a.m.)
 14 (Time Noted: 9:29 a.m.)
 15 MS. ROSNER: Could you read back my
 16 last question?
 17 (Record read.)
 18 MR. McDONALD: Object to the form.
 19 Vague as to time.
 20 THE WITNESS: Our net income from our
 21 combination of Private Practice and Mid
 22 Market business is approximately 6 percent.
 23 BY MS. ROSNER:
 24 Q. Has that number changed over time?
 25 A. Of course.

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 2 Q. What has been the highest and what has
 3 been the lowest net income for HSD?
 4 A. During what period of time?
 5 Q. During the last ten years.
 6 A. It has likely stayed within that
 7 relevant range, up and down, depending upon
 8 performance in any given year.
 9 Q. And you mentioned the net income
 10 includes some of the infrastructure that is used
 11 to serve veterinary business and maybe some
 12 other businesses?
 13 A. The infrastructure costs, such as
 14 distribution that has the warehousing for all of
 15 the businesses, is allocated based upon a
 16 methodology to each of the businesses.
 17 Q. What is Schein's approximate market
 18 share in the independent dental practice
 19 segment?
 20 MR. McDONALD: Object to the form.
 21 Vague as to time.
 22 A. We have no information that would
 23 really allow us to determine what that is.
 24 Q. You don't track Schein's market share?
 25 MR. McDONALD: Object to the form.

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 2 A. I believe the question was about what
 3 is Schein's market share in Independent Private
 4 Practice.
 5 Q. Do you track Schein's market share at
 6 all?
 7 A. We use limited available information
 8 that's out there about the overall dental
 9 market, and we have a rough sense, it's very
 10 imprecise, and we believe that we have a leading
 11 market share in the U.S. dental business for
 12 consumable products.
 13 Q. What do you believe your percentage
 14 market share is in the U.S. business for
 15 consumable products?
 16 MR. McDONALD: Object to the form.
 17 Asked and answered.
 18 A. Again, it's an estimate because there
 19 really is no good independent information that's
 20 available, so I would estimate that it's in the
 21 mid 30s, mid 30 percent.
 22 Q. What is the market share of your
 23 competitors in the U.S. dental consumables
 24 market?
 25 A. I don't have access to that

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 2 information.
 3 Q. You mentioned that Schein is somewhere
 4 in the mid 30s. Who else makes up the rest of
 5 the pie chart?
 6 MR. McDONALD: Object to the form.
 7 A. So the dental market in the U.S. is
 8 served by many different distributors along with
 9 manufacturers that also sell their products
 10 directly.
 11 The collection of full service
 12 distributors, which includes ourselves along
 13 with Patterson, Benco and maybe 25 other
 14 full-service dealers that service various
 15 regions in the country, collectively make up the
 16 largest percentage, the full service channel, if
 17 you will, and then there are an untold number of
 18 other companies that are selling consumable
 19 products primarily through various methods:
 20 Direct marketing, catalog, telesales, Internet
 21 marketing, and other methods.
 22 Q. What percentage of the market is made
 23 up of the full service group that you mentioned?
 24 MR. McDONALD: Object to the form.
 25 A. I don't have a precise answer. I

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 2 think it's the largest share, definitely the
 3 largest share by -- I would be guessing. It's a
 4 meat -- it's by far the largest share of all the
 5 channels.
 6 Q. Are we talking 90 percent?
 7 A. That's high.
 8 MR. McDONALD: Object to the form.
 9 Q. Three-quarters of the market?
 10 MR. McDONALD: Object to the form.
 11 A. Possible.
 12 Q. How do you calculate market share?
 13 You mentioned you consult a variety of
 14 sources. How do you go about doing it?
 15 A. There have been some independent
 16 reports that include certain distributor
 17 information that's confidentially submitted that
 18 allows us to see for that particular report how
 19 our market share would compare, and that report
 20 has changed quite a bit over the course of the
 21 last I'm not sure how many years, but a major
 22 contributor to that report no longer provides
 23 information, which, in my opinion, renders that
 24 report very ineffective and not reliable.
 25 Q. What is the name of that report?

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A. It was the Strategic Dental Marketing Report, SDM.

Q. Other than the SDM Report, are there other sources that Schein uses to calculate its market share?

A. Anecdotal information that we may receive from time to time from manufacturers that we -- whose products we represent. They provide us with information as to how we're doing with their business, and that's just their business. So it's not a picture of the market; it's just their business.

Q. Anything else?

A. Public -- well, not really. That's it as far as the whole market. There's -- it's very, very difficult to determine market share in the United States dental market. There just isn't good information that's available, independent information.

Q. Going back to the Private Practice segment, you understand Independent Private Practice dentists to be for-profit dentists?

MR. McDONALD: Object to the form.

A. Independent -- generally speaking,

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Independent Private Practice dentists are in business to be a successful business.

Q. Private Practice dentists typically are small business owners?

A. Yes.

Q. They are dentists who maintain ownership in their practice?

A. Yes.

Q. Independent dental practices typically are not affiliated with larger corporate dentistry chains?

A. Independent, by definition of independence, the way that we're using "private practice" means their private. Now, what their form of ownership is I don't know, but they're, typically, they're in one location, maybe two locations, a doctor, perhaps an associate that are working together. Those people that went to school to learn how to be a healthcare professional, and they find themselves not only looking to provide the best healthcare possible, but also they find themselves in business. So one of our goals is to help our customers actually be successful in business.

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Q. And of your customers who are Private Practice dentists, they typically do not have an affiliation with a DSO?

MR. McDONALD: Object to the form.

A. A Private Practice dentist typically is a Private Practice dentist, an independent private practitioner without group affiliation.

Q. We talked about DSOs today.

What are DSOs?

A. I'm sorry. Repeat the question, please.

Q. What is a DSO?

A. A DSO is a dental support organization that provides services in support of practices that are part of their organization. There is a network of locations providing dentistry, and the dental support organization provides typically a lot of the administrative support for their network of practices, and it varies depending upon who the DSO is.

Some of the DSOs have common branding for all of their locations. So Aspen Dental is a very large DSO that has maybe 700 or so locations throughout the country, and they are

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all branded Aspen Dental, and they provide the infrastructure allowing the local dentists to really focus on practicing dentistry.

Q. DSOs are distinct from Independent Private Practice dentists?

A. DSOs distinguish themselves from Private Practice Dentists.

Q. Approximately what percentage of Schein's U.S. dental revenues are made up of DSO customers?

MR. McDONALD: Object to the form.

A. I would be estimating. I have that information that I could provide, but right now, I would estimate that that is approximately between 12 and 15 percent, something like that.

Q. DSOs generate approximately how much in revenue for Schein's U.S. dental business?

MR. McDONALD: Object to the form.

Vague as to time.

A. Please repeat the question.

MS. ROSNER: Could you read the question?

(Record read.)

MR. McDONALD: Same objection.

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 2 THE WITNESS: Again, I would be
 3 estimating. I would say that it's probably
 4 about a half a billion dollars.
 5 BY MS. ROSNER:
 6 Q. What is Schein's profit margin on the
 7 DSO customer segment?
 8 MR. McDONALD: Object to the form.
 9 A. We also don't -- well, so it's higher
 10 than our Private Practice business because the
 11 cost to serve for a DSO, typically, some of what
 12 the DSO does for the dental practices allows us
 13 to, for the very large ones especially, allows
 14 us to have less costs associated with serving
 15 those practices. They feel sales consultants in
 16 many of those customers is not necessary. We
 17 have more of a corporate-to-corporate management
 18 program or customer care model.
 19 So I don't have that number, but it
 20 would be north of that number that I mentioned
 21 for the Private Practice --
 22 Q. You previously mentioned --
 23 A. -- which was the net income of
 24 approximately 6 percent.
 25 Q. How far north? Are we talking 7

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 2 large customers. Very large customers
 3 today, the largest of them, call themselves
 4 DSOs. Over the years, they have changed
 5 their nomenclature, so that has changed
 6 quite a bit over time, but back more than 20
 7 years ago, we created a separate business
 8 within our business just to focus on this
 9 aspect of the industry.
 10 By doing that, during that 20 years,
 11 we were really invested in helping that
 12 segment be successful and those customers be
 13 successful, and many of those that we
 14 compete with were not as focused as we are.
 15 So we have a very meaningful share.
 16 It's very hard to measure exactly what that
 17 share is. I would say that we clearly have
 18 the largest share in the United States.
 19 BY MS. ROSNER:
 20 Q. When you say it's the largest share,
 21 are we talking 90 percent? 60 percent? 30
 22 percent?
 23 MR. McDONALD: Again, object to the
 24 form. Vague as to time.
 25 A. I'll answer as of today.

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 2 percent? Are we talking about 12 percent?
 3 Double?
 4 MR. McDONALD: Object to the form.
 5 A. I'm not sure. I would say it could be
 6 double. It could be double.
 7 Q. What is Schein's approximate market
 8 share in the DSO segment?
 9 MR. McDONALD: Object to the form.
 10 Vague as to time.
 11 Are you asking him currently?
 12 Well, Jasmine, you need to clarify the
 13 question.
 14 Currently?
 15 BY MS. ROSNER:
 16 Q. Do you understand the question?
 17 MR. McDONALD: Object to the form.
 18 You should give him a timeframe.
 19 Then just answer as vague and as
 20 broadly as you want to answer if she's going
 21 to be ridiculous and not give you timeframe.
 22 THE WITNESS: So let me -- sorry. I
 23 keep talking over you. Sorry.
 24 So we have been, for more than 20
 25 years, we have been a leader in serving very

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 2 As of today, we certainly don't have
 3 90 percent share. Also, the DSOs continue to
 4 grow as a segment of the marketplace. There are
 5 more -- it's a very competitive segment of the
 6 business. There are more and more dealers, both
 7 full service and other kinds of dealers, that
 8 are doing business with that overall segment,
 9 and I would say that our share is less today
 10 than it was five years ago. It is substantially
 11 higher than our share in Private Practice, but
 12 very difficult to put a number on.
 13 Q. You mentioned your share in Private
 14 Practice was somewhere in the 30s.
 15 Are we talking 50s, 60s for today's
 16 market share in the DSO segment?
 17 MR. McDONALD: Objection.
 18 Q. Is it double?
 19 MR. McDONALD: Objection to the form.
 20 A. It's substantially higher, so I would
 21 be comfortable saying probably -- probably 50
 22 percent, but it's hard to say because in the
 23 Middle Market that I described, that's part of
 24 the same business team that's looking after
 25 Private Practice, there are small group

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2 practices that are calling themselves DSOs.

3 In that segment we believe we're doing
4 well, but our share in that segment is not
5 nearly as large as our share in the largest of
6 the DSOs, the national DSOs, because we have
7 been there for so long.

8 Q. Would you say that your share in the
9 Mid Market DSO segment is more in line with your
10 share in the HSD customer segment overall?

11 MR. McDONALD: Object to the form.

12 Vague as to time.

13 A. The H -- I'm not sure what you mean by
14 the HSD segment.

15 Q. You previously mentioned that your
16 share in the HSD segment is somewhere in the
17 30s. Would you --

18 A. I mentioned that our share in Private
19 Practice is about -- is approximately in the mid
20 30s, and this is my estimation -- there's no
21 good information -- on consumable products, and
22 that the Mid Market is part of that group. So
23 it's in the same business, we report it the
24 same, but in that larger group practice that's
25 not in our Special Markets I would say that we

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2 have a higher share than the 30 percent.

3 Q. How do you go about measuring market
4 share for the DSO segment? You mentioned --

5 A. Again, there's a list. In the very
6 large DSOs and Special Markets, there's a pretty
7 discrete list of the largest of those, so we
8 know who we're doing business with. We know
9 those customers that we believe we have the
10 leading share.

11 Even in those large DSOs, many other
12 distributors, both full service distributors and
13 also all kinds of other distributors that are
14 selling products, are also doing business in
15 those DSOs. But we believe that we have the
16 largest share. So, in that segment, we can take
17 a look and see we're still doing business with
18 most of those very large DSOs, so we feel we
19 have a very strong position.

20 Q. Are there --

21 A. When it comes -- you asked me about
22 the -- so when it comes to the smaller DSOs or
23 the Middle Market, it's very difficult to
24 determine how we're doing specifically compared
25 to others because there isn't such a

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2 discreteness. It's a much bigger list. My
3 feeling, my feeling is that we're to doing
4 better than others and better than we're doing
5 in Private Practice. I could be wrong.

6 Q. Does Schein consult third-party
7 resources to get a sense of its market share in
8 the DSO segment?

9 A. Please repeat. I couldn't understand
10 your question.

11 (Record read.)

12 A. To the best of my knowledge, the only
13 third party that we're still working with is the
14 SDM business, and we're concerned about the
15 usefulness of that service.

16 Q. Are you familiar with the term "buying
17 group"?

18 A. Yes.

19 Q. In dental, buying groups are made up
20 of Independent Private Practice dentists; is
21 that right?

22 MR. McDONALD: Object to the form.
23 Mischaracterizes the record.

24 A. The "buying group" definition, the
25 term "buying group" is used in many different

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2 ways, and sometimes the "buying group"
3 definition is used to include the terminology of
4 GPO, and sometimes even in our own company, in
5 our own team, these teams are used
6 interchangeably.

7 I believe that they're actually quite
8 different. And a buying group within the dental
9 business can come in many, many different forms.
10 It can come in a form that it's just a
11 collection of customers that are looking to ban
12 together just to focus on getting a price from
13 someone to other organizations that are actually
14 aligned with what we're trying to do in helping
15 provide value to the dentists to help the
16 dentists be successful.

17 So there's more to their offering than
18 just a discount on price, and so the "buying
19 group" definition, there isn't a simple
20 definition of what a buying group may mean in
21 the dental marketplace.

22 Q. Is it your understanding that buying
23 groups are typically made up of independent
24 private practice dentists?

25 MR. McDONALD: Object to the form.

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 2 Mischaracterizes the record.
 3 A. I don't know what's typical. We've
 4 been doing business with buying groups for a
 5 very long time, and we have a long list of
 6 buying groups that have different structures and
 7 have different membership affiliations, and I
 8 would say that it's more likely than not that
 9 private practitioners are involved in buying
 10 groups. And DSOs, by the nature of the DSO
 11 organization, is typically not connected with a
 12 buying group, but that's not completely accurate
 13 because there are some DSOs that are -- that
 14 look to spin off some other efforts around the
 15 buying group.
 16 Q. Buying groups typically do not have an
 17 ownership interest in their members' practices;
 18 is that right?
 19 MR. McDONALD: Object to the form.
 20 A. Buying groups do not typically have an
 21 ownership interest. That's probably right. I
 22 don't know, but that's probably right.
 23 Q. You understand the initials "BG" to be
 24 shorthand for the term "buying group"?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't know that.
 3 Q. Have you ever used the initials "BG"
 4 to refer to "buying group"?
 5 A. I have never, not that -- not that I
 6 can recall. I would never in conversation just
 7 talk to my colleagues about the BGs. That's not
 8 something I would do.
 9 Q. If someone were to in conversation
 10 refer to "BGs" to you or in an e-mail, would you
 11 understand that that meant buying group?
 12 A. I would have to understand the context
 13 of the communication. It could be a person they
 14 are referring to. It could be -- I don't know.
 15 Q. Is "buying club" another term meaning
 16 buying group?
 17 MR. McDONALD: Object to the form.
 18 A. It could. Could be.
 19 Q. Schein has different pricing programs
 20 for buying groups than it does for DSOs; is that
 21 right?
 22 A. Every customer has a negotiated term
 23 that they're doing business with. It could
 24 include a pricing program. It could include
 25 value added services. Could include our terms

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 2 for our equipment service. It's very -- there's
 3 no standard. It's, you know, one customer is
 4 one customer.
 5 Q. Are there certain formularies that
 6 apply to DSOs that Schein would not offer to
 7 buying groups?
 8 MR. McDONALD: Object to the form.
 9 A. I'm trying to understand the question.
 10 Q. Do you understand what formulary is?
 11 A. A formulary is a list of products that
 12 a customer has available to them at special
 13 pricing that typically, customer-by-customer, is
 14 discussed and agreed upon, and also, we would be
 15 working closely with manufacturers to have
 16 appropriate pricing for a particular customer, a
 17 particular segment of customers.
 18 So that formulary is something that a
 19 customer can buy from, doesn't have to buy from,
 20 and it's accustomed to each customer. So, in
 21 working with any customer, we would look to
 22 develop a relevant list of products that are
 23 important to them that may or may not be similar
 24 products that are on a DSO buying group, but by
 25 definition, we don't have a policy that says

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 2 something that the DSO is doing is not available
 3 to a buying group.
 4 Q. On the whole, is pricing to DSOs lower
 5 than pricing to buying groups?
 6 A. I don't know that. I don't know. We
 7 have business with many -- I'm not familiar with
 8 all of the terms that we have with the many
 9 buying groups that we're doing business with and
 10 how that matches up to the pricing that we may
 11 have for various DSOs. Because again, DSOs come
 12 in many, many different sizes from, you know,
 13 700 offices to maybe 50 offices, and their
 14 pricing is different based upon each customer's
 15 situation.
 16 Q. What percentage of Schein's dental
 17 revenues come from buying groups?
 18 MR. McDONALD: Object to the form.
 19 A. I don't know.
 20 Q. Does Schein track its revenues from
 21 buying groups?
 22 A. During what period of time?
 23 Q. Does Schein track its revenues from
 24 buying groups today?
 25 A. We have created a new discipline

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 2 within the company, a new functional
 3 responsibility within the company, and some team
 4 members that are responsible for us for a
 5 particular segment of customers that are other
 6 than a private practice, other than DSO, but
 7 they're alternate kinds of entities that come in
 8 many, many different sizes and flavors that are
 9 looking to do business with us, and that person
 10 is responsible for helping us in a uniform way
 11 evaluate how each of those entities' businesses
 12 fit with what our overall value goal is in
 13 helping our customers grow and run a business
 14 and have value as elements of their offering,
 15 and it's not just about price and us being just
 16 a box-mover for a lower price.

17 And so today, and going forward, we
 18 have a team that's responsible for that, which
 19 would include a certain amount of reporting as
 20 to, you know, the scope of that business and
 21 what's in that business.

22 Q. Are you referring to the Alternate
 23 Purchasing Channel?

24 A. I am.

25 Q. And the Alternate Purchasing Channel

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 2 is tracked by the Mid Market group; is that
 3 right?

4 A. No.

5 Q. Who tracks the Alternate Purchasing
 6 Channel?

7 A. There's a leader. Her name is Darci
 8 Wingard. I'm not sure exactly how to spell her
 9 name.

10 Q. Prior to Darci --

11 A. But Darci reports to a leader who is
 12 part of the HSD with the Private Practice
 13 business as well, his name is Joe Cavaretta, and
 14 those two know the most about how that, you
 15 know, the reporting is actually working within
 16 our U.S. dental businesses.

17 Q. So buying group reporting goes through
 18 Darci Wingard to Joe Cavaretta?

19 A. Yes.

20 Q. Prior to Darci starting at Schein, did
 21 anybody else systematically conduct reporting
 22 for buying groups?

23 A. It was --

24 MR. McDONALD: Object to the form.
 25 Go ahead.

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 2 A. It was distributed across our Private
 3 Practice Management Team and Mid Market and also
 4 within our Special Markets business as well,
 5 because, as I mentioned before, we've been doing
 6 business with buying groups for many years in
 7 all kinds of different forms.

8 So some of those customers found
 9 themselves in the Private Practice and Mid
 10 Market area and some of those customers found
 11 themselves in our Special Markets area based
 12 upon whatever their operating model was.

13 So, over the years, we've had a lot of
 14 internal dialogue about where should certain
 15 customers go, should they be in Special Markets,
 16 should they be in the Private Practice and the
 17 Mid Market area, and because there has been an
 18 increased level of the emergence of different
 19 kinds of entities that are looking to do
 20 business with us, we said we need to have
 21 someone that's totally focused on the whole
 22 segment of Alternate Purchasing Channels.

23 Q. Do you have any sense of Schein's
 24 profit margin with respect to the buying group
 25 customer segment?

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 2 A. I do not.

3 Q. Do you have any sense of Schein's
 4 approximate market share in the buying group
 5 customer segment?

6 A. I do not.

7 Q. There are no third-party resources
 8 that Schein could use to evaluate its market
 9 position for buying groups?

10 A. None that I'm aware of.

11 Q. You mentioned earlier that you
 12 distinguish between buying groups and GPOs.
 13 Can you tell me a little bit more
 14 about that?

15 A. So the "GPO" terminology -- and again,
 16 we, even internally, there's some interchange
 17 that is utilized. Sometimes people utilize the
 18 term "GPO" in a way where they're really
 19 referring to a buying group or a buying club,
 20 but GPOs emerged in the Henry Schein world
 21 actually outside of our dental business and they
 22 have been resident in our medical business for
 23 many, many years.

24 The group purchasing organization,
 25 separate entities were borne out of the dynamic

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 2 of the acute care hospitals and manufacturers
 3 making contracts actually with the group
 4 purchasing organization itself is a separate
 5 entity, and that dynamic of manufacturers having
 6 contract pricing for classes of customers is
 7 something that has been in place in the medical
 8 industry for quite some time.

9 So whenever I'm asked about a GPO, I'm
 10 automatically thinking of that model that's
 11 resident within the medical business. If
 12 someone asks me about GPO and dental, to the
 13 best of my knowledge, GPO of that kind of model
 14 is not very prevalent, if prevalent at all, in
 15 the dental business based upon my knowledge.

16 Q. Does Schein have any GPO customers in
 17 the dental segment today?

18 And I'm using "GPO" as the way you
 19 defined GPO.

20 A. Not in any meaningful way that I'm
 21 aware of.

22 Q. When you say "not in any meaningful
 23 way," does that suggest that there are --

24 A. I don't know, because there could be
 25 somebody discovered something and something is

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 2 there that I'm not aware of.

3 Q. I understand that you're the CEO of
 4 Schein's dental business; is that right?

5 A. No longer.

6 Q. What is your current title?

7 A. I'm the vice chairman now of Henry
 8 Schein, and I'm also, and have been for a number
 9 of years, the president of Henry Schein, and
 10 recently, within the last two months, a new
 11 executive has joined our team, his name is John
 12 Koch, K-O-C-H, and John Koch is the global CEO
 13 for our Dental Distribution business.

14 Q. Was your move a promotion?

15 A. So John reports to me. I don't think
 16 of it as a promotion, but I'm -- could be.

17 Q. Was --

18 A. I'm still responsible through John
 19 now, so I'm no longer the CEO of the Global
 20 Dental Distribution business.

21 Q. Was your move something that you were
 22 happy about?

23 A. We are all responsible for succession
 24 planning. I have been with Henry Schein for 38
 25 years. We have a great team of people, and we

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 2 have people that have grown from within as we
 3 transition the company over those 38 years from
 4 one location and 150 people when I joined the
 5 company that was totally focused on just
 6 consumable products selling mail order to
 7 becoming a full service dental company, not only
 8 in the United States, but around the world, and
 9 many of my colleagues have been able to grow
 10 within but sometimes need to recruit from the
 11 outside in succession planning, and now we have
 12 someone who is capable to take what my job. So
 13 it's really a product of succession planning,
 14 given my years of experience.

15 Q. Was Tim Sullivan considered for your
 16 prior job?

17 A. Tim Sullivan was not considered nor
 18 was he interested.

19 Q. Tim Sullivan used to be one of your
 20 direct reports?

21 A. Tim Sullivan was one of my direct
 22 reports up until John Koch joined the
 23 organization.

24 Q. Is Tim Sullivan still the president of
 25 Henry Schein Dental?

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2 A. Tim Sullivan is the president of our
 3 Henry Schein North American Distribution
 4 business, so Canada is also part of his
 5 responsibility. Tim Sullivan does not have
 6 direct responsibility for the Special Markets
 7 business, which reports to Hal Muller.

8 Q. While you were still CEO of the Dental
 9 business, what were the differences in duties
 10 between you and Mr. Sullivan?

11 A. So Tim Sullivan is a business unit
 12 leader who is responsible for the largest
 13 business unit of Henry Schein, and he's directly
 14 responsible for strategy, for operations, for
 15 budgeting, for performance, and, of course,
 16 reporting to me, I'm accountable for his
 17 performance.

18 So what I also do is I also, as the
 19 CEO, when I was the CEO of the Global Dental
 20 business, I was responsible for the Global
 21 Dental business outside of North America as well
 22 with regions of Europe, APAC, and also we had a
 23 business in Brazil.

24 Q. When you were CEO of Henry Schein's
 25 Dental business, did you regularly consult on

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 2 individual customer accounts?
 3 MR. McDONALD: Object to the form.
 4 Vague.
 5 A. Not often.
 6 Q. Did you consult on opportunities to
 7 bid?
 8 MR. McDONALD: Object to the form.
 9 A. Not part of my job normally.
 10 Q. Did you know about each RFP or
 11 customer price quote?
 12 A. No.
 13 Q. Did you set pricing for customers?
 14 A. No.
 15 Q. Did you approve responses to RFPs or
 16 customer price quotes?
 17 A. No.
 18 Q. Did you have to approve decisions not
 19 to bid?
 20 A. No.
 21 Q. Was there a threshold customer account
 22 size that would have required your approval in
 23 any way?
 24 A. Not specifically.
 25 Q. I presume that a team of people at

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 2 Schein come up with a business strategy for HSD?
 3 A. Yes.
 4 Q. Are you a member of that team or were
 5 you a member of that team?
 6 A. That would be Tim's team, and I'm
 7 responsible for -- I was responsible for Tim's
 8 team.
 9 Q. And Tim's team would come up with a
 10 strategy, and you would ultimately approve it?
 11 A. Yes.
 12 Q. Do you monitor whether the strategy
 13 that you approve for HSD is being followed?
 14 A. We monitor performance of all of our
 15 business units, including progress towards
 16 strategic goals.
 17 Q. Do you personally monitor whether
 18 strategic goals are being met?
 19 A. I'm personally involved as part of the
 20 executive team that would monitor that, yes, and
 21 I'm direct -- I would have been directly
 22 accountable given Tim reported to me.
 23 Q. How did you monitor whether or not
 24 there was progress on strategic goals?
 25 A. Through periodic reporting of status

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 2 of the team; providing input back to Tim;
 3 evaluating their course correction plans, if in
 4 fact they were off-plan; and supporting them as
 5 best as I could.
 6 Q. Anything else?
 7 A. Not that I can think of.
 8 Q. You relied on others to provide you
 9 information to help you determine whether or not
 10 progress was being made on strategic plans?
 11 A. I have a team that also would include
 12 a CFO on the global basis and also some
 13 administrative colleagues that would help with
 14 the overall administration of the worldwide
 15 Global Dental business, which would have
 16 included more than 6,000 direct team members and
 17 probably \$6 billion or something like that in
 18 business, and so our team would work with all of
 19 the business unit leaders in all of the
 20 different countries and we would work with them,
 21 understanding how they're performing through
 22 their plans, and we would help them where we
 23 could help them with regard to ideas as to how
 24 to improve, should that be required.
 25 Q. Have you ever discovered an instance

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 2 where a strategy set for HSD was not being
 3 followed?
 4 And I want to be clear that my
 5 question relates not to a problem of execution,
 6 but actions that are inconsistent with an
 7 approved strategy.
 8 MR. McDONALD: Object to the form.
 9 A. Not that I can think of.
 10 Q. If you had discovered such an
 11 instance, what would be your recourse? What
 12 would you do?
 13 MR. McDONALD: Object to the form.
 14 A. Depends on what the particular
 15 strategy is. Some of our strategies are
 16 long-term in nature, and some of those
 17 strategies really require nurturing over a good
 18 number of years. They are long-term priorities,
 19 and sometimes short-term urgencies and things
 20 that are important from a short-term performance
 21 point of view has a team delaying some of the
 22 longer term strategies, and I would either
 23 support that or not or ask them to, you know,
 24 find a way to focus on those longer term
 25 strategies as well.

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2 Q. Has Schein ever had a policy on
3 whether and when to work with buying groups?

4 A. No.

5 Q. Does Schein work with buying groups?

6 A. Yes.

7 Q. How does it determine what buying
8 groups to work with?

9 MR. McDONALD: Object to the form.

10 A. The responsibility for determining
11 which customers to work with and how to work
12 with those customers resides at the business
13 unit operating level, and our overall business
14 model and our strategy is one of high value for
15 our customers, recognizing that our customers,
16 again, as we mentioned before, are in business,
17 and we want to help them to be successful in
18 their business. And so we provide a lot of
19 resource related to helping them understand how
20 to be successful in the business, and it's much
21 more than -- it's much more about value than it
22 is about a specific price for consumable
23 products and us just being a distributor.

24 We have to be a good distributor, but
25 what our focus is is on high value. So our

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2 teams would be looking to align with entities
3 that have some alignment with high value, and
4 it's not just about price. That decision to
5 work with those businesses or those entities is
6 delegated to the various operating team leaders.

7 Q. How does Schein identify which buying
8 group entities are aligned with high value?

9 MR. McDONALD: Object to the form.

10 A. It's delegated to the business unit
11 leaders. So --

12 Q. You don't have an understanding of how
13 you identify high value buying groups?

14 MR. McDONALD: Object to the form.

15 A. The essence of it is that our business
16 model of high value and not just price is the
17 most important thing for us to understand what
18 the goals are of any of those customers, and we
19 would expect that our team is learning and
20 understanding about what that entity is looking
21 to do for the members that might become part of
22 their group, and are they about helping those
23 members in ways that are just beyond getting the
24 cheapest price for any particular product.

25 Q. Is there some manual or cheat sheet or

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2 guidance that Schein has issued to help its team
3 members identify which buying group entities are
4 aligned with high value?

5 A. In what time period?

6 Q. In any time period.

7 A. So, therefore, the answer is yes and
8 no. So there's no formal program or policy or
9 document that I could point to over the 20 years
10 that we've been involved with buying groups that
11 provided that very specific guidance.

12 Today there is, because we have
13 created this alternate purchasing channel
14 leadership and team within our team, and Darci
15 and her team have articulated the kinds of
16 things we want to make sure that we see are part
17 of that decision-making process.

18 Q. When did Darci and her team articulate
19 the particular characteristics that would apply
20 to APCs who are aligned with high value?

21 MR. McDONALD: Object to the form.

22 A. So Darci has probably been with us in
23 this leadership position for a year or two, so
24 within that window of time.

25 Q. Prior to a year or two ago, did Henry

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2 Schein have any formal guidance for its team to
3 help identify entities aligned with high value
4 in the buying group segment?

5 A. The guidance was focused on alignment
6 with our value proposition. We have never
7 wanted to stray from our overall value
8 proposition with the customers, and we feel that
9 to the extent that -- and we'll talk to anybody.
10 So if anybody is out there that's looking to do
11 business in the dental business, we'll listen to
12 them, and to the extent that they are also about
13 value -- and that's what the conversation has
14 been about before it's been more, for lack of a
15 better term, codified by Darci, that's what the
16 team would have been focused on.

17 Q. So, prior to Darci coming onboard,
18 there was guidance, but it wasn't codified, is
19 that what you're saying?

20 A. Yeah, there was guidance and we were
21 all driving to high value and looking to work
22 with partners that were also aligned, and we
23 could feel that it was fitting within our
24 overall business model and that the teams that
25 we -- or the businesses that we might be working

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2 with would also be able to demonstrate to us
3 that the members that would be considering
4 becoming part of that organization would feel
5 value so that they would actually be loyal to
6 that organization, and therefore, business would
7 naturally inure to us if we were aligned with
8 them or come to us if we were aligned with them.

9 Q. How has the guidance about aligning
10 with entities focused on high value in the
11 buying group segment conveyed to Schein's
12 operations teams?

13 MR. McDONALD: Object to the form.

14 A. Again, this would have been delegated
15 through the business unit leaders and through
16 the dialogue and the planning that Tim would
17 have had with his team and, in the United
18 States, the dialogue and the planning that Hal
19 would have had with his team.

20 Q. Is it your understanding that it was
21 codified orally?

22 MR. McDONALD: Object to the form.

23 A. I'm sure oral was part of it. I'm
24 sure from time to time they were writing to each
25 other. I'm sure from time to time they were

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2 also talking to each other about these entities
3 that were in Special Markets, and were they in
4 Tim's business and should one be in one area and
5 one be in another area.

6 This whole area of buying groups and
7 alternate purchasing entities has been around
8 for us and we've been doing business with them
9 for many, many years, and figuring out how to
10 have it best fit with us and be aligned with our
11 business model has been a pretty active
12 conversation, I would say, leading up to the
13 point to say that we need to actually put -- it
14 would be good for us to put more structure
15 around it and ownership. That's why we created
16 Darci's leadership.

17 Q. Has Schein's definition of what
18 constitutes these value added buying groups
19 changed over time?

20 MR. McDONALD: Object to the form.

21 A. I don't think so.

22 Q. Is it Schein's policy to do business
23 with all value added buying groups?

24 MR. McDONALD: Object to the form.

25 A. Each entity is case-by-case, and the

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2 decision-making is delegated to the operating
3 unit leaders.

4 Q. So there may be value added buying
5 groups that Schein has decided not to do
6 business with?

7 MR. McDONALD: Object to the form.

8 A. I don't know.

9 MR. McDONALD: Go ahead.

10 A. I don't know.

11 Q. When would Schein not work with a
12 value added buying group?

13 MR. McDONALD: Object to the form.

14 Vague. Overly broad.

15 A. I don't know. I could speculate that
16 if a mission to be value added was articulated,
17 but there wasn't evidence that there are value
18 added components, that the team would say, okay,
19 they're claiming to be value added, but there's
20 no evidence of it, so it doesn't make sense for
21 us to move right now. But that's speculation.

22 Q. If there was evidence that a buying
23 group was a value added buying group, would it
24 be your expectation that Schein would do
25 business with that buying group?

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2 MR. McDONALD: Object to the form.

3 A. Would --

4 MR. McDONALD: Overbroad. Vague.
5 Go ahead.

6 A. If our teams, to include Hal's team
7 and also, separately, Tim's team, if they were
8 engaged with an entity that they felt was
9 interesting because it seemed that they were
10 going to be a good value for the members and be
11 able to have the members be loyal to the buying
12 group, I would expect that Tim would and Hal
13 would expect that their teams would look to see
14 if there's a possibility of doing business.
15 Because doing business is always also a
16 negotiation.

17 Q. Have you heard the term "price-only
18 buying group"?

19 A. Not specifically in the way that you
20 just said it, but I have -- I would distinguish
21 between the buying groups that I've been talking
22 about, the buying groups that have more to their
23 overall proposition to their members beyond
24 price, and then there are others that may be
25 focused only on price.

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2 I may not have heard the term exactly
3 the way you said it, but that's -- but there may
4 be dynamics of that out there that...

5 Q. Does Schein have a policy against
6 working with buying groups that are focused only
7 on price?

8 MR. McDONALD: Object to the form.

9 A. We don't have a policy. I would say
10 that our team, in their judgment, they would
11 lean towards buying groups that actually have
12 value that fit with our model that also provide
13 us with comfort that their members are also
14 going to be loyal to the group, and there's some
15 mechanisms that help bring that about, and there
16 are other value added elements associated in the
17 buying group.

18 Q. So Schein's team shies away from doing
19 business with buying groups that are focused
20 only on price?

21 MR. McDONALD: Object to the form.

22 Mischaracterizes his testimony.

23 A. Again, we could very well have active
24 dialogue with any kind of buying group that
25 presents itself to us or alternate purchasing

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2 entity, and we would evaluate whether or not it
3 makes sense and it fits and is aligned with our
4 overall value propositions and there are
5 elements associated with it that would lead to
6 loyalty within the group itself.

7 The likelihood of us pursuing buying
8 entities that don't have a value proposition and
9 are only focused on price is not something that
10 our team would spend a lot of time on. They
11 would spend time on the other opportunities that
12 we have with different kinds of buying groups
13 that do have this value.

14 Q. In setting HSD's strategic goals, if
15 Tim Sullivan were to approach you and say that
16 he wanted to add a focus on buying groups that
17 focused only on price, what would be your
18 reaction?

19 MR. McDONALD: Object to the form.

20 Improper hypothetical.

21 A. I would ask my -- it would be
22 inconsistent for Tim to be focused on changing
23 our overall model, and I would ask him has
24 something changed in the marketplace that has
25 you thinking differently and let's analyze it,

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2 and maybe there's something here I don't
3 understand that we need to learn more about, and
4 we would -- we would talk it through.

5 Q. Can price-focused buying groups also
6 be beneficial for Schein?

7 MR. McDONALD: Object to the form.

8 Vague. Overly broad.

9 A. I would say that price-only buying
10 groups are just not aligned with our business
11 model and would not -- we are extremely focused
12 and putting a tremendous amount of investment
13 into the broad-based, full-service elements of
14 what we provide our customers. So price only
15 is -- it's just very inconsistent with what we
16 do.

17 Q. If a price-only buying group brought
18 new customers to Schein, is it possible that
19 that relationship could increase Schein's
20 revenues?

21 MR. McDONALD: Object to the form.

22 A. By definition, if someone brought a --
23 if there was a buying group that we weren't
24 working with -- not saying that we are -- that
25 brought incremental business, if we had gone

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2 away from our policy, it could bring incremental
3 business at a low level, yeah. Could.

4 Q. If a price-only buying group brought
5 new customers to Schein, is it possible that
6 that relationship could increase Schein's
7 profitability?

8 MR. McDONALD: Object to the form.

9 A. It's complex. I don't know. I would
10 have to really look at all of the circumstances
11 and the context and what the impact would be,
12 where the area of business is being done and why
13 that value proposition might make sense for us
14 because it's inconsistent with the business
15 model that we have. It could be negative
16 effects elsewhere. I don't know.

17 Q. I'm just asking whether or not a
18 buying group that brought new customers to
19 Schein could increase profitability?

20 MR. McDONALD: Object to the form.

21 A. I don't know.

22 MR. McDONALD: Hang on. Object to the
23 form. Asked and answered.

24 Go ahead.

25 A. It -- without really understanding the

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 2 complete circumstances about that opportunity,
 3 every opportunity has to be looked at as a
 4 separate customer, potential customer or
 5 potential entity that we're going to do business
 6 with, and we would have to make a decision based
 7 upon -- alignment is the overriding thing that
 8 we think about, and we look to make sure that we
 9 are, you know, not losing our focus on that; and
 10 so if a price-only buying group came to us, we
 11 don't really want to be just a fulfillment house
 12 and not -- not really being in a position to
 13 work directly with those customers, you know,
 14 helping them grow their business.

15 Q. If a price-only buying group were to
 16 bring new customers to Schein, would that take
 17 away from Schein's profitability?

18 MR. McDONALD: Object to the form.

19 Asked and answered. I mean, you have asked
 20 this --

21 A. It's possible.

22 MR. McDONALD: Hang on.

23 THE WITNESS: Okay. Sorry.

24 MR. McDONALD: You have asked a
 25 similar question about five times now. So

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 2 move along or we'll stop. This is your last
 3 shot at this question.

4 Can you repeat it for him, please?

5 (Record read as follows:

6 "Q. If a price-only buying group were to
 7 bring new customers to Schein, would that take
 8 away from Schein's profitability?")

9 MR. McDONALD: Same objections.

10 (Record read.)

11 THE WITNESS: Not necessarily.

12 BY MS. ROSNER:

13 Q. Why does Schein choose to do business
 14 with buying groups?

15 A. Again, we have to pay attention to all
 16 trends that are in the marketplace. We have to
 17 understand all possibilities of doing business
 18 with potential customers, and we feel that as
 19 long as our local teams that are responsible for
 20 their different business units feel that it fits
 21 within their overall current plans, that that
 22 business can work for us. And so, therefore, we
 23 have been doing business with buying groups of
 24 all kinds for a really long time.

25 Q. What benefits does Schein get from

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 2 doing business with buying groups?

3 MR. McDONALD: Object to the form.

4 Overly broad. Vague.

5 A. We get the -- assuming that the buying
 6 group is a buying group that has value elements
 7 associated with it, where the members appreciate
 8 the value brought by the buying group, it gives
 9 us an opportunity to be introduced to that
 10 customer, also adding the additional opportunity
 11 for us to convince those customers to buy even
 12 more of our value-added services, perhaps buy
 13 practice management technology.

14 It's a door-opener for us in some
 15 respects, and if the local team has determined
 16 that there's enough potential in that value, it
 17 could really work for us.

18 Q. Have you ever seen the benefits that
 19 you're describing actually manifest in any of
 20 your buying group relationships?

21 A. I'm sure that they have. I can't
 22 point to any specific examples.

23 Q. Are there any drawbacks to doing
 24 business with buying groups?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 Overly broad. Vague.

3 A. Buying groups that our team has
 4 determined for the various reasons that I have
 5 mentioned before, we believe by moving ahead
 6 with them that they can work for us because of
 7 the value elements associated with those buying
 8 groups.

9 It could work out that that buying
 10 group doesn't actually achieve their goals and
 11 their members become dissatisfied, and being
 12 that we're not directly in control of what the
 13 buying group directly is doing with the other
 14 value elements that are their responsibility,
 15 there could be a negative impact.

16 MR. McDONALD: If you're moving on,
 17 let's take a break.

18 MS. ROSNER: Last question before the
 19 break.

20 BY MS. ROSNER:

21 Q. If there are potential negative
 22 impacts to doing business with buying groups,
 23 then why does Schein do business with buying
 24 groups?

25 MR. McDONALD: Object to form. Overly

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 2 broad. Vague. Improper hypothetical.
 3 A. It's important for us to always
 4 understand what's happening in the marketplace
 5 with various customer segments, new customer
 6 models that might be developing, and again, as
 7 long as we adhere to our high value standards
 8 and our business model and don't lose track of
 9 that, we believe we can do business and have
 10 done business with business models without
 11 hurting our ability to achieve our overall goals
 12 of high value service providers to our customers
 13 and we have actually proven it out in our
 14 performance.
 15 MS. ROSNER: Let's go ahead and take a
 16 break. Off the record.
 17 (Recess; Time Noted: 10:27 a.m.)
 18 (Time Noted: 10:50 a.m.)
 19 BY MS. ROSNER:
 20 Q. Mr. Breslawski, you're familiar with
 21 the group Smile Source?
 22 A. I am familiar with the -- to a certain
 23 extent, I'm familiar with Smile Source.
 24 Q. Smile Source is a buying group of
 25 independent private practice dentists?

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 2 MR. McDONALD: Object to the form.
 3 A. I'm familiar somewhat. I am not that
 4 familiar with the complete structure of Smile
 5 Source and what all of their customers base is,
 6 but I am aware of Smile Source.
 7 Q. What do you know Smile Source to be?
 8 A. I know Smile Source to be an entity
 9 that is a customer today, was a customer years
 10 ago, stopped being a customer, and is back
 11 working with us. So I just don't know all of
 12 the structure of their business.
 13 Q. You don't know whether Smile Source
 14 has an ownership interest in its affiliate
 15 dentists?
 16 A. I do not.
 17 Q. Do you know that Smile Source is a
 18 franchise model?
 19 A. I don't know -- I do not know Smile
 20 Source's business structure virtually at all.
 21 Q. Do you know any of the benefits that
 22 Smile Source provides to its members?
 23 A. I do not. That is something that Tim
 24 Sullivan and his team would be much more
 25 familiar with than me.

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 2 Q. Do you know that Smile Source was
 3 modeled off of a buying group in a division
 4 industry?
 5 MR. McDONALD: Object to the form.
 6 A. I heard that there was some history in
 7 the division business, but I don't know much
 8 about that either.
 9 Q. Do you have any views, either positive
 10 or negative, about Smile Source's business
 11 structure?
 12 A. The only thing I would know is that
 13 our team is interested in doing business with
 14 Smile Source, so assuming Tim and his team have
 15 gone through their overall evaluation process as
 16 to whether or not this makes sense for us, I
 17 would be supportive.
 18 Q. Is it your understanding that Smile
 19 Source is a value-added buying group?
 20 MR. McDONALD: Object to the form.
 21 A. Again, I don't know that much about --
 22 I am relying on Tim and his team and, at this
 23 point, Darci being part of that and Joe
 24 Cavaretta making their decisions.
 25 Q. You mentioned that at various points

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 2 in time Smile Source has been a Schein customer.
 3 I want to focus on the time from the sort of mid
 4 2000s to the 2012 timeframe.
 5 For the majority of that time, Smile
 6 Source --
 7 A. The mid- -- please, the mid 2000s to
 8 2012?
 9 Q. Yes.
 10 A. Okay.
 11 Q. For the majority of that time, Smile
 12 Source was a customer in Schein's Special
 13 Markets division; is that right?
 14 MR. McDONALD: Object to the form.
 15 A. I don't know. I don't know which
 16 business group they were working with. I don't
 17 recall. I may have known at one time.
 18 Q. Do you recall any disagreements
 19 between Tim Sullivan and Hal Muller regarding
 20 Smile Source in the 2010-2012 timeframe?
 21 A. Could be, in that anytime that our
 22 team is looking to determine how we're going to
 23 work with a particular entity, given that our
 24 U.S. Dental business is split between Special
 25 Markets and the rest of the business, that Tim

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2 and Hal would have had frequent conversations
3 about, whether it's Smile Source or any other
4 customers, as to the appropriate placement of a
5 customer or a potential customer in either our
6 Special Markets business or within Tim's scope.

7 Q. I'm asking you specifically whether
8 you recall a disagreement between Tim and Hal
9 regarding Smile Source.

10 A. I don't recall details of any specific
11 disagreements with Hal and Tim.

12 Q. Do you recall whether there was a
13 disagreement between Hal and Tim on Smile
14 Source?

15 MR. McDONALD: Object to the form.

16 A. It's not something that's been on my
17 mind in any significant way.

18 Q. Do you understand that in the 2010 to
19 2012 timeframe, Hal Muller wanted to continue
20 doing business with Smile Source?

21 MR. McDONALD: Object to the form.

22 A. I don't recall the details of any
23 conversation between Tim and Hal regarding Smile
24 Source.

25 Q. Do you recall whether Tim Sullivan

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2 wanted to end Schein's relationship with Smile
3 Source?

4 MR. McDONALD: Object to the form.

5 A. I don't recall that.

6 Q. Do you recall whether Mr. Muller told
7 Mr. Sullivan that Smile Source could bring more
8 volume to Schein?

9 MR. McDONALD: Object to the form.

10 A. I don't recall details of conversation
11 and debate between Hal and Tim on a detailed
12 level with regard to Smile Source or any other
13 specific customer. This is something that is
14 delegated to the president of Special Markets
15 and the president of the balance of our U.S.
16 Dental business, and typically they work these
17 things out.

18 Q. Mr. Sullivan's understanding was that
19 Smile Source did not have ownership in its
20 members' practices.

21 If Smile Source had ownership in its
22 members' practices, would Schein have been
23 amenable to working with Smile Source?

24 MR. McDONALD: Object to the form.
25 Improper hypothetical.

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2 A. Again, I'm not familiar with those
3 details. We work with all kinds of entities
4 where there's ownership, where there's not
5 ownership. I don't -- don't understand the
6 context of the conversation Tim may have been
7 having with Hal.

8 Q. Is it your testimony that if a group
9 does not have an ownership interest in its
10 member practices, then Schein will not work with
11 those members?

12 MR. McDONALD: Object to the form.

13 A. No, that's not my testimony.

14 Q. I'm going to show you a document
15 that's been previously marked as Exhibit CX2111.
16 (Complaint Counsel Exhibit CX2111-001
17 through011, an e-mail chain bearing Bates
18 Nos. Henry Schein-000866230 through 240,
19 marked for identification, as of this date.)

20 BY MS. ROSNER:

21 Q. This is a multi-page e-mail string.
22 The Bates number on the first page is Henry
23 Schein-000866230.

24 Please take a moment to review this
25 document and let me know when you're done.

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2 (Document review.)

3 THE WITNESS: Okay.

4 BY MS. ROSNER:

5 Q. You've had an opportunity to review
6 CX2111?

7 A. Yes.

8 Q. I'm going to refer you to the bottom
9 of page CX2111-003.

10 A. Yes.

11 Q. There's an e-mail from Tim Sullivan at
12 the bottom of that page at 3:01 p.m. to you and
13 Lynne McHugh.

14 Who is Lynne McHugh?

15 A. Lynne McHugh was an executive who had
16 certain operating responsibility but also had
17 certain general administrative responsibility
18 working directly for me.

19 Q. In this e-mail, Mr. Sullivan says,
20 beginning with the second sentence, "Hal seems
21 to feel confident with this group and wants to
22 support this. It feels like a buying club to
23 me. Yes, they do a lot more, but part of their
24 approach is better pricing on supplies. Not
25 good."

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2 Did I read that correctly?

3 A. "Feels like a buying club to me. Yes,
4 they do have" --

5 Yep, you read it correct. Yes.

6 Q. What do you understand him to mean by
7 saying, "Yes, they do a lot more"?

8 MR. McDONALD: Object to the form.

9 A. Well, I think this communication is
10 indicative of our teams, the two leaders of the
11 major parts of our business, sorting through and
12 evaluating whether or not this entity actually
13 fits and where it fits. And so it looks like a
14 good debate or discussion between the two of
15 them as to the level of value beyond just price
16 that this entity provides to its membership, and
17 they're searching for agreement amongst
18 themselves as to how we might want to move
19 forward with this entity.

20 Q. I think you just answered a different
21 question. I want you to focus on my specific
22 question, which is the language, "Yes, they do a
23 lot more."

24 What's your understanding of what that
25 means?

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2 MR. McDONALD: Object to the form.

3 A. I would be speculating.

4 MR. McDONALD: Well, don't speculate.

5 You're not here to speculate. You're here
6 to tell the truth and give your answers. So
7 if you don't know, tell her you don't know.

8 A. I don't know.

9 Q. You receive e-mails from Tim Sullivan
10 on a regular basis, right?

11 A. Of course.

12 Q. And when he writes something to you
13 that you don't understand, do you ask him for
14 clarification?

15 A. If -- from time to time.

16 Q. So are you saying that he wrote this
17 to you, you didn't understand what he meant, and
18 you didn't ask him for clarification?

19 MR. McDONALD: Object to the form.

20 Vague. The e-mail is from eight years ago.

21 A. When this e-mail was received by my
22 colleague Lynne McHugh is the person that I
23 would have relied on typically what her role is
24 to help shepherd these conversations across our
25 business unit leaders, and it's highly unlikely

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2 that I would have done anything with this
3 specific e-mail.

4 Q. If you could turn to page CX2111-05.
5 I'm going to refer you to the Tim Sullivan
6 e-mail at the bottom of that page from September
7 2, 2010 at 12:58 p.m.

8 Do you see that?

9 A. Yes.

10 Q. In the middle of his e-mail, he's
11 referring to Smile Source, and he says, "This
12 becomes a buying group. If they buy a practice
13 and own it... no problem. That's how it works."

14 Did I read that correctly?

15 A. Yes.

16 Q. What do you understand him to mean by
17 saying, "If they buy a practice and own it... no
18 problem. That's how it works"?

19 MR. McDONALD: Object to the form.

20 A. Not sure what he means by that.

21 Q. Does Schein have a policy that they
22 only do business with groups in 2010 that own
23 practices?

24 A. We do not have that policy. Did not
25 have that policy. I believe that Tim was

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2 talking about whether or not -- I think they
3 were debating whether it's in Hal's business
4 group or it's in Tim's.

5 Q. Where do you understand the debate
6 was?

7 A. Well, I shouldn't speculate. I was
8 reading into it, so I don't know.

9 Q. So if there was ownership, are you
10 saying that the group would be in Special
11 Markets at this time?

12 A. Generally, Special Markets accounts,
13 with exceptions, are accounts where there is
14 ownership, generally, but there's exceptions.

15 Q. Does Henry Schein Dental have a
16 limitation that its customer segments have to
17 have ownership?

18 MR. McDONALD: Object to the form.

19 Vague as to time.

20 A. No.

21 Q. I'm going to refer you to CX2111-007.
22 It's an e-mail from Hal Muller, August 31, 2010,
23 at 9:12 p.m.

24 Do you see that?

25 A. Yes.

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Q. He starts this e-mail, "After Randy's call, I do think we continue the relationship with Smile Source. They are going to expand and they just have a slightly different model, but they are not by far the first group that we have had that doesn't own the offices."

Did I read that correctly?

A. Yes.

Q. So Mr. Muller is telling the group in that e-mail that he wants to continue the relationship with Smile Source; is that right?

MR. McDONALD: Object to the form.

For the record, the witness is not on that e-mail.

(Pause.)

THE WITNESS: I'm sorry, was there a question for me?

MS. ROSNER: Can you repeat the question?

(Record read.)

MR. McDONALD: Same objections.

THE WITNESS: His first sentence appears to be saying that.

BY MS. ROSNER:

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Q. And in the e-mail from Tim Sullivan on page 2111-005, the e-mail that we just looked at, Mr. Sullivan appears to disagree with Mr. Muller; is that right?

MR. McDONALD: Object to the form.

A. Which e-mail?

Q. The e-mail that we just looked at on September 2, 2010 at 12:58 p.m. Mr. Sullivan appears to disagree with Mr. Muller about whether Schein should continue doing business with Smile Source?

MR. McDONALD: Object to the form.

A. It's clear they are debating this issue. I don't have the full context of their conversation.

Q. You just spent a moment reading the full e-mail; is that right?

MR. McDONALD: Well, and for the record, as you very well know, there's many other e-mails about this issue, and the company did do business with Smile Source for another year and a half. I think this is a colossal waste of time, but go ahead.

Q. I'm just trying to better understand

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that, "If they buy a practice and own it... no problem. That's how it works" comment?

A. Again, I don't know --

MR. McDONALD: Objection. Asked and answered.

Go ahead.

A. I don't know what Tim is referring to.

Q. Does this seem contrary to your understanding of Schein's strategy with respect to buying groups?

MR. McDONALD: Object to the form.

A. Every decision about an entity that we're either doing business with or considering doing business with stands on its own, and some of those decisions are made within Hal Muller's business and some of those decisions are made in Tim's business. And sometimes there is a discussion as to whether or not the customer's in the right place and it's a complex matter, and so there's some dialogue here between Hal and Tim, where they're looking to understand what the best next steps are with Smile Source.

Q. So I understand that every customer decision is independent of that customer for

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that customer.

Tim seems to be suggesting a broader rule, which is if they buy a practice and own it, no problem. Is that your understanding --

A. There is no --

MR. McDONALD: Hang on. Hang on. Object to the form. Asked and answered.

MS. ROSNER: Can I finish my question?

MR. McDONALD: Well, sure, why don't you go ahead.

MS. ROSNER: Can you repeat what I said before?

MR. McDONALD: Well, you're reading the question. Why don't you just read it again.

(Record read.)

MR. McDONALD: Are you done?

MS. ROSNER: I'll pose that same question.

MR. McDONALD: Object to the form. Asked and answered.

He already told you this was a debate between whether it's in Special Markets or

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 2 HSD, but tell her that again.
 3 THE WITNESS: This is a debate that
 4 Hal and Tim are having as to the right the
 5 appropriate placement of this customer in
 6 either Hal's business or Tim's business.
 7 BY MS. ROSNER:
 8 Q. You do not understand this e-mail
 9 chain to be a debate about whether Schein should
 10 do business with Smile Source?
 11 A. No.
 12 MR. McDONALD: Object to the form.
 13 A. No.
 14 Q. You can put that document aside.
 15 In late 2010, Schein was considering
 16 dropping Smile Source as a customer; is that
 17 right?
 18 A. I don't know.
 19 Q. In late 2010, Schein was considering
 20 discontinuing Smile Source's discount; is that
 21 right?
 22 MR. McDONALD: Objection.
 23 A. I didn't hear the question.
 24 Q. In late 2010, Schein was considering
 25 discontinuing Smile Source's discount?

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 2 MR. McDONALD: Object to the form.
 3 A. I don't know.
 4 Q. The president of Smile Source
 5 requested a meeting to explain why Schein should
 6 not drop Smile Source as a customer; is that
 7 right?
 8 MR. McDONALD: Object to the form.
 9 A. From my point of view, this is
 10 primarily delegated to the leaders of our U.S.
 11 Dental business, Hal Muller and Tim Sullivan,
 12 and I --
 13 Q. You met --
 14 A. Go ahead.
 15 Q. I'm sorry. I cut you off. Please
 16 continue.
 17 A. No.
 18 Q. You met with the owners of Smile
 19 Source in October 2010; is that right?
 20 MR. McDONALD: Object to the form.
 21 A. I actually don't recall meeting the
 22 owners of Smile Source in person. I may have
 23 participated on a phone call.
 24 Q. After the meeting with Smile Source,
 25 you thought that Smile Source was much more than

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 2 simply a buying group, right?
 3 MR. McDONALD: Object to the form.
 4 A. I don't recall the details of that
 5 phone call.
 6 Q. Do you recall whether or not you
 7 considered Smile Source to be much more than a
 8 buying group?
 9 A. I don't recall when, but over time,
 10 I've learned more that Tim and Hal, and Tim in
 11 particular, believes that Smile Source is a
 12 value-added entity that it would be good for us
 13 to be doing business with.
 14 Q. Has Smile Source's business model
 15 changed over time, to your knowledge?
 16 A. I don't know.
 17 Q. In the 2010 timeframe, you guessed
 18 that Smile Source's volume with Schein would
 19 grow over time?
 20 MR. McDONALD: Object to the form.
 21 A. I didn't think of it.
 22 Q. What do you mean?
 23 A. You're asking me in 2010 what was I
 24 thinking about Smile Source and their business
 25 with Schein. I wasn't thinking about it. That

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 2 was, again, something I delegated to Hal and to
 3 Tim.
 4 Q. You never said that Smile Source's
 5 volume with Schein would grow over time?
 6 MR. McDONALD: Object to the form.
 7 If you've got a document, show him.
 8 If you recall, tell her.
 9 A. I don't recall. I don't recall saying
 10 that, but maybe I did. I don't recall it.
 11 Q. You believe that working with Smile
 12 Source in 2010 would be a win-win situation for
 13 Schein and Smile Source?
 14 MR. McDONALD: Object to the form.
 15 If you recall, tell her.
 16 A. I don't recall. I don't recall.
 17 (Complaint Counsel Exhibit CX2298-001
 18 through 003, an e-mail chain bearing Bates
 19 Nos. Henry Schein-000735259 through 261,
 20 marked for identification, as of this date.)
 21 BY MS. ROSNER:
 22 Q. Let me hand you a document that's been
 23 previously marked as CX2298. It's an e-mail
 24 with the first Bates page being Henry
 25 Schein-000735259.

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 2 Please take a moment to review this
 3 document and let me know when you've finished.
 4 (Document review.)
 5 THE WITNESS: Okay.
 6 BY MS. ROSNER:
 7 Q. You've had an opportunity to review
 8 CX2298?
 9 A. Yes.
 10 Q. CX2298 is an e-mail chain. The top
 11 e-mail on the chain is dated October 18, 2010.
 12 If you look to page CX22 --
 13 A. I'm sorry, which page?
 14 MR. McDONALD: She's at the very first
 15 page.
 16 THE WITNESS: On the top?
 17 MR. McDONALD: Yes.
 18 BY MS. ROSNER:
 19 Q. And now I'm going to refer you to page
 20 CX2298-003.
 21 A. Okay.
 22 Q. At the top of that page.
 23 MR. McDONALD: Slow down. Slow down,
 24 Jasmine.
 25 Q. It's an e-mail written by you on

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 2 October 15, 2010 at 4:05 p.m.
 3 Do you see that e-mail?
 4 A. I do.
 5 Q. You drafted this e-mail as part of
 6 your job; is that right?
 7 A. I'm sorry? Say again.
 8 Q. You drafted this e-mail as part of
 9 your job?
 10 A. I'm sure I did, yes.
 11 Q. It's part of your job to communicate
 12 about customer inquiries when they rise to your
 13 level; is that right?
 14 A. I didn't understand every word you
 15 said. Can you please say that again?
 16 Q. Is it part of your job to respond to
 17 customer inquiries when they rise to your level?
 18 A. It's part of my job to respond to
 19 customer inquiries, but also, this is an
 20 employee, Scott, who I believe was an FSC, who
 21 wrote to me, and I'm pretty accessible to
 22 people, so if a -- a team member writes to me, I
 23 will typically either do something myself to
 24 follow up or delegate it to someone to follow
 25 up.

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 2 Q. You had knowledge of the contents of
 3 this e-mail at the time you drafted it; is that
 4 right?
 5 A. At the time I drafted it, I'm sure I
 6 did. I wrote it.
 7 Q. And you drafted this e-mail at or near
 8 the time you looked into the Smile Source
 9 question that Scott was raising to you?
 10 MR. McDONALD: Object to the form.
 11 Don't nod your head at him, trying to
 12 suggest an answer. It may be a tick, but
 13 don't do it, please.
 14 Did you hear her question?
 15 THE WITNESS: I'm sorry. Repeat the
 16 question, please.
 17 (Record read.)
 18 BY MS. ROSNER:
 19 Q. I'm simply asking about --
 20 A. All of this is in a relevant
 21 timeframe.
 22 MR. McDONALD: Jasmine, I've told you
 23 guys I don't know how many times we're not
 24 going to object to the authenticity. If an
 25 e-mail is from him, he did it in his

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 2 capacity as an employee of Henry Schein.
 3 The date is what it is. You know, I mean,
 4 come on.
 5 MS. ROSNER: There are a variety of
 6 reasons why it's important to establish this
 7 as a business record, and that's all that
 8 I'm trying to do.
 9 THE WITNESS: But I thought I said
 10 that this is my e-mail, and I wrote this
 11 e-mail.
 12 BY MS. ROSNER:
 13 Q. And you wrote it near the time that --
 14 A. People don't write e-mails for me. I
 15 write my own.
 16 Q. I'm trying to establish the timing of
 17 when you wrote this e-mail, and that simply you
 18 wrote it near the time that this issue bubbled
 19 up for you?
 20 MR. McDONALD: The record speaks for
 21 itself.
 22 A. It appears that way.
 23 Q. You maintained this e-mail in the
 24 course of Schein's regularly conducted business;
 25 is that right?

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 2 MR. McDONALD: Object to the form.
 3 A. I maintained this e-mail -- say it
 4 again.
 5 Q. This e-mail was maintained in Schein's
 6 regularly conducted course of business?
 7 A. Sure.
 8 Q. And this is a true and correct copy of
 9 CX2298?
 10 A. I assume so.
 11 Q. In CX2298, you say that you, Tim and
 12 Hal met with the owners of Smile Source earlier
 13 this week. You learned a lot more about their
 14 model in this meeting. They are really much
 15 more than simply a buying group.
 16 Do you see that?
 17 A. I do.
 18 Q. You are referring to Smile Source as
 19 more than simply a buying group; is that right?
 20 A. I have learned a lot more about their
 21 model in this meeting. They're really much more
 22 than simply a buying group, yes.
 23 Q. What do you mean by Smile Source being
 24 more than simply a buying group?
 25 A. I don't recall all the details of this

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 2 meeting. I don't actually recall meeting them
 3 in person. It could have been on the phone.
 4 But I believe what they showed is more services
 5 that they provide as sort of a management
 6 services group to help customers beyond just
 7 getting a better price on consumable supplies.
 8 Q. What were some of the services that --
 9 A. I don't recall.
 10 Q. Why is it significant that Smile
 11 Source is more than simply a buying group?
 12 MR. McDONALD: Object to the form.
 13 A. Smile Source is more, as I mentioned
 14 before, as we evaluated whether or not doing
 15 business with entities makes sense for us,
 16 aligning with value for customers, and it is
 17 important to us, and so that would be an
 18 important element of us feeling comfortable
 19 doing business with Smile Source.
 20 Q. If Smile Source was just a buying
 21 group, would Schein consider working with them?
 22 MR. McDONALD: Object to the form.
 23 A. I would rely on Hal and with -- and
 24 Tim. This is something that they would be
 25 responsible for, and to the extent that an

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 2 entity is not aligned with our model, it's more
 3 likely than not that we wouldn't do business
 4 with them.
 5 Q. The second-to-last sentence of your
 6 e-mail on CX2298-003 reads, "My guess is that
 7 we'll see their overall volume with us grow,
 8 thereby making this a win/win."
 9 Did I read that correctly?
 10 A. Yes. Yes.
 11 Q. You expected that volume from Smile
 12 Source was going to increase?
 13 MR. McDONALD: Object to the form.
 14 Mischaracterizes the document.
 15 A. My conclusion here is that their
 16 members would appreciate the value of Smile
 17 Source, and thereby they would be -- that
 18 membership support would also provide us with
 19 access to these customers to also sell beyond
 20 what Smile Source services may be for the full
 21 value of what it is that we could provide to
 22 those customers.
 23 Q. What do you mean by "win/win"?
 24 A. That it would be good for Henry Schein
 25 and it would be good for our customer.

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 2 Q. Going back up your e-mail, in the
 3 middle of your e-mail you say, "That said, I
 4 need to circle back with Tim and Hal to find the
 5 right balance."
 6 Do you see that?
 7 A. Yes.
 8 Q. If Smile Source is a win/win, why do
 9 you need to circle back with Tim and Hal?
 10 MR. McDONALD: Object to the form.
 11 A. I believe this relates to, again, as I
 12 had mentioned before, who would be the primary
 13 owner of the relationship, whether it be Tim or
 14 Hal.
 15 Q. Did you ever actually circle back with
 16 Tim and Hal?
 17 A. I don't recall specifically doing
 18 that. Again, primarily delegating and relying
 19 on Hal and Tim to work out what's next with this
 20 customer.
 21 Q. Okay. You can put CX2298 aside.
 22 In 2011, Smile Source received private
 23 equity investments and hired some new
 24 executives; is that right?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't know.
 3 Q. The CEO of Smile Source reached out to
 4 Schein to schedule an opportunity to introduce
 5 these new executives; is that right?
 6 MR. McDONALD: Object to the form.
 7 A. Again, I don't recall.
 8 Q. You definitely thought Schein should
 9 meet with Smile Source --
 10 MR. McDONALD: Object to the form.
 11 Q. -- to meet these new executives?
 12 MR. McDONALD: Object to the form.
 13 A. Could be.
 14 Q. Why would you be interested in meeting
 15 Smile Source's new executives?
 16 A. Relying on Tim and Hal's
 17 recommendation, I would be supportive of
 18 learning more about this -- this business would
 19 be logical for me.
 20 Q. Did Tim Sullivan ever express to you
 21 any concern about Smile Source's business model?
 22 MR. McDONALD: Object to the form.
 23 A. I don't recall specifics.
 24 (Complaint Counsel Exhibit CX2299-001
 25 through 002, an e-mail chain bearing Bates

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 2 Nos. Henry Schein-000183494 through 495,
 3 E-mail chain, marked for identification, as
 4 of this date.)
 5 BY MS. ROSNER:
 6 Q. I'm going to hand you a document
 7 that's been previously marked as CX2299. This
 8 is an e-mail string. The top page of the e-mail
 9 is marked Henry Schein-000183494.
 10 Please take a moment to familiarize
 11 yourself with CX2299.
 12 A. Okay. I read it.
 13 Q. You've had an opportunity to review
 14 CX2299?
 15 A. Yes.
 16 Q. At the top of the e-mail string is an
 17 e-mail from you dated October 1, 2011. This
 18 e-mail you drafted as part of your job; is that
 19 right?
 20 A. Yes.
 21 Q. And it's part of your job to
 22 communicate about customer opportunities that
 23 arise?
 24 MR. McDONALD: Object to the form.
 25 A. It's part of my responsibility to

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 2 respond to e-mails that I get.
 3 Q. You have knowledge of the contents of
 4 this e-mail?
 5 MR. McDONALD: Object to the form.
 6 A. I have just read this e-mail.
 7 Q. At the time that you drafted your
 8 response, you had knowledge of the contents?
 9 A. I would have read the e-mail.
 10 Q. You drafted this e-mail and Schein
 11 kept it in the ordinary course of its regularly
 12 conducted business?
 13 A. I'm sure --
 14 MR. McDONALD: Hang on.
 15 Object to the form. He drafted the
 16 top e-mail.
 17 Q. This is a true and correct copy of the
 18 e-mail that you drafted?
 19 A. I'm sure it is.
 20 Q. In the e-mail below, Tim Sullivan
 21 responds to a request from Smile Source for a
 22 meeting saying, "Interesting... these guys
 23 certainly aren't going away, but their model
 24 does concern me."
 25 Tim Sullivan is telling you that the

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 2 Smile Source model concerned him. Is that how
 3 you read that e-mail?
 4 MR. McDONALD: Object to the form.
 5 A. I read that Tim Sullivan has open
 6 questions, yes.
 7 Q. Do you agree with Mr. Sullivan that
 8 the Smile Source model is concerning?
 9 A. I wouldn't know.
 10 Q. What about the Smile Source model
 11 concerns --
 12 A. I don't know.
 13 Q. Were you curious about why the Smile
 14 Source model caused concern for Mr. Sullivan?
 15 A. I --
 16 MR. McDONALD: Hang on.
 17 Objection to form.
 18 A. It is very usual for me to encourage
 19 spending time with people and meeting people and
 20 understanding, and so that's why I would have
 21 encouraged a meeting.
 22 Q. About a year prior to this, you
 23 mentioned that the Smile Source relationship was
 24 going to be a win/win.
 25 Did you remind Mr. Sullivan of your

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 2 impression of that?
 3 MR. McDONALD: Object to the form.
 4 Mischaracterizes the document.
 5 A. Not that I recall directly.
 6 Q. Was there anything that changed about
 7 the Smile Source model from October 2010 to
 8 September 2011 that would change a win/win into
 9 something that caused concern?
 10 MR. McDONALD: Object to the form.
 11 A. Not aware directly.
 12 Q. You can put aside Exhibit CX2299.
 13 I want to move forward in time. At
 14 some point in time around 2011 or 2012, the
 15 relationship between Schein and Smile Source
 16 ended.
 17 Is it your understanding that Smile
 18 Source eventually formed a supplier relationship
 19 with Burkhart?
 20 A. Yes.
 21 Q. In the fall of 2014, do you recall
 22 asking your direct reports whatever happened to
 23 Smile Source?
 24 A. I think I did ask them that.
 25 Q. Why would you ask them about Smile

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 2 Source?
 3 A. Just curious about Smile Source.
 4 Q. Why would you be curious about Smile
 5 Source?
 6 A. When we lose a customer, every now and
 7 then, I remember customers that we have lost,
 8 and I may have just asked, so what's up with
 9 Smile Source?
 10 Q. Do you recall that Mr. Muller informed
 11 you that Smile Source was growing and doing well
 12 at that time?
 13 A. I don't recall those details.
 14 Q. Mr. Muller mentioned to you that Smile
 15 Source would love to get back with Schein.
 16 Does that sound familiar to you?
 17 MR. McDONALD: Object to the form.
 18 A. I don't recall that specifically.
 19 Q. Would you be interested in knowing
 20 whether or not Smile Source was delivering for
 21 Burkhart?
 22 MR. McDONALD: Object to the form.
 23 A. Would I be -- can you please restate
 24 the question?
 25 (Record read.)

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 2 MR. McDONALD: Same objection.
 3 THE WITNESS: I would be interested to
 4 know what the latest developments were of a
 5 customer who fired us, sure.
 6 BY MS. ROSNER:
 7 Q. Why would you be interested to know
 8 what the latest developments were from a
 9 customer that you are no longer working with?
 10 MR. McDONALD: Object to the form.
 11 You just mischaracterized what he just said.
 12 Go ahead.
 13 A. If it made sense for us, if we had an
 14 opportunity to speak with a former customer
 15 about current circumstance and whether or not it
 16 made sense for us to see if there's a way to
 17 continue to do business, that would not be
 18 unusual.
 19 Q. Is it your understanding that Mr.
 20 Sullivan also thought that Smile Source was a
 21 successful group?
 22 A. I don't recall that.
 23 Q. Is it your understanding that Mr.
 24 Sullivan was still not willing to work with
 25 Smile Source, despite them being a successful

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 2 group?
 3 MR. McDONALD: Object to the form.
 4 A. I don't, don't recall that.
 5 Q. Is it your understanding that Mr.
 6 Sullivan didn't want to be the first in the game
 7 with buying groups?
 8 MR. McDONALD: Object to the form.
 9 A. I don't know what that means.
 10 (Complaint Counsel Exhibit CX2309-001
 11 through 003, an e-mail chain bearing Bates
 12 Nos. Henry Schein-001544812 through 814,
 13 marked for identification, as of this date.)
 14 BY MS. ROSNER:
 15 Q. Let me hand you a document that's been
 16 previously marked as CX2309. It is a multi-page
 17 e-mail string, with the first e-mail bearing the
 18 Bates label Henry Schein-001544812.
 19 Please take a moment to review CX2309
 20 and let me know when you're done.
 21 (Document review.)
 22 THE WITNESS: Okay.
 23 BY MS. ROSNER:
 24 Q. You've had an opportunity to review
 25 CX2309?

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 2 A. Yes.
 3 Q. There are multiple e-mails in this
 4 chain and some e-mails are drafted from you.
 5 You drafted these e-mails in CX2309 as
 6 part of your job?
 7 A. Any e-mail from me I would have
 8 drafted as part of my job.
 9 Q. You had knowledge of the contents of
 10 the e-mails at the time that you drafted them?
 11 A. Yes; they're my e-mails, yes.
 12 Q. You drafted the e-mails in CX2309 at
 13 or near the time of the events described
 14 therein?
 15 MR. McDONALD: Object to the form.
 16 A. I drafted these e-mails as indicated.
 17 Q. You drafted the e-mails in CX2309 and
 18 kept them in the course of Schein's regularly
 19 conducted business?
 20 A. Yes.
 21 Q. CX2309 is a true and correct copy of
 22 the e-mails that you drafted?
 23 A. They appear to be.
 24 Q. I want to start on page CX2309-002.
 25 Hal Muller is forwarding an e-mail at

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 2 6:11 p.m. referring to the Kois Group. The
 3 second sentence of his e-mail reads, "The times
 4 are changing we might need to start thinking of
 5 a buying group strategy."
 6 Did I read that correctly?
 7 A. Yes, you did.
 8 Q. Mr. Muller is a president of a major
 9 division within Schein Dental, right?
 10 MR. McDONALD: Object to the form.
 11 A. Yes.
 12 Q. He is --
 13 A. Actually, no longer, but he was at
 14 this time.
 15 Q. He is saying that "we need to start
 16 thinking of a buying group strategy."
 17 Does Schein not have a buying group
 18 strategy at this time?
 19 MR. McDONALD: Object to the form.
 20 A. I'm not sure what he's referring to
 21 there because we were doing buying -- we were
 22 doing business with buying groups for many, many
 23 years.
 24 Q. What was Schein's buying group
 25 strategy at this time?

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 2 A. On a case-by-case basis, an entity
 3 would approach us. The individual business unit
 4 leaders would determine whether or not it made
 5 sense for us to do business with them, and they
 6 would make that decision and either begin doing
 7 business or not.
 8 Q. Is it strange to you that he's saying
 9 Schein needs to start thinking about a strategy
 10 for buying groups?
 11 MR. McDONALD: Object to the form.
 12 A. I'm not sure what he is specifically
 13 thinking about with that statement.
 14 Q. Did you respond to him and say, "Hal,
 15 what are you thinking about? We have a
 16 strategy?"
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 A. I don't recall responding directly to
 20 Hal in that way.
 21 Q. The e-mail above that comes from Tim
 22 Sullivan at 7:17 p.m. In the second paragraph,
 23 Mr. Sullivan says, "I forwarded to a few
 24 internally for discussion also. I still believe
 25 this is slippery slope and have yet to see a

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 2 successful one in dental and don't plan to take
 3 the lead role."
 4 Did I read that correctly?
 5 A. Yes.
 6 Q. What's your understanding of what Mr.
 7 Sullivan is calling a slippery slope?
 8 MR. McDONALD: Object to the form.
 9 A. I believe what he is referring to is
 10 starting to do business with buying groups that
 11 are just really focused on a price without
 12 the -- without the other elements that would
 13 help us, you know, be aligned with our overall
 14 business model.
 15 Q. What leads you to the conclusion that
 16 he's referring to price-only buying groups?
 17 A. Because up until this point in time,
 18 we had been doing business with buying groups,
 19 and we had gone through the process to make
 20 decisions about which groups to work with. I
 21 think that he was concerned about possibly
 22 changing that direction and moving away from our
 23 model and do we want to do that, and at this
 24 time, he's expressing concern that it doesn't
 25 feel right for us to go down that road right now

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 2 to change the approach that we have taken so
 3 far.
 4 Q. Is this something in the e-mail that
 5 makes you think he's referring to price-only
 6 buying groups?
 7 MR. McDONALD: Object to the form.
 8 A. I'm not -- I'm not sure. I would have
 9 to know more about the details of -- of what
 10 this group was offering myself, but I think that
 11 that's what Tim was referring to.
 12 Q. So Tim was responding to an e-mail
 13 from Hal saying that we need to start thinking
 14 of a buying group strategy.
 15 Is Hal then recommending that Schein
 16 participate with price-only buying groups?
 17 MR. McDONALD: Object to the form.
 18 A. I think Hal is encouraging us to, as
 19 we have been, continuing our overall internal
 20 dialogue to understand how we best participate
 21 with buying groups going forward as we have in
 22 the past, but also making sure we're learning as
 23 much about what's happening in the marketplace
 24 as more and more different types of entities
 25 have been emerging; and so, therefore, maybe we

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 2 need to think more about devoting some specific
 3 resource to it and really talk it through, is
 4 there something more we should be doing than we
 5 have been doing up to that point.
 6 Q. Sorry. I didn't quite follow.
 7 Are you suggesting that Hal is
 8 referencing the need to potentially work with
 9 price-only buying groups?
 10 MR. McDONALD: Object to form.
 11 A. No, I'm -- what I'm saying is Hal is
 12 encouraging further internal dialogue about
 13 buying groups and our history of having worked
 14 with them for a long time and what's currently
 15 happening in the marketplace.
 16 Q. You're referring to buying groups
 17 generally?
 18 A. Generally.
 19 Q. Not necessarily value-added versus
 20 price-only buying groups?
 21 A. Again, I don't know exactly what Hal
 22 is referencing here.
 23 Q. But you think that Tim is specifically
 24 referencing price-only buying groups in the
 25 "slippery slope" comment?

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 2 A. I believe that's so.
 3 Q. And is there anything in the e-mail
 4 that leads you to believe that the "slippery
 5 slope" comment is directed only towards
 6 price-only buying groups?
 7 MR. McDONALD: Object to the form.
 8 Asked and answered.
 9 A. I think I did answer that question.
 10 MR. McDONALD: You did.
 11 Q. Mr. Sullivan says he does not plan to
 12 take the lead role.
 13 What do you understand him to mean
 14 there?
 15 MR. McDONALD: Object to the form.
 16 A. I'm not sure what he's referring to
 17 there.
 18 Q. Did you ask him to clarify?
 19 A. I don't recall asking him to clarify.
 20 Q. When your direct reports talk about a
 21 direction or strategy for their business and you
 22 don't understand what they're saying, is it
 23 common practice for you not to ask for
 24 clarification?
 25 MR. McDONALD: Object to the form.

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 2 A. If it's very material, I would likely
 3 follow up.
 4 Q. Would deciding whether to take the
 5 lead role on a customer segment be a material
 6 direction?
 7 A. In this case, I didn't recall treating
 8 that as a material item. I thought that he -- I
 9 don't recall following up specifically with him
 10 on that.
 11 Q. Does it surprise you that you didn't
 12 follow up with Tim on that?
 13 MR. McDONALD: Object to the form.
 14 A. No.
 15 Q. At the very top of the e-mail string,
 16 the e-mail from Tim Sullivan at 9:25 p.m. in
 17 CX2309, in his second paragraph, he says, "I'm
 18 open to discussing this topic, but I don't think
 19 we want to be the first in the game. We can
 20 always be second to the party and win in the
 21 long run if this truly becomes a major trend and
 22 threat."
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. What do you understand Mr. Sullivan to

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 2 mean he doesn't want to be first in the game?
 3 A. The same thing as -- similar to the
 4 "slippery slope" comment.
 5 Q. That he doesn't want to be first to
 6 deal with price-only buying groups?
 7 A. I think that he wants to maintain our
 8 model, our business model of high value, and be
 9 aligned with entities and customers that are
 10 also aligned in value and is not ready to
 11 compromise that. That's the way I read this.
 12 Q. The second sentence is, "We can always
 13 be second to the party and win in the long run
 14 if this truly becomes a major trend and threat."
 15 Is that to say if a Patterson or
 16 Burkhart or Benco or someone else were to start
 17 dealing with price-only buying groups, Schein
 18 might consider entering price-only buying
 19 groups?
 20 MR. RACOWSKI: Objection to form.
 21 MR. McDONALD: Object to form.
 22 A. That's to say that it's always -- my
 23 read of this is to say it's always important for
 24 us to be paying attention to what's happening in
 25 the marketplace and to how the landscape is

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 2 changing and how we need to make sure that we
 3 understand how our customers are moving in
 4 whatever direction that they may be moving, and
 5 at some point in time in the future maybe
 6 something like this might make sense, but right
 7 now, we're dedicated to our high value approach.
 8 We think that it's our business model that's
 9 worked for us for a long time. It still holds
 10 true today, and I think that's what Tim was
 11 talking about.
 12 Q. I want to back up one sentence. Tim
 13 is actually talking about Smile Source.
 14 He says, "Yes, I believe they are a
 15 successful group. I actually like these guys
 16 too. We did work for them for a while and it
 17 just caused too many issues. I'm open to
 18 discussing this topic, but I don't think we want
 19 to be the first in the game."
 20 Why wouldn't Schein want to be the
 21 first to work with Smile Source?
 22 MR. McDONALD: Object to the form.
 23 Mischaracterizes the document.
 24 A. I'm not sure what Tim is referring to.
 25 I think he -- my assumption is that he is

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 2 looking to understand more about what the Smile
 3 Source model is, and depending upon what it is
 4 and how it fits with our value model, he may or
 5 may not be supportive of it.
 6 Q. We've already discussed today how you
 7 thought that Smile Source would be a win/win,
 8 and in this e-mail in particular, Tim actually
 9 says, "I believe they are a successful group."
 10 What's stopping Schein from being
 11 first in the game with Smile Source if they're a
 12 successful group and a win/win?
 13 MR. McDONALD: Object to the form.
 14 Mischaracterizes the document.
 15 Mischaracterizes the testimony.
 16 If you understand the question, answer
 17 it.
 18 A. I'm not sure exactly what Tim is
 19 saying in his statement.
 20 Q. Did you ever follow up with Tim to ask
 21 what he meant by being first in the game?
 22 A. Not specifically as to his words in
 23 this statement.
 24 Q. Did you ever follow up with Tim about
 25 the idea of Schein not being first to work with

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 2 buying groups?
 3 MR. McDONALD: Object to the form.
 4 Mischaracterizes the evidence and his
 5 testimony.
 6 A. I don't recall specifically following
 7 up with Tim in that particular manner, but also
 8 frequently following up with Tim on the
 9 importance and the consistency of our business
 10 model and how it's important for us to continue
 11 to be open and listen to everyone about what's
 12 happening in the marketplace and possibly have
 13 new entities that we might work with to add to
 14 the buying groups that we had been working with
 15 that fit with our overall model.
 16 Q. So one thing I don't understand about
 17 CX2309 is that Schein already worked with Smile
 18 Source; is that right?
 19 A. Years prior to this.
 20 Q. Schein had a relationship with Smile
 21 Source.
 22 Why is it that Tim is now saying he
 23 doesn't want to be the first in the game if you
 24 have already worked with Smile Source?
 25 A. I'm not sure --

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 2 MR. McDONALD: Hang on.
 3 Object to the form. Mischaracterizes
 4 the document. Asked and answered.
 5 A. I'm not sure what he's referring to.
 6 Q. You have no understanding of what he's
 7 referring to.
 8 Why don't you simply remind Mr.
 9 Sullivan that you have already worked with Smile
 10 Source?
 11 MR. McDONALD: Object to the form.
 12 A. I don't recall doing that.
 13 Q. You can put CX2309 aside.
 14 MR. McDONALD: Let's take a break.
 15 We've been going an hour.
 16 MS. ROSNER: Off the record.
 17 (Luncheon Recess; Time Noted: 11:54
 18 a.m.)
 19
 20
 21
 22
 23
 24
 25

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 AFTERNOON SESSION
 3 (Time Noted: 12:49 p.m.)
 4 JAMES BRESLAWSKI, resumed and
 5 testified further as follows:
 6 EXAMINATION BY (Cont'd.)
 7 MS. ROSNER:
 8 Q. Mr. Breslawski, before the break, we
 9 were talking about some of the e-mail chains
 10 between you and Mr. Sullivan, and in particular,
 11 there were some comments from Mr. Sullivan about
 12 not wanting to be first in the game, not wanting
 13 to take a lead role, and you weren't sure what
 14 those referred to; is that right?
 15 A. That's correct.
 16 Q. Is there anything that could refresh
 17 your recollection as to what that refers to?
 18 A. Not that I'm aware of.
 19 Q. I want to continue talking about Smile
 20 Source.
 21 Is it your understanding that even
 22 after you met with the executives of Smile
 23 Source, that Mr. Muller and Mr. Sullivan
 24 continued to disagree about whether to work with
 25 Smile Source?

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 2 MR. McDONALD: Object to the form.
 3 A. I don't recall the details of what Hal
 4 and Tim were debating about Smile Source.
 5 Q. Upon hearing that Smile Source was
 6 continuing to grow, do you recall Mr. Muller
 7 suggesting attempting to win back Smile Source
 8 business?
 9 A. I don't recall specifically Hal having
 10 a particular position that would be different to
 11 Tim's. I'm just not sure.
 12 Q. You don't recall Mr. Muller asking to
 13 win back Smile Source as a Special Markets
 14 customer?
 15 MR. McDONALD: Objection. Asked and
 16 answered.
 17 A. I believe -- well, we are now doing
 18 business with Smile Source. So at some point in
 19 time Hal and Tim, in their responsibilities,
 20 found a way for us to start to do business again
 21 with Smile Source.
 22 (Complaint Counsel Exhibit CX2310-001
 23 through 002, an e-mail chain bearing Bates
 24 Nos. Henry Schein-000605589 through 590,
 25 marked for identification, as of this date.)

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 BY MS. ROSNER:
 3 Q. I'm going to hand you a document
 4 that's been previously marked as Exhibit CX2310.
 5 This is an e-mail chain that's on multiple sides
 6 of the one page, and the first Bates number is
 7 Henry Schein-000605589.
 8 Please take a moment to familiarize
 9 yourself with CX2310 and let me know when you're
 10 done.
 11 (Document review.)
 12 THE WITNESS: Okay.
 13 BY MS. ROSNER:
 14 Q. You've had an opportunity to review
 15 CX2310?
 16 A. Yes.
 17 Q. This is an e-mail chain. The top
 18 e-mail in the chain is from you dated October
 19 26, 2014.
 20 You wrote this e-mail as part of your
 21 job?
 22 A. I'm sorry, what was it?
 23 Q. You wrote the e-mail in CX2310 as part
 24 of your job?
 25 A. Yes.

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 2 Q. It's part of your job to respond to
 3 e-mails that you receive?
 4 A. Yes.
 5 Q. You have knowledge of the contents of
 6 this e-mail at the time that you wrote it?
 7 A. Yes.
 8 Q. You drafted CX2310 at or near the time
 9 these questions were --
 10 A. Sorry, your words are coming together
 11 on me. Just slow down a little bit.
 12 Go ahead.
 13 Q. You drafted CX2310 at or near the time
 14 the issue described therein arose?
 15 MR. McDONALD: Object to the form.
 16 A. October -- three days later.
 17 Q. You drafted the e-mail in CX2310 and
 18 maintained it in the course of regularly
 19 conducted business at Schein?
 20 A. Yes.
 21 Q. CX2310 is a true and accurate copy of
 22 your e-mail correspondence?
 23 A. I believe so.
 24 Q. Going to the second page, CX2310-002,
 25 it starts with an e-mail from Hal Muller saying,

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 2 "Are we sure we don't want to let SM to try to
 3 get this business back under SM rules of play?"
 4 And he attaches or pasted in a blurb
 5 about Smile Source; is that right?
 6 A. Yes.
 7 Q. "SM" refers to Special Markets?
 8 A. Correct.
 9 Q. And Mr. Muller is recommending trying
 10 to win back Smile Source under SM rules of play?
 11 A. That's what I read.
 12 Q. What are Special Markets rules of
 13 play?
 14 MR. McDONALD: Object to the form.
 15 A. I'm not sure exactly what he's
 16 referring to.
 17 Q. Is it your understanding that he's
 18 referring to Special Markets pricing?
 19 A. No.
 20 MR. McDONALD: Object to the form.
 21 A. I'm not sure what he's -- what he's
 22 referring to.
 23 Q. If you turn the page to the first
 24 page, CX2310-001, Mr. Sullivan responds, and you
 25 are CC'd on this e-mail, "What's the difference

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 2 between now and then? What do we do when a Priv
 3 customer joins their GPO?"
 4 You understand "Priv" to mean private
 5 customer?
 6 MR. McDONALD: Object to the form.
 7 A. I'm not sure. It could be privileges
 8 customer. It's a loyalty program, but I'm not
 9 sure.
 10 Q. So Mr. Muller is suggesting that
 11 Schein win back Smile Source under Special
 12 Markets rules of play, and Mr. Sullivan is
 13 disagreeing; is that right?
 14 MR. McDONALD: Object to the form.
 15 The document speaks for itself.
 16 A. Looks like they're just having a
 17 conversation.
 18 Q. In their conversation, does it seem
 19 like they're in agreement?
 20 MR. McDONALD: Object to the form.
 21 The document speaks for itself.
 22 A. Tim's asking a question.
 23 Q. Mr. Muller then responds to Tim's
 24 question, "They are all private customers. What
 25 do we do when we have over 1,000 offices? Just

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 2 throwing it out there." Smiley face.
 3 A. Uh-huh.
 4 Q. What's your understanding of what Mr.
 5 Muller is trying to say?
 6 A. I believe it's important that Hal's
 7 looking to continue the dialogue with Tim as to
 8 what to do about this entity and should this be
 9 a customer for Henry Schein.
 10 Q. In trying to continue the dialogue
 11 with Tim, what kind of message is Hal trying to
 12 send to Tim, at least your understanding of it?
 13 MR. McDONALD: Object to the form.
 14 A. I don't -- I don't know.
 15 Q. Mr. Sullivan responds, "Then we wave
 16 flag and commit."
 17 What's your understanding of what Mr.
 18 Sullivan is saying there?
 19 MR. McDONALD: Object to the form.
 20 A. Again, I'm not sure exactly what Tim
 21 is referring to there.
 22 Q. In the first e-mail, in the earliest
 23 e-mail in the string, Mr. Muller is referencing
 24 a blurb that says that Smile Source had opened
 25 252 offices, and now in his most recent e-mail

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 2 he's saying, "What do we do when they open over
 3 1,000 offices?"
 4 Does Henry Schein have some threshold
 5 number of offices that it would require when
 6 working with a group purchaser?
 7 A. We do not. Not that I'm aware of.
 8 Q. Mr. Sullivan seems to object to
 9 working with Smile Source when they have 250
 10 offices, but is willing to wave flag and commit
 11 when Smile Source has over 1,000 offices.
 12 Is that based on guidance that you
 13 gave to Mr. Sullivan?
 14 A. No.
 15 MR. McDONALD: Hang on.
 16 Object to the form. Mischaracterizes
 17 the document.
 18 Go ahead.
 19 A. No.
 20 Q. Where would Mr. Sullivan get guidance
 21 that a buying group with 250 affiliates was not
 22 enough, but 1,000 affiliates would be enough?
 23 MR. McDONALD: Object to the form.
 24 Mischaracterizes the document.
 25 A. We have no guidance. No such

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 2 guidance.
 3 Q. Did you inform Mr. Sullivan that there
 4 was no such rule with respect to the number of
 5 offices that a group purchaser must have to work
 6 with Schein?
 7 MR. McDONALD: Object to the form.
 8 Mischaracterizes the document.
 9 A. There's no such policy.
 10 Q. Did you ever inform Mr. Sullivan that
 11 there was no such policy?
 12 MR. McDONALD: Object to the form.
 13 A. I don't recall specifically talking to
 14 him about number of offices, but we have no such
 15 policy.
 16 Q. Can you name any buying groups that
 17 Schein did business with at the time of this
 18 e-mail on October 2014?
 19 A. So there's a list of buying groups
 20 that we did business with that includes --
 21 there's a whole host of them.
 22 You want me to give you the names? I
 23 don't know if I can remember the names off the
 24 top of my head.
 25 Q. Do you personally remember any of the

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 2 groups that you did business with in 2014?
 3 A. In 2014, there's -- let's see, the
 4 Alpha Omega group is a group we have done
 5 business with for a long period of time.
 6 There's the Council Connections Group. I don't
 7 really know much about these -- these detailed
 8 buying groups, their ownership structure or
 9 their size, but I know there's quite a number of
 10 them.
 11 Q. You mentioned that you don't
 12 necessarily know all the details, including the
 13 size.
 14 Any sense of how many offices Alpha
 15 Omega has?
 16 MR. McDONALD: Object to the form.
 17 A. No, I don't.
 18 Q. Any sense of how many offices Council
 19 Connections has?
 20 A. I don't.
 21 Q. In 2014, did Schein have any buying
 22 group customers that had more than 250 offices?
 23 MR. McDONALD: Object to the form.
 24 A. Please repeat the question.
 25 (Record read.)

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 2 THE WITNESS: I don't know.
 3 MS. ROSNER: Did someone just join?
 4 MS. GOFF: Yes. This is Karen. I got
 5 cut off.
 6 BY MS. ROSNER:
 7 Q. At any point in time, who has been
 8 Schein's largest buying group customer?
 9 MR. McDONALD: Object to the form.
 10 A. I don't know.
 11 Q. Going back to the e-mail CX2310, you
 12 respond to this disagreement between Mr.
 13 Sullivan and Mr. Muller by saying, "Can we
 14 brainstorm a little about this during our off
 15 site time together? This is not just about
 16 Smile Source."
 17 Did I read that correctly?
 18 A. Yes.
 19 Q. What do you mean when you say, "This
 20 is snot just about Smile Source"?
 21 A. My recollection of what I was talking
 22 about here is that the overall dynamic of the
 23 development of different purchasing entities and
 24 possible customers of Henry Schein was changing
 25 and that there are entities that might be

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2 similar to Smile Source that are out there, and
3 it would be good for us to talk about it in a
4 broader sense rather than just focusing on this
5 particular issue.

6 Q. When you say it's not just about Smile
7 Source, you're referencing other buying groups
8 that may be in the market?

9 MR. McDONALD: Object to the form.

10 A. I'm referencing that there may be
11 other buying groups in the market; what our
12 current status is with the current groups that
13 we're doing business with; which ones may be
14 resident within Special Markets; how we're
15 making decisions; if they were in Special
16 Markets; are they in Tim's business; how the
17 FSCs are involved; are they not involved.

18 There's a whole host. It's a very
19 complex matter. So it's easier to talk and
20 brainstorm about different things if we're all
21 together.

22 Q. These issues that you're talking about
23 are where to put group customers and whether
24 FSCs should be involved?

25 A. Yes.

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2 Q. These are not new issues for Schein,
3 right?

4 A. It's always an outstanding issue
5 that's evolving over time, because as customers
6 are changing, generally speaking, customers that
7 are the largest customers in our Special Markets
8 group actually do not require the FSC to have
9 the same kind of contact that the customers in
10 Tim Sullivan's group require, but overall,
11 customers are becoming more and more complex and
12 there are likely certain customers in Hal
13 Muller's group that have certain FSC involvement
14 and certain customers in Tim's group that are
15 also now starting to not have FSC involvement,
16 so it's a complex matter.

17 Q. Are you aware of FSCs raising
18 complaints up the chain when their customer
19 accounts join buying groups?

20 A. I am aware of questions that are on
21 FSCs' minds about what may happen with customers
22 they're currently assigned with that are working
23 directly with Henry Schein that may at some
24 point not be working directly with Schein but
25 through another entity, and how that might

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2 affect their involvement with that customer.

3 Q. And how do you become aware of these
4 instances?

5 A. In various ways. Sometimes, like we
6 saw, there was a message from that FSC in
7 earlier documents, or there may just be
8 conversation that Tim would have with us at a
9 particular meeting, saying that this topic may
10 be coming up, some of the complications that
11 exist with signing on a buying group.

12 Q. And is there some sort of conflict
13 that needs to be resolved when these issues
14 arise?

15 MR. McDONALD: Object to the form.

16 A. Sometimes.

17 Q. Does this conflict also arise when a
18 private customer joins a Schein DSO customer?

19 MR. McDONALD: Object to the form.

20 A. Sometimes.

21 Q. And is there a discussion about how to
22 resolve the conflict when a private customer
23 joins a Schein DSO customer?

24 A. Hal and Tim would typically work
25 through that together. They and their teams

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2 would decide how to handle that.

3 Q. So you're not involved in those
4 conversations?

5 A. Typically, I would not be involved in
6 those detailed level of conversations as a
7 matter of course.

8 Q. You can put aside CX2310.

9 At some point in time, Schein did win
10 back the Smile Source account, is that your
11 understanding?

12 A. Yes.

13 Q. Was that approximately in 2016?

14 A. I don't recall.

15 Q. Do you know anything about the terms
16 of the 2016 agreement with Smile Source?

17 A. I do not.

18 Q. You don't know the discount rate?

19 A. I do not.

20 Q. You don't know whether there was a
21 volume commitment?

22 A. I do not.

23 Q. Has Smile Source changed its business
24 model in any way since Schein first started
25 dealing with Smile Source?

<p style="text-align: right;">Page 126</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 MR. McDONALD: Object to the form. 3 Lack of foundation. 4 A. I wouldn't be aware of those details. 5 Q. Is Smile Source a current customer of 6 Schein today? 7 A. I believe so. 8 Q. Who manages the Smile Source 9 relationship today? 10 MR. McDONALD: You mean individual or 11 the group? 12 Q. To the extent you know. To the extent 13 you know. 14 A. So, to the extent I know, I believe 15 Tim Sullivan is the lead relationship manager 16 with the leadership of Smile Source. I'm not 17 sure exactly where the accounts reside. 18 Q. I want to switch gears right now and 19 talk a little bit about Dental Gator. 20 You're familiar with Dental Gator? 21 A. I am somewhat familiar with Dental 22 Gator. 23 Q. How are you somewhat familiar with 24 Dental Gator? 25 A. It is, as I recall, it is something</p>	<p style="text-align: right;">Page 127</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 that is connected to a very large DSO customer 3 of ours, and it was an initiative that that 4 customer was looking to undertake with our 5 involvement. That was outside of their normal 6 business operations as a DSO. 7 Q. The DSO you're referring to is MB2? 8 A. MB2. 9 Q. MB2 has an ownership interest in its 10 affiliated dental practices; is that right? 11 A. I'm not sure of what MB2's ownership, 12 overall ownership structure is, but MB2 is a DSO 13 customer that's part of our Special Markets 14 business, part of Hal's business. 15 Q. Dental Gator does not have an 16 ownership interest in its affiliated members 17 practices; is that right? 18 MR. McDONALD: Object to the form. 19 A. I believe that's correct. 20 Q. MB2 planned to use Dental Gator as a 21 way to be introduced to and to recruit potential 22 new MB2 affiliates? 23 MR. McDONALD: Object to the form. 24 A. I have heard that. 25 Q. Do you have any reason to doubt that</p>
<p style="text-align: right;">Page 128</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 might be true? 3 A. I have just heard that. 4 Q. Dental Gator was not a price-only 5 buying group; is that right? 6 MR. McDONALD: Object to the form. 7 A. I'm not aware of the details of the 8 offering of Dental Gator. 9 Q. You're not aware of any of the 10 services that Dental Gator provided its members? 11 A. Not that I can think of. Not that I'm 12 aware of. 13 Q. MB2 opened Dental Gator without 14 Schein's knowledge; is that right? 15 MR. McDONALD: Object to the form. 16 A. I'm not sure. I don't know for sure. 17 Q. MB2 allowed Dental Gator access to its 18 Schein discounts without Schein's knowledge; is 19 that right? 20 MR. McDONALD: Object to the form. 21 A. I believe, based upon my recollection, 22 I believe that that is accurate. 23 Q. Schein eventually found out about 24 Dental Gator, right? 25 A. Yes.</p>	<p style="text-align: right;">Page 129</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 Q. And Schein wanted to stop Dental Gator 3 from accessing MB2's negotiated prices? 4 MR. McDONALD: Object to the form. 5 A. Again, I'm not sure what the level of 6 communication and detail was with MB2 related to 7 going outside of our relationship with them. 8 MB2 had a deal with us for them and 9 their structure as MB2, and those -- those terms 10 were for that group of offices, and the best of 11 my recollection, again, were not extended, 12 available beyond what our deal was with MB2. 13 Q. And that would include those prices 14 were not extended to Dental Gator? 15 A. Again, I'm not sure how the Dental 16 Gator question and complication was resolved, 17 but it was not our intention when we created a 18 deal with MB2 that those prices and the deal 19 that we had would go outside of the deal that we 20 made with them. 21 Q. Are you aware that Mr. Muller wanted 22 to continue working with Dental Gator as long as 23 it was part of the MB2 DSO customer? 24 A. I don't recall all of the details of 25 Hal's point of view, but certainly MB2 was a</p>

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2 very important customer, and really
3 understanding what that customer was looking to
4 accomplish and finding a way to continue to have
5 a complete and good relationship with MB2 would
6 naturally be in Hal's interest.

7 Q. If Dental Gator was not affiliated
8 with MB2, Schein likely would not have supported
9 Dental Gator on its own?

10 MR. McDONALD: Object to the form.
11 Improper hypothetical.

12 A. I don't know enough about the details
13 of Dental Gator to conclude that.

14 Q. You were willing to accommodate Dental
15 Gator for unique reasons; is that right?

16 MR. McDONALD: Object to the form.

17 A. I don't recall all of the details of
18 what my involvement may have been, but I could
19 understand how it would be important for us,
20 with a very large DSO customer, to continue to
21 maintain a good relationship with that DSO
22 customer.

23 Q. Had it not been for the relationship
24 with this important DSO customer, would you have
25 been in favor of working with Dental Gator?

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2 MR. McDONALD: Object to the form.

3 A. I wouldn't have enough information to
4 determine that and would expect that the team
5 that evaluates entities on a case-by-case basis
6 would be making that decision.

7 Q. And the same time that you were
8 willing to accommodate Dental Gator because of
9 its relationship with MB2, you didn't want to
10 open the floodgate on buying groups; is that
11 right?

12 MR. McDONALD: Object to the form.

13 A. Buying groups, again, have been a part
14 of our business for a very long time. We have
15 done business with many different buying groups,
16 and I believe that it has been important for us
17 to have the buying groups be aligned with the
18 value model that we -- that we drive, and if in
19 fact it is a price-only with no other value and
20 not fitting with our model, most likely would
21 not be supportive.

22 Q. Did you ever say you didn't want to
23 open the floodgates on buying groups?

24 MR. McDONALD: Object to the form.

25 If you have a document, you ought to

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2 show it to him.

3 A. It's possible if in the context of
4 going outside of our value proposition.
5 (Complaint Counsel Exhibit CX2311-001
6 through 004, an e-mail chain bearing Bates
7 Nos. Henry Schein-000762037 through 040,
8 marked for identification, as of this date.)

9 BY MS. ROSNER:

10 Q. I'm going to hand you a document
11 that's been previously marked as CX2311. This
12 is a document with a first page Bates number of
13 Henry Schein-000762037.

14 Please take a moment to review CX2311
15 and let me know when you're finished.

16 THE WITNESS: Okay.

17 BY MS. ROSNER:

18 Q. You've had an opportunity to review
19 CX2311?

20 A. Yes.

21 Q. CX-2311, the very top is an e-mail
22 from you dated January 28, 2015 at 6:58 in the
23 morning.

24 And throughout the e-mail string,
25 there are e-mails from Mr. Muller, Mr. Sullivan

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2 and yourself.

3 The e-mails that you drafted you
4 drafted as part of your job; is that right?

5 A. Yes.

6 Q. It's part of your job to respond to
7 e-mails that you get regarding the business?

8 A. Yes.

9 Q. You had knowledge of the contents of
10 your e-mails at the time that you drafted them?

11 A. Yes.

12 Q. And you drafted the e-mails in CX2311
13 at or near the time of the events therein
14 described arose?

15 A. I don't understand --

16 MR. McDONALD: Object to the form.

17 A. I don't understand that question.

18 Q. You drafted the e-mail --

19 A. As indicated here. One is at 6:58
20 after the 7:53.

21 MR. McDONALD: Obviously there's a
22 different time zone because he didn't go
23 back in time.

24 THE WITNESS: Okay. Well, I don't
25 understand that question, though, but

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 2 these -- as you see the e-mails, that's how
 3 I drafted them.
 4 BY MS. ROSNER:
 5 Q. I just wanted to understand that you
 6 draft these e-mails while you were having these
 7 discussions with Mr. Sullivan and Mr. Muller;
 8 this wasn't years later that you went back and
 9 drafted these e-mails?
 10 A. Oh, no. Yes, they're contemporaneous
 11 with the time.
 12 Q. You drafted these e-mails and
 13 maintained them in Schein's course of regularly
 14 conducted business?
 15 A. Yes.
 16 Q. And CX2311 is a true and correct copy
 17 of your e-mail correspondence?
 18 A. I believe so.
 19 Q. I'm going to refer you to CX2311-002.
 20 At the top of the e-mail, page 002 is
 21 an e-mail from Mr. Muller, it's on January 28,
 22 2015, at 7:36 in the morning?
 23 A. Uh-huh. Yes.
 24 Q. He's discussing Dental Gator, and in
 25 his second paragraph, he begins, "This is not a

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 2 pure buying group -- they have 12 services they
 3 offer -- as an example, recently offices have
 4 joined Dental Gator and stayed with their
 5 current supplier and did not use the product
 6 savings plan."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. So is Mr. Muller trying to tell you
 10 that this is not a -- Dental Gator is not a
 11 price-only buying group?
 12 A. He's mentioning that they have
 13 additional services, yes.
 14 Q. Do you have any reason to doubt what
 15 Mr. Muller is telling you?
 16 A. No.
 17 Q. And then if we could turn to the first
 18 page, CX2311-001, at the very bottom of that
 19 page, you write, "Thanks. It is important that
 20 while accommodating for unique reasons here, we
 21 don't help open the floodgates on buying
 22 groups."
 23 What do you mean by "don't help open
 24 the floodgates on buying groups"?
 25 A. Specifically, they're really referring

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 2 to price-only groups that are not adding
 3 additional value.
 4 Q. Where in CX2311 do you use the words
 5 "price-only buying groups"?
 6 A. I'm sorry, you see my -- the e-mail
 7 there. That's -- I'm not sure what -- what is
 8 your question?
 9 Q. Where does the term "price only" come
 10 into play in CX2311?
 11 MR. McDONALD: Objection to form. You
 12 asked him what he meant and he told you.
 13 A. Yeah, I don't understand. You asked
 14 me what I meant by that, not what I wrote.
 15 Q. I'm asking whether or not you wrote
 16 "price only" anywhere in CX2311?
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 A. I don't see that specifically written.
 20 Q. Did anybody else in CX2311 write
 21 "price-only buying groups"?
 22 MR. McDONALD: Well, the documents
 23 speak for themselves, but do you really want
 24 him to spend the time to see if those words
 25 are in there, Jasmine?

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 2 Yes? If you do, then he'll read it.
 3 Okay. It's your time.
 4 THE WITNESS: Please repeat the
 5 question.
 6 (Record read.)
 7 THE WITNESS: Anyone else? I didn't
 8 see those words.
 9 BY MR. McDONALD:
 10 Q. But Mr. Muller specifically mentions a
 11 buying group that is not a pure buying group,
 12 but offers additional services, correct?
 13 MR. McDONALD: Object to the form.
 14 A. He's written that.
 15 MR. McDONALD: Asked and answered.
 16 Q. So why are you responding to Mr.
 17 Muller about price-only buying groups when he's
 18 telling you about a value-added buying group?
 19 A. It's not unusual for me to think more
 20 broadly than just the specific message that I
 21 might be sent on any topic, and it's important
 22 for me to periodically remind our team of our
 23 model and the importance of us continuing to
 24 adhere to our model while at the same time
 25 learning and understanding everything that's out

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 2 in the marketplace.
 3 Q. So what you're telling your team is
 4 you don't want to open the floodgates on
 5 price-only buying groups?
 6 MR. McDONALD: Object to the form.
 7 Asked and answered.
 8 A. I think that price-only buying groups
 9 do not align naturally with our value
 10 proposition, and that's what I've said here.
 11 Q. You can put aside CX2311.
 12 It's your understanding that Mr.
 13 Sullivan reluctantly agreed to continue to do
 14 business with Dental Gator assuming Dental Gator
 15 could no longer have access to MB2 pricing?
 16 A. I believe that Hal and Tim reached an
 17 agreement as to how to move forward with Dental
 18 Gator and MB2.
 19 Q. Are you familiar with any of the terms
 20 of the agreement?
 21 A. I'm not. I am not.
 22 Q. Did Mr. Sullivan ever warn you that
 23 doing business with Dental Gator would mean that
 24 Schein was in on approving buying groups?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't recall that specifically.
 3 (Complaint Counsel Exhibit CX2144-001
 4 through 002, an e-mail chain bearing Bates
 5 Nos. Henry Schein-000195206 through 207,
 6 E-mail chain, marked for identification, as
 7 of this date.)
 8 BY MS. ROSNER:
 9 Q. I'm going to hand you a document
 10 that's been previously marked as CX2144, with an
 11 e-mail string with the first page of the e-mail
 12 string bearing the Bates stamp Henry
 13 Schein-000195206.
 14 Please take a moment to review CX2144
 15 and let me know when you're finished.
 16 (Document review.)
 17 THE WITNESS: Okay.
 18 BY MS. ROSNER:
 19 Q. You've had an opportunity to review
 20 CX2144?
 21 A. Yes.
 22 Q. I want to refer you to the top e-mail,
 23 last in time, dated January 28, 2015. The
 24 date -- the time is marked as 6:33 a.m. from Tim
 25 Sullivan to just you regarding Dental Gator.

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 2 Mr. Sullivan writes, "Just us. I'm
 3 going to approve moving forward with his
 4 proposal, but we are then 'in' on approving
 5 buying groups. This won't stop with Dental
 6 Gator."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. What did you understand Mr. Sullivan
 10 to mean when he said that, "We are then 'in' on
 11 approving buying groups"?
 12 A. I believe Mr. Sullivan was concerned
 13 that Dental Gator may not on its own, without
 14 the relations with MB2, meet all of the
 15 different criteria that he would be interested
 16 in in terms of value alignment with a buying
 17 group.
 18 Q. Is there anything in this e-mail
 19 string that leads you to believe that?
 20 A. You asked me what I thought Tim meant
 21 by this sentence, and I thought that I just said
 22 that.
 23 Q. So your answer is that --
 24 A. What I believe Tim was referencing.
 25 Q. And Tim would not believe that Schein

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 2 would work with Dental Gator absent the MB2
 3 relationship?
 4 MR. McDONALD: Object to the form.
 5 Mischaracterizes the testimony.
 6 A. I believe that Tim, as with any entity
 7 that's approaching us, would want to make sure
 8 he understood the value proposition of Dental
 9 Gator and whether it would fit with our model,
 10 and then he and his team would make their
 11 decision.
 12 Q. Wasn't Schein already, quote, "in" on
 13 approving buying groups?
 14 A. There had been many buying groups that
 15 Tim and his team, and also separately Hal and
 16 his team, had determined that they were going to
 17 do business with over the years.
 18 Q. Here Mr. Sullivan is expressing some
 19 idea that doing Dental Gator would create this
 20 change that would enable Schein to be in on
 21 buying groups.
 22 What is it that's changing with
 23 accepting Dental Gator?
 24 MR. McDONALD: Object to the form.
 25 You're testifying and characterizing the

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2 document and so mischaracterizing the
3 document.

4 A. I don't think that Tim would want and
5 still today, going forward, is very dedicated to
6 staying to working with groups that align with
7 value in addition to price, and he would be
8 concerned if we moved away from that, and
9 possibly because of the connection with MB2 and
10 a buying group that might not come up to that
11 standard, he's concerned that that might set a
12 precedent.

13 Q. So we just previously looked at an
14 e-mail where Mr. Muller was saying that Dental
15 Gator's members aren't taking full advantage of
16 the MB2 pricing and that Dental Gator offers 12
17 services to its members.

18 Why wouldn't you correct Mr. Sullivan
19 to say that Dental Gator is not a price-only
20 buying group?

21 MR. McDONALD: Object to the form.

22 A. I don't recall what further
23 conversation I may have had with Tim after this.

24 Q. Mr. Sullivan ended the e-mail with,
25 "This won't top with Dental Gator."

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2 What did you understand him to mean by
3 that?

4 A. Didn't think much of it, so I don't
5 know what he meant.

6 Q. Did you want Dental Gator to be the
7 last buying group that Schein would work with?

8 A. No.

9 Q. Is it a concern that working with
10 buying groups would not stop with Dental Gator?

11 MR. McDONALD: Object to the form.

12 A. No.

13 Q. Did you tell Mr. Sullivan that Schein
14 would continue to do business with buying groups
15 after Dental Gator?

16 A. I don't recall specifically any of the
17 specific conversations.

18 Q. You can put aside CX2144.

19 I want to return to this idea of
20 Schein's practice with respect to buying groups.

21 You have stated that there was no
22 formal policy, but there certainly was a
23 practice to deal with buying groups that made
24 business sense for Schein; is that right?

25 A. Yes.

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2 Q. In January 2010, going back in time,
3 you received an e-mail directly from an FSC
4 about the Pugh Dental Alliance.

5 Do you recall that?

6 MR. McDONALD: Object to the form.

7 A. I don't specifically recall. It could
8 be possible. I don't specifically recall it.

9 Q. Do you know what the Pugh Dental
10 Alliance is?

11 A. I do not.

12 (Complaint Counsel Exhibit CX2296-001
13 through 003, an e-mail chain bearing Bates
14 Nos. Henry Schein-000737600 through 602,
15 marked for identification, as of this date.)

16 BY MS. ROSNER:

17 Q. I'm going to hand you a document
18 that's been previously marked as CX2296. It is
19 a multi-page e-mail string. The first page
20 bears the Bates number Henry Schein-000737600.

21 Please you take a moment to
22 familiarize yourself with CX2296 and let me know
23 when you're done.

24 (Document review.)

25 THE WITNESS: Okay.

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2 BY MS. ROSNER:

3 Q. You've had an opportunity to review
4 CX2296?

5 A. Yes.

6 Q. The top e-mail on the first page
7 latest in time is from you dated January 6,
8 2010.

9 You drafted this e-mail as part of
10 your job; is that right?

11 A. Yes.

12 Q. It's part of your job to respond to
13 e-mails that you get from the business?

14 A. Yes.

15 Q. You had knowledge of the contents of
16 the e-mail when you drafted it?

17 A. Yes.

18 Q. You drafted the e-mail at or near the
19 time the events therein bubbled up to you?

20 A. Yes.

21 Q. You drafted CX2296, the e-mail at the
22 top, and maintained it in the course of Schein's
23 regularly conducted business?

24 A. Yes.

25 Q. CX2296 is a true and correct copy of

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 2 the e-mail correspondence?
 3 A. I believe so.
 4 Q. I want to go to the last -- the
 5 earliest-in-time e-mail. It expands from page
 6 CX2296-002 to 003. This is an e-mail from Scott
 7 Schenker.
 8 Do you know who Scott Schenker is?
 9 A. I believe he's an FSC. I don't really
 10 know him very well.
 11 Q. And Mr. Schenker is complaining about
 12 one of his larger customers joining the Pugh
 13 Dental Alliance. Is that your understanding?
 14 A. Yes.
 15 Q. Pugh Dental Alliance was a Special
 16 Markets customer at the time; is that right?
 17 MR. McDONALD: Object to the form.
 18 A. I believe in reading this, yes.
 19 Q. And in this instance, if Mr.
 20 Schenker's customer was to join Pugh, his
 21 customer would then be transferred to the
 22 Special Markets division?
 23 MR. McDONALD: Object to the form.
 24 A. I'm not sure exactly how Tim and Hal
 25 would have -- would have worked out or resolved

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 2 issue with the customer.
 3 Q. Is it your understanding that Mr.
 4 Schenker is reaching out to you because he's
 5 afraid he's going to lose his customer and any
 6 commissions that he earns from that account?
 7 MR. McDONALD: Object to the form.
 8 A. He's definitely -- he's concerned
 9 about what's going to happen to his involvement
 10 with the account if in fact the doctor joins the
 11 program.
 12 Q. He's also concerned that Pugh could
 13 take others of his accounts; is that right?
 14 MR. McDONALD: Object to the form.
 15 The document speaks for itself.
 16 A. He references other customers that
 17 could be interested.
 18 Q. Mr. Schenker also says, "I am sure HS
 19 would not allow this to occur."
 20 I'm reading from the end of the first
 21 line on page CX2296-003. Do you see that?
 22 A. I'm sorry, 003?
 23 Q. Yes. How the end of the first line
 24 reads "...I'm sure HS would not allow this to
 25 occur."

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 2 A. I see that.
 3 Q. "HS" refers to Henry Schein?
 4 A. I'm not sure. I think so. I don't --
 5 I'm not sure.
 6 Q. In the last line of Mr. Schenker's
 7 e-mail, he tells you that this is a potentially
 8 cancerous situation?
 9 A. That's what I see having been written
 10 here.
 11 Q. If Schein had a practice of working
 12 with buying groups at the time, why didn't this
 13 FSC, Mr. Schenker, know about it?
 14 MR. McDONALD: Object to the form.
 15 A. I don't know.
 16 Q. If Mr. Schenker did not know about
 17 Schein's practice in dealing with buying groups,
 18 why didn't someone simply explain that to him?
 19 MR. McDONALD: Object to the form.
 20 A. I don't know.
 21 Q. Is it common that FSCs are not aware
 22 that Schein has a practice of doing business
 23 with buying groups?
 24 MR. McDONALD: Object to the form.
 25 A. Some may know. Some may not. I don't

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 2 know.
 3 Q. And when you come across an FSC who
 4 doesn't know about Schein's practice of doing
 5 business with buying groups, what do you
 6 typically do?
 7 MR. McDONALD: Object to the form.
 8 A. Again, these issues are the
 9 responsibility of Tim and Hal and their teams,
 10 and to the extent any customers that are part of
 11 a buying group are also connected with the FSC
 12 team, they would be responsible for the
 13 communication to the team.
 14 Q. Would you expect Tim and Hal to inform
 15 their teams that Schein does business with
 16 buying groups?
 17 A. I'm not sure what specifically they
 18 would communicate, but certainly that's
 19 possible.
 20 Q. I'm just speaking generally. Is it
 21 your expectation that Mr. Muller and Mr.
 22 Sullivan keep their teams in the dark about the
 23 fact that Schein does business with buying
 24 groups?
 25 MR. McDONALD: Object to the form.

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A. No.

Q. So the question that Mr. Schenker raises to your attention is an easy problem to fix because someone could just tell him that Schein does business with buying groups; is that right?

MR. McDONALD: Objection to form.

A. It's not as simple as that. Depending on what the nature of the, as I've mentioned many times before, the nature of the particular buying group.

Q. In this instance, Schein has already decided to do business with Pugh Dental Alliance. It is a current customer at the time of this e-mail, that's right, right?

MR. McDONALD: Object to the form.

A. I'm not aware of the details of all of the history of the Pugh Dental Alliance and how it was working with our Special Markets team, but it was a customer.

Q. And if the Pugh Dental Alliance was a customer of your Special Markets team, does that tell you then that it must have been some sort of value-added buying group?

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A. It tells me that Hal and his team would have been responsible to determine that it fit our operating model.

Q. Would you be surprised to know or would you be surprised to find out if Pugh Dental Alliance did not fit within the broader strategy of Schein to work with value-added buying groups?

MR. McDONALD: Object to the form.

A. Again, I'm not familiar with the Pugh Dental Alliance and how far back the relationship goes because we've been doing business with buying groups for a very long period of time, and as, you know, time has gone on, the criteria that the team is using to determine the alignment that buying groups have with our operating model continues -- has continued to evolve. So I just don't have enough information to know what Pugh was.

Q. I believe I asked you earlier today if the criteria for value-added buying groups had changed over time with Schein, and I believe your testimony was no.

Are you amending that testimony to say

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that it has changed over time?

MR. McDONALD: Object to the form.

Mischaracterizes the testimony.

A. We've been doing business with buying groups for over 20 years, and I think now, today, when we actually take a look at what the methodology the teams are using to determine whether or not a buying group is a good fit could definitely be -- could be different to what was done 20 years ago, which I don't recall all of what those details were, as we were working with those buying groups in the early years.

Q. When you talk about the methodology, are you talking about the process by which you determine, or are you talking about the individual characteristics of a particular buying group?

A. Could be both.

Q. What are some of the characteristics of the buying group that have changed over time that would change the definition of whether or not the buying group was a value-added buying group?

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A. So today I think the team is looking more to ensure that the buying group is working closely with its members to stay in touch with its members as a group that is taking advantage of the scope of offerings within that particular buying group, and that there's more of an involvement rather than just making a price list available should they be, you know, signing up to be a member of a buying group, that there's a real relationship management element associated with the buying group.

Q. Anything else?

A. I'm sure there are other things that relate to it. The kinds of services that might be provided helping the customers with different aspects of their business.

Q. Anything else?

A. I'm sure there are other things that I can't think of right now.

Q. These are the characteristics that Schein looks at today to determine whether or not a group is a value-added buying group.

How have these characteristics changed over time? Were some of these characteristics

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 less important? Were there other
3 characteristics?

4 MR. McDONALD: Object to the form.

5 A. Twenty years ago. I'm really not
6 sure. So what -- I wouldn't know 20 years ago
7 what the buying group criteria, the details of
8 the buying group criteria were that the team was
9 utilizing back then.

10 Q. What about five years ago?

11 MR. McDONALD: Object to the form.

12 A. I think, in a less formal way, now
13 with Darci having been added and more of the
14 formal process being put in place. I think the
15 basic fundamental elements of this would have
16 been true; that we're looking for -- that we
17 were looking for buying groups that were
18 actually going to be able to have loyal members
19 that would actively participate in the buying
20 group and actually take advantage of the
21 products and services offered through the buying
22 group.

23 Q. And you wanted buying groups five
24 years ago that offered a variety of services to
25 its members?

1 CONFIDENTIAL - JAMES BRESLAWSKI

2 MR. McDONALD: Object to the form.

3 A. Variety of services to its members and
4 also ongoing engagement in nurturing the
5 relationship with its members.

6 Q. I'm just trying to understand were
7 there any differences between today and five
8 years ago with respect to the types of buying
9 group Schein would want to do business with.

10 It doesn't sound like there were any
11 actual differences. It sounds like Schein has
12 codified those characteristics now through Darci
13 Wingard; is that right?

14 MR. McDONALD: Object to the form.

15 A. I believe that now there is greater
16 codification of it. There are a larger number
17 of entities out there to be put through a
18 process to screen to determine the fit with our
19 business model than there were five years ago,
20 and there's more discipline to make sure that
21 those decisions -- all of those decisions about
22 whether to work or not work with a buying group
23 are going through this process, where five years
24 ago, there might not have been that level of
25 discipline associated with it.

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 Q. But the characteristics of the buying
3 groups themselves that are attractive today have
4 been attractive to Schein in the past?

5 A. Generally speaking, I would say yes.

6 Q. Returning back to CX2296, Mr. Schenker
7 raises an issue about Pugh Dental Alliance with
8 you. You understand Pugh Dental Alliance to be
9 an existing Schein customer.

10 There's a disagreement between Mr.
11 Muller and Mr. Sullivan about whether to
12 continue working with Pugh Dental Alliance, is
13 that your understanding?

14 A. It's my understanding, yes, that they
15 were discussing what to do here.

16 Q. It's also your understanding that Mr.
17 Muller is aware of Schein's policy to do
18 business with value-added buying groups and not
19 price-only buying groups, right?

20 A. Please repeat the question.
21 (Record read.)

22 THE WITNESS: I would say so.

23 BY MS. ROSNER:

24 Q. So if Mr. Muller had decided to do
25 business with Pugh Dental Alliance, we can

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 assume that it is a value-added buying group.

3 Why would Mr. Sullivan object?

4 MR. McDONALD: Object to the form.

5 Mischaracterizes the evidence. Unless
6 you're testifying about what the facts are.

7 A. I'm not sure of exactly what the
8 nature of Tim's understanding of what Pugh had
9 been and what it was going to be.

10 Q. Are you saying that you suspected Tim
11 thought that Pugh might be a price-only buying
12 group?

13 A. I think he felt he needed more
14 information.

15 Q. In the second e-mail down from the top
16 on page CX2296-001, an e-mail from Mr. Sullivan
17 at 11:27, he says, "We need to chat live. I do
18 not support us opening buying clubs."

19 By "buying clubs," you understand him
20 to mean buying groups?

21 MR. McDONALD: Object to the form.

22 A. I believe he was referring there to
23 price-only buying clubs.

24 Q. Why do you think he's referring to
25 price-only buying clubs?

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. Because that's what he's supporting.
 3 He's not in support of price-only buying clubs,
 4 and that's what he's saying here.
 5 Q. Does he use the words "price only" in
 6 his response?
 7 A. No, he doesn't use that.
 8 Q. At the top e-mail, the last in line,
 9 you respond, "Should we separate the discussion
 10 about buying groups?" And then in parentheses
 11 you write, "I fundamentally agree with Tim
 12 without better info to feel otherwise."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. So you fundamentally agree with Tim
 16 about not supporting buying clubs?
 17 MR. McDONALD: Objection to form.
 18 Mischaracterizes his testimony.
 19 A. Fundamentally agree in our value model
 20 and making sure we're going through a process
 21 that's a careful process and not just supporting
 22 price-only buying clubs.
 23 Q. You mentioned that with better info
 24 you might feel otherwise. So are you opening
 25 the door to potentially supporting price-only

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 buying groups if you had better information?
 3 A. I needed more information. They're
 4 always looking for more information to
 5 understand completely what the nature of this
 6 particular group is and so, you know, want to
 7 have a dialogue.
 8 Q. And if you received more information,
 9 could you be convinced to work with price-only
 10 buying groups?
 11 MR. McDONALD: Object to the form.
 12 A. As of right now, again, price-only
 13 buying groups do not fundamentally fit with our
 14 business model.
 15 Q. Tim mentions the need to chat live.
 16 Did you ever chat live about this
 17 account?
 18 A. I actually don't recall.
 19 Q. You can put aside CX2296.
 20 I want to fast forward in time a
 21 little bit to 2015. We talked a little bit
 22 about MB2 and Dental Gator earlier today.
 23 In 2015, do you recall that MB2 was
 24 planning to visit with Adec?
 25 A. I don't recall that.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 Q. Who is Adec?
 3 A. Adec is a manufacturer of dental
 4 equipment.
 5 Q. Do you recall there being a concern
 6 that Adec would learn about Dental Gator?
 7 MR. McDONALD: Object to the form.
 8 A. I don't recall that in particular.
 9 Q. Do you recall there was a concern that
 10 Adec would learn that buying groups had received
 11 discounts on Adec supplies without Adec's
 12 knowledge?
 13 A. I don't recall that in particular.
 14 (Complaint Counsel Exhibit cx2135-001
 15 through 003, an e-mail chain bearing Bates
 16 Nos. Henry Schein-000601936 through 938,
 17 marked for identification, as of this date.)
 18 BY MS. ROSNER:
 19 Q. I'm going to provide you with a
 20 document that's been previously marked as
 21 CX2135. It's a multi-page e-mail string. The
 22 first page of the document bears a Bates stamp
 23 Henry Schein-000601936.
 24 Please take a moment to review CX2135
 25 and let me know when you're finished.

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 2 (Document review.)
 3 THE WITNESS: Okay.
 4 BY MS. ROSNER:
 5 Q. Have you had an opportunity to review
 6 CX2135?
 7 A. Yes.
 8 Q. It's an e-mail string. The top e-mail
 9 is from you dated May 20, 2015 at 11:47 a.m.
 10 The e-mail string is between you, Mr. Sullivan,
 11 and Mr. Muller. I believe there are e-mails
 12 throughout.
 13 You drafted the e-mails in this string
 14 as part of your job?
 15 A. Yes.
 16 Q. It's part of your job to respond to
 17 e-mails that you get in business?
 18 A. Yes.
 19 Q. You have knowledge of the contents of
 20 CX2135?
 21 A. Yes.
 22 Q. You drafted the e-mails in CX2135 at
 23 the time the events arose?
 24 A. Yes.
 25 Q. You drafted the e-mails in CX2135 and

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 maintained them in Schein's ordinary course of
 3 business?
 4 A. Yes.
 5 Q. CX2135 is a true and correct copy of
 6 the e-mail correspondence?
 7 A. I believe so.
 8 Q. Turning to pages 2135-002 ending with
 9 003, you see there's a discussion about MB2
 10 visiting Adec?
 11 A. Yes.
 12 Q. And Mr. Sullivan raises a concern
 13 about Adec learning about Dental Gator?
 14 A. He's raising a question about Dental
 15 Gator and the visit of -- in relation to the
 16 visit of Adec, yes.
 17 Q. Would it be a problem for Schein if
 18 one of its manufacturers found out that Schein
 19 was doing business with a buying group?
 20 MR. McDONALD: Object to the form.
 21 A. Not necessarily.
 22 Q. Do you think it would be a problem
 23 here if Adec learned that Schein was doing
 24 business with Dental Gator?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. Adec and other manufacturers would
 3 have special pricing that would have been part
 4 of the role that we played in between the
 5 manufacturer and our DSO customer MB2, so Adec
 6 would have had an understanding of how they fit
 7 into that.
 8 Dental Gator is now different, and how
 9 does that affect how Adec sells or if they sell.
 10 That's up to them, to Dental Gator, at what
 11 price. It's a different thing. So that
 12 probably is what Tim was talking about.
 13 Q. And Tim wanted to ensure that Adec
 14 didn't hear about Schein doing business with
 15 Dental Gator and getting Adec special pricing to
 16 Dental Gator?
 17 MR. McDONALD: Object to the form.
 18 A. I don't think that's so. I don't
 19 think that's so.
 20 Q. Mr. Muller proposes an easy solution
 21 to the Adec problem and simply said that they
 22 would talk to MB2 before the trip; is that
 23 right?
 24 Let me refer you to the first page,
 25 CX- --

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 A. I'm sorry. Please repeat the
 3 question. What e-mail are we referring to?
 4 Q. I'm going to refer you to page
 5 CX2135-001.
 6 A. Okay.
 7 Q. In the middle of the page, there's an
 8 e-mail from Mr. Muller at 11 a.m., and he
 9 proposes a solution to the problem by saying,
 10 "We could have a talk with MB2 before the trip";
 11 is that right?
 12 MR. McDONALD: Object to the form.
 13 A. Okay.
 14 Q. Mr. Muller then goes on to change the
 15 topic a little bit, and he says that, "Dental
 16 Gator is just one of the many buying groups that
 17 we're engaged with, I just think it is more
 18 obvious -- it's funny as we are discussing this,
 19 I got the following from Randy and I am passing
 20 it on -- the real question we need to answer
 21 (and maybe for the off-site) is how solid a
 22 stance do we want to have?"
 23 Did I read that correctly?
 24 A. Yes.
 25 Q. And then below that, do you understand

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 2 that he's pasted part of an e-mail from Randy?
 3 A. I'm sorry, where is the Randy
 4 reference?
 5 Q. I believe it begins with the quotation
 6 marks, "One thing I have noticed," and then it
 7 ends that paragraph with the name Randy.
 8 A. "I got the following from Randy."
 9 Okay. Got it.
 10 Q. Is that your understanding, that he's
 11 just pasted in one paragraph from Randy?
 12 A. It appears that way.
 13 Q. And you understand Randy to be Randy
 14 Foley?
 15 A. Yes.
 16 Q. And Mr. Foley works with Mr. Muller,
 17 or did, in the Special Markets group at this
 18 time?
 19 A. Correct.
 20 Q. Before we get to Randy's e-mail, Mr.
 21 Muller says, "The real question we need to
 22 answer (and maybe for the off-site) is how solid
 23 a stance do we want to have?"
 24 This is with regards to buying groups,
 25 is that your understanding?

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2 A. I'm not sure exactly what he's
3 referring to.

4 Q. Well, you tell him that he's proposing
5 a very relevant topic at the top e-mail,
6 "Definitely not for e-mail, but a very relevant
7 topic."

8 What is it that you think he's
9 referring to?

10 A. My e-mail relates to his
11 second-to-last paragraph.

12 Q. Okay.

13 A. Where he says, "I am looking into
14 creating a real GPO as a new corporation and
15 what that would entail -- so we could have that
16 in our back pocket should a real GPO..."

17 So that whole aspect of the e-mail,
18 you know, prompted me to say this is relevant.
19 It's complicated, this whole situation is
20 complicated, and it's best for us to have a
21 conversation about it.

22 Q. So up above in Mr. Muller's e-mail,
23 his second full paragraph that begins, "Dental
24 Gator is just one of many buying groups," he
25 ends that paragraph with, "The real question we

1 CONFIDENTIAL - JAMES BRESLAWSKI

2 need to answer (and maybe for the off-site) is
3 how solid a stance do we want to have?" And so
4 he's suggesting this topic be discussed at the
5 off-site.

6 In your e-mail you say, "If we choose
7 to discuss at the off-site, let's do whatever
8 homework necessary to utilize time as best as
9 possible."

10 What's the question that's being
11 discussed at the off-site?

12 MR. McDONALD: Objection to form.

13 Asked and answered.

14 A. That particular sentence, "if we
15 choose to discuss at the off-site" and the
16 "homework," I was referring to the brainstorming
17 idea about creating something in a new
18 corporation that doesn't exist, which is very
19 complicated and didn't want to get to the
20 off-site without having some real homework done
21 about it.

22 Q. So you're not responding at all to Mr.
23 Muller's question about how solid a stance
24 should Schein have in its buying groups?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAMES BRESLAWSKI

2 Asked and answered twice now.

3 A. I'm telling you what my -- my
4 recollection of what my e-mail was about.

5 Q. Going into the paragraph that Mr.
6 Muller pastes from Randy's e-mail, Mr. Foley's
7 e-mail, he says, "One thing I've noticed getting
8 back into my in inbox is the volume of questions
9 on BGs."

10 You understand "BGs" to mean buying
11 groups?

12 A. I believe so.

13 Q. Mr. Muller then asks, "Can we come up
14 with some type of plan, either from us or from
15 HSD?"

16 Do you understand Mr. Foley to be
17 asking for some type of plan on buying groups?

18 A. I'm not exactly sure what he's asking
19 for.

20 Q. Would it surprise you to hear Mr.
21 Foley asking for some type of plan on buying
22 groups?

23 MR. McDONALD: Object to the form.

24 A. Based upon what Randy has written,
25 it's indicative of the fact that there is, over

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2 this window of time and a little bit before,
3 there has been an acceleration of all kinds of
4 new entities out there, and it would be
5 beneficial for us to really understand this as
6 best as possible and how it actually fits with
7 Henry Schein today and going forward, and I
8 think that's what he was looking for.

9 Q. Henry Schein already has a practice at
10 this point about how and whether to engage with
11 buying groups, right?

12 MR. McDONALD: Object to the form.

13 Asked and answered.

14 A. Yes.

15 Q. Would there be any reason to change
16 how Henry Schein engages and when Henry Schein
17 engages with buying groups?

18 A. The marketplace is always changing.
19 The level of activity of different kinds of
20 entities taking on all different kinds of forms
21 is constantly changing, and so we have to make
22 sure that we're paying attention to what's
23 happening in the marketplace, and this, I
24 believe, and this issue of there being a lot
25 more activity of various kinds and in various

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2 forms further led us to creating a more
3 structured and functionally resourced team to
4 focus on what we call this alternate purchasing
5 channel group.

6 Q. After the e-mail from Mr. Foley that's
7 pasted in, Mr. Muller goes on to say, "Brian
8 Brady tells me that the West Coast is busting
9 with groups that are looking for purchasing
10 deals and Schein is losing out."

11 Is it your understanding that Schein
12 is losing out on these West Coast purchasing
13 deals because it's not bidding on buying groups?

14 MR. McDONALD: Object to the form.

15 THE WITNESS: I'm not sure exactly
16 what Brian is referring to.

17 Q. By "losing out," does that mean that
18 Schein is not winning volume from these
19 customers?

20 MR. McDONALD: Object to the form.

21 He just told you he's not sure what it
22 means.

23 A. Yeah, I'm not sure.

24 Q. In the top e-mail where you respond,
25 "Definitely not for e-mail," why is this a topic

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 not for e-mail?

3 A. Because it's, again, this is, in
4 particular, related to -- so, at the conclusion,
5 related to something creating a GPO that doesn't
6 exist, a new corporation, something totally
7 different. It's a very complex topic,
8 impossible, in my view, to dialogue about on
9 e-mail.

10 So I said we should not talk about
11 this on e-mail, let's have a meeting, but let's
12 be prepared for the meeting. Do the homework.

13 Q. Did you ever have the meeting?

14 A. We had our off-site meeting, and the
15 concept of our creating our own GPO and a new
16 corporation did not go very far, and there
17 really wasn't much in the way of preparation
18 done, and so it really -- it's not something
19 that has, at that time, it's not something that
20 had much in the way of legs.

21 Q. When you say that it didn't go very
22 far, what was the discussion at the meeting
23 regarding creating your own GPO?

24 A. I don't recall the details of that.
25 It didn't turn out to be a very significant

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 agenda item because the team was not very well
3 prepared, as I recall.

4 Q. Who was involved in the discussion
5 about creating Schein's GPO?

6 A. The off-site meeting would have been
7 the leadership team of -- it would have included
8 the people on this e-mail and a few other of the
9 senior executives responsible for the U.S.
10 Dental business and possibly even people from
11 some other markets.

12 Q. Who would have been some of those
13 people that you're referencing?

14 A. So it would have been likely -- I
15 don't recall the exact list of those who would
16 have attended the off-site, but it would have
17 included the direct reports of mine and it would
18 have included some of our other colleagues that
19 support the business, like our IT director and a
20 Human Resource colleague and things of that
21 nature. So it was a list of maybe ten or so
22 people, but the primary commercial people would
23 have been my direct reports.

24 Q. You can put that document aside.

25 MR. McDONALD: Would you like to take

1 CONFIDENTIAL - JAMES BRESLAWSKI
2 a break?

3 MS. ROSNER: Sure.

4 (Recess; Time Noted: 2:10 p.m.)

5 (Time Noted: 2:30 p.m.)

6 BY MS. ROSNER:

7 Q. Mr. Breslawski, you report to Stanley
8 Bergman; is that right?

9 A. Yes, I do.

10 Q. What is Mr. Bergman's reaction to the
11 Dental business?

12 MR. McDONALD: Objection to form.

13 Vague.

14 A. Well, Stanley is our CEO, so Stan --
15 and our Dental business is our largest business
16 of Henry Schein, and so he is involved with
17 periodic reporting to him as to the status and
18 performance of business, and he would also
19 periodically visit various locations and
20 participate in different meetings, such as our
21 national sales meeting.

22 And he also is very actively involved
23 in supporting the profession that we serve in
24 the Dental business and helping us stay very
25 well connected to the profession, understanding

<p style="text-align: right;">Page 174</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 what the profession's goals and needs are, and 3 helping to align the resources of Henry Schein 4 to help our customers achieve those goals. 5 Q. Is Mr. Bergman involved on individual 6 dental customer accounts? 7 A. Not as a matter of a regular course. 8 Q. Would Mr. Bergman be aware of Schein's 9 practice of working with buying groups? 10 A. Not to any detail. 11 Q. Would he know the general practice 12 that Schein engages with buying groups? 13 A. Absolutely. 14 MR. McDONALD: Object to the form. 15 A. Absolutely. He would know that we 16 have been working with buying groups for a very 17 long time. He also would have a good 18 understanding of what our Special Markets 19 business is about and how we work with large 20 customers in that respect. 21 Q. Would Mr. Bergman have to approve 22 Schein's practice of working with buying groups? 23 A. Typically, he would not. 24 Q. I want to go back to something you 25 mentioned earlier today when we were talking</p>	<p style="text-align: right;">Page 175</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 about value-added buying groups over time. 3 You mentioned that there's more 4 discipline now than there was in the past. 5 What do you mean by that statement? 6 A. What I was referring to is that today 7 a level of activity in the marketplace with 8 regard to different kinds of entities that are 9 representing that they can pull together 10 customers to be part of an affiliation or a 11 group is greater than it used to be, and we felt 12 that it would be important for us to create a 13 separate group of resources internally to 14 understand that space as best as possible and to 15 put more structure and process and procedure 16 around managing that aspect of the business. 17 Q. As Schein has more discipline today 18 than it did in the past, is that to say that in 19 the past Schein said yes to buying groups that 20 it should have said no to? 21 MR. McDONALD: Object to the form. 22 A. I'm not sure. I know that we have 23 been working with many different buying groups 24 over the years, and I'm not aware of all of the 25 attributes of all of those different buying</p>
<p style="text-align: right;">Page 176</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 groups and how they would match up specifically 3 to the discipline or the new structural process 4 that Darci and the team are working today. I 5 just don't know. 6 Q. Is that to say that Schein in the past 7 said no to buying groups that it should have 8 said yes to? 9 MR. McDONALD: Object to the form. 10 A. I don't know. I don't know. 11 Q. Who would know? 12 MR. McDONALD: Object to the form. 13 A. I'm not sure who would know. 14 Q. Does Mr. Bergman have knowledge about 15 each of Schein's buying group customers? 16 MR. McDONALD: Object to the form. 17 A. I don't believe so. 18 Q. Would Mr. Bergman have any reason to 19 be aware of the Dental Co-op of Utah? 20 MR. McDONALD: Object to the form. 21 A. I don't know. I don't know myself, 22 and I don't know if he would. 23 Q. Are you familiar that the Dental Co-op 24 of Utah as a buying group? 25 A. I'm really not familiar with them.</p>	<p style="text-align: right;">Page 177</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 Q. Do you recall whether Schein did 3 business with the Dental Co-op of Utah? 4 A. I can't think of any details right 5 now. I can't recall anything in particular 6 about the -- a dental buying group in Utah. 7 Q. Do you recall Mr. Bergman learning 8 about the Dental Co-op of Utah and Schein's 9 relationship with them and saying that it did 10 not feel right? 11 MR. McDONALD: Object to the form. 12 A. I don't recall. 13 (Complaint Counsel Exhibit CX2315-001 14 through 004, an e-mail chain bearing Bates 15 Nos. Henry Schein-000110472 through 475, 16 marked for identification, as of this date.) 17 BY MS. ROSNER: 18 Q. I'm going to hand you a document 19 that's been previously marked as CX2315. This 20 is a multi-page e-mail string. The first page 21 is Bates-labeled Henry Schein-000110472. 22 Please take a moment to review CX2315 23 and let me know when you're finished. 24 (Document review.) 25 THE WITNESS: Okay.</p>

1 CONFIDENTIAL - JAMES BRESLAWSKI
 2 BY MS. ROSNER:
 3 Q. You've had an opportunity to review
 4 CX2315?
 5 A. Yes.
 6 Q. This is an e-mail string. The
 7 latest-in-time e-mail at the top of the first
 8 page is from you dated October 20, 2015. There
 9 are some other e-mails in the string that were
 10 authored by you.
 11 You drafted the e-mails in 2315 as
 12 part of your job?
 13 A. Yes.
 14 Q. It's part of your job to respond to
 15 e-mails that you get at this business account?
 16 A. Yes.
 17 Q. You have knowledge of the contents of
 18 CX2315?
 19 A. Yes.
 20 Q. You drafted the e-mails in CX2315 at
 21 or near the time the events therein arose for
 22 you?
 23 A. Yes.
 24 Q. You drafted e-mails in CX2315 and
 25 maintained them in the course of Schein's

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 2 regularly conducted business?
 3 A. Yes.
 4 Q. CX2315 is a true and correct copy of
 5 your e-mail correspondence?
 6 A. I believe so.
 7 Q. Okay. At the bottom of CX2315-001,
 8 Mr. Cavaretta is talking about the Dental Co-op
 9 of Utah, the group that we were just mentioning,
 10 and mentions that at one point in time Schein
 11 did business with the Dental Co-op of Utah and
 12 then Schein terminated the contract when the
 13 Dental Co-op of Utah started to negotiate
 14 directly with manufacturers.
 15 Do you have any reason to discount
 16 that telling of Schein's history with the Dental
 17 Co-op of Utah?
 18 A. I really don't know myself anything of
 19 the history, so I'm reading what you're reading.
 20 Q. Going after that e-mail chain up the
 21 page towards Stanley Bergman's e-mail --
 22 A. Yes.
 23 Q. -- at 6:42 p.m.
 24 A. Yes.
 25 Q. He says, "Hi, JB. Can you please

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 2 look."
 3 And "JB" refers to you?
 4 A. That's me, yes.
 5 Q. "Does not feel right. Am concerned
 6 that this could have ripple effects."
 7 What is your understanding of what
 8 does not feel right?
 9 A. What I believe Stanley is referring to
 10 here and what I responded to is the overall take
 11 of the author of the CR newsletter and the
 12 reference that Stanley is concerned about that
 13 they may not really understand the value that we
 14 provide and that it would be important for us to
 15 find ways to help make sure that CR and Gordon
 16 Christiansen, who is the principal at CR, really
 17 does understand it, and so I said I'll follow up
 18 on that. That's what that was related to.
 19 Q. So it's your understanding that Mr.
 20 Bergman's e-mail doesn't relate to the
 21 information about the Dental Co-op of Utah,
 22 specifically?
 23 A. I don't believe so.
 24 Q. You think he's referring to the CR
 25 Newsletter article?

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 2 A. I took it as the subject, "CR
 3 Newsletter - October 2015," and his concern that
 4 overall this doesn't feel right. Doesn't feel
 5 right that they don't understand what our total
 6 value proposition is, and it would be important
 7 for us to follow up on that.
 8 Q. What do you interpret Mr. Bergman is
 9 saying when he says, "Am concerned that this
 10 could have ripple effects"?
 11 A. I'm not sure exactly what he meant by
 12 that, but responded more specifically to him
 13 feeling that this doesn't feel right. So when
 14 Stanley says something doesn't feel right to him
 15 and he asked me to look into it, that's what I
 16 do.
 17 Q. Did you look into it?
 18 A. Yes, we worked with a number of team
 19 members and I -- and I believe, I'm not sure if
 20 I have the dates right, but I believe we were
 21 able to spend some time with them to better
 22 understand our total value proposition around
 23 the education we provide for customers, the
 24 training and technical service that we provide
 25 for customers, the relationships that are

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 2 critical as part of a full-service dealer, and
 3 helping dealers become effective in adopting
 4 digital dentistry in their practice, and I think
 5 that was valuable to have him understand that.
 6 Q. You can set CX2315 aside.
 7 What is --
 8 A. I'm sorry, what did you say?
 9 Q. You can set aside that document.
 10 A. Okay. I'm sorry. My ears aren't the
 11 best. I'm an older man. Okay.
 12 Q. What is an off-site planning meeting?
 13 A. Twice a year, the team that I work
 14 with, and throughout the company, there's, you
 15 know, we have more than 22,000 team members in
 16 the company, so there are lots of leaders that
 17 have off-site meetings, but with my team, twice
 18 a year we go to the local hotel or we go to
 19 another site and we do some short-range and
 20 long-range planning with each other.
 21 Primarily, the attendees, as I
 22 mentioned before, would be my direct reports and
 23 the senior colleagues from the other functional
 24 areas in the business that we have to partner
 25 with.

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 2 happened at the meeting.
 3 Q. And why is it important to have a
 4 writing of some of the dialogue from the
 5 planning meeting?
 6 MR. McDONALD: Object to the form.
 7 A. It allows us to keep continuity in the
 8 ongoing running dialogue that we have with each
 9 other. This is a team of people that works very
 10 closely together, so it just helps keep some
 11 continuity in our conversation with each other.
 12 Q. Do you ever refer back to the planning
 13 meeting notes?
 14 A. Ever? Of course.
 15 Q. For what purpose?
 16 A. Not always.
 17 Sometimes to do some followup.
 18 Certainly on the action items, there's followup
 19 on the action items. Sometimes on the
 20 documented notes, looking back on the notes is
 21 done and sometimes not.
 22 Q. So you mentioned there are these two
 23 sets, the notes and the followup action items.
 24 Are these two separate documents?
 25 A. It's very informal. Sometimes it's

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 2 Q. You make it a practice of yours to
 3 attend these off-site planning meetings?
 4 A. Up until very recently, the planning
 5 meetings that I'm referring to, the global
 6 dental planning meetings, they were my meetings.
 7 Q. Does Mr. Bergman generally attend the
 8 planning meetings?
 9 A. No.
 10 Q. What is the purpose of off-site
 11 planning meetings?
 12 A. As I mentioned, the purpose of the
 13 planning meeting is short-term planning and
 14 long-term planning for the business.
 15 Q. Does someone regularly take notes
 16 during the planning meeting?
 17 A. Usually at the off-site planning
 18 meetings we will have some notes and some
 19 followup actions.
 20 Q. Starting with the notes, what's the
 21 purpose of someone taking the notes during the
 22 planning meeting?
 23 MR. McDONALD: Object to the form.
 24 A. The notes that would be circulated
 25 represent some of the dialogue that would have

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 2 all on one document. Sometimes it relates,
 3 depending upon where we are, it could relate to
 4 a strategic planning document. There could be
 5 multiple documents.
 6 Q. What's the purpose of having followup
 7 action items?
 8 MR. McDONALD: Object to the form.
 9 A. To give us a good chance of running a
 10 good business.
 11 Q. For HSD planning meetings, is there
 12 someone in particular who is designated as the
 13 note-taker?
 14 MR. McDONALD: Object to the form.
 15 Vague as to time.
 16 A. Sometimes there are different people
 17 that do it. There's probably one person over
 18 the course of the last handful of years that did
 19 it more than others.
 20 Q. Is that Jim Huether?
 21 A. Jim Huether, yeah.
 22 Q. H-U-E-T-H-E-R?
 23 A. That's correct.
 24 Q. Have you ever known Graham Stanley to
 25 be the note-taker for HSD planning meetings?

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 2 A. It's not usual that Graham would be
 3 the designated note-taker. It would -- Jim
 4 Huether reports to Graham Stanley, so Jim
 5 Huether is more the administrative note-taker
 6 and record keeper.
 7 Q. If Jim Huether did not attend an HSD
 8 planning meeting, who would be the next natural
 9 person to be the note-taker?
 10 A. Could be anyone.
 11 MR. McDONALD: Object to form.
 12 A. Could be anyone.
 13 Q. Do you ever share planning meeting
 14 notes with Mr. Bergman?
 15 A. Rarely.
 16 Q. Do you ever share planning meeting
 17 notes with anyone who doesn't attend the
 18 meeting?
 19 A. Again, not usually.
 20 Q. Is it important that planning meeting
 21 notes are accurate?
 22 MR. McDONALD: Object to the form.
 23 A. It's important that, topically, that
 24 the topics are captured. Oftentimes, there's a
 25 lot of conversation, and the notes are not

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 2 necessarily specifically accurate, but the
 3 topics that are identified are usually on point
 4 as to the topics that were discussed.
 5 Q. I just want to make sure I understand
 6 what you're saying. You're saying that the
 7 topics are accurate, but it's not as important
 8 that the specifics on those topics are not
 9 accurate?
 10 MR. McDONALD: Object to the form.
 11 Misstates the testimony.
 12 THE WITNESS: Can you please repeat,
 13 not this question, but the question before
 14 that?
 15 (Record read as follows:
 16 "Q Is it important that planning meeting
 17 notes are accurate?")
 18 THE WITNESS: So my answer to the
 19 question of is it important that they are
 20 accurate, my answer was that it's important
 21 that the topics are represented in the
 22 notes, but sometimes because there's so many
 23 aspects of any kind of a dialogue, the
 24 actual details may not be all the specific
 25 accurate details, but the topic is something

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 2 that we would expect to actually see.
 3 BY MS. ROSNER:
 4 Q. Would you like it for the details to
 5 also be accurate?
 6 MR. McDONALD: Object to the form.
 7 A. Again, it depends on the detail. Some
 8 of them that find their way into the notes are
 9 not that material, and it doesn't matter if it's
 10 accurate as long as the topic is covered.
 11 Q. What's the purpose of taking notes if
 12 it doesn't matter if some of them are not
 13 accurate?
 14 A. I think I --
 15 MR. McDONALD: Object to the form.
 16 Asked and answered. So.
 17 Tell her again.
 18 A. I think I did answer that question.
 19 It helps us keep our running -- we're with each
 20 other very frequently, and it just helps us keep
 21 our conversation with each other going.
 22 The more important thing is action
 23 items and owners and commitments to dates to
 24 follow up on specific things that might have
 25 come out of any particular meeting.

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 2 Q. So if the purpose of the notes is to
 3 keep the dialogue running, you would want to
 4 have some confidence that the dialogue
 5 represented in the notes is accurate so you
 6 could continue on the right direction; is that
 7 right?
 8 MR. McDONALD: Object to the form.
 9 You have asked him essentially the
 10 same question half a dozen times now, and I
 11 got to tell you, I mean, at this rate, I'm
 12 not going to agree to give you a minute over
 13 your time period. You're just wasting time.
 14 Go ahead. Answer again.
 15 THE WITNESS: Can I hear the question?
 16 (Record read.)
 17 MR. McDONALD: Objection. Asked and
 18 answered.
 19 THE WITNESS: Our notes are not
 20 perfect. Generally, we look for notes to
 21 contain the most important topics. At
 22 times, there's a lot of perhaps other
 23 details that are not that important, and if
 24 those details are not accurate but the topic
 25 is relevant, then it's important that that

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 2 topic stays in the conversation.
 3 BY MS. ROSNER:
 4 Q. You attended an HSD planning meeting
 5 on November 2, 2015; does that sound right?
 6 A. It's possible. Off the top of my
 7 head, I'm not sure what the dates of our
 8 meetings were.
 9 Q. Sure.
 10 (Complaint Counsel Exhibit CX2316-001
 11 through 003, an e-mail chain bearing Bates
 12 Nos. Henry Schein-000537458 through 460,
 13 marked for identification, as of this date.)
 14 BY MS. ROSNER:
 15 Q. I'm going to hand you a document
 16 that's been premarked as CX2316. It's a
 17 multi-page e-mail. The first Bates number is
 18 Henry Schein-000537458.
 19 Please take a moment to review CX2316
 20 and let me know when you've had a chance to
 21 familiarize yourself with the document.
 22 (Document review.)
 23 THE WITNESS: Okay.
 24 BY MS. ROSNER:
 25 Q. You've had an opportunity to review

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 2 CX2316?
 3 A. Yes.
 4 Q. This is an e-mail. The last-in-time
 5 e-mail chain at the top of the first page was
 6 sent by you on November 4, 2015.
 7 You wrote this e-mail as part of your
 8 job?
 9 A. Yes.
 10 Q. It's part of your job to respond to
 11 e-mails about off-site planning meetings?
 12 A. Yes.
 13 Q. You had knowledge of the contents of
 14 this e-mail?
 15 A. Yes.
 16 Q. You drafted the e-mail on CX2316 at or
 17 near the time that you got the notes from the
 18 planning meeting?
 19 A. Yes.
 20 Q. You drafted and maintained the e-mails
 21 in CX2316 as part of Schein's regularly
 22 conducted business?
 23 A. Yes.
 24 Q. And CX2316 represents a true and
 25 correct copy of your e-mail correspondence?

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 2 A. I believe so.
 3 Q. Below your e-mail is an e-mail from
 4 Graham Stanley, and Mr. Stanley is forwarding
 5 notes from an off-site planning meeting; is that
 6 right?
 7 A. I'm not sure. The reason why I say
 8 that is that, in looking at this, it doesn't
 9 strike me as one of our off-site planning
 10 meetings. It might have been a different
 11 meeting that we had. It could have been.
 12 Because some of the people that are copied here,
 13 I'm just not sure. I'm not sure if it was an
 14 off-site planning meeting. It was definitely a
 15 meeting amongst this group of people, but it
 16 might not have been one of those two meetings
 17 that I referred to where we have a two-day
 18 session each, you know, twice a year.
 19 Q. Mr. Sullivan has previously testified
 20 that these were notes from an off-site planning
 21 meeting.
 22 Do you have any reason to think that
 23 he might have been mistaken?
 24 A. That may --
 25 MR. McDONALD: Hang on.

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 2 Object to the form.
 3 A. That may have been -- this could be an
 4 off-site meeting that perhaps was actually held
 5 in Wisconsin. I'm just saying that the meetings
 6 that I have just -- to be clear, the meetings
 7 that I was referring to we have twice a year.
 8 They're typically two-day long meetings.
 9 The Global Dental business, just
 10 looking at the addressees, this would indicate
 11 to me that this meeting, and it could have been
 12 off-site, I'm not saying Tim's wrong, but it's
 13 not the meeting that I was referring to.
 14 Q. The people that are included in the
 15 addressee line of Mr. Graham -- Stanley
 16 Graham -- Graham Stanley's e-mail, who are these
 17 people?
 18 A. So these are people that are involved
 19 in the U.S. Dental business, primarily Tim's
 20 team, looks like. Primarily Tim's team.
 21 Q. And --
 22 A. So, again, this is not that off-site
 23 meeting that I was referring to before the
 24 Global Dental planning meetings.
 25 Q. And it appears that Mr. Stanley took

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 2 notes at this meeting that occurred with Tim's
 3 team?
 4 A. He took notes, and he asked whether or
 5 not there were other things that others would
 6 like to add, but I don't know if people did add
 7 notes or not.
 8 Q. But you added notes? Your e-mail at
 9 the top of the -- chain offers some amendments?
 10 A. Okay.
 11 Q. -- to Mr. Stanley's notes?
 12 A. Yeah; that's my comment, right.
 13 Q. You suggested a correction on the
 14 reinvented loyalty program, right?
 15 A. Right.
 16 Q. You also noted that Mr. Stanley forgot
 17 to mention the long-term plan structure?
 18 A. Yes.
 19 Q. These were topics that you pointed
 20 out, because when you reviewed Mr. Stanley's
 21 notes, they jumped out at you as being
 22 inaccurate?
 23 A. I don't know if they jumped out at me.
 24 Just when I read Graham Stanley's notes, it
 25 occurred to me to write this e-mail with this

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 2 content.
 3 Q. You made these suggestions to Mr.
 4 Stanley and provided this content because you
 5 wanted his notes to be accurate?
 6 MR. McDONALD: Object to the form.
 7 Asked and answered.
 8 A. I wanted my thoughts at that moment,
 9 and if I spent some more time, I might have had
 10 other thoughts, but I wanted these particular
 11 thoughts to also be recognized by Graham.
 12 Q. Did anybody tell you to write this
 13 e-mail to Mr. Stanley?
 14 A. Not that I recall.
 15 Q. Did anybody tell you what to say in
 16 your e-mail to Mr. Stanley?
 17 A. Not that I recall.
 18 Q. Looking at Mr. Stanley's e-mail,
 19 turning to the second page, CX2316-002, about
 20 three-quarters down the way of that page, he has
 21 a heading that says "Buying Groups," and then
 22 under that heading it says, "Tim clearly set out
 23 that HS should not be first to cooperate with
 24 GPOs, but also don't want to be the last."
 25 Did I read that correctly?

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 2 A. Yes.
 3 Q. When he refers to Tim, he's referring
 4 to Tim Sullivan?
 5 A. I believe so, yes.
 6 Q. And "HS" refers to Henry Schein?
 7 A. I think so, yes.
 8 Q. And so at the meeting on November 2,
 9 Tim said that Henry Schein should not be the
 10 first to cooperate with GPOs?
 11 MR. McDONALD: Object to the form.
 12 A. Again, I believe this particular
 13 reference, in context, has to do with GPOs as
 14 compared to what we were talking about before
 15 with regard to, in the medical world, the
 16 separate structure of GPOs as opposed to buying
 17 groups, and there is no real presence of a
 18 traditional medical like GPO in the Dental
 19 business, and I think that Tim is -- I believe
 20 that's what Tim was referencing.
 21 Q. You attended the meeting. Do you
 22 recall this statement?
 23 A. No.
 24 Q. When in the notes it refers to GPOs,
 25 you're referring -- you think that Tim is

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 2 referring to a medical GPO, is that your
 3 testimony?
 4 A. My recollection is that this comment
 5 specifically relates to the medical form of GPO.
 6 That is my recollection.
 7 Q. Sorry. You just said that you don't
 8 remember Tim making this statement?
 9 A. No, this is what I believe that this
 10 refers to. I can't recall his statement.
 11 Q. The heading is "Buying Groups."
 12 Is it the case that sometimes people
 13 confuse GPOs and buying groups or use those
 14 terms interchangeably?
 15 A. I believe I mentioned that earlier in
 16 my testimony that internally within the company
 17 that there is sometimes utilization of buying
 18 groups and GPOs and buying clubs that are used
 19 in an interchangeable way.
 20 I personally, whenever speaking about
 21 GPOs, specifically focus on the GPO model, as I
 22 understand it, on the medical side of the
 23 business.
 24 Q. Is it possible that this reference of
 25 GPOs actually means buying groups?

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 2 MR. McDONALD: Object to the form.
 3 Asked and answered.
 4 A. I don't think so. I think it relates
 5 to the medical. That's my take on it.
 6 Q. Underneath this bullet, underneath
 7 this sentence, there's a bullet that says "CDA
 8 bid likely soon."
 9 Is CDA a GPO?
 10 MR. McDONALD: Object to the form.
 11 A. That is a -- I believe that that is a
 12 reference to the California Dental Association.
 13 I believe. I could be wrong, but I think that's
 14 what that is.
 15 Q. Is the California Dental Association a
 16 GPO?
 17 A. No.
 18 Q. Was the California Dental Association
 19 starting a buying group?
 20 MR. McDONALD: Object to the form.
 21 A. The California Dental Association was
 22 starting some form of a group, yes. I believe,
 23 I'm not sure, again, of the timing, but I
 24 believe that that's true.
 25 Q. The next bullet is, "Possible solution

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 2 could be redefinition of loyalty program."
 3 Does Schein have a GPO loyalty program
 4 in the Dental unit?
 5 A. No.
 6 Q. Does Schein have a buying group
 7 loyalty program?
 8 A. We have an overall loyalty program for
 9 customers, and sometimes the loyalty program is
 10 baked into the unique deal that a customer or an
 11 entity, a buying group or whatever, may have as
 12 part of their overall offering.
 13 Q. This isn't the first time today we
 14 have seen this idea of Tim saying Schein should
 15 not be the first to cooperate, but also don't
 16 want to be the last.
 17 Is there some Schein policy about not
 18 being the first in the market and waiting for
 19 others to enter first?
 20 MR. McDONALD: Object to the form.
 21 A. There's no broad-based policy as you
 22 referenced.
 23 Q. Does it seem strange to you that
 24 someone from Schein would be advocating not
 25 being the first in a market?

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 2 MR. McDONALD: Object to the form.
 3 A. I think that Tim is very focused, as
 4 his team, as am I, on the overall value
 5 proposition and strategy that we have in the
 6 business model of high value, helping our
 7 customers grow their business, focusing across a
 8 broad array of products and services beyond
 9 merchandise to include all of their technical
 10 service, business consulting services, practice
 11 management and on and on and on, and I think
 12 that Tim wants to not lose sight of that as our
 13 primary high-value focus, and so to stray from
 14 that, I think Tim just wants to be very
 15 cautious.
 16 Q. Would being first in a market
 17 necessarily mean you'd have to stray from your
 18 value-focused proposition?
 19 A. It depends on what that activity would
 20 be.
 21 Q. Tim says that he also doesn't want to
 22 be the last.
 23 What would be so bad about being the
 24 last in any market?
 25 A. Markets are always changing. Things

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 2 are happening on a regular basis in a market,
 3 and if there is some particular trend that, for
 4 whatever reason, we didn't participate in soon
 5 enough and we were very late to market, it could
 6 be something that we would regret.
 7 Q. Do you agree that Schein should not be
 8 the first to welcome medical GPOs in Dental?
 9 MR. McDONALD: Object to the form.
 10 A. I believe that there's a natural
 11 reason that exists on the medical side of the
 12 business as to how GPO structures were created,
 13 as I believe I testified to before, coming out
 14 of the acute care space.
 15 I believe that, generally speaking, we
 16 play, in large part, a role of a GPO with our
 17 customers and the value that we provide to the
 18 manufacturers we represent, and also the
 19 products and services that we provide our
 20 customers. So inserting another entity for us
 21 in the Dental business doesn't seem needed.
 22 Q. So would you agree with Tim then that
 23 you don't want to be the group that introduces
 24 GPOs to Medical -- excuse me. You don't want to
 25 be the group that introduces GPOs to Dental?

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 2 MR. McDONALD: Object to the form.
 3 A. I believe that it's very important for
 4 us to pay close attention to what's happening
 5 with regard to GPO development on the medical
 6 side of the business; continue to, you know,
 7 identify how, if at all, a medical GPO model is
 8 moving into dentistry, if it is or not; and make
 9 prudent decisions based upon what we see
 10 happening in the marketplace.
 11 Q. You can put that document aside.
 12 Schein has Worldwide Business
 13 Standards that address communications with
 14 competitors; is that right?
 15 A. We do have Worldwide Business
 16 Standards, yes, training, compliance, in all
 17 kinds of forms.
 18 Q. And is there some component of your
 19 compliance training that addresses
 20 communications with competitors?
 21 A. Yes.
 22 Q. Schein executives are required to
 23 undergo these trainings on Worldwide Business
 24 Standards on a regular basis?
 25 A. Yes.

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 2 Q. Do you attend those trainings?
 3 A. Yes, I do.
 4 Q. Does Stanley Bergman attend those
 5 trainings?
 6 A. Yes, he does.
 7 Q. Do your direct reports attend these
 8 trainings?
 9 A. Yes, they do.
 10 Q. What do those trainings say about
 11 communications with competitors?
 12 A. You should not have them.
 13 Q. Why is there a standard against
 14 communicating with competitors?
 15 MR. McDONALD: Object to the form.
 16 A. It's important for us to make sure
 17 that we're actively competing in the
 18 marketplace, that we are focused on our
 19 business, and really recognizing that it's
 20 important for us to compete with our
 21 competitors.
 22 Q. Does Schein take that guidance
 23 seriously?
 24 A. Of course.
 25 Q. What's the consequence for having a

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 2 communication with a competitor that would
 3 violate Schein's Worldwide Business Standards?
 4 MR. McDONALD: Object to the form.
 5 A. So it depends on the circumstance and
 6 it depends -- and on a case-by-case basis, I'm
 7 sure that would be addressed.
 8 Q. What are some of the consequences that
 9 could result from improper communications with
 10 competitors?
 11 MR. McDONALD: Object to the form.
 12 A. Someone could be terminated.
 13 Q. Anything else?
 14 MR. McDONALD: Object to the form.
 15 A. Certainly someone could be counseled
 16 in terms of not adhering to compliance standards
 17 and, you know, be provided ongoing training and
 18 coaching to make sure that compliance is adhered
 19 to.
 20 Q. Anything else?
 21 MR. McDONALD: Object to the form.
 22 A. I'm not sure of any other specific
 23 consequential details -- consequential detail,
 24 and so I'm not aware of it. It could be
 25 happening, but I don't know.

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 2 Q. Has anyone suffered such consequences
 3 for these -- for such communications that you're
 4 aware of?
 5 MR. McDONALD: Object to the form.
 6 A. I actually don't know specifically off
 7 the top of my head. I don't know.
 8 Q. If someone had suffered consequences
 9 for improper communications with competitors,
 10 who would know?
 11 MR. McDONALD: Object to the form.
 12 A. Our HR and Legal team for sure would
 13 know.
 14 Q. How do you identify when a
 15 communication violates Schein's Worldwide
 16 Business Standards?
 17 MR. McDONALD: Object to the form.
 18 Calls for a legal conclusion.
 19 THE WITNESS: Please repeat the
 20 question.
 21 (Record read.)
 22 MR. McDONALD: Same objection.
 23 THE WITNESS: It depends on what the
 24 content of that communication may be.
 25 BY MS. ROSNER:

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2 Q. You've been trained on not having
3 improper communications with competitors.

4 What are the telltale signs that you
5 try to avoid?

6 A. Well, I try to avoid communicating
7 with competitors, generally speaking.

8 Q. Are there instances in which you find
9 yourself in a situation where you have to
10 communicate with someone at a competitor?

11 A. Over time, I'm sure that I've had some
12 connections with competitors -- communications
13 with competitors that involved in the dental
14 trade association. There might be some
15 association business.

16 Sometimes what happens also is a
17 competitor becomes part of a company over time,
18 and we, you know, we've grown our business in a
19 combination of organic growth internally, but
20 also through a host of joint ventures and
21 various M&A activities and acquisitions. And in
22 fact, that's how Tim Sullivan became part of the
23 Henry Schein organization, as we acquired his
24 company back in 1997.

25 Q. So when you have communications or you

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2 find yourself in a situation that would require
3 you to have communications with competitors, are
4 there topics that you personally try to avoid so
5 as not to violate Schein's Worldwide Business
6 Standards?

7 MR. McDONALD: Object to the form.

8 A. Sure.

9 Q. What are some of those topics?

10 MR. McDONALD: Object to the form.

11 A. I really wouldn't talk about our
12 business with our customers, with our pricing or
13 any kind of things that we, you know, clearly
14 should not be talking about.

15 Q. Anything else?

16 A. We keep whatever conversation totally
17 separate to competing with each other in the
18 marketplace.

19 Q. Anything else?

20 A. Not that comes to mind.

21 Q. Would that include aspects that might
22 give Schein a competitive advantage such as its
23 deals with manufacturers?

24 A. Yeah, we would not -- I would not be
25 talking with my competitors about deals with

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2 manufacturers.

3 Q. What about other aspects that keep
4 Schein competitive, such as its hiring terms for
5 FSCs?

6 MR. McDONALD: Object to the form.

7 A. Typically wouldn't be talking to my
8 competitors about that either.

9 Q. Why is that?

10 A. Just --

11 MR. McDONALD: Object to the form.

12 A. Just not appropriate.

13 Q. Have you ever witnessed communications
14 with competitors that you think may violate
15 Schein's Worldwide Business Standards?

16 A. Per se violations of our Worldwide
17 Business Standards, not that I recall.

18 Q. Have you ever personally spoken to
19 anyone about violating or their violating
20 Schein's Worldwide Business Standards with
21 respect to competitor communications?

22 A. Not that I recall right now.

23 Q. Has anyone ever spoken to you about
24 your violating Schein's Worldwide Business
25 Standards with respect to --

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2 A. No, not that I recall.

3 Q. Have you ever witnessed Stanley
4 Bergman having conversations with competitors
5 that violated Schein's Worldwide Business
6 Standards?

7 A. No.

8 Q. Have you ever witnessed Stanley
9 Bergman encourage others to have conversations
10 with competitors that might violate Schein's
11 Worldwide Business Standards?

12 A. No.

13 Q. Would calling on a competitor and
14 proposing a, quote, full-blown war or ceasefire
15 constitute an improper competitor communication?

16 MR. McDONALD: Object to the form.

17 A. I don't know what the context of that
18 is.

19 Q. Is there a context in which directing
20 someone to call a competitor and propose a
21 full-blown war or ceasefire would not violate?

22 A. I don't understand what -- sorry.

23 MR. McDONALD: Object to the form.

24 A. Repeat the question.

25 Q. Is there an instance in which

<p style="text-align: right;">Page 210</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 directing someone to call a competitor and 3 proposing a, quote, "full-blown war or a 4 ceasefire" would not violate Schein's Worldwide 5 Business Standards? 6 MR. McDONALD: Object to the form. 7 A. Again, I don't know what the topic is. 8 I don't -- I just don't know the context. I 9 don't know the topic. I don't know what it's 10 about, what you're referring to. 11 Related to a particular business 12 matter? Related to something unrelated to 13 business? I don't know. 14 Q. Would it be appropriate -- 15 A. I don't know. 16 Q. -- for someone to call a competitor 17 related to a business matter and propose either 18 a full-out war or a ceasefire? 19 MR. McDONALD: Objection to the form. 20 Asked and answered. 21 A. Again, I don't know the context of -- 22 I can't envision that, that circumstance. 23 (Complaint Counsel Exhibit CX2320-001 24 through 003, an e-mail chain bearing Bates 25 Nos. Henry Schein-001243322 through 325,</p>	<p style="text-align: right;">Page 211</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 marked for identification, as of this date.) 3 BY MS. ROSNER: 4 Q. I'm going to hand you a document that 5 has been previously marked as CX2320. It is a 6 multi-page e-mail string. The first page is 7 marked Henry Schein-001243323. 8 Please take a moment to review the 9 document and let me know when you're finished. 10 I apologize. I handed you the wrong 11 document. I'm going to hand you a separate 12 document. You can put that one aside. 13 CX2332. 14 The Bates on this is Henry 15 Schein-001119026. 16 Please take a moment to review CX2332 17 and let me know when you are done. 18 (Complaint Counsel Exhibit CX2332-001 19 through 003, an e-mail chain bearing Bates 20 Nos. Henry Schein-001119026 through 028, 21 marked for identification, as of this date.) 22 (Document review.) 23 THE WITNESS: Okay. 24 BY MS. ROSNER: 25 Q. You've had an opportunity to review</p>
<p style="text-align: right;">Page 212</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 CX2332? 3 A. Yes. 4 Q. It's a multi-page e-mail string. The 5 last-in-time e-mail, the top of the first page 6 is an e-mail from you dated December 12, 2010. 7 There are a couple of e-mails that you 8 have written throughout this chain. 9 You drafted the e-mails in CX2332 as 10 part of your job? 11 A. Yes. 12 Q. It's part of your job to respond to 13 e-mails at work? 14 A. Yes. 15 Q. You have knowledge of the contents of 16 CX2332? 17 A. Yes. 18 Q. You drafted the e-mails in CX2332 at 19 or near the time that the events unfolding were 20 discussed? 21 A. Yes. 22 Q. You drafted and maintained e-mails in 23 CX2332 in Schein's regularly conducted business? 24 A. Yes. 25 Q. CX2332 is a true and correct copy of</p>	<p style="text-align: right;">Page 213</p> <p>1 CONFIDENTIAL - JAMES BRESLAWSKI 2 your e-mail correspondence? 3 A. I believe so. 4 Q. I want to turn your attention to the 5 last page, CX2332-003. It starts with an e-mail 6 from Stanley Bergman at 11:15 a.m. He 7 enumerates a couple of points to Tim and the 8 team, and you are one of the folks on the team. 9 In point (B) he says, "Do we have any 10 major Benco FSC players to go after at this 11 time? If yes, let's be aggressive. If no, then 12 Tim should call Chuck to tell him 'we could have 13 a full-blown war' or we can have a ceasefire. 14 We have the resources and he has to understand." 15 Did I read that correctly? 16 A. Yes. 17 Q. Mr. Bergman is instructing Chuck to -- 18 excuse me, Mr. Bergman is instructing Tim to 19 call Chuck, is that your understanding? 20 MR. McDONALD: Object to the form. 21 A. Yes. 22 Q. "Tim" is Tim Sullivan? 23 A. Tim Sullivan. 24 Q. "Chuck" is Chuck Cohen? 25 A. I believe so, yes.</p>

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2 Q. Chuck Cohen works at Benco?

3 A. Yes.

4 Q. And Mr. Bergman is directing Mr.
5 Sullivan to tell Benco we can have a full-blown
6 war or we can have a ceasefire.

7 What does he mean by "ceasefire"?

8 MR. McDONALD: Object to the form.

9 A. I'm not sure of exactly what was on
10 Stanley's mind at the time.

11 Q. Would you interpret "ceasefire" to be
12 the opposite of a full-blown war?

13 MR. McDONALD: Object to the form.

14 A. The way it's written here, it's the --
15 looks like the opposite, yeah.

16 Q. Tim responds to Mr. Bergman's e-mail
17 that, "We are far from sitting." If you go down
18 one, two, three, four bullet points in his
19 e-mail from 11:47 on page CX2332-002, he says,
20 "We can discuss non-hire agreement with them.
21 I've been thinking about the same thing."

22 Do you see that?

23 A. Yes.

24 Q. What's the non-hire agreement?

25 MR. McDONALD: Object to the form.

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2 A. I believe there was a period of time
3 during which there was some kind of -- I don't
4 recall all of the details, but some kind of an
5 understanding that should someone move from
6 Benco to us or us to Benco, that there would be
7 a window of time within which that
8 representative would be out of territory. I
9 think there was -- it was an agreement related
10 to that.

11 Q. You respond to Mr. Sullivan's e-mail
12 saying, "Thanks, Stan and Tim, for both
13 energizing this topic. Tim, team and I will
14 keep all informed about what we are doing and
15 brainstorm with colleagues regarding additional
16 options."

17 So you support Tim reaching out to
18 Benco about the non-hire agreement?

19 MR. McDONALD: Object to the form.

20 Mischaracterizes the document.

21 A. The topic that I'm referring to is
22 Benco going national and for us to make sure
23 that we're doing the best we possibly can to
24 compete with Benco.

25 Q. Do you disagree with the advice that

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2 Tim should reach out to Benco about the non-hire
3 agreement?

4 MR. McDONALD: Object to form.

5 A. I think it's -- I think it's not
6 something I would do.

7 Q. Would you --

8 A. It's not something I would naturally
9 do; pick up the phone and call Chuck.

10 Q. Why not?

11 A. I just wouldn't. Just wouldn't pick
12 up the phone, typically, and call Chuck. It's
13 not -- it's not something that I would do.

14 Q. Would it make you feel --

15 A. Tim is in a different position with
16 running that sales force, the U.S. dental sales
17 force, and --

18 Q. If you were in Tim's position running
19 the U.S. sales force, would you feel more
20 comfortable calling Chuck Cohen to talk about a
21 non-hire agreement?

22 MR. McDONALD: Object to the form.

23 A. Back in 2010, I know that there was
24 some dialogue about the aggressive hiring and
25 competing that was happening for sales reps, and

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2 perhaps I would have called, but I don't -- I
3 don't know for sure.

4 Q. You understand that --

5 A. I was --

6 Q. -- there was a formal agreement
7 between Schein and Benco involving not hiring of
8 FSCs?

9 A. I don't recall the exact nature of
10 what that agreement was. My recollection is
11 that the agreement was not about not hiring. I
12 don't think there was an agreement related to
13 not hiring, but should there be hiring, that
14 there was an understanding that for certain
15 window of time, that those reps were not to work
16 in the territories that they came from.

17 Q. Is that the 120-day sit-out period?

18 MR. McDONALD: Object to the form.

19 A. I don't recall those details. It
20 could be.

21 Q. In that agreement, were there any
22 limitations on the number of representatives
23 that could be hired from the competitor in a
24 given quarter?

25 A. I don't recall the details.

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 2 MR. McDONALD: Hang on.
 3 Object to the form.
 4 Go ahead.
 5 A. I don't recall the details of that
 6 particular agreement from back at that time.
 7 Q. Did Mr. Sullivan ever face
 8 consequences for his communications with Benco
 9 on the non-hire agreement?
 10 MR. McDONALD: Object to the form.
 11 MR. RACOWSKI: Object to the form.
 12 Foundation.
 13 A. I actually don't know what -- what
 14 communication Tim actually had or didn't have
 15 directly himself with Chuck.
 16 Q. Did Mr. Bergman ever face consequences
 17 for encouraging Mr. Sullivan to negotiate a
 18 non-hire agreement with Benco?
 19 MR. McDONALD: Object to the form.
 20 A. After this communication here, I'm not
 21 sure exactly how any communications between
 22 Benco or Benco's counsel, you know, took place.
 23 I don't know who spoke to who.
 24 Q. You're not aware of any consequences
 25 that Mr. Bergman faced as a result of this

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 2 e-mail?
 3 MR. McDONALD: Object to the form.
 4 Asked and answered.
 5 He just told you he wasn't even sure
 6 it happened. I'm not even sure how he can
 7 answer that question.
 8 MS. ROSNER: I'm not asking about
 9 whether it happened. I'm asking about were
 10 there any consequences from this e-mail.
 11 MR. McDONALD: Were there any
 12 consequences for something that may or may
 13 not have happened? That's absurd.
 14 Object to the form.
 15 THE WITNESS: I'm not, from just
 16 writing this e-mail, I'm not aware of any --
 17 I'm not aware of any consequences.
 18 BY MS. ROSNER:
 19 Q. Did you ever communicate with Benco on
 20 other sensitive business topics?
 21 You can put this e-mail aside.
 22 A. I don't believe so.
 23 Q. Did you ever communicate with
 24 Patterson on other sensitive business topics?
 25 MR. McDONALD: Object to the form.

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 2 A. I don't believe so.
 3 Q. How do you know Paul Guggenheim?
 4 A. Paul Guggenheim I know from back in
 5 the early 1990s, probably. He was with
 6 Guggenheim Dental, a family business, and he was
 7 also involved in the trade association. So he
 8 was the leader of the distributor section of the
 9 trade association at the time, and Paul was --
 10 and his business was one of the businesses that
 11 we were at one point thinking about possibly
 12 becoming part of Henry Schein.
 13 Ultimately, he and his family sold the
 14 business to Patterson, and then he became a
 15 leader in various levels in Patterson over time.
 16 Q. Are you friendly with Mr. Guggenheim?
 17 A. I wouldn't say so. I know Paul.
 18 Paul, if I saw Paul, I would greet Paul.
 19 Q. Do you interact with Mr. Guggenheim
 20 socially?
 21 A. No.
 22 Q. Have you ever given Mr. Guggenheim
 23 reason to think that he could call you directly
 24 on a business issue?
 25 A. Please repeat that question.

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 2 (Record read.)
 3 THE WITNESS: He knew me so he knew my
 4 number. He could call me. I never said,
 5 Paul, anytime, you would -- you know, please
 6 call me anytime you want on a business
 7 issue. I never opened that up.
 8 BY MS. ROSNER:
 9 Q. Did you regularly speak with Mr.
 10 Guggenheim about business issues?
 11 MR. McDONALD: Object to the form.
 12 A. Definitely not.
 13 Q. Did you ever speak with Mr. Guggenheim
 14 about a business issue?
 15 A. The only contact I ever had with Paul
 16 that I can recall related to business after --
 17 this was after, you know, knowing him from the
 18 trade association -- was a number of years ago
 19 he gave me a call to ask me if I knew about the
 20 fact that Amazon was coming into the business.
 21 I received one phone call from him.
 22 Q. This was in December 2013?
 23 A. I don't know exactly what the date is.
 24 It would have been close to when Patterson --
 25 sorry, when Amazon would have been joining the

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 2 trade association, whenever that exactly
 3 happened, and I told him that I didn't know much
 4 about it and never really followed up. There
 5 was no followup conversation.
 6 Q. I want to back up a little bit.
 7 You were the one who actually called
 8 Mr. Guggenheim; is that correct?
 9 MR. McDONALD: Object to the form.
 10 A. No. Incorrect.
 11 Q. Mr. Guggenheim called you and left a
 12 message --
 13 A. Ah.
 14 Q. -- and you called him back?
 15 A. Okay. That could be true, right.
 16 Right. Mr. Guggenheim reached out to me. I did
 17 not reach out to Mr. Guggenheim. I returned his
 18 call. That's correct.
 19 Q. How did you get Mr. Guggenheim's
 20 number?
 21 A. I don't know. I don't recall. My
 22 secretary might have gotten it. I don't have
 23 his number in my, to the best of my knowledge,
 24 in my phone.
 25 Q. How did he get your number?

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 2 MR. McDONALD: Object to the form.
 3 A. Pretty easy to find. I worked for
 4 Henry Schein.
 5 Q. What number did you call Mr.
 6 Guggenheim from?
 7 MR. McDONALD: Object to the form.
 8 A. I believe I called him when I was
 9 driving in my car, so it would have been from my
 10 cell phone.
 11 Q. Were you driving home from work?
 12 A. Probably.
 13 Q. How long did that take, usually?
 14 A. Driving home from work? About 40
 15 minutes or something like that, 45 minutes.
 16 Q. Your cell phone, is that a phone that
 17 you carry on your person?
 18 A. Usually.
 19 Q. Does anybody else have access to your
 20 cell phone?
 21 A. Not normally.
 22 Q. Do you let your wife or your kids make
 23 phone calls from your cell phone?
 24 A. Not normally.
 25 Q. Would there be any reason for your

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 2 wife or kids or anyone else to call Patterson?
 3 A. Not that I'm aware of.
 4 Q. Is there anyone else who might have
 5 access to your cell phone?
 6 A. The only -- I usually have my cell
 7 phone all the time, but, you know, sometimes
 8 it's -- the tech people take it at work and they
 9 do something with it. So, other than that, I
 10 would have it.
 11 Q. Any reason you would think that tech
 12 people at work might call someone at Patterson?
 13 A. Not that I can think of.
 14 Q. What is your cell phone number?
 15 A. It's 631-662-6788.
 16 Q. When you called Mr. Guggenheim back,
 17 what did he say to you?
 18 A. I don't recall exactly. It was
 19 something to the effect, Did you hear that
 20 Amazon was coming into the business?
 21 Q. Anything else?
 22 A. That's actually all that I really
 23 recall.
 24 Q. Did he say that he was afraid about
 25 Amazon coming into the business?

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 2 A. I don't recall him being afraid.
 3 Q. Did he say that the dental companies
 4 needed to ban together or against Amazon coming
 5 into the business?
 6 A. Absolutely not. He asked me what I
 7 knew about it from what I recall.
 8 Q. So he mentioned to you that Amazon was
 9 coming into the business. He asked you what you
 10 knew about it?
 11 A. He said, "Did you hear" -- I think he
 12 said, I believe he said, "Did you hear that
 13 Amazon was coming into the business?" And I
 14 believe that in November, around that time, they
 15 might have entered the business.
 16 Q. What else did he say?
 17 A. I don't recall much of that
 18 conversation other than what I've told you.
 19 Q. What did you say in response to what
 20 he was asking you about Amazon?
 21 A. I recall telling him that I've heard
 22 they have entered the business, and that's about
 23 it.
 24 Q. Did you --
 25 A. There was really no conversation about

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 2 what -- beyond that, really. It would have been
 3 a pretty short phone call, I think.
 4 Q. Did you elaborate where you heard the
 5 information from? Who told it to you?
 6 A. There's a chance that I could have
 7 said that I saw them at the New York show and
 8 that may have said something relative to, They
 9 might be joining the trade association, which
 10 would be fine, so that was about it.
 11 Q. Anything else?
 12 A. Not that I can recall.
 13 Q. Did he respond to your mentioning them
 14 at the New York show or wanting to join the
 15 trade association?
 16 MR. McDONALD: Object to the form.
 17 He said he may have said that. He
 18 didn't say he actually did.
 19 A. I'm sorry, say that again.
 20 Q. Did, to the extent that you mentioned
 21 that Amazon might be joining the New York trade
 22 association -- or, excuse me, might be attending
 23 the New York show or joining the trade
 24 association, did Mr. Guggenheim have any
 25 reaction?

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 2 A. I don't recall.
 3 Q. Was there anything else said on the
 4 call?
 5 A. So the only other thing that I can
 6 think of that Paul and I do know each other from
 7 a long time ago, and so I could have asked him
 8 how his family's doing.
 9 I know that at a point in time he
 10 enjoyed playing hockey, so I could have asked
 11 him about his hockey. Could have, you know, had
 12 a little bit of personal conversation before he
 13 asked me the question about Amazon.
 14 Q. Do you specifically recall whether you
 15 asked him about any of those topics?
 16 A. I don't recall.
 17 Q. Is there anything else you could have
 18 talked about?
 19 A. I don't recall. I didn't follow up
 20 with him on that. What I did was I, you know,
 21 just did not connect with him. I haven't really
 22 connected with him except seeing him maybe once
 23 since then at an industry event.
 24 Q. How did it make you feel for Mr.
 25 Guggenheim to be asking you about Amazon?

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 2 MR. McDONALD: Object to the form.
 3 A. I actually didn't think much about it,
 4 so I wanted to, you know, just make sure that
 5 when -- I didn't want to get involved in a
 6 discussion with him about a competitor or
 7 potential competitor, so I really didn't want to
 8 be on the call for long and in talking about
 9 that, so -- and therefore, I also didn't want to
 10 follow up.
 11 Q. You didn't want to extend the call in
 12 any way to continue talking about Amazon?
 13 A. No.
 14 Q. How did you end the call?
 15 A. Again, I don't exactly remember how I
 16 ended the call. I just don't recall exactly how
 17 I ended the call.
 18 Q. How long did the call last? Are we
 19 talking about five minutes? Are we talking
 20 about half hour? Was this like the duration of
 21 your commute?
 22 A. No. No. Couldn't -- I would be
 23 shocked if it was -- it was a relatively -- my
 24 recollection, it was a relatively short call.
 25 Q. What does "relatively short" mean?

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 2 MR. McDONALD: Object to the form.
 3 It's five years ago.
 4 A. I don't know. Five, ten minutes.
 5 Five minutes, ten minutes. I really don't,
 6 don't recall, but my recollection is that it was
 7 relatively short, short. My commute home is
 8 maybe 35, 40 minutes, and I don't recall being
 9 on the phone with Paul for the length of my
 10 commute, for sure.
 11 Q. You mentioned you were uncomfortable
 12 talking about Amazon with Mr. Guggenheim.
 13 Did you report the call?
 14 A. I mentioned the call to my counsel.
 15 Q. Who?
 16 A. That I believe at the time I mentioned
 17 to Stanley Komaroff at the time.
 18 Q. Was that an in-person discussion, was
 19 that by phone, or was that an e-mail?
 20 MR. McDONALD: You can tell her the
 21 form, but don't tell her what you discussed.
 22 A. I actually don't remember the form,
 23 but I remember that --
 24 MR. McDONALD: Don't tell her the
 25 contents.

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A. I remember the form. Sorry. I remember that I notified Stanley Komaroff. I believe it was Stanley Komaroff.

Q. How long after the call with Mr. Guggenheim did you report this call?

A. I believe it was the next morning. I was busy when I went home. That's my recollection.

Q. You mentioned just the two things you recall discussing: That Amazon was in the business and that potentially you had heard about them attending the New York trade show or joining the trade association.

How long do you think that took?

MS. SEIDL: Object to form.

MR. McDONALD: Objection. Asked and answered.

A. I really don't know. It could have been other -- as I said, I know Paul, and there could have been some personal conversation. We could have talked about, you know, his, as I mentioned, his interest in hockey, and he knows that I have an interest as well. It could have been some personal things, but I don't believe

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that the -- the substance of our conversation relating to Amazon I recall as being very short. I didn't really want to be in a detailed conversation about that with him.

MS. ROSNER: Let's take a break.

Off the record.

(Recess; Time Noted: 3:43 p.m.)

(Time Noted: 4:04 p.m.)

BY MS. ROSNER:

Q. We talked a lot about buying groups today, but I want to now focus on the medical-based GPOs that we have touched on a little bit.

And it's your understanding that the medical GPOs tend to be different entities than the buying groups in Dental, correct?

A. Correct.

Q. GPOs are very common in the medical industry; is that right?

A. Correct.

Q. Approximately what percentage of Schein's medical customers are members of GPOs?

A. I don't know.

Q. In Schein's medical group, is there a

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large representation of GPOs?

A. I would say it's a good representation of GPOs. We work with a good number of the GPOs.

Q. Why does Schein's medical division work with GPOs?

MR. McDONALD: Object to the form.

A. So the medical business is very different to the dental business, and the GPOs originated in the acute care business were very large hospitals, very large volumes. GPOs were borne in that space where manufacturers created contract pricing for certain groups of customers.

The medical business has changed quite a bit over the course of the last ten years, where many hospitals now have actually acquired physician offices. Before that happened, the medical business that we were in, because we're not in the acute care business, we don't sell to the hospitals, where we sell to the alternate sites to the hospital: Ambulatory surgery centers, urgent care centers, and physician offices.

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As those physician offices became more connected with overall what's known as IDNs, more and more of the GPOs created offerings beyond the hospital setting and moved the same contracts but at different levels of pricing for the ambulatory and non-acute settings, and so that's how GPOs have really grown up in the medical business.

Q. Does Schein choose to do business with GPOs because they can bring volume to Schein?

A. We choose to do business with GPOs in the medical space because, in large part, the medical customers have been signed up by the GPOs into these contracts, and so in order for us to really be an effective player in the medical distribution business, we have to be involved more so with the GPOs because of the current structural dynamic that exists in the medical business.

Q. So Schein really doesn't have an option to not deal with GPOs in medical?

A. I would say that's true.

Q. Is it your understanding that the mission of a GPO is to provide a range --

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2 A. Can you please speak a little bit more
3 slowly? I just want to make sure I follow.

4 Q. Is it fair to say that the mission of
5 a GPO is to provide a range of products and
6 services for their members?

7 MR. McDONALD: Object to form.

8 A. I'm not that familiar with all the
9 details of the medical GPOs, but I believe that
10 some of the GPOs or the GPOs provide contract
11 pricing and also some form of services, and
12 really I'm not familiar with the details of
13 those kinds of services.

14 Q. Through GPO contracts, the average
15 price of medical customers pricings has come
16 down; is that right?

17 MR. McDONALD: Object to the form.

18 A. I don't know enough about where
19 pricing was and where it is, but generally
20 speaking, contract pricing is lower than where
21 we are selling off-contract. Because we do have
22 a certain amount of business that flows through,
23 locally, without GPO contracts. So GPO
24 contracts are typically lower pricing.

25 Q. And in Schein's medical business, the

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2 aggregate gross profit percentage is lower than
3 the aggregate gross profit percentage of
4 Schein's Dental business?

5 MR. McDONALD: Object to the form.

6 A. So I don't think those comparisons are
7 relevant because the businesses are so starkly
8 different in that, on the medical side of the
9 business, we don't have the level of investment
10 and cost associated with the FSC networks. We
11 have also very limited support for equipment and
12 technology services.

13 On the dental side of the business,
14 there is a substantially higher cost in
15 providing the full-service model to the
16 dentists, which includes not only the field
17 sales consultant but then also a series of other
18 field-based specialists that are specialists in
19 equipment, in technology, in practice
20 management, in financial service.

21 So there's a lot of costs associated
22 with providing our overall offering to the
23 dental marketplace that doesn't exist in the
24 medical side of our business. So I don't think
25 that that comparison is a relevant comparison.

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2 Q. Regardless of whether Schein, in its
3 ordinary course, compares the gross profit of
4 its dental versus medical businesses, is one
5 higher or lower than the other?

6 MR. McDONALD: Object to the form.

7 A. On average, the medical business gross
8 profit would be lower than the dental business
9 gross profit.

10 Q. Has Schein ever contemplated what
11 would happen if medical GPOs started to enter
12 the dental space?

13 MR. McDONALD: Object to the form.

14 He's not here as a corporate
15 representative.

16 A. When we think about our dental
17 business and we think about the role that we
18 play and the services and value that we provide
19 both for suppliers and also for the customers,
20 we actually see the role of a GPO in large part
21 being played by us.

22 So we don't necessarily see how it's
23 easy for a GPO to make a value argument in the
24 dental business. So we don't really, within
25 running our dental business, we're not spending

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2 a lot of time thinking about the medical GPO
3 model. That's not something that is high on our
4 list of priorities to spend a lot of time on.

5 Q. Are you aware that Schein is engaged
6 with talks with Premier?

7 MR. McDONALD: Object to the form.

8 Vague.

9 A. I'm not sure exactly what you're
10 talking about.

11 Q. Do you know Premier as a medical GPO?

12 A. I know of Premier. I do not know the
13 people at Premier, and I'm not in detail aware
14 of any specific discussion that we may be having
15 that I can recall in any meaningful way with
16 Premier.

17 Q. Would it be surprising to you to learn
18 that the Schein Dental business is discussing
19 doing business with Premier, a medical GPO?

20 MR. McDONALD: Object to the form.

21 Vague as to time.

22 A. It wouldn't surprise me that our team
23 is talking to anyone about possibilities. And
24 there may be desires of medical GPOs to look at
25 the possibilities of doing business in the

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 2 dental space, and if our teams are talking to
 3 them and evaluating whether or not that makes
 4 any sense for us, I wouldn't be surprised about
 5 that.
 6 Again, I don't think that is a very
 7 significant aspect of our activity today.
 8 Q. Has Schein ever created a strategy or
 9 plan around how it would respond if GPOs entered
 10 dental?
 11 A. I go back to fundamentally believing
 12 that the role that we currently play today fills
 13 a space of value that minimizes the need for
 14 another party to be involved as a structural
 15 part of the dental marketplace.
 16 Periodically, our team is looking at
 17 all kinds of options for us to fortify that
 18 value proposition. For instance, from time to
 19 time, and I think we referred to this later --
 20 sorry, earlier, when Hal in particular was
 21 mentioning maybe we should have our own GPO and
 22 maybe we should more formalize what that means
 23 and create a separate business.
 24 We haven't really developed that to
 25 any significant extent, but that is something

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 2 that we could do in the future.
 3 Q. So today there is no specific plan,
 4 but there has been some discussions about how
 5 Schein would respond to GPOs in dental?
 6 MR. McDONALD: Object to the form.
 7 Mischaracterizes his testimony.
 8 A. There has been some discussion about
 9 GPOs and the role that they play in medical and
 10 how, again, we see our role in dental being
 11 different, but also, we want to keep our eyes
 12 open and continue to think about how do we, you
 13 know, further strengthen our value proposition
 14 so there's actually no need for the -- for
 15 another entity to enter the marketplace between
 16 ourselves and our customer because we believe
 17 that if we are directly connected with our
 18 customer, without being -- having some other
 19 entity in the middle, it gives us the best
 20 chance to tell our full value story.
 21 Q. Would Schein prefer that medical GPOs
 22 stay out of dental?
 23 MR. McDONALD: Objection to form.
 24 A. I think that we don't see a need. We
 25 fill, in large part, that need, both for the

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 2 manufacturers and for the customers.
 3 Q. Bringing a medical GPO into the dental
 4 world would risk the camel's nose being allowed
 5 into the tent; is that your understanding?
 6 MR. McDONALD: Objection to the form.
 7 Why don't you show him the document
 8 and not play games at this late hour.
 9 THE WITNESS: Please repeat the
 10 question.
 11 (Record read.)
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: If a medical GPO were
 14 brought in by us, without really thinking
 15 through the value of doing that, how that
 16 would fit with our business model could be
 17 irresponsible.
 18 BY MS. ROSNER:
 19 Q. The phrase "bringing the camel's nose
 20 into the tent" is a figure of speech; is that
 21 right?
 22 MR. McDONALD: Object to the form.
 23 A. Yeah, I've heard that's a figure of
 24 speech.
 25 Q. It generally means to allow a small

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 2 act that opens the door to greater undesirable
 3 things?
 4 MR. McDONALD: Object to the form.
 5 Q. Is that your understanding of the
 6 figure of speech?
 7 MR. McDONALD: Object to the form.
 8 A. I don't know. The figure of speech
 9 "the camel's nose in the tent" doesn't have a
 10 positive connotation.
 11 MS. ROSNER: I have no further
 12 questions at this moment.
 13 Do you like to take a break or do you
 14 want to --
 15 MR. McDONALD: Do you have questions?
 16 MS. SEIDL: I was going to see what
 17 you were going to cover.
 18 MR. McDONALD: Okay.
 19 EXAMINATION BY
 20 MR. McDONALD:
 21 Q. Mr. Breslawski, how are you?
 22 A. I'm okay. How are you?
 23 Q. Good.
 24 Has Henry Schein ever had a policy
 25 about working with buying groups?

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 2 A. No.
 3 Q. Have you ever had a communication --
 4 and I mean that in the broadest sense,
 5 telephone, in person, text, whatever, okay --
 6 with anyone at Patterson regarding buying
 7 groups?
 8 A. No, absolutely not.
 9 Q. Have you ever had a communication,
 10 again, in the broadest sense -- with anyone at
 11 Benco regarding buying groups?
 12 A. No, I have not.
 13 Q. The FTC alleges in this action that
 14 Henry Schein had an agreement with Patterson and
 15 Benco to not do business with buying groups.
 16 Do you have any knowledge of such an
 17 agreement?
 18 A. I do not.
 19 Q. Would such an agreement be contrary to
 20 Henry Schein's business practices about working
 21 with buying groups?
 22 A. It would.
 23 Q. How long have you known Tim Sullivan?
 24 A. For 21 years.
 25 Q. And during that 21 years, have you

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 2 been, for the most part, Mr. Sullivan's boss?
 3 A. Correct.
 4 Q. Do you believe that Mr. Sullivan would
 5 have ever had an agreement with a competitor to
 6 not do business with any customer?
 7 A. Absolutely not.
 8 Q. Is Benco a competitor of Henry Schein?
 9 A. Yes.
 10 Q. Does Henry Schein compete against
 11 Benco?
 12 A. Aggressively.
 13 Q. Is Patterson a competitor of Henry
 14 Schein?
 15 A. Absolutely.
 16 Q. Does Henry Schein compete against
 17 Patterson?
 18 A. Aggressively.
 19 MR. McDONALD: That's all the
 20 questions I have at this time.
 21 EXAMINATION BY
 22 MS. SEIDL:
 23 Q. Hi. My name is Jana Seidl. I'm here
 24 representing Patterson. I just have a few
 25 questions.

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 2 A. Sure.
 3 Q. So you testified that you were not
 4 aware of anyone at Schein entering into an
 5 agreement with anyone at Patterson to refuse to
 6 deal with buying groups, correct?
 7 A. Correct.
 8 Q. And you certainly didn't enter into an
 9 agreement with anyone at Patterson not to deal
 10 with buying groups, correct?
 11 A. That's correct.
 12 Q. And are you aware of anyone at Schein
 13 entering into an agreement or arrangement or
 14 understanding of any kind with someone from
 15 Patterson regarding any customer?
 16 A. I'm not aware of any arrangement.
 17 Q. And you did not enter into an
 18 agreement with anyone at Patterson regarding any
 19 customer?
 20 A. That's correct.
 21 Q. Do you know of anyone at Schein
 22 communicating with anyone at Patterson about
 23 whether or not Schein was going to offer
 24 discounts for any specific customer?
 25 A. Please repeat that.

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 2 MS. SEIDL: Could you read back the
 3 question?
 4 (Record read.)
 5 THE WITNESS: I am not aware of that.
 6 BY MS. SEIDL:
 7 Q. And do you know of anyone at Schein
 8 communicating with anyone at Patterson to learn
 9 whether or not Patterson would be competing for
 10 any customers or offering discounts to any
 11 particular customer?
 12 MS. ROSNER: Objection to form.
 13 A. I am not.
 14 Q. You can go ahead.
 15 MR. McDONALD: Do you have the
 16 question?
 17 THE WITNESS: One more time.
 18 (Record read.)
 19 MS. ROSNER: Objection. Form.
 20 THE WITNESS: Okay. I am not aware of
 21 that.
 22 BY MS. SEIDL:
 23 Q. And did you ever speak with anyone at
 24 Patterson about whether or not any particular
 25 customer is a buying group?

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 2 A. I have never spoken to anyone at
 3 Patterson about that.
 4 Q. And do you know if anyone at Schein
 5 coordinating their conduct with anyone at
 6 Patterson regarding any customer?
 7 MS. ROSNER: Objection. Form.
 8 A. I am not aware of any of that.
 9 MS. SEIDL: That's all I have.
 10 EXAMINATION BY
 11 MR. RACOWSKI:
 12 Q. Good afternoon, Mr. Breslawski. I'm
 13 Ken Racowski representing Benco. I just have a
 14 couple of questions for you.
 15 A. Okay.
 16 Q. If you could pull out an exhibit that
 17 you looked at earlier today. It's labeled
 18 CX2332.
 19 A. Got it.
 20 Q. And if we turn over to page 3 of that
 21 document, you testified at length in response
 22 to --
 23 A. Yeah.
 24 Q. -- questions from Complaint Counsel
 25 regarding an alleged suggestion by Mr. Bergman

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 2 to Mr. Sullivan about reaching out to Benco, do
 3 you remember that testimony?
 4 A. Yes.
 5 Q. I just wanted to make sure it's
 6 absolutely crystal clear for the record. You
 7 don't have any knowledge that Mr. Sullivan
 8 actually made the phone call or the
 9 communication that Mr. Bergman was suggesting in
 10 this e-mail, do you?
 11 A. I do not, no.
 12 Q. And you're not aware of any
 13 communications that Mr. Sullivan may have had
 14 directly with Mr. Cohen about the topic in this
 15 e-mail, are you?
 16 MS. ROSNER: Objection. Leading.
 17 A. I am not aware of that, no.
 18 Q. And then I think the last question,
 19 your counsel may have already cleared that up,
 20 but again, so we have a clear record, you don't
 21 have any personal knowledge of any agreement
 22 between Henry Schein and Benco not to do
 23 business with or to give discounts to buying
 24 groups, do you?
 25 MS. ROSNER: Objection. Leading.

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 2 A. I have no such knowledge.
 3 Q. And you're not aware of anyone at
 4 Schein having ever formed or made such an
 5 agreement with Benco, are you?
 6 MS. ROSNER: Objection. Leading.
 7 A. I am not aware of any such agreement.
 8 MR. RACOWSKI: That's all I have.
 9 Thank you for your time.
 10 MS. ROSNER: Can we take a quick
 11 break?
 12 (Recess; Time Noted: 4:24 p.m.)
 13 (Time Noted: 4:25 p.m.)
 14 MS. ROSNER: Mr. Breslawski, I don't
 15 have any other questions for you today.
 16 Thank you for appearing for this deposition.
 17 Do you have any questions for me?
 18 (Continued on the next page to include
 19 the jurat.)
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 2 THE WITNESS: No, I don't. Thank you.
 3 MS. ROSNER: All right. We can close
 4 the record?
 5 MR. McDONALD: Yes.
 6 (Whereupon, the deposition concluded
 7 at 4:26 p.m.)
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1 CONFIDENTIAL - JAMES BRESLAWSKI
 2
 3 CERTIFICATE
 4 STATE OF NEW YORK)
 : ss
 5 COUNTY OF NEW YORK)
 6 I, Kathy S. Klepfer, a Registered
 7 Merit Reporter and Notary Public within and
 8 for the State of New York, do hereby
 9 certify:
 10 That JAMES BRESLAWSKI, the witness
 11 whose deposition is herein before set forth,
 12 was duly sworn by me and that such
 13 deposition is a true record of the testimony
 14 given by such witness.
 15 I further certify that I am not
 16 related to any of the parties to this action
 17 by blood or marriage and that I am in no way
 18 interested in the outcome of this matter.
 19 In witness whereof, I have hereunto
 20 set my hand this 13th day of July, 2018.
 21
 22 -----
 KATHY S. KLEPFER, RPR, RMR, CRR, CLR
 23
 24
 25

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1 NAME OF CASE:
 2 DATE OF DEPOSITION:
 3 NAME OF WITNESS:
 4 Reason Codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page _____ Line _____ Reason _____
 9 From _____ to _____
 10 Page _____ Line _____ Reason _____
 11 From _____ to _____
 12 Page _____ Line _____ Reason _____
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 24 _____
 25

ERRATA SHEET

DEPOSITION OF: James Breslawski

DATE DEPOSITION: July 10, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
10	12-13	Delete "ex Special Markets"	Typographical error/clarification
28	3	Delete "to"	Typographical error
29	11	Change "ban" to "band"	Typographical error
34	4	Delete "for us"	Typographical error/clarification
38	4	Change "is a separate" to "as a separate"	Typographical error
38	10-11	Change "that's resident" to "that's a resident"	Typographical error
40	10	Change "sometimes need to recruit" to "sometimes we need to recruit"	Typographical error
40	12	Change "to take what" to "to take over"	Typographical error
56	12	Change "putting" to "put"	Typographical error/clarification
64	7	Change "division" to "vision"	Typographical error
123	22	Change "assigned with" to "assigned to"	Typographical error
137	21	Change "sent on" to "sending on"	Typographical error/clarification
159	3	Change "They're" to "I'm"	Typographical error/clarification
163	18-19	Delete "I don't think that's so."	Typographical error/clarification
188	19	Change "keep our running" to "keep our running dialogue"	Typographical error/clarification
206	12	Delete "connections with competitors—"	Clarification/misspoke
206	13	Delete "in"	Typographical error

I, James Breslawski, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 10th day of August, 2018.

at St. James New
(City) (State)


James Breslawski

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Redacted in Entirety

CX8016

CONFIDENTIAL - JAKE MEADOWS
July 13, 2018

CONFIDENTIAL

VIDEOTAPED Deposition of JAKE MEADOWS, held at Proskauer Rose LLP, Eleven Times Square, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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CONFIDENTIAL - JAKE MEADOWS
THE VIDEOGRAPHER: This begins media labeled number 1 of the video-recorded deposition of Jake Meadows in the matter of In re Benco Dental Incorporated, et al. This deposition is being held at 11 Times Square in New York, New York, on July 13, 2018 at approximately 8:31 a.m.

My name is Matthew Smith from TSG Reporting, Incorporated. I'm the legal video specialist. The court reporter is Kathy Klepfer, in association with TSG Reporting.

All appearances have been noted for the record.

Will the court reporter please swear in the witness.

JAKE MEADOWS, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MS. ROSNER:

Q. Good morning, Mr. Meadows. How are

1 CONFIDENTIAL - JAKE MEADOWS
 2 you?
 3 A. Good.
 4 Q. Good.
 5 My name is Jasmine Rosner. I'm with
 6 the Federal Trade Commission. You understand
 7 that you're here today pursuant to a subpoena to
 8 take your deposition?
 9 A. Yes.
 10 Q. Have you ever sat for a deposition
 11 before?
 12 A. I have not.
 13 Q. Okay. I'm just going to go over some
 14 ground rules so that everyone is on the same
 15 page about what a deposition is.
 16 We are here to take your sworn
 17 testimony. You just took an oath from the court
 18 reporter. So everything you say should be
 19 truthful, to the best of your recollection.
 20 A. Uh-huh.
 21 Q. If at any point you recall testimony
 22 that would enhance the accuracy of your
 23 recollection or what you previously testified
 24 to, just please let me know and I'll let you
 25 amend prior answers.

1 CONFIDENTIAL - JAKE MEADOWS
 2 The questions I'm going to be asking
 3 you today I really want you to answer from your
 4 personal knowledge, so if there's something that
 5 you don't know, just tell me that you don't
 6 know; is that okay?
 7 A. Uh-huh. Yes.
 8 Q. Great. From time to time, I may have
 9 documents that I'm going to show you that may
 10 help refresh your recollection. Some of the
 11 things that I may be asking you about may come
 12 from those documents or they may not, I may not
 13 have any documents, but the point is really to
 14 exhaust your personal memory.
 15 If you plan on speculating to any
 16 answer, just let me know that you're
 17 speculating. That way I can know it's not based
 18 on personal knowledge. Is that okay?
 19 A. Yes.
 20 Q. Is there any reason why you can't
 21 testify truthfully and accurately today?
 22 A. No.
 23 Q. Are you impaired in any way or taking
 24 any medication?
 25 A. No. I am taking medication, but

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. Uh-huh.
 3 Q. I'm going to be asking you questions
 4 today. Hopefully, you'll be responding to
 5 questions. From time to time, your attorney may
 6 object. I would recommend that after I ask a
 7 question, take a quick breath, allow your
 8 attorney to say something, so that we're not
 9 speaking over each other at any point in time.
 10 A. Uh-huh.
 11 Q. I would ask that you allow me to
 12 finish my questions before you begin your
 13 answer, and likewise, I will wait for you to
 14 finish an answer before I begin my next
 15 question.
 16 Does that sound okay?
 17 A. Uh-huh.
 18 Q. Great. As you can see, we have a
 19 court reporter here who is transcribing
 20 everything that we're saying. To make her job
 21 easiest, I know we're also on the video, but it
 22 would be most if helpful if you could give
 23 verbal answers.
 24 A. Yes.
 25 Q. Great.

1 CONFIDENTIAL - JAKE MEADOWS
 2 nothing that would impair my ability to testify.
 3 Q. Can you start by telling me where
 4 you're employed and what your title is?
 5 A. I'm employed at Henry Schein Inc., and
 6 my title is Vice President of Sales, Special
 7 Markets.
 8 Q. How long have you held that role?
 9 A. Ten months, approximately.
 10 Q. And what are your responsibilities in
 11 that role?
 12 A. I'm responsible for DSO sales, school
 13 sales, education, institutional and federal
 14 government sales.
 15 Q. Do you lead a team of people that also
 16 manage those types of sales?
 17 A. Yes.
 18 Q. Do you share your role of VP of Sales
 19 in Special Markets with anyone else?
 20 A. No, I do not.
 21 Q. Is that an acting title?
 22 A. No, that is my title.
 23 Q. Prior to being VP of Sales of Special
 24 Markets, what was your title?
 25 A. Vice president of Sales, Eastern area.

CONFIDENTIAL - JAKE MEADOWS

Q. Was that within the Henry Schein Dental Division?

A. Yes.

Q. You understand sometimes people refer to Henry Schein Dental as "HSD"?

A. Yes, I do.

Q. How long were you VP of Sales for the Eastern area?

A. Approximately two years.

Q. What were your roles and responsibilities as VP of Sales of Eastern area?

A. I was responsible for the execution of the sales strategy and the personnel management of the teams within the Eastern area that reported in to Henry Schein Dental.

Q. Did you also have responsibility for setting of sales strategy?

A. I have responsibilities for influencing strategy.

Q. You didn't have ultimate approval authority for strategy, but you contributed to sales strategy?

A. I contributed to sales strategy.

Q. Did you have authority for approving

CONFIDENTIAL - JAKE MEADOWS

pricing to customers in the Eastern area?

A. Yes.

Q. Did you have authority for responding to bids for customers in the Eastern area?

A. Yes.

Q. Prior to being VP of Sales for the Eastern area, what was your title?

A. Eastern Area Sales Director.

Q. What was your territory as the Eastern Area Sales Director?

A. Smaller than my prior role. It was the Northeast zone, the Southeast zone, and the Atlantic Coast zone.

Q. I'm trying to quickly figure out my geography.

What areas of the Eastern United States were not included in your territory as Eastern Area Sales Director?

A. So it was Maine, Vermont, New York -- portions of New York -- Rhode Island, Connecticut, New Jersey, Maryland, Virginia, DC, Pennsylvania -- portions of Pennsylvania -- North Carolina, South Carolina, Georgia, Florida, and Louisiana.

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I believe -- did I forget anything there? States?

Q. You named a lot, a number of states. Just so I'm clear, these are the

states -- the states that you listed are the states that you had responsibility for?

A. At that time, yes.

Q. How long were you Eastern Area Sales Director?

A. Approximately a year and a half.

Q. What was your title prior to being Eastern Area Sales Director?

A. Northwest Zone General Manager.

Q. Going back to your time as Eastern area of Sales Director, were your responsibilities the same as when you were the VP of Sales for the Eastern area?

A. No.

Q. How did they differ?

A. My geography was expanded and my influence within sales strategy was increased.

Q. As Eastern Area Sales Director, did you still have authority to approve pricing to customers?

CONFIDENTIAL - JAKE MEADOWS

A. Yes.

Q. Did you approve responses to RFPs to customers?

A. I do not recall approving a formal RFP, but yes, I would approve a -- an offer that was verbally explained to me.

Q. How long were you the Northwestern zone general manager?

A. Approximately three years.

Q. What was your territory as Northwestern zone general manager?

A. Alaska, Washington State, Idaho, Montana, Oregon, Northern California, portions of Nevada.

Q. What were your roles and responsibilities as Northwestern Zone General Manager.

A. I was responsible for executing sales strategy and personnel management.

Q. Did you have any hand in setting sales strategy as a zone manager?

A. No.

Q. What was your title before Northwestern Zone General Manager?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Director of Career Development.

3 Q. Was that a sales position?

4 A. It's a sales training position.

5 Q. How long were you in the role as
6 Director of Career Development?

7 A. Approximately two years.

8 Q. Do you hold any other positions prior?

9 A. Yes. Regional Manager, Kentucky and
10 West Virginia. Prior to that role, I was an
11 Equipment Sales Specialist -- oh, and that was
12 about two years. Equipment Sales Specialist,
13 approximately a year and a half, and then Field
14 Sales Consultant for approximately four and a
15 half years.

16 Q. Your first job at Schein was as a
17 field sales consultant?

18 A. In 2001, yes.

19 Q. Prior to joining Schein, did you work
20 in the dental industry anywhere else?

21 A. I did not.

22 Q. Prior to joining Schein, had you just
23 graduated from college from somewhere?

24 A. No, I was in a different industry in
25 sales and in the military.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. I'm going to be asking you today some
3 questions about various Schein customer
4 segments, but first, I just want to make sure
5 you understand when I say the word "Schein," you
6 understand that I'm referring to Henry Schein,
7 Inc.; is that right?

8 A. Yes; I would ask you to clarify Henry
9 Schein Special Markets and Henry Schein Dental.

10 Q. Happy to do that.

11 A. There's times where that's necessary.

12 Q. Happy to do that.

13 And we understand that Schein has a
14 lot of different business, it has a medical
15 business, a veterinarian business, a dental
16 business, maybe some others.

17 Today I'm going to focus on Schein's
18 dental business.

19 A. Okay.

20 Q. What is a buying group?

21 A. Do you want my definition?

22 Q. Your definition of a buying group,
23 please.

24 A. Okay. My definition of a buying group
25 is an organized leadership model that negotiates

1 CONFIDENTIAL - JAKE MEADOWS

2 purchasing power on behalf of an individual or a
3 group of individuals.

4 Q. In the dental space, do you understand
5 buying groups to be made up of independent
6 private practice dentists?

7 MR. McDONALD: Object to the form.

8 A. No.

9 Q. What's your understanding of the types
10 of entities that are members of buying groups in
11 Dental?

12 A. Private practice dentists, community
13 health centers, group practices.

14 Q. I want to take --
15 Any others?

16 A. Not that I can think of right now.

17 Q. I want to take each of those in turn.

18 So let's start from the back of your
19 list. Group practices. Can you explain to me
20 or provide an example of a buying group that was
21 made up of group practices?

22 A. I can't. My example is that there are
23 somewhat I would define as group practices
24 within buying groups.

25 Q. I'm sorry, I don't think I understand.

1 CONFIDENTIAL - JAKE MEADOWS

2 Can you say that again?

3 A. My definition of group practice, I
4 would suggest that there's group practices
5 within buying groups.

6 Q. So, under your definition, there would
7 be a larger buying group structure and then,
8 within that buying group structure, one member
9 could potentially be a group practice, is that
10 what you're saying?

11 A. I'm saying that within a -- any given
12 buying group, it is very possible that there
13 could be a practice that's a member of that
14 buying group that would be considered a group
15 practice in my definition.

16 Q. Got it. And when you refer to group
17 practice, what's your definition of group
18 practice?

19 A. More than one dentist practicing.

20 Q. In your definition of group practice,
21 is there any ownership structure or affiliation
22 that you would use to define group practice?

23 A. Not generally. It would be a broad
24 discussion and it is case-by-case within each
25 practice.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. And just so I'm clear, you can't think
3 of any buying groups that have group practices
4 as members sitting here today?

5 A. No, I can't. I -- I can't think of
6 one. Doesn't mean there's not one. I just
7 don't have that information in front of me.

8 Q. That's fine.
9 Going to your example of CHCs?

10 A. Uh-huh.

11 Q. What is a CHC?

12 A. A community health center.

13 Q. Do community health centers typically
14 serve indigent populations?

15 A. I believe that definition is
16 appropriate.

17 Q. Are community health centers made up
18 of independent private practices?

19 MR. McDONALD: Object to the form.
20 Lack of foundation.

21 A. I'm not sure I understand the
22 question.

23 Q. Who typically staffs a community
24 health center?

25 MR. McDONALD: Object to form. Lack

1 CONFIDENTIAL - JAKE MEADOWS
2 of foundation.

3 Go ahead. If you know, answer.

4 A. Do you mean a dentist?

5 Q. What types of dentists typically --

6 A. Every type of dentist.

7 Q. Do dentists who have their own private
8 practice enter in business for themselves
9 typically work at CHCs?

10 MR. McDONALD: Object to the form.

11 Lack of foundation.

12 A. I wouldn't be able to establish that.
13 I don't know enough detail.

14 Q. Do you in your role as direct --
15 scratch that.

16 In your role as VP of Sales of Special
17 Markets, do you interact with community health
18 centers at all?

19 A. I have not yet, but part of my
20 responsibilities would be.

21 Q. Do you have any understanding of the
22 CHC space, given your role as VP of Sales in
23 Special Markets?

24 A. I have some understanding.

25 Q. Is it your understanding that staff of

1 CONFIDENTIAL - JAKE MEADOWS
2 community health centers typically do not
3 include independent private practice dentists?

4 MR. McDONALD: Object to the form.

5 Asked and answered.

6 A. I can't speak to what typically --
7 who's staffed at a CHC, typically.

8 Q. Is there someone else on your team who
9 might be more familiar with CHCs and their
10 makeup?

11 A. Brian Brady or Kathleen Titus.

12 Q. You mentioned that CHCs can be members
13 of buying groups; is that right?

14 A. Yes.

15 Q. When CHCs are members of buying
16 groups -- scratch that.

17 For CHC buying groups, do you ever see
18 private practice dentists being members of those
19 same buying groups?

20 A. I personally have not.

21 Q. Are you familiar with any buying
22 groups that are made up of independent private
23 practice dentists?

24 A. Yes.

25 Q. Can you give me some examples?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Smile Source.

3 Q. Any others?

4 A. KlearImpakt.

5 Q. Any others?

6 A. Alpha Omega Dental Associates or
7 Dental prac- -- Dental Members, National
8 Dental -- Dental Association Members.

9 Q. Has Schein ever had a policy on
10 whether and when to work with buying groups?

11 A. There's -- since I came in the company
12 in 2001, I started working with buying groups as
13 one of my first, the Alpha Omega group, and the
14 National Dental Association both had rebates
15 back to the association for purchases that their
16 members made and discounts to their members, and
17 that was part of my responsibilities in 2001.
18 So, from my perspective, there has always been a
19 policy to work with buying groups.

20 Q. Can you tell me what that policy is
21 and how you learned about it?

22 A. Again, as I said, my policy that I
23 learned was, on my first day or first months of
24 my position, when I was assigned to work with
25 that group by Steve Kess and another -- yeah,

1 CONFIDENTIAL - JAKE MEADOWS
 2 Steve Kess was National Dental Association,
 3 which was Dr. Hazel Harper, and the Alpha Omega,
 4 which was Dr. Steve Guttenberg, and I was
 5 responsible to present to their membership. So
 6 the -- I learned about the policy within my
 7 first few months.

8 Q. What is the National Dental
 9 Association?

10 A. It's a dental association that's
 11 focused on the education and promotion of
 12 African-American dentists.

13 Q. Are the members of the National Dental
 14 Association independent private practice
 15 dentists?

16 A. Yes.

17 Q. You mentioned that the National Dental
 18 Association receives a rebate and its members
 19 receives a discount; is that right?

20 A. I can't speak to what they get today.
 21 I can only speak to my experience from an FSC
 22 through the zone general manager, which is when
 23 I interacted with members and leadership of
 24 those organizations.

25 Q. Fair enough.

1 CONFIDENTIAL - JAKE MEADOWS

2 The discount that the members of the
 3 National Dental Association received, was that
 4 the same discount across the members, or was the
 5 situation where some members had a better
 6 discount than others?

7 A. It was case-by-case, depending -- it
 8 really depends on the purchasing power of that
 9 particular individual or what products they
 10 would choose.

11 Q. So you're saying there was not a
 12 single discount that applied to the entire
 13 group, the National Dental Association?

14 A. I don't recall.

15 Q. Is it common that, when working with a
 16 buying group, the members of the buying groups
 17 would have different levels of discounts?

18 MR. McDONALD: Object to the form.

19 A. Is it common within Henry Schein or is
 20 it common within my experience?

21 Q. Is it common within your experience of
 22 working with buying groups that when Henry
 23 Schein does business with a buying group, the
 24 buying group members would receive a different
 25 level of discount from one another?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. It's common with -- within those
 3 groups, yes, that depending on what they
 4 purchased, because every dentist would purchase
 5 a different type of gloves than the other
 6 dentist, that some gloves, for example, would be
 7 discounted more heavily than other brands of
 8 gloves.

9 Q. I see what you're saying. I see what
 10 you're saying.

11 Assuming members of a buying group
 12 that worked with Schein purchased the same
 13 products, would it be the case that those
 14 members would receive the same level of
 15 discount, or is there a special discount or
 16 different discount attributed to one member
 17 versus another for the exact same product?

18 A. It's so case-by-case based on the
 19 amount of products that they would spend or the
 20 day that they would buy that product that it
 21 would be difficult for me to affirm that they
 22 would all get the same price or they wouldn't
 23 get all the same price on a particular day.

24 Q. I understand that pricing can change.
 25 Maybe let me ask my question differently.

1 CONFIDENTIAL - JAKE MEADOWS

2 Is it the case that members of a
 3 buying group that work with Schein receive the
 4 same level of discount on the same items?

5 MR. McDONALD: Object to the --

6 A. It would depend --

7 MR. McDONALD: Hang on.

8 Object to the form.

9 Go ahead.

10 A. It would depend on their purchasing
 11 level and what type of products they purchased.

12 Q. When Schein negotiates with buying
 13 groups for discounts, is it your understanding
 14 that Schein negotiates a single discount for a
 15 formulary?

16 A. When you say "Schein," do you mean
 17 Henry Schein Special Markets or do you mean
 18 Henry Schein Dental?

19 Q. Let's start with Henry Schein Dental.

20 A. Within Henry Schein Dental and my time
 21 there, it was case-by-case.

22 Q. What do you mean it was case-by-case?

23 A. Can you repeat your question?

24 Q. My question is whether or not when
 25 Schein negotiates with a buying group for

1 CONFIDENTIAL - JAKE MEADOWS
2 discounts on a formulary, is it the case that
3 discounts on the formulary apply equally to all
4 of the members of the buying group?

5 A. That would depend on case-by-case from
6 buying group to buying group that's negotiated
7 with that particular -- that group of leaders of
8 that buying group, and then, as a sub,
9 case-by-case, based on what those members of the
10 buying group were purchasing and their
11 purchasing levels.

12 Q. Can you give me an example of a Schein
13 buying group customer where formulary discounts
14 differ by individual members?

15 A. It's difficult for me to go down into
16 that kind of detail. What I can say is we had a
17 policy within our FSCs where they could discount
18 items off formulary individually. So I would
19 say I'm confident that if there was a particular
20 item that a -- that a practice said, I really
21 believe -- you know, I'm going to buy a certain
22 level of this, I'd like a deeper discount based
23 on the fact that I'm going to increase my level
24 of purchasing, the FSCs is empowered to change
25 that price on the formulary and set it through a

1 CONFIDENTIAL - JAKE MEADOWS
2 process we call custom quote.

3 Q. I understand that FSCs have separate
4 pricing authority outside of contracts that are
5 negotiated with buying groups. I want to focus
6 on the negotiation of contracts with the buying
7 groups themselves.

8 A. Uh-huh.

9 Q. When Schein negotiates contracts with
10 buying groups, does it ever negotiate a discount
11 off the formulary that is different for
12 different members?

13 A. When you say "Schein," do you mean
14 Schein Special Markets or Henry Schein Dental?

15 Q. Henry Schein Dental.

16 A. I've only been involved in the
17 negotiation of the -- sitting at the table
18 negotiating items with Smile Source.

19 Q. And in your experience with
20 negotiating with Smile Source -- let me back up.

21 You understand Smile Source to be a
22 buying group?

23 A. Yes.

24 Q. And in negotiating the agreement with
25 Smile Source, was it the case that different

1 CONFIDENTIAL - JAKE MEADOWS
2 members of Smile Source received different
3 levels of discount off formulary?

4 A. I don't remember the details of our
5 offer exactly, but I do not believe at the
6 beginning of our agreement that there was that
7 case, and then we had some one-off based on
8 large purchasing that was done within the group
9 as an accommodation.

10 Q. You mentioned earlier that within your
11 first day or maybe even first few months of
12 working at Schein, you understand that there was
13 a policy to work with buying groups.

14 What's your understanding of when
15 Schein would engage with buying groups at the
16 time that you began working at Schein?

17 MR. McDONALD: Object to the form.

18 Vague.

19 You can answer if you understand it.

20 A. My understanding from, as I said in my
21 first few months, this was presented to me by
22 Steve Kess as Henry Schein -- at the time,
23 Sullivan Schein Dental -- as, one, our policy;
24 and, two, a great opportunity that they wanted
25 me to take advantage of.

1 CONFIDENTIAL - JAKE MEADOWS

2 And I actually look back on my
3 experience with Alpha Omega and the National
4 Dental Association because that's where I was
5 exposed to Dave Steck and Tim Sullivan as part
6 of -- part of my being promoted into higher
7 levels of a responsibility based on my success
8 with those two groups.

9 Q. You mentioned that buying groups
10 provide a great opportunity for Schein.

11 Why is that?

12 A. Expanding market share. Helping us
13 fulfill our mission. Retaining business.

14 Q. Anything else?

15 A. I think that's general.

16 Q. What do you mean by expanding market
17 share?

18 A. Sales that we did not have yesterday
19 we have today. Things that someone would buy
20 from a competitor they would buy from us.

21 Q. How does working with buying groups
22 help Schein to retain its business?

23 A. The private practice, community
24 health, or group practice is incentivized
25 through the offering of that particular buying

1 CONFIDENTIAL - JAKE MEADOWS
 2 group, whether that's the education or the
 3 comradery or if there's some other service that
 4 they provide that Henry Schein doesn't that
 5 complements our offering so the customer feels
 6 or recognizes the value of the two organizations
 7 partnering, and there are times where we work
 8 with organizations like Alpha Omega or the
 9 National Dental Association that line up with
 10 our values, and we get to focus on non-profit
 11 efforts and those members get to focus on those
 12 non-profit efforts through that group as well.

13 Q. Do you find that members of buying
 14 groups have longer lasting relationships with
 15 Schein as a result of being a member of a buying
 16 group that Schein works with?

17 MR. McDONALD: Object to the form.
 18 Overly broad.

19 A. So you're asking my opinion?

20 Q. Yes. In your experience, have you
 21 found that members of buying groups that work
 22 with Schein stay Schein customers for longer?

23 MR. McDONALD: Object to the form.
 24 Overly broad.

25 A. I don't think it would be appropriate

1 CONFIDENTIAL - JAKE MEADOWS
 2 for me to answer because I would want to see
 3 some former reporting, generally, that would
 4 track that.

5 Q. So you just don't know one way or the
 6 other?

7 A. No.

8 Q. You mentioned earlier that working
 9 with buying groups also helps Schein to fulfill
 10 its mission.

11 What do you mean by that?

12 A. Our mission is to focus on practice
 13 care so that our customers can focus on patient
 14 care, and as I said, when there are times where
 15 we work with groups that are providing services
 16 and offerings to our customers that help them
 17 run a better practice or help them be more
 18 successful in accomplishing their mission,
 19 that's part of our mission. So that's one of
 20 the ways that it helps us.

21 In addition to that, buying groups
 22 often help us market and profile and expose the
 23 other things that Henry Schein does that
 24 oftentimes we can't get communicated to our --
 25 to the marketplace through traditional

1 CONFIDENTIAL - JAKE MEADOWS
 2 marketing.

3 Q. I've heard reference to the Henry
 4 Schein "wheel."

5 A. Yes.

6 Q. Is that what you're referring to?

7 A. Yes.

8 Q. Focusing on the time when you first
 9 started at Henry Schein and when you first
 10 learned of the policy to work with buying
 11 groups, was it your understanding at that time
 12 that Henry Schein worked with all buying groups,
 13 or was there some categorization between the
 14 types of buying groups Henry Schein would want
 15 to work with versus the types of buying groups
 16 that it would not want to work with?

17 A. That was a long time ago, so I'm not
 18 sure I could speak to that. I just do remember
 19 working with the National Dental Association and
 20 Alpha Omega within my geography, and I was in
 21 Washington, D.C., and as I said, I was rewarded
 22 and acknowledged for our success with those
 23 groups.

24 Q. In your time as an FSC, you never came
 25 across a buying group where someone said, no,

1 CONFIDENTIAL - JAKE MEADOWS
 2 no, no, we don't do business with that type of
 3 group?

4 A. I don't recall that ever.

5 Q. You mentioned as an FSC you worked
 6 with the National Dental Association and the
 7 Alpha Omega buying groups.

8 Did you work with any other buying
 9 groups?

10 MR. McDONALD: Object to the form.
 11 Overly broad as to time and vague as to
 12 time.

13 A. I don't recall.

14 Q. Did you pursue business from any other
 15 buying groups outside of National Dental
 16 Association and Alpha Omega while you were an
 17 FSC?

18 A. I don't recall.

19 Q. Has Schein's buying group policy ever
 20 changed since you first joined Schein?

21 A. From my experience, it only enhanced,
 22 but that might have been based on my increase in
 23 responsibility.

24 Q. Can you tell me about when you learned
 25 the first time that Schein's buying group policy

1 CONFIDENTIAL - JAKE MEADOWS
2 was enhanced?

3 A. I think there's a few times within our
4 strategy -- I wouldn't necessarily say policy --
5 that we were continuing to get better at
6 building tools and ways to partner with buying
7 groups. So --

8 Q. I'm going to interrupt you right there
9 really quickly. I apologize.

10 I want to talk about each of those
11 times separately, if that's all right.

12 A. Okay.

13 Q. If it's okay for you to organize your
14 thoughts in that way.

15 So can you tell me about the first
16 time you became aware of the strategy or the
17 practice being enhanced with respect to buying
18 groups?

19 A. When -- when I was a regional manager
20 in Kentucky and I interacted with -- I cannot
21 remember if she was the past president or the
22 current president or incoming president -- Dr.
23 Carrie Brown, who is a dentist in Lexington,
24 Kentucky of the National Dental Association, and
25 I went out and worked with her to expand and

1 CONFIDENTIAL - JAKE MEADOWS
2 worked with the sales team I was responsible for
3 to go -- and Alpha Omega to go introduce
4 ourselves to those members and expose them to
5 the partnership that we have with Henry Schein.

6 My boss at the time, who was the zone
7 general manager, Jeff Chatham, helped me --
8 helped me bring that to life. So I would
9 consider that, from my perspective, an
10 enhancement in the fact that -- that I was
11 involved in bringing that relationship into
12 Kentucky where I was.

13 Q. So you were expanding an existing
14 buying group relationship?

15 A. It was already available to, you know,
16 members of the dental associations across the
17 United States. It was that, as a regional
18 manager, and this was in my experience, as a
19 regional manager, I was proactively dispatching
20 the sales -- I was finding dentists that we
21 didn't have business with and partnering that up
22 with sales people and going with them, and we
23 were creating promotion materials.

24 Q. Is it your understanding that, prior
25 to that time, regional managers did not have the

1 CONFIDENTIAL - JAKE MEADOWS
2 authority to help the growth of Schein's buying
3 group customers?

4 MR. McDONALD: Object to the form.

5 A. No, that was not my experience at all.

6 Q. I guess I'm just -- I'm trying to
7 understand what's the change that you
8 experienced with respect to Schein's practices
9 or procedures?

10 A. From my experience, my manager -- and
11 I was one of 30 people in the DC area -- didn't
12 necessary -- he was not -- I worked with Steve
13 Kess, right, to work there. And it wasn't that
14 my manager wasn't excited about it, as I said, I
15 believe I got promoted because of my work, or my
16 management team wasn't excited, it was more that
17 I paved the way in some new strategies for us to
18 go and gauge the market.

19 Q. Was that more of a Jake Meadows taking
20 an initiative, or was it actually a change
21 within Henry Schein's practices or policies?

22 And I'm referring to your experience
23 as regional manager in Kentucky.

24 A. I saw it as an enhancement because my
25 work there was then duplicated in other regions.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. What was the next time you saw an
3 enhancement to Henry Schein's practices with
4 respect to working with buying groups?

5 A. As I can recall sitting here today, it
6 was when we created the G Plan, which is a
7 formulary -- the "G" stands for "group," from my
8 understanding -- and that was somewhere in the
9 range of 2001.

10 Q. Who created the G Plan?

11 A. I don't recall.

12 Q. Is the G Plan a discount off a set of
13 products?

14 A. It's a formulary.

15 Q. What do you mean by "formulary"?

16 A. It's a listing of products that are
17 discounted ahead of time.

18 Q. Does the G Plan have a particular
19 discount level associated with it or is it just
20 the listing of products?

21 A. No, it's a listing of products, and
22 it's typically coupled with a discount.

23 Q. Is there a standard discount that
24 accompanies the G Plan?

25 MR. McDONALD: Object to the form.

CONFIDENTIAL - JAKE MEADOWS

A. Not that I can recall.

Q. Why did you see the formulation of the G Plan as an enhancement in Henry Schein's practice with respect to working with buying groups?

A. I felt as if it was a way to make it easier for us to be in front of leadership and say we already have discounted so your members don't have to individually go discount these particular items, and it was a way to make it administratively easier for the sales team to work with groups.

Q. In the 2001 timeframe when the G Plan was introduced, did you personally negotiate with any groups using the G Plan?

A. You said 2001? I would say approximately 2011 --

Q. Thank you for that correction.

A. -- is my understanding around the G Plan, and I did not personally involve -- at the time, and actually, within my management roles outside of Kentucky, in each role, I had a lot of -- when I said personnel management is part of my responsibilities, I had a lot more focus

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on personnel management than I did interacting with customers.

It was not often -- it was not often that I interacted with customers in those roles. I was very much more general manager, and in those times of 2011, I had six regional managers and I think I turned over six of them. So I was doing a lot of hiring and a lot of performance management during that time.

Q. You mentioned that you weren't involved with customers on a regular basis.

How frequently did you get involved on customers' specific issues?

A. Often. Daily.

Q. After the G Plan, when was the next time there was an enhancement to Schein's practice or procedures with respect to doing business with buying groups?

A. Well, there were many enhancements that I felt that we continued each day to build or each month to build.

Are you looking for me to define more watershed moments or moments that I would say are -- I'm struggling to understand how to

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subjectively answer that question.

Q. Sure.

A. Or objectively.

Q. I'm not looking for customer-specific developments. I'm more looking for if there was a change to the practice or procedures that you thought were significant.

A. Yeah, I thought some of the changes that we made within our Henry Schein practice analysis offering, we started to make changes within the way that that program was executed so that we could offer that to multiple practices and had a lot of discussions about how to go to leadership of those groups and offer the elements of practice care.

In addition to that -- so this is all around, if I would summarize it, it's the formation of our Business Solutions Group, where we expanded within products like dental marketing and really looked to, as I said, amplify some of the ways that we partnered with groups.

Q. When did Schein start the formation of its Business Solutions Group?

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A. Henry Schein Dental?

Q. Yes.

A. 2007 is when we informally began, and then formally, approximately 2011.

Q. When was the next enhancement to Schein's practice for procedures with respect to doing business with buying groups?

A. Again, I'm looking for that watershed moment like you talked about or described.

I believe it was when, and again, I don't remember the exact dates, but it was after, right in that range of 2013-11, because I was in the Northwest zone, where we started to proactively promote relationships that we had with a Dental Gator or a -- I don't specifically remember promoting Dental Gator, so I'm giving an example there. But I do remember talking to our equipment sales and technology sales groups about equipment and technology offerings that were available to memberships of groups.

So I would say we, again, proactively started to talk to our equipment and technology team and considered that to be a watershed moment.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. So, prior to the 2011-2013 period, it
3 was not your experience that the equipment and
4 technology sales teams were heavily consulted
5 with respect to buying groups?

6 A. No. That -- I'm disagreeing with what
7 you said.

8 It was my experience. What it wasn't
9 my experience that that particular dialogue
10 moved from priority -- and I'm making this up --
11 F to priority C.

12 Q. It became more of a focus?

13 A. Correct.

14 Q. Any other enhancements to Schein's
15 practices or --

16 A. Yes. The formation of the Mid Market
17 Group and the Project Pyramid, which was -- and
18 that was over the period of from 2013, roughly,
19 when we started discussions on that to all the
20 way up until ten months ago. As we formed the
21 Mid Market Group, we have developed the
22 Alternative Purchasing Channels Group.

23 We had some, over that period of time,
24 a lot of back and forth with the Special Markets
25 group about who would lead the way within buying

1 CONFIDENTIAL - JAKE MEADOWS
2 groups and defining or refining the definition
3 between what Special Markets saw as a buying
4 group and how we recognized the buying group.
5 And when I say "we," I mean Henry Schein Dental.

6 Q. Any other enhancements with how Schein
7 did business with buying groups?

8 A. Yes. In September of 2017 when I took
9 my position and was responsible -- or, am now
10 responsible for decision-making, I went through
11 a process to define which groups would be seen
12 as buying groups and moved those groups into the
13 Alternate Purchasing Channels Group.

14 Q. Any other enhancements to Schein's
15 practice or policies with respect to working
16 with buying groups?

17 A. As I'm sitting here today or this
18 morning, I can't think of one, but if I think of
19 one later today, I'll let you know.

20 Q. I appreciate that.

21 I want to ask a couple of general
22 questions about each of these various
23 enhancements that you listed.

24 With respect to the creation of the G
25 Plan formulary in 2011, was that announced to

1 CONFIDENTIAL - JAKE MEADOWS
2 the sales force or made public in some way?

3 A. Yes.

4 Q. How was it announced?

5 A. Over e-mail, I would assume. I don't
6 recall. And at sales meetings.

7 Q. Is that how you found out about it?

8 A. I don't recall.

9 Q. With respect to the formation of
10 Schein's Business Solutions Group, was that
11 announced publicly to the sales force?

12 A. Where I talked about it was announced
13 informally, yes; and when it was announced
14 formally, yes.

15 Q. What kind of announcements was made
16 about the formation of the Business Solutions
17 Group?

18 A. I don't recall exactly.

19 Q. Who would have received such an
20 announcement?

21 A. It's an announcement that, if I were
22 to -- well, the entire sales team, the entire
23 sales management team, service teams.

24 Q. You mentioned that in the 2011 to 2013
25 timeframe, there was a reorganization of

1 CONFIDENTIAL - JAKE MEADOWS
2 priorities with respect to talking to the
3 equipment sales and technology sales groups
4 about Schein working with buying groups.

5 Was there any announcement about that
6 change?

7 A. I wouldn't refer to it as a
8 reorganization of priorities.

9 Is that how you referred to it?

10 Q. How would you refer to it?

11 A. Just a continued change in priorities.

12 Our priorities, because the
13 marketplace is fluid, could and would change
14 from day-to-day to month-to-month to
15 year-to-year to quarter-to-quarter.

16 Q. So was this continual change of
17 priorities with respect to engaging with the
18 equipment sales and technology sales personnel
19 about buying groups, was that announced in a
20 formal way?

21 A. I don't recall.

22 Q. How did others know that they needed
23 to engage with the equipment sales and
24 technology sales in a more proactive way when
25 dealing with buying groups?

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2 A. Specifically, the buying groups, I
3 can't speak to that, but I can say at the time
4 we were very focused on growing our equipment
5 and technology sales and were looking at every
6 opportunity that we had to grow those, and I
7 recall speaking to my management team about it
8 and being -- and hearing from the equipment and
9 technology sales marketing team about groups and
10 opportunities that were out there to make sure
11 that we leverage them and go for it.

12 Q. You mentioned the creation of the Mid
13 Markets Group and the Project Pyramid?

14 A. Uh-huh.

15 Q. What is the Project Pyramid?

16 A. So we took our marketplace that
17 Special Markets is responsible for and Henry
18 Schein Dental is responsible for and built a
19 segmentation project and where we defined
20 different segments in a group that required a
21 different sales approach, and then were, over
22 the period of -- and it took a while -- over the
23 period of forming Project Pyramid and forming
24 Mid Market, which was fluid and has been fluid
25 up until I took my role ten months ago, was

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2 about bringing together Special Markets and
3 Henry Schein Dental together.

4 Q. With the launch of the Mid Markets
5 Group, was there some sort of announcement to
6 the sales team about this new group?

7 A. Yes.

8 Q. Was it a formal announcement?

9 A. Yes.

10 Q. With the launch of the Project
11 Pyramid, was there an announcement to the sales
12 team?

13 A. The sales team would not have known
14 what project -- if I said Project Pyramid, they
15 would not have referred to it as Project
16 Pyramid, but our sales team would be familiar
17 with the pyramid because we have put it up in
18 national sales meetings, field management
19 meetings for the last five years.

20 Q. You mentioned there was this project
21 in September of 2017 where Special Markets would
22 define which groups would be seen as buying
23 groups, and those groups would be moved into the
24 APC group?

25 A. Uh-huh.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Was there a name for that project or
3 initiative, or --

4 A. No; that was my prerogative.

5 Q. Was that project initiative
6 prerogative announced to members of your team?

7 A. Yes.

8 Q. Who made the announcement to your
9 team?

10 A. I did.

11 Q. Was that announced to members outside
12 of your team?

13 A. I did not make an announcement outside
14 of my team, so I'm not familiar if someone else
15 announced somewhere outside of my team.

16 Q. We've talked about some of these
17 various milestones and how they were announced
18 to various teams.

19 Why is it important to announce
20 changes or developments in Schein's practice or
21 protocols in dealing with buying groups?

22 MR. McDONALD: Object to the form.

23 A. Henry Schein Dental or Henry Schein
24 Special Markets?

25 I can't -- if you're talking about

1 CONFIDENTIAL - JAKE MEADOWS

2 whatever timeframe that it's important, I'm not
3 sure what you mean.

4 Q. Henry Schein Dental. Let's leave off
5 your September 2017 --

6 A. Okay.

7 Q. -- project.

8 Let's talk about the G Plan, the
9 formation of the Business Solutions Group and
10 Mid Markets.

11 Why was it important to announce to
12 the sales team the creation of some of these
13 developments?

14 A. It's everyday business. Doing
15 business with these groups would be equal to us
16 announcing a new product that we have from a
17 manufacturer. So I wouldn't call those
18 moments -- they're watershed moments within us
19 specifically today targeting our strategies
20 around buying groups, but for the sales team and
21 for our company, I wouldn't say that we would
22 define those as watershed moments because it's
23 part of everyday business. So we communicate to
24 our sales team consistently and constantly.

25 Q. Why do you communicate with your sales

1 CONFIDENTIAL - JAKE MEADOWS
 2 team consistently and constantly?
 3 A. So that they're aware of the products
 4 and offerings that we have for our customers to
 5 enhance our business with our customers,
 6 increase our market share, retain business and
 7 bring our mission to life, as I've talked about,
 8 or be aware of market trends or conditions, or
 9 we would communicate to our sales team around
 10 their results, we would communicate to our sales
 11 team around performance management, we could
 12 keep going. Benefits changes, anything
 13 associated with an employee would need.
 14 Q. Is it important for the sales team to
 15 be on the same page with respect to Schein's
 16 practices or procedures for a certain customer
 17 segment?
 18 A. I can only -- well, again, we're
 19 talking about in my previous role, Henry Schein
 20 Dental?
 21 Q. Yes.
 22 A. It's important that the sales team be
 23 aligned with what Henry Schein Dental's strategy
 24 is and policies and procedures, our offerings to
 25 customers.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. Have you ever heard the term
 3 "price-only buying group"?
 4 A. No, not that I can recall.
 5 Q. Have you ever heard the term "value
 6 added buying group"?
 7 A. I can make sense of the word, I think,
 8 in a definition, but not that I recall.
 9 Q. Is it your understanding that Henry
 10 Schein, either Special Markets or Henry Schein
 11 Dental, does business with buying groups that
 12 focus only on price?
 13 MR. McDONALD: Object to the form.
 14 A. Is it my understanding that Henry
 15 Schein Special Markets or Henry Schein Dental
 16 only does --
 17 Q. Is it your understanding that Henry
 18 Schein, and I'm including both Special
 19 Markets --
 20 A. Okay.
 21 Q. -- and Henry Schein Dental, does
 22 business with buying groups who focus only on
 23 price?
 24 MR. McDONALD: Object to the form.
 25 A. I understand Henry Schein, both

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. Why is that?
 3 A. So that they can grow and retain our
 4 business and bring our mission to life and be
 5 aware of what our offerings are to put them in
 6 front of customers, or, like I said, if it's
 7 performance management and we want to change
 8 their behavioral habits, or if there's something
 9 associated with being an employee and there's a
 10 benefits change or something that's associated
 11 to them personally.
 12 Q. If you find an instance where an
 13 employee is acting contrary to Schein's set
 14 strategy or -- or generally accepted practices,
 15 how do you respond?
 16 A. That's case-by-case; it really would
 17 be.
 18 Q. Is it ever the case that you ignore
 19 the fact that the employee is acting contrary to
 20 Henry Schein's strategies or practices?
 21 MR. McDONALD: Object to the form.
 22 Overly broad. Vague.
 23 A. It wouldn't be typical, but I can't
 24 speak to instances -- me, personally, it
 25 wouldn't be typical.

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 2 Special Markets and Henry Schein Dental, to do
 3 business with all forms of buying groups and to
 4 listen to opportunities from buying groups that
 5 have opportunity for us to grow our market
 6 share, retain our business, or bring our mission
 7 to life.
 8 Q. Are there any drawbacks to doing
 9 business with buying groups?
 10 MR. McDONALD: Object to the form.
 11 Overly broad.
 12 A. Is there anything in particular? Just
 13 generally?
 14 Q. Are you aware of any drawbacks to
 15 doing business with buying groups?
 16 MR. McDONALD: Same objection.
 17 A. I'm not sure I would use the word
 18 "drawback." I would say that within any segment
 19 or any group of business there's risk.
 20 Q. What types of risks are involved in
 21 doing business with buying groups?
 22 MR. McDONALD: Object to the form.
 23 A. To generalize? Do you want me to
 24 generalize?
 25 Q. Yes.

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2 A. Generalizing is we offer something to
3 a group and we don't get the results that we
4 wanted from offering that to the group, and we
5 waste effort.

6 Q. So, for example, offering a discount
7 and members of a buying group don't take
8 advantage of the discount, you have wasted
9 effort?

10 A. Yes.

11 Q. Any other risks of doing business with
12 a buying group?

13 MR. McDONALD: Object to the form.
14 Overly broad.

15 A. Within a particular -- we could have
16 an agreement within a geography and a strategy
17 within a geography that we're already running,
18 and one buying group might be counter to the
19 effort that we have already committed to or a
20 strategy that we're already running.

21 Q. Any other risks?

22 MR. McDONALD: Same objection. Overly
23 broad.

24 A. That we -- a particular customer
25 within that group based on the fact that we're

1 CONFIDENTIAL - JAKE MEADOWS
2 discounting on volume doesn't -- I mean, I think
3 it's the first answer that I gave.

4 Q. Any other risks?

5 A. Risk that we lose the buying group and
6 they take that influence that they have to a
7 competitor.

8 Q. Any other risks?

9 MR. McDONALD: Same objection.

10 A. Broadly, not right now that I can
11 think of.

12 MS. ROSNER: We've been going for
13 about an hour. Would you like a break?

14 THE WITNESS: I'm fine.

15 MS. ROSNER: John?

16 MR. McDONALD: If you want to go a
17 little longer, or I'm fine --

18 Are you switching topics?

19 MS. ROSNER: I was going to switch
20 topics.

21 MR. McDONALD: Then let's take a
22 break.

23 THE VIDEOGRAPHER: The time is 9:33
24 a.m. We're off the record.

25 (Recess.)

1 CONFIDENTIAL - JAKE MEADOWS
2 THE VIDEOGRAPHER: The time is 9:48
3 a.m. We're on the record.

4 BY MS. ROSNER:

5 Q. Mr. Meadows, I meant to ask you
6 earlier, when you were VP of Sales for the
7 Eastern area, who did you report to?

8 A. Dave Steck.

9 Q. Did you also report to Tim Sullivan?

10 A. I report directly to Dave Steck.

11 Q. Does Dave Steck roll up to Tim
12 Sullivan?

13 A. Yes.

14 Q. Did you have a dotted line reporting
15 to anyone else?

16 A. No.

17 Q. When you were Eastern Area Sales
18 Director, who did you report to?

19 A. Dave Steck.

20 Q. Did you have dotted line reporting to
21 anyone else?

22 A. I did not.

23 Q. When you were a Northwest zone general
24 manager, who did you report to?

25 A. Dave Steck and Joe Cavaretta.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. I'm noticing a pattern here.

3 Now that you are the VP of Sales for
4 Special Markets, who do you report to?

5 A. A.J. Caffentzis.

6 MR. McDONALD: You want to spell that
7 for the court reporter?

8 THE WITNESS: C-A-F-F -- he's going to
9 laugh -- E-N-T-Z-I-S.

10 Q. Do you report to anyone else?

11 A. No.

12 Q. Do you dotted line report to anyone
13 else?

14 A. No.

15 Q. Have you ever reported directly to Tim
16 Sullivan?

17 A. I have not.

18 Q. Do you have interactions with Tim
19 Sullivan?

20 A. I do.

21 Q. Can you describe the nature of your
22 interactions with Tim Sullivan?

23 A. In which role?

24 Q. Starting with your VP of Sales for the
25 Eastern area.

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2 A. I would inform Tim of instances that
3 customer issues that or personnel issues that
4 Dave Steck would direct me to do that or would
5 interact with Tim in the regular course of a
6 meeting discussing an issue or setting budget.

7 Q. Any other types of interactions with
8 Mr. Sullivan?

9 A. Professionally?

10 Q. Yes.

11 A. Normal course of business meetings,
12 personnel issues and customer issues, and I
13 think that's about it.

14 Q. Would you interact with Mr. Sullivan
15 on a daily basis? A weekly basis? How
16 frequently?

17 MR. McDONALD: Object to the form.

18 A. It would depend because we all travel
19 so much that it could be a three-week timeframe
20 once and see him twice in a day another time.

21 Q. Did you mostly interact with Mr.
22 Sullivan over e-mail? In person? By telephone?

23 A. All of that.

24 Q. Did you have a direct line to Mr.
25 Sullivan, or would you seek permission from Mr.

1 CONFIDENTIAL - JAKE MEADOWS

2 Steck to engage with Mr. Sullivan?

3 A. When you say "direct line," I'm not
4 sure what you mean.

5 MR. McDONALD: Like the red phone, do
6 you mean?

7 Q. Did you have a red phone? No, strike
8 that.

9 Did you feel comfortable reaching out
10 to Mr. Sullivan directly without first getting
11 Mr. Steck a heads-up?

12 A. No.

13 And when you say "feel comfortable,"
14 it wasn't because Tim didn't make me feel
15 comfortable; it was out of respect for my
16 reporting to Dave Steck to make sure he was
17 informed of all my business matters.

18 Q. Did you engage with Mr. Sullivan
19 outside of the professional relationship?

20 A. No, we had -- we were talking about
21 working in -- we, as a group of people from
22 work, ran a Tough Mudder, things of that nature,
23 but nothing where it was Tim and myself
24 personally off doing something.

25 Q. Are you friends with Tim Sullivan

1 CONFIDENTIAL - JAKE MEADOWS

2 outside of work?

3 A. I don't know if we could define it as
4 friendship. We're friendly and have a good,
5 strong professional relationship.

6 Q. Do you hang out with Tim Sullivan
7 outside of work?

8 A. No.

9 Q. You mentioned the buying group Alpha
10 Omega earlier today.

11 What is Alpha Omega?

12 A. Alpha Omega is a dental association
13 that's focused on educating and supporting
14 dentists of Jewish decent.

15 Q. Does Schein have a contract that
16 provides discounts to Alpha Omega's memberships?

17 A. I can't speak to what we have alive in
18 existence today. When I've dealt with Alpha
19 Omega, and the last time I dealt with Alpha
20 Omega was when I left the Northwest, we had an
21 agreement in existence, but today I'm not
22 familiar with what their agreement is.

23 Q. Can you describe in broad strokes what
24 the agreement was with Alpha Omega when you last
25 dealt with it?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. That we would compile the sales
3 dollars of the membership and generate a rebate
4 back to the dental society their efforts as a
5 percentage of the -- percentage of sales that
6 the membership had, and we would build in
7 discounted incentives on some of our business
8 solutions offerings, like our Henry Schein
9 Practice Analysis or particular items that we
10 would go try to sell to those groups.

11 Q. When you say particular items, did
12 Henry Schein offer Alpha Omega members discounts
13 on dental products?

14 A. Yes.

15 Q. Were the discounts that Henry Schein
16 offered to Alpha Omega members the same level of
17 discount across the board for all of the
18 members?

19 A. I don't recall.

20 Q. Before the break, we also talked a
21 little bit about Schein's practice or procedures
22 with respect to doing business with buying
23 groups.

24 Are there any types of buying groups
25 that Schein would not consider doing business

1 CONFIDENTIAL - JAKE MEADOWS
2 with?

3 MR. McDONALD: Object to the form.

4 A. Not that I'm aware of. Everything is
5 case-by-case.

6 Q. Is there a line somewhere in the sand
7 where Schein can say, looking at this buying
8 group on its face, I know I'm not going to deal
9 with it?

10 MR. McDONALD: Object to the form.

11 A. When you say "Schein," do you mean
12 Henry Schein Dental during the time I was with
13 Henry Schein Dental, or today?

14 Q. Let's start with Henry Schein Dental.

15 A. Can you ask your question again?

16 Q. Is there a line in the sand somewhere
17 where Henry Schein Dental would say this is the
18 type of buying group we would not do business
19 with on its face?

20 MR. McDONALD: Object to the form.

21 A. No; we would evaluate each buying
22 group case-by-case.

23 Q. Are there buying groups that Henry
24 Schein Dental declines to do business with?

25 A. We would evaluate each buying group

1 CONFIDENTIAL - JAKE MEADOWS
2 case-by-case.

3 Q. Has Henry Schein Dental ever declined
4 to do business with a buying group?

5 A. Yes.

6 Q. Can you give me some examples of
7 buying groups that Henry Schein Dental has
8 declined to do business with?

9 A. Direct Dental Sales.

10 Q. Any others?

11 A. Blue Chip.

12 Q. Any others?

13 A. Off the top of my head, no.

14 Q. When did Henry Schein Dental decline
15 to do business with Direct Dental Sales?

16 A. Approximately 2016.

17 Q. Why did Henry Schein Dental decline to
18 do business with Direct Dental Sales?

19 A. I just want to be very clear, when
20 you're saying Henry Schein Dental, I made the
21 decision not to do business with Direct Dental
22 Sales solely.

23 Q. In your capacity as VP of Sales of the
24 Eastern area, you made the decision not to do
25 business with Direct Dental Sales?

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2 A. Correct. Correct. And Blue Chip.

3 Q. What was your reasoning for not doing
4 business with Direct Dental Sales?

5 A. I had two reasons. One was, from a
6 marketing perspective, the title, their name,
7 Direct Dental Sales, although "DDS" is
8 attractive for -- in the market, in the dental
9 market space. Direct dental sales is counter to
10 our business model. Therefore, I thought there
11 was conflict. That's not in order of
12 importance, but that was one of the major
13 reasons.

14 The second was in their model, in
15 describing their model to me, they were going to
16 dispatch -- start dispatching sales teams to
17 launch their model in Boston, and we had already
18 had a buying group, and they were -- they said
19 they were going after the entire dental market,
20 so it was not specific to private practice or
21 group practice or CHCs. And they were going to
22 start in Boston, was one of the areas, and we
23 already had an agreement with Commonwealth
24 Purchasing Group, and I thought that that would
25 run counter to our strategy and potentially

1 CONFIDENTIAL - JAKE MEADOWS
2 create conflict in an existing agreement that we
3 had.

4 Q. Any other reasons you declined to do
5 business with Direct Dental Sales?

6 A. No.

7 Q. When did you decline to do business
8 with Blue Chip?

9 A. Approximately that same year, same
10 timeframe.

11 Q. What were your reasons for declining
12 to do business with Blue Chip?

13 A. When I interacted with the gentleman
14 who was -- and I don't recall his name -- was
15 starting Blue Chip, I didn't feel as if he had a
16 compelling concept that would be -- that would
17 complement us in the market, and when I asked
18 for business plans, those weren't available, he
19 didn't have those.

20 He then went and built a business
21 plan, and then, after evaluating it, I didn't
22 feel as if that was a group that could help us
23 grow.

24 Q. What about his business plan suggested
25 that Blue Chip could not help Schein grow?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. There were some basic questions that
3 were -- that he couldn't answer that were
4 incomplete. So...

5 Q. Can you give me an example?

6 A. An example would be when I asked would
7 the membership be held to any minimum purchasing
8 levels, and again, I'm -- I'm -- I'm recalling
9 as much as I can, I remember the answer being,
10 "I don't know." So, for me, I felt that that
11 group was not -- or that gentleman was not
12 representing a refined or an organization that I
13 felt was established or able to bring value to
14 us retaining our business, growing our business,
15 or bringing our mission to life.

16 Q. Any other aspects of the business plan
17 or your interactions with the gentleman from
18 Blue Chip that would lead you to believe that a
19 relationship with Blue Chip would not help
20 Schein grow?

21 A. Not that I recall.

22 Q. You mentioned that Blue Chip didn't
23 have a compelling concept.

24 What did you mean by that?

25 A. Meaning what value were they going to

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2 bring to their members. As I talked about, I
3 was very interested, and I would say in Henry
4 Schein Dental we're always interested in
5 partnering with any groups, not just buying
6 groups, but any groups who can amplify our
7 offering and help us move forward in the market
8 in growing our business, retaining our business,
9 and bringing our mission to life.

10 Q. The idea of a buying group bringing
11 value to its members, is that something that you
12 created on your own? Is that the Jake Meadows
13 test for buying groups, or is there some broader
14 philosophy at Henry Schein about working with
15 buying groups who bring value to their members?

16 A. My first responsibility in my Vice
17 President of Sales role and all my other roles
18 was to create value for Henry Schein, grow the
19 business, retain our business, and bring our
20 mission to life, so as far as what value a
21 particular organization would bring to the
22 customers, that was not for me to decide.

23 I'm more focused on could their
24 offering to their membership amplify and
25 complement Henry Schein Dental's offering, and

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2 then we could grow and partnership together.

3 Q. When you talk about a buying group
4 providing value to its members, what are some of
5 the telltale signs of that happening?

6 A. Examples or telltale signs? Because
7 I'm not sure I could -- I'm not an authority on
8 buying groups since I've never run a buying
9 group, and it's a segment -- a segment -- of our
10 business, so I don't think that I could say, oh,
11 all -- the buying groups that do this, this and
12 this are -- that's the telltale buying group.

13 So if you want examples, I could
14 probably give you some examples.

15 Q. Examples would be great.

16 A. Examples of how a buying group would
17 create value for its members, I talked about
18 Alpha Omega and the National Dental Association
19 through education. I think comradery, bringing
20 dentists together so that they can share best
21 practices with one another. Pooling their --
22 their purchasing power with other entities like
23 Henry Schein, or marketing a buying group that
24 actually has staff that would do marketing or
25 would assist or educate.

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2 I think a buying group that would have
3 a meeting or a large meeting to promote that
4 comradery and that education or expose dentists
5 to new technologies and new offerings. A buying
6 group that would educate dentists on market
7 trends, clinical trends. And probably not
8 limited to that list, but that's what I can
9 think of right now.

10 Q. Is it valuable or important to Schein
11 for a buying group to allow Schein FSCs to
12 engage with a buying group's members?

13 A. Yes.

14 Q. Why is that?

15 A. Because FSCs are an important
16 component for us to grow our business, retain
17 our business, and to bring our mission to life.

18 Q. Is it important for Schein or valuable
19 to Schein that a buying group promote some of
20 Schein's offerings other than discounts on
21 dental products?

22 A. It's valuable.

23 Q. Why is that?

24 A. Because those buying groups and part
25 of a decision, you know, case-by-case to do

1 CONFIDENTIAL - JAKE MEADOWS
2 business would be, as I said, does this group
3 amplify our offering for us to achieve our
4 mission, to grow our business, retain our
5 business, and bring our mission to life.

6 Q. If a buying group approached you in
7 your capacity as VP of Sales or as Sales
8 Director, but lacked all of the elements that
9 you just listed, would you be inclined to work
10 with them?

11 A. Since that list is the list I came up
12 with today sitting here, there might be
13 something else that they have that would be
14 valuable to us to help us grow our business,
15 retain our business, or bring our mission to
16 life that I would definitely entertain and,
17 case-by-case, make a decision about whether to
18 do business with them or not.

19 Q. Going back to the Blue Chip group that
20 you mentioned earlier, was Blue Chip willing to
21 commit to a minimum volume of purchases?

22 A. I don't recall.

23 Q. You can't say one way or the other?

24 A. I don't recall.

25 Q. Is a minimum volume commitment one of

1 CONFIDENTIAL - JAKE MEADOWS
2 the characteristics that Schein looks for when
3 partnering with buying groups?

4 A. There was never any policy or
5 procedure for me. It's a case-by-case basis,
6 and part of the decision process that I used
7 because of the amount of effort that we needed
8 to put into working with a buying group, we had
9 to make sure that it -- that effort equaled the
10 results that we would get.

11 So, as I said earlier this morning,
12 that in some -- defining some of the risks of
13 doing business, part of any job is to minimize
14 risk for the company, so there were times where
15 I had to make decisions to minimize risk.

16 Q. And having a volume commitment might
17 be one way to minimize risk in doing business
18 with a buying group?

19 A. It would be case-by-case basis.
20 There's no generalized, I think, thought around
21 it.

22 Q. Does Schein require its buying groups
23 to have an ownership interest in its members'
24 practices?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Henry Schein Dental specifically?

3 Q. Henry Schein Dental.

4 A. No, not that I'm aware of.

5 Q. Does Henry Schein Special Markets
6 require its buying groups to have an ownership
7 interest in its members' practices?

8 A. I can only speak to the time that I've
9 been Vice President of Sales of Special Markets,
10 and I would say no.

11 Q. Have you ever heard of anyone within
12 either Henry Schein Dental or Henry Schein
13 Special Markets requiring ownership of member
14 practices in order to deal with buying groups?

15 A. Not that I can recall.

16 Q. When you are encountered -- strike
17 that.

18 When you encounter a buying group, you
19 mentioned that you review the potential of that
20 buying group on a case-by-case basis?

21 A. Uh-huh.

22 Q. So when you talk about buying groups
23 generally, you're not referring to specific
24 buying groups' characteristics or segments?

25 A. When I -- can you repeat your

1 CONFIDENTIAL - JAKE MEADOWS
2 question?

3 Q. Sure. If in an e-mail you were to use
4 the term "buying groups," it sounds like to me
5 you don't characterize buying groups in
6 different categories because you review them on
7 a case-by-case basis; is that right?

8 A. I would say, over the period of years,
9 we struggled with nomenclature to call something
10 a buying group or a GPO or a co-op, and so there
11 was a little bit of confusion and the definition
12 changed. We attempted to segment maybe in
13 discussions, but never were able to really
14 figure that out.

15 And now I forgot your question.

16 Q. Did you ever use the term "buying
17 group" to refer to a GPO?

18 MR. McDONALD: Object to the form.

19 A. Maybe. I mean, that -- that --
20 looking back, I have -- I could have used "GPO"
21 to describe a buying group, I could have used
22 "buying group" to describe a GPO because of not
23 understanding what that particular organization
24 is.

25 Q. And you view GPOs and buying groups as

1 CONFIDENTIAL - JAKE MEADOWS
 2 distinct groups?
 3 MR. McDONALD: Object to the form.
 4 Currently?
 5 A. I would say, currently, because, as I
 6 said, my education within that nomenclature is I
 7 got exposed to more groups, I started to
 8 understand more what a GPO is compared to what a
 9 buying group is, and I would say in my times, in
 10 my roles, I can think back to, wow, I didn't
 11 even know an organization like this existed.
 12 Q. You've never heard anyone at Schein
 13 tell you that Schein doesn't do business with
 14 buying groups?
 15 MR. McDONALD: Object to the form.
 16 Q. Let me rephrase so that there's not a
 17 double negative.
 18 Have you ever heard anyone at Schein
 19 tell that you Schein does not do business with
 20 buying groups?
 21 A. I have had subordinates who have made
 22 that generalized statement to me that I've
 23 corrected.
 24 Q. Why have you corrected subordinates
 25 when they tell you that Schein does not do

1 CONFIDENTIAL - JAKE MEADOWS
 2 business with buying groups?
 3 A. Very similar to the example I gave you
 4 when I was in Washington, D.C. I wasn't exposed
 5 to the entire strategy of Henry Schein in
 6 regards to buying groups. I was just exposed to
 7 my geography. There are some salespeople that,
 8 within their territory or their friend's
 9 territory, don't do business with buying groups
 10 just based on they don't have any membership by
 11 chance who make a generalized assumption or,
 12 back to those issues of nomenclature, they may
 13 not realize that it's a buying group and see it
 14 as a group practice or understand the ownership
 15 model.
 16 Q. Why is it important to you to correct
 17 subordinates when they misunderstand Schein's
 18 position with respect to buying groups?
 19 A. I want to make sure that if our sales
 20 team sees any opportunities out there, that they
 21 would know to take advantage of all the
 22 opportunities in the market; and if they believe
 23 that we have, you know -- at Henry Schein Dental
 24 we don't do business with automotive stores,
 25 right? But I want them to know that we do

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 2 business with buying groups or any other
 3 example.
 4 Q. Have you ever heard any higher-ups,
 5 someone up the food chain from you, say that
 6 Schein does not do business with buying groups?
 7 A. Not that I recall.
 8 Q. Have you heard anyone ever say that
 9 buying groups are a slippery slope?
 10 MR. McDONALD: Object to the form.
 11 A. That particular statement, no, not
 12 that I recall.
 13 Q. What does "slippery slope" mean to
 14 you?
 15 A. Risk.
 16 Q. Have you ever said that Schein does
 17 not do business with buying groups?
 18 A. Not that I recall.
 19 Q. Have you ever said that Schein --
 20 scratch that.
 21 Have you ever said that doing business
 22 with buying groups would lower Schein's margin?
 23 MR. McDONALD: Object to the form.
 24 If you have got a document, you should
 25 show it to him.

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. Not that I recall.
 3 Q. Have you ever heard anyone else say
 4 that doing business with buying groups would
 5 lower Schein's margin?
 6 MR. McDONALD: Same objection.
 7 If you have got a document, show it to
 8 him.
 9 A. Not that I can recall that statement.
 10 Q. Is it your understanding that buying
 11 groups lower Schein's margin?
 12 A. No.
 13 Q. What is your understanding?
 14 A. That buying groups are a great way for
 15 us to grow our business, retain our business,
 16 bring our mission to life, and if executed
 17 properly, just like every other strategy, we
 18 would grow.
 19 Q. Would that --
 20 A. Make money.
 21 Q. Would that include growing your profit
 22 margin?
 23 A. Yes.
 24 Q. Have you ever said that buying groups
 25 are a threat?

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2 MR. McDONALD: Object to the form.

3 A. Not that I recall.

4 Q. Are you familiar with a SWOT analysis?

5 A. Yes.

6 Q. What is a SWOT analysis?

7 A. Strengths, weaknesses, opportunities
8 and threats.

9 Q. How does Henry Schein use SWOT
10 analyses?

11 MR. McDONALD: Object to the form.

12 Overly broad.

13 A. Henry Schein Dental and the sales
14 team?

15 Q. Yes.

16 MR. McDONALD: Same objection.

17 A. We use the SWOT analysis in -- with
18 our sales team as a feedback tool with our sales
19 team to get a -- to get information back.

20 Q. How often do you personally draft SWOT
21 analyses?

22 A. Personally that I take the box and I
23 write strengths, weaknesses, opportunities and
24 threats?

25 Q. Yes.

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2 A. Not often. Maybe once a year and not
3 formally. I wouldn't say it's a formal business
4 model that my management team would ask me to
5 build a SWOT analysis or that I would ask my
6 team to build a SWOT analysis.

7 Q. How often do you come across SWOT
8 analyses in your various roles at Schein?

9 MR. McDONALD: Object to the form.

10 A. Formally, when we have SWOT meetings,
11 we call it our SWOT team, and it's a play on
12 SWAT with the police officers, and the
13 strengths, weaknesses, opportunities. It's
14 meant to communicate to the sales team members
15 that they are part of influencing strategy from
16 their position.

17 Q. How often do your SWOT meetings occur?

18 A. Face-to-face, traditionally -- I can't
19 speak to the last few national sales meeting,
20 but face-to-face traditionally, we've had SWOT
21 meetings at our national sales meetings, and
22 there would be efforts that they would break
23 into small groups and work on it.

24 Q. Is that an annual meeting?

25 A. Yes.

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2 Q. In the SWOT analysis, what is meant by
3 "threat"?

4 MR. McDONALD: Object to the form.

5 A. In the -- I've never read a book on
6 analysis, so I couldn't tell you exactly on
7 that.

8 Q. What's your understanding of the word
9 "threat" as used in the SWOT analysis?

10 A. Risk.

11 Q. Why is it important to identify risks
12 or threats?

13 MR. McDONALD: Object to the form.

14 A. In business, my mission is to grow
15 business, retain business, and bring our mission
16 to life, and it's important that I know what
17 potential market conditions or what potential
18 pieces of business are that could make it
19 difficult to do that.

20 Q. Who's Stanley Bergman?

21 A. He's CEO of Henry Schein Inc.

22 Q. How often do you get to interact with
23 Mr. Bergman?

24 A. In my new role or in these previous
25 roles?

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2 Q. In any of your roles.

3 MR. McDONALD: Overly broad.

4 A. Do you want me to list out by role?

5 Q. Let's start with your VP of Sales, the
6 Eastern area, how often did you interact with
7 Mr. Bergman?

8 A. Personally, I would interact with him
9 or if I was at a meeting and he would be in the
10 meeting?

11 Q. Let's start with you personally.

12 A. Twice a year.

13 Q. In what context?

14 A. He would be working a room at the
15 national sales meeting and would ask me how
16 things are going, and I would say "good," and he
17 would give me a pat on the shoulder and then
18 move on.

19 Q. That was the extent of it?

20 A. Yes. Personally, yes.

21 Q. How often would you be in meetings
22 with Mr. Bergman?

23 A. Usually two to three times a year, a
24 budget meeting or -- and it is typically
25 videoconference.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. Do you correspond with Mr. Bergman
3 directly?

4 MR. McDONALD: Object to the form.
5 Overly broad.

6 A. In my role today?

7 Q. In your role as VP of Sales of the
8 Eastern area, did you respond -- did you
9 correspond with Mr. Bergman directly?

10 A. There might have been an instance or
11 two that I would update Stanley, but it would
12 have been related to a personnel issue or a
13 large customer issue.

14 Q. Is it fair to say then that you met
15 with Mr. Bergman infrequently while you were VP
16 of Sales of the Eastern area?

17 A. Very infrequently.

18 Q. Did you take your interactions with
19 Mr. Bergman seriously?

20 A. Very.

21 Q. Why is that?

22 A. This is the CEO of our company, and I
23 enjoy and respect when Stanley speaks and the
24 direction that he gives from the podium.

25 Q. Would you ever knowingly feed Mr.

1 CONFIDENTIAL - JAKE MEADOWS
2 Bergman false information?

3 A. No.

4 Q. Would you make an attempt to be
5 accurate in any presentations that you give to
6 Mr. Bergman?

7 A. Yes.

8 Q. Why?

9 A. That's how I communicate.

10 Q. You don't want it to reflect poorly on
11 you if you're inaccurate in your presentations
12 to Mr. Bergman?

13 A. All my presentations to Mr. Bergman I
14 would make an effort to make them as accurate as
15 I could.

16 Q. Do you recall being part of a dinner
17 meeting with Mr. Bergman in July 2015?

18 A. No.

19 Q. Do you recall Mr. Bergman asking for
20 the team to do a presentation for him in July
21 2015?

22 A. I don't remember a meeting with Mr.
23 Bergman in 2015.

24 Q. Do you recall presenting a SWOT
25 analysis or preparing a SWOT analysis for Mr.

1 CONFIDENTIAL - JAKE MEADOWS
2 Bergman?

3 A. I do not.

4 Q. I'm going to show you a document
5 that's been premarked as CX2377. The first page
6 of the document bears the Bates stamp Henry
7 Schein-0002627660.

8 Please take a moment to review this
9 document and let me know when you're finished.

10 (Complaint Counsel Exhibit CX2377-001
11 through 005, an e-mail bearing Bates Nos.
12 Henry Schein-000267660 through 664, marked
13 for identification, as of this date.)

14 MR. McDONALD: Is there more to this
15 e-mail?

16 MS. ROSNER: No, my understanding is
17 that the e-mail begins with Mr. Bergman's
18 message on page CX2377-005, and his e-mail
19 consisted of just the subject line with no
20 text in the body.

21 MR. McDONALD: Got it.

22 Which doesn't show up in his e-mail.

23 MS. ROSNER: Correct.

24 MR. McDONALD: Okay.

25 MS. ROSNER: But you can see the

1 CONFIDENTIAL - JAKE MEADOWS
2 subject line in the chain.

3 MR. McDONALD: Yes. Got it.

4 THE WITNESS: Okay.

5 BY MS. ROSNER:

6 Q. You've had an opportunity to review
7 CX2377?

8 A. I have.

9 Q. CX2377 is an e-mail string. The
10 last-in-time e-mail is from Mr. Cavaretta dated
11 July 13, 2015.

12 A. Uh-huh.

13 Q. You have written some e-mails in this
14 string; is that right?

15 A. Yes.

16 Q. You wrote them as part of your job?

17 A. Yes.

18 Q. It's part of your job at Schein to
19 write and respond to e-mails regarding requests
20 from Mr. Bergman?

21 A. Yes.

22 Q. You wrote the e-mails in CX2377 at or
23 near the time you understood Mr. Bergman was
24 asking for a presentation?

25 A. Yes.

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2 Q. You wrote and Schein maintained CX2377
3 in the ordinary course of Schein's business?

4 A. Yes.

5 Q. CX2377 is a true and accurate copy of
6 your e-mail correspondence?

7 A. I suppose.

8 Q. You have any reason to doubt?

9 A. No, I have no reason to doubt.

10 Q. I'm going to refer you to the bottom
11 of the first page, CX2377-001.

12 A. Uh-huh. Uh-huh.

13 Q. There's an e-mail from you at 8:35
14 a.m., and it looks like you have listed out a
15 SWOT analysis?

16 A. Uh-huh.

17 Q. The bottom line of your e-mail reads,
18 "T," which I understand to mean "threat"; is
19 that right?

20 A. Yes.

21 Q. And within threat, you have listed
22 "Buying Groups, Sirona, Margin Decline/Pricing
23 Pressure."

24 Did I read that correctly?

25 A. Correct.

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2 Q. You're identifying buying groups as a
3 threat; is that right?

4 MR. McDONALD: Object to the form.

5 A. I don't recall, so I'd have to make an
6 assessment about -- but, yes, it says, "T:
7 Buying Groups," if that's what you're asking.

8 Q. So your intention was to indicate here
9 that buying groups would be a threat?

10 A. No. What I would say is, Sirona -- if
11 I were to make this today, there would be Sirona
12 would be a strength, there would be things about
13 loyalty that I would put down in "threats."

14 My assumption, just because it was
15 part of our normal business, that there was some
16 component of something that was happening where
17 I was generalizing with the word "buying
18 groups," but there was something in particular
19 within that effort that was a threat. Could be
20 a particular customer that we didn't have. This
21 is -- these are -- these is very general, very
22 general topics.

23 Q. Do you recall this e-mail sitting here
24 today?

25 A. No.

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2 Q. But you recall at the time that -- or,
3 you understand now upon seeing this e-mail that
4 this was something that was going to go to Mr.
5 Bergman?

6 MR. McDONALD: Object to the form.

7 A. No, I don't -- as I said, I don't
8 remember this meeting happening, so I'm not sure
9 if this meeting ever occurred. I can't recall.

10 Q. Is it your understanding looking at
11 CX2377 that the reason you put the SWOT analysis
12 together was because Mr. Bergman was looking for
13 a presentation from you?

14 A. I don't know if Mr. Bergman was
15 looking for a presentation to me, and I don't
16 know if this was a presentation that -- or a --
17 if we were building the concepts, and that very
18 easily could be stricken from the final
19 outcome and Mr. Bergman very possibly.

20 So I don't, in reading this, I don't
21 see where it says, Jake, you are going to
22 present this to Mr. Bergman, because in the --
23 where I see is that I was to present talent
24 management and recruiting on the first document.

25 Q. Let me refer you to the bottom of

1 CONFIDENTIAL - JAKE MEADOWS
2 CX23777-003.

3 A. Okay.

4 Q. There's an e-mail from Mr. Steck, who
5 you have testified --

6 A. Yes.

7 Q. -- was your boss?

8 A. Yes.

9 Q. And Mr. Steck says, "Team, please see
10 the e-mail below from Stan. It's Saturday night
11 as I write this and we have one whole day to put
12 together a deck to present at Tuesday night's
13 dinner."

14 Did I read that correctly?

15 A. Yes.

16 Q. Is it your understanding that Mr.
17 Steck is asking for your help to put together a
18 presentation for the Tuesday night dinner?

19 A. Yes.

20 Q. And you wanted -- and he is also
21 asking for everyone to stay very high level; is
22 that right?

23 A. Yes.

24 Q. Is it your understanding then that you
25 responded with high level thoughts on what would

1 CONFIDENTIAL - JAKE MEADOWS
2 make up a SWOT analysis?

3 MR. McDONALD: Object to the form.

4 A. Is it my understanding -- I'm sorry,
5 can you ask that question again?

6 Q. That your contribution to this
7 presentation was the SWOT analysis?

8 A. Reading this e-mail, it looks like
9 that one of my contributions in this e-mail
10 chain to Joe, not to Dave Steck or Stanley, was
11 a listing of a SWOT analysis.

12 Q. Why would you have sent an e-mail to
13 Joe on this chain? Were you trying to
14 coordinate the message that the two of you would
15 present to Mr. Bergman?

16 A. That looks -- assume that.

17 Q. Why would buying groups be a threat to
18 Schein?

19 A. In particular to this list?

20 Q. Yes.

21 A. Again, I -- buying groups aren't a
22 threat to Henry Schein. There are certain
23 components within the buying group strategy that
24 create risk or a particular buying group itself
25 could create risk.

1 CONFIDENTIAL - JAKE MEADOWS
2 responsible for what would go in front of Mr.
3 Bergman.

4 Q. What additional detail regarding
5 buying groups is a threat should have been
6 included in your SWOT analysis?

7 MR. McDONALD: Object to the form.

8 He keeps using the word "risk" and you
9 keep saying "threat" because you want that
10 little soundbite of a threat because you
11 think it's bad, and he keeps telling you he
12 used it as risk.

13 Object to the form.

14 Q. Do you understand the question?

15 A. Can you ask it again?

16 (Record read.)

17 MR. McDONALD: Same objection.

18 A. So with this particular moment in this
19 particular time about what should have been
20 included, since I don't remember exactly what we
21 were discussing, and because I believe that
22 buying groups, just like I gave another example
23 that all of these -- all of these items would
24 have a strength, a weakness, an opportunity and
25 a threat in them, I would only make the

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2 Q. You're listing a SWOT analysis to
3 coordinate with Mr. Cavaretta on how to put
4 points together for a presentation for Mr.
5 Bergman. We've already talked about how it's
6 important that any information that you funnel
7 to Mr. Bergman is accurate?

8 A. Yes.

9 Q. Is there anything inaccurate in the
10 SWOT analysis that you're seeing here?

11 MR. McDONALD: Object to the form.

12 A. Are you saying in particular to put in
13 front of Mr. Bergman?

14 Q. Yes.

15 A. I'm not even clear if this got in
16 front of Mr. Bergman. In this chain -- and I
17 don't remember the meeting that you're
18 discussing. In this chain, this looks like this
19 is Joe and I collaborating on what we would
20 think should go in front of Mr. Bergman at the
21 time, and I don't know the detail behind why
22 buying groups is there, and I'm suggesting to
23 you there's more detail to that. And
24 ultimately, it would be Tim or Dave, I don't
25 know within how they work, that would be

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2 assumption that there was some component of a
3 particular relationship that would pose a risk
4 to us.

5 Q. Sitting here today, you don't recall
6 what that particular component --

7 A. I don't.

8 Q. -- of a relationship was that you were
9 referring to?

10 A. I don't.

11 Q. Is there anything that you could
12 review to refresh your recollection as to what
13 that particular component of a relationship is
14 that you're referring to?

15 A. Is there anything I could review? Not
16 that I'm aware of.

17 Q. In the e-mail that you write to Mr.
18 Cavaretta on CX2377 you don't specify any
19 particular component of any relationship; you
20 just use the word "buying groups"; is that
21 right?

22 A. Well, I didn't specify anything about
23 buying groups or Sirona or margin decline or
24 pricing pressure or even with strengths,
25 merchandise, Adec or Mid Market. Those are all

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equally as broad in strengths, weaknesses,
opportunities and threats.

Q. You can put aside CX2377.

By mid 2015, my understanding is that
different people at Schein were discussing how
to address buying groups. Is that also your
understanding?

A. I don't remember the exact timeframe.

Q. Was Brian Brady ever working on a
program that he called the VIP Program?

A. Yes.

Q. What was the VIP Program?

A. The VIP Program was an enhancement of
our Loyalty Program.

Q. What effect would the VIP Program have
on Schein's practices or procedures with respect
to doing business with buying groups?

A. Since we never launched or brought
that group to life and it was a concept, I'm not
sure -- I don't recall what evaluation we did on
that.

Q. You don't recall the intended effect?

A. For me, the intended effect was to
grow our business, retain our business, and

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bring our mission to life, and for me it was a
component of strengthening our Loyalty Program.

Q. Do you recall how specifically it
would have strengthened the Loyalty Program?

A. I do, actually. And I was a proponent
of that I felt as if our Loyalty Program was not
as strong as it could be to do those things I
talk about in the marketplace -- grow, retain,
bring our mission to life -- and that I felt our
Loyalty Program was, when I talked about -- and
I'll say specifically to buying groups, that our
Loyalty Program was not as strong as I wanted it
to be in collaborating with groups in that way.

Q. You thought that Mr. Brady's proposed
VIP Program needed more discussion?

A. Yes.

Q. Why is that?

A. Because I thought it was a concept, a
very broad concept.

Q. And you believe that Schein needed to
get very clear on the direction of his VIP
Program?

MR. McDONALD: Object to the form.

A. It's very often that concepts -- that

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we'll work on concepts over the period of weeks
or months that eventually get abandoned, so --
and it's often that, within our culture, that
people will have a good idea and we'll say,
"Well, why don't you go spend some time and go
work on that idea," and then they will bring
that idea to life and we'll know, "Nah," or
we'll go, "That's great," and we implement it
and it becomes part of everyday business.

Q. While you were discussing the VIP
Plan, you wanted to keep the discussion among a
small group of people?

A. I don't recall, but more than likely,
yes. We wouldn't have included our SWOT teams,
salespeople, or regional managers.

Q. While you were discussing the VIP
Program, you wanted to hold the line in private
practice accounts?

A. Are you telling me that or are you
asking me a question?

Q. Is that right? Is it right that you
wanted to hold the line in private practice
accounts while discussion of the VIP Program was
ongoing?

CONFIDENTIAL - JAKE MEADOWS
MR. McDONALD: Object to the form.

A. I would say every single day I wanted
to grow our business and retain our business and
bring our mission to life.

Q. Have you ever used the words "hold the
line"?

MR. McDONALD: Object to the form.

A. Not that I recall.

Q. I understand "hold the line" to be a
phrase that comes from combat. It means to
remain steadfast in one's position while keeping
something away.

A. Uh-huh.

Q. Is that your understanding as well?

A. Yes.

Q. I'm going to show you a document
that's been previously marked as CX2378. The
first page of this document bears the Bates
stamp Henry Schein-001695339.

Please take a moment to review CX2378
and let me know when you're finished.

(Complaint Counsel Exhibit CX2378-001
through 003, an e-mail bearing Bates Nos.
Henry Schein-001695339 through 341, marked

1 CONFIDENTIAL - JAKE MEADOWS
2 for identification, as of this date)
3 THE WITNESS: Okay. Wait. Excuse me.
4 I didn't read Brian's.

5 Okay.

6 BY MS. ROSNER:

7 Q. You've had an opportunity to review
8 CX2378?

9 A. Yes.

10 Q. 2378 is an e-mail chain. The
11 last-in-time e-mail is from Mr. Brady on July
12 30, 2015.

13 You have drafted some e-mails in this
14 e-mail chain; is that right?

15 A. Yes.

16 Q. One e-mail.

17 You drafted the e-mail on July 30,
18 2015 at 8:23 in the morning as part of your job?

19 A. Yes.

20 Q. It's part of your job to write e-mails
21 about potential programs at Schein?

22 A. At this time, yes. For this
23 particular effort, yes.

24 Q. You had personal knowledge of the
25 contents of the e-mail when you wrote it?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. I can't say that I opened the
3 attachment, because there's an attachment, so
4 I'm not familiar if I opened the attachment or
5 not.

6 Q. But otherwise, the words that you
7 wrote, you had personal knowledge of the bases
8 for whatever it is that you wrote?

9 A. I'm not sure I understand what you're
10 trying to clarify.

11 Q. The --

12 A. Did I write this?

13 Q. You wrote this based on your personal
14 knowledge? You didn't write -- someone else
15 didn't dictate this to you?

16 A. No.

17 Q. You wrote this at the time that you
18 were discussing the VIP Program?

19 A. It must have been.

20 Q. You wrote this e-mail and Schein
21 maintained it in its ordinary course of
22 business?

23 A. Yes.

24 Q. And this is a true and accurate copy
25 of your e-mail correspondence?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. I have to assume so.

3 Q. So, referring you to your e-mail in
4 the middle of page CX2378-001.

5 A. Yes.

6 Q. In the middle of the paragraph, you
7 say, "I believe this group needs to remain small
8 until we have the structure in place for what we
9 think will win this business and hold the line
10 in private practice."

11 Did I read that correctly?

12 A. Yes.

13 Q. What did you mean by "hold the line in
14 private practice"?

15 A. I can only assume because this is
16 2015. So do you want me to assume what I meant?

17 Q. Are you saying you don't recall this
18 e-mail?

19 A. I don't re- -- I write thousands and
20 thousands of e-mails, so I don't recall e-mails
21 I wrote yesterday.

22 Q. Sitting here today, you don't recall
23 this e-mail?

24 A. I don't recall -- I recall us working
25 on the VIP Club Program, but I don't recall this

1 CONFIDENTIAL - JAKE MEADOWS

2 particular e-mail, like this one stands out, if
3 that's what you're asking.

4 Q. Is there anything that could refresh
5 your recollection about this e-mail that you can
6 think of?

7 A. No.

8 Q. No, okay. Great.

9 You also say, "I realize this is
10 coming at us, but I want to understand how much
11 of our efforts will accelerate it, and I want us
12 to decide what a buying group is required to
13 look like in order for us to partner."

14 Did I read that correctly?

15 A. Yeah.

16 Q. So at this time was there a set
17 criteria for what a buying group should look
18 like for Schein to partner with it?

19 A. Everything is case-by-case and has
20 always been case-by-case even today for buying
21 groups. We evaluate buying groups based on
22 their ability to help us grow our business,
23 retain our business, and bring our mission to
24 life.

25 Q. At this time, you're advocating some

1 CONFIDENTIAL - JAKE MEADOWS
2 set of criteria that will help you to identify
3 what a buying group is supposed to look like.

4 Did those criteria ever get set?

5 MR. McDONALD: Object to the form.

6 A. Where am I advocating that?

7 Q. My understanding is when you say, "I
8 want us to decide what a buying group is
9 required to look like in order for us to
10 partner," you're advocating some set of
11 characteristics?

12 A. I have to assume this is in particular
13 to the VIP Club Program.

14 Q. Okay.

15 A. So not broadly is how I would
16 understand this.

17 Q. Were those characteristics or set of
18 criteria ever defined?

19 A. I don't recall. That was a program
20 that we never brought to life.

21 Q. What's the value of setting criteria
22 or characteristics for a set of customers to be
23 eligible for a Schein program?

24 A. What is the value for Henry Schein to
25 set parameters to do business with it?

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Why would Henry Schein set parameters
3 such as the ones you are advocating in CX2378?

4 MR. McDONALD: Object to the form.

5 Mischaracterizes his testimony and the
6 document.

7 A. Yeah, again, I'm not sure I'm
8 advocating for anything other than a discussion
9 particular to the VIP Club Program, so if you're
10 asking me in particular why it would be good for
11 Henry Schein to be -- have alignment within
12 leadership, I can discuss that one, but if
13 you're asking me why it would be important for
14 Henry Schein to have alignment within the VIP
15 Club Program, I can't answer that because that
16 program never was brought to life.

17 Q. You're advocating some set of
18 parameters or criteria. I just want to know why
19 you would advocate that.

20 MR. McDONALD: Object to the form.

21 Mischaracterizes his testimony.

22 A. In particular to the VIP Club Program,
23 again, without reviewing that document or
24 bringing me back to this moment that we were
25 discussing this particular program, I don't

1 CONFIDENTIAL - JAKE MEADOWS
2 recall exactly what I'm speaking to.

3 Q. Is it your understanding that the VIP
4 program was going to be discussed with field
5 managers in August 2015?

6 A. I don't recall that.

7 Q. What is the Area/Zone General Manager
8 Monthly Conference Call?

9 A. The Area/Zone...

10 I believe --

11 MR. McDONALD: Object to the form.

12 Go ahead.

13 A. I believe that's, because we change
14 names of calls over the period of years and
15 within months, or sometimes it's the same
16 meeting but it's called something different, I
17 believe that's the call where Joe Cavaretta,
18 myself, Dave Steck and the zone managers get on
19 a -- have a meeting.

20 Q. What type of information is presented
21 on that meeting?

22 A. Typically outcomes of sales strategies
23 results, market trends, issues, things
24 associated with the company.

25 Q. Would you have raised the VIP Program

1 CONFIDENTIAL - JAKE MEADOWS

2 on such a call?

3 A. I don't believe -- again, since I'm
4 not familiar with the timing or not familiar how
5 far we got with the VIP Program as I'm sitting
6 here, there was many concepts that we would go
7 through a process like this with, and the zone
8 managers would never know, because we never
9 brought it to life, that it was brought up.

10 Q. So you can't recall whether or not the
11 VIP Program was discussed one way or the other?

12 A. Yeah, I can't.

13 Q. Would you view the VIP Program as a
14 good offense?

15 A. As I've said, we built so many
16 concepts and so many programs over a period of
17 years; I don't think I could describe the VIP
18 Program to you.

19 Q. Do you recall ever saying the best
20 defense is a good offense with respect to the
21 VIP Program?

22 MR. McDONALD: Object to the form.

23 A. I don't recall ever saying that about
24 the VIP Program.

25 Q. I'm going to hand you a document

1 CONFIDENTIAL - JAKE MEADOWS
2 that's been previously marked as CX2380. It is
3 an e-mail chain. The first page of the e-mail
4 chain has been Bates-stamped Henry
5 Schein-000280154.

6 Please take a moment to review CX2380
7 and let me know when you're finished.

8 (Complaint Counsel Exhibit CX2380-001
9 through 003, an e-mail chain bearing Bates
10 Nos. Henry Schein-000280154 through 156,
11 marked for identification, as of this date.)

12 (Discussion off the record.)

13 THE WITNESS: Okay.

14 BY MS. ROSNER:

15 Q. You've had an opportunity to review
16 CX2380?

17 A. I have.

18 Q. This is an e-mail string. The
19 last-in-time e-mail is written by you on August
20 25, 2015. You have a couple of e-mails in this
21 string.

22 You wrote the e-mails in CX2380 as
23 part of your job?

24 A. Yes.

25 Q. It's part of your job to discuss

1 CONFIDENTIAL - JAKE MEADOWS
2 topics for the Area/Zone GM Monthly Conference
3 Call?

4 A. Yes.

5 Q. You had personal knowledge of the
6 contents of the e-mail at the time that you
7 wrote it?

8 A. Yes.

9 Q. You wrote the e-mail that's in CX2380
10 at or near the time that the conference call was
11 to take place?

12 A. Let me see. It doesn't -- I'm looking
13 for the appointment. So, Tuesday, 9 a.m.

14 Yes, I wrote this e-mail 13 minutes,
15 it looks like, before the -- the call started.

16 Q. You wrote this e-mail and maintained
17 it in Schein's ordinary course of business?

18 A. Yes.

19 Q. And this is a true and accurate copy
20 of your e-mail correspondence?

21 A. I assume so.

22 Q. I'm going to refer you to the top
23 e-mail on the string from you at 8:47 a.m.

24 A. Uh-huh.

25 Q. 13 minutes before the call.

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Uh-huh.

3 Q. You write in your second sentence --
4 on the second line, rather, "As far as names,
5 I'm leaning towards 'partnership' versus 'VIP'
6 since 'VIP' suggests one customer is more
7 important than the next."

8 Did I read that correctly?

9 A. Yes.

10 Q. Is it your understanding that you're
11 referring to the VIP Program that Brian Brady
12 was working on?

13 A. I'm not sure. Do we reference that?

14 Yes, I would assume so because Dave
15 has here, "Just want them prepared for the VIP
16 Program," yes.

17 Q. It's your understanding that on this
18 call the leadership was going to present to the
19 zone managers the VIP Program?

20 A. No.

21 Q. What's your understanding?

22 A. My understanding is that we would not
23 still be deliberating about, in normal course of
24 business, about the title of a program that we
25 were about to launch 13 minutes before a

1 CONFIDENTIAL - JAKE MEADOWS
2 meeting.

3 So I believe this is just other
4 dialogue associated with evaluating the VIP
5 Program that is not related to the call in
6 particular.

7 Q. When you say "the best defense is a
8 good offense," what's your understanding of that
9 statement?

10 A. I don't know.

11 Q. Sitting here today, you don't recall
12 this e-mail at all?

13 A. No, I do not.

14 Q. Is there anything that could refresh
15 your recollection as to what you meant by "best
16 defense is a good offense"?

17 A. No.

18 Q. Going down to the third bullet in your
19 e-mail.

20 A. Uh-huh.

21 Q. You write, "Happening very quickly do
22 not make commitments on HSD behalf."

23 A. Uh-huh.

24 Q. What are you referencing there?

25 A. I don't know.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. Is there anything that could refresh
 3 your recollection as to what you were
 4 referencing?
 5 A. No.
 6 Q. That line continues, "Important that
 7 we choose partnerships that make long-term sense
 8 for HSD."
 9 A. Uh-huh.
 10 Q. "Bring these opportunities to Joe and
 11 I then will involve DGP."
 12 Did I read that correctly?
 13 A. Yes.
 14 Q. What are you referring to there?
 15 A. I don't know.
 16 Q. Is there anything that could refresh
 17 your recollection as to what you meant there?
 18 A. No.
 19 Q. What is "DGP"?
 20 A. Director of Group Practice.
 21 Q. What are the types of things that you
 22 would bring to DGP's attention?
 23 A. Many things related to growing sales
 24 within the group practice space and the Mid
 25 Market.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Please take a moment to review CX2389
 3 and let me know when you're finished.
 4 (Complaint Counsel Exhibit CX2389-001
 5 through 003, an e-mail chain bearing Bates
 6 Nos. Henry Schein-000045087 through 089,
 7 marked for identification, as of this date.)
 8 THE WITNESS: Okay.
 9 BY MS. ROSNER:
 10 Q. You've had an opportunity to review
 11 CX2389?
 12 A. I have.
 13 Q. This is an e-mail chain. The
 14 last-in-time e-mail is from you dated November
 15 2, 2011.
 16 A. Uh-huh.
 17 Q. You wrote this e-mail as part of your
 18 job?
 19 A. I did.
 20 Q. It's part of your job to respond to
 21 requests about buying groups?
 22 A. Yes.
 23 Q. You have personal knowledge of the
 24 e-mail at the time that you wrote?
 25 A. I have to assume so, yes.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. Is buying groups one of those things?
 3 A. Yes.
 4 Q. You can --
 5 A. At this time, 2015, I believe so. I'm
 6 unsure.
 7 Q. You can put CX2380 to the side.
 8 We've been going for another hour.
 9 Let's take a break.
 10 MR. McDONALD: Sure.
 11 THE VIDEOGRAPHER: The time is 10:52
 12 a.m. We're off the record.
 13 (Recess.)
 14 THE VIDEOGRAPHER: The time is 11:15
 15 a.m. We're on the record.
 16 BY MS. ROSNER:
 17 Q. Mr. Meadows, when you were the
 18 Northwestern zone general manager, was there a
 19 period of time where you started to see more and
 20 more buying groups in dental?
 21 A. Not that I recall.
 22 Q. I'm going to show you a document
 23 that's been previously marked as CX2389. It's
 24 an e-mail string. The first page of the e-mail
 25 has been Bates-stamped Henry Schein-000045087.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. You wrote this e-mail at or near the
 3 time you got this request from Ron Brown?
 4 A. Yes.
 5 Q. You wrote this e-mail and Schein
 6 maintained it in the ordinary course of Schein's
 7 business?
 8 A. Correct.
 9 Q. And this is a true and accurate copy
 10 of your e-mail correspondence?
 11 A. I assume so, yes.
 12 Q. In the first line of your e-mail at
 13 35:51 p.m., you say, "I'm seeing more and more
 14 buying groups in the Pacific Northwest"; is that
 15 right?
 16 A. Yes.
 17 Q. This is while you were the Northwest
 18 zone general manager?
 19 A. Correct.
 20 Q. Do you have any reason to doubt why
 21 that statement would be true?
 22 MR. McDONALD: Object to the form.
 23 That's a double negative.
 24 A. Doubt why -- do I have any reason to
 25 doubt that I would not have been seeing more and

1 CONFIDENTIAL - JAKE MEADOWS
 2 more buying groups?
 3 Q. Let me rephrase.
 4 Based on this e-mail, is it your
 5 understanding that at this point in time you
 6 were seeing more and more buying groups in the
 7 Pacific Northwest?
 8 A. Since I don't recall this e-mail and I
 9 have noted that my definition of "buying groups"
 10 at the time might have been incorrect, I'm not
 11 sure that what I am writing here today -- or,
 12 what I'm reading today and what I wrote here is
 13 related to the same definition of "buying
 14 groups" that we established at the beginning of
 15 the day.
 16 Q. At the time of this e-mail, you
 17 noticed more prevalence of buying groups, as you
 18 defined it at that time; is that right?
 19 A. Again, I'm not sure when I wrote this
 20 that that generalized statement could be true.
 21 Q. Would you have written something
 22 incorrect in an e-mail to Mr. Brown that you
 23 thought was incorrect at the time?
 24 A. I wrote --
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. No, that's not the case. Actually,
 3 one of the things that I do remember John
 4 Chatham helping me with was I had performance
 5 management issues related with Ron Brown, and
 6 John would advise me in those particular types.
 7 I eventually demoted Ron Brown for
 8 decisions that he had made in the marketplace
 9 that I didn't feel helped us grow our business,
 10 retain our business, and bring our mission to
 11 life. So this e-mail could be related to that.
 12 Q. Is your testimony that this e-mail is
 13 related to John Brown's performance or that's
 14 one possible thing this e-mail could be about?
 15 A. It's one possible. Meaning I don't
 16 recall this e-mail. What I recall about Ron, my
 17 dealings with Ron Brown that sticks out in my
 18 memory is that I had difficulties with Ron in
 19 decisions that he would make as a regional
 20 manager associated with business.
 21 Q. You don't recall specifically what you
 22 meant by the phrase "this is not the way I want
 23 to see the business go"?
 24 A. I don't.
 25 Q. Is there anything that could refresh

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. I wrote that to John Chatham.
 3 Q. Thank you for the clarification.
 4 A. Sure.
 5 Q. Who is John Chatham?
 6 A. At the time, John Chatham was Vice
 7 President of Sales Development, Global Sales
 8 Development, more in that Business Solutions
 9 concept.
 10 I reported to him prior to -- in my
 11 Director of Career Development position.
 12 Q. Was John Chatham senior to you at this
 13 time?
 14 A. Yes.
 15 Q. Would you have attempted to be
 16 accurate in your e-mails to Mr. Chatham?
 17 A. Yes.
 18 Q. At the end of the first line of your
 19 e-mail, you say, "This is not the way I want to
 20 see the business go."
 21 Did I read that correctly?
 22 A. Yes.
 23 Q. So you didn't want to see the business
 24 trend towards more and more buying groups?
 25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAKE MEADOWS
 2 your recollection as to what you meant?
 3 A. No, not that I can think of.
 4 Q. You can put CX2389 aside.
 5 You don't like buying groups very
 6 much, do you?
 7 MR. McDONALD: Object to the form.
 8 A. That's not true at all.
 9 Q. Have you ever said that you hate
 10 buying groups?
 11 MR. McDONALD: Object to the form.
 12 A. I don't recall that I have ever said
 13 that.
 14 Q. Okay. I'm going to show you a
 15 document that's been previously marked as
 16 CX2350. This is a multi-page e-mail string.
 17 The first e-mail page has been Bates-stamped
 18 Henry Schein-001518102.
 19 Please take a moment to review CX2350
 20 and let me know when you're finished.
 21 (Complaint Counsel Exhibit CX2350-001
 22 through 003, an e-mail chain bearing Bates
 23 Nos. Henry Schein-001518102 through 104,
 24 marked for identification, as of this date.)
 25 THE WITNESS: Okay.

1 CONFIDENTIAL - JAKE MEADOWS

2 BY MS. ROSNER:

3 Q. You've had an opportunity to review
4 CX2350?

5 A. I have.

6 Q. CX2350 is an e-mail string. The
7 last-in-time e-mail is from you on November 27,
8 2012.

9 A. Uh-huh.

10 Q. You have written a couple of e-mails
11 in this string.

12 Did you write those e-mails as part of
13 your job?

14 A. Yes.

15 Q. It's part of your job to respond to
16 customer inquiries from your field sales
17 representatives?

18 A. Yes.

19 Q. You wrote the e-mails in CX2350 at or
20 near the time that these issues described
21 therein arose?

22 A. Yes.

23 Q. You had personal knowledge of the
24 e-mails that you wrote?

25 A. Yes.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. You wrote these e-mails in CX2350 and
3 Schein maintained them in the ordinary course of
4 its business?

5 A. Yes.

6 Q. CX2350 is a true and accurate copy of
7 your e-mail correspondence?

8 A. Yes.

9 Q. I'm going to refer you to the
10 last-in-time e-mail from you at 4:30.

11 You write in the middle of your
12 e-mail, "I hate buying groups."

13 A. Uh-huh.

14 Q. Did I read that correctly?

15 A. Yes.

16 MR. McDONALD: Object to the form.

17 Q. Why are you saying you hate buying
18 groups?

19 A. In this particular context, I don't
20 know.

21 Q. Is there -- you don't recall this
22 e-mail?

23 A. No, and that would be -- if that
24 statement is a general statement, that would be
25 an incorrect statement. I have clarified that,

1 CONFIDENTIAL - JAKE MEADOWS

2 even at this time, I was dealing with buying
3 groups and prior to that time had been
4 successful within the organization.

5 Q. You're writing an e-mail to Dave
6 Jacklin.

7 Who is Mr. Jacklin?

8 A. Dave Jacklin was Ron Brown's
9 replacement after I demoted Ron.

10 Q. Dave Jacklin reported to you?

11 A. Yes.

12 Q. He's someone who relied on you for
13 guidance?

14 A. Correct.

15 Q. You wouldn't knowingly give Mr.
16 Jacklin a false impression?

17 A. Not knowingly.

18 Q. Is there anything that could refresh
19 your recollection as to why you would tell Mr.
20 Jacklin you hate buying groups?

21 A. As I said, nothing that I can think of
22 that would refresh my memory, but I can't be
23 confident that the definition that we agreed on
24 this morning is the same definition that, at the
25 moment that I wrote this, I had an understanding

1 CONFIDENTIAL - JAKE MEADOWS

2 of it.

3 Q. What other possible definitions would
4 you have meant by "buying group"?

5 A. One of the things that we had in
6 Washington was sales team members going out and
7 gathering up their customers and organizing
8 their customers for their own offering. So if I
9 had -- if I'm a salesperson, an employee of
10 Henry Schein, I potentially could grab five of
11 my customers and say, hey, if you guys all put
12 your sales together, I'll give you -- the
13 salesperson would say I'll give you a deeper
14 discount. And that was not our strategy.

15 So, in Washington, that's where Ron
16 had proactively done that. And that was not the
17 reason for his demotion, but Ron had done that
18 with some salespeople, and so that's -- I'm
19 assuming that's what I'm referring to, in
20 particular, Ron.

21 Q. In CX2350, Mr. Jacklin is asking you
22 about a potential group for Dr. Craig Jolley; is
23 that right?

24 A. That's the subject line, so I would
25 assume, yes.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Is Mr. Jolley's group one of these
3 groups that you mentioned that Ron set up that
4 was him on his own putting dentists together for
5 discount that you're aware of?

6 A. It looks like Dr. Jolley is a part of
7 the Giesy Group or Giesy [different
8 pronunciation] Group.

9 "For 2010, this account was still part
10 of Giesy Group and received an 8 percent credit
11 on his account."

12 Q. Are you reading from CX2350-002?

13 A. Yes.

14 Q. Okay. Do you know the Giesy Group to
15 be one of these groups that Mr. Brown put
16 together?

17 A. I have never heard of the Giesy Group,
18 and the discussion is more about after he left
19 that group. Because it says for 2011 this
20 account was separate, for 2012 this account was
21 separate. So I'm not familiar with the Giesy
22 Group. I was not in the Northwest in 2010.

23 Q. Was there anything about this e-mail
24 string that references some of these groups that
25 Mr. Brown put together with the -- him creating

1 CONFIDENTIAL - JAKE MEADOWS

2 groups of his individual customers?

3 A. Not that I see here that I'm familiar
4 with.

5 Q. Okay. You can put aside CX2350.
6 Have you ever said that you're not a
7 fan of buying groups?

8 A. Not that I recall.

9 Q. I'm going to hand you another document
10 that's been premarked as CX2353. This is an
11 e-mail string on one page. The first and only
12 page of CX2353 is Bates-stamped Henry
13 Schein-0045541.

14 Please take a moment to review CX2353
15 and let me know when you're finished.

16 (Complaint Counsel Exhibit CX2353-001,
17 an e-mail string bearing Bates Nos. Henry
18 Schein-000045541, marked for identification,
19 as of this date.)

20 THE WITNESS: Okay.

21 BY MS. ROSNER:

22 Q. You've had an opportunity to review
23 CX2353?

24 A. Yes.

25 Q. The last-in-time e-mail is from Jason

1 CONFIDENTIAL - JAKE MEADOWS

2 Krause --

3 A. Uh-huh.

4 Q. -- on October 1, 2014. Right below
5 his e-mail is an e-mail from you at 12:01 p.m.

6 A. Uh-huh.

7 Q. Did you write this e-mail as part of
8 your job?

9 A. Yes.

10 Q. It's part of your job to correspond
11 with Mr. Krause on customer opportunities?

12 A. Yes.

13 Q. Did you write the e-mail in CX2353 at
14 or near the time of the events described inside
15 of it?

16 A. Yes.

17 Q. You had personal knowledge of the
18 events that you're describing to Mr. Krause?

19 A. Today I don't.

20 Q. At the time that you wrote it, you had
21 previously spoken with Susan Byrd Harvey and had
22 personal knowledge of that conversation?

23 A. I don't recall, but it's obvious I say
24 I told her there, so I would assume she and I
25 had a conversation.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. You wrote and maintained this e-mail
3 in the course of Schein's ordinary business?

4 A. Yes.

5 Q. And CX2353 is a true and accurate copy
6 of your e-mail correspondence?

7 A. Yes.

8 Q. Who is Susan Byrd Harvey?

9 A. She was an FSC in the DC area.

10 Q. Did she report up through you
11 eventually?

12 A. Yes.

13 Q. Who is Jason Krause?

14 A. At the time, Jason was the Director of
15 Group Practice, the DGP.

16 Q. You're telling Mr. Krause about a GPO
17 opportunity?

18 A. Yes.

19 Q. By "GPO," do you mean buying group?

20 A. I don't know.

21 Q. Are you aware of any GPOs that Ms.
22 Susan Byrd Harvey would have worked with?

23 A. I don't recall.

24 Q. Do you refer GPO customers to the DPG
25 group?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Jason reported to me, so I would
3 have -- if there was an opportunity I thought
4 either he would have to review, I would report
5 it to him or give it to him.

6 Q. When I use the word "GPO," I'm
7 referring to GPOs that exist in the medical
8 field.

9 Is that your understanding of GPO?

10 A. Today that's my understanding. At the
11 time, as I've talked about with nomenclature,
12 there -- it would be often that we would use
13 these terminologies before we even learned about
14 whatever this particular entity was and would go
15 find that out, basically.

16 Q. So it's possible by saying "GPO" you
17 mean buying group?

18 MR. McDONALD: Object to the form.

19 A. I would assume it could be possible.

20 Q. In the third sentence of your e-mail
21 on CX2353, you write, "I told her I'm not a fan
22 of the GPOs, but I'm not sure they get stopped."

23 Did I read that correctly?

24 A. Yes.

25 Q. The "her" that you're referring to,

1 CONFIDENTIAL - JAKE MEADOWS

2 that's Susan Byrd Harvey?

3 A. I would assume so.

4 Q. And you're telling Mr. Krause that you
5 told Ms. Harvey you're not a fan of GPOs?

6 A. No. Actually, the way this sentence
7 is written, I don't think I -- it looks like I
8 did not spell correctly or left out some words,
9 so the fact that I say "I'm not a fan of the
10 GPOs," could have possibly been "the GPO," the
11 particular one. I could have added an "S" on
12 for no purpose.

13 "But I'm not sure they get stopped,"
14 again, that doesn't make sense to me, so I can't
15 recall exactly what I intended.

16 Q. Is there anything that you could look
17 at to refresh your recollection about what you
18 intended in the e-mail in 2353?

19 A. Yes. The thing I would look at is the
20 subject line that says "GPO opportunity," and I
21 was very focused on the fact that we had
22 opportunities with GPOs or buying groups or
23 overall. So I chose the subject line as that
24 since I started this e-mail.

25 Q. I just want to make sure I understand

1 CONFIDENTIAL - JAKE MEADOWS

2 your testimony.

3 Is it your testimony that you told
4 Susan Byrd Harvey that you were not a fan of the
5 particular GPO that she was bringing to you?

6 A. I don't recall. What I'm saying is I
7 don't believe that this e-mail, that I can
8 clearly describe exactly what I was intending to
9 say because it's a fragmented sentence; that the
10 terminology of "GPO" was something that there
11 was oftentimes that I misused during this time;
12 and that I saw the GPO as an opportunity, and
13 that's why I defined it in the subject line.

14 Q. What do you mean by the statement "I'm
15 not sure they get stopped"?

16 A. I have no idea. It doesn't even make
17 sense to me, because like I said, it's a
18 fragmented sentence.

19 Q. Do you have any -- is there anything
20 you could use to refresh your recollection as to
21 what you meant by "I'm not sure they get
22 stopped"?

23 A. No.

24 Q. Why doesn't it make sense to you?

25 A. It's a fragmented sentence.

1 CONFIDENTIAL - JAKE MEADOWS

2 There's -- if we add some words and put a comma
3 in there, then we can potentially make that
4 sentence make sense, but it's obvious that I was
5 not grammatic -- I either left a word out or
6 this is a new sentence or something got erased.
7 It just grammatically doesn't make sense.

8 Q. Sitting here today, do you have any
9 sense of what word you left out or --

10 A. No idea.

11 Q. You can put CX2353 aside.

12 Can you think of anything that you
13 have done that might lead others outside of
14 Schein to believe that you don't like buying
15 groups?

16 A. No.

17 Q. Can you think of anything you have
18 said that might lead others outside of Schein to
19 believe that you don't like doing business with
20 buying groups?

21 A. No.

22 Q. Would you be surprised to learn that
23 folks at Benco believe that you don't like doing
24 business with buying groups?

25 MR. McDONALD: Object to the form.

1 CONFIDENTIAL - JAKE MEADOWS

2 A. I have no thought about what my
3 competitors think about what I think about.

4 Q. Would you be surprised to learn if
5 others at Patterson believe that you do not like
6 working with buying groups?

7 MR. McDONALD: Object to form.

8 MS. SEIDL: Object to form.

9 THE WITNESS: I have no thoughts about
10 what my competitors think about me.

11 BY MS. ROSNER:

12 Q. Why is that?

13 A. I assume competitors are normal course
14 of business, and I focus on my responsibilities
15 to grow, retain, bring the mission to life, and
16 their -- their actions in the marketplace are
17 purely market conditions.

18 Q. Who is Patty Delikat?

19 A. An FSC in Washington.

20 Q. Did she ever report up through you?

21 A. Yes; when I was the Northwest zone
22 manager.

23 Q. Who are Ron Brown and Dave Stalford?

24 A. Ron Brown was that regional manager
25 that I referenced here, and Dan Stalford -- I

1 CONFIDENTIAL - JAKE MEADOWS

2 think it's "Stafford," but is, or was at the
3 time, the regional operations manager, and I
4 believe now is a service technician with us.
5 I'm not sure he's still with the company.

6 Q. Did -- we talked about Mr. Brown
7 already.

8 Did Mr. Stalford report up to you
9 while you were the Northwest zone manager?

10 A. No; he reported to Ron Brown.

11 Q. But --

12 A. And dotted-lined to John Micheli, who
13 reported to me.

14 Q. At the time that you were the
15 Northwest zone general manager, did Ron Brown
16 and Dan Stalford have authority to do business
17 with buying groups?

18 A. In the normal course of doing
19 business, yes, they could do business with
20 buying groups.

21 Q. Do you recall discovering from Ms.
22 Delikat that she was creating a buying group
23 with approval from Mr. Brown and Mr. Stalford?

24 A. No, I don't.

25 Q. I'm going to show you a document

1 CONFIDENTIAL - JAKE MEADOWS
2 that's been premarked as CX0170. It is an
3 e-mail chain that the first page of the e-mail
4 chain has been Bates-stamped Henry
5 Schein-000045132.

6 Please take a moment to review CX170
7 and let me know when you're finished.

8 (Complaint Counsel Exhibit CX0170.001
9 through 002, an e-mail string bearing Bates
10 Nos. Henry Schein-000045132, marked for
11 identification, as of this date.)

12 THE WITNESS: Okay.

13 BY MS. ROSNER:

14 Q. You've had an opportunity to review
15 CX107?

16 A. Yes.

17 Q. This is an e-mail chain. The
18 last-in-time e-mail is written by you on July
19 17, 2012. You have a couple of e-mails in this
20 chain.

21 Did you write these e-mails as part of
22 your job?

23 A. Yes.

24 Q. It was part of your job to respond to
25 questions from FSCs?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes.

3 Q. You -- what you wrote in CX170 was
4 based on your personal knowledge?

5 A. Yes.

6 Q. You wrote CX170 at or near the time
7 that Ms. Delikat reached out to you about this
8 opportunity she wanted to discuss?

9 A. Correct.

10 Q. You wrote the e-mails in CX170 and
11 Schein maintained it as part of its ordinary
12 course of business?

13 A. Yes.

14 Q. CX170 is a true and accurate copy of
15 your e-mail correspondence?

16 A. Yes.

17 Q. I want to refer you down to the middle
18 of the first page, CX170-001. There's an e-mail
19 from Ms. Delikat at 4:01 p.m.

20 Do you see that?

21 A. I do.

22 Q. She's talking about a potential group
23 that's looking for discounts, and she says, "The
24 discounts were approved by Ron Brown and Dan
25 Stalford."

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Uh-huh.

3 Q. Did I read that correctly?

4 A. Yes.

5 Q. Going up the page to your e-mail at
6 10:19 a.m., you write, "Patty, we can talk about
7 this. I have to tell you Ron and Dan made a
8 decision that is against what Tim Sullivan has
9 directed us to do in regards to supporting
10 buying groups. We do not want our customers
11 organizing and creating what are known as GPOs.
12 It takes the value away from the distributor."

13 Did I read that correctly?

14 A. You read that correctly.

15 Q. So you are telling Ms. Delikat that
16 Ron and Dan approved her buying group in error;
17 is that right?

18 MR. McDONALD: Object to the form.

19 A. The fact that Ron and Dan were the
20 only approval would have been incorrect and --
21 and out of my -- out of what I would have wanted
22 in business.

23 Q. So earlier I asked you whether Ron and
24 Dan had the authority to approve buying
25 groups --

1 CONFIDENTIAL - JAKE MEADOWS

2 A. That's not what you asked me.

3 Q. Maybe you can describe for me then
4 what is -- you meant by "Ron and Dan made a
5 decision that is against what Tim Sullivan has
6 directed us to do"?

7 A. Earlier you asked me if Ron and Dan
8 could work with buying groups in the normal
9 course of business, and I agreed, yes, they
10 could work with buying groups.

11 What I'm clarifying here is that, at
12 the time, where Ron Brown -- I was not
13 comfortable with him making decisions about what
14 we were doing with buying groups because Ron
15 Brown was responsible for the geography within
16 Washington, and he could potentially make
17 decisions about buying groups that would grow
18 outside of his sphere of influence and
19 potentially be making business decisions that
20 would impact other regional managers or other
21 geographies.

22 So what I'm calling out here, and it
23 would -- probably missing a comma, as you can
24 see, in many of my e-mails, I'm not the most
25 grammatically correct person. "I have to tell

1 CONFIDENTIAL - JAKE MEADOWS

2 you Ron and Dan," comma, which I don't have
3 there, "made a decision that was against what
4 Tim Sullivan has directed us to do regarding
5 supporting buying groups."

6 So I don't remember the direction that
7 I got from Tim, but I do remember a direction
8 from my leadership that we wanted to keep those
9 decisions out -- outside of particular small
10 geographies to prevent decisions that create a
11 conflict for us outside of geographies.

12 Q. You are referencing a direction that
13 Tim Sullivan has given in regards to supporting
14 buying groups.

15 Would you have heard the direction
16 from Tim Sullivan directly?

17 A. At this time, probably not.

18 Q. Where would you have heard Tim
19 Sullivan's directions regarding what to do in
20 supporting buying groups, if you can recall?

21 A. I -- I -- Dave.

22 Q. Dave Steck?

23 A. Yes, excuse me, Dave Steck.

24 Q. Would you have heard about Tim
25 Sullivan's direction regarding supporting buying

1 CONFIDENTIAL - JAKE MEADOWS

2 groups from anyone else?

3 A. I don't believe so.

4 Q. What did Dave tell you?

5 A. I don't recall. I believe what I'm
6 referencing in this sentence is the fact that
7 Ron made the decision about a particular buying
8 group within -- without getting authorization
9 from me.

10 Q. In your e-mail to Patty, do you
11 mention to her anywhere that Ron didn't have
12 appropriate authorization?

13 A. Looking at this e-mail, I believe
14 that's what I was referencing, but I clarified
15 "we can talk about this" and then finished my
16 e-mail with, "Let's talk."

17 So I would imagine that if I got on
18 the phone with Patty, I would have clarified for
19 Patty that there were some decisions that were
20 made.

21 Because I want to just check a date.
22 The e-mail for Dave Jacklin to see if Dave
23 Jacklin was in place at the time and Ron was
24 removed. So I'm a little unclear on the
25 timeframe here.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. Sorry, the e-mail that you just
 3 referenced with Dave Jacklin, you just looked
 4 back at CX2353?
 5 A. I didn't look for it, but I was
 6 looking for the date. This is July 17 of 2012.
 7 So I don't know if at the time that I am writing
 8 this e-mail if Ron is still the regional manager
 9 of that geography. So this could have been
 10 something that was -- and it looks like she's
 11 bringing something up to me that was undone, and
 12 as you can see, when she brings it up to me, I
 13 start to work to understand what it is about
 14 this group: How many offices? Has it been
 15 presented? What service discounts? How much
 16 can each office buy? Who's the leader? And I
 17 show interest in doing business with the group
 18 that she described in the first e-mail.
 19 Q. Do you know if you ultimately approved
 20 business with this group?
 21 A. No idea. No idea.
 22 Q. I want to focus on the sentence in
 23 your e-mail that says, "We do not want our
 24 customers organizing and creating what are known
 25 as GPOs."

1 CONFIDENTIAL - JAKE MEADOWS
 2 MR. McDONALD: Object to the form.
 3 A. Is it my understanding that they
 4 take --
 5 No. I talked about the value that --
 6 where we amplify or work together.
 7 Q. Do you have any understanding of what
 8 you meant in the last line of your e-mail where
 9 you said, "It takes the value away from the
 10 distributor"?
 11 A. No, because I don't really understand
 12 how I was using the definition of GPOs.
 13 Q. Is there anything that you could use
 14 to refresh your recollection as to what you
 15 meant by, "It takes the value away from the
 16 distributor"?
 17 A. No.
 18 Q. You mention you don't ever recall
 19 hearing Mr. Sullivan say that he didn't want
 20 customers organizing buying groups.
 21 Is that the type of thing Mr. Sullivan
 22 would say?
 23 MR. McDONALD: Object to the form.
 24 A. I have no idea what the type of thing
 25 Mr. Sullivan would say to me. We talked about

1 CONFIDENTIAL - JAKE MEADOWS
 2 What do you understand that to mean?
 3 A. Again, since I don't know the
 4 definition of how I was using "GPOs" at the
 5 time, I -- I can't clarify what that means.
 6 Q. So sitting here today, you have no
 7 understanding of what you meant there?
 8 A. I don't, because I'm unclear of what
 9 my definition of "GPOs" was at the time because
 10 I think we were misusing a lot of nomenclature.
 11 Q. Is there anything you could use to
 12 refresh your recollection as to what you meant
 13 by your statements in CX170?
 14 A. No.
 15 Q. Did Tim Sullivan ever say that he
 16 didn't want customers organizing buying groups
 17 or GPOs?
 18 A. Not that I recall.
 19 Q. Did Tim Sullivan ever say that he
 20 didn't want to accelerate the trend of buying
 21 groups or GPOs?
 22 A. Not that I recall.
 23 Q. Is it your understanding that buying
 24 groups and GPOs take value away from the
 25 distributor?

1 CONFIDENTIAL - JAKE MEADOWS
 2 normal course of business, and as I said, from
 3 the start of my experience at Sullivan Schein
 4 Dental, I was rewarded for my efforts in
 5 partnering with groups.
 6 Q. You mentioned that you don't recall
 7 ever hearing Mr. Sullivan say that he didn't
 8 want to accelerate the trend of buying groups or
 9 GPOs.
 10 Is that the type of thing that Mr.
 11 Sullivan would say?
 12 MR. McDONALD: Object to the form.
 13 A. I can't comment on what the types of
 14 things Tim would say.
 15 Q. Would a statement --
 16 A. I don't understand.
 17 Q. Would a statement such as not wanting
 18 to accelerate the rise of buying groups be out
 19 of character for Tim Sullivan?
 20 MR. McDONALD: Object to the form.
 21 A. I don't have judgments about
 22 statements that -- I mean, it sounds
 23 hypothetical to me that I would be guessing what
 24 Tim Sullivan would say. I'm not sure I can
 25 answer that question.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. Did you ever hear from Mr. Sullivan
3 that buying groups or GPOs take value away from
4 the distributor?

5 A. Not that I can recall.

6 Q. Do you recall ever having a followup
7 call with Ms. Delikat?

8 A. I do not.

9 Q. Did you ever have a followup call with
10 Mr. Brown about this topic?

11 A. Not that I recall.

12 Q. What about with Mr. Stalford?

13 A. No. No.

14 Q. Did you have responsibility to let Mr.
15 Brown and Mr. Stalford know that they didn't
16 have authority to approve discounts with buying
17 groups?

18 A. Yes.

19 Q. In your normal course of dealing,
20 would you have reached out to them after
21 receiving this e-mail from Ms. Delikat?

22 A. That's where I was asking about
23 whether or not Ron was still in his position,
24 because if I would have gotten an e-mail like
25 this from Patty directly to me, one, it's very

1 CONFIDENTIAL - JAKE MEADOWS
2 rare that an FSC would send me an e-mail without
3 the regional manager like this. So my first
4 response was to help and learn about the group,
5 and then after she described -- I think what
6 really was disturbing here is the discounts were
7 approved by Ron and Dan, and I wasn't familiar
8 with it.

9 So I don't -- I don't recall following
10 up with Ron or Dan because I don't really
11 remember this instance, but I do remember
12 broadly that this was one of the things that I
13 had to speak to Ron about because it was on
14 multiple occasions that he had shared other
15 things within the marketplace.

16 Q. You can put CX170 aside.

17 Who is Jeff Reichardt?

18 A. Reichardt.

19 Q. Reichardt.

20 A. Jeff was the zone general manager of
21 the Southwest. No. No. Excuse me. I'm sorry.
22 Southeast. Then Jeff was the Director of
23 Equipment for the Eastern area, and now Jeff is
24 Director of Equipment within Special Markets.

25 Q. While you were Eastern area director,

1 CONFIDENTIAL - JAKE MEADOWS
2 how often did you interact with Mr. Reichardt?

3 A. Jeff reported to me for the first year
4 and a half, I believe it was, in the Eastern
5 area.

6 Q. Were you responsible for his
7 performance reviews during that time?

8 A. Yes.

9 Q. As part of your job, you would give
10 guidance to Mr. Reichardt?

11 A. Yes.

12 Q. You may have informed Mr. Reichardt of
13 Henry Schein Dental strategy?

14 A. Yes.

15 Q. If Henry Schein Dental had an approved
16 strategy about how to engage with a certain
17 customer segment, you might relay that
18 information to Mr. Reichardt?

19 A. I might.

20 Q. Would you expect Mr. Reichardt to
21 ignore any of your guidance or direction?

22 A. At the time?

23 MR. McDONALD: Object to form.

24 A. At the time, no.

25 Q. And you wouldn't make up false

1 CONFIDENTIAL - JAKE MEADOWS
2 guidance or direction to lead Mr. Reichardt
3 astray?

4 A. No.

5 Q. Do you recall telling Mr. Reichardt
6 that HSD was not participating in any GPOs
7 regardless of what they promised to bring
8 Schein?

9 A. I don't recall saying that.

10 Q. I'm going to hand you a document
11 that's been premarked as CX2354. This is a
12 one-page e-mail string that had been Bates
13 stamped Henry Schein-001518597.

14 Please take a moment to review CX2354
15 and let me know when you're finished.

16 (Complaint Counsel Exhibit CX2354-001,
17 an e-mail string bearing Bates Nos. Henry
18 Schein-001518597, marked for identification,
19 as of this date.)

20 THE WITNESS: Okay.

21 BY MS. ROSNER:

22 Q. You've had a moment to review CX2354?

23 A. I have.

24 Q. The top e-mail in this chain is from
25 Mr. Reichardt on October 27, 2014. Below that

1 CONFIDENTIAL - JAKE MEADOWS
2 is an e-mail from you.

3 You wrote the e-mail in CX2354 as part
4 of your job?

5 A. Yes.

6 Q. It's part of your job to provide
7 instruction to Mr. Reichardt?

8 A. Yes.

9 Q. You had personal knowledge of the
10 contents of the e-mail in CX2354?

11 A. Yes.

12 Q. You wrote the e-mail in CX2354 at or
13 near the time you felt you needed to give
14 instruction to Mr. Reichardt?

15 A. Yes.

16 Q. CX2354 was drafted and maintained in
17 Schein's ordinary course of business?

18 A. Yes.

19 Q. CX2354 is a true and accurate copy of
20 your e-mail correspondence?

21 A. Yes.

22 Q. The e-mail in CX2354 that you write at
23 9:07 in the morning starts, "Do not forward.
24 Quick note. I've received a few FSC phone calls
25 over the last few weeks regarding group

1 CONFIDENTIAL - JAKE MEADOWS
2 purchasing organizations," in parentheses,
3 "(GPO). Just for clarity, we are not
4 participating in any GPOs regardless of what
5 they promise to bring us. We can discuss on
6 Monday EA call."

7 Did I read that correctly?

8 A. Yes.

9 Q. So you're telling Mr. Reichardt that
10 you have received some phone calls about group
11 purchasing organizations; is that right?

12 A. Yes.

13 Q. And we've talked about earlier today,
14 by group purchasing organizations, that could
15 possibly mean buying groups?

16 A. Yes.

17 Q. Then you tell Mr. Reichardt that, "We
18 are not participating in any GPOs," and you see
19 that you have capitalized --

20 A. "Not."

21 Q. -- "not."

22 What do you mean by telling Mr.
23 Reichardt we're not participating in any GPOs?

24 A. So I don't recall writing this e-mail.
25 There's obviously more to it since I call it

1 CONFIDENTIAL - JAKE MEADOWS
2 "quick note." So there was discussion after
3 this, so...

4 Q. You don't recall the e-mail in CX2354?

5 A. No, I do not.

6 Q. Is there anything that could refresh
7 your recollection as to what you meant by the
8 words you used in CX2354?

9 A. Not that I can think of.

10 Q. You go on to say that, "We're not
11 participating in any GPOs regardless of what
12 they promise to bring us."

13 What's your understanding of that
14 statement?

15 A. I think it's -- again, I'm back to
16 2014. This is when I, I believe, had and
17 probably within -- or, I don't know what my
18 definition of GPO at the time. It could have
19 been the incorrect definition.

20 Q. You don't know the definition that
21 you're trying to use in CX2354?

22 A. Correct. At the time, we were doing
23 business with buying groups in the Eastern area,
24 so I think if I was talking in particular to
25 buying groups, I more than likely would have

1 CONFIDENTIAL - JAKE MEADOWS
2 said "buying groups."

3 Q. Sitting here today, can you think of
4 any reason why you would say, "We don't work
5 with a customer regardless of what they bring
6 us"?

7 A. No, I can't. And I can't clarify
8 whether "we" is Jeff and I or Henry Schein
9 either.

10 Q. And just to be clear, in this e-mail
11 you're not telling Mr. Reichardt that the FSCs
12 need to bring buying groups to your attention
13 because you were the only one with authority to
14 approve their pricing; is that right?

15 A. I could have clarified for that on the
16 Monday Eastern area call whose authority it was
17 and how I wanted or we wanted to get that done.
18 It's very within the group that reported to me
19 at the time, who I had Jeff Blair, Michael Porro
20 and Jeff Reichardt that reported to me.

21 There were instances that -- that I
22 would allow one zone manager to approve certain
23 things and not allow another zone manager to
24 approve certain things based on performance, and
25 I -- I read this tone to Jeff Reichardt as that

1 CONFIDENTIAL - JAKE MEADOWS
2 there's going to be followup and that's the
3 purpose of "do not forward." Because it's not a
4 complete message, and I wouldn't want Jeff to
5 send a message that's not complete and doesn't
6 have information, so that's why I said, "Do not
7 forward" and clarify, "Quick note."

8 Q. Did you have that followup with Mr.
9 Reichardt?

10 A. I don't recall.

11 Q. Is there anything that could refresh
12 your recollection about whether you did?

13 A. I do not, no.

14 Q. How did you find out that Schein was
15 not participating in any GPOs regardless of what
16 they promised to bring? Is that something Jake
17 Meadows just created out of anywhere?

18 MR. McDONALD: Object to the form.

19 Mischaracterizes his testimony.

20 A. One, Schein, I believe, does
21 participate with GPOs on the medical side, as we
22 define them today; and, two, as I stated, I'm
23 not sure if I'm referring to the company or Jeff
24 and I.

25 Q. If you are referring to just Jeff and

1 CONFIDENTIAL - JAKE MEADOWS

2 you --

3 A. Uh-huh.

4 Q. -- is that a decision you can make on
5 your own, or does someone like Dave Steck have
6 to give you that direction?

7 A. At that particular time in 2014, Dave
8 Steck I believe would have had to get involved
9 because I was, I believe at this time, an area
10 director, and as I said, in regards to
11 authority, I could be referencing that Jeff and
12 I are not participating and that those decisions
13 would have to go above us.

14 I don't -- I'm speculating about the
15 content of the e-mail because it is so short,
16 and it does reference some other discussion that
17 we had and that it's a quick note and there's
18 obviously much more to this than what's written.

19 Q. Okay. You can put aside CX2354.

20 Who is Robert Anderson III?

21 A. He is a re- -- Bobby, and he's a
22 regional manager in Richmond, Virginia.

23 Q. Bobby reported directly to you?

24 A. No, he reported to Michael Porro, who
25 reported to me, and then Jeff Chatham, who

1 CONFIDENTIAL - JAKE MEADOWS
2 replaced Michael Porro.

3 Q. How much did you interact with Mr.
4 Anderson?

5 A. Every other month.

6 Q. What was the nature of your
7 interaction?

8 A. E-mails or a discussion on a topic on
9 a conference call.

10 Q. As part of your job, did you give
11 guidance to Mr. Anderson?

12 A. Indirectly.

13 Q. Did you inform Mr. Anderson of HSD
14 strategy?

15 A. Indirectly. Maybe directly.

16 Q. If HSD had an approved strategy about
17 how to engage with a certain customer segment,
18 you might relay that information to Mr. Anderson
19 or to his direct supervisors?

20 A. More than likely, I would communicate
21 with the zone manager, who would communicate
22 with the regional manager, unless there was some
23 memo or presentation or something that I was
24 communicating something broad, but I wouldn't
25 reach out and particularly grab Bobby to

1 CONFIDENTIAL - JAKE MEADOWS

2 communicate or a regional manager to say, by the
3 way, you know, we do X or Y, proactively.

4 Q. If you were to communicate an HSD
5 strategy to Mr. Anderson, would you expect him
6 to follow it?

7 A. I would.

8 Q. You wouldn't expect Mr. Anderson to
9 ignore your guidance or direction?

10 A. No, I would not.

11 Q. And you wouldn't make up false
12 guidance or direction to lead Mr. Anderson
13 astray?

14 A. No.

15 Q. We talked about Michael Porro.

16 He reported directly to you?

17 A. Yes.

18 Q. How often did you interact with Mr.
19 Porro?

20 A. Weekly.

21 Q. Are you responsible -- were you
22 responsible for Mr. Porro's performance reviews?

23 A. Yes.

24 Q. And as part of your job, you gave
25 guidance to Mr. Porro?

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. Yes.
 3 Q. You informed Mr. Porro of HSD
 4 strategy?
 5 A. Yes.
 6 Q. If HSD had an approved strategy about
 7 how to engage with a certain customer segment,
 8 you might relay that information to Mr. Porro?
 9 A. Yes.
 10 Q. If you communicated an HSD approved
 11 strategy to Mr. Porro, you would expect him to
 12 follow it?
 13 A. I would.
 14 Q. You wouldn't expect Mr. Porro to
 15 ignore your guidance or direction?
 16 A. I would not expect him to.
 17 Q. And you wouldn't make up false
 18 guidance or direction to lead Mr. Porro astray?
 19 A. No, I would not.
 20 Q. Do you recall telling Mr. Porro and
 21 Mr. Anderson that Schein did not currently
 22 participate with GPOs, nor did it want to?
 23 A. No, I do not.
 24 Q. I'm going to hand you a document
 25 that's been premarked as CX2358. This is a

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 2 multi-page e-mail string. The first page of
 3 CX2358 has been Bates-stamped Henry
 4 Schein-000109225.
 5 Please take a moment to review CX2358
 6 and let me know when you've finished.
 7 (Complaint Counsel CX2358-001 through
 8 003, an e-mail string bearing Bates Nos.
 9 Henry Schein-000109225 through 227, marked
 10 for identification, as of this date.)
 11 THE WITNESS: Okay.
 12 BY MS. ROSNER:
 13 Q. You've had an opportunity to review
 14 CX2358?
 15 A. I have.
 16 Q. This is an e-mail string with the
 17 last-in-time e-mail from you dated November 5,
 18 2014. You have written two e-mails in this
 19 string.
 20 You wrote these e-mails as part of
 21 your job?
 22 A. I did.
 23 Q. It's part of your job to communicate
 24 about potential customers?
 25 A. Yes.

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 2 Q. You had personal knowledge of the
 3 contents of this e-mail when you wrote it?
 4 A. Yes.
 5 Q. You wrote the e-mail at or around the
 6 time that this issue about Atlantic Dental Care
 7 was raised for you?
 8 A. Yes.
 9 Q. You wrote the e-mails in CX2358 and
 10 maintained them in Schein's ordinary course of
 11 business?
 12 A. Yes.
 13 Q. CX2358 is a true and accurate copy of
 14 your e-mail correspondence?
 15 A. I assume so, yes.
 16 Q. Going to the second e-mail, which is
 17 in the middle of page CX2358-001, you see that
 18 this is an e-mail that you are writing to Mr.
 19 Anderson; is that right?
 20 A. Yes.
 21 Q. You have copied Mr. Steck, Mr.
 22 Sullivan and Michael Porro; is that right?
 23 A. No, Bobby did. Bobby put them on the
 24 string. I just replied to all.
 25 Q. And when you replied to all, it

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 2 included Mr. Steck, Mr. Sullivan and Mr. Porro?
 3 A. Yes.
 4 Q. In the middle paragraph of your e-mail
 5 to Bobby, you write, "We do not currently
 6 participate with GPOs nor do we want to."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. Why are you telling Bobby that "we do
 10 not currently participate with GPOs"?
 11 A. Probably my misinformation on what a
 12 GPO is or my misunderstanding of what group
 13 Bobby is talking about.
 14 Q. If you turn to the next page,
 15 CX2358-002?
 16 A. Uh-huh.
 17 Q. Bobby is referring to this group
 18 called Atlantic Dental Care, or ADC?
 19 A. Yes.
 20 Q. Are you familiar with that group?
 21 A. I'm familiar that they -- I couldn't
 22 tell you about their business model, but I'm
 23 familiar with the term, the name.
 24 Q. You've heard of the ADC Group?
 25 A. Yes. Yes.

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 2 Q. Do you understand them to be a group
 3 of dentists?
 4 MR. McDONALD: Object to the form.
 5 Q. ADC?
 6 MR. McDONALD: Object to the form.
 7 A. I understand, yes, I understand them
 8 to be a group. I'm not sure what their business
 9 model is, how many dentists are involved, or who
 10 owns what practices or anything.
 11 Q. You don't know anything about the
 12 ownership structure?
 13 A. Correct.
 14 Q. But you understand ADC as a group is
 15 looking to partner with a distributor?
 16 A. Yes.
 17 Q. And at the time, did you understand
 18 that Benco was offering pricing to ADC?
 19 A. At the time, I -- I would have read
 20 this e-mail that said, "ADC recruits with
 21 stating," but I wouldn't understand that they
 22 actually had this, whether that's a true
 23 statement about what Benco does with them.
 24 Q. You understood that Bobby was trying
 25 to tell that you Benco was trying to offer

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 2 pricing to ADC, but you had no independent way
 3 to verify --
 4 A. No.
 5 Q. -- that information?
 6 A. No.
 7 Q. So given that Bobby is telling you
 8 about this group ADC that Benco is trying to
 9 win, how do you understand your statement, "We
 10 do not currently participate with GPOs nor do we
 11 want to"?
 12 A. I particularly remember this group and
 13 other groups in Virginia that we continued to
 14 give to Hal Muller and Randy, Randy --
 15 I forget his last name.
 16 Q. Is it Randy Foley?
 17 A. Randy Foley, yes.
 18 -- Randy Foley in the Special Markets
 19 Group, and there were times where, again, if
 20 this is -- this is during our Project Pyramid
 21 timeframe, where I think we were going back and
 22 forth about who was going to handle these
 23 different groups.
 24 So it's very possible that I'm
 25 referring to "we" as Bobby and myself and

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 2 Michael, not Henry Schein Inc. Because I do --
 3 and I'm not sure if it's Atlantic Dental Care or
 4 Midatlantic Dental Care, which I think -- I
 5 always get these two groups confused, but I do
 6 know that there were a lot of groups like that
 7 in Virginia where, in this moment of time, I
 8 think we had either decided that Special Markets
 9 was going to handle these and we were -- we were
 10 pushing them to Special Markets.
 11 Q. In this period of time while you were
 12 pushing groups to Special Markets, were you also
 13 encouraging the FSCs to compete locally for the
 14 individual buying group members?
 15 A. The ones that we didn't have contracts
 16 with, yes.
 17 Q. Does it seem inconsistent to try to
 18 win the overall business while syphoning away
 19 the individual accounts at the same time?
 20 A. No, because in this particular case --
 21 or, actually, I can't speak to this. I'll just
 22 answer your question generally.
 23 We would not hold off doing business
 24 with a particular dentist until a contract was
 25 completed with a group above them. So, even

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 2 across customers that we don't have agreements
 3 within their buying group and they're part of a
 4 group, they call us for service, we still send a
 5 service tech there. If they want to buy a
 6 product that -- that they have an agreement with
 7 some group, like, for instance, this group is
 8 with Benco and Benco doesn't deal the 3Shape
 9 TRIOS Scanner, we would proactively go in and
 10 try to sell them the 3Shape Scanner as part of
 11 that.
 12 So it's a normal course of business
 13 for us to, every single door, pull every single
 14 door -- or, excuse me, let me use a better
 15 term -- for us to attempt to sell to every
 16 dentist.
 17 Q. If Schein has an agreement with a
 18 buying group to do business with the group, does
 19 Schein still have its FSCs attempt to sell to
 20 the buying group members at greater discounts?
 21 A. Can you ask that one one more time? I
 22 missed the first part.
 23 Q. If Schein has an agreement with a
 24 buying group in place?
 25 A. Yes.

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Q. Is it the practice of Schein to also have the FSCs go into the member accounts to try to sell them at a lower -- at a greater discount?

A. I think it's case-by-case, and if you're generalizing for all of Schein, I think we could say it's case-by-case.

Our strategy that we built in Henry Schein Dental was the FSCs would go in, as we discussed this morning, and we would present or agree to a formulary price and a list of offerings. Go in to get an agreement with a buying group, go out and clarify that agreement that we made on behalf of the buying group, or the buying group would do that, and then the FSCs would work their way through the offering of products that that particular customer would buy and would discount accordingly on top of the formulary that was made at that larger agreement.

Q. I'm going to refer you back to CX2358. Thank you for that explanation. That was helpful. Referring you back to CX2358 to your

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sentence, "We do not currently participate with GPOs nor do we want to."

A. Yeah.

Q. Why wouldn't you want to participate with GPOs?

A. In particular, I believe that I'm referring -- because, again, this timeframe, and I can't necessarily put the dates down -- that the "we" is the Henry Schein Dental field structure versus Hal and Randy's group, who also had some buying groups that they were responsible for.

At this time, and actually, over the course of the last few years, our two groups have been bumping into one another and at times found ourselves to be competing with one another, which would -- not knowingly competing with one another, that would undermine our relationships and we would look like idiots in front of customers.

So there were times where we were clarifying, and I was pulling my team back saying, no, no, no, we are not going to go deal with this customer, and then we would go get the

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Special Markets Group involved.

And then the fights, right, were actually internal fights amongst Randy and myself and Pam Reece, who reported to Randy and myself, and then Hal and myself and Hal and us and others. So there were there was a good amount of infighting on who would get sales credit for some of these groups, and then we had some people -- and it's very possible with Bobby we had some people, in order to pad their own sales results, would not necessarily present it as -- as what it was to make sure it stayed on their P&L and not in Special Markets and vice-versa.

Q. So is it your testimony that it's your understanding that this e-mail is about the internal struggle between Special Markets and HSD for the ADC account?

A. I would -- I would have to assume so because, again, if we use this definition of GPOs synonymous with buying groups, we do business with buying groups, and we want to do business with buying groups. And at the time in 2014 and before we've proactively wanted to do

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business with buying groups and done business with buying groups.

So I would have to assume that these are part of that Project Pyramid, you know, which I'm summarizing with that, but part of this discussion internally.

Q. I guess my question is is this based on a specific memory of this e-mail, or are you speculating?

A. No. No. Timeframe, one, it's based on the fact that the statement -- if you take that segment of the sentence that says, "We do not currently participate with GPOs nor do we want to," that said to someone outside of Henry Schein would not make sense because it would sound like Henry Schein doesn't want to do business with GPOs.

But if you said that to an internal group of people in management, it could be interpreted as Henry Schein Dental versus Henry Schein Special Markets, and that's why this morning I asked you for that clarity and all day have asked you for that clarity. Because it's a very important part of where we struggled with

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2 our Project Pyramid and bringing this all
3 together.

4 Q. So the middle e-mail on page
5 CX2358-001 is a response to Bobby that copies
6 Michael Porro. You then forward that e-mail --

7 A. Yes.

8 Q. -- to just Tim Sullivan and Dave
9 Steck. Do you see that?

10 A. Yes.

11 Q. You have dropped off Bobby and Mr.
12 Porro?

13 A. Yes.

14 Q. And you tell Mr. Sullivan and Steck,
15 "I've got this. Another GPO fight."

16 A. Yes.

17 Q. What are you referring to there?

18 A. I don't recall necessarily on this
19 particular one, but I do recall discussions with
20 3M about letting us have the same Special
21 Markets pricing, the charge-backs in Henry
22 Schein Dental that Hal Muller's group had so
23 that we could go compete within or better
24 compete within the, again, GPO or buying group
25 space.

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2 So, again, that's -- that to me is
3 around us wanting to engage our manufacturers so
4 that we could be better in the buying group and
5 GPO space.

6 Q. You end your e-mail with, "Unless
7 there is another dialogue you would like to see
8 from me to the team, we're forging ahead,"
9 Exclamation point.

10 A. Yes.

11 Q. Did you ever -- what did you mean by
12 "forging ahead"?

13 A. I don't know when I wrote this e-mail
14 what in particular I'm referencing.

15 Q. Did you ever hear from Mr. Sullivan or
16 Steck about a different dialogue they wanted you
17 to deliver to the team?

18 A. I don't recall.

19 Q. Going back to Mr. Anderson's e-mail on
20 CX2358-002 on the next page?

21 A. Uh-huh.

22 Q. He's telling you that Benco is
23 potentially competing for the ADC account.

24 Do you have any reason to doubt
25 whether Benco would be competing for a buying

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2 group?

3 MR. McDONALD: Object to the form.

4 A. Do I have any reason to doubt that
5 Benco would be competing for a buying group?

6 MR. McDONALD: Object to the form.

7 A. It's -- it's -- I really don't put a
8 lot of thought to what my competitors are doing
9 to compete with anyone.

10 Q. Upon reading this e-mail, did it
11 strike you as odd that Benco was going after a
12 buying group?

13 A. I don't recall receiving this e-mail
14 or what I thought when I received this e-mail.

15 Q. Have you ever heard that Benco doesn't
16 work with buying groups?

17 A. I don't recall ever hearing that.

18 Q. You can put CX2358 aside.

19 Are you familiar with a group
20 KlearImpakt?

21 A. I am.

22 Q. What is KlearImpakt?

23 A. A buying group out of Reno, Nevada
24 that has -- headed by two dentists that do
25 education on implantology, and their members I

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2 think are regularly educated by that group, and
3 then Joe and Kathleen, I think, are the ones
4 that found this group and negotiated and brought
5 them to us. That's about what I know.

6 Q. "Joe" is Joe Cavaretta?

7 A. Yes. And "Kathleen" is Kathleen
8 Titus.

9 Q. How do you know about KlearImpakt?

10 A. Joe informed me. Joe Cavaretta
11 informed me.

12 Q. Why did Schein agree to work with
13 KlearImpakt?

14 A. I have -- I don't recall and don't
15 know. That was based out of Reno, Nevada, and I
16 was not involved in that decision-making.

17 Q. What benefit does Schein get from a
18 partnership with KlearImpakt?

19 MR. McDONALD: Object to the form.
20 He just told he doesn't know about
21 them.

22 A. I don't know KlearImpakt well enough
23 to talk about that.

24 Q. Who at Schein approved working with
25 KlearImpakt?

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2 A. I don't know who approved it.

3 Q. Do you ever recall a time when
4 KlearImpakt was starting to enroll accounts in
5 your area while you were the VP of Sales of the
6 Eastern area?

7 A. I'm sorry, what was the question?

8 Q. Do you ever recall a time when
9 KlearImpakt was starting to enroll accounts in
10 your area while you were the VP of Sales for the
11 Eastern area?

12 A. I don't recall the exact time, but I
13 believe there was something in Philadelphia or
14 Kentucky.

15 Q. Involving KlearImpakt?

16 A. Involving KlearImpakt, but I don't
17 remember the exact instance.

18 Q. Do you remember having a sentiment of
19 not wanting to spread the word on KlearImpakt?

20 A. No, I don't recall that.

21 Q. I'm going to show you a document
22 that's been premarked as CX2387. It's a
23 multi-page e-mail chain. The first e-mail has
24 been Bates-stamped Henry Schein-001518966.

25 Please take a moment to review CX2387

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2 and let me know when you're finished.

3 (Complaint Counsel CX2387-001 through
4 003, an e-mail string bearing Bates Nos.
5 Henry Schein-001518966 through 68, marked
6 for identification, as of this date.)

7 THE WITNESS: Okay.

8 BY MS. ROSNER:

9 Q. You've had an opportunity to review
10 CX2387?

11 A. I have.

12 Q. This is an e-mail. The last-in-time
13 e-mail is from Mr. Anderson dated October 20,
14 2015. You have one e-mail in this string on the
15 middle of CX2387-001.

16 Did you write this e-mail as part of
17 your job?

18 A. Yes.

19 Q. It's part of your job to respond to
20 requests about potential customers?

21 A. Yes.

22 Q. You wrote the e-mail in CX2387 at or
23 near the time this inquiry about KlearImpakt
24 arose?

25 A. Yes.

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2 Q. You have personal knowledge of the
3 contents of your e-mail?

4 A. I'm reading it. Yes.

5 Q. You wrote and maintained the e-mail in
6 CX2387 in the course of Schein's ordinary
7 business?

8 A. Yes.

9 Q. CX2387 is a true and accurate copy of
10 your e-mail correspondence?

11 A. Yes.

12 Q. I'm going to refer you to your e-mail
13 on CX2387-001. In the second line of your
14 e-mail at 7:45 a.m., you say, "There's more that
15 we should discuss with Patrick about not
16 spreading this and how to work the formulary for
17 this account."

18 A. Right.

19 Q. Who's Patrick that you're referring
20 to?

21 A. Patrick Eavey. He's the first person
22 who started the string. He's an FSC in
23 Virginia.

24 Q. And Patrick Eavey would report --

25 A. To Bobby; and Bobby reports to Jeff

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2 Chatham and Jeff Chatham reports to me.

3 Q. What do you mean by saying that you
4 need to discuss with Patrick about not spreading
5 KlearImpakt?

6 MR. McDONALD: Object to the form.

7 He just -- you just made up a word in
8 this e-mail that says about spreading
9 "this."

10 Q. Do you understand "this" to refer to
11 KlearImpakt?

12 A. No, I don't.

13 Q. What do you refer -- what do you
14 understand the word "this" to refer to?

15 A. I don't know.

16 Q. What's your understanding of the
17 direction, "We should discuss with Patrick about
18 not spreading this"?

19 A. It could be the link that Patrick has
20 here. It could be the details about the
21 Louisville Dental School with Dr. -- that
22 particular person.

23 I don't remember the instance, but I
24 think that's where I call out -- I mean, we
25 would have -- "There's more that we should

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 2 discuss," so we probably would have had a
 3 followup phone call with Patrick to clarify.
 4 Q. Do you recall this e-mail at all?
 5 A. No.
 6 Q. Is there anything that could refresh
 7 your recollection about what you were trying to
 8 convey in this e-mail?
 9 A. No.
 10 Q. Do you have any understanding of what
 11 you mean by "how to work the formulary for this
 12 account"?
 13 A. Yes.
 14 Q. What does that mean?
 15 A. How to get the most for the customer
 16 out of the formulary and sell the most.
 17 Q. Why is it that you have an
 18 understanding of what that phrase means?
 19 A. That terminology, "work the
 20 formulary," I'm not sure that's a common
 21 language that I would use, but it's something
 22 that around this time we were making sure that
 23 every FSC that ended up getting a customer
 24 within a buying group that we used a formulary
 25 with understood how to help the customer take

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 2 advantage of the discount that we would
 3 negotiate with the buying group and how to show
 4 the customer the benefits of the formulary items
 5 versus the items that were not on formulary.
 6 So there were certain things that FSCs
 7 would have had the opportunity to do to create
 8 value around the relationship we created with a
 9 buying group that we needed to make sure Patrick
 10 was aware of.
 11 Q. Did all FSCs need to know how to work
 12 the formulary?
 13 A. Yes.
 14 Q. Was there generalized trainings for
 15 FSCs on how to work the formulary?
 16 MR. McDONALD: Object to the form.
 17 A. There were times that regional -- I'm
 18 generalizing. Regional managers would do
 19 formulary training at sales meetings that
 20 happened monthly, and at our national sales
 21 meetings we would talk about and celebrate the
 22 fact that we've built formularies for buying
 23 groups and try to get the team engaged.
 24 Q. Is there some reason why you think
 25 that Mr. Eavey needs particularized training on

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 2 the KlearImpakt formulary?
 3 A. Yes, he has a -- he has a KlearImpakt
 4 customer, it seems like, and we would want to
 5 make sure that Patrick would reflect the value
 6 that we promised to the buying group that we
 7 would create.
 8 Q. Did you have some understanding that
 9 Mr. Eavey didn't know how to work with
 10 formularies?
 11 A. No.
 12 Q. You can put CX2387 aside.
 13 I have potentially one more document
 14 to review with you, if that's okay, before we
 15 break for lunch.
 16 A. Yeah.
 17 Q. Who is Dave Panaro?
 18 A. Regional -- formerly, a regional
 19 manager in northern Virginia. Now not with the
 20 company.
 21 Q. Did Mr. Panaro report directly to you?
 22 A. No; he reported to Michael Porro and
 23 then Jeff Chatham and up to me.
 24 Q. How often did you and Mr. Panaro
 25 interact?

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 2 A. As much as I interacted with Bobby.
 3 You know, once a month or, you know, in a group
 4 setting.
 5 Q. Did you have to sign off on Mr.
 6 Panaro's performance reviews?
 7 A. I would be the -- I'm not sure in the
 8 system. I don't remember if I would have been
 9 an approver of his -- I believe I would have.
 10 Q. As part of your job, you would have
 11 given guidance to Panaro, either directly or
 12 indirectly?
 13 A. Yes.
 14 Q. You would have informed Mr. Panaro of
 15 HSD's strategy, either directly or indirectly?
 16 A. Yes.
 17 Q. If HSD had an approved strategy about
 18 how to engage with a certain customer segment,
 19 you might relay that information to Mr. Panaro?
 20 A. Yes.
 21 Q. If you communicated an HSD approved
 22 strategy to Mr. Panaro, you expected him to
 23 follow it?
 24 A. Yes.
 25 Q. You wouldn't expect Mr. Panaro to

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 2 ignore your guidance or direction?
 3 A. I would not expect him to.
 4 Q. And you wouldn't make up false
 5 guidance or direction to lead Mr. Panaro astray?
 6 A. No.
 7 Q. Who is Susan Byrd Harvey?
 8 A. Formally an FSC in northern Virginia.
 9 Q. Ms. Byrd Harvey reported up through
 10 you?
 11 A. She reported to Dave Panaro. Dave
 12 Panaro reported to Michael Porro or Jeff
 13 Chatham, who reported to me.
 14 Q. How often did you interact with Ms.
 15 Byrd Harvey?
 16 A. Once or twice a year.
 17 Q. Is it often that FSCs would reach out
 18 to you directly while you were the VP of Sales
 19 for the Eastern area?
 20 A. Not often.
 21 Q. Do you recall Ms. Byrd Harvey
 22 e-mailing you about the Potomac Valley Dental
 23 Group?
 24 A. No.
 25 Q. Do you know anything about the Potomac

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 2 Valley Dental Group?
 3 A. I know Potomac Valley is the northern
 4 Virginia area, Maryland area. I don't know.
 5 Q. Do you know what services Potomac
 6 Valley were going to provide its members?
 7 A. Today I don't know.
 8 Q. Do you know whether Potomac Valley was
 9 going to be exclusive with its selected
 10 distributor?
 11 A. You keep saying "was." I'm not even
 12 sure if they exist or don't exist. So I'm not
 13 sure if you're referring to a timeframe of
 14 whether or not they were going to do something.
 15 I'm just focused on making sure I'm
 16 understanding you correctly.
 17 Q. Sure.
 18 So did you understand that Ms. Byrd
 19 Harvey reached out to you in October of 2015
 20 about the Potomac Valley Dental Group?
 21 A. I don't --
 22 MR. McDONALD: Object to form.
 23 A. I don't recall that.
 24 Q. I'm going to show you a document
 25 that's been previously marked as CX2393. This

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 2 is an e-mail string. The first page of the
 3 e-mail has been Bates-stamped Henry
 4 Schein-000046912.
 5 Please take a moment to review CX2393
 6 and let me know when you're finished.
 7 (Complaint Counsel CX2393-001 through
 8 002, an e-mail string bearing Bates Nos.
 9 Henry Schein-000046912 through 913, marked
 10 for identification, as of this date.)
 11 THE WITNESS: Okay.
 12 BY MS. ROSNER:
 13 Q. You've had an opportunity to review
 14 CX2393?
 15 A. Yes.
 16 Q. It's an e-mail with the top e-mail
 17 from you dated November 4, 2015. You have a
 18 couple of e-mails in this string.
 19 You wrote the e-mails in CX2393 as
 20 part of your job?
 21 A. Yes.
 22 Q. It's part of your job to communicate
 23 about potential customers?
 24 A. Yes.
 25 Q. You wrote this e-mail at or near the

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 2 time that Ms. Susan Byrd Harvey was referencing
 3 to you the Potomac Valley Dental Group?
 4 A. Yes, but I am unclear since there
 5 seems to be a segment of this e-mail missing.
 6 The "to" and "from" -- or, at least it looks to
 7 me the "to" and "from" from Susan Byrd Harvey at
 8 6:26 a.m., all of the "from," "sent," "to" and
 9 subject line are missing, so I can't speak to
 10 whether I copied and paste that from another
 11 string into this e-mail or it was something that
 12 was forwarded to me.
 13 That seems odd, and I'm unclear about
 14 what could have happened between that.
 15 Q. That's fair enough.
 16 A. Or the time stamp. That could have
 17 been -- you know, again, without all that there,
 18 I'm not real comfortable saying that I
 19 understand this string.
 20 Q. I'll represent to you that what you
 21 see in 2393 was exactly how Schein produced this
 22 document.
 23 A. Okay.
 24 Q. And that I agree that you can't see
 25 who Ms. Susan Byrd Harvey was actually

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 2 responding to in her e-mail on page 2393 --
 3 A. Okay.
 4 Q. -002, so I'll grant you that.
 5 But it's your understanding that --
 6 A. I can speak for the dialogue that
 7 happens that I created and after.
 8 Q. Great.
 9 And the dialogue that you created,
 10 which appears on page CX2393-001, for the most
 11 part, was written at or near the time you got
 12 this e-mail from Ms. Susan Byrd Harvey?
 13 A. That I cannot speak to because, again,
 14 all that stuff is missing. So it looks like
 15 November 4, 2015 there was some dialogue with
 16 Susan Byrd Harvey and that, I mean, there could
 17 have been something personal. I knew Susan
 18 personally because she and I were FSCs together
 19 in DC, so there could have been something
 20 personal within the string about her family or
 21 her personal situation that I didn't want to
 22 include there. So I can't speak to this "good
 23 morning" piece and when that happened without
 24 that information.
 25 Q. I'll just simply represent to you that

1 CONFIDENTIAL - JAKE MEADOWS
 2 you did not copy and paste this e-mail. You
 3 were simply forwarding on an e-mail.
 4 Did you draft the e-mails in CX2394?
 5 A. Yes.
 6 Q. Based on your own personal knowledge?
 7 A. Yes. Yes.
 8 MR. McDONALD: I got to tell you I
 9 don't know about your representation. I
 10 mean, you can't represent whether or not he
 11 took something out of that e-mail. Unless
 12 you have the original e-mails from him.
 13 MS. ROSNER: Fair enough.
 14 BY MS. ROSNER:
 15 Q. Is there any reason to suspect that
 16 the e-mails in 2393 that you wrote are not true
 17 and accurate copies of your e-mail
 18 correspondence?
 19 A. No, I can't say that, because like I
 20 said, this line is odd. This whole e-mail to me
 21 just -- the way it's laid out compared to the
 22 other e-mails that we looked at just looks odd
 23 to me. You can ask me some questions.
 24 Q. Okay.
 25 A. It just looks odd. That's all.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. So in the bottom e-mail of 2393-001,
 3 you direct Dave Panaro, "This is the type of
 4 dialogue you need to get in front of"?
 5 A. Uh-huh.
 6 Q. You are referencing the dialogue that
 7 Susan Byrd Harvey has sent to you; is that
 8 right?
 9 A. I don't know.
 10 Q. Is there anything that could refresh
 11 your recollection?
 12 A. No.
 13 Q. In the top e-mail of CX2393-001, you
 14 write, "We're going to do that but it's
 15 important you guys have plans to win in the
 16 Market without buying groups."
 17 Do you see that?
 18 A. Yes.
 19 Q. Why is it important to win in the
 20 market without buying groups?
 21 A. Because not every private practice
 22 will choose to associate themselves with a
 23 buying group.
 24 Q. To the extent a customer is associated
 25 with a buying group, would Schein have a

1 CONFIDENTIAL - JAKE MEADOWS
 2 strategy of trying to win the customer without
 3 the buying group?
 4 MR. McDONALD: Object to the form.
 5 A. Can you ask that question again?
 6 (Record read.)
 7 A. No; if we were in -- well, let me
 8 clarify. If we were in agreement with the
 9 customer -- or, excuse me, with a buying group,
 10 if it were a buying group that we had a contract
 11 with and we were participating in, then we would
 12 not try to convince that customer not to --
 13 like, for instance, if they were an Alpha Omega
 14 customer, as I referenced earlier, we wouldn't
 15 go say, hey, you don't need Alpha Omega or don't
 16 work with Alpha Omega.
 17 If it were a customer where we did not
 18 have that agreement of the buying group, as I
 19 explain in the example that you asked about
 20 whether -- why would we go try to sell to this
 21 customer before an agreement whereas if we
 22 didn't have the agreement, we would want to go
 23 proactively pull every door, as I said, and call
 24 on every dentist.
 25 Q. If there's an opportunity to win in

1 CONFIDENTIAL - JAKE MEADOWS
2 the market with a buying group, would you
3 instruct your team to try to win in the market
4 without the buying group?

5 MR. McDONALD: Object to the form.

6 A. That would be a case-by-case basis and
7 a region-by-region basis and a
8 territory-by-territory basis. That is so
9 case-by-case.

10 Q. Is there some reason you wanted your
11 team to know that they could not assume that
12 Schein would do business with Potomac Valley
13 Dental Group?

14 A. I can't speak in particular to Potomac
15 Valley Dental Group, but what I would always
16 reinforce to the management team is that before
17 they go and make commitments or dispatch our
18 sales team towards certain activities, that they
19 did a full evaluation of that particular group,
20 or we as a company did a full evaluation of a
21 group.

22 So if in this string you're suggesting
23 that we're discussing a potential group, then I
24 would have suggested, hey, let's do our due
25 diligence and see what the opportunities are

1 CONFIDENTIAL - JAKE MEADOWS
2 with this group and how they fit in in regards
3 to complementing our strategy to grow, retain,
4 and bring our mission to life.

5 Q. I'm going to refer you to the last
6 sentence of your top e-mail on CX2393-001.

7 The last sentence reads, "But don't
8 assume we're doing business with this group."

9 A. Yes.

10 Q. "This group" refers to Potomac Valley
11 Dental Group?

12 A. Again, I'm not -- if -- if we're not
13 missing any e-mails or -- I -- I can't speak to
14 that.

15 Q. Is there --

16 A. Because this -- this could be, I mean,
17 if there are e-mails missing here, we could be
18 talking about a group practice.

19 Q. Is there any reason that you would
20 direct your team to not assume Schein would do
21 business with a buying group?

22 A. Yes.

23 Q. Why might that be?

24 A. If we didn't know enough about that
25 particular group.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Assuming you knew everything about a
3 group and it was attractive, is there any reason
4 why you would instruct your team not to assume
5 that Schein would do business with a buying
6 group?

7 MR. McDONALD: Object to the form.

8 A. There is -- if -- to use your word
9 "attractive," if there was a business and a
10 partnership that I felt could help us grow,
11 retain, and bring our mission to life, and was
12 not -- yes, the answer to the question is I
13 think -- I think I'm answering your question
14 correctly -- or, not correctly, but that I have
15 clarity on your question.

16 If there was an organization that was,
17 from a business standpoint, attractive to do
18 business with, we would do business with that
19 organization, and have done business with that
20 organization.

21 Q. Was the Potomac Valley Dental Group an
22 attractive business to do -- excuse me. Strike
23 that.

24 Was the Potomac Valley Dental Group an
25 attractive group to do business with?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. I have -- I could not tell you
3 anything about the Potomac Valley Dental Group
4 besides the Potomac Valley is like that northern
5 Virginia, Maryland area.

6 MS. ROSNER: We can go off the record.
7 Take a break.

8 THE VIDEOGRAPHER: The time is 12:44
9 p.m. We're off the record.

10 (Luncheon recess.)
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1 CONFIDENTIAL - JAKE MEADOWS

2 AFTERNOON SESSION

3 THE VIDEOGRAPHER: The time is 1:43

4 p.m. We are on the record.

5 JAKE MEADOWS, resumed and

6 testified further as follows:

7 EXAMINATION BY (Cont'd.)

8 MS. ROSNER:

9 Q. Mr. Brady, welcome back from lunch.

10 A. Meadows.

11 Q. Excuse me. Mr. Meadows. I apologize.

12 A. That's fine.

13 Q. Sincere apologies.

14 A. I'm helping.

15 Q. Welcome back from lunch, Mr. Meadows.

16 A. Thank you.

17 Q. I would like to talk about Dental
18 Gator.

19 Are you familiar with Dental Gator?

20 A. Yes.

21 Q. What is Dental Gator?

22 A. A -- a buying group and an affiliation
23 model for MB2.

24 Q. Dental Gator for a period of time was
25 a Special Markets customer; is that right?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes, I -- yes. I'm -- I'm under the
3 impression it still is today.

4 Q. And MB2, which you mentioned, was --
5 is also a member -- strike that.

6 MB2, the entity that you mentioned, is
7 also a Special Markets customer?

8 A. Yes.

9 Q. MB2 is an elite DSO?

10 A. That definition is fine, yes.

11 Q. MB2 does more than \$2 million in
12 merchandise with Schein?

13 A. Off the top of my head, I don't
14 remember, but I believe that's appropriate.

15 Q. MB2 opened Dental Gator as a way to
16 recruit new MB2-owned affiliates?

17 MR. McDONALD: Object to the form.

18 A. I'm not sure exactly what their intent
19 in doing it. I only can describe the model as I
20 described it, from my knowledge.

21 Q. Do you have any sense of whether MB2
22 has had success with recruiting new affiliates
23 through the Dental Gator model?

24 A. My understanding is that they have had
25 success.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Is it your understanding that Dental
3 Gator was opened without Schein's knowledge?

4 A. When you say "Schein," do you mean
5 Henry Schein Dental and Henry Schein Special
6 Markets?

7 Q. Yes.

8 A. Both?

9 Q. Yes.

10 A. I don't -- I don't know.

11 Q. Is it your understanding that Dental
12 Gator provides a variety of services to its
13 membership?

14 MR. McDONALD: Object to the form.

15 A. Is it my understanding that -- I'm
16 sorry. Is it my understanding that? Can you
17 say it again?

18 Q. Is it your understanding that Dental
19 Gator provides a variety of services to its
20 membership?

21 A. Yes.

22 Q. Did you ever consider Dental Gator as
23 raising a bad issue for Schein?

24 MR. McDONALD: Object to the form.

25 A. I don't --

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Let me strike the question and reask
3 it.

4 Did you ever characterize Dental Gator
5 as a bad issue for Schein?

6 A. Not that I recall.

7 Q. I'm going to hand you a document
8 that's been previously marked as CX2362. This
9 is an e-mail string.

10 CX2362 bears the Bates stamp on the
11 first page Henry Schein-000045633.

12 Please take a moment to review CX2362
13 and let me know when you're ready.

14 (Complaint Counsel Exhibit CX2362-001
15 through 003, an e-mail string bearing Bates
16 Nos. Henry Schein-000045633 through 635,
17 marked for identification, as of this date.)

18 THE WITNESS: Okay.

19 BY MS. ROSNER:

20 Q. You've had an opportunity to review
21 CX2362?

22 A. Yes.

23 Q. This is an e-mail string. The last
24 e-mail in the string is by Russ Baker on
25 November 16, 2014.

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes.

3 Q. You have some e-mails in the string.
4 You wrote the e-mails in CX2362 as
5 part of your job?

6 A. Yes.

7 Q. It's part of your job to respond to
8 e-mails about customer accounts?

9 A. Yes.

10 Q. You had personal knowledge of the
11 contents of this e-mail when you wrote it?

12 A. I've read it, yes.

13 Q. You wrote the e-mail near or at the
14 time that you received information about the
15 customer account that's discussed therein?

16 A. Yes.

17 Q. You wrote and Schein maintained this
18 e-mail in the ordinary course of business?

19 A. Yes.

20 Q. Is e-mail 26 -- strike that.
21 CX2362 is a true and accurate copy of
22 your e-mail correspondence?

23 A. It appears to be.

24 Q. I'm going to refer you to the second
25 e-mail from the top of the page on CX2362-001.

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Uh-huh.

3 Q. It's from 3:18, and you write,
4 "Thanks. I need as much info as possible
5 because I'm presenting the GPO issue to
6 leadership next week. I know how bad of an
7 issue Dental Gator is."

8 Did I read that correctly?

9 A. Yes.

10 Q. What did you mean when you say, "I
11 know how bad of an issue Dental Gator is"?

12 A. To my earlier point about who was
13 getting sales credit for these customers, the
14 issue with Dental Gator was I felt as if it
15 should have been part of the Henry Schein Dental
16 sales results versus the Henry Schein Special
17 Markets sales results.

18 Q. And so the fact that Dental Gator was
19 assigned to Special Markets was creating an
20 issue for you and Henry Schein Dental?

21 A. It was presenting an issue for the --
22 the issue it was presenting was the
23 inconsistency of results for us to reach budget
24 internally.

25 Q. And you mention that you're going to

1 CONFIDENTIAL - JAKE MEADOWS
2 present the GPO issue to leadership next week?

3 A. Yeah.

4 Q. Would that include this Dental Gator
5 issue?

6 A. I don't recall what presentation I'm
7 referring to.

8 Q. You don't -- sitting here today, you
9 don't have a recollection of any of the topics
10 you were going to discuss with leadership?

11 A. No.

12 Q. Who is leadership that you refer to?

13 A. I don't know who I'm referring to
14 here.

15 Q. Is there anything that could refresh
16 your recollection about what you presented or
17 who you presented it to?

18 A. Not that I can think of.

19 Q. Okay. You can put CX2362 aside.

20 To the extent you did have a meeting
21 with leadership, would you have presented or
22 brainstormed questions to present to the
23 meeting?

24 A. I'm not -- would I have prepared for
25 the meeting is the question?

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Yes.

3 A. I couldn't -- I couldn't say.

4 Q. Okay. I'm going to show you a
5 document that's been premarked as CX2364. This
6 is an e-mail string. The first page Bates is
7 Henry Schein-001589713.

8 Please take a moment to review CX2364
9 and let me know when you're done.

10 (Complaint Counsel Exhibit CX2364-001
11 through 002, an e-mail string bearing Bates
12 Nos. Henry Schein-001589713 through 714,
13 marked for identification, as of this date.)

14 THE WITNESS: Okay.

15 BY MS. ROSNER:

16 Q. You had an opportunity to review
17 CX2364?

18 A. I have.

19 Q. This is an e-mail string. The
20 last-in-time e-mail is from you on November 19,
21 2014. There are a couple of e-mails from you
22 throughout this string.

23 You wrote the e-mails in CX2364 as
24 part of your job?

25 A. Yes.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. It's part of your job to prepare for
3 meetings with senior leadership?

4 A. It is.

5 Q. You had personal knowledge of the
6 contents of the e-mails at the time you wrote
7 the e-mails in CX2364?

8 A. There's an attachment that appears to
9 be part of this e-mail. I'm not clear if I
10 looked at that attachment or not.

11 Q. Okay. Beyond the attachment, the
12 e-mails that you wrote personally, did you have
13 personal knowledge of what you wrote?

14 A. I would assume, yes.

15 Q. And you wrote these e-mails around the
16 time that you were putting together an agenda or
17 topics for meeting -- for this meeting?

18 A. I'm not -- is that referenced? And
19 are we -- and I'm not confident if -- what
20 meeting this was prepping for.

21 Q. Would you have written this close in
22 time to a meeting or is it likely you would have
23 written it sort of months later or --

24 A. There's some meetings that we prep for
25 over the course of a month and there's some

1 CONFIDENTIAL - JAKE MEADOWS

2 meetings we prep for minutes before we walk into
3 a meeting, so I cannot really be clear what
4 meeting this would be -- that we would be
5 prepping for.

6 Q. Okay.

7 A. Or type of meeting, honestly, because
8 I don't remember meetings from November of 2014.

9 Q. Did you draft this e-mail and maintain
10 it in Schein's ordinary course of business?

11 A. Yes.

12 Q. And CX2364 appears to be an accurate
13 copy of your e-mail correspondence?

14 A. Appears to be.

15 Q. So I'm going to refer you to the
16 bottom e-mail on the page of CX2364-001.

17 A. Uh-huh.

18 Q. It's from you. You write to Rodi.
19 Who is Rodi?

20 A. Rodi Rozin, he is Director of Business
21 Analytics.

22 Q. Does he report to you?

23 A. No.

24 Q. Does he provide information that's
25 useful for you?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes.

3 Q. You write, "This," and you're
4 attaching an Excel spreadsheet, "in addition to
5 the brochure that I shared with you should be
6 part of the information presented at the
7 off-site."

8 Does that refresh your recollection as
9 to what meeting was taking place?

10 A. No, and I'm not sure that I have
11 attached an attachment to my e-mail.

12 Q. Then you in the e-mail ask -- I'll
13 just continue reading, "In addition, I believe
14 we need to craft critical questions to present
15 to the group: How can we stop the progression?
16 How can we compete with existing GPOs? Which
17 competitors are embracing these relationships?
18 What else?"

19 Did I read that correctly?

20 A. Yes.

21 Q. Is it your understanding that you're
22 asking how can we stop the progression of GPOs?

23 A. That's not clear to me.

24 Q. What's your understanding of the
25 question, "How can we stop the progression?"

1 CONFIDENTIAL - JAKE MEADOWS

2 A. I don't have any understanding of
3 the -- the progression, because there's some
4 attachment and some brochure that I'm
5 referencing to Rodi that could be not related to
6 GPOs.

7 Q. I only have one copy of this. I'm
8 going to give it to your counsel first to
9 review.

10 Just to refresh your recollection, I'm
11 going to note that this has been Bates-stamped
12 Henry Schein-000045661.

13 If you can review this document, which
14 I will represent to you is the e-mail from Joe
15 Cavaretta that appears at the very beginning or
16 the last page of the chain of CX2364-002.

17 MR. McDONALD: My only request,
18 Jasmine, is that if you're going to show
19 this to him, then you ought to mark it as an
20 exhibit so we have a record later of what he
21 produced --

22 MS. ROSNER: Okay.

23 MR. McDONALD: -- or what he was
24 shown.

25 MS. ROSNER: We will then mark this as

1 CONFIDENTIAL - JAKE MEADOWS
2 CX2500.

3 MR. McDONALD: Okay.

4 (Complaint Counsel CX2500, an e-mail
5 with attachment bearing Bates Nos. Henry
6 Schein-000045661 through 662, marked for
7 identification, as of this date.)

8 BY MS. ROSNER:

9 Q. Mr. Meadows, I would like for you to
10 look at CX2500 to see if it refreshes your
11 recollection at all about what the discussion in
12 CX2364 could be about.

13 A. What could it be about?

14 Q. I'd like you to look at CX2500 to see
15 if it refreshes your recollection about the
16 subject that's discussed in CX2364.

17 A. No, it doesn't. It looks like a
18 listing of known GPOs, like the subject line
19 suggests, in the e-mail exchange.

20 Q. You've had a moment to look at CX2500?

21 A. Uh-huh.

22 Q. It does not refresh your recollection
23 as to what you were discussing in CX2364?

24 A. Not in detail, no.

25 Q. You can put CX2500 aside.

1 CONFIDENTIAL - JAKE MEADOWS

2 Sitting here today you have no
3 understanding of what the question means, "How
4 can we stop the progression?"

5 A. No. I can't guarantee because I,
6 again, I think the piece is one on the brochure
7 that's not there, and then within that
8 attachment that you just showed me it had the
9 listing of the division responsible. So I have
10 to assume the issue that I've represented a few
11 times in regards to which division is
12 responsible for GPOs is potentially the
13 progression that I'm talking about.

14 Q. Why would you want to stop the
15 progression of which division is responsible for
16 the GPOs?

17 A. I don't think I would want to stop any
18 progression of GPOs or buying groups, if that's
19 the question. It's more about if we had an
20 initiative to grow buying groups and Special
21 Markets had an initiative to grow buying groups,
22 that we were going to run into one another in
23 the marketplace and continue to be in conflict.

24 Q. Is that based on your personal
25 knowledge of what you have written here, or are

1 CONFIDENTIAL - JAKE MEADOWS
2 you speculating as to what this means?

3 A. I'm speculating to what this means
4 based on the attachment that you showed me.

5 Q. Is there -- do you have any knowledge
6 or memory of what particularly and specifically
7 you meant by, "How can we stop the progression?"

8 A. I do not.

9 Q. You then ask, "How can we compete with
10 existing GPOs?"

11 What do you mean by that?

12 A. I would only speculate on that
13 question as well.

14 Q. Sitting here today, you have no memory
15 of what you meant by, "How can we compete with
16 the existing GPOs?"

17 A. Sitting here today, looking at an
18 e-mail from 2014, I would only be speculating
19 about this e-mail because I have not seen this
20 e-mail since I wrote it in 2014.

21 Q. Does Schein typically compete with
22 GPOs?

23 MR. McDONALD: Object to the form.

24 A. I don't think that we compete with the
25 GPO. I think we compete with the dealer that --

1 CONFIDENTIAL - JAKE MEADOWS

2 and again, back to nomenclature and GPOs, I
3 can't speak for Henry Schein broadly on GPOs and
4 how the medical team would explain what they do
5 within their business of GPOs. So I can't speak
6 for all of Henry Schein.

7 Q. I just want you to speak with respect
8 to Dental today and your experience within
9 Dental.

10 In your experience, do you know of an
11 instance where Henry Schein Dental was competing
12 with a GPO?

13 A. A GPO? In the definition I know GPOs
14 to be today?

15 Q. In the definition that you understand
16 GPOs at the time that you wrote this e-mail in
17 CX2364.

18 A. If there was a GPO in language or
19 however we defined it in 2014 that had an
20 agreement with a competitor and was proactively
21 marketing to an existing customer of Henry
22 Schein to not do business with Henry Schein, to
23 do business with another dealer, I think that we
24 would have then be seen as competing with that
25 group, with the assumption that they had a

1 CONFIDENTIAL - JAKE MEADOWS
2 former relationship with another dealer.

3 Q. In the time period of 2014, were you
4 aware of any GPOs in Dental that were aligned
5 with your competitors?

6 A. I can't speak to that moment in 2014,
7 that list.

8 Q. Sitting here today, are you aware of
9 any GPOs that have ever entered Dental and
10 aligned with Schein's competitors?

11 A. The -- again, back to the definition
12 of GPOs, it's so broad, it would be difficult
13 for me to answer that question.

14 Q. I want to use the definition of GPOs
15 that you were just using. You mentioned that in
16 2014, you couldn't think of any.

17 Using that same definition, looking
18 back across your entire time at Schein, are you
19 aware of any GPOs that have entered Dental and
20 aligned with Schein's competitors?

21 A. Using the definition that I think was
22 very loosely used during this timeframe, and
23 again, I'm -- I can't think back to when we
24 signed our agreement with Smile Source, so Smile
25 Source might be a customer considering the fact

1 CONFIDENTIAL - JAKE MEADOWS
2 that they did business with Burkhart and Darby,
3 Nashville Dental, some of the other competitors.

4 Q. Looking at the bottom e-mail on page
5 CX2364-001, you're telling Mr. Cavaretta and
6 Rozin that you need to craft critical questions
7 to present to the group, and then there are the
8 three questions listed below.

9 If you go above that one e-mail, do
10 you see there's an e-mail from Mr. Cavaretta at
11 3:44 p.m.?

12 A. Yes.

13 Q. Mr. Cavaretta adds to your list of
14 questions?

15 A. Uh-huh.

16 Q. And he asks, "What is our strategy if
17 we don't want to work with GPOs?"

18 A. Uh-huh.

19 Q. Did I read that right?

20 A. You read it correctly.

21 Q. It your understanding that he's adding
22 this question to your list of questions?

23 A. No.

24 Q. If you go back to your e-mail at the
25 bottom of 2364-001, and you turn the page, you

1 CONFIDENTIAL - JAKE MEADOWS
2 end your e-mail with the question, "What else?"

3 That appears at the top of 2364-002?

4 A. "What else?" Yes.

5 Q. Given the "what else," are you
6 understanding Mr. Cavaretta to add his question,
7 "What is our strategy if we don't want to work
8 with GPOs?" to your critical questions to
9 present to the group?

10 A. Based on my response, "Can you turn
11 that into two or three questions that are more
12 direct and less broad?" I think that's more than
13 likely -- I -- it looks as if I made that
14 assumption.

15 Q. Do you recall whether you asked these
16 questions at any meeting?

17 A. No, I do not.

18 Q. Okay. You can put CX2364 aside.

19 A. And 2500?

20 Q. And CX2500.

21 Do you ever recall communicating with
22 Mr. Cavaretta and Kam Gantos about this same
23 meeting on GPOs?

24 A. Kam Gantos, no.

25 Q. Who is Kam Gantos?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Kam is a zone general manager of
3 the -- I'm trying to remember. We changed the
4 name of his zone a few times -- the Midwest
5 area. So I'm not sure of the exact name of it.
6 It was at one time the North Central zone. I'm
7 not familiar with what the name of it is today.

8 And he was also, prior to Joe and I's
9 role as Vice Presidents of Sales of the East
10 area and West area, there were three areas, an
11 Eastern area, and that was that first geography
12 I explained to you, a Central area, and a
13 Western area.

14 Q. And you were in charge of the Eastern
15 area?

16 A. Yes.

17 Q. And Mr. Cavaretta was in charge of the
18 Western area?

19 A. Correct.

20 Q. And Kam Gantos was in charge of the
21 Central area?

22 A. Correct.

23 Q. I'm going to hand you a document
24 that's been previously marked as CX2365.

25 CX2365 is a multi-page e-mail chain.

1 CONFIDENTIAL - JAKE MEADOWS
 2 The top page of the document has been
 3 Bates-stamped Henry Schein-000108258.
 4 Please take moment to review CX2365
 5 and let me know when you are finished.
 6 (Complaint Counsel Exhibit CX2365-001
 7 through 003, an e-mail chain bearing Bates
 8 Nos. Henry Schein-000108258 through 60,
 9 marked for identification, as of this date.)
 10 THE WITNESS: Okay.

11 BY MS. ROSNER:

12 Q. You've had an opportunity to review
 13 CX2365?

14 A. I have.

15 Q. CX2365 is an e-mail. The last e-mail
 16 in time is from Joe Cavaretta on November 20,
 17 2014. Just below that e-mail is an e-mail
 18 written by you at 2:20 p.m.

19 Did you write this e-mail in CX2365 as
 20 part of your job?

21 A. Yes.

22 Q. It's part of your job to draft e-mails
 23 regarding potential meetings; is that right?

24 A. Yes.

25 Q. You had personal knowledge of the

1 CONFIDENTIAL - JAKE MEADOWS
 2 contents of this e-mail when you wrote it?

3 A. Yes.

4 Q. This e-mail was written near or at the
 5 time that there was a discussion about this
 6 particular off-site meeting?

7 A. I'm sorry?

8 Q. You wrote the e-mail in CX2365 around
 9 the time that you were discussing what to
 10 present at a meeting?

11 A. Yes.

12 Q. You wrote the e-mail in CX2365 and it
 13 was maintained in Schein's ordinary course of
 14 business?

15 A. Yes.

16 Q. CX2365 is a true and accurate copy of
 17 your e-mail correspondence?

18 A. Yes.

19 Q. I'm going to take you back a couple of
 20 pages to CX2365-002 and 003. It appears at the
 21 bottom of CX2365-002 Mr. Cavaretta is forwarding
 22 an e-mail to you and Kam Gantos.

23 Do you see that?

24 A. Uh-huh. Yes.

25 Q. He's forwarding you an e-mail about

1 CONFIDENTIAL - JAKE MEADOWS
 2 Smile Source, and he says, "I'm going to add
 3 Smile Source to the GPO list for the off-site
 4 meeting discussion. Even though we do not
 5 support them, it seems fair to give examples of
 6 GPOs that we don't support who are taking
 7 business from us."

8 Did I read that correctly?

9 A. Yes.

10 Q. Is it your understanding that Smile
 11 Source was taking business from Schein?

12 A. Is it my understanding that Smile
 13 Source was taking business from Schein? Is that
 14 your question?

15 Q. Yes.

16 A. It's my understanding that Darby and
 17 Burkhart, who are in partnership with Smile
 18 Source, was taking business from Schein.

19 Q. Is it your understanding that because
 20 of their partnership with Smile Source, Darby
 21 and Burkhart were taking business from Schein?

22 A. And the fact that I did not have a
 23 partnership, yes. We. Excuse me.

24 Q. Do you recall adding Smile Source to
 25 the GPO list for the off-site meeting?

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. I don't recall adding it to the list.

3 Q. I'm going to go up one e-mail in time,
 4 the e-mail from Kam Gantos at 11:40 a.m.

5 Do you see that?

6 A. I do.

7 Q. Kam opens the e-mail by saying,
 8 "Thanks for sharing. Just do your best to keep
 9 this crap in the West."

10 Did I read that correctly?

11 A. You did.

12 Q. What is Kam referring to in saying,
 13 "Just do your best to keep this crap in the
 14 West"?

15 MR. McDONALD: Object to the form.

16 A. I can't -- I have no idea why -- what
 17 Kam wrote. This is the first I've seen this
 18 e-mail since 2014.

19 Q. Sitting here today, you have no
 20 understanding or no knowledge of what Kam meant
 21 when Kam said "keep this crap in the West"?

22 A. No. We had a very jovial relationship
 23 between the three of us, so I imagine it's just
 24 an attempt to dig on anything.

25 Q. Is there anything that could refresh

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your recollection about what Kam was referring to when Kam mentioned "crap"?

A. No.

Q. If you go to the last paragraph of Kam's e-mail, Kam writes, "At the end of the day, I think that we need to spend time on a common message as we move through 2015. I know that we all have more than we can deal with already, but this could be like Ebola (controlled and squashed, at least in U.S.) or it could be much worse (I won't draw an analogy here)."

A. Uh-huh.

Q. Did I read that correctly?

A. Yes.

Q. What is Kam referring to in that paragraph that the three of you need to align on?

MR. McDONALD: Object to the form.

A. I would only be speculating today.

Q. You have, sitting here today, you have no memory or personal knowledge about what Kam is referring to?

A. Only in the context of reading the

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e-mail would I speculate. I don't remember this e-mail.

Q. Is there anything that could refresh your recollection as to what Kam is referring to?

A. No.

Q. Going up in time, there's an e-mail from Joe Cavaretta at 3:03 p.m.

Do you see that?

A. Yes.

Q. Mr. Cavaretta says, "I agree. This is getting worse and will continue to get worse unless we act on the action items we discussed with Tim during our last meeting. You guys are going to have to make this a big issue at the off-site."

A. Uh-huh.

Q. Did I read that correctly?

A. Yes.

Q. What is Mr. Cavaretta referring to that is getting worse and worse?

A. The -- again, I'm going -- I would speculate here based on what I have read because I don't remember at this particular instance,

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but I do remember around this time, again, over the course of 2014 and 2015, where the situation associated with Dental Gator and where we had customers that bought from us that we received sales credit for that would sign up for -- or, excuse me, for Smile Source that would sign up -- forgive me. It is Dental Gator and then I'll reference back to Smile Source. But customers that would sign up for existing buying groups that we had would -- those sales credits would move over into the Special Markets Group and not be part of the Henry Schein Dental sales credit in regards to hitting our budgets.

So the issue that, at this timeframe, that we were talking to Tim about and wanted to represent to Jimmy Breslawski, who is responsible for Special Markets and Henry Schein Dental and for Graham Stanley, who has oversight of Special Markets and Henry Schein Dental, was that we had budget concerns and that there were inconsistencies in how we were going to the market based on the fact that we were all going to the market to the same groups, and that was causing conflict.

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Q. Did you ever analogize that conflict to something akin to Ebola?

A. I don't.

Q. Do you have an understanding as to why Kam Gantos would say that this conflict you mentioned is like Ebola?

A. I cannot.

Q. Did you understand how this conflict that you mentioned could be controlled and squashed?

A. Do I understand how it could be controlled and squashed?

I think by this conflict I'm describing, not the conflict Kam is describing, the one that I represented about the Special Markets Group getting sales credit versus the Henry Schein Dental group getting sales credit, the way I believe that issue could be squashed is either Special Markets runs the strategy and the execution of buying groups and GPOs, the language that we used then, or Henry Schein Dental runs the strategy on buying groups.

Q. The issue that Kam Gantos is referring to in the e-mail at 11:40 a.m., do you think

1 CONFIDENTIAL - JAKE MEADOWS
 2 that that's separate from this issue of
 3 assigning credit that you have just discussed?
 4 A. Do you want my -- you're asking me if
 5 I think, like what I'm -- after reading it here
 6 today?
 7 Q. What's your understanding?
 8 A. I -- I don't remember this e-mail
 9 exchange. What I was referencing in regards to
 10 the off-site and my memory around talking with
 11 Tim and talking with Jim Breslawski and Graham
 12 Stanley was around bringing the issue of that
 13 this is more prevalent and that there are more
 14 and more conflicts coming about in the
 15 marketplace between Henry Schein Dental and the
 16 Special Markets team.
 17 Q. In the e-mail that Joe Cavaretta
 18 writes on 3:03 p.m., he mentions, "The issue
 19 will get worse and worse unless we act on the
 20 action items we discussed with Tim during our
 21 last meeting."
 22 Do you recall the meeting that you had
 23 with Tim that he is referring to?
 24 A. No, I do not.
 25 Q. Do you recall the action items that

1 CONFIDENTIAL - JAKE MEADOWS
 2 were discussed with Tim?
 3 A. I do not.
 4 Q. Is there anything that could refresh
 5 your recollection as --
 6 A. Not that I can think of.
 7 Q. Do you recall meeting with Mr.
 8 Sullivan about Dental Gator at any point in time
 9 in 2014 or 2015?
 10 A. I don't recall.
 11 Q. I'm going to ask you to turn to the
 12 front page, CX2365-001, and refer you to your
 13 e-mail, the second half of the page at 2:20 p.m.
 14 In the second line of your e-mail, you
 15 write, "I went through this with Tim. He wants
 16 me to bring up all of the issues so that Jimmy
 17 and Graham can hear them and the team talks
 18 about them."
 19 I read that correctly?
 20 A. Yes.
 21 Q. You mentioned you went through this
 22 with Tim.
 23 That's Tim Sullivan?
 24 A. I assume so.
 25 Q. Do you recall when you met with Tim

1 CONFIDENTIAL - JAKE MEADOWS
 2 Sullivan?
 3 A. I do not.
 4 Q. Do you recall what you said or what
 5 was discussed?
 6 A. I do not.
 7 Q. You mentioned Jimmy.
 8 That's Jim Breslawski; is that right?
 9 A. Yes.
 10 Q. And "Graham" is Graham Stanley?
 11 A. Yes.
 12 Q. Do you recall actually having this
 13 meeting where you put forward the known GPO, the
 14 picture of Dental Gator, and the GPO brochure
 15 that you mention here?
 16 A. I remember sitting in the room in the
 17 meeting. I don't think I remember like the
 18 exact agenda and some of the discussion. I
 19 remember points of the discussion.
 20 Q. What was the purpose of the meeting?
 21 A. It was an overview of everything that
 22 we were doing in the Henry Schein Dental
 23 business. I was not included at the time as
 24 director of -- or Eastern area director. I was
 25 not included in the entire meeting, only

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 2 portions of the meeting because there were
 3 certain things that I was either not privy to, I
 4 suppose, or that they wanted to have discussions
 5 without me.
 6 So I remember the -- I remember,
 7 again, moments or parts of the meeting that I
 8 assume that we're referring to.
 9 Q. Do you remember whether Dental Gator
 10 was discussed at the meeting?
 11 A. I don't remember.
 12 Q. Do you remember whether Smile Source
 13 was discussed at the meeting?
 14 A. I do remember.
 15 Q. What was said about Smile Source?
 16 A. I remember John Chatham describing
 17 that we had had Smile Source at another time and
 18 that we have continued to try to -- and again,
 19 I'm -- I'm paraphrasing and remembering, like I
 20 said, I remember -- I remember being in that
 21 room, and I'm reflecting on the kind of my
 22 takeaways from what I remember.
 23 I remember John making a case for why
 24 Henry Schein Dental could do a good job in
 25 partnering with buying groups, and Hal Muller

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 2 was sitting to my left, and this whole
 3 discussion was about making the case for why
 4 Henry Schein Dental versus Special Markets, and
 5 that's why I remember it. Because it was -- it
 6 was not necessarily a tense moment, but as
 7 somebody who didn't necessarily always sit at a
 8 board room table with the presidents and Jim
 9 Breslawski and Graham Stanley, that was our big
 10 prep and our big moment to make the case for it.

11 So I remember Smile Source being an
 12 example of us saying we think we could go get
 13 Smile Source and win that versus Hal and his
 14 group.

15 Q. Did you make the same case with
 16 respect to Dental Gator?

17 A. I don't remember if we discussed
 18 Dental Gator at that meeting, but I do
 19 remember -- not at that meeting -- that being an
 20 ongoing case that I was trying to make to Randy
 21 Foley and Hal Muller that Henry Schein Dental
 22 could -- we could do a better job if, one, we
 23 were the sole -- we were solely responsible and
 24 had a unified strategy.

25 Q. Was there any change that came about

1 CONFIDENTIAL - JAKE MEADOWS
 2 as a result of the meeting?

3 A. I don't think any -- I don't recall,
 4 actually, to be honest.

5 Q. Turning back to Dental Gator, do you
 6 recall that Dental Gator initially was offering
 7 members pricing from the MB2 pricing plan?

8 A. I remember it that way.

9 Q. Did that bother you?

10 A. Yes.

11 Q. Why?

12 A. Because my understanding at the time
 13 was that that pricing was built specifically
 14 around committed -- contractually committed
 15 business on behalf of MB2 and that we had given
 16 rebates or discounts however to MB2, and that
 17 that exposure of pricing to customers that we
 18 did not have, Henry Schein Dental did not have a
 19 contractual agreement with, potentially made us
 20 look dishonest within our customers.

21 Q. At some point in time did Special
 22 Markets agree to ensure that Dental Gator had
 23 separate pricing apart from MB2?

24 A. I don't recall.

25 Q. At any point in time did you want to

1 CONFIDENTIAL - JAKE MEADOWS
 2 stop Schein's relationship with Dental Gator?

3 A. I don't recall, but I don't believe I
 4 would have. We had good business with them. We
 5 would have been walking away from business.

6 Q. I want to show you a document that's
 7 been premarked as CX2370.

8 A. Can I move this one aside?

9 Q. Yes. You're done with all prior
 10 documents.

11 Handing you a document that's been
 12 premarked as CX2370.

13 A. Uh-huh.

14 Q. The first page bears the Bates stamp
 15 Henry Schein-000209007.

16 Please take a moment to review CX2370
 17 and let me know --

18 A. Okay.

19 Q. -- when you're done.

20 (Complaint Counsel Exhibit CX2370-001
 21 through 002, an e-mail chain bearing Bates
 22 Nos. Henry Schein-000209007 through 008,
 23 marked for identification, as of this date.)

24 THE WITNESS: Okay.

25 BY MS. ROSNER:

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. You've had an opportunity to read
 3 CX2370?

4 A. Yes.

5 Q. The last e-mail in the chain is from
 6 you on January 26, 2015.

7 You wrote this e-mail as part of your
 8 job?

9 A. Yes.

10 Q. It's part of your job to communicate
 11 about Schein's customers?

12 A. Yes.

13 Q. You have personal knowledge of the
 14 contents of your e-mail?

15 A. Yes.

16 Q. You wrote an e-mail in CX2370 at or
 17 near the time that there was a discussion about
 18 Dental Gator?

19 A. This looks like a new chain around
 20 Dental Gator in 2015.

21 Q. It's a chain started between Hal and
 22 Tim; is that right?

23 A. Correct.

24 Q. And Tim is asking for your thoughts,
 25 correct?

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2 A. Correct.

3 Q. And you respond to Tim near in time
4 that he's asking for your thoughts?

5 A. Yes.

6 Q. You drafted and maintained this e-mail
7 in Schein's ordinary course of business?

8 A. Yes.

9 Q. CX2370 is a true and accurate copy of
10 your e-mail correspondence?

11 A. Yes.

12 Q. I'm going to refer you to the third
13 paragraph, if you will, of your e-mail at 2:03
14 p.m.

15 You write, "I understand that we're
16 drawing new lines with them, but the lines I was
17 expecting we would stop this GPO."

18 Did I read that correctly?

19 A. Yes.

20 Q. This is an e-mail chain about Dental
21 Gator, correct?

22 A. Correct.

23 Q. And at this time, you're saying you
24 understand that Schein is drawing new lines with
25 Dental Gator?

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2 Gator to me, I thought they were
3 misrepresenting -- they were either
4 misrepresenting what we as a company, Henry
5 Schein Dental, could deliver on, or I felt that
6 they were violating confidentiality by exposing
7 pricing that we contractually agreed with them
8 through this effort.

9 Q. Is it your testimony that Schein does
10 not offer discounts in the range of 30 to 50
11 percent to its group customers?

12 A. No, I couldn't say -- I couldn't say
13 that because I think there are some items within
14 those offerings because it's from item to item
15 that we do offer 30 percent or even 60 percent
16 discount. There are some items we sell at cost.

17 Q. Is it your testimony that "I was
18 expecting we would stop this GPO" refers to
19 stopping Dental Gator from advertising its
20 discounts?

21 A. My testimony is that this statement is
22 potentially an incomplete statement, and even,
23 again, the way that I wrote it doesn't make
24 sense. The sentence doesn't flow. So it seems
25 fragmented to me.

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2 A. Yes.

3 Q. And you're saying the lines you
4 expected to be drawn with Dental Gator was that
5 we would stop this GPO?

6 A. I'm sorry. What's your question?

7 (Record read.)

8 A. That's what the sentence reads. "The
9 lines I was expecting we would stop this GPO,"
10 but again -- and this looks like an incomplete
11 sentence. The subject around Dental Gator was
12 that they were expanding into our current base
13 and they had YouTube videos up saying we can
14 save -- save you 30 to, you know, 50 percent on
15 dental supplies with Henry Schein, which I
16 didn't think was possible or correct within the
17 Special Markets offering, and just like I said
18 earlier, I was concerned that our customers that
19 were not part of Dental Gator would be exposed
20 to that pricing without that contractual
21 agreement and therefore would feel as if we were
22 either gouging them or treating them unfairly.

23 So I'm not sure that's a complete
24 sentence, but that was -- that was my issue
25 around Dental Gator. This particular Dental

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2 I was more describing what my overall
3 concern with Dental Gator was that I believe Tim
4 and Hal were discussing.

5 Q. And just to be clear, this e-mail you
6 sent was going to Tim Sullivan and Dave Steck,
7 right?

8 A. And Kam Gantos, but I'm not sure why
9 Kam Gantos is on -- why I would add Kam Gantos
10 there.

11 Q. And you report to Dave Steck and --

12 A. Correct.

13 Q. -- Tim Sullivan, directly or
14 indirectly?

15 A. Dave Steck I report to.

16 Q. And indirectly you report to Tim
17 Sullivan?

18 A. Yes.

19 Q. It's important for you to be accurate
20 in your e-mails to Mr. Sullivan?

21 A. Yes.

22 Q. It's important for you to be accurate
23 in e-mails to Mr. Steck?

24 A. Yes, and I -- I'm -- in my -- little
25 embarrassing, but over the course of years, Mr.

1 CONFIDENTIAL - JAKE MEADOWS
2 Steck and Mr. Sullivan, because, as you can see,
3 in some of my e-mails I have fragmented
4 sentences or misspellings, have talked to me
5 about that and pushed me towards reading
6 glasses.

7 Q. Did anybody ever talk to you about
8 this e-mail in particular?

9 A. I -- I don't recall.

10 Q. Is there anything that could refresh
11 your recollection about what specifically you're
12 referring to or anybody having questions about
13 what you're referring to in CX2370?

14 A. No. All I can speak to is the subject
15 of Dental Gator, not this particular e-mail.

16 Q. You can put CX2370 aside.

17 I want to talk quickly about Smile
18 Source.

19 Who is John Nathan?

20 A. I do not know. I don't recall. I
21 can't place that name right now.

22 Q. Do you know John Nathan to work with
23 Smile Source in any capacity?

24 A. I don't know that name, John Nathan.

25 Q. We've talked about Smile Source

1 CONFIDENTIAL - JAKE MEADOWS
2 earlier today; how at one point in time Smile
3 Source was a customer of Henry Schein's; is that
4 right?

5 A. Yes.

6 Q. And then there was a period of time
7 where Smile Source was no longer a customer of
8 Henry Schein?

9 A. Yes.

10 Q. And then there was a further period of
11 time when Schein won back Smile Source as a
12 customer?

13 A. That's my -- yes. I mean, I can speak
14 to the second piece. Everything else is how I
15 understand it.

16 Q. Did you ever learn that Schein chose
17 to stop doing business with Smile Source in the
18 2012 timeframe?

19 MR. McDONALD: Object to the form.

20 A. Did I ever learn? I believe I
21 remember -- I don't remember doing business with
22 Smile Source during the time I think I was a
23 zone manager, and I remember out West we had,
24 because Burkhart is primarily in that geography,
25 that we had some Smile Source issues.

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2 Q. Do you ever recall telling Michael
3 Porro that it was more Schein's choice to stop
4 doing business with Smile Source?

5 A. No, I don't recall that.

6 Q. I'm going to hand you a document
7 that's been previously marked as CX2349. It is
8 an e-mail string, and the first page bears the
9 Bates number Henry Schein-000530282.

10 (Complaint Counsel Exhibit CX2349-001
11 through 002, an e-mail string bearing Bates
12 Nos. Henry Schein-000530282 through 283,
13 marked for identification, as of this date.)

14 BY MS. ROSNER:

15 Q. Please take a moment to review CX2349
16 and let me know when you're done.

17 A. Okay.

18 Q. You've had an opportunity to review
19 CX2394?

20 A. I have.

21 Q. It's an e-mail string. The
22 last-in-time e-mail is from you dated January
23 26, 2012. You have a couple of e-mails in this
24 string.

25 Did you write these e-mails as part of

1 CONFIDENTIAL - JAKE MEADOWS
2 your job?

3 A. Yes.

4 Q. It's part of your job to correspond
5 with your direct reports about potential
6 customers?

7 A. Yes.

8 Q. You had personal knowledge of the
9 e-mail at the time that you wrote it?

10 MR. McDONALD: Object to the form.

11 A. I would assume so.

12 Q. You wrote this e-mail close in time to
13 this inquiry about Smile Source?

14 A. Again, that question you keep asking
15 me. I'm just trying to get clarity on that.

16 We're discussing in 2012, January 26,
17 we're discussing Smile Source; is that the
18 question you're asking me?

19 Q. Yes.

20 A. Yes.

21 Q. And you wrote your e-mails around the
22 time that you had that discussion?

23 A. Yes.

24 Q. You didn't write this e-mail like a
25 year later after the discussions is the point?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. No. No. No.

3 Q. You drafted and maintained this e-mail
4 in the course of Schein's regular business?

5 A. Correct.

6 Q. And CX2349 is a true and accurate copy
7 of your e-mail correspondence?

8 A. Yes.

9 Q. In the e-mail correspondence, do you
10 understand Mr. Porro in the middle of the first
11 page, CX2349, to be proposing ways to win back
12 the Smile Source account?

13 A. Yes.

14 Q. And you respond, "That's if we want
15 the Smile Source group. John Nathan was working
16 closely on this, and it was more our choice I
17 believe to stop doing business with the group.
18 It's closer to a GPO."

19 A. Uh-huh.

20 Q. Did I read that correctly?

21 A. There's two sentences there, right?

22 MR. McDONALD: There's actually three.

23 A. Yeah, so --

24 Q. There is three.

25 A. -- I just --

1 CONFIDENTIAL - JAKE MEADOWS

2 MR. McDONALD: You need to up your
3 reading glasses.

4 A. Is there three sentences?

5 Yes, you read it correctly.

6 Q. Thank you.

7 So you're questioning whether or not
8 Schein would want to win back the Smile Source
9 group; is that right?

10 A. Yes.

11 Q. And you mentioned that it was more
12 Schein's choice to stop doing business with the
13 group; is that right?

14 MR. McDONALD: Object to the form.

15 Mischaracterizes and misstates the document.

16 A. I don't remember who John Nathan is.
17 This is from 2012, six and a half years ago. So
18 I can't speak to whether or not, because Michael
19 Porro and I were in the same office at this
20 time, whether or not he and I had a discussion
21 with one another and this is a followup to a
22 discussion. Because it would have been very
23 common that Michael, because he was an office
24 away from me, that I would go talk to him. So
25 I'm not sure how much clarity I can give around

1 CONFIDENTIAL - JAKE MEADOWS

2 this, this e-mail chain.

3 Q. Do you -- do you remember this e-mail
4 chain at all?

5 A. No.

6 Q. Is there anything that could refresh
7 your recollection about why you wrote the words
8 here?

9 A. No.

10 Q. Okay. You can put CX2349 aside.

11 Have you ever heard anyone from Schein
12 say that Henry Schein should not be first to
13 cooperate with buying groups?

14 A. Not that I recall.

15 Q. I'm going to show you a document
16 that's been previously marked as CX0189.

17 Please take a moment to review CX0189.
18 The first page bears the Bates number Henry
19 Schein-000088519.

20 (Complaint Counsel Exhibit CX0189.001
21 through 002, an e-mail chain bearing Bates
22 Nos. Henry Schein-000088519 through 520,
23 marked for identification, as of this date.)

24 THE WITNESS: Okay.

25 BY MS. ROSNER:

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. You've had an opportunity to review
3 CX0189?

4 A. I have.

5 Q. This is an e-mail from Graham Stanley
6 dated November 3, 2015. I understand this to be
7 meeting notes from a November 2, 2015 meeting.
8 Is that your understanding?

9 MR. McDONALD: Object to the form.

10 A. It appears to be based on the subject
11 line.

12 Q. You were copied on -- or, you are in
13 the "to" line of this e-mail.

14 Is that because you attended this
15 meeting?

16 A. As I said, I believe -- I don't know
17 about the timeframe. I would -- sounds like I
18 did or it's possible I didn't. I'm not really
19 sure about which meeting this was.

20 Q. Do you often attend meetings with Mr.
21 Breslawski and Mr. Sullivan and others?

22 A. No, not with Mr. Breslawski.

23 Q. Would you recall this meeting if you
24 attended it?

25 A. I believe so, yes. I would have

1 CONFIDENTIAL - JAKE MEADOWS
2 recalled that we had a meeting. A lot of the
3 dates for me, because in the last ten months, as
4 I said, I've taken on this new role, a lot of
5 the dates over this timeframe of going from Area
6 Director to Vice President of Sales, and then
7 after, it's just -- it's all kind of mashed
8 together, so it's hard for me to go, oh, well,
9 this one was first and that one was second.

10 Q. Sure. I'm going to refer you to the
11 second page, CX0189-002.

12 A. Uh-huh.

13 Q. In the middle of the second page,
14 there's a heading that says "Buying Groups."

15 Do you see that?

16 A. Yes.

17 Q. And underneath the heading "Buying
18 Groups" it reads, "Tim clearly set out that HS
19 should not be the first to cooperate with GPOs,
20 but also don't want to be last."

21 Did I read that correctly?

22 A. Yes.

23 Q. Do you recall this at the --

24 A. I do not. I do not recall that.

25 Q. Is there anything that could refresh

1 CONFIDENTIAL - JAKE MEADOWS
2 your recollection about what this could mean?

3 A. No.

4 Q. Does it surprise you to see something
5 that indicates Tim was suggesting that Henry
6 Schein should not be first to cooperate with
7 GPOs?

8 MR. McDONALD: Object to the form.
9 Mischaracterizes the document and the
10 evidence and the other testimony in this
11 case about this document.

12 You can answer.

13 A. It doesn't make sense to me since our
14 definition of "GPO" is we already do business
15 with GPOs at this time and many years before.
16 So -- or buying groups. The -- it just doesn't
17 make sense to me.

18 Q. Would you ever echo Mr. Sullivan's
19 sentiment that Schein should not be first?

20 MR. McDONALD: Object to the form.
21 Vague.

22 A. I have -- I don't know if I would
23 ever. I don't recall ever doing that.

24 Q. Does that sound like something you
25 would also say, that Schein should not be first

1 CONFIDENTIAL - JAKE MEADOWS
2 to participate with GPOs?

3 MR. McDONALD: Object to the form.

4 A. I don't recall ever saying that.

5 Q. I'm going to hand you a document
6 that's been previously marked as CX2284. Please
7 take a moment to review the document.

8 The first page bears the Bates stamp
9 Henry Schein-000036701.

10 A. Uh-huh.

11 (Complaint Counsel Exhibit CX2284-001
12 through 009, an e-mail chain bearing Bates
13 Nos. Henry Schein-000036701 through 709,
14 marked for identification, as of this date.)

15 BY MS. ROSNER:

16 Q. Have you had an opportunity to review
17 CX2284?

18 A. Yes.

19 Q. CX2248 is an e-mail chain. The
20 last-in-time e-mail is from you on March 26,
21 2016.

22 A. Uh-huh.

23 Q. There are a couple of e-mails from you
24 throughout.

25 You wrote the e-mails in CX2284 as

1 CONFIDENTIAL - JAKE MEADOWS
2 part of your job?

3 A. Yes.

4 Q. It's part of your job to communicate
5 about potential customers?

6 A. Yes.

7 Q. You had personal knowledge of the
8 contents of your e-mails?

9 A. Yes.

10 Q. You wrote the e-mails near in time
11 that you were discussing this potential customer
12 opportunity?

13 A. Yes.

14 Q. You wrote the e-mails in CX2284 and
15 maintained them as part of Schein's ordinary
16 course of business?

17 A. Yes.

18 Q. CX2284 is a true and accurate
19 representation of your e-mail correspondence?

20 A. Yes.

21 Q. I want to refer you to the bottom
22 e-mail on the first page, CX2284-001 --

23 A. Yes.

24 Q. -- from you at 10:50 a.m.

25 Do you see that?

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A. I do.

Q. Your e-mail reads, "We all agreed we wouldn't be first but we would be a strong second."

Did I read that correctly?

A. Yes.

Q. What do you understand or what are you saying there?

A. In regards to Premier and the Georgia Dental Association, we knew that we would not be the lowest priced competitor, and so we thought we would be their second choice.

Q. I just want to make sure I understand.

Are you referring to an opportunity to bid for Premier's and GDA's business?

A. GDA's business.

Q. And in your e-mail, you say, "We all agreed we wouldn't be first."

Was there some plan or agreement not to be first?

A. No, there was never -- we always competed to win. I think it was when we built the bid, it's referencing our confidence in whether or not we would be the lowest bid.

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Q. How did you know that Schein was not going to be the lowest bid for GDA?

A. Just guessing. We don't know. The feedback that we received from the marketplace was that, in that Georgia area, that we were too expensive.

Q. Who was going to be the lowest bid for GDA?

A. I don't know.

Q. Who else was bidding for GDA?

MR. McDONALD: Object to the form.

A. I don't know. I don't recall, I would say.

Q. Was it possible that Schein was the only entity submitting a bid for GDA?

A. I'm not sure what's possible. I'm only familiar with our interactions with GDA.

Q. What did the interactions with GDA tell you about this bidding event?

A. That's a lot to unpack in that question. Can you be more specific?

Q. You had some interactions with GDA?

A. Yes.

Q. In interacting with GDA, did they

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discuss who they anticipated was going to bid for their business?

A. I don't recall them discussing with me who else was bidding on the business.

Q. Did you have any feeling that you were bidding against another entity for GDA's business?

A. We always assumed competitive -- competitive offers in all of our dealings, so then we present competitive offers. I think there was speculation between Scott Garringer, who was the regional manager at the time, and Michael Porro, who was the zone manager, about who was in and who wasn't.

Q. Going back to your e-mail on CX2284.

A. Uh-huh.

Q. In the second paragraph of your e-mail at the bottom of the page, you write, "Execute Order 66"?

A. Uh-huh.

Q. Is that right?

A. Yes.

Q. That's a "Star Wars" reference?

A. Yes.

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Q. Comes from "Revenge of the Sith"?

A. Yes.

Q. My understanding of that reference is that Darth Sidious issues Order 66; is that right?

A. Yes.

Q. And Order 66 tells the Clone Troopers to kill the Jedi; is that right?

A. Yes. Execution of the Jedi, right.

Q. So it's kind of a reference about someone who's partnered with someone killing off their partner, right?

MR. McDONALD: Object to the form.

A. I -- I wouldn't clarify it that way.

Q. What did you mean when you said, "Execute Order 66"?

A. I don't know exactly what I meant, but it wouldn't be -- it wouldn't be out of character for Brian and I to be having two different discussions or two different references. I could have finished a phone call with him with something else that we were chuckling about, and I just included that as a chuckle.

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 2 But there's no -- there's no
 3 representation here that that's -- that I'm
 4 referring to, and I'm not sure how I would even
 5 refer to, considering I'm talking about what a
 6 great opportunity it is to do business with a
 7 CDA and a GDA up here, why I -- this would be
 8 counter to -- to the message.

9 And his even "Laugh out loud. I know
 10 it," it just -- it just doesn't make sense that
 11 I would be talking about executing that, so I'm
 12 confident it's something else.

13 Q. Sitting here today, you have no
 14 understanding as to why you would include a
 15 reference to "execute Order 66"?

16 A. No.

17 Q. Is there anything that you could look
 18 at to refresh your recollection as to what you
 19 meant?

20 A. No.

21 Q. You can put aside CX2284.

22 MS. ROSNER: We've been going about an
 23 hour. I have just a couple of documents to
 24 show you, but we can take a break if you
 25 would like.

1 CONFIDENTIAL - JAKE MEADOWS

2 MR. McDONALD: I'm fine.

3 How much time has gone?

4 THE VIDEOGRAPHER: Four hours and 50
 5 minutes, I believe.

6 MR. McDONALD: Do you want to just use
 7 the last of your ten minutes?

8 MS. ROSNER: Let's do it.

9 BY MS. ROSNER:

10 Q. We talked about KlearImpakt today,
 11 right?

12 A. KlearImpakt?

13 Q. Yes.

14 A. Yes.

15 Q. Have -- and we've also talked about
 16 your interactions with Tim Sullivan, correct?

17 A. Yes, we've talked about a few of
 18 those.

19 Q. Do you attend Special Markets budget
 20 meetings?

21 A. I did last year.

22 Q. Prior to last year, have you ever
 23 attended a Special Markets budget meeting?

24 A. I don't recall ever being -- I recall
 25 being in budget meetings. I don't recall being

1 CONFIDENTIAL - JAKE MEADOWS
 2 specifically just in a Special Markets budget
 3 meeting.

4 Q. Do you recall in any budget meetings
 5 Tim Sullivan taking a hard stance about Schein
 6 not doing business with buying groups?

7 A. I don't recall that.

8 Q. I'm going to hand you a document
 9 that's been previously marked as CX2392. This
 10 is a document that bears the Bates label on the
 11 first page Henry Schein-000280726.

12 Please take a moment to review the
 13 document and let me know when you're finished.

14 (Complaint Counsel Exhibit CX2392-001
 15 through 002, an e-mail chain bearing Bates
 16 Nos. Henry Schein-000280726 through 727,
 17 marked for identification, as of this date.)

18 THE WITNESS: Okay.

19 BY MS. ROSNER:

20 Q. You've had a moment to review CX2392?

21 A. I have.

22 Q. It's an e-mail chain with the last
 23 e-mail in time dated November 3, 2015 from you.
 24 There are two e-mails in this chain from you.

25 You wrote the e-mails in 2392 as part

1 CONFIDENTIAL - JAKE MEADOWS
 2 of your job?

3 A. Yes.

4 Q. It's part of your job to respond to
 5 e-mails from Tim Sullivan?

6 A. Yes.

7 Q. You have personal knowledge of the
 8 contents of your e-mail?

9 A. Yes.

10 Q. You drafted the e-mails in 2392 near
 11 the time of the e-mail that Tim Sullivan sent
 12 you an e-mail?

13 A. Yes.

14 Q. You drafted and maintained e-mails in
 15 CX2392 as part of Schein's regularly conducted
 16 business?

17 A. Yes.

18 Q. CX2392 represents a true and accurate
 19 copy of your e-mail exchange?

20 A. Yes.

21 Q. I'm going to refer you to the top
 22 e-mail from you on the first page at 5:42 p.m.
 23 Actually, strike that.

24 I'm going to refer you to the last
 25 e-mail in the e-mail chain from Tim Sullivan on

1 CONFIDENTIAL - JAKE MEADOWS
2 page CX2392-002.

3 He writes to you, "Jake, you slipped
4 me a note about this group during the SM budget
5 meeting. I had just informed Hal (and team)
6 that we do not have plans to open up new buying
7 groups, but have a plan ready to roll if needed.
8 Did we just include KlearImpakt? If so" --
9 scratch that.

10 "Who are they, where, et cetera.
11 Tim."

12 A. Yes.

13 Q. Do you recall sliding Mr. Sullivan a
14 note about KlearImpakt?

15 A. I do.

16 Q. Why did you do that?

17 A. I don't remember exactly what Tim was
18 saying, you know, word for word, but this was
19 around that time that we were discussing who was
20 going to open -- who was going to be the group
21 that was going to open up the buying groups and
22 negotiate the formularies and the pricing and
23 everything that they were doing with them, and I
24 believe Tim made a statement about the fact that
25 the Special Markets Group would be the ones that

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2 would be opening them up or that we were
3 allowing or letting them do it, and I was
4 sliding a note to him letting him know that I
5 wanted him aware, even though he just made a
6 commitment, that I wanted to inform him that he
7 made a commitment that we potentially, because I
8 didn't know where we were with KlearImpakt, that
9 we potentially couldn't live up to. Because Tim
10 was saying, fine, the Special Markets Group will
11 handle buying groups.

12 Q. It was your impression that Tim
13 Sullivan was taking a hard stance with respect
14 to not doing buying groups in HSD?

15 A. No.

16 MR. McDONALD: Object to the form.

17 A. No. It was my understanding that Tim
18 was misspeaking about the fact that we were
19 currently not, like right in that moment, having
20 any pending buying group discussions.

21 Q. I want to refer you to your e-mail at
22 the top of the chain on the first page of
23 CX2392.

24 A. Uh-huh.

25 Q. 001.

1 CONFIDENTIAL - JAKE MEADOWS
2 What I think you're trying to say is,
3 "I really think" -- "I really did think he was
4 aware and I only said something" --

5 A. Yes.

6 Q. -- "because he was taking such a hard
7 stand in front of everyone."

8 A. Yes.

9 Q. When you say he was taking such a hard
10 stand in front of everyone, you're referring to
11 Tim?

12 A. I believe so.

13 Q. And it was your impression that Mr.
14 Sullivan was taking a hard stand in front of
15 everyone at this meeting?

16 A. Yes.

17 Q. You can put aside 2392.

18 A. Okay.

19 Q. Is it also your understanding that Mr.
20 Sullivan was soapboxing about his views on
21 buying groups at this meeting?

22 A. I don't remember that. What I do
23 remember about this meeting is there was a lot
24 of conflict between the Henry Schein Dental
25 group and the Henry Schein Special Markets group

1 CONFIDENTIAL - JAKE MEADOWS
2 about who was going to handle buying groups, and
3 the hard stand that I'm referencing is whether
4 or not Henry Schein Dental would be the ones
5 that would lead the way, and I disagreed.

6 Q. Is it your understanding that,
7 particularly with the creation of the Mid
8 Markets Group, that Henry Schein Dental would
9 bring buying groups in-house to its division?

10 A. I think that we, when we created that,
11 we did not have clarity on that decision, and
12 the segments of the market started to cross over
13 one another, just like that example within
14 Dental Gator, where we didn't -- is this a DSO
15 or is it a buying group? We weren't -- we were
16 so unsure about what things were that we moved
17 the buying group towards that effort to go
18 proactively sell to buying groups, or the Mid
19 Market Group towards buying groups, and at the
20 same time, the Special Markets Group continued
21 to drive buying group relationships, and that's
22 where the conflict came up.

23 Q. Let me ask you, what does it mean to
24 be soapboxing?

25 A. Standing up on a -- I reference it as

1 CONFIDENTIAL - JAKE MEADOWS
 2 standing up on a -- standing up at a higher
 3 position and talking about a particular subject.
 4 Q. Does it typically involve sort of
 5 speaking passionately about a subject?
 6 A. Yes.
 7 Q. Have you ever known Tim to soapbox
 8 about whether Henry Schein Dental does business
 9 with buying groups?
 10 A. I don't recall.
 11 Q. I'm going to hand you a document
 12 that's been premarked as CX176. This is an
 13 e-mail chain. The first page Bates is Henry
 14 Schein-00004474.
 15 Please take a moment to review CX176
 16 and let me know when you're done.
 17 (Complaint Counsel Exhibit CX0176.001
 18 through 002, an e-mail chain bearing Bates
 19 Nos. Henry Schein-00004474 through 475,
 20 marked for identification, as of this date.)
 21 THE WITNESS: Okay.
 22 BY MS. ROSNER:
 23 Q. You've had an opportunity to review
 24 CX176?
 25 A. Yes.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. This is an e-mail dated November 3,
 3 2015. The top e-mail is from you.
 4 Again, you wrote the e-mails in this
 5 chain. You wrote the e-mails in CX176 as part
 6 of your job?
 7 A. Yes.
 8 Q. It's part of your job to communicate
 9 about -- to communicate with Tim Sullivan when
 10 he asks you a question?
 11 A. Yes.
 12 Q. You wrote this near in time to the
 13 question that Tim Sullivan posed to you?
 14 A. Near in time that Tim questioned me?
 15 I don't -- yes.
 16 Q. You wrote -- you had personal
 17 knowledge of the contents of your e-mails in
 18 CX176?
 19 A. Yes.
 20 Q. CX176 was drafted and maintained in
 21 Schein's course of regular business?
 22 A. Yes.
 23 Q. CX176 is a true and accurate copy of
 24 your e-mail correspondence?
 25 A. Appears to be, yes.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. At the very top of the chain at 5:14
 3 p.m., you write, "I had to. He was going off
 4 about how we do not have any buying group
 5 agreements and that we will not do them.
 6 Soapboxing about HSD and buying groups."
 7 Did I read that correctly?
 8 A. You did.
 9 Q. This is an e-mail in response to Mr.
 10 Cavaretta asking whether you slid the note about
 11 KlearImpakt to Tim Sullivan?
 12 A. Yes.
 13 Q. And it was your impression at the time
 14 that Tim Sullivan was going off about how Schein
 15 doesn't have any buying group agreements?
 16 A. No.
 17 Q. What did you mean by he was going off
 18 about how we do not have any buying group
 19 agreements?
 20 A. You asked the question if Schein,
 21 specifically Henry Schein Dental. This was the
 22 discussion about whether Henry Schein Dental
 23 should have any of the buying group agreements
 24 or whether Henry Schein Special Markets should
 25 have the buying group agreements.

1 CONFIDENTIAL - JAKE MEADOWS
 2 Q. So I read your e-mail to refer to a
 3 subject as past tense, "we do not have," as
 4 opposed to future tense, "we will not have."
 5 Is that mistaken?
 6 MR. McDONALD: Object to the form.
 7 A. Could you repeat your question?
 8 Q. Sure. You mentioned that Tim Sullivan
 9 was "going off about how we do not have any
 10 buying group agreements," so that suggests that
 11 it's Tim Sullivan's impression that Henry Schein
 12 Dental did not at that time have any buying
 13 group agreements; is that right?
 14 MR. McDONALD: Object to the form.
 15 A. That would be an -- if -- no, I don't
 16 think that, because Tim at this time is well
 17 aware of buying group -- current buying group
 18 agreements that we had and were executing.
 19 So if Tim would have said we don't
 20 have any buying group agreements, one, that
 21 would have been incorrect for Schein; and, two,
 22 this whole discussion that we were having was
 23 about whether or not Henry Schein Dental or the
 24 Henry Schein Special Markets, which at the time
 25 was a completely different division, should be

1 CONFIDENTIAL - JAKE MEADOWS
2 getting sales credit or leading the way on
3 growing and working with buying groups in the
4 marketplace.

5 Q. Why would you have written then that
6 Tim was going off about how we do not have any
7 buying group agreements?

8 A. The "we" that I believe I'm referring
9 here is Henry Schein Dental team and whether or
10 not we have current -- we're in talks with
11 groups.

12 Q. Is there somewhere in your e-mail you
13 can point me to this idea of being in current
14 discussions?

15 A. That I can point you to that we are in
16 current discussions with?

17 Q. Yeah, where do you get the idea
18 that -- where do you get the understanding that
19 this e-mail references not just agreements that
20 have been done, but agreements that are in
21 negotiation?

22 MR. McDONALD: Object to the form.

23 A. I'm familiar with this timeframe that
24 we were in discussions with Henry Schein Special
25 Markets about who would be responsible for

1 CONFIDENTIAL - JAKE MEADOWS
2 buying groups and for -- and that's the way that
3 it's written.

4 If Tim Sullivan were to in a meeting
5 represent that Henry Schein Dental has zero
6 buying group agreements, everyone in the room
7 would have had an example to say that's not
8 true.

9 So that's why I'm confident that we're
10 talking about existing groups, and the fact that
11 I slid him KlearImpakt on a piece of paper,
12 because I do remember doing that, was about a
13 group that we were in active discussion with.
14 Because I didn't slide across every other buying
15 group that we do business with which in 2015 I
16 was aware of, or I didn't say I'm going to send
17 you a list of every buying group so that you can
18 see this list, and KlearImpakt would be on that
19 list.

20 And the reason that -- where I said "I
21 had to, I'm sorry" to Joe is Joe was not sure
22 that we were actually going to win it or not
23 because we were competing for it, and I
24 potentially set Joe up to have to have a deeper
25 discussion about something that may not come

1 CONFIDENTIAL - JAKE MEADOWS
2 about.

3 Q. Is it your understanding that at this
4 time Schein already had a signed PVA with
5 KlearImpakt?

6 A. I don't recall my knowledge, but as I
7 said, I remember sliding that across to Tim in
8 reference to say we're in discussions with them.

9 Q. You can put this document aside.
10 I'm just going to ask you a couple of
11 last questions.

12 We've mentioned a group Premier today?

13 A. Yes.

14 Q. Premier is a medical GPO; is that
15 right?

16 A. Yes.

17 Q. And Premier has been a customer of
18 Henry Schein Medical for some time?

19 A. Yes.

20 Q. Has Premier ever reached out to you on
21 the Dental side?

22 A. I recall having one interaction with
23 Premier, and I was invited to a conference call
24 with the GDA. I might have -- with the GDA
25 leadership, and we got on the conference call

1 CONFIDENTIAL - JAKE MEADOWS
2 and Premier Dental was on the conference call at
3 the same time. And I did not know who Premier
4 was, and I was upset at the time that we had had
5 an intent on having a discussion with the GDA, I
6 did not understand the relationship between the
7 GDA and Premier, and I saw it as extremely
8 unprofessional and I felt as if that the GDA and
9 Premier were trying to surprise us or that
10 Premier was trying to listen in on a phone call
11 without our knowledge.

12 And at that time, as soon as I found
13 out, because I hit star pound -- if you do that
14 on a conference call, it will tell you how many
15 people -- there was five participants when we
16 thought there were four, and I said there was a
17 fifth, maybe I said there was a sixth, I don't
18 remember exactly how many people were on the
19 call, but I remember finding out that they were
20 on the call.

21 And I told the group that -- I asked
22 Premier if this -- if you were the same Premier
23 that we have an agreement with, because I think
24 I Googled it while we were on the conference
25 call that we had an agreement with in Henry

1 CONFIDENTIAL - JAKE MEADOWS
2 Schein Medical, or they might have said it, and
3 they said, "No, we're not that group."

4 And at that point, I had this -- this
5 gut feeling that I was being treated
6 dishonestly, and I communicated to the
7 leadership of the GDA that I am not -- I must
8 not understand your model if Premier is here and
9 that I felt that it was unprofessional that they
10 brought in a second or a third group into a
11 discussion and didn't prepare us.

12 I called out for non-disclosures for
13 us in order to move forward to have a discussion
14 because this other entity, that was Premier at
15 the time, in my experience, I felt approached me
16 and Henry Schein Dental extremely
17 unprofessional, and I found it to be extremely
18 unprofessional of the GDA as well.

19 Q. Approximately when did this occur?

20 A. I don't remember. I don't remember
21 the date. I just remember it was during -- it
22 was during our discussions with the GDA over the
23 summer period before -- before we decided not to
24 move forward with them or they declined our
25 offer. I forget which one it was.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. In the last six months, have you dealt
3 with anyone from Premier who's wanted to partner
4 with Schein on the dental business?

5 A. Yes.

6 Q. Can you tell me about that?

7 MR. McDONALD: Well, hang on. Hang
8 on.

9 Jasmine, so I don't know what in the
10 world it has to do with this case, but
11 you're out of time. You're well over your
12 five hours. So I would ask you to wrap this
13 up quick and think about -- I'm not going to
14 give you a lot more time because you're over
15 by probably ten minutes. I'm sitting here
16 patiently letting you do that because I'm
17 not ever going to hold you to the second,
18 but you're now going on a topic that doesn't
19 have anything to do with your lawsuit. It's
20 in the last six minutes. It's after you
21 filed your action. I can't imagine how this
22 is even remotely relevant.

23 So if you want this to be your last
24 question, then go for it. Otherwise, I
25 suggest you figure out how you're going to

1 CONFIDENTIAL - JAKE MEADOWS
2 wrap this up in the last couple of minutes.

3 BY MS. ROSNER:

4 Q. Are you currently entertaining
5 potentially doing business with Premier on the
6 Dental side?

7 A. Well, I'm -- I'm Vice President of
8 Sales of Special Markets, so I can't
9 necessarily -- I'm not authorized to make
10 decisions about Henry Schein Dental and what
11 Henry Schein Dental does.

12 I'm exploring because there are some
13 other GPOs that we do business with in Special
14 Markets, like Acruity, I'm going to explore,
15 because I got it from the Medical side, some
16 opportunities with that group.

17 MS. ROSNER: That's all my questions.

18 We can take a break and go off the record.

19 MR. McDONALD: Thanks.

20 THE VIDEOGRAPHER: The time is 3:18
21 p.m. We're off the record.

22 (Recess.)

23 THE VIDEOGRAPHER: The time is 3:36
24 p.m. We're on the record.

25 EXAMINATION BY

1 CONFIDENTIAL - JAKE MEADOWS

2 MR. McDONALD:

3 Q. Mr. Meadows, you were shown a number
4 of e-mails today by counsel for the FTC, and
5 they showed you snippets of e-mails in an
6 attempt to suggest that you may be against or
7 anti buying group or GPOs, and I want to give
8 you the opportunity to state what your belief is
9 or how you feel about buying groups and GPOs.

10 So will you tell the Administrative
11 Law Judge your feelings or your beliefs about
12 doing business with buying groups?

13 A. Since -- since I joined Henry Schein
14 in 2001, within, as I described, the first few
15 months or days of being part of Henry Schein,
16 one, I was asked by my company and senior
17 leaders of my company to go make the most of
18 existing relationships and agreements with the
19 buying groups that existed, and I personally
20 feel that my success with those groups helped
21 propel my career within Henry Schein.

22 My own experience is that, by working
23 with, specifically -- and I did focus a lot of
24 my business on that Alpha Omega early in my
25 career, and I was a commission paid salesperson

1 CONFIDENTIAL - JAKE MEADOWS
2 that I actually had increased commissions from
3 partnering with those groups and had a positive
4 experience with partnering with those groups.

5 And then when I moved in my next
6 position, continued to expand our partnership
7 with an existing buying group, and I would say
8 throughout my career at Henry Schein have always
9 seen, generally, buying groups as a positive way
10 for Henry Schein to achieve our mission, grow
11 our business, retain our business, and bring our
12 mission to life.

13 And I believe that there is probably
14 instances that have been represented today that
15 are more about case-by-case basis for a
16 particular either situations or buying groups
17 that didn't make sense for us to grow our
18 business, retain our business, or bring our
19 mission to life.

20 Q. Thank you.

21 Are Benco and Patterson competitors of
22 Henry Schein?

23 A. Yes.

24 Q. And do you compete with them for
25 business?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes.

3 Q. Do you try to take business away from
4 Benco?

5 A. Yes.

6 Q. Do you try to take business away from
7 Patterson?

8 A. Yes.

9 Q. Does Benco and Patterson try to take
10 business away from you?

11 A. Yes.

12 Q. Aside from recruiting, have you ever
13 had any conversations or communications, and I
14 want you to use that broadly -- in person,
15 telephone, e-mail, letter, text message, however
16 you want to define that -- have you ever had a
17 communication, outside of recruiting, with
18 anyone from Benco other than to simply say hello
19 or have small talk?

20 A. No.

21 Q. Again, outside of recruiting, have you
22 ever had a communication, in the broadest sense,
23 with anyone from Patterson other than to say
24 hello or have small talk?

25 A. No.

1 CONFIDENTIAL - JAKE MEADOWS

2 Q. Have you ever had a communication with
3 anyone from Benco about buying groups or GPOs or
4 any other type of customer?

5 A. No.

6 Q. Have you ever had a communication with
7 anyone from Patterson about buying groups, GPOs,
8 or any other type of customer?

9 A. No.

10 Q. So have you personally ever reached
11 any kind of agreement or understanding with
12 anyone from Benco or Patterson about buying
13 groups, GPOs, or any other type of customer?

14 MS. ROSNER: Objection.

15 A. No.

16 MS. ROSNER: Calls for a legal
17 conclusion.

18 A. I --

19 MS. ROSNER: You can answer.

20 A. I personally never had that.

21 Q. And you would know if you did, right?

22 A. I would.

23 Q. The FTC alleges in this case that
24 Henry Schein had an agreement with Benco and
25 Patterson to not do business with buying groups

1 CONFIDENTIAL - JAKE MEADOWS

2 or offer them discounts.

3 Do you have any personal knowledge of
4 such an agreement?

5 A. No.

6 Q. Would such an agreement be consistent
7 or inconsistent with your knowledge of the
8 business practices of Henry Schein Dental?

9 A. Very --

10 MS. ROSNER: Objection. Legal
11 conclusion.

12 A. Very inconsistent.

13 Q. You've talked today a number of times
14 about the conflict between Henry Schein Dental
15 and Henry Schein Special Markets about who gets
16 responsibility for buying groups?

17 A. Uh-huh.

18 Q. Can you explain what was the conflict
19 between Henry Schein Dental and Henry Schein
20 Special Markets?

21 A. Every year each group is given a quota
22 or a budget to reach that we have to grow our
23 business a particular amount. Buying groups are
24 within this conflict that we were talking about.
25 Buying groups were an area that both divisions,

1 CONFIDENTIAL - JAKE MEADOWS
 2 that both have different presidents and
 3 different sales teams, were attractive to both
 4 groups to do business with to grow their
 5 business to meet or beat quota, and the conflict
 6 that -- that I explained today was a conflict
 7 between the sales teams in the marketplace, the
 8 Henry Schein Special Markets sales team and the
 9 Henry Schein Dental sales teams, which are
 10 completely different HR teams, sales roles, pay
 11 structures, were continuing to try to beat one
 12 another to -- to introduce Henry Schein and win
 13 the buying groups, which caused conflict for and
 14 misrepresentation of our brand to the buying
 15 group. And so, therefore -- I can speak for
 16 myself -- I continued to raise to Dave Steck and
 17 then in meetings that conflict because I felt as
 18 if that we could meet or beat quota if we
 19 were -- if we, Henry Schein Dental, were the
 20 lead on the buying groups initiative.

21 So there was a lot of dialogue back
 22 and forth about who should lead that.

23 Q. If a buying group, a particular buying
 24 group, was a Special Markets customer, would
 25 Henry Schein Dental FSCs continue to call on

1 CONFIDENTIAL - JAKE MEADOWS
 2 those customers, individual customers?

3 MS. ROSNER: Objection. Form.

4 A. It was case-by-case on whether or not
 5 the FSCs would call on -- continue to call on a
 6 Special Markets buying group, but there were
 7 two -- two scenarios that were always likely.

8 One is that whenever a customer was a
 9 Special Markets customer, the FSC's commission
 10 was more than cut in half as part of that
 11 division's policy, which would de-incentivize
 12 the FSC from interacting with that customer
 13 proactively on a regular basis to -- to the
 14 level that we wanted, and therefore, we felt as
 15 if, one, if the commission was decreased, then
 16 that FSC would not be able to -- or would not be
 17 incentivized to continue to represent our value
 18 and retain that customer, grow that customer,
 19 and bring our mission to life within that
 20 customer without the FSC, who in Henry Schein
 21 Dental was -- that was our strategy, an FSC
 22 strategy; or if an FSC was unassigned to that
 23 customer, we as a company, and Henry Schein
 24 Dental, who was responsible for equipment and
 25 technology across the entire U.S., would lose

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 2 the ability to have someone proactively
 3 presenting new technologies, equipment and
 4 technology -- or, equipment to that customer
 5 because the Special Markets Division was only
 6 responsible for merchandise sales to those
 7 customers and only got sales credit for
 8 merchandise sales. Never got credit for
 9 equipment and technologies, so therefore, they
 10 were not incentivized to sell equipment and
 11 technology.

12 So I felt as if it was undermining our
 13 ability to grow our business, retain our
 14 business, and bring our mission to life.

15 Q. Do -- I'm switching topics a little
 16 bit.

17 Do FSCs have the ability to discount
 18 merchandise to their customers?

19 A. Yes.

20 Q. Can you explain how that happens?

21 A. The FSCs are commission-based and paid
 22 on gross profit, total gross profit of the
 23 customer's purchases within a certain timeframe.
 24 So, with that as more of the governor for our
 25 FSCs, we allowed them to discount product in an

1 CONFIDENTIAL - JAKE MEADOWS
 2 individual basis on a particular item, sometimes
 3 below cost, in the spirit of winning and keeping
 4 the entire customer and having access so they
 5 can bring our mission to life.

6 MR. McDONALD: Thank you. That's all
 7 the questions I have at this time.

8 EXAMINATION BY

9 MS. SEIDL:

10 Q. Mr. Meadows, my name is Jana Seidl. I
 11 represent Patterson. I just have a few
 12 questions.

13 A. Okay.

14 Q. You testified that Schein and
 15 Patterson competed for customers, correct?

16 A. Correct.

17 Q. Would you classify that competition as
 18 intense?

19 A. Yes.

20 Q. So there was never a time in any of
 21 your roles at Schein where Schein did not
 22 compete against Patterson for customers?

23 MS. ROSNER: Objection. Leading.

24 A. I've never had an experience where we
 25 did not compete for every dental office that was

1 CONFIDENTIAL - JAKE MEADOWS
2 out there specific to Patterson or any other
3 competitor.

4 MS. SEIDL: That's all the questions I
5 have. Thank you.

6 EXAMINATION BY

7 MR. YOON:

8 Q. Mr. Meadows, my name is Eric Yoon and
9 I represent Benco Dental Supply. I just have a
10 couple of questions.

11 Earlier you were asked about Atlantic
12 Dental Care and given a document from Ms. Rosner
13 that's Bates-labeled -- not Bates-labeled,
14 that's pre-labeled CX2358. I don't think you
15 will need the document. I just said that just
16 to bring up the Atlantic Dental Care.

17 Do you know for a fact whether or not
18 Benco actually made an offer to or, you know,
19 tried to do business with Atlantic Dental Care?

20 A. No, I don't know for a fact.

21 Q. Do you know for a fact whether
22 Benco -- whether Benco does or does not do
23 business with buying groups, including Atlantic
24 Dental Care?

25 A. I do not know for a fact.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. So would it be fair to say that you do
3 not know Benco's policy, if it existed, about
4 buying groups?

5 MS. ROSNER: Objection. Leading.

6 A. I have no idea what their policy is.

7 MR. YOON: That's all the questions I
8 have.

9 Thank you.

10 MS. ROSNER: Could we take a
11 five-minute break?

12 THE VIDEOGRAPHER: The time is 3:48
13 p.m. We're off the record.

14 (Recess.)

15 THE VIDEOGRAPHER: The time is 3:55
16 p.m. We're on the record.

17 FURTHER EXAMINATION BY

18 MS. ROSNER:

19 Q. Mr. Meadows, your attorney was asking
20 about the documents that we reviewed today and
21 noted that those documents had particular
22 instances where it appeared that you did not
23 support buying groups and perhaps suggested that
24 that was not representative of your view; is
25 that right?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. That's correct.

3 Q. In any of those documents today did
4 you ever caveat that you generally support
5 buying groups, but on this case-by-case basis,
6 you didn't support going forward with a
7 particular group?

8 A. Can you rephrase? I'm not sure I
9 understand your question.

10 Q. In the documents that we reviewed
11 today there was some language that cast out on
12 whether or not you approved of doing business
13 with buying groups, and my question is whether
14 or not in those documents you ever provided a
15 caveat that, while you did not want to do
16 business with a particular group, you generally
17 support buying groups?

18 A. Did I provide any documents to that?

19 Q. Did you provide any caveats in the
20 documents that we reviewed today?

21 A. Yes, I felt I did.

22 Q. Do you recall specifically which ones?

23 A. I think I represented in multiple of
24 the documents that we reviewed where I was
25 asking questions about -- asking questions about

1 CONFIDENTIAL - JAKE MEADOWS
2 the particular group, represented that I had
3 interest in doing business with the groups, and
4 there were a few subject lines like the GPO
5 opportunity that I feel like that I represented
6 that I was very interested and very proactive in
7 doing business with and positive about doing
8 business with GPOs as we defined them then and
9 buying groups.

10 Q. I want to make sure that your
11 testimony on these documents is crystal clear.

12 Can you list out for me the documents
13 that you are describing where you believe you
14 have shown your interest in doing business with
15 buying groups?

16 A. I don't remember all of the documents
17 that we reviewed today. It's been a long day,
18 but you asked me if I could generalize, and I
19 generalized. So I can generalize and say I -- I
20 do remember today seeing questions that I asked
21 particular -- about particular buying groups, as
22 we reviewed them, where I was asking about how
23 many locations, which I think you would find in
24 the document, or who was the leader or what's
25 their offer or, you know, what are we offering

1 CONFIDENTIAL - JAKE MEADOWS
2 them that represents my interest in growing with
3 buying groups.

4 I think there were also, when we
5 talked about the VIP Club, my questions were all
6 to get to an end, which was develop some sort of
7 program or some sort of concept that would allow
8 us to do better with buying groups than we did.

9 And in my testimony today I also
10 represented multiple what I referred to as
11 watershed moments that I felt were evolutions in
12 the advancement of, a positive advancement, of
13 us doing business with Henry Schein. And we
14 didn't discuss today the formation of the
15 Alternate Purchasing Channel Group, which was
16 part of -- which solely is even a more
17 refinement, sole focus on buying groups and us
18 taking advantage of it.

19 Q. Can you name for me the buying groups
20 that you have advocated for and wanted to work
21 with since 2011?

22 A. I don't think I can name them all. I
23 could do -- one, I can say generally I was
24 interested in doing business with buying groups,
25 as I've said, and I would have go through

1 CONFIDENTIAL - JAKE MEADOWS
2 records or look at a list of buying groups to
3 see which ones that I particular, in person,
4 advocated for.

5 I can say Smile Source. I can say the
6 Georgia Dental Association. I can say some of
7 the ones where, like said, where Joe Cavaretta
8 exposed to me where it was KlearImpakt, and I
9 said, yeah, let's go. But as far as those --
10 those are the ones that are top of mind today
11 because we have seen those in the documents
12 today.

13 Q. Any other buying groups you recall
14 advocating for wanting to work with since 2011?

15 MR. McDONALD: Object to the form.

16 Asked and answered.

17 A. I'm confident there's a list that I
18 could provide if I were to go back and do
19 research within the buying groups that we've
20 listed out, but off the top of my head today, I
21 can't think of any considering, you know, today
22 we've gone through a lot of information.

23 Q. I'm going to refer you to the CX2500,
24 which I believe the court reporter has.

25 A. Oh, that was that one copy.

1 CONFIDENTIAL - JAKE MEADOWS
2 Q. Take a moment. There are some buying
3 groups listed on that sheet.

4 That's the only list of buying groups
5 that I'm aware of. I want to see if any of that
6 refreshes your recollection.

7 A. I don't think this is probably a
8 complete list, but I definitely made a case for
9 the Louisiana Primary Care Association, the
10 Continued Growth, and -- I mean, if you're
11 asking about ones that came to be or ones that I
12 promoted within the organization, I'm not sure
13 which -- which ones do you want to hear about?

14 Q. I'm asking about buying groups that
15 you supported, you supported working with either
16 growing or entering into contracts with since
17 2011.

18 A. So, generally, all buying groups that
19 we had contracts with and, generally, all
20 activities that were associated with evaluating
21 whether or not a buying group would be someone
22 who would complement growing our business,
23 retaining our business, and bringing our mission
24 to life.

25 If you're looking for names,

1 CONFIDENTIAL - JAKE MEADOWS
2 specifically, I would say Breakaway, Dental
3 Gator after we resolved our issues,
4 Commonwealth, Council Connections, Illinois
5 Primary Health Assoc- -- yeah, Primary Health
6 Association, Louisiana Primary Care. And I'm
7 just going off of this list that we're focused
8 on today. Teeth Tomorrow, which is one that I
9 was actually involved in from inception, meaning
10 did preliminary meetings with the two owners of
11 those -- or, I don't know if they're owners, but
12 the executives that represented Teeth Tomorrow,
13 and got into a lot of detail with that one.

14 Again, off the top of my head, I'm
15 looking at this list and I'm just going off of
16 what's on this list to give you some examples
17 besides what we talked about today.

18 Q. Is there any other company that comes
19 to mind?

20 A. Again, after a long day, I can't think
21 of another one, but I'm confident that there
22 were.

23 Q. You mentioned GDA --

24 A. Yes.

25 Q. -- as one company that you supported?

1 CONFIDENTIAL - JAKE MEADOWS

2 A. Yes.

3 Q. Did Schein ultimately submit a bid for
4 GDA's business?

5 A. I do not recall whether or not we
6 submitted a formal bid. I don't remember.

7 Q. Do you recall sending GDA a letter
8 saying that Schein was not going to submit a bid
9 for its business?

10 A. I don't recall. I don't remember that
11 exactly. I remember we communicated with them
12 that we were -- that basically either
13 negotiations or our dialogue with them was going
14 to stop, but I don't remember how we
15 communicated that to them.

16 Q. What do you mean you communicated that
17 your negotiations or dialogue was going to stop?

18 A. Meaning the -- that instance that I
19 described to you with Premier and that back and
20 forth, that I had reached out to Frank Caputo --
21 I might have slaughtered his name, I apologize
22 for that -- whoever the Frank was -- I think the
23 person responsible, I reached out to him
24 multiple times, with no return phone call,
25 because, like I said, I wanted to engage them

1 CONFIDENTIAL - JAKE MEADOWS

2 without that entity Premier that I didn't know
3 anything about, I wanted to follow up on were we
4 going to get non-disclosures, were we going to
5 have discussions to proactively reach out. I
6 interacted with their incoming president. I
7 don't remember that doctor's name, but it was
8 someone of the GDA. And I had conversations
9 with her about -- and I -- and I was looking to
10 communicate with the GDA -- I had a really bad
11 experience, and I didn't think that that's the
12 experience they wanted me to have -- so that we
13 could kind of bring our relationship back to
14 life. And Frank never reached out back to me,
15 and in that e-mail that you showed me today
16 where the GDA or Premier is trying to get to
17 somebody within Henry Schein, it's basically
18 that they didn't get a positive response based
19 on their dealings with me so they, from the way
20 I interpret that, they were looking to go to a
21 different place to see if they could get a
22 different one when ultimately they needed to
23 respond to me.

24 So, based on the fact that I could not
25 engage the leadership, based on the fact of my

1 CONFIDENTIAL - JAKE MEADOWS
2 unprofessional experience, I didn't feel that it
3 was appropriate for us to mislead the GDA at
4 that time as if we were going to continue to be
5 in discussions. I wasn't going to keep calling
6 them.

7 Q. And you ended the further negotiations
8 with GDA?

9 A. I'm sorry.

10 Q. You ended further negotiations with
11 GDA?

12 MR. McDONALD: Object to the form.

13 Q. Let me rephrase.

14 Negotiations between Schein and GDA
15 stopped?

16 MR. McDONALD: Object to the form.
17 Mischaracterizes the evidence.

18 A. I actually don't believe that that's
19 the case. I believe that I said that I, or I
20 might have called out that we were going to
21 stop, but we continued to reach out to the GDA
22 after -- after that, and I did as well.

23 MS. ROSNER: I have no further
24 questions.

25 FURTHER EXAMINATION BY

1 CONFIDENTIAL - JAKE MEADOWS
2 MR. McDONALD:

3 Q. Mr. Meadows, did you keep your
4 feelings about buying groups a secret?

5 A. No.

6 Q. So did you think it was necessary to
7 tell everyone that you were pro buying group?

8 A. No.

9 Q. Do you think people knew that?

10 (Continued on the next page to include
11 the jurat.)

1 CONFIDENTIAL - JAKE MEADOWS
 2 A. I think people knew that based on the
 3 fact that, as I said, I've made a case for why
 4 we should handle buying groups and speaking to
 5 the strength of the FSC and what we could do for
 6 buying groups.

7 MR. McDONALD: Thank you. That's all
 8 I have.

9 THE VIDEOGRAPHER: This concludes
 10 today's deposition. The time is 4:07 p.m.
 11 We're off the record.

12 oOo

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 JAKE MEADOWS

Subscribed and sworn to
 before me this ____ day
 of _____, 2018.

1 CONFIDENTIAL - JAKE MEADOWS

2
 3 CERTIFICATE
 4 STATE OF NEW YORK)

5 : ss
 6 COUNTY OF NEW YORK)

7 I, Kathy S. Klepfer, a Registered
 8 Merit Reporter and Notary Public within and
 9 for the State of New York, do hereby
 10 certify:

11 That JAKE MEADOWS, the witness whose
 12 deposition is herein before set forth, was
 13 duly sworn by me and that such deposition is
 14 a true record of the testimony given by such
 15 witness.

16 I further certify that I am not
 17 related to any of the parties to this action
 18 by blood or marriage and that I am in no way
 19 interested in the outcome of this matter.

20 In witness whereof, I have hereunto
 21 set my hand this 18th day of July, 2018.

22
 23
 24
 25

 KATHY S. KLEPFER, RPR, RMR, CRR, CLR

1 CONFIDENTIAL - JAKE MEADOWS
 2 INDEX

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6 By Ms. Seidl 273	
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12 Exhibit CX2378-001 through 003, an e-mail bearing Bates Nos. Henry Schein-001695339 through 341	98
14 Exhibit CX2380-001 through 003, an e-mail chain bearing Bates Nos. Henry Schein-000280154 through 156	106
16 Exhibit CX2389-001 through 003, an e-mail chain bearing Bates Nos. Henry Schein-000045087 through 089	112
18 Exhibit CX2350-001 through 003, an e-mail chain bearing Bates Nos. Henry Schein-001518102 through 104	117
20 Exhibit CX2353-001, an e-mail string bearing Bates Nos. Henry Schein-000045541	123
22 Exhibit CX0170.001 through 002, an e-mail string bearing Bates Nos. Henry Schein-000045132	132
24 Exhibit CX2354-001, an e-mail string bearing Bates Nos. Henry Schein-001518597	145
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3 Exhibit CX2358-001 through 003, an e-mail string bearing Bates Nos. Henry Schein-000109225 through 227	155
5 Exhibit CX2387-001 through 003, an e-mail string bearing Bates Nos. Henry Schein-001518966 through 68	171
7 Exhibit CX2393-001 through 002, an e-mail string bearing Bates Nos. Henry Schein-000046912 through 913	180
9 Exhibit CX2380-001 through 003, an e-mail string bearing Bates Nos. Henry Schein-000045633 through 635	193
11 Exhibit CX2364-001 through 002, an e-mail string bearing Bates Nos. Henry Schein-001589713 through 714	197
13 Exhibit CX2500, an e-mail with attachment bearing Bates Nos. Henry Schein-000045661 through 662	202
15 Exhibit CX2365-001 through 003, an e-mail chain bearing Bates Nos. Henry Schein-000108258 through 60	210
17 Exhibit CX2370-001 through 002, an e-mail chain bearing Bates Nos. Henry Schein-000209007 through 008	224
19 Exhibit CX2349-001 through 002, an e-mail string bearing Bates Nos. Henry Schein-000530282 through 283	232
21 Exhibit CX0189.001 through 002, an e-mail chain bearing Bates Nos. Henry Schein-000088519 through 520	236
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 3 Exhibit CX2392-001 through 002, an e-mail chain 248
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1 ERRATA SHEET
 2 Case Name:
 3 Deposition Date:
 4 Deponent:
 5 Pg. No. Now Reads Should Read Reason
 6 _____
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 18 _____
 19 _____
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 21 _____
 Signature of Deponent
 22 SUBSCRIBED AND SWORN BEFORE ME
 23 THIS ____ DAY OF _____, 2018.
 24 _____
 25 (Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

DEPOSITION OF: Jake Meadows

DATE DEPOSITION: July 13, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
6	20	Change "Uh-huh" to "Okay"	Clarification
7	1	Change "Uh-huh" to "Okay"	Clarification
7	10	Change "Uh-huh" to "Okay"	Clarification
7	17	Change "Uh-huh" to "Yes"	Clarification
16	23	Change "somewhat" to "some"	Typographical error
17	3	Change "group practice" to "buying group"	Typographical error/clarification
18	10	Change "Uh-huh" to "Yes"	Clarification
21	6-7	Change "Alpha Omega Dental Associates or Dental prac --- Dental Members" to "Alpha Omega"	Typographical error/clarification
21	8	Change "Dental – Dental Association members" to "Dental Association members"	Typographical error/clarification
26	8	Delete "as a sub,"	Typographical error/clarification
26	24	Change "FSCs is" to "FSCs are"	Typographical error/clarification
27	8	Change "Uh-huh" to "Okay"	Clarification
28	6	Change "there was that" to "that was the"	Typographical error/clarification
35	20	Change "sales" to "sales team"	Typographical error/clarification
35	21	Change "partnering that up" to "partnering them up"	Typographical error/clarification
37	9	Change "2001" to "2011"	Clarification
41	13	Change "2013-11" to "2011-2013"	Typographical error/clarification
42	8-9	Change "What it wasn't my experience that" to "What wasn't my"	Typographical error/clarification

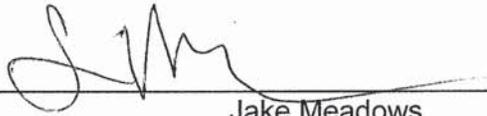
		experience was that”	
42	8-9	Change “What it wasn’t my experience that” to “What wasn’t my experience was that”	Typographical error/clarification
43	13	Change “Alternate to “Alternative”	Typographical error/clarification
47	25	Change “Uh-huh” to “Yes”	Clarification
50	13	Change “employee would need” to “employee that they would need to know”	Clarification/misspoke
56	10	Change “report” to “reported”	Typographical error/clarification
61	4	Change “dental society their efforts” to “dental society for their efforts”	Typographical error/clarification
68	2	Change “partnership” to “partner”	Typographical error/clarification
72	21	Change “Uh-huh” to “Yes”	Clarification
79	19	Change “meeting” to “meetings”	Typographical error
88	15	Change “to me” to “from me”	Clarification/misspoke
90	16	Change “assume that” to “I assume that”	Clarification/misspoke
97	14	Change “Uh-huh” to “Yes”	Clarification
105	9	Change “that it was brought up” to “that it was never brought up”	Typographical error/clarification
116	6	Change “types” to “issues”	Typographical error
116	15	Change “possible” to “possibility”	Typographical error
149	15	Delete “for”	Typographical error
149	18	Change “It’s very within the” to “It’s very possible within the”	Typographical error/clarification
150	13	Delete “I do not,”	Clarification/misspoke
191	14	Change “appropriate” to “right”	Clarification/misspoke
206	2	Delete “former”	Clarification
212	22	Change “that I did not have a partnership” to “that we did not have a partnership”	Clarification/misspoke
212	23	Delete “We. Excuse me.”	Clarification
220	24	Change “directer” to “director”	Typographical error
228	2	Change “Gator to me” to “Gator issue	Typographical

		to me”	error/clarification
239	15	Change “GPOs” to “buying groups”	Clarification/misspoke
239	16	Delete “So – or buying groups.”	Clarification
250	20	Change “group” to “division”	Clarification
264	14	Change “Acruity” to “Acurity”	Typographical error
265	23	Change “with, specifically” to “with buying groups, specifically”	Clarification
269	17	Change “Uh-huh” to “Yes”	Clarification
271	20	Change “customer without the FSC” to “customer. Without the FSC”	Typographical error/clarification
272	3-4	Delete “and technology – or, equipment”	Clarification/misspoke
272	8	Change “Never got” to “Special Markets never got”	Clarification/misspoke
272	25	Change “in an” to “on an”	Typographical error
278	15	Change “Alternate” to “Alternative”	Typographical error/clarification
278	17	Change “refinement” to “refined”	Typographical error
279	7	Change “like said” to “like I said”	Typographical error
279	8	Change “exposed” to “expressed”	Typographical error/clarification
280	10	Change “Continued Growth” to “continued growth”	Typographical error
282	20	Change “Caputo” to “Capaldo”	Typographical error
283	25	Change “my” to “their”	Clarification
284	2	Change “of my” to “of that”	Clarification

I, Jake Meadows, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 16 day of August, 2018.

at Ocean View, Delaware
(City) (State)



Jake Meadows

A				
\$2 (1)	achieve (2)	278:20 279:4	alive (1)	43:25 44:4,11,12,13
191:11	70:3 266:10	advocating (7)	60:17	45:19 48:6,11,15,17
A.J (1)	acknowledged (1)	101:25 102:6,10	alleges (1)	announcement (8)
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1 TIM SULLIVAN
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 8 July 19, 2018
 9 9:04 a.m.
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 12 Videotaped deposition of TIM SULLIVAN, at
 13 Locke Lord LLP, 111 South Wacker Drive,
 14 Chicago, Illinois, pursuant to notice, before
 15 JANET L. ROBBINS, Illinois Certified Shorthand
 16 Reporter, Registered Professional Reporter.
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Page 3

1 TIM SULLIVAN
 2 A P P E A R A N C E S:
 3 FEDERAL TRADE COMMISSION
 4 BY: RONNIE SOLOMON, ESQ.
 5 LIN KAHN, ESQ.
 6 JASMINE ROSNER, ESQ. (Telephonically)
 7 901 Market Street
 8 San Francisco, California 94103
 9 appeared on behalf of the Federal
 10 Trade Commission;
 11
 12 LOCKE LORD
 13 BY: JOHN McDONALD, ESQ.
 14 LAUREN FINCHER, ESQ.
 15 2200 Ross Avenue
 16 Dallas, Texas 75201
 17 -and-
 18 SIDLEY AUSTIN
 19 BY: TIMOTHY MURIS, ESQ.
 20 1501 K Street, NW
 21 Washington, DC 20005
 22 appeared on behalf of Henry Schein, Inc.
 23 and the Deponent;
 24
 25 BUCHANAN INGERSOLL & ROONEY
 26 BY: KENNETH RACOWSKI, ESQ.
 27 Two Liberty Place
 28 50 S 16th Street
 29 Philadelphia, Pennsylvania 19102
 30 appeared on behalf of Benco Dental
 31 Supply Company;

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1 TIM SULLIVAN
 2 A P P E A R A N C E S: (Continued)
 3 BRIGGS AND MORGAN
 4 BY: JAMES LONG, ESQ.
 5 JAY SCHLOSSER, ESQ. (Telephonically)
 6 2200 IDS Center
 7 80 S 8th Street
 8 Minneapolis, Minnesota 55402
 9 appeared on behalf of Patterson
 10 Companies, Inc.
 11
 12 ALSO PRESENT:
 13 JEFF WILHITE, Legal Videographer
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Page 5

1 TIM SULLIVAN
 2 I N D E X
 3 WITNESS:
 4 TIM SULLIVAN
 5
 6 P A G E
 7 EXAM BY MR. SOLOMON 9
 8
 9 E X H I B I T S
 10 EXHIBITS DESCRIPTION PG LN
 11 Exhibit CX0174 E-mail Chain Subject: 249 9
 12 Co-Op summary of
 13 conference call
 14 Henry Schein-000011439
 15 to 441
 16 Exhibit CX0196 Text Messages 407 3
 17 Henry Schein-000068325
 18 to 337
 19 Exhibit CX0197 AT&T Wireline 407 3
 20 FTC-AT&T-0031706 to
 21 709
 22 Exhibit CX2113 9/15/10 E-mail from 125 9
 23 Tim Sullivan to Jim
 24 Breslawski
 25 Subject: Smile Source
 26 Henry Schein-000740470
 27 Exhibit CX2122 E-mail Chain 278 2
 28 Subject: Checking-in
 29 on Smile Source
 30 Henry Schein-000184295
 31 to 296
 32 Exhibit CX2143 E-mail Chain 317 9
 33 Subject: Dental Gator
 34 Henry Schein-000194341
 35 to 343
 36 Exhibit CX2225 E-mail Chain 229 2
 37 Subject: Our Meeting
 38 today PGMS
 39 Henry Schein-000090449
 40 to 454
 41 Exhibit CX2251 7/7/14 E-mail from 223 14
 42 Kathleen Titus to Glen
 43 Showgren
 44 Subject: PGMS
 45 Agreement
 46 HS-00017154 to 17162

EXHIBITS	DESCRIPTION	PG	LN
Exhibit CX2299	E-mail Chain Subject: Smile Source Update Henry Schein-000183494 to 495	178	21
Exhibit CX2422	E-mail Chain Subject: FYI: Quick P&G Issue Henry Schein-001247954 to 956	356	24
Exhibit CX2440	E-mail Chain Subject: FYI Henry Schein-000091189 to 192	329	15
Exhibit CX2452	E-mail Chain Subject: April 1 Kavos Website HS-00072699 to 701	350	9
Exhibit CX2453	E-mail Chain Subject: Smile Source HS-00491516 to 518	148	5
Exhibit CX2454	E-mail Chain Henry Schein-001556694 to 694	110	7
Exhibit CX2456	E-mail Chain Subject: Follow up on Dental GPO Henry Schein-001594941 to 946	192	4
Exhibit CX2457	E-mail Chain Subject: Vegas Buying Group Henry Schein-000266350	206	18
Exhibit CX2458	E-mail from Joe Cavaretta to Steve Dutson Subject: Merit Dent HS-00232391	208	18
Exhibit CX2459	E-mail Chain Subject: Confidential: A Matter of Mutual Interest Henry Schein-001249896 to 897	362	17

EXHIBITS	DESCRIPTION	PG	LN
Exhibit CX2462	E-mail Chain Subject: Did you meet with Smile Source Henry Schein-000145566 to 568	447	20
Exhibit CX2467	E-mail Chain Subject: Oral B NM state meeting Henry Schein-000209558 to 559	251	17
Exhibit CX2470	E-mail Chain Subject: Kois Center Henry Schein-000195529 to 533	290	19
Exhibit CX4088	AT&T Wireline FTC-AT&T-0030895	388	14

TIM SULLIVAN

THE VIDEOGRAPHER: This is the start of DVD No. 1 of the video recorded deposition of Tim Sullivan in the matter In Re Benco Dental, Inc., et al., in the United States of America, Before the Federal Trade Commission, Docket No. D09379.

This deposition is being held at 111 South Wacker Drive, Chicago, Illinois, on Thursday, July 19th, 2018, at approximately 9:04 a.m.

My name is Jeff Wilhite, legal video specialist from TSG Reporting, headquartered at 747 Third Avenue, New York, New York. The court reporter is Janet Robbins in association with TSG Reporting.

Will counsel please introduce yourselves.

MR. SOLOMON: Ronnie Solomon on behalf of the Federal Trade Commission.

MS. KHAN: Lin Khan with the FTC, counsel.

MR. McDONALD: John Donald and

TIM SULLIVAN

Lauren Fincher with Locke Lord and Tim Muris with Sidley Austin on behalf of Henry Schein and the witness.

MR. RACOWSKI: Ken Racowski from Buchanan Ingersoll & Rooney representing Respondent Benco Dental Supply Company.

MR. SCHLOSSER: Jay Schlosser from Briggs and Morgan representing Patterson Companies.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness. (Witness sworn.)

TIM SULLIVAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SOLOMON:

Q. Good morning, Mr. Sullivan.

A. Good morning.

Q. I'm Ronnie Solomon. We met earlier. I'm an attorney at the Federal Trade Commission. With me this morning is also my colleague, Lin Kahn, who's also an attorney,

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1 TIM SULLIVAN
2 who I assume you know.
3 A. Yes.
4 Q. Mr. Sullivan, you've had your
5 deposition taken before, correct?
6 A. Correct.
7 Q. So you understand how this works.
8 You're a pro at this point, but I just want to
9 go over a few rules just for the record.
10 First, it's important that in
11 response to all of my questions today you
12 provide clear, verbal responses and try to
13 avoid any head nods or gestures that the court
14 reporter can't take down in the transcript,
15 okay?
16 A. Okay.
17 Q. Second, if you need to take a break
18 at any point, just let me know and we can go
19 off the record, okay?
20 A. Okay.
21 Q. If there's a question pending,
22 however, I'll just ask that you answer the
23 question first before we go off the record,
24 okay?
25 A. Okay.

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1 TIM SULLIVAN
2 Q. The third thing is, when I ask a
3 question, it's really important that you let me
4 just finish the question so that we have a
5 clear record. Let your counsel object and
6 then -- if he wishes, and then you can answer
7 the question.
8 Does that make sense?
9 A. It does.
10 Q. Mr. Sullivan, you've provided sworn
11 testimony to the FTC before, correct?
12 A. Correct.
13 Q. And that was on May 25th, 2017 at
14 the FTC's offices in Chicago, right?
15 A. I assume that's the date. I'd have
16 to look, but it sounds right.
17 Q. I'm going to refer to that today as
18 the investigational hearing, okay?
19 A. Okay.
20 Q. I just want to get a few preliminary
21 things on the record today before we start.
22 First, you told the truth during
23 your investigational hearing last year,
24 correct?
25 A. Correct.

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1 TIM SULLIVAN
2 Q. And after your investigational
3 hearing in May of 2017, did you ever read the
4 transcript?
5 A. I did.
6 Q. And when did you read the
7 transcript?
8 A. Within 30 or 60 days of the
9 deposition.
10 Q. Why did you read it?
11 A. On advice of counsel.
12 Q. And how many times did you read it?
13 A. Once.
14 Q. Did you notice any inaccuracies in
15 your testimony?
16 MR. McDONALD: He's provided an
17 errata sheet, I think.
18 THE WITNESS: I provided comments to
19 counsel on corrections in there.
20 BY MR. SOLOMON:
21 Q. So everything that you thought
22 needed to be corrected or that was inaccurate
23 was on your errata sheet, is that correct?
24 A. That's my understanding.
25 Q. Okay. Anything else that was in

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1 TIM SULLIVAN
2 your IH transcript that you've subsequently
3 found after providing the errata sheet that you
4 think may be inaccurate?
5 MR. McDONALD: Object to the form,
6 assumes facts not in evidence, that is,
7 that he's read it again.
8 THE WITNESS: I don't believe so.
9 BY MR. SOLOMON:
10 Q. So you haven't read it since then?
11 A. Correct.
12 Q. And you didn't read the IH
13 transcript to prepare for today's deposition,
14 correct?
15 A. What's the IH transcript?
16 Q. Sorry. The investigational hearing
17 transcript, you didn't read that to prepare for
18 today's testimony, correct?
19 A. There's portions of my transcript
20 that I read in preparation for this --
21 Q. Okay.
22 A. -- but not the entirety, no.
23 Q. So you read portions of the
24 investigational hearing transcript, is that
25 right?

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form.
3 THE WITNESS: I believe so, yes.
4 BY MR. SOLOMON:
5 Q. Which portions did you read?
6 A. I would have to look at them.
7 Q. You don't recall, sitting here
8 today, which portions you read?
9 A. No.
10 Q. When did you read them?
11 A. Last week.
12 Q. How many times did you read those
13 portions of your investigational hearing
14 transcript?
15 MR. McDONALD: Object. Again,
16 object to the form.
17 THE WITNESS: Once.
18 BY MR. SOLOMON:
19 Q. Why did you review it?
20 MR. McDONALD: Don't discuss --
21 don't discuss anything you've conferred
22 with counsel about.
23 THE WITNESS: These are items that I
24 spoke to counsel, about so I don't think I
25 can discuss those.

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1 TIM SULLIVAN
2 your depositions in those cases, is that right?
3 A. Yes.
4 Q. And you have no reason to believe
5 that any portion of your testimony in those
6 cases is not truthful, right?
7 A. Correct.
8 Q. And you have no reason to believe
9 that your testimony in those cases was not
10 accurate, correct?
11 MR. McDONALD: Well, again, he
12 has -- Ronnie, I really don't know what
13 you're doing here, but it's your time to
14 spend.
15 He's had errata sheets in the class
16 action/SourceOne. He was not given an
17 opportunity to read and sign his EUO in
18 Texas. So he's never reviewed that
19 transcript for accuracy. That's not an
20 available option to an EUO proceeding.
21 BY MR. SOLOMON:
22 Q. So I understand then, you were not
23 able to review the transcript of your
24 examination under oath in the investigation by
25 the Texas Attorney General, is that right?

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. Is there any reason to believe that
4 any portion of your testimony in your
5 investigational hearing was not truthful?
6 A. No.
7 Q. Is there any reason to believe that
8 any portion of your testimony in your
9 investigational hearing was not accurate?
10 MR. McDONALD: Object to the form.
11 Again, subject to his errata sheet?
12 THE WITNESS: No.
13 BY MR. SOLOMON:
14 Q. And you were also deposed by the
15 Texas Attorney General's Office in June of
16 2016, is that right?
17 A. Sounds right.
18 Q. And you were also deposed by the
19 plaintiffs in the SourceOne litigation,
20 correct?
21 A. Correct.
22 Q. As well as in the class action
23 litigation, correct?
24 A. Correct.
25 Q. Okay. And you told the truth during

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1 TIM SULLIVAN
2 A. Sounds right.
3 Q. Okay. Then focusing just on the
4 SourceOne and plaintiffs class action
5 litigations, you were able to review the
6 transcripts of your testimony in those cases,
7 right?
8 MR. McDONALD: Well, I think he only
9 gave one. I may be -- I may be wrong, but
10 there was one deposition, right? Is that
11 right?
12 MR. SOLOMON: I'm not sure.
13 Maybe --
14 MR. McDONALD: Well, you said
15 "depositions," and I think there's only
16 one.
17 MR. SOLOMON: Right.
18 BY MR. SOLOMON:
19 Q. So you were deposed in the SourceOne
20 litigation, correct?
21 A. Let me put it this way: It's not
22 clear to me -- these all kind of run together.
23 I don't know which ones are which. They talk
24 about the same topics in all of them.
25 Q. Sure.

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1 TIM SULLIVAN
2 A. So I'm not sure which ones are which
3 exactly.
4 Q. Sure.
5 A. I'm happy to look at any documents
6 to confirm.
7 Q. Sure. So you --
8 A. At this point, I don't know.
9 Q. You're aware of the SourceOne case,
10 correct?
11 A. Yes.
12 Q. And you were deposed in that
13 litigation, correct?
14 A. Yes.
15 Q. And your testimony in that
16 deposition was truthful and accurate, correct?
17 A. Correct.
18 Q. You were also deposed in an class
19 action in the Western District of New York, In
20 Re Antitrust Litigation, is that right?
21 MR. McDONALD: No --
22 MR. RACOWSKI: Objection.
23 MR. McDONALD: -- that's not right.
24 It's the Eastern District.
25 MR. SOLOMON: Thank you for that

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1 TIM SULLIVAN
2 clarification.
3 BY MR. SOLOMON:
4 Q. So you were deposed in a class
5 action in the Eastern District of New York
6 entitled "In Re Antitrust Litigation," is that
7 right?
8 A. Sounds right.
9 Q. Okay. And your testimony in that
10 deposition was truthful and accurate, correct?
11 MR. McDONALD: Again, I object to
12 the form.
13 THE WITNESS: Correct.
14 BY MR. SOLOMON:
15 Q. And you have no reason to believe
16 that any portion of your testimony in those two
17 depositions was not truthful or accurate,
18 correct?
19 MR. McDONALD: Object to the form.
20 I don't think there was two, but if you
21 want to make that representation.
22 THE WITNESS: Correct.
23 BY MR. SOLOMON:
24 Q. Okay. Thank you.
25 Mr. Sullivan, how did you prepare

Page 20

1 TIM SULLIVAN
2 for today's deposition?
3 A. Well, as I just mentioned, I
4 reviewed portions of my transcript from last
5 night -- or last week, earlier this week, and
6 then had a preparation day with our attorneys
7 yesterday.
8 Q. And how long was that preparation
9 session?
10 A. Several hours.
11 Q. Did you review any documents during
12 that preparation session?
13 A. Yes.
14 Q. What documents did you review?
15 MR. McDONALD: I object to the form.
16 Do not answer that question.
17 THE WITNESS: I cannot answer that
18 question.
19 MR. McDONALD: It reveals my work
20 product of what documents I chose of the
21 millions of documents in this case to show
22 him.
23 BY MR. SOLOMON:
24 Q. Was anyone present -- strike that.
25 Was anyone else present at this

Page 21

1 TIM SULLIVAN
2 meeting other than your outside attorneys?
3 A. No.
4 Q. Okay. What else did you do to
5 prepare for today's deposition other than the
6 meeting you referenced yesterday?
7 A. Got a good night's sleep.
8 Q. Anything else?
9 A. No.
10 Q. Did you speak to anyone at Henry
11 Schein about your testimony today?
12 A. No.
13 Q. Did you meet with anyone at Henry
14 Schein in reference to your testimony today?
15 A. No.
16 Q. Mr. Sullivan, you're the president
17 of Schein's North American Dental Group,
18 correct?
19 A. Correct.
20 Q. And you've held that title for some
21 time at this point, correct?
22 A. Correct.
23 Q. Your title has not changed since you
24 last provided sworn testimony in May of 2017,
25 right?

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1 TIM SULLIVAN
2 A. Correct.
3 Q. And your duties and responsibilities
4 continue to remain the same, right?
5 A. That's correct.
6 Q. And there's been no changes to your
7 duties and responsibilities since May of 2017?
8 A. Correct.
9 Q. Henry Schein is your employer,
10 correct?
11 A. Correct.
12 Q. And Henry Schein is a full-service
13 distributor of dental products and services,
14 correct?
15 A. And -- on the medical side and on
16 the health side as well, but my
17 responsibilities are on the dental side, yes.
18 Q. Okay. And Patterson and Benco are
19 Schein's primary competitors in the market for
20 dental distribution, correct?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: They are our largest
23 competitors. I don't know if I would put
24 them in the primary category.
25 ///

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1 TIM SULLIVAN
2 THE WITNESS: Online-only
3 distributors, consumables-only
4 distributors --
5 BY MR. SOLOMON:
6 Q. Is it --
7 A. Not -- not full service.
8 Q. Okay. Is it fair to say that those
9 distributors do not offer value-added
10 services -- strike that.
11 Is it fair to say that those
12 distributors do not offer the same value-added
13 services that Schein does?
14 MR. McDONALD: Object to the form,
15 overly broad, vague.
16 THE WITNESS: That is my general
17 understanding, yes.
18 BY MR. SOLOMON:
19 Q. And what's your understanding based
20 on?
21 A. 30 years in the dental industry.
22 Q. What additional services does Henry
23 Schein provide to its customers that Internet
24 distributors do not?
25 MR. McDONALD: Object to the form.

Page 23

1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. When you say "largest," what do you
4 mean by that?
5 A. As far as size of their
6 organizations, they're the largest competitors
7 that we have in the industry.
8 Q. Are Patterson and Benco the only
9 other national full-service distributors in the
10 industry?
11 A. That is my understanding.
12 Q. Okay. And you have an understanding
13 of what mail order distributors are, correct?
14 A. Well, in a sense, though, they're
15 still referred to as mail order, but very
16 little is done mail order anymore. So it's
17 more there's full service and non-full service.
18 Q. Are mail order distributors
19 sometimes called Internet distributors?
20 MR. McDONALD: Object to the form.
21 THE WITNESS: Can be.
22 BY MR. SOLOMON:
23 Q. Any other names that are used to
24 refer to mail order distributors?
25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 THE WITNESS: We sell capital
3 equipment, practice management software.
4 We provide technical service, and we
5 provide business solutions for our
6 customers.
7 BY MR. SOLOMON:
8 Q. And Internet distributors don't do
9 that?
10 MR. McDONALD: Object to the form,
11 assumes facts not in evidence, lack of
12 foundation.
13 THE WITNESS: Some may claim to,
14 some may. Not all do. Some -- some may.
15 I'm not -- I don't know which ones
16 specifically you're referring to. But in
17 general, that is accurate.
18 BY MR. SOLOMON:
19 Q. You're not aware of any that offer
20 those services to customers?
21 MR. McDONALD: Object to the form,
22 lack of foundation.
23 THE WITNESS: Darby, as an example,
24 is a primary consumable company, but they
25 have added equipment lines to their

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1 TIM SULLIVAN
 2 offering that customers can order, but they
 3 don't do the service and provide the
 4 installation of that. The customers will
 5 then do that on their own. So there's an
 6 example of kind of a hybrid of the two.
 7 BY MR. SOLOMON:
 8 Q. Any other examples you can think of
 9 sitting here today?
 10 A. Not off the top of my head.
 11 Q. Is it fair to say that Internet
 12 distributors do not have field sales
 13 consultants or sales representatives?
 14 MR. McDONALD: Again, object to the
 15 form, lack of foundation.
 16 THE WITNESS: None that I'm aware
 17 of.
 18 BY MR. SOLOMON:
 19 Q. Is it fair you to say that Internet
 20 distributors do not provide equipment servicing
 21 to their customers?
 22 MR. McDONALD: Object to the form,
 23 lack of foundation.
 24 THE WITNESS: None that I'm aware
 25 of.

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1 TIM SULLIVAN
 2 Q. Within Schein's dental business, am
 3 I correct that private practice dentists
 4 traditionally were the main customers for Henry
 5 Schein Dental?
 6 A. Yes.
 7 Q. And Henry Schein Dental is sometimes
 8 referred to by the acronym HSD, correct?
 9 A. Correct.
 10 Q. And you are the head of HSD or Henry
 11 Schein Dental, right?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I'm the president of
 14 Henry Schein Dental for --
 15 BY MR. SOLOMON:
 16 Q. So you --
 17 A. -- our North American, so U.S. and
 18 Canada.
 19 Q. And so you oversee that division
 20 within Schein, correct?
 21 MR. McDONALD: Object to the form.
 22 He just said North America. So if you want
 23 to say -- if you want to narrow this to
 24 North America so we don't have that issue
 25 anymore, then it's fine.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. Any other differences you can
 4 think of, sitting here today, between a
 5 full-service distributor, such as Henry Schein,
 6 and an Internet or mail order distributor?
 7 A. No.
 8 Q. I just would like to go through some
 9 definitions with you, Mr. Sullivan, just so
 10 we're clear about some of the terms I'm going
 11 to be using today.
 12 If I say "Schein," you understand
 13 today that I'm referring to Henry Schein,
 14 right?
 15 A. Yes.
 16 Q. And I understand Henry Schein has
 17 multiple divisions, as you mentioned, medical,
 18 veterinary, dental.
 19 Today when I talk about Schein, I'll
 20 be referring to Schein's dental business only,
 21 okay?
 22 A. Okay.
 23 Q. And if I refer to medical, I'll let
 24 you know, or veterinary.
 25 A. Okay.

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1 TIM SULLIVAN
 2 MR. SOLOMON: Sure.
 3 BY MR. SOLOMON:
 4 Q. So you have primary responsibility
 5 for HSD in North America, correct?
 6 A. Correct.
 7 Q. You've heard the term "buying group"
 8 before, right?
 9 A. I have.
 10 Q. And do you understand a buying group
 11 to be a collection of independent private
 12 practice dentists?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: That's a definition of
 15 them.
 16 BY MR. SOLOMON:
 17 Q. Would you agree with that
 18 definition?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: To some extent.
 21 BY MR. SOLOMON:
 22 Q. Have you used the term "buying
 23 group" to refer to those types of entities?
 24 A. Yes.
 25 Q. Do you understand that independent

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1 TIM SULLIVAN
2 dentists may choose to become members of buying
3 groups, correct?
4 A. Correct.
5 Q. And you understand that buying
6 groups may offer a variety of services to their
7 members, right?
8 A. Yes.
9 Q. And you understand that one service
10 offered by buying groups is to negotiate lower
11 supply prices on behalf of their members,
12 right?
13 MR. McDONALD: Object to the form.
14 THE WITNESS: I believe that to be
15 true.
16 BY MR. SOLOMON:
17 Q. And you understand that buying
18 groups pool their members' purchasing power to
19 search for discounts on dental products from
20 distributors, right?
21 THE COURT REPORTER: I'm sorry. Say
22 that again.
23 MR. SOLOMON: Sure.
24 BY MR. SOLOMON:
25 Q. You understand that buying groups

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1 TIM SULLIVAN
2 pool their members' purchasing power to seek
3 for discounts on dental products from
4 distributors --
5 MR. McDONALD: Object --
6 BY MR. SOLOMON:
7 Q. -- right?
8 MR. McDONALD: Object to the form.
9 THE WITNESS: I believe that's what
10 they attempt to do.
11 BY MR. SOLOMON:
12 Q. You understand that having greater
13 purchasing power may allow a buying group to
14 get lower prices for its members, correct?
15 MR. McDONALD: Object to the form.
16 THE WITNESS: That's what they
17 attempt to do, yes.
18 BY MR. SOLOMON:
19 Q. Okay. When you --
20 MR. McDONALD: Do you need him to
21 slow down?
22 THE COURT REPORTER: Please, you're
23 talking real fast. I'm not understanding
24 you.
25 MR. SOLOMON: Sure. I'll do my

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1 TIM SULLIVAN
2 best.
3 MR. McDONALD: When she's shaking
4 her head, that might be a clue you're going
5 too fast.
6 MR. SOLOMON: I'm not looking at
7 her, so...
8 MR. McDONALD: Okay. I'll tell you.
9 If I tell you to slow down, just trust me,
10 I can see her.
11 BY MR. SOLOMON:
12 Q. You say they attempt to do those
13 things.
14 What do you mean by that?
15 A. Well, some buying groups attempt to
16 bring groups of customers together with -- one
17 of their initiatives is to provide lower
18 pricing. Not many of them actually have the
19 resources behind actually to make sure that
20 that happens.
21 So they can tell a story as an
22 attempt that that's what they're going to do,
23 but they don't have the infrastructure or they
24 don't have the value for the members to
25 actually get any compliance with their members

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1 TIM SULLIVAN
2 to actually support that buying group's
3 initiative.
4 Q. When you say they don't have the
5 resources, what do you mean by that?
6 A. I'm sorry. It's the wrong word.
7 Structure or other value to their members to
8 provide compliance with their own members to
9 follow those -- to follow the purchasing
10 program.
11 Q. What is your understanding of what's
12 wrong with the structure?
13 A. I'm not saying anything is wrong
14 with it. They don't have the structure in
15 place for their members to comply with the
16 agreements that they're making with their
17 distributors.
18 Q. And what do you mean by that? What
19 specifically is missing from their structure
20 that would allow their members to comply with
21 purchasing from distributors?
22 MR. McDONALD: Object to the form.
23 THE WITNESS: I can't speak to
24 what -- I don't know which group you're
25 referring to. They're all structured

1 TIM SULLIVAN
 2 differently. We've seen some that work.
 3 We have a history of working with
 4 buying groups, as you know, many of them.
 5 And we've seen some where they work, where
 6 the members actually then end up do
 7 increasing their purchases to then earn
 8 that special pricing discount. We've
 9 some -- we've seen some that the buying
 10 habits of their members don't change.
 11 And typically what the difference is
 12 is the other value-added services that the
 13 buying groups themselves provide.
 14 BY MR. SOLOMON:
 15 Q. You said typically what happens is
 16 they offer value-added services a second ago,
 17 right?
 18 A. Correct.
 19 Q. What were you meaning by that
 20 distinction?
 21 A. So some will do -- if it's more
 22 than -- some will offer just dental supply
 23 pricing only. There's no other member value
 24 for their members to comply with that program.
 25 Others have actually compliance

1 TIM SULLIVAN
 2 A. My understanding is Smile Source is
 3 now structured that way.
 4 Q. Any others?
 5 A. That's -- that's the one that comes
 6 to mind.
 7 Q. When you say "Smile Source is now
 8 structured that way," what do you mean? Was
 9 there a change in Smile Source's model at any
 10 point?
 11 A. That's my understanding.
 12 Q. Do you know when that change
 13 occurred?
 14 A. When Trevor Mauer came into Smile
 15 Source, he changed the structure and the
 16 membership requirements.
 17 Q. And do you know when that was
 18 approximately?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I'd have to be looking
 21 at some documents to understand it.
 22 BY MR. SOLOMON:
 23 Q. And what is your understanding based
 24 on?
 25 A. Discussions that I had with Trevor

1 TIM SULLIVAN
 2 minimums that say, and, by the way, if you're
 3 going to join this group, you actually have to
 4 then purchase through the programs they have
 5 set up. It could be using the labs that
 6 they've set up, the dental supply sponsor that
 7 they've negotiated with. It could a cell phone
 8 coverage, everyone's going to use AT&T. It
 9 could be, you know, who knows, what other type
 10 of buying power that they're looking to put
 11 together.
 12 If the members are forced to then
 13 comply with that, those are typically more
 14 successful than the ones that are simply on
 15 price only.
 16 Q. So when you say members are forced
 17 to comply, what do you mean?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Again, some are forced
 20 to comply, meaning if they don't, they will
 21 kick them out of the group.
 22 BY MR. SOLOMON:
 23 Q. Can you give me an -- strike that.
 24 Can you give me an example of a
 25 buying group that has that structure?

1 TIM SULLIVAN
 2 prior to re-engaging with them.
 3 Q. Anything else?
 4 A. Primarily that.
 5 Q. Okay. And you can't recall the
 6 approximate time period when you began
 7 re-engaging with Mr. Mauer?
 8 A. I believe it was around --
 9 MR. McDONALD: Object to form.
 10 THE WITNESS: I believe it was in
 11 the 2016 time period.
 12 BY MR. SOLOMON:
 13 Q. So a moment ago you mentioned
 14 there's some buying groups that are price-only
 15 and have no other value, right? And then there
 16 are other buying groups that do offer other
 17 programs to their members, right?
 18 A. Yes.
 19 Q. So you're saying that there's two
 20 types of buying groups, one that is focused on
 21 price and the other that's focused on price as
 22 well as offering other programs and value to
 23 their members. Am I understanding that
 24 correctly?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
2 THE WITNESS: So let me be clear. I
3 think price is a component of value. It is
4 not the only component of value.
5 So each group is their own group.
6 They're each structured; they offer
7 different programs for their members.
8 The ones that are primarily focused
9 on price-only on dental supplies are ones
10 that I have not seen work in the long run.
11 The ones that add other pieces to
12 the value component are typically more
13 successful, will last longer, and actually
14 then drive compliance through their
15 members.
16 BY MR. SOLOMON:
17 Q. Does Schein refuse to work with
18 price-only buying groups?
19 MR. McDONALD: Object to the form.
20 THE WITNESS: No.
21 BY MR. SOLOMON:
22 Q. Has Schein ever refused to work with
23 price-only buying groups?
24 MR. McDONALD: Object to the form.
25 THE WITNESS: No.

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. When you say that historically
4 you've seen price-only buying groups not work
5 out, what is your understanding based on? Is
6 that personal experience?
7 A. Yes.
8 Q. Can you give me an example of some
9 experience you've had with price-only buying
10 groups that have not been successful?
11 A. So this goes back quite a ways.
12 Buying groups started as study clubs. Eight
13 dentists in Milwaukee, Wisconsin golf every
14 Saturday. They say, hey, let's get together
15 and form a group to then negotiate all of our
16 purchasing with someone. We've worked with
17 some of those in the past. It could be a local
18 study club. I don't have any names for you.
19 And we've attempted that. We leave that
20 decision up to the local leadership. And some
21 have worked; most don't.
22 The history is when once they -- we
23 put it together, the dentists don't change
24 their purchasing habits if they had a great
25 relationship with their existing supplier.

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1 TIM SULLIVAN
2 Q. So you haven't been involved in any
3 of those relationships with price-only buying
4 groups. You just mentioned those are set up in
5 the field. Am I correct in understanding that?
6 MR. McDONALD: Object to the form,
7 assumes facts not in evidence.
8 THE WITNESS: Yeah, I can't say
9 never. Sometimes I'll get involved, you
10 know, the management might reach out to me;
11 sometimes they're making the decision
12 locally.
13 BY MR. SOLOMON:
14 Q. So how did you learn that these
15 buying groups that are price-only were not
16 successful? Did someone tell you?
17 A. Typically, yes.
18 Q. So a regional manager or someone in
19 the field would come to you and let you know
20 that a price-only buying group was not
21 successful?
22 A. I wouldn't refer to it as they came
23 to me. It comes up in discussions, in a
24 meeting.
25 Q. So can you think of any particular

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1 TIM SULLIVAN
2 discussion or meeting when that came up?
3 A. No. This is just general concepts
4 we talk about from time to time.
5 Q. Have you ever done any independent
6 research into whether these price-only buying
7 groups can be successful?
8 A. Not that I'm aware of.
9 Q. Have you ever conducted your own
10 diligence as to how price-only buying groups
11 can be successful?
12 A. Not that I'm aware of.
13 Q. So your understanding of price-only
14 buying groups that were not successful was
15 comments you've heard from other people within
16 Schein, is that right?
17 MR. McDONALD: Object to the form.
18 THE WITNESS: Primarily, yes.
19 BY MR. SOLOMON:
20 Q. Okay.
21 MR. McDONALD: Can you pause a
22 second?
23 Did somebody join or drop off?
24 MR. LONG: My guess is that Jay
25 Schlosser dropped off.

1 TIM SULLIVAN
 2 MR. McDONALD: Did anybody join?
 3 Thank you.
 4 BY MR. SOLOMON:
 5 Q. So how did Schein, in your
 6 experience, handle price-only buying groups
 7 that, as you said, in your experience, have not
 8 been successful?
 9 MR. McDONALD: Object to the form,
 10 overly broad, vague.
 11 THE WITNESS: Yeah, I'm not sure how
 12 to answer that. I mean, it's -- their
 13 relationship, for whatever reason, the
 14 local leader or one of our sales reps, we
 15 may give them the flexibility to give it a
 16 shot.
 17 BY MR. SOLOMON:
 18 Q. Did you want your sales reps to work
 19 with those groups?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It really depends on
 22 what the opportunity was.
 23 BY MR. SOLOMON:
 24 Q. What do you mean by that?
 25 A. I'm not sure how else to answer it.

1 TIM SULLIVAN
 2 If there was an opportunity to grow our
 3 business that we have -- where those customers
 4 in this group are already customers or not, it
 5 was an opportunity to get new customers, an
 6 opportunity to get a deeper share of their
 7 business than we have today. It could be a
 8 multitude factors that go into it.
 9 Q. So there were a number of factors
 10 that people at Schein would look to in
 11 determining whether to do business with a
 12 price-only buying group; am I correct in
 13 understanding that?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: We are flexible in
 16 understanding the structure and opportunity
 17 within each group that approaches us.
 18 BY MR. SOLOMON:
 19 Q. And has that always been the case?
 20 A. Yes.
 21 Q. You've encouraged people within
 22 Schein to pursue price-only buying groups?
 23 MR. McDONALD: Object to the form,
 24 misstates his testimony.
 25 THE WITNESS: I wouldn't state it

1 TIM SULLIVAN
 2 that way, no.
 3 BY MR. SOLOMON:
 4 Q. Why not?
 5 A. Those are your words, not mine.
 6 Q. I'm just asking you if you would
 7 agree with that statement.
 8 MR. McDONALD: He said no.
 9 BY MR. SOLOMON:
 10 Q. So what -- sorry. You can answer.
 11 A. Restate it.
 12 Q. Sure. My question is just have you
 13 encouraged others within Schein to pursue
 14 price-only buying groups?
 15 A. No.
 16 Q. Why not?
 17 A. I think I've just stated, we've seen
 18 very inconsistent performance of those type of
 19 groups.
 20 Q. Any other reason why you would not
 21 encourage people within Henry Schein to pursue
 22 price-only buying groups?
 23 A. It's not a fast growing segment of
 24 our business. It's not a key priority.
 25 There's plenty of opportunities for us to

1 TIM SULLIVAN
 2 pursue, and that does not hit the radar.
 3 Q. Any other reasons?
 4 A. Those are the two that I'll give
 5 you.
 6 Q. Okay. I just want to go through a
 7 more definitions for the record.
 8 While at Schein, you've used the
 9 term "group purchasing organization" or "GPO"
 10 to refer to buying groups of independent
 11 dentists, correct?
 12 A. Correct.
 13 Q. And you've used the term "group
 14 purchasing organization" interchangeably with
 15 "buying group," correct?
 16 A. That's correct.
 17 Q. You're familiar with the term
 18 "dental service organization," also referred to
 19 as a DSO?
 20 A. Yes.
 21 Q. Okay. And DSOs have a common
 22 ownership structure, is that right?
 23 MR. McDONALD: Object to the form,
 24 mischaracterizes all the evidence in the
 25 case and all the other witnesses on Henry

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1 TIM SULLIVAN
2 Schein's behalf that have already
3 testified.
4 THE WITNESS: They're all structured
5 differently.
6 BY MR. SOLOMON:
7 Q. Generally speaking, is there some
8 common ownership structure to them, in your
9 experience?
10 MR. McDONALD: Object to the form,
11 vague, lack of foundation.
12 THE WITNESS: They're all structured
13 differently.
14 BY MR. SOLOMON:
15 Q. Do some have common ownership?
16 A. That's my understanding, yes.
17 Q. Are some -- strike that.
18 Do some not have common ownership?
19 A. That's my understanding, yes.
20 Q. Can you think of any that do not
21 have common ownership?
22 MR. McDONALD: Object to the form,
23 lack of foundation.
24 THE WITNESS: Not off the top of my
25 head.

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. Have you ever referred to DSOs as
4 entities that have common ownership?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: I don't recall if I
7 have.
8 BY MR. SOLOMON:
9 Q. You may have?
10 MR. McDONALD: Object to the form,
11 asked and answered.
12 THE WITNESS: I don't recall that I
13 have.
14 BY MR. SOLOMON:
15 Q. You just don't recall one way or the
16 other, sitting here today?
17 A. I don't recall if I've used those
18 exact words that you just said. I don't know.
19 Q. Do you understand that DSOs employ
20 dentists under a contract?
21 MR. McDONALD: Object to the form,
22 lack of foundation.
23 THE WITNESS: Some do.
24 BY MR. SOLOMON:
25 Q. Do you understand that DSOs are not

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1 TIM SULLIVAN
2 comprised of independent private practice
3 dentists?
4 MR. McDONALD: Object to the form,
5 lack of foundation.
6 THE WITNESS: Some do; some don't.
7 BY MR. SOLOMON:
8 Q. So some DSOs are comprised of
9 private practitioners?
10 MR. McDONALD: Asked and answered.
11 THE WITNESS: That's my
12 understanding.
13 Again, I don't work directly with
14 that segment. I'm not responsible for that
15 segment, never have been responsible for
16 that segment. So that's my understanding,
17 but I don't know for a fact.
18 BY MR. SOLOMON:
19 Q. Okay. So you're speculating?
20 MR. McDONALD: Object to the form.
21 He gave you his understanding.
22 THE WITNESS: I just provided you my
23 understanding. I'm not sure how else to
24 answer you.
25 ///

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. Okay. You've heard the term
4 "private practice dentists," correct?
5 A. Correct.
6 Q. And private practice dentists are
7 the core of HSD's customer base, is that right?
8 A. It's our largest segment, yes.
9 Q. When you say it's your largest
10 segment, what do you mean?
11 MR. McDONALD: Object to the form.
12 THE WITNESS: So the largest space
13 of our customer base are private practice
14 dentists, a single-office space
15 practitioner that might own one, two, three
16 type of locations. Over the years,
17 particularly the last ten years or so,
18 there have become more large group
19 practices.
20 So a dentist or two or three might
21 come together as a small group. That does
22 not qualify in this elite kind of DSO
23 space. So some are single-office space
24 practitioners; some are in this mid-market
25 segment.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. So single-office
 4 practitioners, you wouldn't group those in with
 5 a DSO, correct?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: Correct.
 8 BY MR. SOLOMON:
 9 Q. Okay. Do you understand that
 10 private practices account for the largest share
 11 of Schein's sales to customers?
 12 A. I believe that to be true.
 13 Q. And do you understand that private
 14 practices account for the majority of Schein's
 15 sales to customers?
 16 A. Yes.
 17 Q. Are they Schein's most profitable
 18 customer segment?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: Not necessarily, no.
 21 BY MR. SOLOMON:
 22 Q. Which is Schein's most profitable
 23 customer segment?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: They're both --

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1 TIM SULLIVAN
 2 they're both profitable. We don't have a
 3 separate P&L on just the elite DSOs when
 4 you put all in. So we have the HSD P&L.
 5 There's a special markets P&L.
 6 They're very intertwined, and it has
 7 created actual -- a lot of internal
 8 conflict, quite honestly, because there are
 9 issues when Hal and his team and special
 10 markets would sign a deal with a large DSO,
 11 and the consumables ix on that P&L or the
 12 equipment service, the service technicians,
 13 the local facilities, vans, everything else
 14 is on the HSD P&L.
 15 BY MR. SOLOMON:
 16 Q. Okay. Have you ever heard anyone
 17 within Schein state that private practices are
 18 Schein's most -- strike that.
 19 Have you ever heard anyone within
 20 Schein state that private practices are
 21 Schein's most profitable customer segment?
 22 MR. McDONALD: Object to the form,
 23 overly broad.
 24 THE WITNESS: I don't recall
 25 specifically. I'd have to see what you're

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1 TIM SULLIVAN
 2 referring to.
 3 BY MR. SOLOMON:
 4 Q. Have you ever -- I'm not referring
 5 to anything in particular.
 6 A. Okay.
 7 Q. I'm just asking a question.
 8 Have you ever referred to private
 9 practices as Schein's most profitable customer
 10 segment?
 11 A. I don't recall using that exact
 12 terminology, no.
 13 Q. Another definition I'd just like to
 14 cover, community health centers or CHCs as
 15 they're sometimes called.
 16 You're familiar with those entities?
 17 A. Yes.
 18 Q. Okay. And a community health center
 19 is a federally qualified group that provides
 20 care to the indigent, is that correct?
 21 A. I'm not sure that they're all
 22 exactly that, but I believe that to be
 23 accurate, yes.
 24 Q. Are you aware of any that do not fit
 25 that definition?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Again, I don't recall.
 4 I just don't want to -- I don't know if
 5 it's narrowly just to the indigent
 6 population. I don't know that for a fact.
 7 BY MR. SOLOMON:
 8 Q. I see.
 9 And it's your understanding that
 10 CHCs are not made up of independent private
 11 practice dentists, right?
 12 MR. McDONALD: Object to the form,
 13 lack of foundation.
 14 THE WITNESS: That's my
 15 understanding.
 16 BY MR. SOLOMON:
 17 Q. And do you understand that some CHCs
 18 are members of CHC-specific buying groups,
 19 right?
 20 A. I'm not sure I would -- how would
 21 you define that?
 22 Q. I'm referring to buying groups whose
 23 members are individual CHCs.
 24 MR. McDONALD: Object to the form,
 25 lack of foundation.

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<p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: I believe that to be</p> <p>3 true, yes.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Okay. Are you aware of any of those</p> <p>6 types of buying groups that are comprised of</p> <p>7 CHCs?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: Not specifically, no.</p> <p>10 MR. McDONALD: Lack of foundation.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. Okay. Are those sometimes called</p> <p>13 CHC GPOs --</p> <p>14 MR. McDONALD: Object to the --</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. -- to your understanding?</p> <p>17 MR. McDONALD: Object to the form,</p> <p>18 lack of foundation.</p> <p>19 THE WITNESS: Not that I recall, no.</p> <p>20 BY MR. SOLOMON:</p> <p>21 Q. And do you have any knowledge as to</p> <p>22 whether -- strike that.</p> <p>23 Mr. Sullivan, you stated that HSD</p> <p>24 has had buying group customers going back many</p> <p>25 years, was that right?</p>	<p>1 TIM SULLIVAN</p> <p>2 A. Yes.</p> <p>3 Q. How many years -- strike that.</p> <p>4 When did HSD first start working</p> <p>5 with buying groups?</p> <p>6 MR. McDONALD: Object to the form,</p> <p>7 lack of foundation.</p> <p>8 THE WITNESS: Well, I became part of</p> <p>9 Henry Schein in 1997. The special markets</p> <p>10 division had already been started prior to</p> <p>11 my joining in 1997. I believe there were</p> <p>12 buying groups that Hal and his team had</p> <p>13 been working with dating pre, you know,</p> <p>14 before my joining.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Okay. I'm asking you specifically</p> <p>17 about HSD.</p> <p>18 A. Well -- sorry. So -- all right. So</p> <p>19 not Henry Schein Dental -- well, we weren't</p> <p>20 defined as HSD back in 1997. There was a</p> <p>21 special markets division at that time and what</p> <p>22 was, well, I guess Henry Schein Dental at that</p> <p>23 time.</p> <p>24 And there were groups that we were</p> <p>25 working with at the time. I don't know -- I</p>
Page 56	Page 57
<p>1 TIM SULLIVAN</p> <p>2 can't tell you the names of them, but some</p> <p>3 resided in special markets. Some at the time</p> <p>4 we didn't really define as buying groups, but</p> <p>5 there were groups of dentists, like I</p> <p>6 mentioned, study clubs. There was a study club</p> <p>7 that we had done some business with that would</p> <p>8 fit that type of definition.</p> <p>9 Q. And that was within HSD?</p> <p>10 A. Correct.</p> <p>11 Q. That was as early as 1997?</p> <p>12 A. Correct.</p> <p>13 Q. Can you think of any specific</p> <p>14 examples of buying groups that Schein or HSD</p> <p>15 worked with in the '90s and 2000s?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: Not by name, no.</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. What was the first buying group that</p> <p>20 you can recall that HSD worked with?</p> <p>21 A. Probably the earliest one that comes</p> <p>22 to mind is called Alpha Omega.</p> <p>23 Q. And when did Schein form a</p> <p>24 relationship with Alpha Omega?</p> <p>25 A. I don't have a specific day, but I</p>	<p>1 TIM SULLIVAN</p> <p>2 believe it was early 2000s.</p> <p>3 Q. Any other buying groups you can</p> <p>4 think of that Schein worked with in that time</p> <p>5 frame?</p> <p>6 A. I know we provided a long list. I</p> <p>7 don't know -- none at top of mind right now.</p> <p>8 None come to mind.</p> <p>9 Q. As head of H -- as head of HSD, you</p> <p>10 have had decision-making authority relating to</p> <p>11 buying groups that came to HSD, is that right?</p> <p>12 MR. McDONALD: Object to the form,</p> <p>13 mischaracterizes the evidence.</p> <p>14 THE WITNESS: Yeah, that's not --</p> <p>15 that's not correct.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Why is that not correct?</p> <p>18 A. So I'm the president of Henry Schein</p> <p>19 Dental. Hal Muller is the president of special</p> <p>20 markets. We've had internal conflicts as to</p> <p>21 how we're going to work with certain groups.</p> <p>22 So Hal had made some of those</p> <p>23 decisions. I'd make some of those decisions.</p> <p>24 Some of those decisions were made locally. I</p> <p>25 wasn't even aware of them. So they're -- we do</p>

<p style="text-align: right;">Page 58</p> <p>1 TIM SULLIVAN</p> <p>2 provide our local leadership team authority to</p> <p>3 make decisions in the field. So they're --</p> <p>4 it's -- they don't all roll up to me.</p> <p>5 Q. So you were involved in some of</p> <p>6 those decisions?</p> <p>7 A. Some, yes.</p> <p>8 Q. In what instances would you be</p> <p>9 involved in a decision as it relates to working</p> <p>10 with a buying group?</p> <p>11 A. It would vary. If it was --</p> <p>12 depending on the size of the opportunity, if</p> <p>13 for whatever reason the regional manager or the</p> <p>14 zone manager at the time didn't feel</p> <p>15 comfortable making the decision or wanted some</p> <p>16 input on it, they'd come to me or to Dave</p> <p>17 Steck, or Joe or Jake at the time might have</p> <p>18 gotten involved.</p> <p>19 Q. Why would they come to you?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 THE WITNESS: I don't know. You'd</p> <p>22 have to ask them.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. You have no understanding as to why</p> <p>25 someone in the field might come to you with</p>	<p style="text-align: right;">Page 59</p> <p>1 TIM SULLIVAN</p> <p>2 questions about a buying group?</p> <p>3 MR. McDONALD: Object to the form,</p> <p>4 asked and answered.</p> <p>5 THE WITNESS: It would vary. I</p> <p>6 don't know.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Did anyone ever come to you seeking</p> <p>9 your approval as to whether to work with a</p> <p>10 buying group?</p> <p>11 A. Yes.</p> <p>12 Q. How often did that happen?</p> <p>13 A. Not very as it relates to the number</p> <p>14 of groups that we ultimately worked with, but</p> <p>15 some would come to me. And I wouldn't</p> <p>16 necessarily say it was always about getting</p> <p>17 approval. It was more of what would you</p> <p>18 suggest, what do you think we should do. I'd</p> <p>19 give my guidance.</p> <p>20 But in most cases if whoever came to</p> <p>21 me about it really wanted to give it a shot,</p> <p>22 I'd allow them the opportunity to give it a</p> <p>23 shot.</p> <p>24 Q. And do you recall when people in the</p> <p>25 field first started coming to you as it relates</p>
<p style="text-align: right;">Page 60</p> <p>1 TIM SULLIVAN</p> <p>2 to buying groups?</p> <p>3 A. No.</p> <p>4 Q. Has that been happening for the last</p> <p>5 ten years?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. You also mentioned that you</p> <p>8 had some disagreements with Mr. Muller as it</p> <p>9 relates to buying groups.</p> <p>10 Do you recall that?</p> <p>11 MR. McDONALD: Object to the form,</p> <p>12 mischaracterizes his testimony.</p> <p>13 THE WITNESS: Hal and I had</p> <p>14 conflicts between our P&Ls and our -- our</p> <p>15 strategy of approaching various groups,</p> <p>16 yes.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. And when you had those conflicts,</p> <p>19 did you and Mr. Muller come together to try to</p> <p>20 resolve the conflicts in a mutually beneficial</p> <p>21 way?</p> <p>22 A. Interesting way to phrase it. We</p> <p>23 would attempt to most often, yes.</p> <p>24 Q. Would he seek your input on buying</p> <p>25 group opportunities?</p>	<p style="text-align: right;">Page 61</p> <p>1 TIM SULLIVAN</p> <p>2 A. Sometimes he would and sometimes he</p> <p>3 wouldn't.</p> <p>4 Q. Why did he seek your input in some</p> <p>5 cases?</p> <p>6 MR. McDONALD: Object to the form,</p> <p>7 lack of foundation.</p> <p>8 THE WITNESS: Depending on the</p> <p>9 commitment that the group was looking for</p> <p>10 relative to the broader array of offerings</p> <p>11 that we have.</p> <p>12 If they were looking -- if they</p> <p>13 needed equipment and pricing on equipment,</p> <p>14 if they're looking for service, for</p> <p>15 business solutions, the deeper into the</p> <p>16 basket of offerings of our value</p> <p>17 proposition that the group was looking for,</p> <p>18 Hal knew at that point if it's going to --</p> <p>19 portions of that were going to hit my P&L.</p> <p>20 He wanted to make sure that I was involved</p> <p>21 in some of those decisions. Sometimes he'd</p> <p>22 check; sometimes he didn't. Hal was on his</p> <p>23 own quite often.</p> <p>24 BY MR. SOLOMON:</p> <p>25 Q. Were you involved in decision-making</p>

<p style="text-align: right;">Page 62</p> <p>1 TIM SULLIVAN 2 as it related to buying groups of independent 3 dentists? 4 MR. McDONALD: Object to the form. 5 THE WITNESS: Sometimes yes; 6 sometimes no. 7 BY MR. SOLOMON: 8 Q. In 2010, do you recall that you and 9 Mr. Muller had discussions about whether to 10 continue doing business with a buying group 11 called Smile Source? 12 A. Yes. 13 Q. And at the time, Smile Source fell 14 within the special markets division, is that 15 right? 16 A. Yes. 17 Q. Okay. And you provided input to 18 Mr. Muller regarding how to proceed with Smile 19 Source in the 2010 time frame. 20 Do you recall that? 21 MR. McDONALD: Object to the form, 22 vague as to time. 23 THE WITNESS: Yeah, I'd have to take 24 a look at the dates and what you're 25 referring to.</p>	<p style="text-align: right;">Page 63</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. Okay. Do you recall in the 2010 4 time frame having discussions with Mr. Muller 5 about how to proceed with Smile Source? 6 A. Again, I don't know -- I'd like to 7 look at a document that you're referring to to 8 say it was 2010 or 2012 versus '14 versus '16. 9 We had -- there's a long history of in and out 10 with Smile Source. 11 Q. Okay. Did you ever provide input to 12 Mr. Muller regarding how to handle Smile Source 13 when it fell within the special markets 14 division? 15 MR. McDONALD: Object to the form, 16 vague, lack of foundation. 17 If you have a document, you ought to 18 show it to him. 19 THE WITNESS: Yeah, I'd like to take 20 a look at what you're referring to. 21 BY MR. SOLOMON: 22 Q. I'm not -- I'm not -- I'm actually 23 not referring to a document. I'm just asking 24 general questions right now. 25 MR. McDONALD: So you're not going</p>
<p style="text-align: right;">Page 64</p> <p>1 TIM SULLIVAN 2 to show any of these documents later? So I 3 can -- so later when you slap down a 4 document with this quote or this question 5 there, then I can object and you will 6 not -- you will take it back and not show 7 it to him; is that what you're doing? 8 BY MR. SOLOMON: 9 Q. You can answer the question. 10 MR. McDONALD: Ask the question 11 again. 12 MR. SOLOMON: Court Reporter, would 13 you mind just reading back the question? 14 MR. McDONALD: Don't play games, 15 Ronnie. 16 (Court Reporter read the record as 17 requested: 18 "Q Okay. Did you ever provide 19 input to Mr. Muller regarding how to 20 handle Smile Source when it fell 21 within the special markets 22 division.") 23 MR. McDONALD: Object to the form, 24 vague, overly broad. 25 Again, if you have a document, you</p>	<p style="text-align: right;">Page 65</p> <p>1 TIM SULLIVAN 2 should show it to him and not play games. 3 THE WITNESS: I'd like to see a 4 document that you're referring to. I don't 5 recall. 6 BY MR. SOLOMON: 7 Q. I'm not referring to a document. 8 I'm asking you just a question. 9 A. I -- 10 MR. McDONALD: Asked and answered. 11 He said I don't recall. 12 THE WITNESS: I don't recall. 13 BY MR. SOLOMON: 14 Q. Okay. If you and Mr. Muller ever 15 disagreed regarding a specific buying group 16 customer or opportunity, would that 17 disagreement ever be elevated to 18 Mr. Breslawski? 19 MR. McDONALD: Object to the form, 20 vague. 21 THE WITNESS: It could. 22 BY MR. SOLOMON: 23 Q. Do you recall any instances when 24 that happened? 25 A. Not specifically.</p>

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1 TIM SULLIVAN
2 Q. Okay. And Mr. Breslawski is your
3 boss, is that right?
4 A. Correct.
5 Q. You report to him directly?
6 A. Up until early this year, yes.
7 Q. So there was a change in your
8 reporting structure earlier this year?
9 A. Correct.
10 Q. To whom do you now report?
11 A. John Koch --
12 Q. Okay.
13 A. -- who is now the CEO of our global
14 dental business.
15 Q. So you no longer report to
16 Mr. Breslawski directly?
17 A. Correct. Jim Breslawski is now the
18 vice chair of Henry Schein, Inc. and president
19 of Henry Schein, Inc.
20 And Koch is K-O-C-H.
21 Q. Would you say that you saw an
22 increase in the number of buying groups in the
23 dental industry in the last five to ten years?
24 A. Yes.
25 Q. Can you quantify what the increase

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1 TIM SULLIVAN
2 buying group, Schein could lose business to
3 competitors that do work with them, is that
4 right?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: It's possible.
7 BY MR. SOLOMON:
8 Q. And that would pose a risk to
9 Schein's business, correct?
10 A. In that instant, yes.
11 Q. Can working with buying groups also
12 have a negative impact where Schein lowers its
13 margins on existing business, but the new
14 business doesn't flow to offset the incremental
15 opportunity?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: In that scenario, yes.
18 BY MR. SOLOMON:
19 Q. Okay. And would you refer to that
20 as margin erosion?
21 A. Yes.
22 Q. Have you ever referred to that as
23 cannibalization of existing business?
24 MR. McDONALD: Object to the form.
25 If you have a doubt, you ought to

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1 TIM SULLIVAN
2 was?
3 MR. McDONALD: Object to the form,
4 lack of foundation --
5 THE WITNESS: No way.
6 MR. McDONALD: -- vague.
7 BY MR. SOLOMON:
8 Q. How did you know that there was an
9 increase in buying groups in the last five or
10 ten years?
11 A. Just the number of individuals,
12 representative group that would approach our
13 organization to -- if they wanted to create
14 one. We call it, if you would, the noise level
15 increased relative to people approaching us.
16 Q. Would you say that buying groups can
17 affect Schein's business?
18 MR. McDONALD: Object to the form,
19 vague.
20 THE WITNESS: Yes.
21 BY MR. SOLOMON:
22 Q. How so?
23 A. Well, in particular, ones that we
24 choose to work with to help grow our business.
25 Q. If Schein decides not to work with a

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1 TIM SULLIVAN
2 show it to him.
3 THE WITNESS: I'd like it -- if you
4 see me use that terminology, I'd like to
5 understand in what context you're referring
6 to.
7 BY MR. SOLOMON:
8 Q. Again, I'm just asking a general
9 question.
10 MR. McDONALD: Then object to the
11 form, overly broad, vague, asked and
12 answered.
13 THE WITNESS: Yeah, again, I'd like
14 to understand in what context you're
15 referring to where -- I've used that word
16 before. But in that exact context, I'd
17 like to understand what you're referring
18 to.
19 BY MR. SOLOMON:
20 Q. You've used that word as it relates
21 to buying groups?
22 MR. McDONALD: Object to the form.
23 If you have a document, you should
24 show it to him. If you refuse to do that,
25 then I'm going to object when you put it

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1 TIM SULLIVAN
 2 down in front of him.
 3 Do not play games, Mr. Solomon.
 4 This is not a game playing event.
 5 BY MR. SOLOMON:
 6 Q. You can answer the question.
 7 A. I'd like to understand more
 8 specifically what you're referring to.
 9 Q. Okay. Have you ever stated that
 10 working with buying groups -- strike that.
 11 Do you think that working with
 12 buying groups can lead to a price war between
 13 Schein and its competitors?
 14 MR. McDONALD: Object to the form,
 15 lack of foundation.
 16 If you have a document, show it to
 17 him.
 18 THE WITNESS: I don't recall using
 19 that exact language, but I'd like to
 20 understand what you're referring to better.
 21 BY MR. SOLOMON:
 22 Q. My question is a little different.
 23 Do you think that working with buying groups
 24 can lead to a price war between Schein and its
 25 competitors?

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1 TIM SULLIVAN
 2 THE WITNESS: I'd like to understand
 3 what you're referring to. I don't recall
 4 using that type of language, but I'd like
 5 to understand what you mean by it.
 6 BY MR. SOLOMON:
 7 Q. Which part of my question confuses
 8 you?
 9 A. Do I believe it would lead to a
 10 price war? I don't know how you would define a
 11 price war. I don't know how I would define a
 12 price war.
 13 Q. Have you ever used the term "price
 14 war"?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: It's possible. I
 17 don't recall. I'd like to -- if you have
 18 something you'd like to show me that refers
 19 to where I used it, if you know I have
 20 based on documents that you've reviewed,
 21 I'd like to see that.
 22 BY MR. SOLOMON:
 23 Q. Do you think that working with
 24 buying groups can lead to competitive
 25 discounting between Schein and its competitors?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 It's a different question. Your
 4 question before is have you ever stated
 5 that and you ripped off this question. Now
 6 you're saying something different.
 7 BY MR. SOLOMON:
 8 Q. You can answer the question,
 9 Mr. Sullivan.
 10 MR. McDONALD: Ask it again because
 11 it's a different question.
 12 BY MR. SOLOMON:
 13 Q. Do you recall the question?
 14 MR. McDONALD: Ask it again.
 15 THE WITNESS: He's asking --
 16 MR. McDONALD: Ask it again.
 17 THE WITNESS: Please ask it again.
 18 BY MR. SOLOMON:
 19 Q. Sure. Do you think that working
 20 with buying groups can lead to a price war
 21 amongst Schein and its competitors?
 22 MR. RACOWSKI: Objection, form.
 23 THE COURT REPORTER: Wait. Who said
 24 that?
 25 MR. McDONALD: Ken.

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1 TIM SULLIVAN
 2 A. It could lead to great
 3 opportunities. It could lead to getting
 4 business that we don't have in existing
 5 customers, deeper share of wallet, if you
 6 would. It could lead to getting new customers
 7 that we don't have.
 8 It could also lead to existing
 9 business that doesn't change, you know, nothing
 10 changes with their buying habits other than
 11 it's now at a lower price. So there's a
 12 multitude of outcomes from working with the
 13 various buying groups.
 14 Q. And specific to competitive
 15 discounting between Schein and its competitors,
 16 do you think that's one possible result of
 17 working with a buying group?
 18 MR. McDONALD: Object to the form,
 19 asked and answered, vague.
 20 THE WITNESS: I don't know what our
 21 competitors would do.
 22 BY MR. SOLOMON:
 23 Q. So you've never -- that's never
 24 factored into your analysis as it relates to
 25 buying groups?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: As the president of
 4 the company, yes, I'm responsible for and
 5 part of what I do is look at, so what's
 6 happening competitively in the marketplace.
 7 We need to understand what's happening
 8 competitively.
 9 So if we're -- if it's a
 10 single-office space practitioner, we know
 11 we're bidding against our competitors. If
 12 it's a large DSO, we're competing -- we're
 13 competing -- we're competing; it's our
 14 competitors.
 15 If it's a mid-market, every scenario
 16 and every segment of the marketplace we
 17 have competition. So yes, in every single
 18 case we know we are bidding against our
 19 competitors for the opportunity to do
 20 business with that single office, that
 21 mid-market, or the large DSO.
 22 BY MR. SOLOMON:
 23 Q. Do you think that if a full-service
 24 distributor begins selling to a buying group,
 25 that others will have to follow that course in

1 TIM SULLIVAN
 2 Q. I'm asking you about what Schein
 3 would do.
 4 MR. McDONALD: Object to the form,
 5 lack of foundation.
 6 He's already told you it does
 7 business with buying groups, so the
 8 question makes absolutely zero sense.
 9 THE WITNESS: So that wasn't your
 10 question. You asked if -- what would other
 11 distributors -- if you recall, I don't
 12 think you said --
 13 BY MR. SOLOMON:
 14 Q. Sure.
 15 A. -- what would Henry Schein do.
 16 Q. I'll ask another way.
 17 If your competitors are working with
 18 buying groups, do you feel that Schein would
 19 need to do the same in order to compete in the
 20 marketplace?
 21 MR. McDONALD: Object to the form --
 22 THE WITNESS: We have been --
 23 MR. McDONALD: -- improper
 24 hypothetical.
 25 THE WITNESS: And we've been work --

1 TIM SULLIVAN
 2 order to compete in the marketplace?
 3 MR. McDONALD: Object to the form,
 4 lack of foundation.
 5 THE WITNESS: I don't know what our
 6 competitors would do if we decided to do
 7 it.
 8 BY MR. SOLOMON:
 9 Q. Say that again.
 10 A. Could you repeat the question. I
 11 might have misunderstand.
 12 Q. Sure.
 13 MR. SOLOMON: Court Reporter, can
 14 you repeat the question.
 15 (Court Reporter read the record as
 16 requested.)
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Not necessarily.
 19 BY MR. SOLOMON:
 20 Q. Why not?
 21 A. When you referred to any
 22 distributor, are you asking what we would do or
 23 what any other distributor would do?
 24 I can't answer what any other
 25 distributor would do. I can't.

1 TIM SULLIVAN
 2 we already work with buying groups. We
 3 have been working with buying groups. So I
 4 don't know how to answer that if we're
 5 already in the space.
 6 BY MR. SOLOMON:
 7 Q. Okay. Have you ever stated that
 8 buying groups were a slippery slope for Schein?
 9 MR. McDONALD: Again, object to the
 10 form.
 11 If you've got a document, show it to
 12 him. And I will object when you show it to
 13 him later. I may instruct him not to
 14 answer if you're going to play this game,
 15 Mr. Solomon. And you can go to the ALJ and
 16 explain to him why you're doing this.
 17 THE WITNESS: Could you repeat the
 18 question?
 19 BY MR. SOLOMON:
 20 Q. Have you ever stated that buying
 21 groups were a slippery slope for Schein's
 22 business?
 23 MR. McDONALD: Same objection.
 24 THE WITNESS: If you're referring --
 25 if you know that I have in some type of

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1 TIM SULLIVAN
2 communication, I'd like to read it and
3 understand it because I'd like to
4 understand the full context of what that
5 was stated in.
6 So I don't know how to answer that
7 because there's buying groups, as I
8 mentioned, when it's price-only versus
9 those that add further value. So I need to
10 understand the context of which buying
11 group model you're referring to.
12 BY MR. SOLOMON:
13 Q. Have you ever said that buying
14 groups generally are a slippery slope for
15 Schein's business?
16 MR. McDONALD: Same objection.
17 THE WITNESS: I just don't know how
18 to answer it any differently than I just
19 did.
20 BY MR. SOLOMON:
21 Q. I just want your recollection
22 sitting here today.
23 MR. McDONALD: Same objection.
24 THE WITNESS: Of what?
25 ///

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1 TIM SULLIVAN
2 Object to the form.
3 THE WITNESS: Ronnie, in each one of
4 these, I need to understand the context of
5 what you're referring to. As a stand-alone
6 statement, I wouldn't just on a stand-alone
7 make that type of statement. If it's in
8 reference to something specific you'd like
9 to review, let's do that.
10 BY MR. SOLOMON:
11 Q. So, again, I just want your
12 recollection, sitting here today, have you used
13 those words in a specific context?
14 MR. McDONALD: Object to the form.
15 If you have a document, show it to
16 him.
17 THE WITNESS: I may have.
18 BY MR. SOLOMON:
19 Q. Have you ever said that Schein would
20 be second to working with buying groups?
21 MR. McDONALD: Object to the form.
22 If you have a document, show it to
23 him.
24 THE WITNESS: I may have. I'd like
25 to understand what context you're referring

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. My question, whether you've ever
4 referred to buying groups as being a slippery
5 slope for Schein's business.
6 MR. McDONALD: Object to the form,
7 asked and answered.
8 THE WITNESS: I need to understand
9 what context you're referring to because,
10 again, if it's the price-only versus those
11 that add additional value that can drive
12 compliance within the groups, I would
13 answer that differently than the price-only
14 buying groups.
15 BY MR. SOLOMON:
16 Q. Okay. So you may have said it in
17 some context, is what you're telling me?
18 A. I may have in some context, yes.
19 Q. Sitting here today, you can't recall
20 one way or the other?
21 A. I may have in some context.
22 Q. Okay. Have you ever stated that you
23 did not want Schein to be the first to work
24 with buying groups?
25 MR. McDONALD: Same objection.

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1 TIM SULLIVAN
2 to.
3 BY MR. SOLOMON:
4 Q. You testified earlier that Schein
5 has already worked with buying groups, right?
6 A. I can't say Schein has always worked
7 with buying groups. I've been with the company
8 for 21 years. In my history with Henry Schein,
9 yes, we have worked with buying groups.
10 Q. Why would you say that Schein would
11 not want to be the first to work with a buying
12 group if Schein has always worked with buying
13 group customers?
14 MR. McDONALD: Object to the form.
15 If you've got a document, you should
16 show it to him. If you refuse to do that,
17 I'm going to object when you do so.
18 THE WITNESS: I just answered that
19 question.
20 BY MR. SOLOMON:
21 Q. I don't think you did.
22 A. I did. It was, when talking about
23 specific buying groups, I may have in that -- I
24 don't know which spectrum of a buying group
25 that you're referring to.

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1 TIM SULLIVAN
 2 So if you show me something where
 3 the context of that particular discussion I
 4 might have been having with someone or e-mail
 5 exchange, I can speak to that incident and that
 6 specific scenario that we were referring to.
 7 The e-mail may be vague in its response, but
 8 the intent behind it I can speak to, if you
 9 want to show me something that we can look at.
 10 Q. Do you ever -- strike that.
 11 Do you recall ever telling others
 12 internally at Schein that you were closely
 13 watching buying groups and GPOs in the dental
 14 industry?
 15 MR. McDONALD: Object to the form.
 16 If you have a document, show it to
 17 him.
 18 THE WITNESS: I'd like to understand
 19 the context fully before I -- I don't know.
 20 I may have said something like that.
 21 MR. McDONALD: How much more of this
 22 do you have, this little mind memory game?
 23 MR. SOLOMON: Well, we're going --
 24 MR. McDONALD: Because we -- because
 25 we may stop --

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1 TIM SULLIVAN
 2 A. I don't know. I don't know
 3 specifically.
 4 Q. You can't recall any specific buying
 5 groups that you're aware of that Benco has
 6 worked with, is that right?
 7 MR. McDONALD: Object to the form,
 8 asked and answered.
 9 THE WITNESS: Well, there is one on
 10 the East Coast that I know that we -- that
 11 they do business with in the Virginia area.
 12 BY MR. SOLOMON:
 13 Q. What's it called?
 14 A. I believe it's Atlantic Dental Care
 15 or something to that effect.
 16 Q. And you believe Atlantic Dental Care
 17 to be a buying group?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: In some format of one,
 20 yes.
 21 BY MR. SOLOMON:
 22 Q. What do you mean by that?
 23 A. There's buying groups that are
 24 price-only. There's buying groups that
 25 have more -- I've explained it. I'll keep

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1 TIM SULLIVAN
 2 MR. SOLOMON: Okay.
 3 MR. McDONALD: -- and may not come
 4 back --
 5 MR. SOLOMON: We're going --
 6 MR. McDONALD: -- if this is what
 7 you're going to do.
 8 BY MR. SOLOMON:
 9 Q. Mr. Sullivan --
 10 MR. McDONALD: This is not the
 11 proper use of a deposition. It's abusive
 12 of the witness; it's abusive of the
 13 process. You would not do this if the ALJ
 14 was sitting here.
 15 BY MR. SOLOMON:
 16 Q. Mr. Sullivan, have you ever known
 17 Benco to work with any buying groups?
 18 MR. RACOWSKI: Objection to form,
 19 foundation.
 20 THE WITNESS: My understanding is
 21 they have.
 22 BY MR. SOLOMON:
 23 Q. Which ones?
 24 ///
 25 ///

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1 TIM SULLIVAN
 2 explaining it.
 3 There's buying groups that are based
 4 on price-only and there's others that add more
 5 value so the members drive -- and they drive
 6 compliance within their members.
 7 Q. Okay. And where do you believe that
 8 Atlantic Dental Care falls on that spectrum?
 9 A. I don't --
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: Sorry.
 12 I don't know. I don't know them.
 13 BY MR. SOLOMON:
 14 Q. So you're not sure one way or the
 15 other whether Atlantic Dental Care is a buying
 16 group?
 17 MR. RACOWSKI: Objection,
 18 mischaracterizes testimony.
 19 THE WITNESS: I don't know which
 20 form of a buying group they are. I believe
 21 them to be a buying group. That's why I
 22 mentioned them before.
 23 BY MR. SOLOMON:
 24 Q. And what's your understanding based
 25 on?

<p style="text-align: right;">Page 86</p> <p>1 TIM SULLIVAN</p> <p>2 A. A discussion I had with local</p> <p>3 leadership at the time.</p> <p>4 Q. When was that?</p> <p>5 A. I don't have the time frame in front</p> <p>6 of me.</p> <p>7 Q. Have you ever done any research into</p> <p>8 whether or not Atlantic Dental Care is, in</p> <p>9 fact, a buying group?</p> <p>10 A. Not specifically me, no.</p> <p>11 Q. Are you aware of whether Patterson</p> <p>12 has historically worked with buying groups?</p> <p>13 MR. LONG: Objection, form,</p> <p>14 foundation.</p> <p>15 THE WITNESS: In some format I</p> <p>16 believe they have.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. How do you know that?</p> <p>19 A. Again, we -- we compete against</p> <p>20 Patterson and Benco and everyone at the</p> <p>21 single-office space practitioner level, in the</p> <p>22 kind of large group practice space, and in the</p> <p>23 major DSO space.</p> <p>24 So how they define buying groups, I</p> <p>25 have no idea. How we define certain ones, I</p>	<p style="text-align: right;">Page 87</p> <p>1 TIM SULLIVAN</p> <p>2 believe we are bidding against all of our</p> <p>3 competitors in these cases. Some we win; some</p> <p>4 we lose. I believe some are Patterson, but I</p> <p>5 can't specifically tell you which ones that may</p> <p>6 be.</p> <p>7 Q. Do you recall ever competing with</p> <p>8 Patterson for any buying group business going</p> <p>9 back to 2009?</p> <p>10 MR. LONG: Objection, form.</p> <p>11 THE WITNESS: Not me specifically.</p> <p>12 The folks in our field I'm sure could tell</p> <p>13 us some names, but I wouldn't know them, as</p> <p>14 I sit here today.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. Do you recall ever competing with</p> <p>17 Benco for any buying group business going back</p> <p>18 to 2009?</p> <p>19 A. My answer is basically the same,</p> <p>20 other than the one example I gave you with</p> <p>21 Atlantic Dental Care. That one I'm directly</p> <p>22 aware of.</p> <p>23 Q. Do you recall ever coming across</p> <p>24 Patterson or Benco in a competitive situation</p> <p>25 as it relates to a buying group bid?</p>
<p style="text-align: right;">Page 88</p> <p>1 TIM SULLIVAN</p> <p>2 MR. McDONALD: Object to the form,</p> <p>3 lack of foundation.</p> <p>4 THE WITNESS: I wouldn't know.</p> <p>5 BY MR. SOLOMON:</p> <p>6 Q. Sitting here today, you can't think</p> <p>7 of any specific examples, other than I think</p> <p>8 you mentioned Atlantic Dental Care?</p> <p>9 A. Well, that's different. You asked</p> <p>10 Patterson and Benco at the time. I don't know</p> <p>11 if Patterson was in that one or not. That one</p> <p>12 specifically I know Benco was involved in. I</p> <p>13 don't know if Patterson was also.</p> <p>14 Q. Okay. Can you think of any other</p> <p>15 examples as it relates to Patterson and Benco?</p> <p>16 A. I wouldn't know if the team in the</p> <p>17 field would know. Hal Muller in special</p> <p>18 markets, he might know, but I wouldn't know.</p> <p>19 Q. Have you ever heard that Benco does</p> <p>20 not work with buying groups?</p> <p>21 A. I wouldn't know that.</p> <p>22 Q. Have you ever heard that Patterson</p> <p>23 does not work with buying groups?</p> <p>24 A. I wouldn't know that.</p> <p>25 Q. So you never formed that impression</p>	<p style="text-align: right;">Page 89</p> <p>1 TIM SULLIVAN</p> <p>2 one way or the other?</p> <p>3 A. I think I stated earlier I believe</p> <p>4 that they do.</p> <p>5 MR. SOLOMON: Okay. We've been</p> <p>6 going for a little while, so I'd like to</p> <p>7 take a break if that's okay with everyone.</p> <p>8 Off the record, please.</p> <p>9 MR. McDONALD: Well, no, you need to</p> <p>10 get the agreement with everybody before you</p> <p>11 take a break. It's not your decision.</p> <p>12 MR. SOLOMON: I would disagree with</p> <p>13 that. But I need to use the restroom, so</p> <p>14 I'd like to go off the record.</p> <p>15 MR. McDONALD: Okay. Then you</p> <p>16 should tell me that, Ronnie.</p> <p>17 THE VIDEOGRAPHER: The time is</p> <p>18 10:05 a.m. We are off the record.</p> <p>19 (Jasmine Rosner entered the</p> <p>20 deposition telephonically.)</p> <p>21 THE VIDEOGRAPHER: The time is</p> <p>22 10:19 a.m. We are back on the record.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. Welcome back, Mr. Sullivan.</p> <p>25 Before the break, we talked about</p>

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1 TIM SULLIVAN
 2 different types of buying groups, and we
 3 mentioned -- or you mentioned price-only buying
 4 groups on the one hand and then buying groups
 5 that offer other programs and services to their
 6 members.
 7 Do you recall that discussion?
 8 A. I do.
 9 Q. Okay. Schein never had a practice
 10 of not working with price-only buying groups,
 11 is that right?
 12 MR. McDONALD: Object to the form.
 13 And let me ask you, Ronnie,
 14 you've -- you've been getting sloppy in
 15 saying just Schein. And so I want the
 16 record to be clear what you mean when you
 17 say Schein.
 18 Do you mean Henry Schein Dental, or
 19 do you mean Henry Schein the entire
 20 company?
 21 MR. SOLOMON: Well, I know
 22 Mr. Sullivan is responsible for HSD.
 23 MR. McDONALD: Only.
 24 BY MR. SOLOMON:
 25 Q. So if you have knowledge beyond

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1 TIM SULLIVAN
 2 MR. SOLOMON: Court reporter, can
 3 you just read back my question one more
 4 time.
 5 (Court Reporter read the record as
 6 requested as follows:
 7 "Q Schein never had a practice of not
 8 working with price-only buying groups, is
 9 that right?")
 10 THE WITNESS: We never had a --
 11 could you clarify the question for me,
 12 please? We never had a practice of working
 13 with buying groups?
 14 BY MR. SOLOMON:
 15 Q. Has Schein ever had a practice of
 16 not working with price-only buying groups?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: No, we -- there are
 19 some that we have worked with.
 20 BY MR. SOLOMON:
 21 Q. You also talked about the difference
 22 between a price-only buying group on the one
 23 hand and then buying groups that offer
 24 value-added services in other programs.
 25 And one of the things you mentioned

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1 TIM SULLIVAN
 2 that, then I'd ask you to let us know. But if
 3 you're just here to tell me about what you know
 4 with HSD, then tell me that.
 5 MR. McDONALD: Well, with all due
 6 respect, Ronnie, that's not his
 7 responsibility to clarify your question.
 8 If you -- if we want to have the
 9 understanding that when you say Schein, you
 10 mean HSD, unless you say otherwise, then
 11 that's fine, but I don't want to object to
 12 every question.
 13 MR. SOLOMON: Sure. I guess I just
 14 want whatever he has personal knowledge of.
 15 So if he was aware of a policy that Henry
 16 Schein, the corporate entity, had with
 17 respect to buying groups, that's what you
 18 have personal knowledge of and I would
 19 expect a response on that.
 20 MR. McDONALD: Well, I would -- I'll
 21 state on the record, he's only here -- he's
 22 the president of Henry Schein Dental, and
 23 he's not here to speak for special markets.
 24 You've already deposed several people
 25 within special markets. And so...

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1 TIM SULLIVAN
 2 was that price-only buying groups cannot force
 3 compliance among their members, is that right?
 4 MR. McDONALD: Object to the form,
 5 misstates his testimony.
 6 THE WITNESS: And "force" might not
 7 be the proper word. They had -- they
 8 didn't have structure in place that would
 9 drive compliance for their members to
 10 follow the buying group formulary, if you
 11 would.
 12 BY MR. SOLOMON:
 13 Q. So are you referring to like
 14 contractual provisions that would require
 15 forced compliance?
 16 A. Well, again, I just the change the
 17 word from "force" to "drive compliance,"
 18 whatever. But it -- some it could be
 19 contractual or just other value-added services
 20 that had the member wanting to do this within
 21 the group for the benefit of the group.
 22 If they didn't personally have any
 23 other personal benefits for their practice,
 24 then they themselves aren't -- wouldn't --
 25 would not always change their purchasing habits

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1 TIM SULLIVAN
2 just for the group if it didn't benefit them
3 more directly.
4 Q. Couldn't a price-only buying group
5 agree to a contractual provision that required
6 compliance?
7 A. Could they? Yeah, I guess they
8 could.
9 Q. Is it your experience that that has
10 happened in the past?
11 MR. McDONALD: Object to the form,
12 lack of foundation.
13 THE WITNESS: Well, I gave you the
14 one example with Smile Source. I believe
15 today's members within Smile Source, part
16 of what they sign up for in that membership
17 is to move 80, 85 percent of their
18 purchases to within their sponsored
19 suppliers.
20 BY MR. SOLOMON:
21 Q. And are you referring to -- to Smile
22 Source now as a price-only buying group?
23 A. No.
24 Q. Okay. So I'm just focusing on
25 price-only for the moment, if that's okay.

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1 TIM SULLIVAN
2 A. Understood.
3 Q. So it's possible that price-only
4 buying groups could force compliance among
5 their members?
6 MR. McDONALD: Object to the form,
7 lack of foundation.
8 THE WITNESS: I -- I have to
9 understand more specifically which one
10 you're referring to. I'm not familiar with
11 those that force it. Again, I don't know
12 of many or any that have other services or
13 other value offering or structure in place
14 that would drive that compliance.
15 BY MR. SOLOMON:
16 Q. Is there something specific to the
17 structure of a price-only buying group that
18 would, in your mind, prevent it from being able
19 to drive compliance?
20 MR. McDONALD: Object to the form --
21 THE WITNESS: I hadn't --
22 MR. McDONALD: -- improper
23 hypothetical.
24 Go ahead.
25 THE WITNESS: Yeah, I hadn't thought

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1 TIM SULLIVAN
2 about it before. I don't know.
3 BY MR. SOLOMON:
4 Q. Okay. So your distinction of
5 price-only versus value-added or other program
6 buying groups, what do you see as the key
7 difference as it relates to being able to drive
8 compliance?
9 A. I don't know if there's any one key
10 difference. If there's other things, other
11 offerings that the members are going to get by
12 joining the group other than just, by the way,
13 we negotiated this price with XYZ, join, if
14 there's other things they can get, do they get
15 marketing for their practice, does it help
16 drive patient traffic, can they -- do they
17 group their lab services together, could it be,
18 by the way, we negotiated with AT&T, switch
19 your phone bills, the plowing service that we
20 provide for you in the winter in Wisconsin, who
21 knows, they -- there's no one key thing.
22 The question is, as a member, do you
23 see broader value than just price that you
24 would change your purchasing habits for your
25 practice?

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1 TIM SULLIVAN
2 Q. So you're saying that a member of a
3 value-added service buying group would change
4 their purchasing habits based on the
5 availability of other services?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: Some will. Some will
8 some; some won't. We have found that the
9 more that they provide, the more that they
10 do, the greater compliance that they'll get
11 within that group.
12 BY MR. SOLOMON:
13 Q. And do you know why that's the case?
14 MR. McDONALD: Object to the form.
15 THE WITNESS: I think it's any --
16 like any one of us, you get points when you
17 go to a certain hotel. You go to Starbucks
18 and the more points you build, the greater
19 value.
20 It's that type of -- why do any of
21 us as consumers shift your business to a
22 certain airline or to a -- if there's more
23 value you get out of it, you'll potentially
24 do more with that group.
25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. How do you know that?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: I think I just gave
 6 the examples. I mean, I try to stay at
 7 Marriotts. I fly Delta as much as I can
 8 because I get value out of that. I think
 9 it's common sense.
 10 BY MR. SOLOMON:
 11 Q. So are you saying that there's more
 12 loyalty to a value-added services buying group
 13 as compared to a price-only buying group?
 14 A. That's my opinion, yes.
 15 Q. So loyalty then would drive
 16 compliance among the buying group members; is
 17 that what you're saying?
 18 MR. McDONALD: Object to the form,
 19 misstates his testimony.
 20 THE WITNESS: It's an example I was
 21 using. It's not loyalty alone. That
 22 help -- helped drive compliance.
 23 BY MR. SOLOMON:
 24 Q. Couldn't members of a price-only
 25 buying group similarly be loyal to their buying

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1 TIM SULLIVAN
 2 group and comply with purchasing requirements?
 3 MR. McDONALD: Object to the form,
 4 hypothetical.
 5 THE WITNESS: Could they? Yes.
 6 BY MR. SOLOMON:
 7 Q. So why do you make a distinction as
 8 it relates to compliance between price-only and
 9 value-added service buying groups?
 10 MR. McDONALD: Asked and answered.
 11 THE WITNESS: We have seen the more
 12 they -- value that they bring to their
 13 members, the more the members act as one.
 14 The fewer the offering, the less compliance
 15 we've seen with the program.
 16 BY MR. SOLOMON:
 17 Q. Can you give me an example of where
 18 Schein has seen that to be the case?
 19 A. Alpha Omega is an example, as I
 20 mentioned earlier. It's one of the first ones
 21 that -- or an early one that we worked with.
 22 It's based on a relationship that others in the
 23 organization had. So we gave it a shot. We
 24 continue to work with them. But I can't say an
 25 Alpha Omega member on average buys anymore from

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1 TIM SULLIVAN
 2 us than a non-Alpha Omega member.
 3 Q. So is Alpha Omega a price-only
 4 buying group?
 5 A. In my opinion, that's the bucket I
 6 would put them in, yes.
 7 Q. Okay. And so is it your
 8 understanding that Alpha Omega cannot drive
 9 compliance among its members?
 10 A. That's the history that we have,
 11 yes.
 12 Q. Has that been problematic for
 13 Schein?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Not problematic. It's
 16 just -- it's just a fact.
 17 BY MR. SOLOMON:
 18 Q. And you have personal knowledge of
 19 the fact that Alpha Omega has not been able to
 20 drive compliance among its members?
 21 A. It's my --
 22 MR. McDONALD: Object to the form.
 23 Go ahead.
 24 THE WITNESS: It's my opinion.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Schein has continued to do business
 4 with Alpha Omega, is that right?
 5 MR. McDONALD: Object to the form,
 6 lack of foundation.
 7 THE WITNESS: That's correct.
 8 BY MR. SOLOMON:
 9 Q. When did Schein first start working
 10 with Alpha Omega, if you know?
 11 A. I don't know. I believe it was
 12 early 2000s.
 13 Q. Okay.
 14 A. It might have been somewhere in the
 15 '90s. I really don't know.
 16 Q. Okay. Has Alpha Omega's ability to
 17 drive compliance among its members changed over
 18 time?
 19 A. Not that I recall.
 20 Q. Okay. Have you ever looked at
 21 numbers relating to Alpha Omega and the amount
 22 of business they do with Schein?
 23 A. I have, but it's been a number of
 24 years.
 25 Q. When was the last time you looked?

1 TIM SULLIVAN
 2 A. Probable back early before 2010.
 3 Q. And is Alpha Omega a customer of HSD
 4 or special markets?
 5 A. That's a good question. I believe
 6 it's in special markets. But we -- again, how
 7 we're structured, the agreement may be within
 8 special markets. But we work with every single
 9 customer, anyone in special markets, Henry
 10 Schein Dental Service.
 11 So it's the consumables that runs
 12 through the special markets' P&L, if you would.
 13 All the equipment, the service, all the other
 14 value-added services is what my team in HSD is
 15 responsible for.
 16 That is part of our -- what's been
 17 our historic inherent conflict, if Hal is going
 18 to make a deal with a group, but there's
 19 commitments on our behalf. Sometimes we're
 20 making commitments with groups that may or may
 21 not -- that doesn't impact Hal directly, but
 22 then there's a -- what size do they become?
 23 Should they become special markets? So we have
 24 had our own inherent internal challenges when
 25 it comes to this space.

1 TIM SULLIVAN
 2 join some other distributor, that we would
 3 still be able to retain their business.
 4 BY MR. SOLOMON:
 5 Q. Do you know whether Schein's
 6 relationship with Alpha Omega has brought new
 7 customers to Schein?
 8 MR. McDONALD: Object to the form --
 9 THE WITNESS: I think --
 10 MR. McDONALD: -- lack of
 11 foundation.
 12 THE WITNESS: I think as members
 13 have joined or left Alpha Omega, the ones
 14 that joined give us an opportunity as a
 15 part of the group, but we still have to go
 16 in and earn that business every single day.
 17 BY MR. SOLOMON:
 18 Q. On the whole, though, you're not
 19 sure -- strike that.
 20 On the whole, do you know whether
 21 Schein has gained new customers through its
 22 relationship with Alpha Omega?
 23 MR. McDONALD: Object to the form,
 24 lack of foundation.
 25 THE WITNESS: I can't speak

1 TIM SULLIVAN
 2 Q. Has Schein benefitted from its
 3 relationship with Alpha Omega?
 4 MR. McDONALD: Object to the form,
 5 vague.
 6 THE WITNESS: It really is hard to
 7 say. I can't tell that most of those
 8 members we wouldn't be able to still earn
 9 their business on our own.
 10 BY MR. SOLOMON:
 11 Q. So you can't think of any reason why
 12 Schein would benefit from its relationship with
 13 Alpha Omega?
 14 MR. McDONALD: Object to the form,
 15 misstates his testimony.
 16 THE WITNESS: I'm saying I can't
 17 tell you if -- if we didn't have this
 18 agreement with Alpha Omega as structured
 19 earlier, then I don't -- their structure
 20 may have changed over time. I don't -- I
 21 really don't know. I haven't spent much
 22 time on it.
 23 But I can't tell you that we --
 24 these four people on this side were members
 25 of Alpha Omega and now Alpha Omega left to

1 TIM SULLIVAN
 2 specifically to it, no.
 3 BY MR. SOLOMON:
 4 Q. Because you're -- you're just not
 5 aware one way or the other?
 6 A. Correct.
 7 Q. Okay. Do you believe that Schein
 8 working with buying groups can be beneficial to
 9 Schein's business?
 10 MR. McDONALD: Object to the form,
 11 vague, asked and answered.
 12 THE WITNESS: As I stated earlier,
 13 yes.
 14 BY MR. SOLOMON:
 15 Q. Can you tell me how?
 16 MR. McDONALD: Object to the form,
 17 asked and answered.
 18 THE WITNESS: As I stated earlier,
 19 if joining with a group, anywhere in that
 20 spectrum of how -- a buying group, how we
 21 define, gives us an opportunity to
 22 potentially have -- their members may be
 23 existing customers of ours that we might
 24 only be getting 30, 40, 50 percent of their
 25 business, might increase their purchases

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1 TIM SULLIVAN
 2 through us.
 3 Members that join that don't buy
 4 from us that now want to join or follow the
 5 structure of the membership buying, it's
 6 new opportunities for us.
 7 BY MR. SOLOMON:
 8 Q. So Schein can increase the amount of
 9 business it does with existing customers and
 10 gain new customers, right?
 11 MR. McDONALD: Object to the form,
 12 lack of foundation, vague, hypothetical.
 13 THE WITNESS: Correct.
 14 BY MR. SOLOMON:
 15 Q. Okay. Schein worked with Smile
 16 Source prior to 2012, is that right?
 17 A. That is correct.
 18 Q. And Smile Source originally fell
 19 within special markets, is that right?
 20 A. That's correct.
 21 Q. And then Smile Source was later
 22 transferred to HSD at some point in or around
 23 2011, is that correct?
 24 A. Sounds -- I can't speak to the date,
 25 but at some point it did transfer to HSD, yes.

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1 TIM SULLIVAN
 2 into whether Schein's relationship with Smile
 3 Source was a beneficial one prior to 2012?
 4 MR. McDONALD: Again, object to the
 5 form. You should define what you mean by
 6 "Schein."
 7 Do you mean Henry Schein the entire
 8 company, Henry Schein HSD, or Henry Schein
 9 special markets?
 10 THE WITNESS: I don't recall
 11 specifically looking into it.
 12 BY MR. SOLOMON:
 13 Q. Okay. Do you know whether Smile
 14 Source brought customers to Schein from
 15 competing distributors?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: So anytime?
 18 We have business with them today.
 19 They're close to 4 or 500 members. At the
 20 time they only had 20 members, I believe,
 21 or 40 members.
 22 BY MR. SOLOMON:
 23 Q. So I'm just referring prior to 2012.
 24 So prior to 2012, do you recall
 25 whether Smile Source brought new customers to

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1 TIM SULLIVAN
 2 Q. When Smile Source was a special
 3 markets customer, it offered special discounts
 4 based on special markets formulary pricing, is
 5 that correct?
 6 MR. McDONALD: Object to the form,
 7 lack of foundation.
 8 THE WITNESS: I don't know what
 9 formulary they were on at the time.
 10 BY MR. SOLOMON:
 11 Q. Okay. Do you recall the level of
 12 discounts that Smile Source members received
 13 when Smile Source was in special markets?
 14 A. I do not.
 15 Q. Okay. Do you -- strike that.
 16 Smile Source was a profitable
 17 customer relationship for Schein prior to 2012,
 18 is that right?
 19 MR. McDONALD: Object to the form,
 20 lack of foundation, vague as to "Schein."
 21 THE WITNESS: I would assume so.
 22 BY MR. SOLOMON:
 23 Q. Do you --
 24 A. I don't know for a fact.
 25 Q. Okay. Do you recall ever looking

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1 TIM SULLIVAN
 2 Schein from competing distributors?
 3 MR. McDONALD: Object to the form,
 4 lack of foundation.
 5 THE WITNESS: I believe there are
 6 examples of members or customers who joined
 7 the Smile Source group that then started
 8 purchasing through the Smile Source
 9 arrangement via Henry Schein in our special
 10 markets group.
 11 BY MR. SOLOMON:
 12 Q. So they shifted their purchases from
 13 other distributors to Henry Schein?
 14 A. That's my understanding.
 15 Q. Okay. And prior to 2012, Smile
 16 Source caused existing customers to increase
 17 their purchases through Schein, is that right?
 18 MR. McDONALD: Object to the form,
 19 lack of foundation.
 20 THE WITNESS: I'd really have to
 21 take a look at it again. Like I said, I
 22 don't recall specifically what the details
 23 back six years ago.
 24 BY MR. SOLOMON:
 25 Q. Do you recall whether Schein's

<p style="text-align: right;">Page 110</p> <p>1 TIM SULLIVAN 2 pre-2012 relationship with Smile Source 3 involved volume commitments? 4 MR. McDONALD: Object to the form, 5 lack of foundation. 6 THE WITNESS: I don't recall. 7 (Exhibit CX2454 was marked for 8 identification.) 9 BY MR. SOLOMON: 10 Q. Mr. Sullivan, I'm handing you a 11 document that's been pre-marked as CX2454. 12 Please look this over and let me know when 13 you've had a chance to review it. 14 (Witness viewed said document.) 15 MR. McDONALD: I don't care if this 16 is on the record. Are you giving her a 17 copy, too? 18 MR. SOLOMON: I will give her a 19 copy. I thought I had, but -- 20 MS. FINCHER: Shouldn't she just 21 have -- 22 MR. McDONALD: Well, he's got a pen 23 in his hand. 24 THE WITNESS: I'm not -- 25 MR. McDONALD: That is why I'm</p>	<p style="text-align: right;">Page 111</p> <p>1 TIM SULLIVAN 2 asking. And so if that's going to be it, 3 great, but I'm going to take the pen out of 4 his hand so he doesn't write on it. 5 MR. SOLOMON: Yeah. 6 THE WITNESS: I don't write on it. 7 I use it to (indicating). But I can... 8 MR. SOLOMON: Well, I had made just 9 enough copies so that we have one for the 10 court reporter, so I might need to ask 11 someone to hand me a copy. 12 THE WITNESS: I won't use it. 13 MR. McDONALD: Just don't use it. 14 MR. SOLOMON: Okay. 15 THE WITNESS: Okay. I've read it. 16 BY MR. SOLOMON: 17 Q. You've had a chance to review this? 18 A. I have. 19 Q. Okay. What is CX2454? 20 A. I don't see that. Where is that? 21 Q. Oh, I'm sorry. If you look at the 22 bottom right-hand corner of this document, 23 there is a CX number. 24 Do you see that? 25 A. I do.</p>
<p style="text-align: right;">Page 112</p> <p>1 TIM SULLIVAN 2 Q. Okay. We're going to be referring 3 to documents today by CX and then a number just 4 for purposes of identifying documents in the 5 deposition. 6 A. Okay. 7 Q. And this one is CX2454, and then it 8 has a -001 through 006. 9 A. Okay. 10 Q. So what is CX2454? 11 A. I'm sorry. I thought you were 12 asking me what does that number mean. You're 13 asking what is the document? 14 Q. Right, I'm referring to the 15 document. I'm calling -- I'm calling the 16 document -- 17 A. I'm like I know it's your number. 18 Q. Right. What is CX2454? 19 A. This looks like a message from John 20 Chatham, who is our VP of sales at this time, 21 sent out to Jason Krause and Jeff Hand, because 22 I think they're responsible for the business 23 in -- one in Colorado and one in Alabama at the 24 time, informing them of new customers that have 25 just joined Smile Source and for them to follow</p>	<p style="text-align: right;">Page 113</p> <p>1 TIM SULLIVAN 2 up with these customers and make sure that we 3 show them what Henry Schein is all about. 4 Q. And your e-mail address is there in 5 the cc line, is that right? 6 A. That's correct. 7 Q. You received this e-mail? 8 A. Yes. 9 Q. And did you receive this as part of 10 your job at Schein? 11 A. I don't define it as part of my job. 12 Yes, I receive this as my responsibility at 13 Henry Schein. 14 Q. And do you have personal knowledge 15 of the contents of this e-mail? 16 MR. McDONALD: Object to the form, 17 calls for a legal conclusion. 18 THE WITNESS: I'm aware of the 19 details in here, yes. 20 BY MR. SOLOMON: 21 Q. And do you recall whether this 22 e-mail was written close in time to Smile 23 Source being transferred from special markets 24 to HSD? 25 A. It appears to be in that time frame.</p>

<p style="text-align: right;">Page 114</p> <p>1 TIM SULLIVAN</p> <p>2 Q. And do you believe this to be a true</p> <p>3 and accurate representation of the e-mail</p> <p>4 correspondence represented here?</p> <p>5 MR. McDONALD: Object to the form.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. SOLOMON:</p> <p>8 Q. Okay. And Henry Schein keeps</p> <p>9 documents such as CX2454 in the ordinary course</p> <p>10 of its business, is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So I'd like to turn to the</p> <p>13 contents of this e-mail, Mr. Sullivan.</p> <p>14 Who's John Chatham?</p> <p>15 A. At this time, he was our vice</p> <p>16 president of either sales or sales development.</p> <p>17 Q. Does he still work for Schein?</p> <p>18 A. He does not. He retired last --</p> <p>19 last year.</p> <p>20 Q. Did you report to Mr. Chatham?</p> <p>21 A. John reported to me.</p> <p>22 Q. And this e-mail relates to Smile</p> <p>23 Source moving from special markets to HSD,</p> <p>24 right?</p> <p>25 A. That's not what this e-mail refers</p>	<p style="text-align: right;">Page 115</p> <p>1 TIM SULLIVAN</p> <p>2 to. This is -- he's talking about we just</p> <p>3 received two accounts, that they have moved</p> <p>4 into the Smile Source formulary. But this is</p> <p>5 not about Smile Source moving to us; it's about</p> <p>6 these two new customers.</p> <p>7 Q. So at this time in January of 2011,</p> <p>8 had Smile Source already been moved from</p> <p>9 special markets to HSD?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 lack of foundation.</p> <p>12 THE WITNESS: I believe so based on</p> <p>13 other -- prior to that, John -- John would</p> <p>14 not have been sending out an e-mail on</p> <p>15 special markets' behalf.</p> <p>16 BY MR. SOLOMON:</p> <p>17 Q. Okay. I'd like to turn your</p> <p>18 attention to the sentence beginning at the end</p> <p>19 of the second line. It says --</p> <p>20 A. Can I -- I'm sorry.</p> <p>21 Q. Yeah.</p> <p>22 A. Can I clarify the last?</p> <p>23 Q. Certainly.</p> <p>24 A. Now I'm reading -- I'm just</p> <p>25 rereading this first line. So, "Guys, we have</p>
<p style="text-align: right;">Page 116</p> <p>1 TIM SULLIVAN</p> <p>2 just received a major account Smile Source from</p> <p>3 our special markets team."</p> <p>4 So I don't know if this is before it</p> <p>5 shifted over or not. There may have been a</p> <p>6 period of time that we were working with our</p> <p>7 special markets team. Even though it was still</p> <p>8 in special markets, it was still up to our</p> <p>9 local team to welcome those customers into the</p> <p>10 fold of Henry Schein.</p> <p>11 So I just want to clarify. I don't</p> <p>12 know if it's important or not whether it had</p> <p>13 shifted to us by this time or not.</p> <p>14 Q. Okay. Thank you for that</p> <p>15 clarification.</p> <p>16 So you're not sure one way or the</p> <p>17 other at this point in time in January of 2011</p> <p>18 where Smile Sources exactly fell?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So I'd just like to turn your</p> <p>21 attention to the end of the second line.</p> <p>22 Mr. Chatham writes, "They have special pricing</p> <p>23 based on the Special market formulary pricing.</p> <p>24 For all products not in the formulary they</p> <p>25 receive 18% off catalog price except film,</p>	<p style="text-align: right;">Page 117</p> <p>1 TIM SULLIVAN</p> <p>2 anesthetic and alloy which is 5% and small</p> <p>3 equipment which is 10%."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. So is it fair to say that at this</p> <p>7 point in time, Smile Source members were</p> <p>8 receiving pricing based on the special markets</p> <p>9 formulary?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 lack of foundation.</p> <p>12 THE WITNESS: Sounds correct.</p> <p>13 BY MR. SOLOMON:</p> <p>14 Q. Okay. Do you know what discounts</p> <p>15 off catalog Smile Source members were receiving</p> <p>16 based on the special markets formulary?</p> <p>17 MR. McDONALD: Object to the form,</p> <p>18 lack of foundation.</p> <p>19 THE WITNESS: I'm not directly</p> <p>20 aware, no.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Do you have any understanding of</p> <p>23 what discounts are available under these</p> <p>24 special markets formulary at this point in time</p> <p>25 in January of 2011?</p>

1 TIM SULLIVAN
 2 A. I don't recall specifically at this
 3 time, no.
 4 Q. Okay. Is it fair to say that for
 5 all non-formulary products at this point in
 6 time, Smile Source members were receiving
 7 18 percent off catalog pricing from Schein?
 8 MR. McDONALD: Object to the form.
 9 You've mischaracterized the document. You
 10 didn't read the whole sentence, Ronnie.
 11 THE WITNESS: Can you repeat that?
 12 BY MR. SOLOMON:
 13 Q. Sure. Is it fair to say that at
 14 this point in time in January of 2011, Smile
 15 Source members were receiving 18 percent off
 16 catalog pricing except on film, anesthetic and
 17 alloy, as well as small equipment?
 18 A. That's how I read this, yes.
 19 Q. And Mr. Chatham goes on to say,
 20 "Although the accounts are not contractually
 21 bound to purchase from us virtually all smile
 22 Source accounts have transferred their
 23 business. These two accounts are currently
 24 PDCO accounts."
 25 Do you see that?

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. And Mr. Chatham is also
 4 telling you that Smile Source members were not
 5 required to purchase their products through
 6 Schein, is that right?
 7 A. That is correct.
 8 Q. So there was no contractual
 9 provision requiring Smile Source members to
 10 purchase through Schein during the pre-2012
 11 relationship, is that right?
 12 MR. McDONALD: Object to the form.
 13 That's two different questions.
 14 Are you asking him if that's what
 15 the document says, or are you asking him if
 16 he has independent knowledge of that?
 17 THE WITNESS: Could you repeat the
 18 question, please?
 19 BY MR. SOLOMON:
 20 Q. Sure. So there was no contractual
 21 provision requiring Smile Source members to
 22 purchase through Schein during the pre-2012
 23 relationship with Smile Source, is that
 24 correct?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 A. I do.
 3 Q. And PDCO there, that refers to
 4 Patterson?
 5 A. Correct.
 6 Q. Okay. So is it fair to say that
 7 Mr. Chatham is telling you that two accounts
 8 that were from Patterson had switched their
 9 purchases from Patterson to Henry Schein after
 10 joining Smile Source?
 11 MR. LONG: Objection, form,
 12 foundation.
 13 THE WITNESS: It appears that that's
 14 what John is stating here, yes.
 15 BY MR. SOLOMON:
 16 Q. Are you aware of any other instances
 17 in which customers from competing distributors
 18 came to Henry Schein as a result of Schein's
 19 relationship with Smile Source?
 20 MR. McDONALD: Object to the form,
 21 asked and answered, lack of foundation.
 22 THE WITNESS: I believe there were
 23 others, but I don't have specific
 24 knowledge. These two do, based on this
 25 document, refresh my recollection on that.

1 TIM SULLIVAN
 2 lack of foundation.
 3 If you know what the terms of the
 4 contract were, and you're testifying under
 5 oath to tell the truth, then tell him. If
 6 you don't know, then you should tell him
 7 that.
 8 THE WITNESS: I don't know the
 9 specific details of the contract.
 10 BY MR. SOLOMON:
 11 Q. Your understanding, sitting here
 12 today and reading this e-mail, though, is that
 13 Smile Source members were not bound to purchase
 14 through Schein; am I correct in understanding
 15 that?
 16 MR. McDONALD: Object to the form.
 17 If you're asking him if that's what
 18 the document says, then I'll stipulate to
 19 that, that's what the document says and
 20 he's already said that.
 21 But, again, if you're asking him if
 22 that's -- if he has personal knowledge of
 23 the terms of the contract, then that's a
 24 different question.
 25 THE WITNESS: That is how I read

<p style="text-align: right;">Page 122</p> <p>1 TIM SULLIVAN 2 John's view of this relationship. 3 BY MR. SOLOMON: 4 Q. Do you have any reason to doubt that 5 Smile Source members were not required to 6 purchase through Henry Schein? 7 A. I'd have to see the details of the 8 contract. Based on John, I would believe that 9 that was the case because of what John is 10 writing here, but we'd have to -- I'd have to 11 confirm that. 12 Q. John is also telling you that even 13 though there are no contractual -- strike that. 14 John is telling you that even though 15 there are no contractual requirements that 16 Smile Source members have to purchase through 17 Schein, all of the Smile Source accounts have 18 transferred their business over to Schein, is 19 that right? 20 MR. McDONALD: Object to the form. 21 If you're -- are you asking him that's what 22 the document says, or are you asking him if 23 that's a true statement? 24 THE WITNESS: That's how I read 25 this, what John's opinion is here, yes.</p>	<p style="text-align: right;">Page 123</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. In the sentence before the last, 4 Mr. Chatham refers to a sales plan. He says, 5 "The sales plan is P18 + formulary." 6 Do you see that? 7 A. I do. 8 Q. Are you familiar with that sales 9 plan? 10 A. Generally speaking, yes. 11 Q. And what is your understanding of 12 what the P18 + formulary sales plan is? 13 A. It highlights the -- his earlier 14 description. So they're on a formulary. 15 Before any products that are not on that 16 formulary, they're getting 18 percent off. The 17 P18 refers to that 18 percent except for film, 18 anesthetic, alloy, and small equipment. 19 Q. Okay. On average, do you know 20 whether the formulary discounts are higher than 21 the 18 percent discount? 22 A. Again, I don't know what the special 23 markets contract was at the time. 24 Q. Is this plan, P18 + formulary, still 25 in existence, to your knowledge?</p>
<p style="text-align: right;">Page 124</p> <p>1 TIM SULLIVAN 2 A. I believe so, but I don't know 3 for -- I'd have to confirm. 4 Q. Okay. Do you know whether Smile 5 Source currently receives discounting in 6 accordance with the P18 + formulary plan? 7 MR. McDONALD: Object to the form. 8 THE WITNESS: I know they're on a 9 formulary plus something for items not on a 10 formulary, but I don't know specifically 11 what it is. 12 BY MR. SOLOMON: 13 Q. Do you know what discounts Smile 14 Source members currently receive from Schein 15 under the terms of the current agreement 16 between Schein and Smile Source? 17 MR. McDONALD: Object -- 18 THE WITNESS: So that's the one -- 19 MR. McDONALD: Object to the form. 20 Go ahead. 21 THE WITNESS: That's the one I 22 thought I just answered. I don't know what 23 the current one is. I believe it's a -- 24 there's a -- it's a very similar format. 25 There's a formulary plus discounts for</p>	<p style="text-align: right;">Page 125</p> <p>1 TIM SULLIVAN 2 things not on formulary. 3 BY MR. SOLOMON: 4 Q. Okay. So you just -- sitting here 5 today, you're not sure what those discounts 6 are? 7 A. Correct. 8 Q. You can put that document aside. 9 (Exhibit CX2113 was marked for 10 identification.) 11 BY MR. SOLOMON: 12 Q. Mr. Sullivan, I am handing you a 13 document that's been pre-marked CX2113. Please 14 look this over and let me know when you've had 15 a chance to review. 16 A. Okay. 17 (Witness viewed said document.) 18 THE WITNESS: Okay. 19 BY MR. SOLOMON: 20 Q. What is CX2113? 21 A. It is an e-mail that I sent to Jim 22 Breslawski, Hal Muller, with a copy to Lynne 23 and Chris regarding Smile Source. 24 Q. Did you write CX2113 as part of your 25 job?</p>

1 TIM SULLIVAN
 2 A. Yes.
 3 Q. And do you have personal knowledge
 4 of the contents of CX2113?
 5 A. I'm not sure what you -- I mean, I
 6 wrote it.
 7 Q. So you have personal knowledge of
 8 what you wrote here?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Yes.
 11 BY MR. SOLOMON:
 12 Q. Okay. And did you write this e-mail
 13 close in time to the meeting that you referred
 14 to with Hal Muller in this e-mail?
 15 A. Well, it says "I met this morning,"
 16 so yes.
 17 Q. And do you believe CX2113 to be a
 18 true and accurate copy of this e-mail
 19 correspondence?
 20 A. Yes.
 21 Q. Okay. And does Schein keep CX2113
 22 in the ordinary course of its business?
 23 A. Yes.
 24 Q. Okay. Mr. Sullivan, this CX2113
 25 relates to a meeting you had with Hal Muller

1 TIM SULLIVAN
 2 concerning Smile Source, right?
 3 A. Yes.
 4 Q. Do you recall this meeting?
 5 A. Not the meeting specifically, but it
 6 does refresh my memory on a meeting that he and
 7 I had about it, yes.
 8 Q. And what do you recall about the
 9 meeting?
 10 A. I summarized it here.
 11 Q. So I'd just like to direct your
 12 attention to the third paragraph down. You
 13 say, "neither of us support concept of buying
 14 groups."
 15 Do you see that?
 16 A. I do.
 17 Q. So in September of 2010, you did not
 18 support the concept of buying groups, is that
 19 correct?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: So thank you now for
 22 getting specific to the phrases you were
 23 quoting me on earlier. Because now
 24 specifically as I'm referring to Smile
 25 Source and the concept of a price-only type

1 TIM SULLIVAN
 2 buying group without some of the additional
 3 benefits, that's what I'm referring to. So
 4 it's not clear in this document, but that
 5 is -- that is the intent when I write that.
 6 BY MR. SOLOMON:
 7 Q. So you're saying that you did not
 8 support the concept of price-only buying
 9 groups?
 10 A. The Smile Source one in particular
 11 at that time.
 12 Q. Okay. And what did you mean by
 13 that?
 14 A. Do you want me to repeat what I just
 15 said?
 16 Q. What did you mean that you didn't
 17 support the concept of buying groups?
 18 MR. McDONALD: Object to the form,
 19 asked and answered.
 20 THE WITNESS: The subject of Smile
 21 Source, I'm specifically talking about
 22 Smile Source, neither of us supports. Hal
 23 may have been more supportive. I was not
 24 supportive of the Smile Source model at
 25 that time.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And so at this time, Smile Source
 4 was a price-only buying group, is that right?
 5 A. That was my opinion of it. As you
 6 can see down below, I'm inclined to allow this,
 7 although it's not up to me; it's not my
 8 decision to make. It's not just solely up to
 9 me, but that was my opinion of Smile Source at
 10 that time.
 11 Q. And Hal Muller felt the same way,
 12 based on your statement here, "neither of us
 13 support concept of buying groups"?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Yeah, I can't speak to
 16 exactly how Hal was feeling at that time
 17 about buying groups, but I believe we were
 18 both struggling with how Smile Source was
 19 structured at the time.
 20 BY MR. SOLOMON:
 21 Q. Did you also not support the concept
 22 of other price-only buying groups other than
 23 Smile Source at this time?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: Well, I testified

<p style="text-align: right;">Page 130</p> <p>1 TIM SULLIVAN</p> <p>2 earlier how I feel about those who</p> <p>3 are -- we will work with some. Here's an</p> <p>4 example how I viewed it. It's not solely</p> <p>5 my decision. But if someone wants to give</p> <p>6 it a shot to make a compelling argument to</p> <p>7 do it, we'll do it. This is an example of</p> <p>8 that.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. But as far as you're concerned at</p> <p>11 this point in time, you did not support that?</p> <p>12 MR. McDONALD: Object to the form,</p> <p>13 misstates his testimony, asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: I don't know how</p> <p>16 else to -- I don't know -- I don't know how</p> <p>17 to answer it any differently, that it's not</p> <p>18 something I would support. I would not --</p> <p>19 I would -- my opinion would be that I don't</p> <p>20 think we should, but it doesn't mean we</p> <p>21 won't. I'm not the be-all end-all</p> <p>22 decision-maker on that.</p> <p>23 BY MR. SOLOMON:</p> <p>24 Q. You're providing your input here to</p> <p>25 Mr. Muller at this point in time because you</p>	<p style="text-align: right;">Page 131</p> <p>1 TIM SULLIVAN</p> <p>2 and Mr. Muller were determining how to move</p> <p>3 forward with Smile Source, is that right?</p> <p>4 MR. McDONALD: Object to the form,</p> <p>5 mischaracterizes the document.</p> <p>6 You might want to look at your</p> <p>7 question.</p> <p>8 THE WITNESS: Yeah, I don't see</p> <p>9 anything in here talking about moving or</p> <p>10 how to do anything with the account.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. You and Mr. Muller reached an</p> <p>13 agreement with respect to Smile Source,</p> <p>14 correct?</p> <p>15 You say in the second sentence, "I</p> <p>16 think we agree on the following. Hal please</p> <p>17 confirm."</p> <p>18 A. Yeah, so -- yeah, I think that's</p> <p>19 true. I think we agree on the following.</p> <p>20 Q. Okay.</p> <p>21 A. So I can't speak to everything</p> <p>22 regarding Smile Source.</p> <p>23 Q. Turning to the next sentence, you</p> <p>24 write, "Whereas it may benefit SM to some</p> <p>25 extent, the risk to overall HSI (due to having</p>
<p style="text-align: right;">Page 132</p> <p>1 TIM SULLIVAN</p> <p>2 40 % share in the market) for margin erosion,</p> <p>3 image, as well as...competitors then following</p> <p>4 suit and huge price war breaks out."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. So is it fair to say that you</p> <p>8 believe that working with buying groups at this</p> <p>9 time could lead to margin erosion for Schein?</p> <p>10 MR. McDONALD: Object to the form,</p> <p>11 mischaracterizes the document and his</p> <p>12 testimony.</p> <p>13 THE WITNESS: So thank you for</p> <p>14 clarifying your earlier paraphrases of mine</p> <p>15 because this now -- clearly I'm referring</p> <p>16 to Smile Source in this case.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. So you're saying that working with</p> <p>19 Smile Source could lead to margin erosion for</p> <p>20 Henry Schein?</p> <p>21 A. It could.</p> <p>22 Q. And you were concerned about that</p> <p>23 specifically in this case here?</p> <p>24 MR. McDONALD: Object to the form.</p> <p>25 THE WITNESS: It could.</p>	<p style="text-align: right;">Page 133</p> <p>1 TIM SULLIVAN</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. When you say "it could," what do you</p> <p>4 mean?</p> <p>5 A. You asked if it could lead to margin</p> <p>6 erosion. I'm saying it could.</p> <p>7 Q. And you were concerned about that?</p> <p>8 MR. McDONALD: Object to the form.</p> <p>9 THE WITNESS: I didn't know if the</p> <p>10 benefits of expanding -- like other</p> <p>11 opportunities I talked about where buying</p> <p>12 groups could bring to us, I don't know if</p> <p>13 the benefits would outweigh it.</p> <p>14 There's pros and cons to doing</p> <p>15 business with any customer. This is on the</p> <p>16 list of the cons.</p> <p>17 BY MR. SOLOMON:</p> <p>18 Q. Why did you think working with Smile</p> <p>19 Source could lead to margin erosion?</p> <p>20 A. Well, as I stated here, as a way of</p> <p>21 having a 40 percent share in the market at the</p> <p>22 time, at least that's a rough estimate in my</p> <p>23 mind, it could have led to if we didn't get all</p> <p>24 the other benefits. We talked about this</p> <p>25 earlier. If we could grow existing business,</p>

1 TIM SULLIVAN
2 good. If we could get new accounts, good. But
3 if the only thing it did was to provide a
4 discounting on our existing business, that's
5 the not so good.

6 Q. Did you think that working with
7 other price-only buying groups could also lead
8 to margin erosion for Schein?

9 A. I don't know how to answer it any
10 differently than I just did. It could lead to
11 opportunities; it could lead to margin erosion.

12 Q. You also mention after margin
13 erosion "image."

14 Do you see that?

15 A. I do.

16 Q. You believe that buying groups
17 working with Schein could hurt Schein's image,
18 is that right?

19 A. In this context in talking about
20 Smile Source, and I believe our Henry Schein
21 brand stands for overall value, price is a
22 component of that. We have been, always have
23 been and always will be competitively priced.
24 That's a component of our overall value.

25 We want the Henry Schein brand to

1 TIM SULLIVAN
2 stand for more than just that, to fit with our
3 mission statement to focus on practice care so
4 our customers can focus on patient care.
5 That's the image I want.

6 And if there are groups out there
7 that are known to be, the only thing they're
8 doing is price and not bringing any other
9 value, that's not necessarily I want our brand
10 tied with that brand. That's what I mean
11 relative to image.

12 Q. You also refer to a price war. Did
13 you see that? Do you see that?

14 A. I do.

15 Q. And you're referring to a price war
16 between Schein and its competitors, correct?

17 A. I see that.

18 Q. Is it fair to say you believe that
19 Schein working with Smile Source could lead to
20 a price war between Schein and its competitors?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: It's a poor choice of
23 words, I would say in that case, but it
24 was -- again, I think there's opportunities
25 within working with these groups and there

1 TIM SULLIVAN
2 also -- there's risk with it.
3 As I said, in every segment, we are
4 competing with our competitors in every
5 segment of the business. In this instance,
6 I'm talking about Smile Source in
7 particular.

8 BY MR. SOLOMON:

9 Q. So you're saying that working with
10 Smile Source in particular would have led to a
11 price war between Schein and its competitors?

12 MR. McDONALD: Object to the form,
13 mischaracterizes the document and his
14 testimony.

15 THE WITNESS: That's not what I'm
16 stating.

17 BY MR. SOLOMON:

18 Q. What are you stating?

19 A. The risk to overall Henry Schein is
20 possible margin erosion, image, and other
21 competitors in -- competing more on price
22 within that space.

23 Q. So by price war, you're referring to
24 competing on price?

25 A. As a standalone. Again, I believe

1 TIM SULLIVAN
2 our brand stands for more than just price, and
3 I don't want to shift that brand and that image
4 to being only price.

5 Q. And you were concerned about
6 competing on price with your competitors as it
7 related to Smile Source, right?

8 MR. McDONALD: Object to the form,
9 mischaracterizes and misstates the
10 testimony.

11 THE WITNESS: We compete on price in
12 every segment of the market. I was
13 highlighting it in this particular case
14 because it was a message to -- it was an
15 e-mail to Jimmy about Smile Source.

16 BY MR. SOLOMON:

17 Q. Okay. Why were you concerned about
18 a price war?

19 MR. McDONALD: Object to the form,
20 mischaracterizes the document and the
21 testimony he just gave you.

22 THE WITNESS: I wasn't concerned.
23 It's on the list of potential cons.

24 BY MR. SOLOMON:

25 Q. Why was it on the list of potential

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1 TIM SULLIVAN
 2 cons?
 3 A. I don't know how else to answer
 4 that, Ronnie.
 5 Q. I just want your opinion.
 6 MR. McDONALD: He just gave it to
 7 you about two minutes ago. I really would
 8 like you to actually listen to what he's
 9 telling you. Go ahead and tell him again.
 10 THE WITNESS: Could you read back
 11 what I stated last time?
 12 (The reporter read the record as requested
 13 as follows:
 14 "THE WITNESS: We compete on price in every
 15 segment of the market. I was highlighting
 16 it in this particular case because it was a
 17 message to -- it was an e-mail to Jimmy
 18 about Smile Source.
 19 "BY MR. SOLOMON: Q Okay. Why were you
 20 concerned about a price war?"
 21 "MR. McDONALD: Objection.
 22 "THE WITNESS: I wasn't concerned. It's on
 23 the list of potential cons.
 24 "BY MR. SOLOMON: Q Why was it on the
 25 list of potential cons?

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1 TIM SULLIVAN
 2 "A I don't know how else to answer that,
 3 Ronnie.")
 4 THE WITNESS: So I stand by that
 5 same response.
 6 BY MR. SOLOMON:
 7 Q. How would working with Smile Source
 8 lead to a price war?
 9 MR. McDONALD: Object to the form,
 10 mischaracterizes the document --
 11 THE WITNESS: I'm not saying --
 12 MR. McDONALD: -- and his testimony.
 13 THE WITNESS: I'm not saying that it
 14 would, in fact, lead to that. I'm just
 15 saying it was a concern of mine at the
 16 time, but it's not -- it's not a major
 17 concern. It was the last thing that was
 18 listed in the -- because I do believe -- as
 19 I said, I'm inclined to -- hey, let's go
 20 for it; there could be some real
 21 opportunity here, but you have to weigh
 22 pros and cons of any opportunity that
 23 presents itself.
 24 BY MR. SOLOMON:
 25 Q. So what was the concern specifically

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1 TIM SULLIVAN
 2 as it related to a price war by working with
 3 Smile Source?
 4 MR. McDONALD: Object to the form,
 5 asked and answered.
 6 THE WITNESS: As I said, poor choice
 7 of words. Shouldn't have referred to it as
 8 that.
 9 BY MR. SOLOMON:
 10 Q. Why not? What do you mean by that?
 11 A. Because I don't know how to define
 12 it. It was just poor choice of words.
 13 Q. You would use another -- strike
 14 that.
 15 You would have used another term?
 16 A. I don't know how else to answer you,
 17 Ronnie.
 18 Q. Okay. Have you used the term "price
 19 war" in other contexts?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Not that I recall.
 22 But if you want to show me something where
 23 else I referred to it, I'd be happy to talk
 24 about it.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. I'm just asking you generally.
 4 A. If you have something that I can
 5 speak to or -- again, I used it in this
 6 particular context. I don't know that I've
 7 used it in any other context that I'd like
 8 to -- I don't recall. But if you can refresh
 9 my memory, that would be helpful.
 10 Q. Okay. Moving on to the next
 11 sentence, you write, "neither of us want to
 12 lose SS as an account. They are \$1 million and
 13 growing."
 14 "SS" there refers to Smile Source,
 15 correct?
 16 A. Correct.
 17 Q. So at this point in time, you did
 18 not want to lose Smile Source as an account of
 19 Schein, is that right?
 20 A. Correct.
 21 Q. And you wanted to keep the
 22 \$1 million in business that Smile Source was
 23 doing with Schein at this point in time, right?
 24 A. Correct.
 25 Q. And you also saw value in the fact

1 TIM SULLIVAN
 2 that Smile Source was \$1 million and that it
 3 was a growing account, correct?
 4 A. Correct.
 5 Q. Turning to the next paragraph, "Hal
 6 is still" -- you write, "Hal is still gathering
 7 details and having discussions with SS corp
 8 about how to manage expectations and risks to
 9 our core business."
 10 What were you referring to by "risks
 11 to our core business"?
 12 A. So at the time, we were having
 13 challenges in the field when -- again, which is
 14 one of the reasons I didn't -- I wasn't a fan
 15 of Smile Source's structure at the time -- they
 16 were to go out to recruit new members to join,
 17 customers of ours already saying they had
 18 special pricing from Henry Schein through the
 19 special markets, through this arrangement, and
 20 it causes a challenge with our field source.
 21 So that was the risk of, if the only
 22 thing they did is provide price and so the
 23 customer switched, but we didn't add any other
 24 value in help grow the business beyond what
 25 they were already doing, they would only lead

1 TIM SULLIVAN
 2 Q. Why?
 3 A. Because, as I talked about with the
 4 opportunity with buying groups, if they're
 5 going to continue to add new members and if
 6 they were non-HSD customers, that would be a
 7 good thing. If we could sign up existing
 8 customers that we might only have 30 percent of
 9 their business but now move it up to 80 percent
 10 of their business, that would be a good thing.
 11 So, yeah, if we can create that type
 12 of win-win atmosphere, that would be a good
 13 thing for both Smile Source and for Henry
 14 Schein.
 15 Q. Turning to the last paragraph, you
 16 write, "I am inclined to 'allow' this account
 17 to join (not that it's up to me/us) and see
 18 what happens. Afterall, Scott and HSD (per
 19 Hal) only get about 30% of this accounts
 20 business today. So, if theory works we would
 21 get 100% at lower margins, but all parties win
 22 in overall GP \$'s."
 23 Do you see that?
 24 A. Yes.
 25 Q. What does "GP \$'s" refer to?

1 TIM SULLIVAN
 2 to the margin erosion aspect I was talking
 3 about before.
 4 Q. So you're referring to margin
 5 erosion here?
 6 MR. McDONALD: Object to the form,
 7 mischaracterizes his testimony.
 8 THE WITNESS: If the only thing they
 9 did was transfer the existing volume on to
 10 this format -- and, again, sometimes the
 11 customer might have been on a better
 12 pricing program than the individual field
 13 sales consultant had him on. Not in all
 14 cases was it a lower price.
 15 BY MR. SOLOMON:
 16 Q. You go on to say, "This is risky as
 17 they want to push forward, but we need time
 18 with them to create a win-win plan going
 19 forward."
 20 Did I read that right?
 21 A. You did.
 22 Q. So you were in favor of coming up
 23 with a win-win plan to move forward with Smile
 24 Source at this point in time?
 25 A. Correct.

1 TIM SULLIVAN
 2 A. Gross profit dollars.
 3 Q. Okay. Does this paragraph here
 4 refer to a specific customer account?
 5 A. Yes, it does.
 6 Q. A specific dentist?
 7 A. I believe so, yes.
 8 Q. Do you recall who the dentist was?
 9 A. I do not.
 10 So Scott is our field sales
 11 consultant. He's the one who sent in an
 12 example prior to this exchange that led to this
 13 meeting about a customer that was contemplating
 14 joining or not.
 15 Q. Okay. So you're recognizing in this
 16 paragraph that Schein was not getting all of
 17 this account's business at this point in time,
 18 correct?
 19 A. Correct.
 20 Q. And your theory was that working
 21 with Smile Source could bring Schein more of
 22 this account's business but at lower margins?
 23 A. Correct.
 24 Q. And you were in favor of that?
 25 A. Correct.

1 TIM SULLIVAN

2 Q. And you thought that would be a good
3 arrangement for Schein?

4 A. In this instant, yes.

5 Q. And that would be because Schein
6 would make up for lower margins by the
7 incremental sales volume with respect to this
8 account, is that right?

9 MR. McDONALD: Object to the form.

10 THE WITNESS: Well, as stated at the
11 end, overall we'd have more GP dollars to
12 work with.

13 BY MR. SOLOMON:

14 Q. So am I correct then what I just
15 stated, that you're stating that the -- strike
16 that.

17 So you're saying that the overall
18 gross profit dollars would be the same or
19 higher?

20 A. Higher.

21 Q. And how would they end up being
22 higher?

23 A. Okay. So if we have 30 percent of
24 their business today, let's say they buy
25 \$50,000 in supplies, 30 percent of that is

1 TIM SULLIVAN

2 \$15,000.

3 So if we now got \$50,000 or \$40,000
4 of their business, even if it was at a lower
5 margin percentage because they could earn a
6 discount, the GP dollars are going to be much
7 greater. Win for the customer, win for Henry
8 Schein, win for Smile Source.

9 Does that make sense?

10 Q. You could put that document aside.

11 A. Okay.

12 MR. SOLOMON: So we have -- I'm
13 being told we have just a few minutes left.
14 The videographer has to change the tape.
15 So why don't we just go off the record and
16 let him do that.

17 THE VIDEOGRAPHER: This is the end
18 of DVD No. 1. The time is 11:10 a.m. We
19 are off the record.

20 (Whereupon, a recess was had
21 from 11:10 a.m. to 11:26 a.m.)

22 THE VIDEOGRAPHER: This is the
23 beginning of DVD No. 2. The time is
24 11:26 a.m. We are back on the record.

25 ///

1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. Welcome back, Mr. Sullivan.

4 A. Thank you.

5 (Exhibit CX2453 was marked for
6 identification.)

7 BY MR. SOLOMON:

8 Q. I'd like to hand you another
9 document. This is a document that's been
10 pre-marked as 2453.

11 Please take a look at it and let me
12 know when you've had a chance to review.

13 (Witness viewed said document.)

14 THE WITNESS: Okay.

15 BY MR. SOLOMON:

16 Q. Mr. Sullivan, what is CX2453?

17 A. It's an e-mail exchange between Hal,
18 myself, Jimmy, and Lynne regarding Smile
19 Source.

20 Q. And you received this e-mail as part
21 of your job at Henry Schein?

22 A. Correct.

23 Q. And you responded to portions of
24 this e-mail as part of your job at Henry
25 Schein?

1 TIM SULLIVAN

2 A. Correct.

3 Q. And do you have personal knowledge
4 of what's written in this e-mail?

5 MR. McDONALD: Object to the form.

6 Are you talking about his e-mails or
7 the whole thing?

8 MR. SOLOMON: I'm referring to
9 everything that's in this exhibit?

10 MR. McDONALD: Okay. Do you
11 understand his question, if you have
12 personal knowledge of every single word or
13 phrase of this document?

14 THE WITNESS: Not of every single
15 word or phrase in this document, no.

16 BY MR. SOLOMON:

17 Q. Do you have personal knowledge of
18 what you wrote in the e-mail?

19 A. Yes.

20 Q. Okay. And did you draft this e-mail
21 around the time that you were discussing Smile
22 Source with Mr. Muller and Mr. Breslawski and
23 Lynne McHugh in this e-mail?

24 A. Yes.

25 Q. Okay. And is this a true and

<p style="text-align: right;">Page 150</p> <p>1 TIM SULLIVAN 2 accurate representation of this e-mail 3 correspondence, CX2453? 4 MR. McDONALD: Object to the form. 5 THE WITNESS: I believe so. 6 BY MR. SOLOMON: 7 Q. Okay. And did Schein keep documents 8 such as CX 2453 in the ordinary course of its 9 business? 10 A. Yes. 11 Q. I'd like to turn your attention, 12 Mr. Sullivan, to the last page of this e-mail 13 chain, and I'm referring to an e-mail from 14 Mr. Muller to you on September 20th, 2010 at 15 11:48 a.m. 16 Do you see that? 17 A. I do. 18 Q. Mr. Muller writes, "Tim- We have 19 decided to drop this group." 20 So Mr. Muller is telling you in 21 September of 2010 that special markets was 22 planning to drop Smile Source as a customer, is 23 that right? 24 A. That's how I read this, yes. 25 Q. Okay. And this is in response to</p>	<p style="text-align: right;">Page 151</p> <p>1 TIM SULLIVAN 2 some outstanding concerns about Smile Source 3 that you and Mr. Muller were discussing around 4 this time, is that right? 5 MR. McDONALD: Object to the form. 6 THE WITNESS: I'm not exactly sure 7 why. My initial response to him was, Hal, 8 why do you have to drop this group? 9 BY MR. SOLOMON: 10 Q. So you're telling Mr. Muller that 11 you didn't want to drop Smile Source as an 12 account, correct? 13 A. I didn't understand why he was 14 suggesting that. 15 Q. Okay. Were you in favor of keeping 16 Smile Source as a customer at this point in 17 time? 18 A. I'd be in favor of keeping any 19 customer that we could provide mutual value 20 for. 21 Q. So you were not in agreement with 22 Mr. Muller at this point in time that Schein 23 should drop Smile Source? 24 A. Well, I think if you read from my 25 e-mail, I'm asking why we have to drop there --</p>
<p style="text-align: right;">Page 152</p> <p>1 TIM SULLIVAN 2 drop them, is there something else driving this 3 decision other than the natural conflict, which 4 we have been talking about or referred to 5 earlier. 6 I wasn't suggesting that we had to 7 drop them. I was only suggesting how price 8 fits into the whole value proposition. 9 So, yeah, I have more questions than 10 I have answers at this point. 11 Q. So you're questioning Mr. Muller's 12 decision to drop Smile Source? 13 A. Correct. 14 Q. Okay. Fair to say you were not on 15 board with that decision at this point in time? 16 A. I just had questions about it. It 17 wasn't my decision to make, right? It was a 18 special markets account. 19 Q. Were you in favor of keeping Smile 20 Source as a customer at this point in time? 21 A. I thought I just answered that 22 question saying I'm in favor of keeping any 23 customer that we could provide mutual value 24 for. 25 Q. And my question is specific to Smile</p>	<p style="text-align: right;">Page 153</p> <p>1 TIM SULLIVAN 2 Source. 3 At this point in time, were you 4 interested in keeping Smile Source as a 5 customer of Schein? 6 MR. McDONALD: Object to the form, 7 asked and answered. 8 THE WITNESS: Based on how -- again, 9 I don't know -- remember exactly what I was 10 thinking eight years ago at this time. But 11 based on what I'm reading here, I'm 12 questioning as to do we need to drop them 13 or not or why do you want to drop them. 14 BY MR. SOLOMON: 15 Q. Okay. 16 A. So I'd be in favor of keeping them 17 if we could find the right way, or if we need 18 to drop them, that's what we would do. 19 MR. McDONALD: Tim, raise up your 20 microphone a little bit. 21 BY MR. SOLOMON: 22 Q. So going back to Mr. Muller's 23 original e-mail to you, he writes, and I'm 24 referring to the second paragraph here, "I 25 would not be surprised if they take this</p>

1 TIM SULLIVAN
 2 business to Patterson or Benco and say 'we have
 3 \$1M worth of Schein business if you want it.'"
 4 Do you see that?
 5 A. I do.
 6 Q. So Mr. Muller is telling you that
 7 there's a risk that Smile Source could take its
 8 business to Patterson or Benco, correct?
 9 MR. McDONALD: Object to the form.
 10 The document speaks for itself.
 11 THE WITNESS: That's how I read it.
 12 BY MR. SOLOMON:
 13 Q. And he's telling you that Schein
 14 potentially could lose \$1 million worth of
 15 business if it dropped the Smile Source
 16 account, correct?
 17 A. That's how I --
 18 MR. McDONALD: Object. Object to
 19 the form.
 20 Go ahead.
 21 THE WITNESS: That's how I read it,
 22 yes.
 23 BY MR. SOLOMON:
 24 Q. Did you agree with him that Smile
 25 Source could go to Patterson or Benco at this

1 TIM SULLIVAN
 2 point in time if Schein had decided to drop
 3 Smile Source?
 4 MR. McDONALD: Object to the form,
 5 calls for speculation.
 6 THE WITNESS: They can go to any
 7 number of suppliers in the marketplace. He
 8 specifically said Patterson and Benco, but
 9 they could go to any number of them.
 10 BY MR. SOLOMON:
 11 Q. So it was a risk that Smile Source
 12 could take its business to Patterson or Benco?
 13 A. Or --
 14 MR. McDONALD: Object to the form,
 15 asked and answered.
 16 THE WITNESS: Or any other dealer as
 17 well, yes.
 18 BY MR. SOLOMON:
 19 Q. Were you concerned about that?
 20 A. Again, I'll go back to -- I was
 21 asking, why do you have to drop this group? Is
 22 there other things we need to consider? I
 23 mean, I -- I'm sorry. I don't -- I would
 24 answer that the same way I did your earlier
 25 question.

1 TIM SULLIVAN
 2 Q. So one of the factors you considered
 3 in determining whether to drop Smile Source was
 4 the risk they could take their business to
 5 Patterson and Benco?
 6 MR. McDONALD: Object to the form.
 7 I don't know where you get that is
 8 something he considered about dropping
 9 Smile Source. That's nowhere in here about
 10 some decision from Mr. Sullivan to drop
 11 Smile Source. You're mischaracterizing
 12 this document and his testimony.
 13 THE WITNESS: It would be irrelevant
 14 to me where it goes. I don't care where.
 15 If we don't have it, it's somewhere else.
 16 Doesn't matter to me where it's at at that
 17 point.
 18 BY MR. SOLOMON:
 19 Q. So you wouldn't care if Smile Source
 20 took its business to Patterson or Benco?
 21 MR. McDONALD: Object to the form,
 22 mischaracterizes his testimony.
 23 THE WITNESS: Not what I said,
 24 Ronnie. I said if we didn't have it, I
 25 wouldn't care where it was. It's somewhere

1 TIM SULLIVAN
 2 else. It's at a competitor. A competitor
 3 is a competitor.
 4 BY MR. SOLOMON:
 5 Q. Okay. So at this point in time
 6 then, you were concerned about losing Smile
 7 Source to Patterson or Benco if Schein ended
 8 the relationship, is that right?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't know how else
 11 to answer the question that you're trying
 12 to have me say something I'm not.
 13 He's suggesting to drop it. I'm
 14 asking why do we have to drop it. Where it
 15 went, I don't care. If we dropped it, I
 16 don't care where it went.
 17 BY MR. SOLOMON:
 18 Q. Would it be beneficial to Schein if
 19 Smile Source took its business to Patterson or
 20 Benco?
 21 A. No.
 22 Q. Would it hurt Schein's business if
 23 Smile Source took its business to Patterson or
 24 Benco?
 25 MR. LONG: Object to the form.

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1 TIM SULLIVAN
 2 THE WITNESS: I would answer it the
 3 same way I said before, if it's not with us
 4 and it's somewhere else, that would be
 5 \$1 million of business that we wouldn't
 6 have.
 7 BY MR. SOLOMON:
 8 Q. You could put that document aside.
 9 Mr. Sullivan, have you ever provided
 10 guidance to Schein personnel in the field about
 11 whether to do business with a buying group?
 12 A. Is there something specifically?
 13 Are we doing this again where -- do you have a
 14 document I can look at that you're referring to
 15 specifically?
 16 Q. No. I think you mentioned earlier
 17 that sometimes you would talk to people in the
 18 field about working with buying groups.
 19 And so I'm asking you, following up
 20 on that, did you ever provide guidance to
 21 Schein personnel in the field about working
 22 with buying groups?
 23 A. Yes, I would give my opinion on
 24 whether or not we should, depending where on
 25 the spectrum of a buying group a particular

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1 TIM SULLIVAN
 2 someone makes a compelling argument to go
 3 work with them, I'll let them make that
 4 call.
 5 BY MR. SOLOMON:
 6 Q. So people within the organization
 7 have an understanding that you're less
 8 supportive of price-only buying groups?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I wouldn't
 11 characterize it that way.
 12 BY MR. SOLOMON:
 13 Q. How would you characterize it?
 14 A. As I stated before, my belief is
 15 that there's less opportunity with those groups
 16 that are price-only and how that impacts or
 17 conflicts with our brand and our image of a
 18 full-service dealer.
 19 So if they want to make a compelling
 20 argument, to go for it; I'm open. And you'll
 21 see throughout this whole period of time,
 22 opportunity after opportunity were presenting
 23 themselves. Some came to me; some didn't. We
 24 signed some that I didn't even know. So
 25 depends where in the spectrum they fell.

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1 TIM SULLIVAN
 2 opportunity resided.
 3 Q. And what kind of guidance would you
 4 provide?
 5 MR. McDONALD: Object to the form,
 6 vague.
 7 THE WITNESS: Yeah, I don't know
 8 specifically how to answer that. I mean, I
 9 think -- I believe my feelings on buying
 10 groups is well known within the
 11 organization on the price-only versus those
 12 that have compelling stories to get
 13 compliance within their groups.
 14 BY MR. SOLOMON:
 15 Q. So you're saying that people within
 16 the organization know that you are not
 17 supportive of working with price-only buying
 18 groups?
 19 MR. McDONALD: Object to the form,
 20 mischaracterizes his testimony.
 21 THE WITNESS: I never said I'm not
 22 supportive of working with them. I said
 23 there's less -- I believe there's less
 24 opportunity, less compliance with those
 25 groups that are like that. But, again, if

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1 TIM SULLIVAN
 2 Q. How do people within the Schein
 3 organization know that's your position?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Various meetings.
 6 BY MR. SOLOMON:
 7 Q. What kind of meetings?
 8 A. It could be budget meetings for the
 9 future year, strategic planning meetings,
 10 meetings.
 11 Q. Who would be present at those
 12 meetings?
 13 MR. McDONALD: Object to the form,
 14 overly broad.
 15 THE WITNESS: It would vary in each
 16 one.
 17 BY MR. SOLOMON:
 18 Q. Is it generally salespeople who are
 19 in these meetings?
 20 MR. McDONALD: Object to the form,
 21 vague.
 22 THE WITNESS: Generally not, no.
 23 BY MR. SOLOMON:
 24 Q. Is it --
 25 A. Generally, the executive leadership

1 TIM SULLIVAN
2 team or field leadership team for Henry Schein
3 Dental. Sometimes special markets is in the
4 room. Sometimes Jimmy is involved. So there's
5 a number of meetings that we have.

6 Q. How many times did you make your
7 position clear on buying groups in one of these
8 meetings?

9 MR. McDONALD: Object to the form.

10 THE WITNESS: No idea.

11 BY MR. SOLOMON:

12 Q. More than once?

13 A. Yes.

14 Q. More than five times?

15 MR. McDONALD: Object to the form.

16 THE WITNESS: Most likely.

17 BY MR. SOLOMON:

18 Q. More than ten times?

19 MR. McDONALD: Object to the form.

20 THE WITNESS: I don't know, Ronnie.

21 BY MR. SOLOMON:

22 Q. And what specifically would you say
23 with respect to your position?

24 MR. McDONALD: Object to the form.

25 THE WITNESS: Generally speaking, as

1 TIM SULLIVAN

2 I've talked about, the spectrum of buying
3 groups from a price-only to the structure
4 that they have that will drive compliance
5 within the group. In generality, that's
6 it.

7 BY MR. SOLOMON:

8 Q. So you would talk about a spectrum
9 of buying groups?

10 A. It's a spectrum of the offering of a
11 buying group that would drive compliance with
12 the groups.

13 Q. And price-only buying groups would
14 be on one end of the spectrum, correct?

15 A. Correct.

16 Q. And value-added service buying
17 groups would be on the other end of the
18 spectrum?

19 A. Correct.

20 Q. Did anyone ever ask you to clarify
21 your position on buying groups in one of these
22 meetings?

23 A. I don't recall specifically. I
24 would assume so, but I'd be speculating. I
25 don't recall specifically.

1 TIM SULLIVAN

2 Q. Okay. Was anyone ever confused
3 about what your policy was with respect to
4 buying groups?

5 MR. McDONALD: Object to the form,
6 calls for speculation.

7 THE WITNESS: We didn't have a
8 policy per se. There was a strategy in how
9 to -- in general.

10 There was definitely confusion
11 again, and part of the confusion is our own
12 internal. There's a special markets
13 approach to it versus the HSD approach to
14 it. There's a different impact on P&Ls.

15 So there was definitely confusion
16 within our organization as to should we,
17 shouldn't we, do we have a strategy, don't
18 we have a strategy, trying to clarify some
19 of that, if you talk to Hal versus if you
20 talk to me. So it really -- there was
21 definite confusion within our organization.

22 BY MR. SOLOMON:

23 Q. What did you do to try to dispel
24 that confusion?

25 A. Apparently not enough and really

1 TIM SULLIVAN

2 addressed the opportunities as they came up one
3 by one, but do our best as much as possible. I
4 think we have a great leadership team,
5 phenomenal leadership team to allow them to
6 make decisions as best they -- they felt best
7 for the business.

8 Q. So when you were made aware of
9 confusion surrounding buying groups, what did
10 you do specifically to dispel that confusion?

11 MR. McDONALD: Object to the form,
12 vague.

13 THE WITNESS: Apparently not enough.

14 BY MR. SOLOMON:

15 Q. What do you mean by that?

16 A. The fact that the confusion existed
17 and continued to exist means I didn't do
18 enough.

19 Q. What could you have done?

20 MR. McDONALD: Object to the form,
21 calls for speculation.

22 THE WITNESS: Yeah, I -- I don't
23 know. Held more meetings, taken Hal to
24 dinner. I don't know. There's -- cleared
25 up -- you know, clean up the P&Ls.

1 TIM SULLIVAN
 2 We've done some things. We're
 3 structured different today than we were
 4 back in this period of time to help bring
 5 alignment between the groups. So there's a
 6 lot more we've done today to bring that
 7 clarity that we didn't do then.
 8 BY MR. SOLOMON:
 9 Q. Were people in the field confused
 10 about your position with respect to buying
 11 groups?
 12 MR. McDONALD: Object to the form,
 13 calls for speculation.
 14 THE WITNESS: I don't know if anyone
 15 in the field was confused about my
 16 particular perspective of it, but there was
 17 confusion in the field as to what our, the
 18 company's, strategy was around it.
 19 BY MR. SOLOMON:
 20 Q. Did you ever hear anyone say that
 21 Schein does not work with any buying groups?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: If they did, they
 24 would be mistaken.
 25 ///

1 TIM SULLIVAN
 2 begin with, but I believe I would have
 3 taken them through the spectrum of buying
 4 groups.
 5 BY MR. SOLOMON:
 6 Q. And you would have made clear that
 7 Schein does work with certain buying groups?
 8 A. I believe it is clear because we
 9 have a number of them already, and the team
 10 knows we have a number of them already. So I
 11 believe that part is already clear.
 12 But how we work with them and how we
 13 structure them going forward, which P&L does it
 14 go in, it was internally confusing, not great.
 15 Q. So going back to field salespeople
 16 that came to you for guidance with respect to
 17 working with buying groups, were there any
 18 specific factors that you told those people to
 19 consider in making a decision as to whether to
 20 work with a buying group?
 21 MR. McDONALD: Object to the form,
 22 mischaracterizes his testimony.
 23 He never said he had any
 24 recollection of such a conversation
 25 happening.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Do you recall any specific instances
 4 where someone said Schein does not work with
 5 any buying groups?
 6 A. Not that I recall. But if you want
 7 to show me something different, I can speak to
 8 it.
 9 Q. I'm just generally -- again asking
 10 you generally, in your experience as president
 11 of HSD, have you ever had a situation where a
 12 person in the field has told you that Schein
 13 does not work with buying groups or thought
 14 that was Schein's position?
 15 MR. McDONALD: Object to the form,
 16 asked and answered.
 17 THE WITNESS: Yeah, I don't recall
 18 anyone specifically coming to me and
 19 stating that to me.
 20 BY MR. SOLOMON:
 21 Q. What would be your response if you
 22 heard that?
 23 MR. McDONALD: Object to the form,
 24 asked and answered.
 25 THE WITNESS: I'd be speculating, to

1 TIM SULLIVAN
 2 THE WITNESS: Again, I don't recall
 3 specific. There's no one -- when you say
 4 "field salespeople," no one, other than the
 5 one example we talked about earlier with
 6 Scott who's a rep down in Florida -- and,
 7 again, he didn't reach out to me; he's
 8 reaching out to the Hal -- I don't recall
 9 any specific discussions with anyone in the
 10 field in that regard.
 11 BY MR. SOLOMON:
 12 Q. Did any of those discussions ever
 13 happen while you were head of HSD?
 14 MR. McDONALD: Object to the form.
 15 He just told you he didn't recall any such
 16 discussions.
 17 THE WITNESS: I don't recall.
 18 BY MR. SOLOMON:
 19 Q. Okay. So field salespeople never
 20 came to you concerning whether or not to do
 21 business with a buying group?
 22 MR. McDONALD: Object to the form,
 23 asked and answered.
 24 THE WITNESS: Not that I recall.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. What about sales managers? Did they
 4 ever come to you with questions about whether
 5 to work with a buying group?
 6 A. Rarely, but from time to time, yes.
 7 Q. And what did they ask you?
 8 MR. McDONALD: Object to the form,
 9 overly broad.
 10 THE WITNESS: I'd really have to
 11 look at a specific. No one -- they didn't
 12 come to me saying, hey, in general, Tim,
 13 what are your thoughts on buying groups?
 14 It was a specific example, here's a
 15 potential opportunity.
 16 Maybe they couldn't reach Hal and
 17 they might not have been able to reach
 18 Dave. You know, Tim, we have this
 19 opportunity. It wasn't like part of the
 20 process was to come through me. For
 21 whatever reason, they might have felt more
 22 comfortable coming to me. But it didn't
 23 happen often, but occasionally.
 24 BY MR. SOLOMON:
 25 Q. They came to you seeking guidance?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: Or an opinion, what --
 4 what do you think I should do, what would
 5 you do, that type of thing.
 6 BY MR. SOLOMON:
 7 Q. How would you approach those
 8 situations?
 9 MR. McDONALD: Object to the form,
 10 overly broad, vague.
 11 THE WITNESS: Generally, again, I
 12 don't recall specifically, but I'd take
 13 them through, try to understand more about
 14 this potential opportunity.
 15 BY MR. SOLOMON:
 16 Q. And how would you try and understand
 17 more about the potential opportunity? What
 18 sort of questions would you ask?
 19 MR. McDONALD: Object to the form,
 20 vague, overly broad.
 21 THE WITNESS: Tell me more about the
 22 group.
 23 BY MR. SOLOMON:
 24 Q. And what would you want to know?
 25 A. What is it they're looking for.

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1 TIM SULLIVAN
 2 What's the opportunity? How many customers?
 3 How many members do they have? What are their
 4 goals, relative number of members? What other
 5 services do they provide? What do you believe?
 6 Do you believe by doing this we'll help the
 7 member and their -- and the group grow, and
 8 will that benefit Henry Schein Dental as well?
 9 Q. Anything else? Any other questions
 10 you would ask?
 11 MR. McDONALD: Object to the form,
 12 overly broad, vague.
 13 THE WITNESS: Generally speaking,
 14 none that come to mind.
 15 BY MR. SOLOMON:
 16 Q. Did you have any hard and fast rules
 17 with respect to whether to do business with the
 18 buying group?
 19 A. No. It was generally, again,
 20 understanding the spectrum of their offering.
 21 And if my opinion was no and they came back
 22 with a compelling argument, we might have said
 23 go for it. So there's no hard and fast rules.
 24 Q. If you disagreed with that Schein
 25 employee, how would Schein proceed with that

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1 TIM SULLIVAN
 2 business?
 3 MR. McDONALD: Object to the form,
 4 asked and answered.
 5 THE WITNESS: It would depend on the
 6 situation. I'd have to -- if you have a
 7 specific to go through, let's talk about
 8 it.
 9 BY MR. SOLOMON:
 10 Q. Would you be able to prevent a sales
 11 manager or person in the field from working
 12 with a buying group if you were not in favor?
 13 MR. McDONALD: Object to the form,
 14 hypothetical.
 15 THE WITNESS: I could. I don't know
 16 that I would.
 17 BY MR. SOLOMON:
 18 Q. So a field salesperson or a manager
 19 could proceed working were a buying group even
 20 if you were not in favor of the relationship?
 21 A. Yes, there's -- yes.
 22 Q. And how often would that happen?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know.
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Were there any instances in which
 4 you had the final decision as to whether to
 5 work with a buying group?
 6 A. None that come to mind. I mean,
 7 really, I'd have to -- if you can show me
 8 something specific, I'd like to understand it
 9 better.
 10 Q. I'm just asking you, sitting here
 11 today as head of HSD, were there ever any
 12 instances in which you had the final decision
 13 regarding whether to do business with a buying
 14 group?
 15 A. I don't know that it -- I don't
 16 recall a situation where it came to me where
 17 others wanted to do it where I was sitting
 18 there saying no.
 19 Q. Were there any instances in which
 20 you had the final say as to whether to do
 21 business with a buying group where it was your
 22 decision and nobody else's?
 23 A. I don't believe so, no.
 24 Q. Can you name any buying groups that
 25 Schein worked with in the period from 2011

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1 TIM SULLIVAN
 2 and Schein stopped doing business in or around
 3 January 2012?
 4 MR. McDONALD: Object to the form,
 5 mischaracterizes the evidence.
 6 THE WITNESS: Can you repeat that?
 7 BY MR. SOLOMON:
 8 Q. Am I correct that Smile Source and
 9 Schein stopped doing business in or around
 10 January 2012?
 11 MR. McDONALD: Same objection.
 12 THE WITNESS: I believe that's
 13 around the time that they terminated us,
 14 yes.
 15 BY MR. SOLOMON:
 16 Q. You say Schein terminated you?
 17 A. No.
 18 MR. McDONALD: Object to the form.
 19 BY MR. SOLOMON:
 20 Q. Strike that.
 21 You say Smile Source terminated
 22 Schein?
 23 A. Correct.
 24 Q. Was it a mutual decision?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 until 2015 that you're aware of?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Can I name
 5 specifically?
 6 BY MR. SOLOMON:
 7 Q. Correct.
 8 A. We've provided a list of them. I
 9 don't have them in front of me. I'd like to --
 10 I can review the list.
 11 Q. I'm just asking, again, sitting here
 12 today, groups that you have personal knowledge
 13 of as head of HSD.
 14 MR. McDONALD: Object to the form.
 15 This isn't some memory test. If you
 16 recall, then tell him. If you don't
 17 recall, then tell him you can't recall
 18 names.
 19 THE WITNESS: The two that come to
 20 mind are Smile Source and Atlantic Dental
 21 Care or whatever the name of it is.
 22 BY MR. SOLOMON:
 23 Q. Any others?
 24 A. Not that come to mind right now.
 25 Q. And am I correct that Smile Source

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1 TIM SULLIVAN
 2 He just told you.
 3 THE WITNESS: They terminated our
 4 relationship.
 5 BY MR. SOLOMON:
 6 Q. Was it a mutual decision?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: They terminated our
 9 relationship.
 10 BY MR. SOLOMON:
 11 Q. What do you mean by that?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: I don't know how
 14 clearer I can be, Ronnie. They terminated
 15 the relationship. I have e-mails from the
 16 president of Smile Source wishing that they
 17 didn't have to do that.
 18 BY MR. SOLOMON:
 19 Q. So you were not okay with that
 20 decision; is that what you're saying?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I'm saying we had an
 23 opportunity to work with them. There were
 24 conflicts. We worked through those -- we
 25 attempted to work through those conflicts.

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1 TIM SULLIVAN
2 Apparently they came to the conclusion that
3 they could be serviced better by Burkhart.
4 BY MR. SOLOMON:
5 Q. And you were okay with that
6 decision?
7 MR. McDONALD: Object to the form.
8 THE WITNESS: No, I can't say I was
9 okay with it. We clearly kept in touch
10 with them. We met with them to try to
11 retain the business. They came to the
12 decision not to do business.
13 BY MR. SOLOMON:
14 Q. And so the decision then was not a
15 mutual one?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: I don't know how else
18 to tell you. No. They terminated the
19 relationship. We did not terminate the
20 relationship with Smile Source back then.
21 (Exhibit CX2299 was marked for
22 identification.)
23 BY MR. SOLOMON:
24 Q. Okay. I'd like to hand you another
25 document. This has been pre-marked as CX2299.

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1 TIM SULLIVAN
2 A. That is correct.
3 Q. And this exhibit, CX2299, is a true
4 and accurate representation of this e-mail
5 correspondence, correct?
6 A. Correct.
7 Q. And Schein keeps documents such as
8 CX2299 in the ordinary course of its business,
9 right?
10 A. Yes.
11 Q. So turning to the first part of this
12 e-mail chain, the e-mail from Glenn Ellisor to
13 you.
14 Mr. Elisor was affiliated with a
15 group called Vision Source, am I correct?
16 MR. McDONALD: Object to the form.
17 THE WITNESS: That's my
18 understanding.
19 BY MR. SOLOMON:
20 Q. What is Vision Source?
21 A. My understanding is, similar to
22 Smile Source, Vision Source is on the
23 ophthalmology side. So they work with
24 ophthalmologists and optometrists in that
25 market similar to what they're doing with Smile

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1 TIM SULLIVAN
2 Mr. Sullivan, let me know when you've had a
3 chance to review it.
4 (Witness viewed said document.)
5 THE WITNESS: Okay.
6 BY MR. SOLOMON:
7 Q. Mr. Sullivan, what is CX2299?
8 A. Copy of an e-mail exchange.
9 Q. Who is the e-mail exchange between?
10 A. Originated by Glenn Ellisor as the
11 CEO of Smile Source at that time, and then I
12 forwarded it on to others in the organization
13 for a discussion.
14 Q. You wrote part of this e-mail chain,
15 correct?
16 A. Yes.
17 Q. And you did so as part of your job
18 at Henry Schein?
19 A. Yes.
20 Q. And you have personal knowledge of
21 what you wrote in this e-mail, correct?
22 A. Yes.
23 Q. And you wrote this e-mail close in
24 time to receiving this message from
25 Mr. Ellisor, is that right?

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1 TIM SULLIVAN
2 Source. That's where they started, and Smile
3 Source became an offshoot of what they were
4 doing in vision.
5 Q. So Vision Source is a buying group
6 for ophthalmologists, correct?
7 MR. LONG: Objection to foundation.
8 THE WITNESS: I'm not sure how -- I
9 don't know if Vision Source -- how I would
10 describe them.
11 BY MR. SOLOMON:
12 Q. Did you ever meet with Mr. Elisor?
13 A. I met with a number of folks. I
14 don't know if Glenn was ever in one of those
15 meetings. I don't recall.
16 Q. Why would you have met with
17 Mr. Elisor if he represents Vision Source?
18 MR. McDONALD: Object to the form.
19 THE WITNESS: Well, again, I don't
20 know if I did. If I did, it would have
21 been in respect to what they're doing on
22 the dental side. It had nothing to do with
23 vision. We're not in vision.
24 BY MR. SOLOMON:
25 Q. Got it.

<p style="text-align: right;">Page 182</p> <p>1 TIM SULLIVAN</p> <p>2 So Mr. Elisor tells you in his</p> <p>3 e-mail to you on Thursday, September 1st, 2011</p> <p>4 at 9:58 a.m., "...through research and</p> <p>5 intensive strategy sessions, we've fine tuned</p> <p>6 our model and value proposition for independent</p> <p>7 dentists."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. So he was telling you that Smile</p> <p>11 Source had fine tuned their model, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And he's also telling you that</p> <p>14 they've brought on some new talent to help lead</p> <p>15 Smile Source at this point in time, right?</p> <p>16 A. Yes.</p> <p>17 Q. And he's also telling you that Smile</p> <p>18 Source was working on a national rollout for</p> <p>19 2012, correct?</p> <p>20 MR. McDONALD: Why don't you show</p> <p>21 him where that is.</p> <p>22 MR. SOLOMON: Sure.</p> <p>23 THE WITNESS: I see it now. Yes, I</p> <p>24 see it.</p> <p>25 ///</p>	<p style="text-align: right;">Page 183</p> <p>1 TIM SULLIVAN</p> <p>2 BY MR. SOLOMON:</p> <p>3 Q. The third paragraph, last sentence?</p> <p>4 A. I see it, yeah.</p> <p>5 Q. Moving on to your response, you tell</p> <p>6 Mr. Muller, Mr. Chatham, and Mr. Breslawski,</p> <p>7 "Interesting..these guys certainly aren't going</p> <p>8 away, but their model does concern me."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. So at this point in time in</p> <p>12 September of 2011, Schein was working with</p> <p>13 Smile Source, right?</p> <p>14 A. I want to clarify that. I'm not</p> <p>15 sure when -- when was it that they terminated</p> <p>16 us?</p> <p>17 Q. You testified earlier it was</p> <p>18 January 2012.</p> <p>19 A. And so this is before then?</p> <p>20 Q. Correct.</p> <p>21 A. Okay. If those dates are accurate,</p> <p>22 that sounds right.</p> <p>23 Q. And you're saying that you were</p> <p>24 concerned about Smile Source's model, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 184</p> <p>1 TIM SULLIVAN</p> <p>2 Q. What was the concern?</p> <p>3 A. They were positioning themselves as</p> <p>4 more than a price, but to date that's really</p> <p>5 all that they were offering, it's all that they</p> <p>6 were talking about. And so I was concerned</p> <p>7 that they could be perceived as more but only</p> <p>8 be providing the price side of it. And that</p> <p>9 model concerns me, as I've highlighted before.</p> <p>10 Q. But they were a Schein customer at</p> <p>11 this time, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And Schein was getting business from</p> <p>14 their customers, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And Schein was increasing the amount</p> <p>17 of business it was doing with existing</p> <p>18 customers, correct?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: I don't know that for</p> <p>21 a fact --</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. Well --</p> <p>24 A. -- as I sit here today.</p> <p>25 Q. Do you have any reason to doubt that</p>	<p style="text-align: right;">Page 185</p> <p>1 TIM SULLIVAN</p> <p>2 that's the case?</p> <p>3 MR. McDONALD: Object to the form,</p> <p>4 lack of foundation, asked and answered.</p> <p>5 THE WITNESS: I'd have to confirm</p> <p>6 that your statement is accurate. I don't</p> <p>7 know for a fact.</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q. So why would you be concerned about</p> <p>10 a group that Schein is already doing business</p> <p>11 with and had decided to do business with?</p> <p>12 A. Back to if the only thing that was</p> <p>13 happening was adding clients, adding customers</p> <p>14 I already do business -- customers of ours at</p> <p>15 lower volume and was causing creation issues in</p> <p>16 the field, as I've explained before, then</p> <p>17 that -- it was causing conflicts; it was</p> <p>18 causing challenges. Part of it is our own</p> <p>19 internal. Some of it was how they were</p> <p>20 marketing their program to new clients.</p> <p>21 And so it sounds good, but we</p> <p>22 wanted -- you know, didn't know for sure or it</p> <p>23 wasn't clear to me that they were actually</p> <p>24 bringing in -- delivering the value to their</p> <p>25 members that they were claiming to bring.</p>

1 TIM SULLIVAN

2 Q. We looked at a document earlier
3 today that showed that the Smile Source was
4 \$1 million and growing.

5 Do you recall that?

6 A. I do.

7 Q. So is it fair to say at this point
8 Smile Source was a growing customer?

9 MR. McDONALD: Object to the form,
10 mischaracterizes the evidence.

11 THE WITNESS: Can you repeat the
12 question?

13 BY MR. SOLOMON:

14 Q. Sure. Is it fair to say that at
15 this point in time, Smile Source was a growing
16 customer?

17 MR. McDONALD: Object to the form,
18 mischaracterizes the evidence.

19 THE WITNESS: Again, I'd like to
20 understand that more clearly, this time
21 frame versus the time frame of that e-mail
22 that we talked about earlier.

23 BY MR. SOLOMON:

24 Q. So you're not sure whether Schein
25 was still -- strike that.

1 TIM SULLIVAN

2 You're not sure whether Smile Source
3 was still a growing customer in September of
4 2011; is that what you're saying?

5 A. As I sit here right now, that's --
6 that's right.

7 Q. Okay. Do you have any reason to
8 doubt that they were?

9 A. No.

10 Q. Okay. So when you refer to their
11 model, what specific -- what model specifically
12 are you referring? Are you referring to a
13 price-only buying group model?

14 A. That's correct.

15 Q. So you were concerned about their
16 price-only buying group model?

17 MR. McDONALD: Object to the form.

18 THE WITNESS: They were making
19 claims to providing value for the members
20 more than that. But at this time, the only
21 thing that they were really marketing to
22 new members and the value that we believe
23 that they were really only driving was that
24 on the price side.

25 ///

1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. And that was problematic, in your
4 opinion?

5 A. It was a concern.

6 Q. How did you deal with that concern?

7 A. We would -- they would contact us if
8 there was a problem with one of our reps saying
9 something bad about them. We would contact
10 them if we heard one of their salespeople
11 presenting only on price. The people in the
12 field would communicate the challenges, and we
13 would communicate that with them primarily
14 through John Chatham.

15 Q. Did you ever tell -- strike that.

16 Did Schein ever tell Smile Source
17 that their price-only buying group model was a
18 concern?

19 A. Wouldn't say it in those words
20 exactly. But, yeah, we expressed our concerns
21 to them about that in some regard.

22 Q. Who expressed those concerns?

23 A. I know I had at one point. Where in
24 the process of the entire relationship, I'm not
25 sure. We had -- we did have face-to-face

1 TIM SULLIVAN

2 meetings with them. I don't recall if it was
3 before or after this, but I expressed that
4 concern. I know John had when he was working
5 with others within Smile Source.

6 Q. Did you ever ask Smile Source to
7 change its model?

8 MR. McDONALD: Object to the form.

9 THE WITNESS: No. It wouldn't be
10 our place to do that. We would talk to
11 them about our value proposition and how
12 does that align with theirs. And the more
13 we're aligned, the more opportunity for
14 there to be a mutual win-win.

15 BY MR. SOLOMON:

16 Q. Did -- strike that.

17 Have Schein representatives ever
18 said bad things about Smile Source?

19 MR. McDONALD: Object to the form,
20 vague, lack of foundation.

21 THE WITNESS: I don't know
22 specifically, but I believe that to be the
23 case, yes.

24 BY MR. SOLOMON:

25 Q. Who has said bad things about Smile

<p style="text-align: right;">Page 190</p> <p>1 TIM SULLIVAN</p> <p>2 Source?</p> <p>3 A. I just said I don't know</p> <p>4 specifically, so I don't have the exact names.</p> <p>5 But the conflict we would hear about is -- we</p> <p>6 had the one example earlier with Scott Schenker</p> <p>7 down in Florida. Here's a customer who met</p> <p>8 with Smile Source who's trying to see should</p> <p>9 they join. Scott would say, you don't need to</p> <p>10 join them. They don't -- the only thing</p> <p>11 they're providing you is XYZ. Look at all that</p> <p>12 I do for you.</p> <p>13 It's no -- to a large extent, it's</p> <p>14 not much different than you do every single</p> <p>15 day; you try to show your value versus any</p> <p>16 competitor in the marketplace.</p> <p>17 And Smile Source was not a</p> <p>18 competitor. But from a rep's perspective, if</p> <p>19 they moved into special markets, they would get</p> <p>20 lower commission, which is another reason why</p> <p>21 we wanted to move it over to HSD to maybe it</p> <p>22 will help eliminate that conflict.</p> <p>23 Part of the issue is our own</p> <p>24 internal stuff. And so since it wasn't clear,</p> <p>25 yeah, sometimes our sales rep would say</p>	<p style="text-align: right;">Page 191</p> <p>1 TIM SULLIVAN</p> <p>2 negative things about them that we would try</p> <p>3 clarifying. That was John's e-mail earlier to</p> <p>4 managers in the area, you know, kind of fluffed</p> <p>5 it up a little bit about, it's good, it's a</p> <p>6 good thing for them, so they can then help sell</p> <p>7 that to the sales team, but not all -- the</p> <p>8 entire sales team didn't truly always</p> <p>9 understand it.</p> <p>10 Q. Are you -- strike that.</p> <p>11 At this point in time, Smile Source</p> <p>12 was an HSD customer, not special markets,</p> <p>13 correct?</p> <p>14 MR. McDONALD: At the time of 2299?</p> <p>15 MR. SOLOMON: Correct.</p> <p>16 THE WITNESS: I -- I don't know</p> <p>17 specifically. I don't know.</p> <p>18 BY MR. SOLOMON:</p> <p>19 Q. You're not sure one way or the</p> <p>20 other?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 A. I would say this: I believe so</p> <p>24 because the message is to myself and to John</p> <p>25 Chatham. There's no one from special markets</p>
<p style="text-align: right;">Page 192</p> <p>1 TIM SULLIVAN</p> <p>2 in here, so that very well could be the case.</p> <p>3 Q. You can put that document aside.</p> <p>4 (Exhibit CX2456 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. Mr. Sullivan, I'm handing you</p> <p>8 another document that's been pre-marked as</p> <p>9 CX2456. Please let me know when you've had a</p> <p>10 chance to review it.</p> <p>11 (Witness viewed said document.)</p> <p>12 THE WITNESS: Okay.</p> <p>13 BY MR. SOLOMON:</p> <p>14 Q. Mr. Sullivan, what is CX2456?</p> <p>15 A. It is an e-mail exchange started by</p> <p>16 someone outside of the organization and then</p> <p>17 ultimately including others of us within.</p> <p>18 Q. And you received this e-mail --</p> <p>19 A. I did.</p> <p>20 Q. -- correct?</p> <p>21 And you wrote part of this e-mail</p> <p>22 chain, correct?</p> <p>23 A. I did.</p> <p>24 Q. And did you do so as part of your</p> <p>25 job at HSD?</p>	<p style="text-align: right;">Page 193</p> <p>1 TIM SULLIVAN</p> <p>2 A. Yes.</p> <p>3 Q. Do you have personal knowledge of</p> <p>4 what you wrote in this e-mail?</p> <p>5 A. Yes.</p> <p>6 Q. And did you write this e-mail close</p> <p>7 in time to receiving these inquiries from</p> <p>8 Mr. Josh Naftolin?</p> <p>9 A. I'm sorry. Say it again.</p> <p>10 Q. Sure. Did you write this e-mail</p> <p>11 close in time to receiving these inquiries from</p> <p>12 Mr. Josh Naftolin, who is referenced in this</p> <p>13 e-mail?</p> <p>14 A. Well, the time frame we're talking</p> <p>15 about, but I never received an e-mail from</p> <p>16 Josh. It was Steve Kess that would have</p> <p>17 forwarded it on to me.</p> <p>18 Q. Got it.</p> <p>19 And then did you write this e-mail</p> <p>20 close in time to receiving those e-mails from</p> <p>21 Mr. Kess?</p> <p>22 A. Yes.</p> <p>23 Q. And do you believe CX2456 to be a</p> <p>24 true and accurate representation of this e-mail</p> <p>25 correspondence?</p>

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1 TIM SULLIVAN
 2 A. Yes.
 3 Q. And is CX2456 something that Schein
 4 kept in the ordinary course of its business?
 5 A. Yes.
 6 Q. I'd like to turn your attention to
 7 the last page of this e-mail chain. You'll see
 8 someone named Mr. Josh Naftolin, who appears to
 9 be a regional sales manager in California,
 10 drafted this part of the e-mail chain to
 11 Mr. Kess, is that right?
 12 A. I think you said California, but it
 13 looks to me it says North Carolina.
 14 Q. Right. I think I said North
 15 Carolina.
 16 A. I'm --
 17 MR. McDONALD: You said -- you said
 18 California.
 19 MR. SOLOMON: My apologies.
 20 BY MR. SOLOMON:
 21 Q. So Mr. Naftolin is a regional sales
 22 manager in North Carolina?
 23 A. I believe for our medical business,
 24 not in dental.
 25 Q. So he worked on the medical side of

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1 TIM SULLIVAN
 2 THE WITNESS: Appears to be.
 3 BY MR. SOLOMON:
 4 Q. And then Mr. Kess on December 7th,
 5 2011 at 8:25 a.m. includes you on the e-mail by
 6 copying yourself, Mr. Steck, and Mr. Hinsch.
 7 Do you see that?
 8 A. I do.
 9 Q. You reply to Mr. Kess' e-mail, "I am
 10 still of position that we do NOT want to lead
 11 in getting this initiative started in dental.
 12 I think that it is a very slippery slope."
 13 Do you see that?
 14 A. I do.
 15 Q. So are you saying that you did not
 16 want Schein to lead in getting GPOs started in
 17 the dental industry?
 18 A. So, again, e-mails are not always
 19 clear. I tried to clarify it I think in the
 20 next one, "At end of day, we provide package
 21 discount," yadda, yadda, yadda. We work with
 22 groups. We have worked with groups. We
 23 continue to work with groups.
 24 Again, didn't see a -- at this time,
 25 wasn't a major part of our initiative, wasn't a

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1 TIM SULLIVAN
 2 Schein's business?
 3 A. I don't recognize the name. Just
 4 based on this exchange, that's what it looks
 5 like.
 6 Q. Okay. Mr. Naftolin is raising the
 7 idea of a dental group purchasing organization,
 8 correct?
 9 A. Correct.
 10 Q. And he's saying that he has
 11 continued interest in this idea and wants to
 12 hammer out some ideas in details, right?
 13 A. In generality, yes, I think that
 14 summarizes it.
 15 Q. And Mr. Naftolin seems interested in
 16 wanting to bring business to Schein through a
 17 potential dental GPO, correct?
 18 MR. McDONALD: Object to the form.
 19 The document speaks for itself.
 20 THE WITNESS: That's -- that's how I
 21 read it.
 22 BY MR. SOLOMON:
 23 Q. And this appears to be just an idea
 24 of Mr. Naftolin's at this point in time?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 major strategic priority of ours. Priorities
 3 were focused elsewhere.
 4 So, no, we were not looking to
 5 necessarily proactively go out and expand it,
 6 particularly those when it comes to the
 7 price-only focus. Again, this is GPOs but
 8 buying groups.
 9 Q. Why did you not want to expand it?
 10 A. I think I just stated, there's
 11 opportunities within them; there's risks within
 12 them.
 13 Q. And you write "do NOT." You write
 14 "NOT" in all caps. So you seem to be very
 15 emphatic about not wanting to work with them,
 16 correct?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I don't know how to
 19 answer it differently than I just did.
 20 BY MR. SOLOMON:
 21 Q. Did you want to make sure that
 22 Mr. Kess and the others copied on this e-mail
 23 understood your position very clearly with
 24 respect to buying groups?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 THE WITNESS: Throughout the clarity
 3 in the next paragraph, right? So, "At end
 4 of day, we provide package discount 'deals'
 5 to those" -- "At end of day, we provide
 6 package discount 'deals' to those that
 7 control buying. Simply being a 'member'
 8 has historically provided little value or
 9 incentive to drive change in purchasing."
 10 So I think it's -- if you take the
 11 entire exchange in total, I think my
 12 message is clear, because I don't think the
 13 first part of my message was very clear.
 14 BY MR. SOLOMON:
 15 Q. Do buying groups ever control
 16 buying?
 17 MR. McDONALD: Object to the form,
 18 lack of foundation.
 19 THE WITNESS: Again, "control" may
 20 have -- be a wrong -- you know, again,
 21 portray a word referring to compliance, so
 22 they can drive compliance within their
 23 members to actually do what they're signing
 24 up to do. That's what I meant by "control"
 25 there.

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1 TIM SULLIVAN
 2 choice of words, quick response in an
 3 e-mail. But I'm saying we work with buying
 4 groups. I've talked to you about the
 5 spectrum. The next paragraphs clarifies,
 6 so I think my message in totality is pretty
 7 clear.
 8 BY MR. SOLOMON:
 9 Q. Why would Schein call buying groups
 10 a slippery slope if they work with them?
 11 MR. McDONALD: Object to the form.
 12 This is a document from Mr. Sullivan, not
 13 Schein.
 14 MR. SOLOMON: Strike that.
 15 BY MR. SOLOMON:
 16 Q. Why would you call buying groups a
 17 slippery slope if Schein has always worked with
 18 buying groups?
 19 A. Poor word -- poor choice of words on
 20 my part.
 21 Q. How -- how would you have changed
 22 this sentence?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I don't know. I'd be
 25 speculating.

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So you meant "compliance," but you
 4 wrote groups that control buying?
 5 A. Kind of like sometimes we call them
 6 GPOs and buying groups. Yeah, it would
 7 intertwine that word in this regard, yes.
 8 Q. Did Mr. Kess and the others copied
 9 on this e-mail understand that's what you meant
 10 here?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I would hope so. I
 13 don't know for a fact.
 14 BY MR. SOLOMON:
 15 Q. You also -- going back to the first
 16 paragraph, you state, "I think that it is a
 17 very slippery slope."
 18 Do you see that?
 19 A. I do.
 20 Q. So you're saying that working with
 21 buying groups was a slippery slope for Schein?
 22 MR. McDONALD: Object to the form,
 23 mischaracterizes the document.
 24 THE WITNESS: We work -- we already
 25 work with them. Maybe, again, back to poor

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Well, I don't want you to speculate.
 4 I just want to know what you meant.
 5 A. Poor choice of words.
 6 Q. You can't think of any way you could
 7 have clarified this statement?
 8 A. I think I did in the next paragraph.
 9 Q. Where?
 10 A. I'll read it again, "At end of day,
 11 we provide package discount 'deals' to those
 12 that control buying." In other words, can
 13 drive compliance within their groups.
 14 "Simply being a 'member' has
 15 historically provided little value or incentive
 16 to drive change in purchasing loyalty at the
 17 local practice -- GP," meaning general
 18 practitioner -- "level." I think -- I think
 19 that clarifies my position.
 20 Q. How did it clarify your position?
 21 MR. McDONALD: Object to the form,
 22 asked and answered.
 23 THE WITNESS: I don't know how to
 24 answer that. I believe that clarifies it.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And you refer to in this paragraph,
 4 the second paragraph here, "being a 'member'
 5 has historically provided little value."
 6 So this was based on past experience
 7 with buying groups that Schein has had?
 8 A. Back to the Alpha Omega example I
 9 gave you.
 10 Q. And fair to say you did not want to
 11 replicate those experiences?
 12 MR. McDONALD: Object to the form --
 13 THE WITNESS: It would depend --
 14 MR. McDONALD: -- mischaracterizes --
 15 hang on, mischaracterizes his testimony.
 16 THE WITNESS: It would depend on the
 17 opportunity.
 18 BY MR. SOLOMON:
 19 Q. Did you ask any questions about this
 20 particular opportunity in terms of how Schein
 21 could possibly arrange for a win-win situation?
 22 A. I don't recall.
 23 Q. You didn't in this e-mail, though,
 24 correct?
 25 A. That's correct.

1 TIM SULLIVAN
 2 Are you referring to price there?
 3 A. So, again, price is a value or the
 4 component of our overall proposition. We
 5 compete on overall value in every segment of
 6 the market, from private practitioner to small
 7 group, large groups, to majors. So, yes, price
 8 is a component of that.
 9 Q. Wouldn't that be a problem then with
 10 value-added buying groups?
 11 A. No, we compete on -- we compete in
 12 those cases for the business also.
 13 Q. Right. But you're stating here that
 14 working with price-only buying groups causes
 15 all sorts of issues for members and local area
 16 non-members who expect the same price.
 17 A. Right.
 18 Q. Correct?
 19 Isn't that the same -- isn't that
 20 problem also present with respect to value --
 21 value-added buying groups?
 22 MR. McDONALD: Object to the form,
 23 mischaracterizes the document.
 24 THE WITNESS: Yeah, not necessarily.
 25 Again, it depends on the group, which

1 TIM SULLIVAN
 2 Q. Why not?
 3 A. I don't -- I don't know.
 4 Q. So, again, in the second
 5 paragraph you say, I think it is a very
 6 slippery slope.
 7 Have you used that phrase to refer
 8 to buying groups in any other context?
 9 MR. McDONALD: Object to the form.
 10 If you've got a document, show it to
 11 him.
 12 THE WITNESS: Not that I recall.
 13 BY MR. SOLOMON:
 14 Q. Okay. Have you ever heard anyone
 15 else within Schein refer to buying groups as a
 16 slippery slope?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Again, not that I
 19 recall. If you have something to show me,
 20 I'd be happy to speak to it.
 21 BY MR. SOLOMON:
 22 Q. Okay. In the second paragraph, you
 23 say, "...yet causes all sorts of issues for
 24 those members and local area non-members who
 25 then expect the same."

1 TIM SULLIVAN
 2 groups do we want to put our brand with,
 3 our image. The ones that we sign up for,
 4 we're saying we're willing to take that --
 5 we believe that the value message in that
 6 relationship is consistent.
 7 BY MR. SOLOMON:
 8 Q. Did you know whether the prospect
 9 reference in this e-mail had a value-added
 10 component to it?
 11 A. I do not. I don't know if they did
 12 or not.
 13 Q. Did you ask about it in this e-mail?
 14 A. As I stated earlier, no.
 15 Q. Why not?
 16 A. As I stated earlier, I don't know.
 17 Q. That's something you would want to
 18 know, correct?
 19 A. If the opportunity --
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: Sorry.
 22 If -- if someone was going to push
 23 to release to get this going, then we would
 24 take that next step.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. When you say if someone was going to
 4 push to get it going, do you mean if people
 5 continued to send you e-mails about this group?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't know how they
 8 would approach me or anyone else. It could
 9 have been Hal. It could have been any
 10 number of us. Again, I'm not the sole
 11 decision-maker in these things.
 12 So if someone said, no, I really
 13 want to pursue this, and Steve Kess said,
 14 hey, let's really drive this, then we would
 15 dive deeper into it.
 16 BY MR. SOLOMON:
 17 Q. You can put that document aside.
 18 (Exhibit CX2457 was marked for
 19 identification.)
 20 BY MR. SOLOMON:
 21 Q. Mr. Sullivan, I'm handing you a
 22 document that's been pre-marked as CX2457.
 23 Please have a look at it and let me know when
 24 you've had a chance to review.
 25 (Witness viewed said document.)

1 TIM SULLIVAN
 2 this in the ordinary course of its business,
 3 correct?
 4 A. Correct.
 5 Q. Do you recall the meeting referenced
 6 in CX2547 with Mr. Cavaretta?
 7 A. I do not.
 8 Q. The subject here is "Vegas Buying
 9 Group."
 10 Do you see that?
 11 A. I do.
 12 Q. Do you recall what group is being
 13 referenced in the subject line?
 14 A. Until reading this e-mail, no.
 15 Q. Okay. This was on December 22nd,
 16 2011 at 10:46 a.m., correct?
 17 A. Correct.
 18 (Exhibit CX2458 was marked for
 19 identification.)
 20 BY MR. SOLOMON:
 21 Q. Okay. I'd like to hand you another
 22 document that's been pre-marked as CX2458.
 23 Please take a look at this, Mr. Sullivan, and
 24 let me know when you've had a chance to review.
 25 (Witness viewed said document.)

1 TIM SULLIVAN
 2 THE WITNESS: Okay.
 3 BY MR. SOLOMON:
 4 Q. Mr. Sullivan, what is CX2457?
 5 A. An e-mail exchange between myself
 6 and other internal TSMs, team Schein members.
 7 Q. You received this e-mail as part of
 8 your job as H -- at HSD?
 9 A. Correct.
 10 Q. And you responded to it as part of
 11 your job at HSD?
 12 A. Correct.
 13 Q. And you have personal knowledge of
 14 the contents of which you wrote in this e-mail?
 15 A. Correct.
 16 Q. And you wrote this e-mail close in
 17 time to your meeting with Mr. Cavaretta
 18 referenced in this e-mail?
 19 A. It looks to be accurate, yes.
 20 Q. This is a true and correct
 21 representation of this e-mail exchange between
 22 you, Mr. Cavaretta, Mr. Steck, Mr. Chatham, and
 23 Ms. Pampel?
 24 A. Correct.
 25 Q. And Schein keeps documents such as

1 TIM SULLIVAN
 2 THE WITNESS: Okay.
 3 BY MR. SOLOMON:
 4 Q. Okay. Mr. Sullivan, what is
 5 CX2458?
 6 A. It's an e-mail from Joe Cavaretta to
 7 our local manager and a sales rep of ours in
 8 Las Vegas.
 9 Q. Okay. And Mr. Cavaretta is
 10 referring to a meeting that he had with Tim,
 11 Dave, and John about the Merit Dent group.
 12 Do you see that?
 13 A. I do.
 14 Q. Is he referring to a meeting that he
 15 had with you, Mr. Steck, and Mr. Chatham?
 16 A. Appears to be.
 17 Q. And do you understand that the
 18 meeting referenced in CX2458 corresponds to the
 19 meeting referenced in CX2457?
 20 A. It's a fair assumption, but I don't
 21 know. They're two different titles. I assume
 22 it's the same.
 23 Q. Yeah, they're both on the -- both
 24 e-mails are from the same day, correct?
 25 A. It appears to be the same, yeah.

1 TIM SULLIVAN
 2 Q. Okay. And you have no reason to
 3 doubt that this is the same meeting referenced
 4 in both documents?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I have no reason to
 7 doubt that.
 8 BY MR. SOLOMON:
 9 Q. Okay. So do you recall after
 10 reviewing CX2458 more about this particular
 11 meeting you had with Mr. Cavaretta?
 12 A. I do not.
 13 Q. Do you recall at all a group called
 14 Merit Dent?
 15 A. I do not.
 16 Q. So Mr. Cavaretta writes in his
 17 e-mail, "As you can imagine" -- and he's
 18 speaking about his meeting with you, Mr. Steck,
 19 and Mr. Chatham.
 20 He writes, "As you can imagine, they
 21 feel the same way as we do that we don't want
 22 to be the first company to open the floodgates
 23 to the dangerous world of GPOs," correct?
 24 MR. McDONALD: Object to the form.
 25 Are you asking him if that's what it

1 TIM SULLIVAN
 2 says?
 3 BY MR. SOLOMON:
 4 Q. That's what it says, correct?
 5 A. That is what it says.
 6 Q. Fair to say that you were concerned
 7 about Schein being the first distributor to
 8 work with GPOs based on what Mr. Cavaretta
 9 wrote here?
 10 MR. McDONALD: Object to the form.
 11 THE WITNESS: This is not my e-mail.
 12 BY MR. SOLOMON:
 13 Q. That's true. This is Mr. Cavaretta
 14 writing it. He's saying that -- he's talking
 15 about a conversation he had with you,
 16 Mr. Steck, and Mr. Chatham.
 17 MR. McDONALD: Object to the form.
 18 BY MR. SOLOMON:
 19 Q. Did you say that at the meeting you
 20 had with Mr. Cavaretta earlier that day?
 21 A. I don't think I've ever used the
 22 terms "open the floodgates to dangerous world
 23 to GPOs."
 24 Q. So Mr. Cavaretta is
 25 mischaracterizing what you said here?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: That's my
 4 understanding, yes.
 5 BY MR. SOLOMON:
 6 Q. What did you actually say?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I just told you, I
 9 don't recall even having the meeting. I
 10 don't recall how the meeting -- what was
 11 actually said in the meeting.
 12 My assumption would have been the
 13 same discussion we've had about buying
 14 groups only based on price.
 15 BY MR. SOLOMON:
 16 Q. So you don't recall the meeting at
 17 all?
 18 A. Correct.
 19 Q. And you don't recall what you said
 20 at the meeting?
 21 A. That's correct.
 22 Q. But you're also saying that you did
 23 not say what Mr. Cavaretta wrote on this page,
 24 right?
 25 A. Correct. I can tell you what I had

1 TIM SULLIVAN
 2 for dinner last Tuesday -- or I can't tell you
 3 what I had for dinner last Tuesday, but I can
 4 tell you it wasn't shrimp. I can tell you what
 5 I didn't -- I didn't say.
 6 Q. So this is not something you would
 7 say?
 8 A. Correct.
 9 Q. Do you know why Mr. Cavaretta would
 10 be mischaracterizing your statements?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: I don't.
 13 BY MR. SOLOMON:
 14 Q. Has Mr. Cavaretta ever
 15 mischaracterized your statements in other
 16 e-mails?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: If you have one I can
 19 look at, I can speak to that. Not that I
 20 recall.
 21 BY MR. SOLOMON:
 22 Q. Mr. Cavaretta is your direct report,
 23 correct?
 24 A. No.
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 THE WITNESS: No, he's not.
 3 BY MR. SOLOMON:
 4 Q. Mr. Cavaretta reports to you --
 5 strike that.
 6 Mr. Cavaretta falls below you in
 7 the -- in the Henry Schein corporate chain, is
 8 that right?
 9 A. That's correct.
 10 Q. And he reports to Mr. Steck?
 11 A. That's correct.
 12 Q. And Mr. Steck reports to you?
 13 A. That's correct.
 14 Q. Are you concerned that someone who
 15 falls lower within the corporate Schein chain
 16 is mischaracterizing your statements as it
 17 relates to potential customers?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Again, as I've
 20 mentioned several times the confusion in
 21 this space during this period of time, both
 22 internal and external, our opinion.
 23 So in this case, in this particular
 24 example, he's -- I read this that he's
 25 speaking about how we view the buying group

1 TIM SULLIVAN
 2 A. I've already testified that I don't
 3 agree with that.
 4 Q. Okay. The next sentence,
 5 Mr. Cavaretta writes, "Based on the fact that
 6 they will not guarantee that all their business
 7 will come to Schein they will not fall into the
 8 CAG world either."
 9 Does CAG refer to corporate accounts
 10 group?
 11 A. Yes, it does.
 12 Q. And that's another acronym used to
 13 refer to special markets, correct?
 14 A. That's correct.
 15 Q. So he's saying that if a potential
 16 customer cannot guarantee that all of their
 17 business will be brought to Schein, Schein is
 18 not interested in working with that customer,
 19 is that correct?
 20 MR. McDONALD: Object to the form,
 21 mischaracterizes the testimony and the
 22 document.
 23 THE WITNESS: He's referring to this
 24 particular example. He's not stating
 25 that's our position across all potential

1 TIM SULLIVAN
 2 opportunity relative to those price-only
 3 versus on a spectrum. I don't know how
 4 else to respond to that.
 5 BY MR. SOLOMON:
 6 Q. Did Mr. Cavaretta tell you that he
 7 didn't want to be the first -- strike that.
 8 Did Mr. Cavaretta ever tell you that
 9 he did not want Schein to be the first
 10 distributor to work with GPOs or buying groups?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: Again, we -- at this
 13 time we're already working with groups. So
 14 I just think it's a false statement in
 15 here.
 16 BY MR. SOLOMON:
 17 Q. So this is a false statement?
 18 A. It's poorly worded.
 19 Q. He also calls GPOs dangerous.
 20 Do you see that?
 21 A. I do.
 22 MR. McDONALD: Object to the form.
 23 BY MR. SOLOMON:
 24 Q. Would you agree with that --
 25 Mr. Cavaretta's characterization there?

1 TIM SULLIVAN
 2 opportunities.
 3 BY MR. SOLOMON:
 4 Q. And he's saying that if a potential
 5 customer cannot guarantee that all of their
 6 business will be brought to Schein, HSD is not
 7 interested in working with that customer, is
 8 that right?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Where does it say
 11 that?
 12 MR. McDONALD: It doesn't.
 13 BY MR. SOLOMON:
 14 Q. "Based on the fact that they will
 15 not guarantee all of their business will come
 16 to Schein they will not fall into the CAG world
 17 either."
 18 A. That they -- he's specifically
 19 talking now about this opportunity, not our
 20 strategy across the board on GPOs. We're
 21 obviously doing business with GPOs or buying
 22 groups at this point already.
 23 He's talking about this specific --
 24 when he says, "Based on the fact that they,"
 25 they, Merit Dental will not.

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1 TIM SULLIVAN
2 Q. So because they won't guarantee that
3 all of their business will go through Schein,
4 they will not fall into special markets,
5 correct?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: That's what he's
8 stating here. Yes, that's what he's
9 stating.
10 BY MR. SOLOMON:
11 Q. Do you say anywhere in this e-mail
12 that Schein is already working with buying
13 groups or GPOs? Strike that.
14 Does Mr. Cavaretta state anywhere in
15 this e-mail that Schein is already working with
16 buying groups or GPOs?
17 A. I don't see that in this e-mail, no.
18 Q. Mr. Cavaretta goes on to write under
19 numeral 1, "I will explain to Dr. Balle that
20 the one price fits all strategy doesn't
21 translate well into our world."
22 Do you see that?
23 A. I do.
24 Q. Is he saying that Schein is not
25 willing to give a dentist of a buying group all

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1 TIM SULLIVAN
2 the same price?
3 MR. McDONALD: Object to the form,
4 calls for speculation.
5 THE WITNESS: I don't know what he's
6 referring to there.
7 BY MR. SOLOMON:
8 Q. You're not sure one way or the
9 other; you just have no knowledge of what
10 Mr. Cavaretta means here?
11 MR. McDONALD: Objection, asked and
12 answered. He just told you he doesn't know
13 what he meant.
14 THE WITNESS: I don't know what he
15 means. I'd be speculating.
16 BY MR. SOLOMON:
17 Q. Turning to the last paragraph of
18 this exhibit, Mr. Cavaretta writes, "If not we
19 will just have to take the docs that may leave
20 us for a different company on a case by case
21 basis."
22 Do you see that?
23 A. I do.
24 Q. So Mr. Cavaretta is saying that
25 there's a risk that by not working with this

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1 TIM SULLIVAN
2 group, they could leave Schein for another
3 distributor, correct?
4 MR. McDONALD: Object to the form.
5 THE WITNESS: That's how I read it.
6 BY MR. SOLOMON:
7 Q. And why would Schein be willing to
8 lose customers by refusing to work with this
9 group?
10 MR. McDONALD: Object to the form,
11 mischaracterizes the document.
12 THE WITNESS: That's not how I read
13 what he's saying.
14 BY MR. SOLOMON:
15 Q. How do you read what he's saying?
16 A. As we talked about earlier, if we
17 decide to work with a group, we would do it
18 because we believe we can get deeper
19 penetration into our existing business to
20 potentially add new ones if we believe that
21 they could actually get their members to comply
22 with the -- the arrangement.
23 If not and they decide to go
24 somewhere else, well, now they're going to be
25 kind of pitched that story via another

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1 TIM SULLIVAN
2 distributor. So we're going to make sure --
3 you know, their members, by the way, in all
4 these groups are our customers. They're not
5 customers of those groups; they're members.
6 Every single one of those members are customers
7 or potential customers of ours.
8 So whether they're in the group or
9 not, we're going to be meeting with them all
10 the time to show them our value. So if they
11 decide to work with someone else, okay. That
12 doesn't mean we just give up. There is a risk.
13 If it turns out to be that they do
14 more and they have some other hooks into their
15 members to switch, then it provides a risk.
16 But he's saying we'll go after that business to
17 make sure we don't lose it.
18 Q. He's saying we'll go after the
19 independent -- strike that.
20 He's saying we'll go after the
21 individual accounts, not the actual buying
22 group, right?
23 MR. McDONALD: Object to the form.
24 THE WITNESS: That's how I read it.
25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. You can put that document aside.
 4 MR. McDONALD: So, Ronnie, it's
 5 12:30, and we've been going over an hour.
 6 How about lunch?
 7 MR. SOLOMON: Sure. This is a
 8 perfect point to break.
 9 MR. McDONALD: Okay.
 10 THE VIDEOGRAPHER: Time is
 11 12:30 p.m. We are off the record.
 12 (Whereupon, from 12:30 p.m. to
 13 1:19 p.m. a luncheon recess was taken.)
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1 TIM SULLIVAN
 2 AFTERNOON SESSION
 3 THE VIDEOGRAPHER: This is the
 4 beginning of DVD No. 3. The time is
 5 1:19 p.m. We are back on the record.
 6 TIM SULLIVAN,
 7 was called for examination, and having been
 8 previously duly sworn, was examined and
 9 testified further as follows:
 10 EXAMINATION (Resumed)
 11 BY MR. SOLOMON:
 12 Q. Welcome back, Mr. Sullivan, from
 13 lunch.
 14 (Exhibit CX2251 was marked for
 15 identification.)
 16 BY MR. SOLOMON:
 17 Q. I'd like to hand you a document
 18 that's been pre-marked as CX2251. Please let
 19 me know when you've had a chance to review it.
 20 (Witness viewed said document.)
 21 THE WITNESS: Okay.
 22 BY MR. SOLOMON:
 23 Q. Mr. Sullivan, what is CX2251?
 24 A. It's an e-mail from Kathleen Titus
 25 to two of our West Coast managers, and it

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1 TIM SULLIVAN
 2 includes an attachment of a prime vendor
 3 agreement.
 4 Q. And this is in regards to a
 5 potential customer called Pacific Group
 6 Management Services, correct?
 7 A. Correct.
 8 Q. Are you familiar with that group?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I recall the name, but
 11 I'm not familiar with the group, no.
 12 BY MR. SOLOMON:
 13 Q. They were a buying group, right?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Again, I remember the
 16 name, but I don't recall the details of who
 17 they are.
 18 BY MR. SOLOMON:
 19 Q. Okay. So you're not sure whether --
 20 sitting here today, you're not sure if they
 21 were a buying group?
 22 MR. McDONALD: Objection, asked and
 23 answered.
 24 THE WITNESS: If there's more
 25 documents to review to refresh my memory.

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1 TIM SULLIVAN
 2 But as I sit here today, I don't recall who
 3 they are. I recognize the name.
 4 BY MR. SOLOMON:
 5 Q. Miss Titus, Kathleen Titus writes,
 6 "We had a GPO prospect called PGMS. Very
 7 intriguing, willing to be exclusive. I created
 8 this and sent to Joe for review. It went to
 9 Tim and he shot it down. I think the meta msg
 10 is officially, GPO's are not good for Schein."
 11 Did I read that correctly?
 12 A. You read it correctly.
 13 Q. Okay. "Tim," does that refer to
 14 you, Mr. Sullivan?
 15 A. I believe so, yes.
 16 Q. And "msg," she uses the phrase
 17 "msg," does that refer to message?
 18 A. I would assume so.
 19 Q. Do you recall rejecting this group,
 20 Pacific Group Management Services, as a
 21 customer prospect?
 22 A. I don't recall shooting it down, as
 23 she says in here, or rejecting it.
 24 Q. What do you recall?
 25 A. I'd like to review the document, so

1 TIM SULLIVAN
 2 there's more to it. I know there's an exchange
 3 on it, but I don't recall being the one that
 4 shot it down.
 5 Q. She also says, "I think the meta
 6 message is officially, GPO's are not good for
 7 Schein."
 8 Did you understand Ms. -- strike
 9 that.
 10 Do you understand Ms. Titus to be
 11 saying that her belief is that GPOs are not
 12 good for Schein?
 13 MR. McDONALD: Object to the form,
 14 calls for speculation --
 15 THE WITNESS: I'm not going to
 16 spec- --
 17 MR. McDONALD: -- misstates the
 18 record of what Ms. Titus said she meant.
 19 I think you there listening nicely
 20 to her testimony, Mr. Sullivan.
 21 THE WITNESS: I'm not going to
 22 speculate as to what she means behind that.
 23 BY MR. SOLOMON:
 24 Q. Okay. What do you -- sitting here
 25 today, what do you think of her statement, "I

1 TIM SULLIVAN
 2 think the meta message is officially, GPO's are
 3 not good for Schein"?.
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: It misstates my
 6 position on it.
 7 BY MR. SOLOMON:
 8 Q. How so?
 9 A. As I've stated before and many times
 10 over, we work with many groups, historically
 11 worked with many groups. We've continued to
 12 work with groups. And there are examples of --
 13 these keep coming up as possible groups to work
 14 with because we don't have a policy against.
 15 We don't have a strategy against. If we did,
 16 these opportunities wouldn't keep coming up.
 17 So they keep coming up because we'll take a
 18 look at them individually and make a decision.
 19 Q. So Ms. Titus is saying that this
 20 customer prospect was sent to you for review,
 21 you shot it down, and that the meta message is
 22 officially GPOs are not good for Schein.
 23 Sitting here today, are you
 24 surprised to see this statement?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 mischaracterizes the evidence in the
 3 record.
 4 If you're testifying that that's
 5 what she said and meant, then that's fine.
 6 But you know darn well that she gave a
 7 deposition and said otherwise.
 8 THE WITNESS: That is not my -- it's
 9 not my feeling on it. That's not our
 10 strategy, company strategy.
 11 BY MR. SOLOMON:
 12 Q. So sitting here today reading this
 13 statement, are you surprised?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: Yes.
 16 BY MR. SOLOMON:
 17 Q. And her statement here is
 18 inconsistent with the Schein's company
 19 strategy?
 20 A. Inconsistent with our history,
 21 inconsistent with our activity in the space.
 22 Yes, it's inconsistent.
 23 Q. Okay. You can put that document
 24 aside.
 25 ///

1 TIM SULLIVAN
 2 (Exhibit CX2225 was marked for
 3 identification.)
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. I'm handing you another document
 8 that's been marked CX2225.
 9 Mr. Sullivan, do you recognize
 10 CX2225?
 11 A. I do.
 12 Q. And what is it?
 13 A. It's an e-mail exchange that I was
 14 copied on at the end by Joe Cavaretta to myself
 15 that includes a series of other e-mails.
 16 Q. And did you receive this e-mail in
 17 CX2225 as part of your job?
 18 A. Yes.
 19 Q. Do you have personal knowledge of
 20 anything written in this e-mail?
 21 A. I don't know how best to answer that
 22 other than I recognize the e-mail.
 23 Q. Okay.
 24 A. I have to say, there's one, the
 25 backside of this --

<p style="text-align: right;">Page 230</p> <p>1 TIM SULLIVAN 2 MR. McDONALD: Ronnie, are you 3 representing that this is all part of the 4 same thing? Because it looks to me like 5 it's two completely separate e-mails. 6 MR. SOLOMON: Yeah. Would you like 7 to go off the record just for a second? 8 MR. McDONALD: Sure. 9 THE VIDEOGRAPHER: Time is 1:28 p.m. 10 we're off the record. 11 (Whereupon, a discussion was had off 12 the record.) 13 (Whereupon, the following was had 14 off the video record:) 15 MR. McDONALD: So we've had a 16 discussion off the record about 17 Exhibit CX2225. And counsel for the FTC 18 and counsel for Schein have agreed that 19 CX2225-002, which has a Bates number of 20 Henry Schein-9045, is not part of this 21 e-mail chain. 22 And I guess you guys will produce a 23 new document that just has that page whited 24 out or something so that we don't have 25 confusion at a later date.</p>	<p style="text-align: right;">Page 231</p> <p>1 TIM SULLIVAN 2 MR. SOLOMON: Yeah, we can figure 3 out how to handle that after today. 4 MR. McDONALD: Okay. 5 BY MR. SOLOMON: 6 Q. So Mr. Sullivan -- 7 MR. McDONALD: You got to go back 8 on. 9 MR. SOLOMON: Oh. 10 (Whereupon, the following was had on 11 the video record:) 12 THE VIDEOGRAPHER: Time is 1:31 p.m. 13 We are back on the record. 14 BY MR. SOLOMON: 15 Q. Mr. Sullivan, as I asked you about 16 CX2225, we just agreed that Page 002 is not a 17 part of this exhibit. So I'm just asking about 18 all the other pages except that page, okay? 19 A. Okay. 20 Q. Okay. So you received this e-mail 21 as part of your job at Henry Schein, correct? 22 A. Correct. 23 Q. And you have personal knowledge of 24 the contents of this e-mail, correct? 25 MR. McDONALD: Object to the form.</p>
<p style="text-align: right;">Page 232</p> <p>1 TIM SULLIVAN 2 THE WITNESS: I mean, I understand 3 the contents of it, but I can't tell you I 4 understand every single level of detail of 5 it. I would not -- I didn't draft any of 6 these. 7 BY MR. SOLOMON: 8 Q. Okay. Did you receive this e-mail 9 around the time that you were involved in the 10 PGMS prospect? 11 A. Appears to be, yes. 12 Q. Okay. And does this appear to be a 13 true and accurate representation of this e-mail 14 correspondence? 15 A. It does. 16 Q. And did Schein keep this e-mail in 17 the ordinary course of its business? 18 A. Yes. 19 Q. I'd like to just refer you, 20 Mr. Sullivan, to the first page of this e-mail. 21 Ms. Titus is talking about rejecting PGMS as a 22 buying group. 23 Do I have that right? 24 A. Where does she state that, rejecting 25 them?</p>	<p style="text-align: right;">Page 233</p> <p>1 TIM SULLIVAN 2 Q. She says, "Just delivered the news 3 moments ago to Kathy Khalik. She was 4 absolutely gracious, but clearly devastated." 5 Do you see that? 6 A. I do. 7 Q. Do you understand Ms. Titus to be 8 saying that she had rejected this group? 9 A. Again, I don't know if I'd use the 10 term "rejected," but for whatever reason 11 decided not to work with them. That's how I 12 read that, yes. 13 Q. She says, "I explained if there was 14 a time in the future they become an MSO that 15 can demonstrate compliance, we would be pleased 16 to revisit. I offered her the compromise Tim 17 suggested to enroll the fully owned locations 18 in a special markets program." 19 Do you see that? 20 A. I do. 21 Q. So turning to the first sentence we 22 just read, "I explained" -- beginning with "I 23 explained," what is an MSO that Ms. Khalik is 24 referring to there? 25 A. The --</p>

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1 TIM SULLIVAN
2 MR. McDONALD: Object to the form.
3 You mean Ms. Titus?
4 MR. SOLOMON: Right. So strike
5 that.
6 BY MR. SOLOMON:
7 Q. What is an MSO that Ms. Titus is
8 referring to there?
9 A. Managed service organization.
10 Q. What is that?
11 A. So they're different than a DSO in
12 the respect of they provide management services
13 for organizations. So, again, they are all --
14 many structured differently. In many cases
15 they don't have any equity in their practice
16 that they're -- that they're helping to manage,
17 but those members pay this MSO for
18 management-type services.
19 Q. So MSO -- MSOs manage independent
20 dental practices?
21 MR. McDONALD: Object to the form,
22 vague.
23 THE WITNESS: I think it's a --
24 MR. McDONALD: Overly broad.
25 Go ahead.

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1 TIM SULLIVAN
2 THE WITNESS: It seems like a
3 general -- a good description of a general,
4 yes.
5 BY MR. SOLOMON:
6 Q. And they contract to provide
7 services with those independent dental
8 practices, is that right?
9 A. Yeah, I can't speak if they sign --
10 I would assume they sign contracts. I haven't
11 seen a contract that an MSO provides for the
12 members, but it sounds right.
13 Q. And you understand that there's a
14 fee associated with those -- with the provision
15 of those contracted services?
16 A. Usually that's the case, yes.
17 Q. Okay. What kind of management
18 services do MSOs provide to independent dental
19 practices?
20 MR. McDONALD: Object to the form,
21 lack of foundation.
22 THE WITNESS: Again, I don't work
23 this closely with any -- any one of them.
24 But some will offer to work in the practice
25 management software system to help book

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1 TIM SULLIVAN
2 patients. Some will help market their
3 practice to bring new patients into the
4 practice. They'll manage the books for
5 them, their receivables, their payables.
6 Some will -- they're just various
7 services that the dental practice otherwise
8 would not -- I'm sorry, would otherwise
9 have to manage on their own, that they
10 actually ask this MSO group to manage for
11 them, and they pay them a fee for that.
12 BY MR. SOLOMON:
13 Q. Can you give me an example of an
14 MSO?
15 A. I believe Breakaway Dental is an
16 example of an MSO.
17 Q. Any others?
18 A. That's the one top of mind that
19 comes out that I can confirm.
20 Q. So what's the difference between an
21 MSO and a DSO, which we talked about earlier
22 today?
23 MR. McDONALD: Object to the form,
24 lack of foundation.
25 THE WITNESS: Sometimes there is no

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1 TIM SULLIVAN
2 difference. It's how they refer to
3 themselves. Some want to be referred to as
4 an MSO. Some want to be referred to as a
5 DSO.
6 More likely in a DSO situation, the
7 DSO actually owns the practice and the
8 dentists are employees of the group. In an
9 MSO, that is typically not the case because
10 they just did what I just described to you.
11 So there definitely is some crossover in
12 both.
13 BY MR. SOLOMON:
14 Q. So in some instances, MSOs do not
15 have ownership in the locations that they
16 manage?
17 A. Correct.
18 Q. So turning back to Ms. Titus'
19 statement here, she's saying that if -- well,
20 strike that.
21 Do MSOs provide purchasing services
22 to their members?
23 MR. McDONALD: Object to the form,
24 overly broad, lack of foundation.
25 THE WITNESS: Again, I can give you

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1 TIM SULLIVAN
 2 an example of one. I don't know how they
 3 all operate. I'm not exactly sure even how
 4 Breakaway operates. So I don't know if
 5 they actually do the purchasing for them or
 6 if the local dentist does it. I think it
 7 really varies on whatever -- however
 8 they're structured.
 9 BY MR. SOLOMON:
 10 Q. So some MSOs provide centralized
 11 purchasing and some don't; is that what you're
 12 saying?
 13 MR. McDONALD: Object. Object to
 14 the form, overly broad, vague, lack of
 15 foundation.
 16 THE WITNESS: I don't know. I think
 17 it's more common in a DSO than it is in
 18 an -- I don't know if there's none that do
 19 it in an MSO or some do. I don't know.
 20 BY MR. SOLOMON:
 21 Q. Okay. So, again, turning to
 22 Ms. Titus' statement, she says -- she's telling
 23 Joe Cavaretta here that if they can become an
 24 MSO and demonstrate compliance, that Schein
 25 would be pleased to revisit, is that right?

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: That's how --
 4 MR. McDONALD: The document speaks
 5 for itself.
 6 THE WITNESS: That's how it reads,
 7 yes.
 8 BY MR. SOLOMON:
 9 Q. Did you tell Ms. Titus that you
 10 would be willing to work with PGMS if they
 11 became an MSO rather than a buying group?
 12 A. I don't recall ever talking to
 13 Kathleen Titus about this directly.
 14 Q. In the next sentence, she talks
 15 about offering a compromise that Tim suggested
 16 to enroll the fully owned locations in special
 17 markets.
 18 Do you see that?
 19 A. I do.
 20 Q. So you were only in favor of working
 21 with fully owned locations that were a part of
 22 this group, is that right?
 23 MR. McDONALD: Object to the form,
 24 mischaracterizes his testimony.
 25 THE WITNESS: So that's definitely

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1 TIM SULLIVAN
 2 not my position. In this particular case,
 3 I don't recall the situation or what the
 4 exact specifics were, but that's clearly
 5 not my position, as you know.
 6 BY MR. SOLOMON:
 7 Q. So she has it wrong here?
 8 A. Well, I don't see her --
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I don't see her saying
 11 this is my position overall. She's talking
 12 about this specific example with PGMS.
 13 BY MR. SOLOMON:
 14 Q. And she's referring to a compromise
 15 that you suggested, right?
 16 MR. McDONALD: Object to the form.
 17 The document speaks for itself.
 18 If you're asking if that -- if he
 19 did that, then ask that. If you're asking
 20 him if that's what the document says, then
 21 please ask that, but let's be clear what
 22 you're asking him.
 23 THE WITNESS: Could you repeat the
 24 question?
 25 ///

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Sure. Did you, in fact, offer the
 4 compromise that Ms. Titus talks about in this
 5 e-mail?
 6 A. Not directly to her. And I don't
 7 recall my discussion with Joe. I would have
 8 had a discussion with Joe. And I don't recall
 9 that being my suggestion, by any means.
 10 Q. What do you recall?
 11 A. Just that we talked about this
 12 opportunity and where do they fit in the
 13 spectrum of buying groups.
 14 Q. And do you recall where they fit in
 15 this -- strike that?
 16 Do you recall where this group fit
 17 on the spectrum?
 18 A. There was no additional -- I'd be
 19 speculating to the exact discussion. But based
 20 on this input and the fact that we declined, I
 21 can assume that it was over on the price-only
 22 side of it.
 23 Q. So your understanding is Schein
 24 declined this group because it was a price-only
 25 buying group?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: If you read this
 4 message in entirety again instead of
 5 picking it apart, but in entirety, you can
 6 see we're bringing some clarity to
 7 around -- to internal confusion on who's
 8 managing which groups.
 9 Joe even starts his message that,
 10 "Bringing KT," Kathleen Titus, "and Andrea
 11 back," meaning now part of the mid-market.
 12 It's been a benefit. We're bringing
 13 special markets and HSD more closely
 14 together than we were prior, so part of our
 15 own confusion. She herself was saying we
 16 had the opportunity to having Tim's input
 17 on something of this nature. It's the
 18 first time we have.
 19 So it's clearly I'm not involved in
 20 all the day-to-day in every one of these
 21 decisions. So we're bringing some clarity
 22 around it. But this is still landed in
 23 the -- the far left side of the spectrum,
 24 if you would, relative to the overall value
 25 that we felt this group was going to bring

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Why not?
 4 A. Again, if we sign with any group,
 5 decide to bring on any group, typically it's
 6 only with us. But if they have no services or
 7 values or other things that drive compliance,
 8 it doesn't matter that it's only with us.
 9 Q. So if a price-only buying group is
 10 willing to be exclusive, Schein is still not
 11 interested?
 12 MR. McDONALD: Object to the form,
 13 mischaracterizes his testimony.
 14 THE WITNESS: It really
 15 mischaracterizes my testimony, I mean, in a
 16 big way.
 17 BY MR. SOLOMON:
 18 Q. Okay.
 19 A. I've said it multiple times that is
 20 not our position; it's not my position. I
 21 don't why you keep phrasing it that way.
 22 Q. So if -- I'll try and rephrase.
 23 So if -- if a price-only buying
 24 group is willing to be exclusive, Schein still
 25 believes that it can't drive compliance?

1 TIM SULLIVAN
 2 to their members and therefore lack of
 3 compliance.
 4 It talks about if they were -- they
 5 become an MSO where they may be taking over
 6 some of the purchasing control or they can
 7 demonstrate compliance, we'd like to
 8 revisit. So clearly they were not
 9 demonstrating that they could -- they could
 10 drive compliance within their members.
 11 BY MR. SOLOMON:
 12 Q. Do you recall in the e-mail we
 13 looked at a few moments ago prior to this one,
 14 Ms. Titus says that this group PGMS was willing
 15 to be exclusive with Schein?
 16 A. I do.
 17 Q. Was that sufficient in order to --
 18 strike that.
 19 Did you think that the fact that
 20 PGMS was willing to be exclusive would have
 21 helped drive compliance among its members?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: That alone wouldn't do
 24 it, no.
 25 ///

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I believe they can.
 4 If they're -- if they're exclusive,
 5 you're saying?
 6 BY MR. SOLOMON:
 7 Q. Correct.
 8 A. I believe they can, yeah.
 9 Q. So --
 10 A. It doesn't -- because they're
 11 exclusive doesn't mean they will.
 12 Q. What other factors might influence
 13 whether they can drive compliance other than a
 14 promise to be exclusive?
 15 A. I'll go back through the spectrum.
 16 Do they add other value? Is it part of
 17 contractual agreements that they have to follow
 18 or they no longer will be a member? Are there
 19 other values that the members receive that
 20 drives loyalty within their group?
 21 I mean, as I've said, it -- I've
 22 testified many times about what would -- what I
 23 believe would drive that.
 24 Q. So a promise to be exclusive would
 25 not be enough?

1 TIM SULLIVAN
2 A. As a standalone, not necessarily.
3 It could be. Again, someone locally, Kathleen,
4 if she really pushed maybe could have pushed us
5 over the edge and say, hey, let's go for it.
6 She said, hey, I actually respect yours and
7 Joe's input on this, I agree, let's pass.
8 Q. Turning to Mr. Cavaretta's e-mail to
9 you, he forwards Ms. Titus' e-mail to you,
10 correct?
11 A. Correct.
12 Q. And he says that Ms. Titus and he
13 also mentions Andrea were acting as GPO watch
14 dogs.
15 Do you see that?
16 MR. McDONALD: Object to the form,
17 mischaracterizes the document.
18 BY MR. SOLOMON:
19 Q. Joe says, "They know how to be the
20 watch dogs and take it seriously!"
21 A. He did state that, yes.
22 Q. Do you know what Mr. Cavaretta means
23 there?
24 A. I do not.
25 Q. Did you ever seek clarification from

1 TIM SULLIVAN
2 Mr. Cavaretta as to what he meant about being a
3 GPO watchdog?
4 MR. McDONALD: Object to the form.
5 It doesn't say GPO watchdog, Ronnie.
6 You can wish and hope that it says that,
7 but it doesn't say that. So why don't you
8 accurately read the document and ask the
9 question again.
10 THE WITNESS: Could you repeat the
11 question, please?
12 MR. SOLOMON: Can you repeat the
13 question?
14 (The reporter read the record as
15 requested.)
16 MR. McDONALD: Again,
17 mischaracterizes the document,
18 mischaracterizes the testimony.
19 THE WITNESS: I don't know how to
20 answer that. That's not what the document
21 says.
22 BY MR. SOLOMON:
23 Q. So Mr. Cavaretta says, "Bringing
24 KT" -- I assume he's referring to Kathleen
25 Titus?

1 TIM SULLIVAN
2 A. Yes.
3 Q. -- "and Andrea" -- I'm assuming he's
4 referring to Andrea Hight?
5 A. Correct.
6 Q. -- "back has a benefit I didn't even
7 think of as it pertains to the GPO world,"
8 correct?
9 A. Yes, it does say that.
10 Q. And he says, "They know how to be
11 the watch dogs and take it seriously!"
12 They're saying that Ms. Titus --
13 Ms. Titus and Ms. Hight are being watchdogs
14 with respect to GPOs, correct?
15 MR. McDONALD: Object to the form.
16 THE WITNESS: You'd have to ask him
17 what he meant by it.
18 BY MR. SOLOMON:
19 Q. So you have no understanding as to
20 what Mr. Cavaretta meant here?
21 MR. McDONALD: Object to the form,
22 asked and answered.
23 THE WITNESS: You'd have to ask Joe
24 what he meant by that.
25 ///

1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. You don't recall ever seeking
4 clarification from Mr. Cavaretta about what he
5 meant?
6 A. I don't.
7 Q. I'm handing you another document
8 that's been pre-marked as CX1 -- CX0174.
9 (Exhibit CX0174 was marked for
10 identification.)
11 (Witness viewed said document.)
12 THE WITNESS: Okay.
13 BY MR. SOLOMON:
14 Q. Mr. Sullivan, what is CX0174?
15 A. It's an e-mail exchange amongst some
16 team members of ours.
17 Q. Do you understand CX0174 to be about
18 a buying group called the Dental Co-Op of Utah?
19 A. That's my understanding, yes.
20 Q. And the Dental Co-op of Utah is a
21 buying group, correct?
22 MR. McDONALD: Object to the form.
23 THE WITNESS: Yeah, I'm not very
24 familiar with them. It appears to be in
25 this instance.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Do you recall ever learning about
 4 the Dental Co-op of Utah?
 5 A. Again, I'm familiar with the name,
 6 but I don't recall the details of who they are
 7 and how they operate.
 8 Q. So I'd like to focus your attention
 9 on the first page, Mr. Upchurch's e-mail to
 10 Mr. Cavaretta on July 18, 2014 at 10:22 a.m.
 11 The last paragraph, "They are
 12 probably going to align with a Darby over a
 13 PDCO but Benco also might jump at the
 14 opportunity. The Co-Op is turning into a GPO
 15 (even if they don't think they are one now),
 16 from what KT has observed in Texas, New Mexico
 17 and from Tim S, HSD does not want to enter the
 18 GPO world."
 19 Do you see that?
 20 A. I see that.
 21 Q. Do you have any understanding as to
 22 why Mr. Upchurch would be saying that you do
 23 not want to enter the GPO world?
 24 MR. McDONALD: Object to the form,
 25 calls for speculation.

1 TIM SULLIVAN
 2 A. It's an e-mail exchange between Joe
 3 and I primarily, but there's others copied that
 4 it was on at the beginning.
 5 Q. And what is it about?
 6 A. A manufacturer partner of ours,
 7 Oral-B, working with, it appears to be, the
 8 same dental co-op on the last exchange.
 9 Q. Did you -- you drafted part of this
 10 e-mail chain, correct?
 11 A. Yes.
 12 Q. And did you do so as part of your
 13 job at Schein?
 14 A. I did.
 15 Q. And did you have personal knowledge
 16 of what you wrote in CX2467?
 17 A. Yes.
 18 Q. And did you write this e-mail at or
 19 around the time you were having these
 20 discussions about the Dental Co-op of Utah?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Let me go back to the
 23 last document and see.
 24 (Witness viewed said document.)
 25 THE WITNESS: This looks to be about

1 TIM SULLIVAN
 2 THE WITNESS: No. I'd be
 3 speculating.
 4 BY MR. SOLOMON:
 5 Q. Okay. Do you recall ever telling
 6 Mr. Upchurch that you did not want to enter the
 7 GPO world?
 8 A. No.
 9 Q. Sitting here today, you have no
 10 knowledge as to why Mr. Upchurch wrote this?
 11 A. Correct. It's inconsistent with our
 12 history and where we're at in the evolution of
 13 whole market space.
 14 Q. You can put that document aside.
 15 I'm handing you another document
 16 that's been pre-marked as CX2467.
 17 (Exhibit CX2467 was marked for
 18 identification.)
 19 (Witness viewed said document.)
 20 THE WITNESS: Okay.
 21 BY MR. SOLOMON:
 22 Q. Mr. Sullivan, do you recognize
 23 CX2467?
 24 A. I do.
 25 Q. What is it?

1 TIM SULLIVAN
 2 a month before the last one we discussed.
 3 So I think you're going back -- you're
 4 working your way --
 5 BY MR. SOLOMON:
 6 Q. I'm actually just referring --
 7 A. You're working your way backwards.
 8 Q. -- just to the discussions you're
 9 having in this e-mail with Mr. Cavaretta and
 10 Mr. Straka.
 11 Did you draft this e-mail around the
 12 times you were having those discussions?
 13 MR. McDONALD: To be clear, Ronnie,
 14 are you suggesting that there were
 15 discussions beyond the e-mail? I think
 16 that's where he's getting confused.
 17 If you're asking if the e-mails
 18 occurred around the time that the e-mails
 19 were sent, I will stipulate to that.
 20 If you're asking him if they
 21 occurred at the same time of some
 22 discussion, like you and I are discussing
 23 outside of e-mail, then I think he's
 24 confused and I'm confused about what you're
 25 asking him.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Yeah, I think I'm interested in
 4 knowing, did you write this e-mail around the
 5 same time as what you're describing happened?
 6 So you're referring to -- you talk
 7 about discussions with someone named Bob
 8 Straka.
 9 Did you write this e-mail around the
 10 time you were having those discussions?
 11 A. I would say it appears to be because
 12 in one of the messages I say "I'm on with Bob
 13 now" as we're having an e-mail.
 14 Q. Okay.
 15 A. So it appears to be, yes.
 16 Q. And does CX2467 appear to be a true
 17 and accurate representation of this e-mail
 18 chain?
 19 A. Yes.
 20 Q. Okay. And was this document,
 21 CX2467, kept in the ordinary course of Schein's
 22 business?
 23 A. Yes.
 24 Q. Okay. So turning to Mr. Cavaretta's
 25 e-mail, I'd like to focus on Cavaretta's e-mail

1 TIM SULLIVAN
 2 to Mr. Hinsch and someone named Marguerite
 3 Walsh on June 16th, 2014 at 9:59 a.m.
 4 Do you see that?
 5 A. I do.
 6 Q. He writes -- he's talking about the
 7 dental co-op. And he says, "It is a long story
 8 but this Co-Op started out very small in Utah
 9 about 7 years ago and have wanted to expand to
 10 other regions. We have declined to do this as
 11 HSD."
 12 Do you see that?
 13 A. I do.
 14 Q. So Mr. Cavaretta is stating that the
 15 Dental Co-Op of Utah wanted to expand to other
 16 regions, is that right?
 17 MR. McDONALD: Object to the form.
 18 The document speaks for itself.
 19 THE WITNESS: That's what it states.
 20 BY MR. SOLOMON:
 21 Q. He says that HSD has declined to
 22 support this expansion, correct?
 23 MR. McDONALD: Object to the form.
 24 The document speaks for itself.
 25 THE WITNESS: That's what he's

1 TIM SULLIVAN
 2 stated.
 3 BY MR. SOLOMON:
 4 Q. Do you know whether the Dental Co-Op
 5 of Utah was a price-only buying group?
 6 MR. McDONALD: Object to the form,
 7 lack of foundation.
 8 THE WITNESS: I'm not familiar.
 9 BY MR. SOLOMON:
 10 Q. You don't know one way or the other?
 11 A. I'm not familiar.
 12 Q. Do you know why Mr. Cavaretta was
 13 saying that HSD had declined to support the
 14 Dental Co-Op of Utah's expansion?
 15 A. I don't recall the details at that
 16 time right now.
 17 Q. Okay. Mr. Hinsch in the next e-mail
 18 responds, "I think this is something that Tim
 19 should talk with Bob Straka about."
 20 Who is Bob Straka?
 21 A. He was the -- I don't know what his
 22 exact title was, maybe GM. He was responsible
 23 for the Oral-B relationship in the U.S. market.
 24 Q. And what is Oral-B?
 25 A. A supplier partner of ours.

1 TIM SULLIVAN
 2 Q. Does Oral-B sell products directly
 3 to customers?
 4 A. No, they sold through distributors.
 5 Well, what time frame is this?
 6 No, I believe at this time we were
 7 partners of theirs at one point. They did
 8 eliminate their dealer partners and sold direct
 9 for a short period of time, couple of years.
 10 And then they came back through the dealer
 11 market with a limited number of dealers, from
 12 my understanding.
 13 And I believe it's during this time,
 14 and that's why I was reaching out to him, I was
 15 wondering why they were going back to a direct
 16 approach in this case versus working through
 17 us.
 18 Q. So Oral-B was selling products to
 19 the Dental Co-Op of Utah, is that right?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: That's -- that's my
 22 understanding, yes.
 23 BY MR. SOLOMON:
 24 Q. The Dental Co-Op of Utah was already
 25 partnered with Schein, correct?

1 TIM SULLIVAN
 2 A. Correct, at this time, yes.
 3 Q. And you tell Mr. Hinsch and
 4 Mr. Cavaretta, "I'll send him a message and
 5 discuss with him."
 6 Do you see that?
 7 A. I do.
 8 Q. So you spoke with Mr. Straka about
 9 this?
 10 A. Correct.
 11 Q. And if you turn to the next page,
 12 the first page, you're talking to Mr. Cavaretta
 13 about what you're going to speak with
 14 Mr. Straka about.
 15 And you ask him, "Is it more than
 16 they are simply supporting a buying group?"
 17 Do you see that?
 18 A. I do.
 19 Q. So you contacted Mr. Straka to ask
 20 why Oral-B was supporting a buying group?
 21 MR. RACOWSKI: Object to the form.
 22 THE WITNESS: No. My discussion
 23 with Mr. Straka was they can support and
 24 decide -- whatever go-to market strategy
 25 they want, it's their decision to make.

1 TIM SULLIVAN
 2 this -- with the Dental Co-Op of Utah.
 3 BY MR. SOLOMON:
 4 Q. You don't say that in this e-mail,
 5 though, right?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I'm asking for
 8 details. I didn't state anything about --
 9 I'm not making a statement. I'm asking
 10 questions.
 11 BY MR. SOLOMON:
 12 Q. And one of the questions is, "Is it
 13 more than they are simply supporting a buying
 14 group?"
 15 A. That is one of the questions, yes.
 16 Q. And Joe Cavaretta responds, "No,
 17 it's not"?
 18 A. That's how -- yes, that's his
 19 response.
 20 Q. So was it more than -- strike that.
 21 Was your conversation with
 22 Mr. Straka about more than it's -- that they
 23 were simply supporting a buying group?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I'll repeat what my

1 TIM SULLIVAN
 2 They had decided to come back through
 3 dealers versus selling to the direct end
 4 user.
 5 So here's an example that now
 6 they're going to sell to the direct end
 7 user. They can do that if they choose to.
 8 They can do whatever they want.
 9 But for us to find out via a trade
 10 show that that's what they were doing, that
 11 was very poor communication.
 12 BY MR. SOLOMON:
 13 Q. But you're saying here that you want
 14 to know why they're supporting a buying group?
 15 A. I was asking Joe what the -- I
 16 wanted clarity on the issue before I spoke to
 17 Bob.
 18 Q. Why did it matter whether Oral-B was
 19 working with a buying group?
 20 MR. McDONALD: Object to the form,
 21 asked and answered.
 22 THE WITNESS: I just stated, if
 23 they're going to work through dealers, then
 24 work through dealers. Through us, we would
 25 get the -- we would work with them with

1 TIM SULLIVAN
 2 discussion with Mr. Straka was. They made
 3 a decision to come back through the dealer
 4 network. We supported that decision, of
 5 course. And so if so, then we'll work with
 6 them to get into as many customers as we
 7 possibly can.
 8 We also have an exclusive
 9 relationship with Colgate. We represent --
 10 you know, Butler is another toothbrush
 11 line.
 12 So we will -- but they were now
 13 working with one direct again. They can do
 14 that. We just wanted communication as to
 15 what their -- what is their strategy now
 16 with customers. Are they changing it?
 17 That's fine. We just need to understand
 18 what that is.
 19 BY MR. SOLOMON:
 20 Q. Did you ask Mr. Straka why he was
 21 selling to a buying group?
 22 A. Not --
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Sorry.
 25 MR. McDONALD: Go ahead.

1 TIM SULLIVAN
 2 THE WITNESS: Not why, but are, in
 3 fact, they changing their strategy going
 4 direct or they were going to work with
 5 dealers.
 6 BY MR. SOLOMON:
 7 Q. Couldn't Oral-B sell direct as well
 8 as through dealers?
 9 MR. McDONALD: Object to the form,
 10 asked and answered.
 11 THE WITNESS: Yes, they can.
 12 BY MR. SOLOMON:
 13 Q. But you're saying at this time they
 14 were not doing that?
 15 A. That's my understanding.
 16 Q. Okay. What did Mr. Straka tell you?
 17 A. To the best of my recollection, he
 18 apologized for the poor communication. That's
 19 not how we should have found out. But the fact
 20 that we had an exclusive with Colgate, they
 21 didn't -- they felt they didn't have an
 22 opportunity to get into this group in
 23 particular, so they decided to offer them a
 24 program directly.
 25 Q. And you thought that was

1 TIM SULLIVAN
 2 That was a very compelling part of their
 3 new structure.
 4 BY MR. SOLOMON:
 5 Q. So if a Smile Source member does not
 6 purchase a minimum quantity of products through
 7 Schein, their membership would be at risk; is
 8 that what you're saying?
 9 MR. McDONALD: Object to the form,
 10 mischaracterizes the evidence and his
 11 testimony.
 12 THE WITNESS: No, that's not what
 13 I'm saying. Because sponsors particular
 14 has -- we're one of three sponsors. So it
 15 didn't have to come through Schein. They
 16 could continue to work with Burkhart and
 17 they could continue to work with Darby.
 18 But if they didn't -- and it's up to Smile
 19 Source. I don't know exactly what they do
 20 if someone doesn't.
 21 In that document, they state that
 22 they would. It puts their membership at
 23 risk if they don't buy through their
 24 sponsored partners.
 25 ///

1 TIM SULLIVAN
 2 problematic?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: No. As I told you,
 5 it's their decision to make.
 6 BY MR. SOLOMON:
 7 Q. Okay. You can put this document
 8 aside.
 9 Mr. Sullivan, we talked about Smile
 10 Source earlier today. And I think I asked you
 11 if Smile Source ever changed its model, and you
 12 said at some point in 2016.
 13 Do you recall that?
 14 A. I do.
 15 Q. How did Smile Source change its
 16 model in 2016?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: Yeah, I don't have all
 19 the details, but one of them was -- to me
 20 one of the most compelling pieces was they
 21 stated that in the agreement that they have
 22 with their members, that they are required
 23 to purchase their dental supplies through
 24 their sponsor partners. And if they
 25 didn't, they put their membership at risk.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. The individual Smile Source member,
 4 their membership is at risk, is what you're
 5 stating?
 6 A. That's what I'm stating is my
 7 understanding of the new Smile Source
 8 agreement.
 9 Q. And that agreement has been in place
 10 since March of 2017?
 11 A. I believe it actually started prior
 12 to that, whenever -- around the time Trevor
 13 joined.
 14 Q. Okay. So how would a Smile Source
 15 member put their membership at risk? What do
 16 they need to do in order to stay as a member?
 17 How much do they need to purchase from Schein?
 18 MR. McDONALD: Object to the form,
 19 mischaracterizes his testimony.
 20 THE WITNESS: To clarify, it's not
 21 that they have to buy through Schein. We
 22 want them to, but they have two other
 23 partners -- my understanding is they have
 24 two other dealer partners also, Darby and
 25 Burkhart.

1 TIM SULLIVAN
 2 So my understanding, provided they
 3 purchase 80 -- it's either 80 or 85 percent
 4 of their supplies through the Smile
 5 Source-approved dealers, their membership
 6 is not at risk.
 7 BY MR. SOLOMON:
 8 Q. So the Smile Source-approved dealers
 9 are Schein, Darby, and Burkhart, correct?
 10 MR. McDONALD: Currently.
 11 THE WITNESS: Currently, yes.
 12 BY MR. SOLOMON:
 13 Q. So your understanding is that
 14 members have to purchase 80 to 85 percent of
 15 their products through one of those three
 16 distributors?
 17 A. It doesn't have to be one of them.
 18 It could be 30 percent from us, 30 percent from
 19 Darby, 30 percent -- so it could -- as long as
 20 combined, it's through their approved dealers.
 21 Q. So a Smile Source member could
 22 purchase 100 percent of their products through
 23 Darby and nothing -- nothing through Schein, is
 24 that correct?
 25 A. That's correct.

1 TIM SULLIVAN
 2 THE WITNESS: Again, my belief is
 3 around the time Trevor Mauer became either
 4 president or CEO, whatever his actual title
 5 is, within Smile Source.
 6 BY MR. SOLOMON:
 7 Q. So what would you call Smile Source
 8 now? Would you still call it a buying group?
 9 A. So they categorize themselves and so
 10 even internally we refer to them as a franchise
 11 DSO.
 12 Q. They call themselves a franchise
 13 DSO?
 14 A. Correct.
 15 Q. What does -- so Schein internally
 16 also refers to them as a franchise DSO?
 17 A. That's correct.
 18 Q. Do you understand them to still be a
 19 buying group?
 20 A. By our definition, that would put
 21 them to the far right, if you would, as far as
 22 in the spectrum of buying groups. They do --
 23 their members do comply with their membership
 24 agreement.
 25 So, yes, they provide enough value,

1 TIM SULLIVAN
 2 Q. And they would not put their
 3 membership at risk?
 4 A. That's correct.
 5 Q. And a Smile Source member could
 6 purchase 50 percent of their products from
 7 Burkhart and the other 50 from Darby, purchase
 8 nothing from Schein and they still would not
 9 put their membership at risk?
 10 A. That's correct.
 11 Q. A Smile Source member can purchase
 12 nothing from Schein and not put their
 13 membership at risk?
 14 A. That's correct.
 15 Q. So Smile Source members --
 16 MR. McDONALD: Slow down, Ronnie.
 17 BY MR. SOLOMON:
 18 Q. Smile Source members do not make any
 19 volume commitments to Schein specifically,
 20 correct?
 21 A. That is correct.
 22 Q. When did you understand this change
 23 specifically took place?
 24 MR. McDONALD: Object to the form,
 25 asked and answered.

1 TIM SULLIVAN
 2 a lot of value, actually, to their members, and
 3 therefore their members do, for the most part,
 4 comply with their purchase agreement.
 5 Q. So would you still call them a
 6 buying group?
 7 A. Again, we refer to them as a
 8 franchise DSO, but you could intertwine them
 9 with a full value buying group as well, yes.
 10 Q. So the change that you're referring
 11 to was just that Smile Source members commit to
 12 purchasing 80 to 85 percent of their products
 13 through one of the three distributors who Smile
 14 Source has partnered with, right?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: If you put "any" in
 17 front of that, so "any one of the three,"
 18 that would be an accurate statement, but
 19 not -- they don't have to purchase through
 20 one of the three.
 21 BY MR. SOLOMON:
 22 Q. Any other changes in Smile Source's
 23 model that you're aware of?
 24 MR. McDONALD: Object to the form,
 25 lack of foundation.

1 TIM SULLIVAN
 2 THE WITNESS: So my understanding is
 3 they added more to their offering. They
 4 have an agreement with certain labs.
 5 Now, a member is not required to
 6 move to the lab because that's a very
 7 personal decision by dentists, but it's
 8 actually a very good offering. My
 9 understanding is many do actually switch to
 10 the labs that they represent.
 11 They have local forum meetings where
 12 all the dentists in the Dallas area, as an
 13 example, can get together once a month and
 14 just talk amongst themselves and do some
 15 best practices. So they bring other things
 16 to the group that I don't believe existed
 17 before.
 18 BY MR. SOLOMON:
 19 Q. Were -- strike that.
 20 Was Smile Source offering
 21 value-added services to its members before --
 22 before it changed its model?
 23 A. My understanding was the ones I just
 24 described, no. And even prior, their website
 25 looked pretty and the brochures looked nice,

1 TIM SULLIVAN
 2 Source before then?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Again, if I have the
 5 date right, that would be accurate.
 6 BY MR. SOLOMON:
 7 Q. Do you recall -- do you recall
 8 meeting with Smile Source in or around
 9 February of 2014?
 10 A. Sounds accurate, yes.
 11 Q. Where did you meet -- strike that.
 12 Who did you meet with?
 13 A. It would be easier --
 14 MR. McDONALD: Hang on. Object to
 15 the form.
 16 Go ahead.
 17 THE WITNESS: It would be easier if
 18 you know the dates and the meetings. If I
 19 can look at a document, I can -- it would
 20 be easier to talk you through it to make
 21 sure I don't misstate anything and have to
 22 clarify it later.
 23 The dates sound right, but it could
 24 have been '13, could have been '15. It's
 25 four years ago, three years ago.

1 TIM SULLIVAN
 2 claimed to have a lot of these other things.
 3 In reality, there was no meat on the bone, if
 4 you would. They weren't -- it wasn't --
 5 members weren't taking advantage of those
 6 because there was no real value being created
 7 in those.
 8 Q. So there were some value-added
 9 services, but you thought that there wasn't
 10 meat on the bones of those value-added
 11 services?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: And Trevor himself,
 14 that comes from them. They themselves
 15 self-admitted that the rest of their story
 16 was not understood by the members, and the
 17 value that they were bringing or the rest
 18 of the offering wasn't driving any
 19 additional value.
 20 BY MR. SOLOMON:
 21 Q. Trevor -- do you know when Trevor
 22 started working at Smile Source?
 23 A. I believe it was sometime in 2016,
 24 if I had to --
 25 Q. So he wasn't working for Smile

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay.
 4 A. I'd prefer to work off --
 5 Q. Okay.
 6 A. -- documents if you know
 7 specifically who I met with.
 8 Q. And when you met with them in
 9 February 2014, that was before they had changed
 10 their model, correct?
 11 A. Assuming that is the date --
 12 MR. McDONALD: Hang on. Object to
 13 the form.
 14 Go ahead.
 15 THE WITNESS: Back to what I said
 16 before, assuming we have the dates correct,
 17 I believe that to be the case, yes.
 18 BY MR. SOLOMON:
 19 Q. Okay. So they were still a buying
 20 group at that point?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Again, they were
 23 claiming to be more than that.
 24 BY MR. SOLOMON:
 25 Q. Okay. Do you recall how many times

1 TIM SULLIVAN
 2 you met with Smile Source in that period of
 3 February 2014?
 4 A. In that one month?
 5 Q. Correct.
 6 A. No. I would assume one, but I
 7 don't -- was there -- was there two?
 8 Q. I don't know. I'm asking you.
 9 A. I don't know. I'd have to look at
 10 the documents that support that.
 11 Q. Okay.
 12 A. I don't remember two meetings in
 13 February 2014.
 14 Q. You only remember one?
 15 A. That's all I can recall without
 16 looking at anything more.
 17 Q. Okay. Do you recall that the
 18 February 2014 meeting was at the request of
 19 Smile Source?
 20 A. This would be so much easier if we
 21 just pull out the paperwork. I believe that to
 22 be true.
 23 Q. Okay. And do you recall that Smile
 24 Source asked Schein to prepare a presentation?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 THE WITNESS: I don't recall the
 3 order of things or where the request came
 4 in.
 5 BY MR. SOLOMON:
 6 Q. Do you recall making a presentation
 7 to Smile Source at a meeting with them?
 8 A. Yes.
 9 Q. What do you recall about the
 10 presentation?
 11 A. Do you have it? Can we look at it?
 12 Q. Well, I'd just like to make sure
 13 that we're talking about the same thing.
 14 A. You want to test me first and then
 15 show me the -- I don't -- I don't --
 16 MR. McDONALD: If you recall, Tim,
 17 tell him. He does have it, as you know he
 18 does, and he knows he does, but play his
 19 game if he wants to waste his time.
 20 THE WITNESS: I don't recall the
 21 specifics.
 22 BY MR. SOLOMON:
 23 Q. Why did you meet with Smile Source
 24 in February of 2014?
 25 A. I -- I don't recall.

1 TIM SULLIVAN
 2 Q. Did you see the meeting as a way to
 3 ask Smile Source questions about its model?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: Remember, prior to
 6 this they terminated us. There's a
 7 possibility to do business again. So we
 8 were showing them how and why we would be
 9 good partners.
 10 BY MR. SOLOMON:
 11 Q. Were you meeting with Smile Source
 12 to learn more about whether they were still a
 13 buying group?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: To learn more if our
 16 combined strategies could create alignment
 17 and mutual benefits for Smile Source, for
 18 their members, our customers and us.
 19 BY MR. SOLOMON:
 20 Q. Did you want to know whether Schein
 21 was still focused on providing discounts to its
 22 members?
 23 MR. McDONALD: Object to the form.
 24 MR. SOLOMON: Strike that.
 25 MR. McDONALD: Your question makes

1 TIM SULLIVAN
 2 no sense.
 3 BY MR. SOLOMON:
 4 Q. You wanted to know -- strike that.
 5 Did you want to know whether Smile
 6 Source was still focused on providing discounts
 7 to its members?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: I wanted to understand
 10 their total value proposition. And where
 11 price was a component of that, yes, we
 12 needed to understand that detail, also.
 13 BY MR. SOLOMON:
 14 Q. You wanted to know whether they were
 15 still a price-only buying group as they were
 16 pre-2012?
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I just stated what our
 19 goal was, which is to understand what their
 20 total value proposition was. And, yes,
 21 price is a component of value, and are we
 22 in alignment in all of that.
 23 BY MR. SOLOMON:
 24 Q. Okay. Mr. Sullivan, I'm handing you
 25 a document marked CX2122.

1 TIM SULLIVAN
 2 (Exhibit CX2122 was marked for
 3 identification.)
 4 (Witness viewed said document.)
 5 MR. McDONALD: So, Ronnie, while
 6 he's looking at this, his e-mail, which is
 7 the third one from the top, has
 8 highlighting in it, which I don't think is
 9 on the original document.
 10 It's highlighted. Anyone care to
 11 join me it's highlighted, at least on my
 12 copy? And it's not on the original
 13 document.
 14 MR. SOLOMON: Yeah, I did not add
 15 that. So I'm fine stipulating that as far
 16 as I know, that was not in the original --
 17 MR. McDONALD: Okay.
 18 MR. SOLOMON: -- e-mail.
 19 MR. McDONALD: Thank you.
 20 THE WITNESS: Okay.
 21 BY MR. SOLOMON:
 22 Q. Mr. Sullivan, what is CX2112 [sic]?
 23 A. It's an e-mail that started with
 24 Andy Goldsmith, who is the chief dental officer
 25 and VP of vendor relations for Smile Source, to

1 TIM SULLIVAN
 2 Q. So this e-mail starts with
 3 Mr. Goldsmith e-mailing you on October 28th,
 4 2013 at 4:55 p.m. And he tells you that Smile
 5 Source has been growing, that Smile Source
 6 wants to renew its partnership, and that its
 7 current dealer cannot meet its expansion.
 8 Do you see that?
 9 A. I do.
 10 Q. And do you know whether
 11 Mr. Goldsmith is referring to Burkhart when he
 12 talks about its current dealer's range not
 13 being able to meet Smile Source's expansion?
 14 MR. McDONALD: Object to the form.
 15 THE WITNESS: I wouldn't know for
 16 sure. I would assume so, since Burkhart
 17 was their -- one of their two partners at
 18 that time.
 19 BY MR. SOLOMON:
 20 Q. Burkhart is a full-service
 21 distributor, correct?
 22 A. Yes.
 23 Q. Burkhart is a regional full-service
 24 distributor, correct?
 25 A. Correct.

1 TIM SULLIVAN
 2 me and then a series of internal exchanges on
 3 it.
 4 Q. You drafted part of CX2112 [sic],
 5 correct?
 6 A. Correct.
 7 Q. And did you do so as part of your
 8 job at Schein?
 9 A. Yes.
 10 Q. Do you have -- did you have personal
 11 knowledge of what you wrote in CX2112 [sic]?
 12 A. Yes.
 13 Q. And did you draft CX2112 [sic]
 14 around the time you're having these discussions
 15 with Mr. Muller about meeting with Smile
 16 Source?
 17 A. Yes.
 18 Q. And does CX2122 appear to be a true
 19 and accurate representation of this e-mail
 20 correspondence?
 21 A. Yes.
 22 Q. And Schein kept it in the usual
 23 course -- ordinary course of its business,
 24 correct?
 25 A. Correct.

1 TIM SULLIVAN
 2 Q. They do not have a national presence
 3 in the United States, right?
 4 A. That's right.
 5 Q. Where is -- where are Burkhart's
 6 operations mostly focused, if you know?
 7 A. The Pacific Northwest.
 8 Q. You respond on October 28th, 2013 at
 9 5:00 p.m. You write, "Oy...I think I need to
 10 take the meeting."
 11 Is it fair to say you were not
 12 excited to re-engage with Smile Source here?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: It was a -- they
 15 terminated the agreement. When we had a
 16 partnership with them, there was conflict
 17 throughout.
 18 And so it was one of those, you
 19 know, should we take the meeting? Are we
 20 interested? So it wouldn't be my decision
 21 alone, but I think I need to take the
 22 meeting. What does everyone think?
 23 BY MR. SOLOMON:
 24 Q. Why were -- strike that.
 25 Were you hesitant?

<p style="text-align: right;">Page 282</p> <p>1 TIM SULLIVAN</p> <p>2 A. They terminated us. Yes, I was</p> <p>3 hesitant.</p> <p>4 Q. Why does the fact that they</p> <p>5 terminated Schein make you hesitant to meet</p> <p>6 with a customer prospect?</p> <p>7 A. I didn't know if anything changed.</p> <p>8 Q. In terms of what?</p> <p>9 A. Our -- whatever we had -- whatever</p> <p>10 conflicts we had prior, I didn't think at the</p> <p>11 time anything changed. That's why I'm saying,</p> <p>12 "I think I need to take the meeting." I'm</p> <p>13 saying I need to take the meeting. Hesitant,</p> <p>14 but I think I need to take it.</p> <p>15 Q. You were concerned that some of the</p> <p>16 conflicts that were present in the pre-2012</p> <p>17 relationship were still there?</p> <p>18 A. Both internally with us, which is</p> <p>19 ourselves and special markets, as well as I</p> <p>20 didn't know what would have changed within --</p> <p>21 it's the same people at Smile Source still.</p> <p>22 Q. Were you concerned that Smile Source</p> <p>23 was still a price-only buying group at this</p> <p>24 point?</p> <p>25 MR. McDONALD: Object to the form.</p>	<p style="text-align: right;">Page 283</p> <p>1 TIM SULLIVAN</p> <p>2 THE WITNESS: I didn't know. That's</p> <p>3 why I said I need to take the meeting.</p> <p>4 BY MR. SOLOMON:</p> <p>5 Q. Was that one of the things you</p> <p>6 wanted to find out?</p> <p>7 A. Yes.</p> <p>8 Q. Why?</p> <p>9 A. It's everything I've said to date on</p> <p>10 our position, my position on buying groups.</p> <p>11 Price is a component. That's what I said at</p> <p>12 the very top line. I said, again, look at this</p> <p>13 in entirety. I want to see if we can convert</p> <p>14 them from less of the focus on price to overall</p> <p>15 value proposition.</p> <p>16 Q. And you -- so focusing on that</p> <p>17 statement, the last-in-time e-mail, you write</p> <p>18 "Doubtful," right?</p> <p>19 A. I did.</p> <p>20 Q. So you weren't optimistic about</p> <p>21 that -- the prospect of converting them away</p> <p>22 from supply discounts, right?</p> <p>23 MR. McDONALD: Object to the form,</p> <p>24 mischaracterizes his testimony.</p> <p>25 THE WITNESS: I was -- didn't know</p>
<p style="text-align: right;">Page 284</p> <p>1 TIM SULLIVAN</p> <p>2 what would have changed. That's why I want</p> <p>3 to take the meeting, but didn't know,</p> <p>4 understand. I want to understand better.</p> <p>5 I was doubtful that anything changed</p> <p>6 relative to where they saw price as a</p> <p>7 component of value as compared to where we</p> <p>8 see price as a component of value.</p> <p>9 BY MR. SOLOMON:</p> <p>10 Q. Were you hoping that Smile Source</p> <p>11 would be less focused on discounts and price?</p> <p>12 MR. McDONALD: Object to the form.</p> <p>13 THE WITNESS: Can't say I was</p> <p>14 hoping. I wanted to understand it.</p> <p>15 BY MR. SOLOMON:</p> <p>16 Q. What other information were you</p> <p>17 hoping to learn from Smile Source by taking a</p> <p>18 meeting?</p> <p>19 A. As I just stated, what else -- is</p> <p>20 there going to be anything different at this</p> <p>21 stage of their development from when it was</p> <p>22 when they terminated us in 2012?</p> <p>23 MR. SOLOMON: We've again going for,</p> <p>24 I guess, like almost another hour. I would</p> <p>25 like to take a bathroom break.</p>	<p style="text-align: right;">Page 285</p> <p>1 TIM SULLIVAN</p> <p>2 Is that okay with everyone?</p> <p>3 MR. McDONALD: Absolutely.</p> <p>4 MR. SOLOMON: Okay.</p> <p>5 THE VIDEOGRAPHER: The time is 2:21</p> <p>6 p.m. We're off the record.</p> <p>7 (Whereupon, a recess was had</p> <p>8 from 2:21 p.m. to 2:38 p.m.)</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 2:38 p.m. We are back on the record.</p> <p>11 BY MR. SOLOMON:</p> <p>12 Q. Mr. Sullivan, welcome back.</p> <p>13 Prior to the break, we were talking</p> <p>14 about the February 2014 meeting with Smile</p> <p>15 Source.</p> <p>16 Do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. And we discussed that you were</p> <p>19 trying to learn more information about Smile</p> <p>20 Source through this meeting, correct?</p> <p>21 A. That was --</p> <p>22 MR. McDONALD: Object to the form,</p> <p>23 mischaracterizes his testimony.</p> <p>24 THE WITNESS: That was one of the</p> <p>25 things we were looking to learn, yes.</p>

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Okay. After you met with Smile
 4 Source in February of 2014, what did you learn?
 5 A. Again, I think there's some
 6 documents that would support that because I
 7 think I sent a summary of what we learned of
 8 the meeting. It might help to look at that.
 9 But top of my head, it was a -- best
 10 recollection, it was a good meeting. They gave
 11 a good pitch with understanding what their
 12 total value proposition to their membership was
 13 and looked interesting again.
 14 Q. Smile Source did?
 15 A. Yes.
 16 Q. In what respect?
 17 A. Again, if you have it, I think you
 18 see a summary that I put -- I think there's a
 19 summary of the meeting somewhere that talked
 20 about it.
 21 I don't know specifically. It
 22 was -- he was impressed -- Andy Goldsmith was
 23 impressed when we met with them talking about
 24 their plans.
 25 Q. Did you think that Smile Source was

1 TIM SULLIVAN
 2 more within their group. But, in essence, yes,
 3 still -- still today in that buying group
 4 category but less of their emphasis on the
 5 total value around price and price only, but
 6 that they were offering more to their members.
 7 Q. So would you consider them to have
 8 still been a price-only buying group?
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: I -- I'd -- again,
 11 they -- they portrayed themselves as more
 12 than that. Their ability to actually
 13 execute that I still questioned.
 14 BY MR. SOLOMON:
 15 Q. Why?
 16 A. Because the players, for the most
 17 part, hadn't changed.
 18 Q. Sorry. What do you mean by that?
 19 A. I believe there was a gentleman
 20 named Todd Nickerson, who was involved early
 21 on. I believe he was still here at this time.
 22 I'm not sure exactly what Andy's role was early
 23 on. He was still leading it. Good guys, good
 24 intentions, poor on execution.
 25 Q. So at this point in time in

1 TIM SULLIVAN
 2 still a buying group?
 3 A. It didn't change my opinion, if I
 4 recall correctly at that time, about their
 5 ability to actually execute. Again, in the
 6 past they had a broader offering where they
 7 would actually execute it. And we were -- we
 8 were happy to be partners with them back then.
 9 There were some conflicts; it was mainly
 10 internal conflicts. So getting terminated by
 11 them was not good news for us.
 12 Didn't want to necessarily go
 13 through all the effort to re-engage, re-sign
 14 up, relaunch, re-communicate, explain to the
 15 team what's different now without truly knowing
 16 and believing that, okay, it actually is
 17 different.
 18 So I was impressed with the meeting,
 19 wanted to explore it further, if I recall
 20 correctly, before we went through all that
 21 effort.
 22 Q. And did you walk away from the
 23 meeting with an understanding that Smile Source
 24 was still a buying group?
 25 A. They were looking to expand to offer

1 TIM SULLIVAN
 2 February of 2014, Schein -- strike that.
 3 At this point in time in February of
 4 2014, Smile Source had not changed its model?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I think I stated
 7 before they portrayed to have changed and
 8 offered more value to their members. And
 9 clearly, in fact, they've gone from,
 10 whatever, 20 or 40 customers at that time
 11 to now having over 130 locations. It
 12 seemed to be more compelling. And if there
 13 are more members, they must be seeing more
 14 value but wanted to understand that better.
 15 BY MR. SOLOMON:
 16 Q. But you talked about Smile Source
 17 having changed its model at some point in 2016
 18 when Trevor Mauer took over, is that right?
 19 A. Right.
 20 Q. This was before then?
 21 A. Yes, 2014 is before 2016, yes.
 22 Q. Do you recall who you met with
 23 during the February 2014 meeting?
 24 A. I believe it was Andrew. I'm not
 25 sure who else joined him.

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<p>1 TIM SULLIVAN</p> <p>2 Q. Andrew Goldsmith?</p> <p>3 A. I believe so.</p> <p>4 Q. Do you have any recollection if</p> <p>5 there was anyone else from Smile Source there?</p> <p>6 A. I don't recall if Todd was there or</p> <p>7 not. I believe there was a dentist member in</p> <p>8 the meeting. I'm not sure if -- I had a couple</p> <p>9 of meetings with them. I don't know if that's</p> <p>10 when he was present.</p> <p>11 If you have a copy of the meeting,</p> <p>12 it might -- I don't know if there is or not.</p> <p>13 It might be in there.</p> <p>14 Q. Was anyone else from Smile Source --</p> <p>15 strike that.</p> <p>16 Was anyone else from Schein present?</p> <p>17 A. I believe John Chatham was with me</p> <p>18 for sure. I'm not sure who else.</p> <p>19 (Exhibit CX2470 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. I'd like to hand you, Mr. Sullivan,</p> <p>23 a document that's been pre-marked as CX2470.</p> <p>24 Please take a look at this and let me know when</p> <p>25 you've had a chance to review it.</p>	<p>1 TIM SULLIVAN</p> <p>2 A. Put this one away?</p> <p>3 Q. Yes, please.</p> <p>4 (Witness viewed said document.)</p> <p>5 THE WITNESS: Okay.</p> <p>6 BY MR. SOLOMON:</p> <p>7 Q. Mr. Sullivan, what is CX2470?</p> <p>8 A. An e-mail exchange primarily</p> <p>9 between -- internally between Hal, Jimmy, and</p> <p>10 I.</p> <p>11 Q. And you drafted part of this e-mail</p> <p>12 chain, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And did you do so as part of your</p> <p>15 job at Schein?</p> <p>16 A. Yes.</p> <p>17 Q. And you have personal knowledge of</p> <p>18 what you -- strike that.</p> <p>19 You had personal knowledge of what</p> <p>20 you wrote in CX2470?</p> <p>21 A. Yes.</p> <p>22 Q. And do you understand CX2470 to be a</p> <p>23 true and accurate representation of this e-mail</p> <p>24 correspondence?</p> <p>25 A. Yes.</p>
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<p>1 TIM SULLIVAN</p> <p>2 Q. And is CX2470 a document that Schein</p> <p>3 kept in the ordinary course of its business?</p> <p>4 A. Yes.</p> <p>5 Q. So, Mr. Sullivan, what is this</p> <p>6 e-mail exchange about?</p> <p>7 A. Well, it started out with an e-mail</p> <p>8 from Hal Muller forwarding on a note sent to</p> <p>9 doctors about the Kois group or Kois Center.</p> <p>10 And then from there it was an exchange between</p> <p>11 the three of us on the value of putting</p> <p>12 together a program for them.</p> <p>13 Q. For Kois?</p> <p>14 A. That's how it started. And then</p> <p>15 somewhere along the way Jimmy shifted to a</p> <p>16 question around -- or Hal started a question --</p> <p>17 someone started a question about -- or JB.</p> <p>18 Jimmy started a question about Smile Source.</p> <p>19 So it shifted about halfway through about Smile</p> <p>20 Source.</p> <p>21 Q. So I would like to start on</p> <p>22 CX2470-003.</p> <p>23 Your e-mail to Mr. Muller on</p> <p>24 September 8th, 2014 at 7:17 p.m., this part</p> <p>25 relates to Kois, am I right?</p>	<p>1 TIM SULLIVAN</p> <p>2 A. Yes.</p> <p>3 Q. And Kois is a buying group?</p> <p>4 A. At the time I don't believe so. I</p> <p>5 think Kois is more of a study club of sorts.</p> <p>6 They offer consulting services. He would put</p> <p>7 on seminars in education around how to do</p> <p>8 dentistry a certain way.</p> <p>9 Q. Were -- strike that.</p> <p>10 Was Kois seeking discounts on</p> <p>11 supplies at this point?</p> <p>12 MR. McDONALD: Object to the form,</p> <p>13 lack of foundation.</p> <p>14 THE WITNESS: So John Kois himself</p> <p>15 refers to his group as a tribe. And it</p> <p>16 looks like he is starting to test the</p> <p>17 waters, I guess for better terminology --</p> <p>18 for lack of better terminology, on whether</p> <p>19 or not they could form, as part of their</p> <p>20 tribe, at a group discount of some sort,</p> <p>21 yes.</p> <p>22 BY MR. SOLOMON:</p> <p>23 Q. So Kois was seeking volume discounts</p> <p>24 on dental products?</p> <p>25 MR. McDONALD: Object to the form.</p>

1 TIM SULLIVAN
 2 THE WITNESS: Well, again, this is
 3 not an e-mail to us. This is something he
 4 sent out to him members. Some of their
 5 members are to customers of ours. He sent
 6 it on to us as an FYI.
 7 So at this point I don't believe
 8 they've reached out to us. This is just --
 9 it looks like they're asking their members
 10 "what would you think if."
 11 BY MR. SOLOMON:
 12 Q. Do you understand that Kois today is
 13 a buying group?
 14 MR. McDONALD: Object to the form,
 15 lack of foundation.
 16 THE WITNESS: I don't know that they
 17 are.
 18 BY MR. SOLOMON:
 19 Q. Do you know whether Kois has
 20 contracted for volume discounts on dental
 21 products with a distributor?
 22 MR. McDONALD: Object to the form,
 23 lack of foundation.
 24 THE WITNESS: Not that I'm aware of.
 25 ///

1 TIM SULLIVAN
 2 discounts on dental products?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Again, based on what I
 5 read and what they forwarded on, there was
 6 nothing more that they were looking for.
 7 Again, they hadn't sent us anything. From
 8 my quick read was the only thing they'd be
 9 looking for was a volume discount.
 10 BY MR. SOLOMON:
 11 Q. So they were a price-only buying
 12 group?
 13 MR. McDONALD: Object to the form,
 14 lack of foundation.
 15 THE WITNESS: I'm saying they were
 16 not at this point, but it looked like they
 17 were exploring that option.
 18 BY MR. SOLOMON:
 19 Q. They were exploring the option to
 20 become a price-only buying group?
 21 MR. McDONALD: Object to the form,
 22 lack of foundation.
 23 THE WITNESS: Not with us. At this
 24 point, I'm not aware of any direct
 25 communication from Kois to us. This is a

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Have they ever done that?
 4 MR. McDONALD: Object to the form,
 5 lack of foundation.
 6 THE WITNESS: Not that I'm aware of.
 7 BY MR. SOLOMON:
 8 Q. What else do you know about Kois
 9 other than it's a study club?
 10 A. Nothing more than I just described
 11 earlier.
 12 Q. So, again, focusing on your e-mail
 13 to Mr. Muller at 7:17 p.m., you tell him, "I
 14 still believe this is slippery slope and have
 15 yet to see a successful one in dental and don't
 16 take -- don't plan to take the lead role.
 17 Watching closely."
 18 Do you see where I'm referring to?
 19 A. I do.
 20 Q. Are you referring to Kois as a
 21 slippery slope here?
 22 A. In this instance, I'm referring to
 23 Kois.
 24 Q. And that's because Kois was
 25 interested in starting a program for volume

1 TIM SULLIVAN
 2 copy of an e-mail that they sent out to
 3 their members, to their tribe.
 4 BY MR. SOLOMON:
 5 Q. And you're stating that you didn't
 6 want to take the lead role in working with a
 7 price-only buying group, is that right?
 8 MR. McDONALD: Object to the form,
 9 lack of foundation -- or, sorry, object to
 10 the form, mischaracterizes the document and
 11 his testimony.
 12 THE WITNESS: That is what I wrote.
 13 BY MR. SOLOMON:
 14 Q. Is that what you meant?
 15 A. Is what --
 16 Q. That you didn't want Schein to take
 17 the lead role in working with a price-only
 18 buying group?
 19 A. As I've said in the past, we have in
 20 some cases; we have not in others.
 21 In this case did not want to take
 22 the lead role in putting something together
 23 with Kois if it was going to be a price-only,
 24 but we don't -- we know nothing of them at this
 25 point.

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1 TIM SULLIVAN

2 Q. What did you mean by "take the lead

3 role"?

4 A. We weren't going to proactively

5 reach out to them.

6 Q. Did you have any understanding that

7 your competitors were not working with Kois at

8 this point?

9 MR. McDONALD: Object to the form.

10 THE WITNESS: I had no idea if they

11 were or not.

12 BY MR. SOLOMON:

13 Q. Okay. You also write, "Watching

14 closely."

15 Are you referring to watching the

16 competition and whether they were willing to

17 engage with Kois?

18 A. No.

19 Q. What were you referring to?

20 A. Kois.

21 Q. So you're just watching Kois

22 closely?

23 A. Correct.

24 Q. Why?

25 A. They had a large membership group

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1 TIM SULLIVAN

2 with their 5,000 members. Many of those we

3 assumed would be customers -- customers of ours

4 already.

5 Q. So how would -- strike that.

6 What did you hope to gain from

7 watching them closely?

8 A. To see if they would approach us for

9 this opportunity.

10 Q. As a price-only buying group?

11 MR. McDONALD: Object to the form,

12 mischaracterizes his testimony.

13 THE WITNESS: I don't know how they

14 would approach us.

15 BY MR. SOLOMON:

16 Q. Would Schein be interested in

17 contracting with Kois if they had approached

18 Schein at this point in time as a price-only

19 buying group?

20 MR. McDONALD: Object to the form,

21 lack of foundation, calls for speculation.

22 THE WITNESS: Yeah, I'd be

23 speculating. I'd need to understand a lot

24 more about them.

25 ///

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1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. Okay.

4 A. But, yes, we would consider working

5 with them.

6 Q. Even though you a moment ago in this

7 e-mail mentioned that Kois was a slippery slope

8 and you didn't want to take the lead role?

9 A. Meaning, again, as I defined much

10 earlier, we were not going to proactively reach

11 out to them.

12 Q. But you also called them a slippery

13 slope.

14 Was that referring to proactively

15 reaching out to them or something else?

16 A. I'd put it in the same category,

17 same bucket. Again, maybe a poor choice of

18 words, but yes.

19 Q. Okay. Turning to Page 2, it looks

20 like the conversation shifts to Smile Source.

21 And Mr. Breslawski asks you on September 9th,

22 2014 at 3:24 p.m., "Tim...how do you view Smile

23 Source?" And you respond on September 9th,

24 2014 at 6:34 p.m.

25 Am I correct that this is following

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1 TIM SULLIVAN

2 the February 2014 meeting that you had with

3 Smile Source?

4 A. Yes.

5 Q. This is approximately seven or so

6 months after the February 2014 meeting, right?

7 A. Yes.

8 Q. And you tell Mr. Breslawski, "Yes,

9 they would love to get back with us for 20% off

10 catalog pricing to all their members with no

11 commitments to purchase from us, plus a

12 kickback to them. Not interested."

13 Do you see where I'm reading?

14 A. I do.

15 Q. You're stating that you were not

16 interested in working with Smile Source in this

17 e-mail, correct?

18 MR. McDONALD: Object to the form,

19 it mischaracterizes the document.

20 I mean, Ronnie, you skipped the

21 sentence that said, we met with them

22 earlier, we made a great proposal, and they

23 turned us down.

24 Do you want to just ignore that?

25 It's outrageous.

1 TIM SULLIVAN
 2 THE WITNESS: So if you read the
 3 message in the entirety, I think it's a
 4 much better way to look at it. We had a
 5 great meeting with them. We think we made
 6 a great proposal. They turned us down.
 7 We went -- I went on to say what was
 8 included in our proposal. It wasn't just
 9 limited to that, but those are the things I
 10 highlighted. They wanted more than what we
 11 proposed.
 12 BY MR. SOLOMON:
 13 Q. But you say you're not interested?
 14 A. Correct.
 15 Q. Why did you say you're not
 16 interested if you had just met with them a few
 17 months earlier?
 18 MR. McDONALD: Object to the form.
 19 THE WITNESS: Well, again, they
 20 turned us down. We gave them the proposal.
 21 They turned it down. So apparently our
 22 proposal wasn't good enough.
 23 So not interested, if we had to go
 24 further than that, not interested, because
 25 part of it was they could not -- they have

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I think it's like --
 4 MR. McDONALD: You should show him
 5 the document if you've got it.
 6 THE WITNESS: I think it's like a
 7 ten-page PowerPoint presentation. I'll be
 8 happy to go through it with you.
 9 BY MR. SOLOMON:
 10 Q. Can you tell me what Schein's
 11 proposal was without a document in front of
 12 you?
 13 A. It would be really challenging
 14 because it's all encompassing. That's --
 15 again, we have a broad value proposition. So
 16 it went through each aspect of our value. I
 17 couldn't do it without -- it would be much
 18 easier with it in front of me.
 19 Q. So you're saying that when you say
 20 "not interested," you're not saying that you
 21 weren't interested in working with
 22 Smile Source; you're referring to something
 23 else?
 24 MR. McDONALD: Object to the form,
 25 mischaracterizes his testimony.

1 TIM SULLIVAN
 2 no commitments to purchases, plus they
 3 wanted a kickback to the group.
 4 BY MR. SOLOMON:
 5 Q. Is that something that Smile Source
 6 told you at the February 2014 meeting?
 7 A. Yes.
 8 Q. Do you recall who told you that?
 9 A. I would assume it was Andy.
 10 Q. And based on that, you were not
 11 interested in forming a relationship with Smile
 12 Source?
 13 A. It's not what I said. They turned
 14 us down. Let's start with this. We gave a
 15 proposal. They turned it down. Is that clear?
 16 Q. I'm just trying to figure out why
 17 you would say you're not interested in this
 18 e-mail.
 19 What are you not interested in?
 20 A. Going beyond the proposal that we
 21 gave them that would make sense for us and
 22 partially because it did not include
 23 commitments from their members.
 24 Q. What was Schein's proposal
 25 specifically?

1 TIM SULLIVAN
 2 THE WITNESS: I think I testified
 3 already we met with them, gave a great
 4 proposal; they turned it down.
 5 In our proposal, we were offering
 6 20 percent off catalog pricing to all their
 7 members but no -- no commitments to
 8 purchase from us, plus a kickback is what
 9 they were -- I'm sorry. That's what they
 10 were looking for. Our proposal did not get
 11 there. That's what they were looking for.
 12 At that level we were not interested at
 13 that time.
 14 BY MR. SOLOMON:
 15 Q. Why were you not interested in that?
 16 A. Like I stated several times, we
 17 weren't confident. We felt good about the
 18 meeting. We felt good about some of the
 19 changes that they were making, but we weren't
 20 confident that they could actually execute to
 21 that.
 22 You have to go through all the
 23 exercise of relaunching a relationship with
 24 someone that terminated us to now be back at
 25 the table. They were looking for more than we

1 TIM SULLIVAN
 2 were willing to give to re-engage, including a
 3 lack of commitment from their members, to then
 4 launch a program. It would take a lot of work,
 5 explanation to our team as to what's different,
 6 what's changed, why now versus then. Wasn't
 7 confident that what they were talking about as
 8 part of their new strategy they could actually
 9 execute.
 10 Q. Did Smile Source ever make a
 11 counterproposal to Schein?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Not that I recall.
 14 BY MR. SOLOMON:
 15 Q. Did --
 16 A. During this time, no, not that I
 17 recall.
 18 Q. Did Smile Source ever ask Schein to
 19 increase the discounts that Schein was
 20 proposing?
 21 A. I don't recall specifically what --
 22 to what level, but they did tell us ours was
 23 not enough.
 24 Q. And what was -- if you recall, what
 25 was Schein's response to that?

1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form,
 3 assumes facts not in evidence.
 4 Why don't you show him the proposal.
 5 THE WITNESS: If you pull out the
 6 proposal, it will be covered in there. If
 7 you really want to know, let's pull it out.
 8 We'll go through it.
 9 BY MR. SOLOMON:
 10 Q. I'm -- I'm sorry. I'm looking at
 11 this e-mail right now.
 12 A. I understand that. So looking at
 13 this right now, I don't know what we proposed
 14 eight months prior to this four years ago from
 15 today.
 16 Q. Turning to the first page of CX2470,
 17 at 6:36 p.m. -- or at 8:16 p.m., Mr. Breslawski
 18 asked us -- he asked you if Smile Source is a
 19 buying group that's delivering for Burkhart.
 20 Do you see that?
 21 A. I do.
 22 Q. And then you respond, "Yes. I
 23 believe they are a successful group. I
 24 actually like these guys too. I can't speak
 25 for Burkhart, but I can't imagine the story to

1 TIM SULLIVAN
 2 A. Okay. Let's stay connected.
 3 Q. So Schein wasn't willing to go any
 4 higher or to give Smile Source what it was
 5 asking for?
 6 A. That's --
 7 MR. McDONALD: Object to the form --
 8 THE WITNESS: Sorry.
 9 MR. McDONALD: -- asked and
 10 answered.
 11 THE WITNESS: That's the "not
 12 interested" part, right.
 13 BY MR. SOLOMON:
 14 Q. And am I correct in understanding
 15 that when Smile Source worked with Schein prior
 16 to 2012, the members were getting 18 percent
 17 off of catalog, as we discussed earlier today?
 18 A. I believe what it was was a special
 19 markets formulary. I'm not sure where that
 20 formulary was priced. Anything not in that
 21 formulary, then they got 18 percent off those
 22 less, but in certain categories it wasn't all
 23 that.
 24 Q. Would Schein have been willing to
 25 offer Smile Source 18 percent off catalog?

1 TIM SULLIVAN
 2 their reps. We did work with them for a while
 3 and it just caused too many issues."
 4 Correct, you state that there?
 5 A. Yes, I do.
 6 Q. I don't want to be accused of not
 7 reading the whole passage, so I'm reading all
 8 of it.
 9 A. All right. Thank you.
 10 Q. Turning to the next --
 11 A. Thank you.
 12 Q. Turning to the next paragraph, you
 13 write, "I'm open to discussing this topic, but
 14 I don't think we want to be the first in this
 15 game."
 16 Do you see that?
 17 A. I do.
 18 Q. So you're telling Mr. Breslawski,
 19 following the February 2014 meeting, that you
 20 did not want Schein to be the first distributor
 21 to work with Smile Source?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: No. The first
 24 paragraph I'm responding specifically
 25 around Smile Source. He asked me a

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1 TIM SULLIVAN
 2 question around Smile Source and how it's
 3 delivering for Burkhart. And based on the
 4 meeting that we had with a number of
 5 members, you see my response there.
 6 I shift back to my earlier comment
 7 here about Kois, what I said. I'm
 8 repeating about Kois again. I'm open to
 9 discussing this topic, which is in the
 10 subject line still around Kois, but
 11 everything we discussed earlier, again,
 12 about the e-mail, so repeating what I said
 13 about Kois at that point.
 14 BY MR. SOLOMON:
 15 Q. So the second paragraph refers to
 16 Kois?
 17 A. That's my recollection, yes.
 18 Q. How do you know that?
 19 A. As I'm reading it, that's what
 20 I'm -- I believe it was about.
 21 Q. Mr. Breslawski had just asked you
 22 about Smile Source, though, correct?
 23 A. He did.
 24 Q. You were no longer talking about
 25 Kois at this point?

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1 TIM SULLIVAN
 2 A. As I said, the first paragraph is
 3 around Smile Source. The second paragraph, I
 4 shifted back to the original intent of the
 5 e-mail around Kois.
 6 Q. Okay. So you're saying that Kois is
 7 a potential major trend and threat in the
 8 second sentence?
 9 A. Potentially, if we decide to not
 10 work with them for whatever reason, and if
 11 1,000 of their -- 5,000 member -- I don't know
 12 how many members of theirs would be customers
 13 of ours, and they shifted their business, that
 14 would be a threat. I don't know if they would.
 15 Again, I don't believe -- if they were going to
 16 be a price-only -- I don't know what their
 17 model was. Again, they didn't send us an RFP
 18 at this point. I don't know.
 19 Q. Okay. Do you recall having any
 20 other discussions with Mr. Breslawski as a
 21 follow-up to this e-mail?
 22 A. I don't recall one specifically to
 23 this e-mail, unless you have something to show
 24 me, but not that I recall right now.
 25 Q. Why was it important with respect to

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: We were at the
 4 beginning and shifted partway through. I
 5 responded now back to the beginning and I
 6 shifted partway through.
 7 BY MR. SOLOMON:
 8 Q. You don't actually mention Kois in
 9 this second paragraph, right?
 10 A. Correct, I do not.
 11 Q. So how do you know that's what
 12 you're referring to? Is that just based on
 13 your recollection, sitting here today?
 14 MR. McDONALD: Object to the form.
 15 You asked him what it referred to,
 16 and he told you what he thinks it refers
 17 to. Now you're just arguing with him.
 18 THE WITNESS: I answered that
 19 already. Yes.
 20 BY MR. SOLOMON:
 21 Q. You go on to say, "We can always be
 22 second to the party the win in the long run if
 23 this truly becomes a major trend and threat."
 24 Are you referring to Smile Source
 25 there?

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1 TIM SULLIVAN
 2 you -- say Kois in the second paragraph.
 3 Why was it important that Schein
 4 would be second to working with that group as
 5 opposed to the first?
 6 A. So let's say --
 7 MR. McDONALD: Hang on. I object to
 8 the form, mischaracterizes the document.
 9 Go ahead.
 10 THE WITNESS: So, again, earlier, if
 11 I describe that we decide not to work with
 12 them for whatever reason and it turns out
 13 that their members do comply with the
 14 program, then we're not too shy or
 15 embarrassed to go back to the group and
 16 say, hey, we -- for whatever reason, we
 17 actually want to be in the game. So we'd
 18 be second in at that point.
 19 They may say, sorry, the ship has
 20 sailed. They may say, great, love to have
 21 you, provide a quote, then be second in.
 22 BY MR. SOLOMON:
 23 Q. Why was timing important? Why was
 24 it important to be second and not first?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
2 THE WITNESS: I didn't say it was
3 important. I just said we can always be
4 second to the party. I didn't say it's
5 important that we're second to the party.
6 I said we can be.

7 BY MR. SOLOMON:

8 Q. Okay. You can put this document
9 aside.

10 Mr. Sullivan, do you recall a buying
11 group called Dental Gator?

12 A. I do.

13 Q. And what do you recall about Dental
14 Gator?

15 A. They were, for lack of a better
16 term, an offshoot, if you would, of a large DSO
17 customer of special markets called MB2. And
18 they were attempting to use the pricing that
19 they got for their DSO in creating separately a
20 buying group, if you would, based on Henry
21 Schein prices.

22 Q. Do you know whether Dental Gator
23 offered other services to its members?

24 A. Not that I'm aware of.

25 Q. So you believe Dental Gator was a

1 TIM SULLIVAN
2 price-only buying group that didn't offer
3 value-added services to its members?

4 A. That's my understanding at that
5 time.

6 Q. Were you concerned about Dental
7 Gator?

8 A. At the time, only in the spirit of
9 they were adding single-office space
10 practitioner members, getting pricing that was
11 passed on to this larger DSO.

12 Contractually, this larger DSO, MB2,
13 had a -- they were allowed to be in the
14 contract with them to offer anything -- that
15 pricing to anyone outside of their DSO members.

16 Q. And why was that a concern for you?

17 A. My understanding is it was just
18 against the prime vendor agreement that our
19 special markets team had with them.

20 Q. Were you concerned about the fact
21 that Dental Gator was a buying group?

22 A. I was concerned that that pricing
23 that was set up for one particular customer, it
24 wasn't in that customer's or that group's
25 ability to pass that pricing on to people

1 TIM SULLIVAN
2 outside of their group.
3 If we wanted to contract directly
4 with Dental Gator, we'd be happy to and have a
5 separate agreement with them, but not based on
6 how the DSO was structured.

7 Q. So if HSD had formed a contract
8 directly with Dental Gator, you would have been
9 fine working with Dental Gator?

10 A. Possibly.

11 Q. Why do you say "possibly"?

12 A. It goes back to I need to understand
13 more about who they are, how they're
14 structured, compliance of their members,
15 everything else that goes into the
16 consideration that we've been talking about all
17 day.

18 Q. Do you recall having discussions
19 with Mr. Muller about Dental Gator?

20 A. I do.

21 Q. Do you recall having disagreements
22 with Mr. Muller about Dental Gator?

23 A. I do.

24 Q. And what was the nature of the
25 disagreement?

1 TIM SULLIVAN
2 A. It would be easier to read the
3 documents and go through it to understand it
4 specifically, but -- it would be very helpful.

5 Q. Okay. Do you recall -- okay.

6 I'm handing you a document that's
7 been pre-marked as CX2143. Please let me know
8 when you've had a chance to review.

9 (Exhibit CX2143 was marked for
10 identification.)

11 (Witness viewed said document.)

12 THE WITNESS: Okay.

13 BY MR. SOLOMON:

14 Q. Mr. Sullivan, do you recognize
15 CX2143?

16 A. I do.

17 Q. And is this an e-mail that you
18 received?

19 A. It is.

20 Q. And you drafted part of this e-mail
21 chain as well?

22 A. Yes.

23 Q. You did so as part of your job at
24 Henry Schein?

25 A. Yes.

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1 TIM SULLIVAN

2 Q. And you had personal knowledge of

3 what you wrote in this e-mail?

4 A. Yes.

5 Q. And you wrote this e-mail close in

6 time to the disagreements you were having with

7 Mr. Muller surrounding Dental Gator, correct?

8 A. Around the time we were having

9 discussions about Dental Gator, yes.

10 Q. Okay. And do you believe CX2143 is

11 a true and accurate representation of this

12 e-mail correspondence?

13 A. Yes.

14 Q. And does Henry Schein keep CX2143 in

15 the ordinary course of its business?

16 A. Yes.

17 Q. Okay. So does this refresh your

18 recollection, Mr. Sullivan, about the nature of

19 the discussions you were having with Mr. Muller

20 about Dental Gator in the January 2015 time

21 frame?

22 A. It does.

23 Q. Okay. What was the nature of those

24 discussions?

25 A. Well, I think it highlights what I

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1 TIM SULLIVAN

2 mentioned before. And I think in totality,

3 this is a great example of how we've had some

4 internal conflict on how we're structured.

5 Certain parts of it is volume, the special

6 markets P&L; part is on HSD P&L.

7 But as you can see, we resolved it

8 in a good way for the customer, something that

9 they would like to see for how Dental Gator is

10 going to work. So for their existing customers

11 that we already had, we said, fine,

12 grandfathered in. But going forward, they

13 couldn't offer the MB2 pricing to additional

14 clients.

15 So that was an excellent exchange, a

16 resolution that Hal and I were able to work

17 out, and it worked out well for the customer.

18 Q. So going forward after this point,

19 Dental Gator could no longer offer the same

20 discounts to new members of its buying group?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: If I recall, we set up

23 a separate one for them, so a separate

24 different pricing arrangement for those

25 that would join, but not the same as what

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1 TIM SULLIVAN

2 MB2 was getting, correct.

3 BY MR. SOLOMON:

4 Q. Do you recall what that pricing

5 arrangement that you set up was?

6 A. Based on what I'm reading here, I

7 don't know for sure if this is what was

8 actually implemented. My understanding is that

9 they accepted this. It was a -- a G-10, which

10 is a 10 percent off.

11 Q. And what is the G-10 plan?

12 A. 10 percent off.

13 Q. Who is that plan available to?

14 MR. McDONALD: Object to the form,

15 vague.

16 THE WITNESS: In this case, it was

17 being offered to Dental Gator.

18 BY MR. SOLOMON:

19 Q. Is it offered to any other customers

20 in the ordinary course of your business?

21 MR. McDONALD: Object to the form.

22 THE WITNESS: My understanding is

23 that it is. It says the discount will be a

24 G-10, which is one of the MM -- mid-market

25 plans that we have used in the past.

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1 TIM SULLIVAN

2 BY MR. SOLOMON:

3 Q. So this means 10 percent off catalog

4 price?

5 MR. McDONALD: Object to the form.

6 If you know, tell him, but don't

7 guess.

8 THE WITNESS: I believe so.

9 BY MR. SOLOMON:

10 Q. Can an independent private practice

11 dentist qualify for this G-10 plan?

12 MR. McDONALD: Object to the form.

13 THE WITNESS: We have multiple

14 pricing programs for customers. We call

15 them VPAs, volume purchase agreements. So

16 it depends on the size of the customer,

17 number of locations.

18 There's other ways to get to this

19 type of pricing where it's not necessarily

20 called the G-10. So there's a multitude of

21 ways that we work with our customers on

22 discount. Very, very few of our customers

23 pay a catalog price.

24 BY MR. SOLOMON:

25 Q. How many of your customers would you

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1 TIM SULLIVAN
 2 say pay 10 percent off of catalog?
 3 MR. McDONALD: Object to the form,
 4 calls for speculation.
 5 THE WITNESS: I would be guessing.
 6 BY MR. SOLOMON:
 7 Q. So you're not sure; you don't know
 8 one way or the other, sitting here today?
 9 A. Correct.
 10 Q. Do you know whether Dental Gator was
 11 happy about Schein cutting the discounts it was
 12 able to offer?
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: I've never -- I never
 15 met with Dental Gator. I don't know.
 16 BY MR. SOLOMON:
 17 Q. Did Schein restrict Dental Gator's
 18 ability to advertise itself as a buying group?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: Never, no.
 21 BY MR. SOLOMON:
 22 Q. You're not aware of that ever
 23 happening?
 24 A. To advertise themselves as a buying
 25 group? No. They can advertise however they'd

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1 TIM SULLIVAN
 2 aware of any scenarios that we've done
 3 that.
 4 BY MR. SOLOMON:
 5 Q. Turning to the first page of this
 6 exhibit, you write on January 28th at
 7 7:37 a.m., "I think we are basically there with
 8 Hal's last proposal and yes Hal the SAM can
 9 offer it if meeting today. Not sure how this
 10 is not a Buying Group, though. They all offer
 11 multiple services to their members including
 12 savings on Supplies."
 13 Do you see where I'm referring to?
 14 A. I do.
 15 Q. Does this refresh your recollection
 16 that Dental Gator was a buying group that was
 17 offering multiple services to its members, one
 18 of which was savings on supplies?
 19 A. Yes, meaning -- and, again, I don't
 20 know how effective the other ones are, the
 21 other services. But from what we understood is
 22 primarily people were joining Dental Gator
 23 based on the pricing model.
 24 Q. But your understanding is that they
 25 were a value-added services buying group?

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1 TIM SULLIVAN
 2 like outside of -- we do restrict how some
 3 large groups are able to use our brand in their
 4 advertising. But how they want to represent
 5 themselves to add members -- how to use our
 6 brand we want to control. But outside of that,
 7 it's up to them.
 8 Q. So Schein would never tell Dental
 9 Gator that it had to advertise itself as not
 10 being a buying group?
 11 MR. McDONALD: Object to the form.
 12 You mean Henry Schein Dental or
 13 Henry Schein special markets? Or it's your
 14 intention on being vague?
 15 BY MR. SOLOMON:
 16 Q. Schein would never tell a customer
 17 that it can't advertise itself as a buying
 18 group, is that right?
 19 MR. McDONALD: Object to the form,
 20 overly broad, vague, calls for speculation.
 21 THE WITNESS: I can't imagine a
 22 scenario that we would tell a customer how
 23 to advertise themselves. We -- how we --
 24 they want to use our brand we want to
 25 restrict. But outside of that, I'm not

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1 TIM SULLIVAN
 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: No, it's not -- that's
 4 not my belief.
 5 BY MR. SOLOMON:
 6 Q. What is your belief?
 7 A. Well, again, at the time, that they
 8 were an offshoot of a large customer of ours in
 9 MB2, that the only thing that they were
 10 offering was getting that pricing that we were
 11 offering MB2. That was my understanding.
 12 Q. But you're saying here that Dental
 13 Gator offers multiple services to its members,
 14 including savings on supplies, right?
 15 A. Correct.
 16 Q. So it is -- was your understanding
 17 that Dental Gator offered more than just
 18 savings on supplies?
 19 A. Well, I know they stated it. I
 20 don't know how they -- how good they were in
 21 executing it.
 22 Q. Did you ever look into that?
 23 A. Not that I recall.
 24 Q. So what was your basis for doubting
 25 whether or not they actually offered -- whether

<p style="text-align: right;">Page 326</p> <p>1 TIM SULLIVAN 2 or not they actually executed other value-added 3 services? 4 A. Based on -- 5 MR. McDONALD: Object to the form. 6 THE WITNESS: Just based on 7 discussions with Hal and those that -- or 8 the complaints that were coming in from the 9 field. 10 BY MR. SOLOMON: 11 Q. So is it fair to say that Dental 12 Gator was not a price-only buying group? 13 MR. McDONALD: Object to the form, 14 lack of foundation. 15 THE WITNESS: My view is they 16 portrayed themselves as more than that, but 17 in effectiveness, that's all they were. 18 BY MR. SOLOMON: 19 Q. I'm also -- I also just want to ask 20 you, you define buying group as an entity that 21 offers multiple services including savings on 22 supplies. 23 Do you see that? 24 A. Uh-huh. Yes. 25 Q. So you're using the term "buying</p>	<p style="text-align: right;">Page 327</p> <p>1 TIM SULLIVAN 2 group" to refer to an entity that offers lots 3 of services, including savings on supplies, 4 correct? 5 MR. McDONALD: Object to the form. 6 THE WITNESS: Correct. 7 BY MR. SOLOMON: 8 Q. Do you normally use the term "buying 9 group" to refer to entities that offer multiple 10 services, including savings? 11 A. You've seen multiple ways of how 12 I've referred to them. I've told you multiple 13 ways that I've referred to them. So I don't 14 always use that terminology in every exchange, 15 no. 16 Q. I'm just trying to understand why 17 you said here a buying group is an entity that 18 offers multiple services, including savings. 19 A. I wasn't very clear. Many -- some 20 do. Some claim to, but don't actually execute. 21 Some claim to and execute. Some don't claim 22 to. 23 Q. So you just weren't being very clear 24 here? 25 MR. McDONALD: Object to the form.</p>
<p style="text-align: right;">Page 328</p> <p>1 TIM SULLIVAN 2 THE WITNESS: Apparently not. 3 BY MR. SOLOMON: 4 Q. You can put that document aside. 5 Mr. Sullivan, I'm handing you 6 CX246-001. Please let me know when you've had 7 a chance to review. 8 MR. LONG: Has this been 9 (undiscernible)? 10 MR. McDONALD: No. 11 MR. SOLOMON: Yeah, that's what I'm 12 trying to figure out. 13 MR. McDONALD: I don't think it is, 14 Ronnie, because clearly it says, "Thanks, 15 Joe, good info." 16 MR. SOLOMON: I don't know. I'm not 17 sure. This does not appear to be -- 18 MS. KAHN: Do you want to come back 19 to this? 20 MR. SOLOMON: Yeah. Maybe we can 21 put this aside and we can come back to 22 this. I'm not sure why this is that one 23 page. 24 MR. McDONALD: Okay. 25 THE WITNESS: Back to you or --</p>	<p style="text-align: right;">Page 329</p> <p>1 TIM SULLIVAN 2 MR. McDONALD: Just put it to the 3 side. 4 MR. SOLOMON: Put it aside. 5 Yeah, can we take a -- just a 6 five-minute break? 7 THE VIDEOGRAPHER: This is the end 8 of DVD No. 3. The time is 3:23 p.m. We 9 are off the record. 10 (Whereupon, a recess was had 11 from 3:23 p.m. to 3:41 p.m.) 12 THE VIDEOGRAPHER: This is the 13 beginning of DVD No. 4. The time is 14 3:41 p.m. We are back on the record. 15 (Exhibit CX2440 was marked for 16 identification.) 17 BY MR. SOLOMON: 18 Q. Mr. Sullivan, welcome back. 19 I'm handing you a document that's 20 been pre-marked as CX2440. Please let me know 21 when you've had a chance to review. 22 (Witness viewed said document.) 23 MR. McDONALD: You don't want to use 24 the same numbers that's on this? 25 MR. SOLOMON: We're going with CX</p>

<p style="text-align: right;">Page 330</p> <p>1 TIM SULLIVAN 2 numbers for everything in this. 3 MR. McDONALD: I know, but the 246 4 that's not on the page -- 5 MR. SOLOMON: I did. I see what you 6 mean. So it's -- it's got this little 7 exhibit sticker on it. Just in case we get 8 confused, I just used a new one. 9 MR. McDONALD: Okay. For the 10 record, I think that exhibit sticker is 11 from Joe Cavaretta's investigational 12 hearing. 13 BY MR. SOLOMON: 14 Q. Mr. Sullivan, you've a chance to 15 adequately review CX2440? 16 A. I'm actually in the middle. 17 Q. Okay. 18 (Witness viewed said document.) 19 THE WITNESS: Okay. 20 BY MR. SOLOMON: 21 Q. Mr. Sullivan, what is CX2440? 22 A. An e-mail exchange started with Hal 23 sending a message to me and then I circulated 24 it amongst the HSD team. 25 Q. And you drafted part of this e-mail</p>	<p style="text-align: right;">Page 331</p> <p>1 TIM SULLIVAN 2 as part of your job at Henry Schein? 3 A. Yes. 4 Q. You have personal knowledge of the 5 contents of this e-mail? 6 A. Specifically the pieces that I 7 drafted, yes. 8 Q. And did you draft this e-mail close 9 in time to the items that are being discussed 10 in CX2440? 11 A. Yes. 12 Q. And is CX2440 a true and accurate 13 representation of this e-mail exchange? 14 A. Yes. 15 Q. And does Henry Schein keep CX2440 in 16 the ordinary course of its business? 17 A. Yes. 18 Q. Okay. I'd like to direct your 19 attention to -- on the first page of this 20 exhibit, there's an e-mail from you to 21 Mr. Cavaretta, Mr. Meadows, Mr. Steck, 22 Mr. Chatham, and Mr. Rozin at 9:44 a.m. 23 Specifically, the discussion around 24 Dental Gator and your statement, "The 25 December 'offsite' last year I left with a goal</p>
<p style="text-align: right;">Page 332</p> <p>1 TIM SULLIVAN 2 to see if we could get Hal to shut it down, but 3 knew that could be a challenge due to the 4 parent company being an EDSO of ours in SM." 5 Do you see that? 6 A. I do. 7 Q. EDSO refers to Elite Dental Service 8 Association? 9 A. Correct. 10 Q. And SM refers to special markets, 11 correct? 12 A. Correct. 13 Q. So in this statement here, you're 14 saying that you tried to get Hal Muller to shut 15 down Dental Gator at an offsite meeting? 16 MR. McDONALD: Object to the form, 17 mischaracterizes the document. 18 THE WITNESS: That's not what I'm 19 stating, no. 20 BY MR. SOLOMON: 21 Q. What are you stating? 22 A. What we just went through in the 23 prior discussion around Dental Gator, it was to 24 shut down the pricing that they were receiving. 25 We actually ended up in a very good</p>	<p style="text-align: right;">Page 333</p> <p>1 TIM SULLIVAN 2 solution, if you recall. They were not -- the 3 parent company, MB2, did not have the 4 contractual rate. They were breaking the 5 contract, in essence, by passing that pricing 6 on to others not in their group. So we needed 7 to shut that down, but we did it in a way that 8 came to a very good resolution for our customer 9 with a different pricing plan. 10 So we're clearly not against buying 11 groups per se, as we would have just shut it 12 down otherwise if that were the case. We 13 created something uniquely for Dental Gator as 14 an offshoot of that. 15 Q. How do you know you're referring to 16 pricing here? 17 A. Because I drafted it. 18 Q. So based on your recollection, you 19 recall that you were referring to pricing in 20 this e-mail? 21 A. Well, it aligns with the previous 22 discussion that we had regarding Dental Gator 23 and the resolution that we came to with Hal, 24 which this is now five months later. If you go 25 back to the last discussion we had, it was</p>

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 2 around that time of what we did following that
 3 meeting relative to Dental Gator.
 4 And we were able to shift from --
 5 take that customer, MB2, who is basically
 6 violating the contract that they had with us.
 7 We were able to change the format to allow them
 8 different pricing but kept Dental Gator itself
 9 as a buying group alive.
 10 Q. So you recall this conversation that
 11 you had with Mr. Muller at an offsite meeting?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: It was the discussion
 14 that we just had prior to this one on the
 15 e-mail exchange following that thing
 16 between Jimmy and I and Hal, Hal and I, if
 17 you recall, on Dental Gator, and how we
 18 adjusted the pricing. Yeah, this is
 19 what -- this is what -- this is referring
 20 to that.
 21 BY MR. SOLOMON:
 22 Q. So this is referring to a
 23 December offsite meeting, right? Am I right?
 24 A. Yes.
 25 Q. But the e-mail we just looked at

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 2 moment ago is from January 2015, right?
 3 A. Correct.
 4 Q. Okay. So is that -- the e-mail from
 5 January 2015, does that also refer to a meeting
 6 at December offsite?
 7 A. Not that I recall.
 8 Q. So I'm asking you specifically about
 9 this December offsite meeting where you talked
 10 to Mr. Muller about Dental Gator.
 11 What exactly did you tell him at
 12 this meeting?
 13 A. No. I'm saying -- so at the
 14 December last offsite meeting, Dental Gator
 15 first was raised by members of my team and the
 16 conflict that it was creating. I said I'll
 17 work with Hal to figure it out, to understand
 18 more about it.
 19 It took us a while, but January is
 20 when Hal and I were having this exchange about
 21 it. And we resolved it at that time to the
 22 mutual benefit of the customer, MB2 primarily,
 23 that's the parent company, the offshoot they
 24 created in Dental Gator, for our suppliers that
 25 were impacted by these agreements as well, and

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 2 for us and its members.
 3 So it took a while from the
 4 December offsite. There's holidays involved,
 5 year-end close. By January, we got to the
 6 topic and we resolved it. That's what I'm
 7 referring to here.
 8 Q. Okay. So you're not talking about a
 9 meeting you had with Mr. Muller at a
 10 December offsite?
 11 A. Correct.
 12 Q. Okay.
 13 A. We left that meeting with a goal to
 14 see if I could -- if we could get Hal -- so Hal
 15 wasn't -- I don't think Hal was there. But
 16 based on reading this, if we could get Hal to
 17 shut that down. And we were able to do that to
 18 the mutual benefit of our customer.
 19 Q. Were you aware of others within
 20 Henry Schein Dental saying that Dental Gator
 21 was a buying group that needed to be shut down?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I don't recall that
 24 direct language, meaning not shutting down
 25 Dental Gator per se, but shutting down the

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 2 pricing that they did not have a
 3 contractual right to. So that's my
 4 recollection of it.
 5 BY MR. SOLOMON:
 6 Q. Do you recall others within Henry
 7 Schein Dental raising concerns about Dental
 8 Gator because it was acting as a buying group?
 9 A. Well, as I just stated, it came up
 10 in our December offsite meeting. So yes, it
 11 was raised as a concern.
 12 Q. Specifically that it was a buying
 13 group?
 14 A. Again, one that was set up on
 15 pricing that they didn't have -- they weren't
 16 supposed to have access to and one that was
 17 acting as -- without the broader array of
 18 services that other groups that we work with
 19 offer.
 20 Q. They did offer value-added services,
 21 though, as we talked about earlier, right?
 22 A. And we also talked about the fact
 23 that I wasn't confident that they were
 24 executing that plan either.
 25 Q. And you can't recall any specific

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 2 part of those value-added services that were
 3 concerning to you, right?
 4 MR. McDONALD: Object to the form,
 5 misstates his testimony.
 6 THE WITNESS: Yeah, I'm saying I
 7 don't know -- I don't know what additional
 8 value-added services that they claim to
 9 provide. I don't know what they were.
 10 But whatever they were claiming it
 11 to be, I don't believe that they were
 12 actually executing on that piece. They
 13 were primarily marketing themselves with a
 14 "join us, you get better supplies -- deal
 15 on supplies."
 16 BY MR. SOLOMON:
 17 Q. And you're understanding of that was
 18 based on conversations you had with others
 19 within Henry Schein Dental, is that right?
 20 A. That is correct.
 21 Q. Okay. So you didn't know that
 22 information on your own; you learned it from
 23 others?
 24 A. Yeah, I trust my team to bring me
 25 the appropriate information.

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 2 A. Yes.
 3 Q. And through in-person meetings?
 4 A. Yes.
 5 Q. Do you value your relationship with
 6 Mr. Cohen?
 7 MR. McDONALD: Object to the form,
 8 vague.
 9 THE WITNESS: So let me take a
 10 moment and explain my relationship with
 11 Chuck Cohen.
 12 So he's a competitor of ours,
 13 competitor of mine. We're fierce
 14 competitors. But just as we talked
 15 earlier, we're cordial with each other.
 16 He's potentially -- Benco has been a
 17 company that potentially we'd be interested
 18 in merging our operations with.
 19 So I definitely want to treat Chuck
 20 with respect if some day he potentially
 21 would be working for me. I want to make
 22 sure that he understands who I am.
 23 But it's -- to be really clear, I do
 24 not, have not talked with Chuck Cohen or
 25 anyone else at Benco regarding our views on

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 2 Q. Do you remember who told you that?
 3 A. I don't specifically, no. I know
 4 Joe was involved.
 5 Q. Okay. You can put that document
 6 aside.
 7 Mr. Sullivan, you're familiar with
 8 Chuck Cohen?
 9 A. I am.
 10 Q. Who is Chuck Cohen?
 11 A. I believe he's the president of
 12 Benco Dental.
 13 Q. And you have a relationship with
 14 Mr. Cohen?
 15 MR. McDONALD: Object to the form,
 16 vague.
 17 THE WITNESS: We know each other.
 18 BY MR. SOLOMON:
 19 Q. And you've interacted with Mr. Cohen
 20 on several occasions?
 21 A. Correct.
 22 Q. And you've spoken with Mr. Cohen
 23 over the phone?
 24 A. I have.
 25 Q. And by text message?

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 2 strategic initiatives such as buying
 3 groups.
 4 BY MR. SOLOMON:
 5 Q. Never?
 6 A. Never.
 7 Q. I believe you testified in your
 8 investigational hearing that you had talked
 9 with Mr. Cohen about Atlantic Dental Care.
 10 Do you recall that?
 11 A. I do.
 12 Q. Was that one instance in which you
 13 had a communication with Mr. Cohen about buying
 14 groups?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: I did not have a
 17 discussion with Chuck Cohen in that
 18 exchange about buying groups, about Benco's
 19 strategy with him or Henry Schein's
 20 strategy with him.
 21 He contacted me about this group.
 22 As soon as he started going down a road
 23 that I felt uncomfortable with, I
 24 immediately told him, Chuck, we should not
 25 be having this discussion, and we changed

<p style="text-align: right;">Page 342</p> <p>1 TIM SULLIVAN 2 the topic of the discussion. 3 BY MR. SOLOMON: 4 Q. Other than that conversation, you've 5 never talked to Mr. Cohen about buying groups? 6 A. I've never talked -- not other than 7 that conversation. I've never talked to Chuck 8 Cohen about our strategy or Benco's strategy 9 around buying groups. 10 Q. Has Mr. Cohen ever reached out to 11 you on any other occasion regarding buying 12 groups? 13 MR. McDONALD: Object to the form, 14 misstates his testimony. 15 THE WITNESS: I can tell you I've 16 never had a discussion with Chuck Cohen 17 about Henry Schein's strategy or Benco's 18 strategy on buying groups. 19 BY MR. SOLOMON: 20 Q. Has he ever reached out to you 21 trying to have a discussion with you concerning 22 buying groups, other than the ADC example we 23 just discussed a moment ago? 24 MR. McDONALD: Object to the form. 25 MR. RACOWSKI: Objection, asked and</p>	<p style="text-align: right;">Page 343</p> <p>1 TIM SULLIVAN 2 answered. 3 THE WITNESS: No. 4 BY MR. SOLOMON: 5 Q. So there's been no other occasion on 6 which Mr. Cohen has reached out to you trying 7 to talk about buying groups, other than as it 8 relates to ADC? 9 MR. McDONALD: Objection to form -- 10 MR. RACOWSKI: Same objection. 11 MR. McDONALD: -- misstates his 12 testimony. 13 MR. RACOWSKI: Same objection. 14 MR. McDONALD: We have an agreement 15 that an objection by one is good for all, 16 right, so we both don't have to object to 17 this stuff? 18 MR. SOLOMON: I think that's right. 19 THE WITNESS: Can you restate the 20 question? 21 MR. SOLOMON: Would you mind just 22 reading it back. 23 (The reporter read the record as 24 requested.) 25 MR. McDONALD: Same objection.</p>
<p style="text-align: right;">Page 344</p> <p>1 TIM SULLIVAN 2 THE WITNESS: I want to clarify 3 because you say "other than" as if that was 4 a discussion about buying groups. That was 5 not a discussion about buying groups. 6 I have not had a discussion about -- 7 with Chuck Cohen or anyone at Benco about 8 their strategy on buying groups or ours or 9 any attempt to come to any sort of 10 agreement about how to treat buying groups. 11 BY MR. SOLOMON: 12 Q. And just to be clear, my question 13 was a little different. It was has Chuck 14 Cohen -- strike that. 15 On how many occasions has Chuck 16 Cohen reached out to you to try and talk about 17 buying groups? 18 MR. McDONALD: Object to the form. 19 THE WITNESS: I -- never, to my 20 knowledge, did he call me to talk about 21 buying groups in general and the strategy 22 therein. 23 He reached out to me about 24 American -- or Atlantic Dental Group for -- 25 I don't know why he did. But for whatever</p>	<p style="text-align: right;">Page 345</p> <p>1 TIM SULLIVAN 2 reason, he did on that occasion. But it 3 was not to talk about an overall strategy. 4 He mentioned something about this 5 group. I didn't know anything about them, 6 never heard of them before. He started to 7 go on about them. I said, Chuck, thanks, 8 but no thanks. We should not be having 9 this discussion. 10 We shifted the discussion to joking 11 around a little bit about him recruiting me 12 and me to go to work for him and ha, ha, 13 ha, and then end of the discussion. 14 BY MR. SOLOMON: 15 Q. So in that instance, he was 16 contacting you about Atlantic Dental Care, 17 which you understand is a buying group? 18 MR. McDONALD: Object to the form. 19 THE WITNESS: At the time, I did 20 not. I didn't know who they were. 21 BY MR. SOLOMON: 22 Q. Okay. Has Mr. Cohen ever told you 23 that Benco had a no buying group policy? 24 A. Not that I recall. 25 Q. Has Mr. Cohen ever told you that</p>

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 2 Benco doesn't work with buying groups?
 3 A. Not that I recall.
 4 Q. Has Mr. Cohen ever told you anything
 5 else about his position with respect to buying
 6 groups?
 7 A. I'll repeat what I said before.
 8 I've never had a discussion with Chuck Cohen
 9 about buying groups. He called me about a
 10 specific Atlantic Dental co-op, but we never
 11 had a discussion about buying groups.
 12 Q. At some point you came to understand
 13 that ADC was a buying group, correct?
 14 A. Correct.
 15 Q. When did that happen?
 16 A. Around the same time frame through
 17 our local leadership team.
 18 Q. How did you learn that ADC was a
 19 buying group?
 20 A. I believe our manager in the area --
 21 Bob Anderson is the local manager, but he was
 22 working with Michael Porro, who was our zone
 23 manager at the time.
 24 Michael reached out to me. I
 25 believe it started with because he could not

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 2 BY MR. SOLOMON:
 3 Q. Do you still understand ADC to be a
 4 buying group, sitting here today?
 5 MR. McDONALD: Object to the form,
 6 lack of foundation.
 7 THE WITNESS: I still know very
 8 little about them at this point, but that's
 9 how I would categorize them, yes.
 10 BY MR. SOLOMON:
 11 Q. Do you believe that Mr. Cohen is
 12 someone who has provided you with accurate
 13 information in the past?
 14 MR. McDONALD: Object to the form,
 15 lack of foundation.
 16 THE WITNESS: I don't know what you
 17 mean by that.
 18 BY MR. SOLOMON:
 19 Q. Have you and Mr. Cohen ever
 20 exchanged information about common concerns
 21 relating to your respective businesses?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: I don't know what
 24 you're referring to. If you can get
 25 specific, I'd be happy to answer any

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 2 get a hold of Dave Steck. And so it sounded
 3 like something that was happening pretty
 4 urgently, and he reached out to me to get my
 5 thoughts on it.
 6 Q. And he told you it was a buying
 7 group?
 8 MR. McDONALD: Object to the form.
 9 THE WITNESS: A form of a buying
 10 group, yes.
 11 BY MR. SOLOMON:
 12 Q. What do you mean by "a form of a
 13 buying group"?
 14 A. Really? Okay.
 15 So there's buying groups that are on
 16 price-only. There's buying group that have
 17 added values. I mean, it's everything I've
 18 been talking about buying groups. That's what
 19 I mean.
 20 Q. So where does Atlantic Dental Care
 21 fall on the spectrum you're talking about?
 22 A. I --
 23 MR. McDONALD: Object to the form,
 24 lack of foundation.
 25 THE WITNESS: Sorry. I don't know.

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 2 questions. I know there's plenty of copies
 3 on exchanges that we've had.
 4 BY MR. SOLOMON:
 5 Q. Sure. Have you ever communicated
 6 with Mr. Cohen about manufacturers selling
 7 their products directly to customers?
 8 A. I believe he sent me a message in
 9 regard to that happening on one occasion.
 10 Q. Do you recall when that was?
 11 A. No, but I'm sure we'll go through it
 12 in detail. I don't. I don't have it in front
 13 me, so I don't recall when that was.
 14 Q. What do you recall about that text
 15 message with Mr. Cohen?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I recall that it
 18 happened, but I don't recall the details,
 19 as I sit here today.
 20 BY MR. SOLOMON:
 21 Q. But you recall that it relates --
 22 related to a manufacturer selling its products
 23 directly to customers, right?
 24 MR. McDONALD: Object to the form,
 25 misstates his testimony.

<p style="text-align: right;">Page 350</p> <p>1 TIM SULLIVAN 2 THE WITNESS: I need to 3 understand -- I'd like to review the 4 documents with you so I can answer that 5 more accurately. 6 BY MR. SOLOMON: 7 Q. Mr. Sullivan, I'm handing you a 8 document that's been pre-marked as CX2452. 9 (Exhibit CX2452 was marked for 10 identification.) 11 (Witness viewed said document.) 12 THE WITNESS: Okay. 13 BY MR. SOLOMON: 14 Q. Mr. Sullivan, what is CX2452? 15 A. It's an e-mail exchange. It starts 16 with one from myself to our supplier partner at 17 KaVo, at Danaher at the time, and more internal 18 exchanges. 19 Q. Danaher is a dental products 20 manufacturer? 21 A. Correct. 22 Q. At the time -- so -- I'm sorry. 23 Is it called Danaher now and it used 24 to be called KaVo? 25 A. So Danaher is the parent company.</p>	<p style="text-align: right;">Page 351</p> <p>1 TIM SULLIVAN 2 And they've acquired multiple brands throughout 3 the years. At this time, they still were 4 referred to as Danaher, but today they go by 5 the KaVo-Kerr group. 6 Q. So CX2452, did you receive this 7 e-mail as part of your job at Schein? 8 A. Yes. 9 Q. And you drafted portions of this 10 e-mail as part of your job? 11 A. Correct. 12 Q. And you have personal knowledge of 13 what you wrote in these e-mails? 14 A. Yes. 15 Q. And CX2452, you wrote it around the 16 time that you were speaking with Mr. Cohen 17 about KaVo-Kerr, correct? 18 MR. McDONALD: Object to the form. 19 There's nothing in here about speaking. 20 It's says text messages. 21 THE WITNESS: I never spoke -- well, 22 I shouldn't say that. 23 Chuck called me the morning of 24 the -- looks to be the 16th and then 25 there's later a text from him.</p>
<p style="text-align: right;">Page 352</p> <p>1 TIM SULLIVAN 2 BY MR. SOLOMON: 3 Q. Okay. And you wrote this e-mail on 4 that same day? 5 A. Correct. 6 Q. And CX2452 is a true and accurate 7 representation of this e-mail correspondence, 8 correct? 9 A. Yes. 10 Q. And Schein keeps CX2452 in the 11 ordinary course of its business? 12 A. Yes. 13 Q. So turning your attention to the 14 first-in-time e-mail in this exhibit, 15 March 16th, 9:32, it looks like, a.m. The 16 subject is "April 1 KaVo Website." 17 You're concerned about this 18 manufacturer allowing customers to order direct 19 from their website, is that correct? 20 A. Yes. 21 Q. Okay. And turning to the 22 next-in-time e-mail, you refer to Chuck Cohen 23 calling you that morning to tell you about that 24 same issue, is that right? 25 A. Correct.</p>	<p style="text-align: right;">Page 353</p> <p>1 TIM SULLIVAN 2 Q. Did Chuck Cohen first bring this 3 issue to your attention by phone on that 4 morning? 5 A. So this is at 9:30. 6 As the best that I recall it, yes. 7 Q. Do you recall what he told you? 8 A. Something to the effect that KaVo is 9 launching a new program that customers can 10 order directly on their website. 11 Q. Fair to say you and Mr. Cohen were 12 both concerned about this? 13 MR. McDONALD: Object to the form. 14 THE WITNESS: Yes. 15 BY MR. SOLOMON: 16 Q. Why? 17 A. Because KaVo is a company that Henry 18 Schein, we represent. They do not sell direct. 19 They don't -- they never have. So this is a 20 shift in their strategy. That's their call to 21 make. We need to understand what their 22 go-to-market strategy is. 23 Q. So they are a supplier that Schein 24 works with? 25 A. Yes.</p>

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 2 Q. And they're also a supplier that
 3 Benco works with?
 4 A. Yes.
 5 Q. And so this was a concern for both
 6 you and Mr. Cohen, correct?
 7 MR. McDONALD: Object to the form,
 8 asked and answered.
 9 THE WITNESS: I can't speak for
 10 Chuck. I mean, from my perspective, yes.
 11 I assumed he called me because it was a
 12 concern of his also.
 13 BY MR. SOLOMON:
 14 Q. And so you and Mr. Cohen
 15 communicated about it?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: Chuck called me about
 18 it. I received his phone call.
 19 BY MR. SOLOMON:
 20 Q. Did you provide any information to
 21 him on the call?
 22 A. Just that I was unaware and thanks
 23 for the information.
 24 Q. Did you tell him you're also
 25 concerned?

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 2 Mr. Cohen about other concerns relating to
 3 manufacturers, other than this one, a set of
 4 communications?
 5 A. I believe there was another one.
 6 Again, I'd like to -- I'm sure you have it, so
 7 let's go through it.
 8 Q. I'm not sure that I do.
 9 A. Oh.
 10 Q. Can you tell me what you're
 11 referring to?
 12 A. I -- it was another manufacturer
 13 that changed certain pricing on, I think,
 14 freight or something on how they shipped
 15 something out.
 16 Q. Do you recall who the manufacturer
 17 was?
 18 A. I believe it was P&G, but I -- I --
 19 we should confirm that.
 20 Done here?
 21 Q. Yes, for the moment.
 22 Mr. Sullivan, I'm handing you a
 23 document that's been pre-marked as CX2422.
 24 (Exhibit CX2422 was marked for
 25 identification.)

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 2 MR. McDONALD: Object to the form.
 3 THE WITNESS: I don't recall what I
 4 said to him other than thanks for the
 5 information. I was not aware.
 6 BY MR. SOLOMON:
 7 Q. And then turning to the first page
 8 of this exhibit, you refer to a "Text message
 9 from Chuck C." And -- do you see that?
 10 A. I do.
 11 Q. Are you copying and pasting the text
 12 message that you got from Mr. Cohen into this
 13 e-mail?
 14 A. I don't believe so. I think I'm
 15 just retyping it in.
 16 Q. Okay. And Mr. Cohen writes, "FYI:
 17 Heard from KaVo that they're changing their
 18 plan re selling HPs direct on the web, will
 19 rescind plan. Good news. Enjoy Hawaii, see
 20 you Saturday. Thanks. Cfc."
 21 Is that Mr. Cohen's -- does that
 22 represent Mr. Cohen's text message to you about
 23 this issue?
 24 A. Yes.
 25 Q. Do you recall communicating with

1 TIM SULLIVAN
 2 THE WITNESS: Okay.
 3 BY MR. SOLOMON:
 4 Q. Mr. Sullivan, what is CX2422?
 5 A. It's an e-mail that I received from
 6 Chuck Cohen regarding P&G, and I forwarded it
 7 on to Paul Hinsch, who is our VP of marketing
 8 and merchandising.
 9 Q. You received this e-mail as part of
 10 your job at Schein?
 11 MR. McDONALD: I'll object to the
 12 form.
 13 THE WITNESS: I received this
 14 e-mail, and I am employed at Schein, yes.
 15 BY MR. SOLOMON:
 16 Q. And you drafted part of this e-mail
 17 as part of your job at Schein, correct?
 18 A. Correct.
 19 Q. And you had personal knowledge of
 20 what you wrote in this e-mail?
 21 A. Yes.
 22 Q. And you drafted this e-mail to
 23 Mr. Hinsch close in time to your communications
 24 with Mr. Cohen, correct?
 25 MR. McDONALD: Object to the form.

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1 TIM SULLIVAN
 2 THE WITNESS: I forwarded it on to
 3 Paul Hinsch on the receipt of the e-mail I
 4 got from Chuck Cohen, yes.
 5 BY MR. SOLOMON:
 6 Q. CX2422 is a true and accurate
 7 representation of this e-mail correspondence,
 8 correct?
 9 A. Yes.
 10 Q. And Henry Schein has kept CX2422 in
 11 the ordinary course of its business, correct?
 12 A. Correct.
 13 Q. So, Mr. Sullivan, what is this
 14 e-mail about?
 15 A. Well, I have to go through all the
 16 details again, but it's a change in how P&G is
 17 treating shipping on boxes.
 18 Q. And what was the change?
 19 A. Well, I wasn't aware of it, so I
 20 forwarded it on to Paul Hinsch for his thoughts
 21 because I wasn't -- I'm not sure what it was
 22 prior. There was a change.
 23 Q. What was -- what was -- do you know
 24 why Mr. Cohen was reaching out to you about
 25 this?

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. What's Mr. Cohen telling you here?
 4 What is he explaining is the change?
 5 A. I don't know. That's why I passed
 6 it on to Paul.
 7 Q. Okay. Did you think this was
 8 something that was potentially concerning for
 9 Schein?
 10 A. I didn't know. That's why I passed
 11 it on to Paul.
 12 Q. Okay. And is this an example of
 13 Mr. Cohen reaching out to you to discuss
 14 something that potentially could be a common
 15 concern for Schein and Benco?
 16 MR. McDONALD: Object to the form.
 17 THE WITNESS: I don't know if I'd
 18 categorize it that way. I don't know why
 19 Chuck sent it to me, to be...
 20 BY MR. SOLOMON:
 21 Q. And you passed this on to Mr. Hinsch
 22 because you wanted to find out more information
 23 about it?
 24 A. Correct, I wanted to get his
 25 thoughts.

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1 TIM SULLIVAN
 2 A. No.
 3 Q. Was this something that was
 4 potentially harmful to Schein?
 5 MR. McDONALD: Object to the form,
 6 lack of foundation.
 7 THE WITNESS: I don't know. That's
 8 why I passed it on to Paul Hinsch for
 9 thoughts.
 10 BY MR. SOLOMON:
 11 Q. And can you point me specifically --
 12 specifically to what the change was that was
 13 occurring with respect to P&G in this e-mail?
 14 MR. McDONALD: Object to the form,
 15 lack of foundation.
 16 If you're asking him what Mr. Cohen
 17 told him, that's fine. If you're asking
 18 him if P&G actually made a change and he
 19 has personal knowledge of that, then lack
 20 of foundation.
 21 THE WITNESS: That's what I said
 22 before, I don't know what the -- I don't
 23 know what -- prior, I don't know what the change
 24 was.
 25 ///

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1 TIM SULLIVAN
 2 Q. And what did you learn?
 3 A. I don't recall. I don't remember
 4 what the end result was.
 5 Q. Okay. Did you ever have any
 6 follow-up conversations with Mr. Cohen about
 7 this e-mail?
 8 A. I don't believe so.
 9 Q. This relates to changes with respect
 10 to a supplier that works with both Schein and
 11 Benco, correct?
 12 A. And others, but yes.
 13 Q. Have you communicated with Mr. Cohen
 14 about other manufacturers other than the two
 15 examples we've just looked at?
 16 A. These were the only two examples
 17 that came to mind for me.
 18 Q. Is it possible that you've
 19 communicated to Mr. Cohen on other occasions
 20 about issues relating to dental product
 21 manufacturers?
 22 MR. McDONALD: Object to the form.
 23 THE WITNESS: To be clear, when you
 24 say communi- -- when I communicated with,
 25 Chuck is, for whatever reason, sending me

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1 TIM SULLIVAN
2 the communication; it's not me starting the
3 communication with him. So why he's doing
4 that, you'd have to ask him. But these are
5 the only two that come to mind.
6 BY MR. SOLOMON:
7 Q. In this example, it looks like, in
8 CX2422, Mr. Cohen is reaching out to you,
9 correct?
10 A. Correct.
11 Q. In the document we looked at
12 previously, you had had a phone conversation
13 with Mr. Cohen, correct?
14 A. I received a phone call from
15 Mr. Cohen, yes.
16 Q. Have you ever...
17 (Exhibit CX2459 was marked for
18 identification.)
19 BY MR. SOLOMON:
20 Q. Mr. Sullivan, I've handed you
21 CX2459. Let me know when you've had a chance
22 to review it.
23 (Witness viewed said document.)
24 THE WITNESS: Okay.
25 ///

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1 TIM SULLIVAN
2 Q. And Dentsply is a manufacturer that
3 works with both Schein and Benco, correct?
4 A. And many others, but yes.
5 Q. It's one of the largest dental
6 product manufacturers in the nation, correct?
7 A. Correct.
8 Q. And specifically he's talking about
9 a poison pill clause in some of the agreements
10 with Dentsply.
11 Do you see that?
12 A. I do.
13 Q. Do you have an understanding as to
14 what he's referring to here?
15 A. I don't.
16 Q. Okay. He goes on to tell you that
17 Benco is concerned about sharing data with
18 Dentsply if Dentsply begins to sell products
19 direct.
20 Do you see that?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: Where? Which -- which
23 line are you referring to?
24 BY MR. SOLOMON:
25 Q. I'm talking about the second

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. Mr. Sullivan, what is CX2459?
4 A. It's a copy of an e-mail of Chuck
5 sending me a message.
6 Q. And you received this e-mail,
7 correct?
8 A. I did.
9 Q. And you forwarded it on after you
10 received it?
11 A. I did.
12 Q. And it looks like the subsequent
13 conversations are internal to Schein, right?
14 A. Correct.
15 Q. And they've all been redacted for
16 attorney-client privilege?
17 A. That's my understanding.
18 Q. So focusing on Mr. Cohen's e-mail to
19 you on June 12th, 2013 at 5:20 p.m., what is
20 Mr. Cohen's e-mail about?
21 A. Suppliers that we -- that he
22 provides customer level data to.
23 Q. And Mr. Cohen is telling you about
24 Dentsply specifically, correct?
25 A. He is.

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1 TIM SULLIVAN
2 paragraph of this e-mail starting with "Our
3 concern."
4 (Witness viewed said document.)
5 THE WITNESS: Okay. Repeat the
6 question again. I'm sorry.
7 BY MR. SOLOMON:
8 Q. Sure. He goes on to tell you that
9 Benco is concerned about sharing data with
10 Dentsply if Dentsply sells product directly to
11 customers.
12 A. Yes, I see that now, yes.
13 Q. Is this something that -- so in this
14 instance, Mr. Cohen is talking about Dentsply
15 selling products directly to customers?
16 MR. McDONALD: Object to the form,
17 mischaracterizes the document.
18 THE WITNESS: Yeah, that's not how I
19 read it.
20 BY MR. SOLOMON:
21 Q. How do you read it?
22 A. Well, I don't want to interpret
23 Chuck's e-mail, that I immediately forwarded it
24 on to our -- including legal counsel because I
25 did not want to have that discussion.

1 TIM SULLIVAN
 2 Q. Why not?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I don't think it would
 5 be appropriate for Chuck and I to have that
 6 discussion.
 7 BY MR. SOLOMON:
 8 Q. Specifically why?
 9 A. Based on discussions that I've had
 10 with legal counsel.
 11 Q. Prior to this e-mail you had --
 12 A. In -- in the training that I get
 13 on -- on -- why am I coming up with the wrong
 14 acronym?
 15 The training that we receive as it
 16 relates to this topic.
 17 Q. So you thought it would be
 18 inappropriate to respond to Mr. Cohen in this
 19 instance?
 20 MR. McDONALD: Object to the form.
 21 THE WITNESS: It's why I forwarded
 22 it on to legal counsel, to get advice on
 23 how -- on how to handle this.
 24 BY MR. SOLOMON:
 25 Q. So you were concerned that Mr. Cohen

1 TIM SULLIVAN
 2 was reaching out to you about this specific
 3 topic?
 4 MR. McDONALD: Object to the form.
 5 Don't reveal communications you've
 6 had with counsel.
 7 THE WITNESS: Right.
 8 Yeah, I don't know how else to
 9 answer that than I already have.
 10 BY MR. SOLOMON:
 11 Q. Did you ever get back to Mr. Cohen
 12 about this e-mail?
 13 A. I don't believe so.
 14 Q. So you never followed up with
 15 Mr. Cohen at all about the issues he raises in
 16 CX2459?
 17 A. I don't believe so.
 18 Q. Is this the first time you forwarded
 19 something from Mr. Cohen on to Schein's legal
 20 department?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: I don't -- I don't
 23 believe it's the first time, no.
 24 BY MR. SOLOMON:
 25 Q. Have you forwarded other e-mails

1 TIM SULLIVAN
 2 from Mr. Cohen on to Schein's legal department?
 3 A. Prior to this date?
 4 Q. Correct.
 5 A. I believe so, yes.
 6 Q. Do you recall what instances you
 7 forwarded an e-mail from Mr. Cohen on to
 8 Schein's legal department prior to this date?
 9 A. So we had an agreement with Benco at
 10 one point as it related to how we -- hiring of
 11 each other's employees. During that period,
 12 there was definitely exchanges that included
 13 attorney-client privilege, discussions with
 14 attorneys. So I would assume, I believe during
 15 that period there was also other e-mails that I
 16 would have gotten that I forwarded on to legal
 17 counsel.
 18 Q. Did you ever tell Mr. Cohen that you
 19 should not be communicating about the topic in
 20 this e-mail here?
 21 A. I don't recall.
 22 Q. You just don't recall one way or the
 23 other, sitting here today?
 24 A. Well, I believe I'd be -- there were
 25 discussions I had with legal counsel on how to

1 TIM SULLIVAN
 2 respond to this. I don't want to reveal that
 3 discussion.
 4 Q. I'm not -- I'm not asking for your
 5 discussions with legal counsel. I'm asking for
 6 what you told Mr. Cohen.
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I'm saying I don't
 9 recall if I ended up sending anything
 10 directly back to Chuck on this or not.
 11 BY MR. SOLOMON:
 12 Q. Okay. So other than the hiring
 13 agreement that you just mentioned a moment ago,
 14 has Mr. Cohen ever reached out to you about a
 15 topic that you found to be troubling or
 16 concerning --
 17 MR. McDONALD: Object to the form.
 18 BY MR. SOLOMON:
 19 Q. -- other than what's represented in
 20 this e-mail?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: We spoke earlier about
 23 that Atlantic Dental Group where I verbally
 24 told him we shouldn't be talking about
 25 this. Outside of that, nothing comes to

1 TIM SULLIVAN
 2 mind.
 3 BY MR. SOLOMON:
 4 Q. Have you ever talked to Mr. Cohen
 5 about a company called Buy Now Direct?
 6 A. I don't know if we spoke or if it
 7 was in text.
 8 Q. And what was the nature of your
 9 communications with Mr. Cohen about Buy Now
 10 Direct?
 11 A. He brought to my attention some
 12 publicly available information about Henry
 13 Schein product being available on either Amazon
 14 or Buy Now Direct through Amazon, that Henry
 15 Schein brand product was listed on there. I
 16 was not aware of that. Publicly available
 17 information, but it wasn't -- I didn't -- I was
 18 not aware of that.
 19 Q. So he brought it to your attention?
 20 A. He did.
 21 Q. Were you appreciative of that?
 22 A. It was information that was good to
 23 know.
 24 Q. Were you concerned about what was
 25 going on with Schein products being available

1 TIM SULLIVAN
 2 through Amazon or Buy Now Direct?
 3 A. Yes, because we have -- it would
 4 violate our contracts with our suppliers. We
 5 sell to end users. Our end users are not
 6 allowed to then take our product and sell it --
 7 to resell it. It was concerning.
 8 Q. And you say you don't recall whether
 9 you had a phone call or if it was a text
 10 message with Mr. Cohen surrounding Buy Now
 11 Direct?
 12 A. Correct. I know there's paperwork
 13 that supports those text messages and possibly
 14 a phone call around the same time. I believe
 15 we can look at that, if you'd like. But I know
 16 there was text messages for sure.
 17 Q. On what other occasions has
 18 Mr. Cohen reached out to you about business
 19 concerns?
 20 MR. McDONALD: Object to the form,
 21 vague.
 22 THE WITNESS: I can't speak to how
 23 you would define business concerns.
 24 BY MR. SOLOMON:
 25 Q. Something that was concerning to

1 TIM SULLIVAN
 2 Schein about its business.
 3 A. Do you have something --
 4 MR. McDONALD: Object -- object to
 5 the form.
 6 Go ahead.
 7 THE WITNESS: Do you have something
 8 specific that I can --
 9 BY MR. SOLOMON:
 10 Q. No.
 11 A. -- respond to?
 12 Q. We --
 13 A. You have nothing specific that I can
 14 respond to?
 15 Q. I don't. We've looked at a few
 16 different e-mails, Buy Now Direct, the issue
 17 with KaVo-Kerr, the manufacturer, the issue
 18 with Dentsply.
 19 And I'd like to know if there are
 20 any other communications that you had with
 21 Mr. Cohen that are in -- similar in vein and
 22 relate to business concerns.
 23 A. We talked about --
 24 MR. McDONALD: Object to the form.
 25 I'm sorry.

1 TIM SULLIVAN
 2 THE WITNESS: I'm sorry.
 3 MR. McDONALD: Go ahead.
 4 THE WITNESS: We talked about
 5 employment agreements, also. We talked
 6 about -- Atlantic Dental Care was one
 7 example. That's all that comes to mind
 8 right now.
 9 BY MR. SOLOMON:
 10 Q. Have you ever talked to Mr. Cohen
 11 about trends in the dental industry?
 12 A. Not that I recall.
 13 Q. Have you ever talked to Mr. Cohen
 14 about the growth of DSOs in corporate
 15 dentistry?
 16 A. Not that I recall.
 17 Q. Have you ever talked to Mr. Cohen
 18 about merger opportunities?
 19 A. Yes.
 20 Q. On how many occasions did you speak
 21 with Mr. Cohen about merger opportunities?
 22 A. I believe there were two
 23 specifically face-to-face meetings and probably
 24 a phone call or two along the way.
 25 Q. How long would you say those

1 TIM SULLIVAN
 2 face-to-face meetings lasted for?
 3 A. Well, one was a breakfast in -- at
 4 the Greater New York meeting. And another
 5 was -- we actually went to an opera together in
 6 New York.
 7 Q. And you discussed merger
 8 opportunities while you guys were attending the
 9 opera or after? When did that conversation
 10 take place?
 11 A. It wasn't during the opera, although
 12 it would have been more exciting. But yes,
 13 there's a dinner before -- or, sorry, there's
 14 cocktails before, there's dinner, and in the
 15 middle there's a break. So somewhere along
 16 that line it was -- the intent of doing this
 17 together was to build a relationship to
 18 possibly merge our organizations together.
 19 Q. Do you recall when those meetings
 20 took place?
 21 A. I believe -- I know there's some
 22 documents on it. I think it's around in this
 23 '13 to '15 type time frame.
 24 Q. Okay. So you mentioned two specific
 25 face-to-face meetings, and there were some

1 TIM SULLIVAN
 2 a period of time then I had to step off the
 3 board. By the time I came back on the board,
 4 he had already transitioned off to the DTA
 5 Foundation board.
 6 Q. When did you overlap?
 7 A. I believe it was around 2010, so it
 8 was a year or two before or a year or two
 9 after, somewhere in that time frame, I believe.
 10 Q. So beginning around 2010 is what
 11 you're saying?
 12 A. Sounds right.
 13 Q. How often would you meet with
 14 Mr. Cohen surrounding DTA-related business?
 15 A. I don't recall any one-on-one
 16 meetings with Chuck during that time. We had
 17 the board meeting. Sometimes after the board
 18 meetings, whether it was at the annual meeting
 19 that a lot of members came to or Chicago
 20 Midwinter was one of the big board meetings
 21 we've had of the year, a little group would go
 22 into the bar afterwards and have a cocktail.
 23 But I don't recall any specific,
 24 just one-on-one, sit-down arranged --
 25 prearranged meetings with Chuck at those

1 TIM SULLIVAN
 2 other phone calls or text messages?
 3 A. Yeah, there were times when we spoke
 4 on the phone about opportunities. We created a
 5 family foundation. The family foundation
 6 started a fund through Dental -- the DTA
 7 Foundation. Chuck was involved. He was on the
 8 board of the DTA Foundation. Would the Cohen
 9 family want to create a similar thing?
 10 So we had questions about how we'd
 11 form that, you know, how we formed the goal,
 12 the intent behind it. They could do something
 13 different.
 14 We had conversations that followed
 15 up on -- from our meeting in New York, I think,
 16 just a few weeks later. It might have been
 17 early January we had a discussion as a
 18 follow-up to that relative to do we want to
 19 take this to the next step, anything further.
 20 Q. You served on the DTA board of
 21 directors with Mr. Cohen, correct?
 22 A. For -- yes. Yes.
 23 Q. For how long?
 24 A. I believe it was around two to three
 25 years that we overlapped on the board. There's

1 TIM SULLIVAN
 2 meetings.
 3 Q. How many times would you say you
 4 were a part of a meeting with Mr. Cohen as it
 5 related to DTA-related business?
 6 A. During that period of time, probably
 7 twice a year, maybe three times depending on --
 8 not everyone showed up at every board meeting.
 9 Q. Where did these -- where did these
 10 board meetings take place?
 11 A. The two major ones were the
 12 Wednesday before the Chicago Midwinter, which
 13 is in February, and then at the annual meeting
 14 for all members, which is usually in the fall.
 15 Q. You and Mr. Cohen are a part of an
 16 organization called the Young Presidents
 17 Organization?
 18 A. Yes.
 19 Q. What is that?
 20 A. Well, I'm now a YPO gold member, but
 21 it's for when you're under 50 years old and a
 22 president, the Young Presidents Organization.
 23 It's a large international group. I'm part of
 24 the Wisconsin chapter. He's part of the
 25 Pennsylvania chapter.

1 TIM SULLIVAN
 2 And there are other members within
 3 the DTA that are also presidents of their
 4 organizations and the Young. So I think
 5 there's about five or six DTA and other dental
 6 industry people that are in the YPO.
 7 Q. How big is this organization?
 8 A. It's on -- there's a website. It's
 9 got to be, I don't know, 5, 6,000 members.
 10 We're 100 members in the State of Wisconsin,
 11 but it's an international group.
 12 Q. Have you and Mr. Cohen ever attended
 13 YPO meetings together?
 14 A. No. There was -- someone at the DTA
 15 was looking to put together a meeting at one of
 16 the conventions about, hey, Fellow YPOers,
 17 let's all meet. I don't know that it ever took
 18 place or not. But I never like attended a trip
 19 to a YPO event that YPO was putting on that
 20 Chuck was at.
 21 Q. So you've never been at a YPO
 22 meeting at the same time as Mr. Cohen?
 23 A. That's correct.
 24 Q. Have you ever had communications
 25 with Mr. Cohen about YPO?

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. How many times would you say you've
 4 exchanged text messages with Mr. Cohen?
 5 MR. McDONALD: Object to the form.
 6 THE WITNESS: I would answer it the
 7 same. I don't know exactly.
 8 BY MR. SOLOMON:
 9 Q. And how many times would you say
 10 you've met with Mr. Cohen total in person?
 11 MR. McDONALD: Object to the form,
 12 vague.
 13 THE WITNESS: Well, do you mean met
 14 with him one on one or met with him we were
 15 in the same room, met with him in a board
 16 meeting, met with him -- how would you
 17 define "met with him"?
 18 BY MR. SOLOMON:
 19 Q. Any encounter with Mr. Cohen in
 20 person.
 21 A. Any encounter, several.
 22 Q. Can you give me a number?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I'd be speculating,
 25 but it's several.

1 TIM SULLIVAN
 2 A. Just to understand maybe who else
 3 was a member within the dental trade. And I
 4 think -- I forget the gentleman's name. I can
 5 picture him. He kind of took the lead on
 6 trying to put meetings together at a cocktail
 7 hour or something for any YPO members that were
 8 part of the DTA.
 9 Q. How many times would you say you
 10 spoke to Mr. Cohen on the telephone?
 11 MR. McDONALD: Object to the form.
 12 THE WITNESS: Several, ten-plus
 13 probably. I know you have the record, so
 14 you could probably tell me, but I -- that
 15 would be my estimate.
 16 BY MR. SOLOMON:
 17 Q. So more than ten times?
 18 A. I believe so.
 19 Q. Are we talking 20 times? 50 times?
 20 100 times?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Again, you have all
 23 the records. You could probably tell me
 24 exactly what it is. I don't know.
 25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. More than 20?
 4 A. Yes.
 5 Q. More than 30?
 6 A. Probab- --
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I'm speculating at
 9 this point. Probably. I don't know. It
 10 could be at the Chicago Midwinter meeting,
 11 we could both be there. We're both
 12 present, as you've defined. We might not
 13 even see each other, but we're both
 14 present.
 15 There's conventions, five, six,
 16 seven -- there's 60-plus conventions a
 17 year. I go to three, four a year. I don't
 18 know which one's he's at and which one's
 19 he's not.
 20 BY MR. SOLOMON:
 21 Q. So you've met with Mr. Cohen at the
 22 Chicago Midwinter meeting?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: Again, through the DTA
 25 board meeting that happened to be in

1 TIM SULLIVAN
 2 Chicago prior to the Chicago Midwinter. We
 3 didn't -- we never traveled to Chicago with
 4 the intent of solely the two of us meeting.
 5 BY MR. SOLOMON:
 6 Q. But you've met with him at a Chicago
 7 Midwinter meeting?
 8 MR. McDONALD: Object to the form,
 9 asked and answered.
 10 THE WITNESS: I have.
 11 BY MR. SOLOMON:
 12 Q. How many times have you met with him
 13 at one of the Chicago Midwinter meetings?
 14 MR. McDONALD: Object to the form,
 15 asked and answered, vague.
 16 THE WITNESS: Met with him or was he
 17 present at the meeting? I can't tell you
 18 if he was present at the meeting.
 19 Between -- I would say the three
 20 times for sure that we overlapped -- or the
 21 two or three times that we overlapped as
 22 being members of the board.
 23 There are times the foundation board
 24 would come in and give a presentation to
 25 the DTA board, I don't know, five, six,

1 TIM SULLIVAN
 2 meeting. I don't, hey, wave from a
 3 distance is a meeting.
 4 An encounter, if we're both present,
 5 I would say on average it was two, three
 6 times a year at various conventions,
 7 whether it was Chicago, it could have been
 8 California, Hinman, Yankee, CDA.
 9 BY MR. SOLOMON:
 10 Q. What about the ADA meetings?
 11 A. ADA.
 12 Q. What about the Greater New York
 13 meetings?
 14 A. Greater New York.
 15 Q. And when you meet with Mr. Cohen at
 16 these meetings, is it a one-on-one situation?
 17 Are there other people present?
 18 MR. McDONALD: Object to the form,
 19 mischaracterizes his testimony.
 20 He said encounter. He specifically
 21 pushed back to you on meeting and he said
 22 he's counting encounters, not meetings one
 23 on one.
 24 Listen to his testimony, please, and
 25 don't misstate it.

1 TIM SULLIVAN
 2 seven times at the Chicago Midwinter
 3 meeting. I'm speculating, but probably in
 4 that range.
 5 BY MR. SOLOMON:
 6 Q. And the Chicago Midwinter meeting is
 7 a trade show, is that right?
 8 A. It is.
 9 Q. What other trade shows have you met
 10 Mr. Cohen at?
 11 MR. McDONALD: Object to the form,
 12 vague.
 13 THE WITNESS: Seen him at or met him
 14 at?
 15 BY MR. SOLOMON:
 16 Q. I'm just talking -- well, what's the
 17 distinction you're making between seeing and
 18 meeting? I'm just referring to where you've
 19 actually had an encounter with Mr. Cohen.
 20 MR. McDONALD: Object to the form.
 21 You mean just like hello?
 22 MR. SOLOMON: Any interaction.
 23 MR. McDONALD: Or do you mean a
 24 substantive encounter?
 25 THE WITNESS: I define meeting as

1 TIM SULLIVAN
 2 THE WITNESS: Are you asking me
 3 about meetings with him or encounters with
 4 him?
 5 BY MR. SOLOMON:
 6 Q. So just to be clear, I'd like to
 7 understand what distinction you're making
 8 because I wasn't there meeting with Mr. Cohen.
 9 So you said "hi" to him on some
 10 occasions, correct, and no further
 11 conversations happened, is that right?
 12 A. Correct.
 13 Q. And on other occasions you've had
 14 more substantive conversations with him?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Correct.
 17 BY MR. SOLOMON:
 18 Q. Okay. So would you call those --
 19 where you've had more substantive conversations
 20 with Mr. Cohen, would you refer to those as
 21 meetings?
 22 A. I would, yes.
 23 Q. And when you're just saying hello to
 24 him and nothing more, you would not call that a
 25 meeting?

1 TIM SULLIVAN
 2 A. Correct.
 3 Q. Okay. So using that definition,
 4 would you still say you've met with Mr. Cohen
 5 two to three times a year at various trade
 6 shows?
 7 A. No.
 8 Q. What would the number be then?
 9 A. Far less.
 10 Q. How many?
 11 A. The only time I would actually meet
 12 with Chuck was during the period that we had
 13 this employment agreement about hiring of each
 14 other, and that was the only substantive
 15 business issue that he and I would discuss
 16 while meeting at a trade show.
 17 Q. So every time you've met with
 18 Mr. Cohen at a trade show -- or strike that.
 19 You've met with Mr. Cohen at trade
 20 shows to only discuss the hiring agreement
 21 between Benco and Schein?
 22 A. To the best of my recollection,
 23 that's right.
 24 Q. And the hiring agreement between
 25 Benco and Schein was in place from 2009 until

1 TIM SULLIVAN
 2 So especially coming out of a
 3 foundation meeting that they just presented to
 4 the DTA, we're talking about what the Sullivan
 5 Foundation had done. So he had asked me
 6 questions about -- and his father asked
 7 questions about that.
 8 So there were other things we talked
 9 about, but the only substantive business thing
 10 we spoke about was related to the employment
 11 agreement.
 12 Q. I'd like to hand you a document
 13 that's been pre-marked as CX4088.
 14 (Exhibit CX4088 was marked for
 15 identification.)
 16 THE WITNESS: Okay.
 17 BY MR. SOLOMON:
 18 Q. Mr. Sullivan, do you know what this
 19 document is?
 20 A. Looks like phone records.
 21 Q. And I'd like you to turn to Page 45
 22 of this exhibit. If you look on the bottom,
 23 there are page numbers on the right-hand side.
 24 A. Oh, I'm sorry. Okay. Got it.
 25 Q. And I'd like to point you to item

1 TIM SULLIVAN
 2 2016, is that correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: Yeah, I don't have the
 5 exact dates.
 6 BY MR. SOLOMON:
 7 Q. Does that sound right to you?
 8 A. It's possible. I really don't --
 9 I'd be speculating on the exact dates.
 10 Q. Okay. So while the hiring agreement
 11 was in place, you're stating that every time
 12 you met with Mr. Cohen at a trade show it was
 13 to discuss the hiring agreement?
 14 A. To the best of my recollection, yes.
 15 Q. And you never discussed anything
 16 else other than the hiring agreement during
 17 those meetings?
 18 A. To the best of my recollection,
 19 that's right.
 20 Q. Okay.
 21 A. I'm sorry. Strike that.
 22 As I mentioned before, there were
 23 times we talked about his foundation, if it
 24 would founda- -- you know, could there be
 25 something more?

1 TIM SULLIVAN
 2 1679.
 3 Do you see where I'm pointing you
 4 to --
 5 A. I do.
 6 Q. -- on the left-hand side?
 7 A. Yes.
 8 Q. Okay. And under "Originating
 9 Number," there's a number 570-407-1340.
 10 Do you recognize that number?
 11 A. I do not.
 12 Q. You don't recognize that as
 13 Mr. Cohen's phone number?
 14 A. No, I wouldn't know his --
 15 Q. Okay.
 16 A. -- phone number.
 17 Q. I will represent to you that that is
 18 Mr. Cohen's cell phone number as identified by
 19 Benco's counsel.
 20 A. Okay.
 21 Q. And in the "Terminating Number"
 22 column, there's a phone number 414-975-8377.
 23 Do you see that?
 24 A. I do.
 25 Q. Is that your phone number?

<p style="text-align: right;">Page 390</p> <p>1 TIM SULLIVAN</p> <p>2 A. That is.</p> <p>3 Q. Okay. And that's your cell phone</p> <p>4 number?</p> <p>5 A. It is.</p> <p>6 Q. And are you the only person that</p> <p>7 uses that cell phone?</p> <p>8 A. I believe so.</p> <p>9 Q. No one else uses that cell phone?</p> <p>10 A. Correct.</p> <p>11 Q. And your office number, is it</p> <p>12 414-290-2508?</p> <p>13 A. Yes, it is.</p> <p>14 Q. Also, for that phone number, are you</p> <p>15 the only person that uses that phone?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: My admin will answer</p> <p>18 the phone for me occasionally, but she has</p> <p>19 her own line for making her own phone</p> <p>20 calls.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. Okay.</p> <p>23 A. So I'm the only one. That's my</p> <p>24 direct line.</p> <p>25 Q. Okay. You can put that document</p>	<p style="text-align: right;">Page 391</p> <p>1 TIM SULLIVAN</p> <p>2 aside for a second.</p> <p>3 MR. SOLOMON: We're just going to</p> <p>4 take a quick break, if that's okay.</p> <p>5 MR. McDONALD: Yes.</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 4:41 p.m. We are off the record.</p> <p>8 (Whereupon, a recess was had</p> <p>9 from 4:41 p.m. to 5:00 p.m.)</p> <p>10 THE VIDEOGRAPHER: The time is</p> <p>11 5:00 p.m. We are back on the record.</p> <p>12 BY MR. SOLOMON:</p> <p>13 Q. Mr. Sullivan, you have CX4088 in</p> <p>14 front of you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And, again, I'd like to</p> <p>17 direct your attention to item 1679.</p> <p>18 Do you see where I'm pointing you</p> <p>19 to?</p> <p>20 A. I do.</p> <p>21 Q. And, again, you identified</p> <p>22 414-975-8377 as your phone number, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And I represented to you that</p> <p>25 570-407-1340 is the phone number that Benco's</p>
<p style="text-align: right;">Page 392</p> <p>1 TIM SULLIVAN</p> <p>2 counsel has identified for Mr. Chuck Cohen as</p> <p>3 his cell phone.</p> <p>4 And under "Elapsed Time," do you see</p> <p>5 it says 11 minutes and 34 seconds?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you understand this to be</p> <p>8 a call you had with Mr. Cohen on January 13th,</p> <p>9 2012?</p> <p>10 A. It appears to be, yes.</p> <p>11 Q. Do you recall this phone call?</p> <p>12 A. Not specifically, no.</p> <p>13 Q. So do you recall what you might have</p> <p>14 discussed with Mr. Cohen on this phone call on</p> <p>15 January 13th, 2012?</p> <p>16 MR. McDONALD: Object to the form.</p> <p>17 THE WITNESS: I could speculate what</p> <p>18 it was about, the employment agreements, as</p> <p>19 I mentioned to you before, the charity, the</p> <p>20 potential merger discussions.</p> <p>21 BY MR. SOLOMON:</p> <p>22 Q. You have no specific recollection of</p> <p>23 what you discussed on this call, though? You'd</p> <p>24 be speculating if you told me?</p> <p>25 A. Correct. I can tell you what it was</p>	<p style="text-align: right;">Page 393</p> <p>1 TIM SULLIVAN</p> <p>2 not about. It goes back to what I was stating</p> <p>3 earlier. It was not about any confidential</p> <p>4 strategic plans for Henry Schein or Benco</p> <p>5 relative to buying groups or any of the sort,</p> <p>6 but I can't tell you what specifically it was</p> <p>7 about.</p> <p>8 Q. Have you ever heard of a group</p> <p>9 called Unified Smiles?</p> <p>10 A. Only through a message I got from</p> <p>11 Chuck.</p> <p>12 Q. When did you get a message from</p> <p>13 Chuck about Unified Smiles?</p> <p>14 A. It was -- was it the day before --</p> <p>15 was it the day before this or something? I</p> <p>16 think there was a text message about it.</p> <p>17 Q. And Mr. Cohen texted you about</p> <p>18 Unified Smiles?</p> <p>19 MR. McDONALD: Object to the form.</p> <p>20 THE WITNESS: If I'm --</p> <p>21 MR. McDONALD: If you have a -- if</p> <p>22 you have a clear recollection, then tell</p> <p>23 him, but don't guess.</p> <p>24 THE WITNESS: Yeah, I'm -- I'm</p> <p>25 attempting to recall the process -- the</p>

1 TIM SULLIVAN
 2 order of things here. So I'm right now
 3 speculating, so I don't know exactly where
 4 I heard it from.
 5 BY MR. SOLOMON:
 6 Q. But you recall Mr. Cohen texting you
 7 about Unified Smiles?
 8 MR. McDONALD: Object to the form.
 9 He just said he didn't recall that.
 10 THE WITNESS: I don't recall
 11 specifically.
 12 BY MR. SOLOMON:
 13 Q. But you just said a moment ago that
 14 Mr. Cohen texted you about Unified Smiles the
 15 day before.
 16 A. I believe --
 17 MR. McDONALD: Object to the form.
 18 THE WITNESS: I believe there's
 19 paperwork that speaks to Unified Smiles. I
 20 don't know. I was in my mind thinking it
 21 was from Chuck. It might not have been
 22 from Chuck. I don't recall now. I think I
 23 misspoke.
 24 BY MR. SOLOMON:
 25 Q. You haven't spoke to Mr. Cohen about

1 TIM SULLIVAN
 2 Unified Smiles?
 3 A. No.
 4 Q. So why did you just say a moment ago
 5 that you received a text message from Mr. Cohen
 6 about Unified Smiles?
 7 A. I think I misspoke.
 8 Q. Why did you misspeak?
 9 MR. McDONALD: Object to the form.
 10 What do you mean --
 11 THE WITNESS: I don't know.
 12 MR. McDONALD: -- why did he
 13 misspeak?
 14 BY MR. SOLOMON:
 15 Q. So you don't know why you just said
 16 that?
 17 A. In preparation for this, there was
 18 something about -- you had asked me if I heard
 19 about it. I never had and then forgot all
 20 about them until preparation for this, which
 21 would have been confidential discussions with
 22 attorneys.
 23 Q. How did you hear about Unified
 24 Smiles in preparation for today?
 25 MR. McDONALD: Object to the form.

1 TIM SULLIVAN
 2 Do not reveal your communications
 3 you've had with counsel.
 4 THE WITNESS: I'd be revealing
 5 confidential information with counsel.
 6 BY MR. SOLOMON:
 7 Q. Is there any nonconfidential
 8 information that you can tell me about Unified
 9 Smiles with respect to how you prepared
 10 today -- for today?
 11 A. No.
 12 Q. Have you ever had a discussion with
 13 Mr. Cohen about Unified Smiles?
 14 A. I don't believe so, no.
 15 Q. Do you understand Unified Smiles to
 16 be a buying group?
 17 A. I don't know who they are.
 18 Q. Did you look at any documents with
 19 counsel that refreshed your recollection as to
 20 what Unified Smiles was at any point in
 21 preparation for today?
 22 THE WITNESS: Would that be
 23 revealing confidential information?
 24 MR. McDONALD: Listen to his
 25 question.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Did you look at any documents with
 4 counsel that refreshed your recollection
 5 regarding Unified Smiles in preparation for
 6 your deposition today?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: Yes.
 9 BY MR. SOLOMON:
 10 Q. How many documents did you look at?
 11 A. I believe just one.
 12 Q. Okay. Which documents did you look
 13 at?
 14 A. That's what I'm saying, I don't
 15 recall. That's why I'm saying I think I
 16 misspoke. I thought it might have been
 17 something from Chuck, but it might have been
 18 something internally. I just don't recall.
 19 Q. Okay. Going back to this phone call
 20 with Mr. Cohen, you don't recall one way or the
 21 other what you discussed with him on that day,
 22 correct?
 23 MR. McDONALD: Object to the form,
 24 asked and answered.
 25 THE WITNESS: Back to what I said

1 TIM SULLIVAN
 2 before, I don't recall specifically what it
 3 was about, but I know what it was not
 4 about.
 5 BY MR. SOLOMON:
 6 Q. It was not about?
 7 A. Buying groups, what I just stated
 8 before.
 9 Q. Okay. Okay. You can put that
 10 aside.
 11 Mr. Sullivan, we talked earlier
 12 about a conversation -- strike that.
 13 We talked earlier about a phone call
 14 you received from Mr. Cohen in March of 2013
 15 relating to Atlantic Dental Care.
 16 Do you recall that?
 17 A. Yes.
 18 Q. And you previously testified about
 19 this call during your investigational hearing
 20 in May of 2017, correct?
 21 A. Correct.
 22 Q. And during that phone call,
 23 Mr. Cohen told you that Benco did not plan to
 24 bid for ADC's business?
 25 MR. McDONALD: Object to the form,

1 TIM SULLIVAN
 2 misstates his testimony, misstates the
 3 record.
 4 THE WITNESS: What I recall about
 5 that discussion was him asking me if I knew
 6 who they were. I did not. He started to
 7 say who they were, and I stopped him, as I
 8 testified earlier, saying this is not
 9 something we should be talking about,
 10 Chuck.
 11 BY MR. SOLOMON:
 12 Q. Okay. So he never told you that
 13 Benco did not plan to bid?
 14 A. Not in that discussion, no.
 15 Q. You didn't testify about that in
 16 your investigational hearing last year?
 17 A. To what? Testify what? That he --
 18 Q. That Mr. Cohen told you that Benco
 19 did not plan to bid on ADC's business before
 20 you stopped him.
 21 A. In that phone discussion, I don't
 22 believe so. I mean, I don't believe -- that's
 23 why -- I don't -- my recollection, as I sit
 24 here today, is that he did not state that in
 25 that discussion.

1 TIM SULLIVAN
 2 He asked me if I knew who they were.
 3 I did not know who they were. He started to
 4 explain from his perspective who they were, and
 5 I stopped him saying, Chuck, this is not a
 6 discussion we should be having. And that's
 7 what I testified earlier, that we changed the
 8 discussion to have to do with him recruiting me
 9 and me coming to work for him, joking around
 10 and other relatively small insignificant
 11 discussions.
 12 Q. So are you -- why did you stop him
 13 when he started telling you what ADC was?
 14 A. It was -- it was a discussion that I
 15 didn't think he and I should be having.
 16 Because, as I stated to you before, I would
 17 not, will not talk to Chuck or anyone at Benco
 18 about their strategies when it comes to
 19 buying -- relates to buying groups.
 20 Q. Okay. You thought that Mr. Cohen's
 21 call to you in March of 2013 was a crazy call,
 22 correct?
 23 MR. McDONALD: Object to the form.
 24 Why don't you show him his testimony
 25 where he said that.

1 TIM SULLIVAN
 2 THE WITNESS: Did I state that in
 3 the last testimony?
 4 BY MR. SOLOMON:
 5 Q. I believe you did.
 6 A. If I can confirm that, if you're
 7 saying it's in there, I'd like to confirm it.
 8 Q. Okay. We could do that.
 9 Were you surprised by Mr. Cohen's
 10 call to you on March 25th of 2013 regarding
 11 Atlantic Dental Care?
 12 A. Once I learned of the topic, I was
 13 surprised at why he was calling me, yes.
 14 Q. And why were you surprised?
 15 A. Because I know it's a topic I would
 16 not reach out to him to talk about.
 17 Q. Why is that?
 18 A. Never have. Because I know better.
 19 I know not to talk to my competitors about
 20 strategies when it comes to buying groups. I
 21 wouldn't do it.
 22 Q. So you would never make the same
 23 call to Mr. Cohen based on your antitrust
 24 training?
 25 A. That's correct.

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1 TIM SULLIVAN
2 Q. How else would you describe the call
3 from Mr. Cohen?
4 A. Cordial.
5 Q. Were you shocked by the call?
6 A. Again, once I learned what the
7 intent and the purpose of his call was, yes.
8 Q. And you believe that Mr. Cohen
9 should not have been discussing Atlantic Dental
10 Care with you on March 25th, 2013?
11 A. That is correct.
12 Q. Okay. And you don't recall
13 Mr. Cohen discussing either a customer or
14 buying groups with you on any other occasion,
15 is that right?
16 A. That's correct.
17 Q. This was the first time?
18 A. That's correct.
19 Q. And you were concerned that this
20 could be a potential antitrust violation?
21 MR. McDONALD: Object to the form.
22 THE WITNESS: Not on my behalf. I
23 received the phone call. Once I learned
24 the topic, I shut it down.
25 ///

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. So just to be clear, you shot down
4 the conversation at what point?
5 A. Oh, I don't know how far into the
6 call. It always starts with small talk,
7 probably something about how much better the
8 Packers are than the Eagles, other than this
9 one exceptional rare year, so other than small
10 talk.
11 And then at some point he shifted to
12 asking me if I knew who they were. I didn't.
13 He started to say something else about it, and
14 that's when I shut it down. We shifted to a
15 different topic, joked around a little bit.
16 Q. So what caused alarm bells to go off
17 in your head? Just that he had mentioned
18 something called Atlantic Dental Care or
19 something else?
20 A. That he was starting to talk to me
21 about a customer. In particular, it sounded
22 like it was a group of some sort. I didn't
23 know anything about it at that time. And
24 that's when I said, Chuck, you know you and I
25 should not be talking about this.

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1 TIM SULLIVAN
2 Q. Did you ever -- strike that.
3 You never reported the call to
4 anyone at Schein after it happened, right after
5 it happened, did you?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: Not that I recall.
8 BY MR. SOLOMON:
9 Q. You never reported the call to
10 Schein's legal department, did you?
11 A. Not that I recall.
12 Q. And you didn't take any other steps
13 to document the call or what Mr. Cohen told you
14 during that phone call?
15 A. No. I felt I took appropriate
16 action.
17 Q. What was the appropriate action that
18 you took?
19 A. Shutting down the discussion.
20 Q. And there's no written record of you
21 telling Mr. Cohen that you did not want to
22 discuss Atlantic Dental Care, correct?
23 A. Not that I'm aware of.
24 Q. And other than Mr. Cohen, there are
25 no other witnesses knowledgeable about what you

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1 TIM SULLIVAN
2 discussed on the March -- on the March 25th,
3 2013 phone call?
4 A. There was no one on my line.
5 Q. And you're familiar with Schein's
6 antitrust training and compliance guidelines,
7 generally speaking, correct?
8 A. Correct.
9 Q. And you understand that Schein's
10 antitrust training and compliance guidelines
11 would have required you to report this call?
12 MR. McDONALD: Object to the form.
13 THE WITNESS: I don't know that it
14 would require me to report that call.
15 BY MR. SOLOMON:
16 Q. So you don't think that you were
17 required to report that call with Mr. Cohen?
18 MR. McDONALD: Object to the form.
19 THE WITNESS: I believe I did
20 everything that was appropriate.
21 BY MR. SOLOMON:
22 Q. You took no actions or precautions
23 in accordance with Schein's antitrust -- strike
24 that.
25 You took no actions or precautions

1 TIM SULLIVAN
 2 in accordance with Schein's antitrust
 3 compliance trainings that you received, right?
 4 MR. McDONALD: Object to the form.
 5 THE WITNESS: How can you possibly
 6 say -- I just said I took actions for sure.
 7 BY MR. SOLOMON:
 8 Q. You didn't let anyone else know?
 9 A. I did not.
 10 Q. And you did nothing to document the
 11 call?
 12 A. That's correct.
 13 Q. And you continued to communicate
 14 with Mr. Cohen following that call?
 15 MR. McDONALD: Object to the form.
 16 THE WITNESS: Not about Atlantic
 17 Dental Care, if that's -- I did not
 18 communicate with him.
 19 BY MR. SOLOMON:
 20 Q. Let's take a look at some more
 21 documents.
 22 So I'm handing you a document that's
 23 been pre-marked as CX0197, and I'm also handing
 24 you a document that's been pre-marked as
 25 CX0196.

1 TIM SULLIVAN
 2 of all the practices. So it's not a buying
 3 group, it's a big group. We're going to bid.
 4 Thanks."
 5 Do you see that?
 6 A. I do.
 7 Q. I'd like you to turn to the other
 8 document you have in front of you, and to
 9 CX0197-002.
 10 Do you see that?
 11 A. I do.
 12 Q. Okay. And I'd like to point you to
 13 item 3089.
 14 Do you see that?
 15 A. I do.
 16 Q. And this appears to be an entry from
 17 March 27th, 2013. And the originating number,
 18 it appears to be your phone number, is that
 19 correct?
 20 A. That's correct.
 21 Q. And the terminating number appears
 22 to be Mr. Cohen's telephone number, is that
 23 correct?
 24 A. Yes, it appears to be correct.
 25 Q. And the elapsed time indicates six

1 TIM SULLIVAN
 2 (Exhibits CX0196 and CX0197 were
 3 marked for identification.)
 4 (Witness viewed said document.)
 5 THE WITNESS: Okay.
 6 BY MR. SOLOMON:
 7 Q. Mr. Sullivan, do you recognize
 8 CX0196 as your text message communications with
 9 Mr. Cohen in 2013?
 10 A. I do.
 11 Q. And these text message
 12 communications were around the time of the
 13 March 25th, 2013 phone call that we've been
 14 talking about, correct?
 15 A. Correct.
 16 Q. And I'd like to direct your
 17 attention to CX0196-10. And it's a text
 18 message from Mr. Cohen to you on March 27th,
 19 2013.
 20 A. Okay.
 21 Q. Do you see that?
 22 A. I do.
 23 Q. And Mr. Cohen says, "Tim: Did some
 24 additional research on the Atlantic Care deal,
 25 seems like that have actually merged ownership

1 TIM SULLIVAN
 2 seconds, correct?
 3 A. Yes.
 4 Q. So this is an attempt by you to
 5 contact Mr. Cohen just a couple of days after
 6 the March 25th call you had with him, correct?
 7 A. Correct, and the same day, I
 8 believe, of his message on Atlantic Dental
 9 Care, is that right?
 10 Q. It appears to be so.
 11 A. Yes.
 12 Q. And then, again, I'd like to point
 13 you to 3091. Again, this is an entry from
 14 March 27th, 2013. And this appears to be from
 15 your cell phone number to Mr. Cohen's cell
 16 phone number, and the elapsed time is 20
 17 seconds.
 18 Do you see that?
 19 A. I do.
 20 Q. This is another phone call from you
 21 to Mr. Cohen on March 27th, 2013, correct?
 22 A. Correct.
 23 Q. So why did you try and call
 24 Mr. Cohen twice after receiving his text
 25 message about Atlantic Dental Care and the fact

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1 TIM SULLIVAN
 2 that Benco was going to bid?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: To the best of my
 5 recollection, it was, again, to remind him,
 6 Chuck, when you brought this up to me the
 7 first time, I had said we should not be
 8 talking about this.
 9 The fact that he sent me a text on
 10 this again, I wanted to call and clarify to
 11 him, Chuck, stop sending me this
 12 information; it's not what we should be
 13 talking about.
 14 BY MR. SOLOMON:
 15 Q. So your intent was to call him to
 16 let him know that you did not want him to
 17 continue contacting you about Atlantic Dental
 18 Care?
 19 A. Correct. Remember, I want to keep
 20 things cordial with Chuck. We still wanted to
 21 acquire his company. If that wasn't the case,
 22 I probably would have acted and been a little
 23 more direct with him and done a few things
 24 differently.
 25 I was really clear with him in my

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1 TIM SULLIVAN
 2 verbal communications any time in these two
 3 communications, the first phone call and my
 4 attempt here after getting this text, to
 5 cordially tell him, but very directly tell him,
 6 Chuck, stop sending me this type of
 7 communication.
 8 Q. So you're reaching -- you're
 9 affirmatively reaching out to him again?
 10 A. Yes.
 11 Q. Did you think that that was required
 12 of you?
 13 A. I felt I needed to send him a
 14 message to stop communicating with me about the
 15 customer issue.
 16 Q. You previously testified that you
 17 weren't sure why you called Mr. Cohen about --
 18 why you called Mr. Cohen on March 27, 2013, is
 19 that correct?
 20 A. That's correct.
 21 Q. Why did you not remember during your
 22 investigational hearing last year why you tried
 23 to call Mr. Cohen?
 24 MR. McDONALD: Object to the form.
 25 THE WITNESS: I can't tell you why I

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1 TIM SULLIVAN
 2 didn't recall it then. Thought about it
 3 more since, reviewed my testimony,
 4 and myself asking why would I be calling
 5 him. I'm saying, to the best of my
 6 recollection, it would have been about
 7 that.
 8 BY MR. SOLOMON:
 9 Q. So what refreshed your recollection
 10 as to why you were calling Mr. Cohen since your
 11 investigational hearing in May of 2017?
 12 MR. McDONALD: Object to the form.
 13 He just told you there's no way he
 14 could recall.
 15 THE WITNESS: My review of my
 16 testimony.
 17 BY MR. SOLOMON:
 18 Q. So you're changing your testimony
 19 from May of 2017 in which you said that you
 20 don't recall why you were reaching out to
 21 Mr. Sullivan [sic] on March 27th, 2013, is that
 22 right?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: I'm clarifying it by
 25 saying to the best of my recollection. I

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 2 can't say, in fact, I know exactly that's
 3 for sure. To the best of my recollection,
 4 I believe that's why I was calling him. It
 5 was so quickly after his text message.
 6 And, again, to keep things
 7 cordial -- I could have sent a text reply
 8 saying Chuck, stop -- I wanted to pick up
 9 the phone and say, Chuck, stop.
 10 BY MR. SOLOMON:
 11 Q. How many times total did you reach
 12 out to Mr. Cohen asking him to stop contacting
 13 you about ADC?
 14 MR. McDONALD: Object to the form.
 15 You have the records.
 16 Don't guess.
 17 THE WITNESS: These two here for
 18 sure I attempted.
 19 BY MR. SOLOMON:
 20 Q. Any other attempts?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Let's go through the
 23 records.
 24 BY MR. SOLOMON:
 25 Q. Did you ever actually have a

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1 TIM SULLIVAN
2 conversation with Mr. Cohen in which you said,
3 please don't contact me anymore about ADC?
4 A. To the best of my recollection, we
5 did.
6 Q. When did that conversation occur?
7 A. We should go through the records. I
8 believe it was about a week later.
9 Q. Okay. Are you referring to your
10 call with Mr. Cohen on April 3rd of 2013?
11 A. Where do you see that?
12 Q. So I'm looking at items 3120 and
13 3122.
14 (Witness viewed said document.)
15 THE WITNESS: Okay. I see that now,
16 yes.
17 BY MR. SOLOMON:
18 Q. So it looks like you tried to reach
19 Mr. Cohen on March 3rd, 2013 in item 3120 and
20 then again in item 3122.
21 And in item 3120, the phone call
22 lasted for 37 seconds; and in item 3122, it
23 appears to be a five-minute-and-thirty-six-
24 second phone call, is that right?
25 A. That's correct.

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1 TIM SULLIVAN
2 wanted you to know our -- what I decided to do
3 on it, and then we shifted the topics.
4 Q. How long in total did you talk to
5 Mr. Cohen about ADC on April 3rd, 2013?
6 A. It couldn't have been 30 seconds.
7 Q. What did you shift the topic to
8 after that?
9 A. I don't recall. I -- I don't know.
10 I'd be speculating. Again, it goes down -- it
11 might have been something about should we
12 continue to discuss the merger organizations or
13 some other topic. It might have been the
14 Packers, the Eagles, for all I know.
15 Q. So you recall discussing ADC but not
16 what else you discussed on that call with
17 Mr. Cohen?
18 A. That's correct.
19 Q. And you recall what his reaction
20 was, but not anything else you discussed on
21 that call?
22 A. To be clear, we've had a lot of
23 discussions about meaningless things that can
24 happen on multiple occasions.
25 The only time I talked about

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1 TIM SULLIVAN
2 Q. When did you -- is this when you
3 told Mr. Sullivan in item 3122 -- strike that.
4 Is this when you told Mr. Cohen in
5 item 3122 to stop contacting you about ADC?
6 A. To the best of my recollection,
7 that's when it happened, yes.
8 Q. What did you say?
9 A. I don't recall the exact words.
10 Something to the effect of -- if you recall,
11 we're going back and forth with some text in
12 between here, too. I noticed you rang. I was
13 just trying to connect. We finally did
14 connect.
15 Was to say, Chuck, as I told you
16 when you first sent this to me, it's not the
17 type of topic we should be discussing and
18 please don't send me any more information as it
19 relates to customers and how you approach
20 customers, something to that effect. I don't
21 know if those were the exact words, but I was
22 clear to him not to communicate with that.
23 Q. What did he say in response?
24 A. I don't recall. Something -- I
25 understand -- I just thought you -- I just

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1 TIM SULLIVAN
2 anything business substantive with Chuck Cohen
3 or anyone at Benco was on our employment
4 agreement issues.
5 It could have been, by the way, is
6 there something going on with -- I don't know;
7 let's shift to that topic. I don't know. It
8 could have been back to football or something
9 silly. I don't know.
10 But I know I did not talk about -- I
11 did not talk to him about our strategy on
12 buying groups or asking him any questions about
13 Benco's strategy on buying groups. Did not
14 happen.
15 Q. So you just told him to stop
16 contacting you about ADC?
17 A. Correct.
18 Q. Did you tell him why you wanted him
19 to stop contacting you?
20 A. Just the fact that it's a discussion
21 you and I should not be having.
22 Q. And he didn't ask any questions
23 about why you were saying that?
24 A. I think I just testified. He
25 something to the effect of "I understand."

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1 TIM SULLIVAN
2 Q. Anything else?
3 A. Not that I recall.
4 Q. How is it that you recall your
5 conversation with Mr. Cohen on this day about
6 ADC but not what you discussed after?
7 MR. McDONALD: Object to the form,
8 asked and answered.
9 THE WITNESS: I don't know how I
10 remembered last Tuesday I had pizza. I
11 don't know.
12 For some reason I remember that
13 because it was a topic I know very clearly
14 what we should and shouldn't -- what we can
15 and what we shouldn't be talking about.
16 The list of what we can are the things I
17 just mentioned. I don't know what we
18 shifted to at that time.
19 BY MR. SOLOMON:
20 Q. But you have a very vivid
21 recollection of that conversation with
22 Mr. Cohen on April 3rd of 2013 about ADC?
23 A. What I'm saying is I know I had two
24 discussions with him about it. I think when I
25 originally testified, I didn't know if it was

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1 TIM SULLIVAN
2 on the second one. I know I -- on the first
3 one. It could have been just on the first
4 call.
5 As I'm thinking through the process
6 and I see the timeline of text messages that
7 came back to me, now I know I talked to him a
8 second time about it; that's why I'm calling
9 him.
10 Q. You're not guessing; you have a very
11 specific recollection of this phone call, is
12 that right?
13 A. What I'm saying is to the best of my
14 recollection.
15 Q. So Mr. Cohen would testify that you
16 told him that, right?
17 MR. McDONALD: Object to the form.
18 THE WITNESS: I don't know what -- I
19 would assume so. I don't -- I don't know
20 his testimony.
21 BY MR. SOLOMON:
22 Q. What does that mean? What do you
23 mean by to the best of your recollection?
24 A. Not the worst. To the best of my
25 recollection.

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1 TIM SULLIVAN
2 Q. So you have a very specific memory
3 about this conversation?
4 A. Well, you're changing the words to
5 "very specific." I'm saying, as I think
6 through the process and, again, reviewing my
7 testimony and then the order of how things
8 happened and the text messages, it did come
9 back to me.
10 Q. When did you first recall this?
11 A. Last week or earlier this week, as I
12 was reviewing the documents.
13 Q. And what were you looking at
14 specifically that refreshed your recollection
15 about this call?
16 A. Both my testimony and these similar
17 papers.
18 Q. Was it during a meeting with your
19 counsel?
20 MR. McDONALD: Object to the form.
21 Don't -- don't reveal communications
22 you've had with counsel.
23 THE WITNESS: When I first came
24 back, no. It was as I was reviewing the
25 documents by myself prior.

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1 TIM SULLIVAN
2 BY MR. SOLOMON:
3 Q. So you were reviewing them alone
4 without -- strike that.
5 You were reviewing the documents
6 alone, not in a meeting with your counsel when
7 you first recalled this phone call with
8 Mr. Cohen that you're speaking about today?
9 A. That's correct.
10 Q. And do you recall what day that was?
11 A. Some of it was over the weekend,
12 this past weekend. Some of it was on Monday,
13 so between Sunday and Monday this past week.
14 Q. Okay. When you reviewed your
15 transcript last year and when you provided
16 corrections for the errata sheet, you didn't
17 recall this new conversation with Mr. Cohen,
18 correct?
19 MR. McDONALD: Object to the form.
20 THE WITNESS: I don't know if I'd
21 call it a new conversation because we spoke
22 about the conversation in that. I just
23 didn't -- I wasn't thinking. I didn't
24 review it in that light.
25 ///

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So you reviewed your IH transcript,
 4 your investigational hearing transcript, last
 5 year after you gave your testimony, and you
 6 didn't recall this second conversation with
 7 Mr. Cohen about ADC, correct?
 8 A. I didn't take --
 9 MR. McDONALD: Object to the form.
 10 THE WITNESS: Sorry. I did not take
 11 the time to think through the process at
 12 that time.
 13 BY MR. SOLOMON:
 14 Q. What document did you look at
 15 specifically that refreshed your recollection
 16 about this phone call?
 17 A. These similar documents of text
 18 exchanges.
 19 Q. So the text exchanges represented in
 20 CX0196?
 21 A. I -- assuming that I know what
 22 the -- I mean, yes. I mean, if that's -- I
 23 don't know what they were labeled then, but
 24 yes.
 25 Q. So the text message exchanges you

1 TIM SULLIVAN
 2 had with Mr. Cohen which involved ADC, is that
 3 what you're talking about?
 4 A. Correct.
 5 Q. And what specifically in these text
 6 message exchanges refreshed your recollection?
 7 A. Well, I had time to pause and think
 8 through from the first message that he sent,
 9 the conversation that we had then where I did
 10 tell him don't communicate with me anymore.
 11 And there's a series of text messages that
 12 followed, including we're trying to connect.
 13 It took us a while to actually connect.
 14 And then I saw when we did connect
 15 again, it was in response to a text message
 16 about, I saw you rang, should we try
 17 connecting. It was during that process.
 18 Q. Was this the -- was this the last
 19 time you spoke with Atlantic Dental Care with
 20 Mr. Cohen?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: Yes.
 23 BY MR. SOLOMON:
 24 Q. Mr. Sullivan, I'd like to point you
 25 to item 3092 in the phone records that we're

1 TIM SULLIVAN
 2 looking at on March 27, 2013.
 3 Do you see that?
 4 A. I do.
 5 Q. And this is a phone call from your
 6 cell phone to 978-761-3064 that lasted for
 7 4 minutes and 44 seconds.
 8 Do you see that?
 9 A. I do.
 10 Q. And this is just a couple of minutes
 11 after you tried reaching Mr. Cohen in item 3091
 12 on March 27, 2013, correct?
 13 A. Yes.
 14 Q. Do you know whose phone number that
 15 is under "Terminating Number," 978-761-3064?
 16 A. I do not.
 17 Q. I will represent to you that that is
 18 Mr. Michael Porro's phone number, as has been
 19 identified by your counsel in discovery
 20 responses.
 21 A. Okay.
 22 Q. So you called Mr. Porro just a
 23 couple of minutes after trying to reach
 24 Mr. Cohen on March 27th, 2013, is that right?
 25 A. It appears so, yes.

1 TIM SULLIVAN
 2 Q. Why would you call Mr. Porro right
 3 after you said you called Chuck Cohen to tell
 4 him to stop talking to you about ADC?
 5 A. I don't recall.
 6 Q. Sitting here today, you have no
 7 recollection?
 8 A. No. I -- there was communication
 9 from Michael to me. I don't know if I was
 10 responding to a message from him. I don't
 11 know. There's -- I know there's additional
 12 paperwork on that as well, on e-mail exchanges
 13 that Michael and I had on this topic.
 14 Q. So do you or don't you recall why
 15 you tried reaching out to Mr. Porro immediately
 16 after reaching out to Mr. Cohen?
 17 A. I don't know what immediately after
 18 calling Mr. Cohen has to do with it, but no.
 19 During this time, I was talking to Michael
 20 Porro about Atlantic Dental Care. He had sent
 21 me an e-mail about it. I don't know what the
 22 chronological order of it is. We should be
 23 good to through that to better understand that.
 24 Q. Did you tell him about your
 25 conversations with Mr. Cohen?

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1 TIM SULLIVAN
2 A. No.
3 Q. How do you know?
4 A. That's not -- it's a discussion
5 Chuck and I, as I told Chuck, we shouldn't be
6 having. I'm not going to pass that on to any
7 of my team members.
8 Q. But you don't recall specifically
9 what you discussed with Mr. Porro, correct?
10 MR. McDONALD: Object to the form.
11 He just told you he knows he didn't
12 talk about that, and Mr. Porro told you the
13 same thing. Now you're calling him a liar.
14 Great.
15 BY MR. SOLOMON:
16 Q. You can answer.
17 A. Ask it again.
18 Q. But you don't recall specifically
19 what you talked to Mr. Porro about?
20 MR. McDONALD: Object to the form,
21 asked and answered.
22 THE WITNESS: It was not about a
23 discussion with Chuck Cohen. I believe it
24 was about Atlanta Dental Care because
25 Michael and I were having an exchange about

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1 TIM SULLIVAN
2 it during this -- during the same time
3 frame.
4 BY MR. SOLOMON:
5 Q. Are you guessing, or do you know
6 that for a fact?
7 MR. McDONALD: Object to the form.
8 THE WITNESS: I -- I am guessing
9 that that was -- it was about that.
10 BY MR. SOLOMON:
11 Q. Okay. I don't --
12 A. Because of the time, because of the
13 time frame, because of the topic, I was
14 exchanging e-mails with Michael Porro on this
15 topic.
16 Q. I don't want you to guess. If you
17 have a specific recollection, tell me. But if
18 you're guessing --
19 A. I don't have a specific
20 recollection.
21 MR. McDONALD: To be clear, he told
22 you what he did not talk about.
23 THE WITNESS: Right.
24 BY MR. SOLOMON:
25 Q. Okay. You can put this set of phone

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1 TIM SULLIVAN
2 records aside for a moment.
3 I'd like to go back one second to
4 the text messages you exchanged with Mr. Cohen
5 about Atlantic Dental Care.
6 And specifically, I'd like to point
7 you to CX0196-004, starting with, "Hi Chuck.
8 Thanks for the call."
9 Do you see that?
10 A. I do.
11 Q. This is on March 25th, 2013 right
12 after you had just spoken with Mr. Cohen about
13 ADC, correct?
14 A. Well, again, I did not talk to
15 Mr. Cohen about ADC. He called me to talk
16 about it. I shut that discussion down.
17 Q. And then this is a follow-up text
18 message communication, correct?
19 A. That is correct.
20 Q. And you say, "Hi Chuck. Thanks for
21 the call"?
22 A. Yes.
23 Q. So you're thanking Mr. Cohen for
24 calling you in regards to Atlantic Dental Care?
25 A. I'm going to say it again.

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1 TIM SULLIVAN
2 MR. McDONALD: Object. Object to
3 the form.
4 THE WITNESS: I wanted to keep
5 things cordial between Chuck and I. We
6 were seriously interested in acquiring his
7 company, merging the company. And so, yes,
8 I was being cordial, softer than I would
9 have been otherwise.
10 But, again, I can tell you what
11 we've never talked about, which is the
12 picture you're trying to paint. That
13 picture does not exist.
14 BY MR. SOLOMON:
15 Q. I'm just trying to understand why
16 you would be thanking him for a call after you
17 just testified that you were shocked and
18 concerned about him calling you, and you were
19 doing everything you can to shut the
20 conversation down and telling him not to
21 contact you anymore, and then you text him and
22 say thank you for call. I'm just trying to
23 understand why --
24 A. Because we --
25 MR. McDONALD: Hang on. Hang on.

<p style="text-align: right;">Page 430</p> <p>1 TIM SULLIVAN 2 Object to the form, asked and 3 answered. He just told you. 4 THE WITNESS: The conversation was 5 very short about ADC. I was clear with him 6 on that. We went on about other stuff, so 7 yes. And I said, hey, thanks for the call. 8 We were joking about me going to work for 9 him. 10 I went on to say, "Yes, I am good 11 with the terms we discussed and I look 12 forward to joining Team Benco." 13 Hey, by the way, put my face on your 14 logo. I'm being facetious, keeping things 15 light between us because I just basically 16 told him firmly we shouldn't be talking 17 about this, you know, Chuck, but let's keep 18 things light, keep -- stay cordial. 19 BY MR. SOLOMON: 20 Q. If you turn to CX0196-007, again, 21 this is a text message to you -- from you to 22 Mr. Cohen. 23 You say, "Thanks for the follow up 24 on that article. Unusual." 25 Do you see that?</p>	<p style="text-align: right;">Page 431</p> <p>1 TIM SULLIVAN 2 MR. McDONALD: I don't. Where are 3 you? 4 MR. SOLOMON: CX0196-007. 5 THE WITNESS: Oh, is that -- 6 MR. McDONALD: I'm sorry. I'm just 7 lost, Ronnie. My 007 says, "Ouch..Didn't 8 think that response from Stan!!" 9 MR. SOLOMON: The next line. 10 MR. McDONALD: Okay. Sorry. Got 11 you. It's late. 12 BY MR. SOLOMON: 13 Q. You write, "Thanks for the follow up 14 on that article. Unusual." 15 Do you see that? 16 A. Well, what I write in total is, 17 "Ouch..Didn't think about that response from 18 Stan!!" Because he had jokingly said to me, 19 "Problem with this joke is if Stan says 20 'Great,'" ha, ha, ha. "Maybe Scott would hire 21 me," Scott Anderson over at Patterson. "Thanks 22 for the follow up on that article. Unusual." 23 Q. What did -- and the follow-up on the 24 article, you're referring to Atlantic Dental 25 Care?</p>
<p style="text-align: right;">Page 432</p> <p>1 TIM SULLIVAN 2 A. So he sent me, "Here's the link to 3 the press release." So he had called me about 4 Atlantic Dental Care. There was a press 5 release out about it; did I see it. I said, 6 no, I don't know who they are. So he forwarded 7 me that press release, thanks. 8 Q. So you're thanking him for doing 9 that? 10 A. Again, to be professionally cordial, 11 yeah. 12 Q. And, again, you -- or strike that. 13 You refer to it as unusual. What 14 did you mean by that? 15 A. I don't -- I don't know what I meant 16 by that. 17 Q. You have no recollection what you 18 meant, sitting here today? 19 A. No. 20 Q. Is there anything you could look at 21 that could refresh your recollection as to what 22 you meant when you said "unusual" with respect 23 to that article? 24 A. Nothing came to mind as I reviewed 25 this, no.</p>	<p style="text-align: right;">Page 433</p> <p>1 TIM SULLIVAN 2 Q. Turning to CX0196-005, Mr. Sullivan 3 [sic] e-mails you a link to the press release. 4 And this is the press release that 5 relates to Atlantic Dental Care, correct? 6 MR. McDONALD: Object to the form. 7 You misstated, Ronnie. 8 MR. SOLOMON: Sorry. 9 THE COURT REPORTER: You've got to 10 redo it. Sorry. It's getting late. I'm 11 tired. Redo the question, please. 12 MR. SOLOMON: Oh, sure. 13 BY MR. SOLOMON: 14 Q. So CX0196-005, this is Mr. Cohen 15 e-mailing you a link to the press release 16 surrounding Atlantic Dental Care, correct? 17 MR. McDONALD: Well, it's texting, 18 not e-mailing. 19 MR. SOLOMON: Got it. 20 MR. McDONALD: Do you want to try a 21 third time to get the name right? 22 THE WITNESS: It is late. 23 MR. SOLOMON: Okay. I'll try this a 24 third time. 25 ///</p>

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1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. So CX0196-005, this is Mr. Cohen
 4 texting you a link to the press release
 5 surrounding Atlantic Dental Care, correct?
 6 A. Correct.
 7 Q. And this is another instance of
 8 Mr. Cohen contacting you as it relates to
 9 Atlantic Dental Care, correct?
 10 A. Correct.
 11 Q. Why didn't you try calling Mr. Cohen
 12 then to tell him to stop contacting you about
 13 ADC?
 14 A. He just sent me a link to the
 15 article that he referred to. I told him we
 16 shouldn't be talking about it. Why he sent a
 17 text, I don't know.
 18 Q. You waited two more days to call him
 19 to tell him to stop contacting you about ADC,
 20 right?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: It's not that I
 23 waited. I just didn't -- he's forwarded me
 24 a link to an article. Didn't think much of
 25 it. Then he sent me a text actually

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1 TIM SULLIVAN
 2 telling me how they plan to approach it.
 3 Him forwarding me a public link,
 4 it's public information. Why send it, I
 5 don't know. It doesn't make sense to me.
 6 I wouldn't do it. I would not send him
 7 anything on that. He send it to me. It's
 8 public information.
 9 Then he sends me a message that's
 10 not public information. I'm calling him to
 11 say, Chuck, knock it off.
 12 BY MR. SOLOMON:
 13 Q. What was the link that he -- what
 14 was the text that he sent you that was not
 15 public information?
 16 A. The one about that we were just
 17 talking about, did some additional research on
 18 Atlantic Dental Care. It seems like they have
 19 actually merged. So it's not a buying group.
 20 It's a group we're going to bid.
 21 MR. McDONALD: You need to slow
 22 down. You're getting tired. She's tired.
 23 THE WITNESS: Sorry.
 24 MR. McDONALD: Just slow down.
 25 MR. SOLOMON: I think we can take a

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1 TIM SULLIVAN
 2 quick break. And then I think we have just
 3 20 or so minutes left. So let's go off the
 4 record.
 5 THE VIDEOGRAPHER: The time is
 6 5:42 p.m. We're off the record.
 7 (Whereupon, a recess was had
 8 from 5:42 p.m. to 5:59 p.m.)
 9 THE VIDEOGRAPHER: This is the
 10 beginning of DVD No. 5. The time is
 11 5:59 p.m. We are back on the record.
 12 BY MR. SOLOMON:
 13 Q. Mr. Sullivan, the first phone call
 14 you had with Mr. Cohen on March 25th, 2013 that
 15 we've been discussing, did Chuck Cohen ever
 16 basically say to you that Benco did not plan to
 17 bid on the Atlantic Dental Care group during
 18 that conversation?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: The only thing I
 21 recall from the conversation was him
 22 mentioning -- asking me if I knew who they
 23 were. There was an article on it or
 24 something. He started to go down the road.
 25 I don't know what it was. I just said,

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1 TIM SULLIVAN
 2 Chuck, we should not -- I don't recall that
 3 being anything he stated.
 4 BY MR. SOLOMON:
 5 Q. So he did not say that?
 6 MR. McDONALD: Object to the form.
 7 THE WITNESS: I don't believe so.
 8 BY MR. SOLOMON:
 9 Q. Okay. Earlier today I asked you
 10 some questions about your investigational
 11 hearing testimony from May of 2017.
 12 Do you recall that?
 13 A. I do.
 14 Q. And I asked you earlier today if
 15 anything in your testimony from your
 16 investigational hearing transcript was
 17 inaccurate.
 18 Do you recall that?
 19 A. I do.
 20 Q. And you said no, correct?
 21 A. Correct.
 22 Q. This afternoon you have now told us
 23 that there were inaccuracies in your
 24 investigational hearing transcript as it
 25 relates to what conversations you had with

1 TIM SULLIVAN
 2 Mr. Chuck Cohen, correct?
 3 MR. McDONALD: Object to the form.
 4 THE WITNESS: I'm saying now that
 5 in recollect- -- in reviewing the forms,
 6 that I recall what the conversation was
 7 about.
 8 BY MR. SOLOMON:
 9 Q. But I asked you earlier this morning
 10 if there were any inaccuracies in your
 11 investigational hearing transcript and you told
 12 me no.
 13 MR. McDONALD: Object to the form.
 14 THE WITNESS: That may be something
 15 we need to clear up.
 16 BY MR. SOLOMON:
 17 Q. Why did you say that this morning if
 18 you knew that there were some inaccuracies, as
 19 you say, in your investigational hearing
 20 testimony?
 21 MR. McDONALD: Object to the form.
 22 THE WITNESS: The thought didn't
 23 cross my mind when you asked me this
 24 morning.
 25 ///

1 TIM SULLIVAN
 2 paint here. In reviewing the documents, it
 3 didn't make -- I was trying to clarify in
 4 my mind that the order of things happened.
 5 He texted me. We spoke. I told him -- so
 6 I just went through that timeline.
 7 I didn't think while I was doing it,
 8 oh, by the way, that now makes my last
 9 testimony inaccurate, didn't think about
 10 it. I was thinking the mindset of, what
 11 was that? Oh, you know what? I'm going to
 12 be asked on that again. I can clean it up
 13 or clarify it here.
 14 BY MR. SOLOMON:
 15 Q. And just so the record is clear or
 16 very clear, you first realized that your
 17 investigational hearing testimony was
 18 inaccurate last week, is that right?
 19 MR. McDONALD: Object to the form,
 20 misstates what he just said.
 21 THE WITNESS: I'll repeat. The
 22 thought didn't cross my mind that as I read
 23 it, that now makes that part of the
 24 testimony inaccurate. At the time, that's
 25 what I said. It was accurate. That's what

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. And you testified earlier that you
 4 first realized that there were inaccuracies in
 5 your investigational hearing testimony about a
 6 week ago, is that right?
 7 MR. McDONALD: Object to the form.
 8 THE WITNESS: I didn't view it as
 9 inaccuracies in it. As I was reading it, I
 10 wanted to -- I went through the timeline.
 11 Didn't think about it being inaccurate in
 12 the -- in the documents, which is why I
 13 didn't think about it when you said it this
 14 morning. It just reminded me of the time
 15 frame and I wanted to clean it up in this
 16 discussion.
 17 BY MR. SOLOMON:
 18 Q. So you just -- sorry. Go ahead. I
 19 didn't mean to cut you off.
 20 A. I think that covers it.
 21 Q. So are you saying that you first
 22 realized the inaccuracy today?
 23 MR. McDONALD: Object to the form.
 24 THE WITNESS: What I'm saying -- I
 25 know the picture, again, you're trying to

1 TIM SULLIVAN
 2 I said.
 3 In thinking about it further, it
 4 changed my recollection as to what that was
 5 about. Didn't think that I had to go back
 6 and change my testimony there, knowing this
 7 testimony would be happening here.
 8 BY MR. SOLOMON:
 9 Q. So when did you realize that your
 10 testimony in the investigational hearing was
 11 inaccurate?
 12 MR. McDONALD: Object to the form.
 13 THE WITNESS: Until you just said it
 14 right now.
 15 BY MR. SOLOMON:
 16 Q. You just realized today that your
 17 testimony in your investigational hearing was
 18 inaccurate?
 19 MR. McDONALD: Object to the form.
 20 THE WITNESS: I know what you're
 21 attempting to do.
 22 No, I'm saying as I was reviewing
 23 it -- I'll repeat myself again -- as I was
 24 reviewing it, I was reviewing in my mind
 25 the timeline. And it clarified for me, to

1 TIM SULLIVAN
 2 the best of my recollection, the series of
 3 events and why it occurred the way that it
 4 happened.
 5 And I had -- it didn't think to
 6 me that -- I didn't think that I had made
 7 my testimony inaccurate. Back then it's
 8 still accurate. I didn't recall then.
 9 That's accurate. I recall now. This is
 10 accurate.
 11 BY MR. SOLOMON:
 12 Q. When did you first recall that you
 13 had had these additional conversations with
 14 Mr. Cohen?
 15 MR. McDONALD: Object to the form.
 16 He's not testifying about any
 17 additional conversations, Counsel. He's
 18 clarifying what the conversation was about.
 19 THE WITNESS: I was just about to
 20 say the same thing. I'm not changing the
 21 fact that we had the con- -- that we had
 22 the discussion back then. What I meant a
 23 year ago, I didn't recall what it was
 24 about. That is accurate. That is still
 25 true at that time.

1 TIM SULLIVAN
 2 it again?
 3 BY MR. SOLOMON:
 4 Q. Today you talked about conversations
 5 you had with Mr. Cohen on March 27th and
 6 April 3rd. You didn't testify about those
 7 conversations in your investigational hearing
 8 last year.
 9 When did you first recollect those
 10 phone calls and conversations with Mr. Cohen
 11 about ADC?
 12 MR. McDONALD: Same objections.
 13 THE WITNESS: I did --
 14 MR. McDONALD: Misstating his
 15 testimony.
 16 THE WITNESS: Yeah, and I did
 17 testify about those last year. I just
 18 didn't recall what they were about. That
 19 was my -- that was my testimony then.
 20 BY MR. SOLOMON:
 21 Q. Turning -- if you can pull up your
 22 phone records again, Mr. Sullivan.
 23 MR. McDONALD: Which one? He's got
 24 two.
 25 MR. SOLOMON: This is CX0197.

1 TIM SULLIVAN
 2 BY MR. SOLOMON:
 3 Q. Today you talked about conversations
 4 you had with Mr. Cohen on March 27th and
 5 April 3rd, for example. You didn't testify
 6 about that in your investigational hearing last
 7 year.
 8 When did you first recollect those
 9 phone calls and conversations that you had with
 10 Mr. Cohen?
 11 MR. McDONALD: If you're going -- if
 12 you're going to tell him that his testimony
 13 was inaccurate, then you need to show him
 14 his testimony and show him what he said.
 15 And I'm going to object to you
 16 telling him that something was inaccurate
 17 without putting in front him, giving him an
 18 opportunity to read it, and telling you if
 19 he's changing what he said.
 20 It's late in the day. He's been
 21 testifying for nearly six and a half hours.
 22 You're throwing around dates of stuff that
 23 happened years ago. It's not fair to the
 24 witness.
 25 THE WITNESS: Could you please ask

1 TIM SULLIVAN
 2 MR. McDONALD: Okay.
 3 BY MR. SOLOMON:
 4 Q. And, again, if you can look at items
 5 3120 and 3122.
 6 Do you see where I'm looking at?
 7 A. I do.
 8 Q. Okay. When you spoke to Mr. Cohen
 9 on April 3rd, did you mention ADC?
 10 A. I just want to clarify. Is this the
 11 call I already testified about?
 12 Q. Yes.
 13 A. This is the second -- after we
 14 played a little phone tag, a couple of text
 15 messages about, yeah, I saw you called, is this
 16 that phone call?
 17 Q. I mean, this is a phone call on
 18 April 3rd, 2013 that we've been talking about
 19 today. One is 37 seconds, and one is 5 minutes
 20 and 36 seconds.
 21 A. I'd like to review the entire series
 22 of events. I just want to confirm that that's
 23 the call I'm talking about.
 24 Q. Okay. Do you want to pull up the
 25 text messages; is that what you're saying?

Page 446

1 TIM SULLIVAN
2 A. Yes. Yes, please.
3 Q. You should have those somewhere in
4 front of you as well.
5 (Witness viewed said document.)
6 THE WITNESS: Okay. Yes.
7 BY MR. SOLOMON:
8 Q. So item 3120 on April 3rd, 2013,
9 this is you trying to reach Mr. Cohen. And the
10 call lasted for 37 seconds, correct?
11 A. I don't know if we actually
12 connected. I don't know if 37 seconds is it
13 ringing or if I left a message. I don't
14 recall.
15 Q. You don't recall speaking with
16 Mr. Cohen on that first phone call on item
17 3120?
18 A. Correct. I think he called me back
19 later in the day.
20 Q. And then item 3122 on April 3rd,
21 2013, it looks like Mr. Cohen calls you, and
22 you spoke for 5 minutes and 36 seconds,
23 correct?
24 A. Correct.
25 Q. And when you spoke to Mr. Cohen

Page 448

1 TIM SULLIVAN
2 A. It's an internal e-mail exchange
3 with a copy of a draft proposal for our meeting
4 with Smile Source.
5 Q. You drafted part of this e-mail,
6 correct?
7 A. I did.
8 Q. And you did so as part of your job
9 at Schein?
10 A. Yes.
11 Q. And you had personal knowledge of
12 what you wrote in this e-mail?
13 A. Yes.
14 Q. And you wrote this e-mail around the
15 time that you were meeting with Smile Source in
16 February of 2014, correct?
17 A. That is correct.
18 Q. And this CX2462 is a true and
19 accurate representation of this e-mail
20 correspondence and its attachment, correct?
21 A. Correct.
22 Q. And Schein has kept CX2462 in the
23 ordinary course of its business?
24 A. Correct.
25 Q. Okay. Mr. Sullivan, is the

Page 447

1 TIM SULLIVAN
2 during that phone call, did you mention ADC?
3 A. What -- what I mentioned to him had
4 to do with the text he sent me, which, again,
5 after telling him on the first call that he
6 should not -- that we should not be having this
7 discussion, going back and forth on some other
8 things, then he went on to tell me that they're
9 going to bid.
10 That day I attempted to call him.
11 We didn't connect. It took a while to get back
12 and forth, and we did finally connect on this
13 day. And that's when I said, Chuck, as I
14 spoke -- said to you the first time, we should
15 not be talking about this stuff. He sent me
16 another text. Don't send me text messages like
17 that.
18 Q. Mr. Sullivan, I'm handing you an
19 exhibit that's been pre-marked CX2462.
20 (Exhibit CX2462 was marked for
21 identification.)
22 (Witness viewed said document.)
23 THE WITNESS: Okay.
24 BY MR. SOLOMON:
25 Q. Mr. Sullivan, what is CX2462?

Page 449

1 TIM SULLIVAN
2 attachment to -- the attachment in CX2462 the
3 proposal that Schein made to Smile Source in
4 February of 2014?
5 MR. McDONALD: Object to the form.
6 THE WITNESS: The e-mail says it's a
7 proposal draft, so I cannot confirm that
8 was the final, but it is a draft of what we
9 were going to propose.
10 BY MR. SOLOMON:
11 Q. Does this look like what you ended
12 up proposing to Smile Source in February 2014?
13 A. I don't know what else would have
14 changed. But this is, again, a draft. Nothing
15 might have changed. It could have been a
16 period, a comma. It could have been a number.
17 I don't know.
18 Q. If you turn to CX2462-012.
19 Do you see where I'm at?
20 A. I do.
21 Q. Does this slide represent the
22 discounts that Schein offered to Smile Source
23 in February 2014?
24 MR. McDONALD: Object to the form,
25 asked and answered.

Page 450

1 TIM SULLIVAN
2 THE WITNESS: Again, this is a
3 draft. I don't know if this was the final
4 version.
5 BY MR. SOLOMON:
6 Q. Sitting here today, do you have any
7 reason to doubt that this was the proposal that
8 Schein offered to Smile Source in
9 February 2014?
10 MR. McDONALD: Object to the form.
11 THE WITNESS: I would like to go
12 back and confirm and get the actual
13 draft -- or the actual presentation.
14 BY MR. SOLOMON:
15 Q. So you're not sure one way or the
16 other, sitting here today, if these were the
17 discounts that were proposed to Smile Source in
18 2014?
19 A. I cannot confirm that for a fact.
20 Q. Do you recall ever meeting with
21 Smile Source in -- strike that.
22 Do you recall meeting with anyone
23 from Smile Source at the Chicago Midwinter
24 meeting in February of 2014?
25 A. I met with -- what's his name

Page 452

1 TIM SULLIVAN
2 that we had with them. I'm not -- do you have
3 the meeting date when we actually met with them
4 and proposed this?
5 Q. I don't.
6 A. Yeah, I'm not -- I'm not -- I don't
7 recall if it was -- if it was after our meeting
8 or before. I believe it was after the meeting,
9 and they had already said no. It was just a --
10 they were at the Chicago Midwinter meeting
11 following up.
12 Q. Did Smile Source tell you what
13 pricing they were already getting from their
14 current supplier, Burkhart, in February of
15 2014?
16 A. No.
17 Q. Do you recall, sitting here today,
18 what pricing or discounts you ultimately
19 proposed to Smile Source when you met with them
20 in February of 2014?
21 A. Well, I think I just answered that,
22 that I don't know that this was the final. And
23 I'd have to take a look at what that actually
24 was.
25 Q. Okay. So you don't recall?

Page 451

1 TIM SULLIVAN
2 again -- whoever was initially sending me
3 messages. I met him first at the ADA, and we
4 had some e-mail exchanges, which is in the
5 fall. And then I believe we had a follow-up
6 meeting at our booth, not like a sit-down
7 meeting, scheduled meeting. It was a meeting
8 at the booth at 10 o'clock. I'm not saying it
9 was 10 o'clock. It was a meeting at our booth.
10 Q. At the Chicago Midwinter meeting?
11 A. I believe that's right, yes.
12 Q. Okay.
13 A. Is it Andrew? Was that name from
14 earlier? Is he the CEO guy that we were --
15 Q. We were looking at e-mails with Andy
16 Goldsmith earlier today.
17 Is that who you're referring to?
18 A. That -- that's who I'm thinking of,
19 yes.
20 Q. Okay. So you talked to Andy
21 Goldsmith at the Chicago Midwinter meeting in
22 February 2014?
23 A. I believe he was the one there, yes.
24 Q. Do you recall what you talked about?
25 A. I believe it was post the meeting

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1 TIM SULLIVAN
2 A. That's correct.
3 Q. Do you recall whether Smile Source
4 was meeting with any other distributors in the
5 February 2014 time frame?
6 MR. McDONALD: Object to the form.
7 THE WITNESS: I don't recall them
8 telling me that they were.
9 BY MR. SOLOMON:
10 Q. Did you know that they were meeting
11 with any other distributors in the
12 February 2014 time frame?
13 A. No, I do not.
14 MR. SOLOMON: We can go off the
15 record.
16 THE VIDEOGRAPHER: The time is
17 6:17 p.m. We are off the record.
18 (Whereupon, a recess was had
19 from 6:17 p.m. to 6:21 p.m.)
20 THE VIDEOGRAPHER: The time is
21 6:21 p.m. We are back on the record.
22 MR. SOLOMON: I have no further
23 questions.
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1 TIM SULLIVAN
 2 THE VIDEOGRAPHER: The time is
 3 6:21 p.m. We are off the record.
 4 (Whereupon, at 6:21 p.m. the
 5 deposition was adjourned to July 20, 2018
 6 at 9:00 a.m.)
 7
 8 _____
 9 TIM SULLIVAN
 10
 11 SUBSCRIBED AND SWORN BEFORE ME
 12 THIS ____ DAY OF _____, 2018.
 13
 14 _____
 15 (Notary Public) MY COMMISSION EXPIRES: _____
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Page 455

1 TIM SULLIVAN
 2 C E R T I F I C A T E
 3 S T A T E O F I L L I N O I S)
 4) s s . :
 5 C O U N T Y O F C O O K)
 6 I, JANET L. ROBBINS, a Notary Public
 7 within and for the State of Illinois, do
 8 hereby certify:
 9 That TIM SULLIVAN, the witness whose
 10 deposition is hereinbefore set forth, was
 11 duly sworn by me and that such deposition
 12 is a true record of the testimony given by
 13 such witness.
 14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage; and that I am
 17 in no way interested in the outcome of this
 18 matter.
 19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 24th day of July, 2018.
 21
 22 _____
 23 JANET L. ROBBINS, CSR, RPR
 24
 25

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1 TIM SULLIVAN
 2 NAME OF CASE:
 3 NAME OF WITNESS:
 4 Reason Codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page ____ Line ____ Reason ____
 9 From _____ to _____
 10 Page ____ Line ____ Reason ____
 11 From _____ to _____
 12 Page ____ Line ____ Reason ____
 13 From _____ to _____
 14 Page ____ Line ____ Reason ____
 15 From _____ to _____
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ERRATA SHEET

DEPOSITION OF: Tim Sullivan

DATE DEPOSITION: July 19-20, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
15	12	Change "No." to "Yes, see pages 409:23-423:17, 437:14-447:17, and 478:14-479:17.	Clarification/misspoke
22	16	Change "the health side" to "the animal health side"	Typographical error/clarification
32	19	Change "behind actually to make sure" to "behind them to make sure"	Typographical error/clarification
51	11	Change "ix" to "is"	Typographical error
53	5	Change "narrowly" to "narrowed"	Typographical error
93	22	Delete "personally"	Typographical error
93	24	Change "they" to "the members"	Clarification
102	10	Delete "Service"	Typographical error
102	23	Change "become" to "be in"	Typographical error
123	15	Change "Before" to "For"	Typographical error
142	20	Change "field source" to "field sales"	Typographical error
164	12	Change "own internal" to "own internal conflicts"	Clarification
171	12-13	Change "take them through" to "talk them through"	Typographical error
185	15	Delete "creation"	Typographical error
197	7	Change "but" to "not"	Typographical error
205	23	Change "to release to get" to "to really get"	Typographical error
235	3	Change "general – a good description of a general" to "a good description of it generally"	Typographical error/clarification
243	10	Change "within their members" to "with their members"	Typographical error

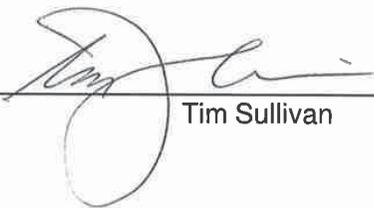
244	21	Change “don’t why” to “don’t know why”	Typographical error
264	13	Change “sponsor” to “Smile Source”	Typographical error
264	21	Change “In that document” to “In some document”	Typographical error/clarification
307	22	Change “less” to “items”	Typographical error/clarification
315	13-14	Change “they were allowed to be in the contract with them to offer anything” to “they were not allowed in the contract to offer anything”	Clarification
326	17	Change “in effectiveness” to “effectively”	Typographical error/clarification
333	4	Change “rate” to “right”	Typographical error
333	13	Change “uniquely” to “unique”	Typographical error
335	13-14	Change “so at the December last offsite meeting” to “so at the last December offsite meeting”	Typographical error/clarification
341	19	Change “him” to “Mr. Cohen”	Clarification
341	20	Change “him” to “Mr. Cohen”	Clarification
369	23	Change “Atlantic Dental Group” to “Atlantic Dental Care group”	Clarification
373	23	Delete “specifically”	Typographical error
375	10-11	Change “ we had questions about how we’d form that” to “he had questions about how we formed that”	Typographical error/clarification
386	14	Change “of each other” to “of each other’s sales reps”	Clarification
388	10-11	Change “the employment agreement.” to “the employment agreement and a potential merger.”	Clarification
415	22	Change “not to communicate with that” to “not to communicate about that with me.”	Typographical error/clarification
435	7	Change “send” to “sent”	Typographical error
442	5	Change “think” to “occur”	Clarification
442	6-7	Change “I didn’t think that I had made my testimony inaccurate.” to “I didn’t think my testimony was	Clarification

		inaccurate.”	
486	2	Change “sees” to “states”	Typographical error
504	24	Change “we believe and approve of the lives we touch” to we “believe in improving the lives we touch”	Typographical error
510	21	Delete “floor”	Typographical error/clarification
throughout		Change “special markets” to “Special Markets”	Typographical error

I, Tim Sullivan, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 21st day of August, 2018.

at West Allis, WI
(City) (State)



Tim Sullivan

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
BENCO DENTAL INC., ET AL.

Docket No. D09379

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** CONFIDENTIAL **

DEPOSITION OF JOSEPH J. BAYTOSH, DDS
San Francisco, California
Friday, July 27, 2018

Reported by:

LORRIE L. MARCHANT, CSR No. 10523
RMR, CRR, CCRR, CRC

Job No. 143128

Page 2

1 July 27, 2018
 2 9:02 a.m.
 3
 4 Deposition of JOSEPH J. BAYTOSH, DDS, held
 5 at the offices of Locke Lord, LLP, 101
 6 Montgomery Street, Suite 1950, San
 7 Francisco, California, before Lorrie L.
 8 Marchant, a Certified Shorthand Reporter,
 9 Registered Merit Reporter, Certified
 10 Realtime Reporter, California Certified
 11 Realtime Reporter, Certified Realtime
 12 Captioner.
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Page 3

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 2
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 33 ---oOo---

Page 4

1 SAN FRANCISCO, CALIFORNIA
 2 FRIDAY, JULY 27, 2018
 3 9:02 a.m.
 4 JOSEPH BAYTOSH, DDS,
 5 FIRST DULY SWORN/AFFIRMED, TESTIFIED AS FOLLOWS:
 6 EXAMINATION BY MR. KASS
 7 BY MR. KASS:
 8 Q. Good morning, Dr. Baytosh.
 9 A. Morning.
 10 Q. Could you please introduce yourself for the
 11 record.
 12 A. Joseph Baytosh, DDS, from Girard, Ohio.
 13 The address to my office, 136 South State Street,
 14 Girard 44420.
 15 Q. And are you a practicing dentist?
 16 A. Yes, I am.
 17 Q. Okay. How long have you been a practicing
 18 dentist?
 19 A. 30 years.
 20 Q. And have you been in Girard, Ohio, for the
 21 full 30 years?
 22 A. Yes.
 23 Q. And are you a member of Corydon Palmer
 24 Dental Society?
 25 A. Yes, I am.

Page 5

1 Q. And do I have the name right? It's Corydon
 2 Palmer Dental Society?
 3 A. Very good pronunciation. It's not an easy
 4 one.
 5 Q. When did you join Corydon Palmer?
 6 A. I joined it when I was a dental resident,
 7 right out of dental school. I did a residency in
 8 the Youngstown area. Became a member right out of
 9 dental school and have been a member.
 10 Q. Why did -- why did you join?
 11 A. I was a student member of the ADA during my
 12 dental school career, and it was just a transition
 13 from the student membership to full ADA membership.
 14 Q. And did membership in Corydon Palmer come
 15 along with membership in the ADA?
 16 A. Correct. It's part of the three-tiered
 17 membership.
 18 Q. Okay. And do most dentists in the region
 19 that join the ADA automatically join the Corydon
 20 Palmer group?
 21 A. Yes. It's a requirement, that to be a
 22 member of the ADA, you have to be a member of your
 23 state association as well as your local component,
 24 which is, in our area, the Corydon Palmer Dental
 25 Society.

1 Q. What is the geographic scope of
2 Corydon Palmer?
3 A. It encompasses three counties. Trumbull,
4 Mahoning, and Columbiana are the counties, in Ohio.
5 Q. Is there a defined -- is that the
6 definition of the territory for the Corydon Palmer?
7 A. Yes.
8 (Reporter clarification.)
9 BY MR. KASS:
10 Q. So let me just ask that again so that the
11 record is clear.
12 Is the -- the three counties that you
13 mentioned, that the formal definition of the
14 territory of Corydon Palmer?
15 A. Yes.
16 Q. And then for other counties within Ohio,
17 there are other local associations?
18 A. Correct.
19 Q. How many members does Corydon Palmer have?
20 A. Currently, we may be between 230, 250
21 dentists.
22 Q. And within the region, the three-county
23 region that encompasses the Corydon Palmer
24 territory, do you know how many dentists --
25 practicing dentists there are?

1 A. I would say close to 300.
2 Q. Okay. So there are approximately 300
3 dentists in the three-county region, approximately
4 230 to 250 of which are members of Corydon Palmer?
5 A. Sounds like a fair assessment, yes.
6 Q. Okay. Now, you joined Corydon Palmer, as
7 you said, when you started practicing as a resident
8 and then practicing as a dentist, and you've been
9 consistent -- a consistent member throughout?
10 A. Yes.
11 Q. Have you ever been involved in any of the
12 leadership roles within Corydon Palmer?
13 A. Yes. Several.
14 Q. Okay. And can you walk me through,
15 starting with your beginning -- your first
16 leadership role up to the present?
17 A. My first leadership role was our board of
18 trustees. And I may have served on that multiple
19 years. Probably more than ten.
20 Q. Okay. And when did you first start serving
21 as a board of -- a trustee on the board of trustees?
22 A. I'm not actually sure. 2003, 2005,
23 potentially.
24 Q. And have you been a consistent member of
25 the board of trustees ever since, or have there been

1 times when you've been on and times when you've been
2 off?
3 A. It's been off and off over the years.
4 Q. And as a board of trustees, what were your
5 general responsibilities?
6 A. Basically, we have meetings every other
7 month. Go through the business of the dental
8 society.
9 Q. Okay. And do -- as -- going through and
10 reviewing the business of the dental society, do you
11 also make strategic decisions about the activities
12 of the dental society or what's the role?
13 A. There's items that may come up for
14 discussion on things that may be pertinent to the
15 dental society, as well as things that -- actions
16 that need to be voted on.
17 Q. Can you give me some examples of the kinds
18 of things that might need to be voted on?
19 A. Budgetary items.
20 Q. What are the activities of the Corydon
21 Palmer Dental Society? What types of things do they
22 do?
23 A. We have -- probably the majority of them
24 are community activities. We have a free clinic
25 that we staff currently. We do a national Give Kids

1 a Smile event, where we're providing service to
2 children at no cost at a local clinic.
3 Q. Okay. Are there other events that you --
4 A. We do a public outreach at our local county
5 fair.
6 Q. And do you host the county fair, or there
7 is a county fair and you have a --
8 A. There is a county fair, and we participate
9 in -- there's a medical booth. And I think other
10 professions also participate.
11 Q. Do you provide any services directly to the
12 members themselves in terms of continuing education
13 or any other services?
14 A. To the members of?
15 Q. Of Corydon Palmer.
16 A. Yes.
17 Q. What kinds of services do you provide?
18 A. We do continuing education course, usually
19 four times a year.
20 Q. Does Ohio have a continuing education
21 requirement?
22 A. Yes.
23 Q. And does the Corydon Palmer continuing
24 education course that you offer four times a year,
25 does that satisfy all or most of the continuing

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1 education requirements?
 2 A. Yes, it does.
 3 Q. In addition to providing continuing
 4 education courses, do you provide any other services
 5 directly to your membership, the practicing
 6 dentists?
 7 A. I'm not sure how to answer the question.
 8 Services --
 9 Q. So I understand you provide benefits to the
 10 practice of dentistry generally, and that would
 11 include some of your -- some of the events you
 12 talked about, the free clinic, Give Children a
 13 Smile, those sorts of things. You also provide
 14 direct services to dentists through your continuing
 15 education course.
 16 Do you provide other direct services, make
 17 available other direct services, to the practicing
 18 members?
 19 A. I don't -- I don't think we offer anything
 20 at our level that I would consider to be a direct
 21 service, no.
 22 Q. Okay. Do you host any sort of events for
 23 the membership other than the continuing education
 24 course?
 25 A. Social events.

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1 A. Correct.
 2 Q. Okay. And the continuing education portion
 3 of that, is that sort of a small portion, like a
 4 one- or two-hour or three-hour piece of it, and the
 5 rest is trade show, or how does that work?
 6 A. It's usually six and a half hours of
 7 continuing education. So the majority of the day is
 8 classes. Our lunch is usually a business meeting
 9 for the dental society.
 10 Q. Okay. And so you were talking about
 11 your -- I was asking you about your role, and you
 12 mentioned that you were on the board of trustees
 13 from time to time, on and off, over the past 10 or
 14 15 years or so; right?
 15 A. Sure.
 16 Q. What other leadership roles have you had
 17 within Corydon Palmer?
 18 A. I've been chairman of our membership
 19 committee, chairman of our -- co-chairman of our
 20 continuing education committee, a chairman of our
 21 nominating committee. I have also gone through the
 22 ranks -- or the chairs for leadership to -- I was
 23 the president of the dental society in 2014.
 24 Q. The president of the dental society, is
 25 that a rotating position that changes fairly

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1 Q. Well, like what?
 2 A. We have an annual holiday get-together. We
 3 have a golf outing. We do a family picnic at a
 4 local minor league baseball event.
 5 Q. How often would you say that the members of
 6 the Corydon Palmer group get together, some or all
 7 of it, how often does that occur?
 8 A. I think the majority of the members, the
 9 continuing education course is also combined with
 10 one of our meetings. So that's probably the biggest
 11 time for members to get together professionally as
 12 well as socially.
 13 Q. Do you have sort of a trade show as well,
 14 where you invite distributors, manufacturers, and
 15 others to join and present?
 16 A. Yes. We do have vendors who are present
 17 during our continuing education courses.
 18 Q. And the continuing education course, is
 19 that a one-day affair or a two- or three-day affair?
 20 A. It's a one-day, all-day event.
 21 Q. And it happens four times a year?
 22 A. Yes.
 23 Q. Okay. And usually you invite vendors,
 24 distributors, and others to participate in those
 25 programs?

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1 frequently?
 2 A. Yes. It's just a one-year term, and it
 3 starts as a -- I think the secretary, then
 4 president-elect, and then president.
 5 Q. And each one would be for a one-year
 6 period?
 7 A. Correct.
 8 Q. And that's the order -- that's the
 9 succession order, and it happens that way every
 10 year?
 11 A. Correct.
 12 Q. So for today, the secretary would be the
 13 president in two or three years' time?
 14 A. Correct.
 15 Q. And so you were secretary in 2012; would
 16 that be right?
 17 A. Sure.
 18 Q. And president-elect in 2013?
 19 A. Yes.
 20 Q. And then president in 2014?
 21 A. Correct.
 22 Q. And you would have been the immediate past
 23 president in 2015; is that right?
 24 A. Correct.
 25 Q. Okay. And did you have any other similar

Page 14

1 roles following your role as either president or
 2 immediate past president?
 3 A. For the last seven years, I've been the
 4 representative of our subdistrict in Ohio, which is
 5 the Corydon Palmer Dental Society, Northeast Dental
 6 Society, and the Akron Dental Society. And as the
 7 representative from our area to the Ohio Dental
 8 Association, we have our annual meeting in
 9 September.
 10 Q. I see. So as part of the Ohio Dental
 11 Association, there is a -- there are representatives
 12 from the various local associations, like Corydon
 13 Palmer --
 14 A. Correct. There's delegates from each --
 15 each district, and I am the head of that delegation
 16 this year.
 17 Q. And you're the head of the delegation from
 18 a -- for a three- --
 19 A. Three separate dental societies forming one
 20 district.
 21 Q. Got it. Okay.
 22 So there are districts that are made up of
 23 multiple local dental societies. Your district has
 24 three dental societies within it. You are the
 25 delegate or the head delegate for the district?

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1 type of a discount -- or I should say a rebate
 2 program that they had established with another
 3 dental society in the state.
 4 Q. And when you said it was passed off to you
 5 from another dentist, who was the other dentist?
 6 A. Her name is Dr. Marybeth Shaffer.
 7 Q. And who was Dr. Marybeth Shaffer?
 8 A. At the time, I don't know if she had any
 9 leadership role with the dental society, but she had
 10 been a past president and served in many capacities
 11 within the dental society, leadership roles.
 12 Q. And how did -- do you recall when she
 13 passed this off to you?
 14 A. I believe it was in November of 2014.
 15 Q. Do you remember the circumstances when she
 16 passed it off to you?
 17 A. I think it was just through an e-mail that
 18 she had sent to me saying that I should look into
 19 this with one of the regional managers from Henry
 20 Schein.
 21 Q. Do you know why she was looking into this?
 22 Why this issue came up for her?
 23 A. Not really sure.
 24 Q. Okay. And what did you do after you
 25 received this e-mail from Dr. Shaffer?

Page 15

1 A. Correct.
 2 Q. Okay. And you've been doing that for the
 3 last seven years, you said?
 4 A. Correct.
 5 Q. Okay. Now, in 2014, did you -- let me step
 6 back for a second.
 7 Have you been involved in any dealings
 8 with -- on behalf of Corydon Palmer with respect to
 9 establishing a buying group component of the dental
 10 society?
 11 MS. GOFF: Objection to form.
 12 BY MR. KASS:
 13 Q. You can answer.
 14 A. Could you rephrase that question or repeat
 15 it again.
 16 Q. Sure.
 17 On behalf of the Corydon Palmer Dental
 18 Society, were you involved in any efforts to
 19 establish, participate in, or create a buying group
 20 component or offering for the -- for your members?
 21 A. I don't know if this will answer your
 22 question, but it was passed off to me from another
 23 dentist who was interested in Corydon Palmer putting
 24 something together with Henry Schein Dental Supply
 25 Company, to look at either a buying group or some

Page 17

1 A. I believe that she passed on to him -- to
 2 the regional manager, a Mark Sirney, to get in
 3 contact with me to discuss either a buying club or a
 4 rebate program.
 5 Q. And Mark Sirney, he's the regional manager
 6 for Henry Schein?
 7 A. Correct.
 8 Q. Did you reach out to Mark Sirney or --
 9 A. I think he reached out to me.
 10 Q. And then what happened?
 11 A. We got together for lunch. He showed me
 12 the program that he had established -- the rebate
 13 program that was already established with the Stark
 14 County Dental Society, and he had proposed that
 15 idea.
 16 He also discussed some of the background of
 17 what it would take to establish a buying group.
 18 Q. And is Stark County, is that a
 19 contiguous -- does it have a contiguous territory to
 20 the Corydon Palmer, or where is it located?
 21 A. It's probably within 100 miles of our
 22 dental society. It is not a contiguous dental
 23 society with us.
 24 Q. You said that he discussed the background
 25 of what it would take to establish a buying group.

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1 What do you recall about that?

2 A. He said that the logistics of trying to set

3 up a buying group would be pretty intense. And he

4 mentioned that it would take a lot of time to

5 compile the materials that different dentists buy

6 within our dental society. Try to pare it down to

7 what could be put together for a buying group.

8 And he said that the rebate program that he

9 had with Stark County is something that we could put

10 together pretty quickly and get some kind of benefit

11 towards -- for our dental society.

12 Q. And what was the -- what were the benefits

13 of the rebate program for your membership?

14 MS. GOFF: Objection. Form.

15 BY MR. KASS:

16 Q. You can answer.

17 A. The only thing I would think it would be is

18 lower prices for dental supplies.

19 Q. Was that something you were interested in?

20 A. I think any dentist would be interested in

21 paying less for goods and services.

22 Q. And did you -- you ultimately entered into

23 an agreement with Henry Schein on behalf of Corydon

24 Palmer; is that right?

25 A. For a rebate program, yes.

Page 19

1 Q. You're distinguishing a rebate program from

2 something -- from something else, it sounds like. I

3 mean -- maybe not.

4 A. It's -- it's what they had titled the

5 program and distinguishing from a buying group or --

6 I'm not sure where --

7 Q. Well, I think you were trying to draw a

8 distinction between a rebate program and a buying

9 group. If I misunderstood, then that's fine. I

10 just didn't -- I wanted to clarify if you had -- if

11 you were drawing some distinction, I wanted to

12 understand that.

13 A. I think there were -- in my mind at the

14 time, they were two separate entities.

15 Q. And what's the distinction between the two,

16 in your mind?

17 A. I think the buying group is something that

18 we would get lower prices purchasing dental supplies

19 through Henry Schein or one of the other dental

20 companies. And the rebate program is something that

21 would benefit the dental society as a whole.

22 Q. Okay. But even under the rebate program,

23 the members of the dentists, do they benefit?

24 MS. GOFF: Objection to form.

25 THE WITNESS: The biggest benefit to a

Page 20

1 rebate program would be due stabilization. Our

2 ability to keep our costs down through the rebate

3 program.

4 BY MR. KASS:

5 Q. And so there's a benefit, clearly, for the

6 dental society in terms of revenues that it

7 receives?

8 MS. GOFF: Objection to form and

9 foundation.

10 BY MR. KASS:

11 Q. You can answer.

12 A. Yeah. I think it's -- you know, we're --

13 we have to run our dental society. And any way that

14 we could lower our cost and create revenue is

15 certainly what the goal was.

16 Q. Do the members of the dental society, do

17 they receive some portion of the rebates?

18 A. No. No individual dentist receives

19 anything from that.

20 Q. Okay. Do any individual dentists receive

21 any benefit from the -- from the rebate program that

22 you entered into?

23 MS. GOFF: Objection to form and

24 foundation.

25 THE WITNESS: No.

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1 BY MR. KASS:

2 Q. Okay. Is there sort of a program that goes

3 along with the provision of the -- let me ask it

4 this way.

5 Is there are -- as for the individual

6 dentists, do you understand that there's any sort of

7 change or other process in place that -- as a result

8 of this rebate program, that affects the individual

9 dentists?

10 A. No.

11 MS. GOFF: Objection to form. Sorry. Let

12 me get out my objection.

13 Objection to form. Foundation.

14 BY MR. KASS:

15 Q. What do you view as the purpose of the

16 rebate program?

17 A. I think the main purpose is to help

18 generate income for the society.

19 Q. And as part of generating income for the

20 society, does the -- well, let me step back.

21 So one of the things that the members of

22 the dental society, normally they have to pay dues?

23 A. Correct.

24 Q. And they receive certain benefits, like

25 continuing education and other -- other benefits, as

1 being part of this society; is that right?

2 A. Correct.

3 Q. And one of the things that's important is
4 trying to keep the dues to a manageable level; is
5 that right?

6 MS. GOFF: Objection to form and
7 foundation.

8 THE WITNESS: Correct.

9 BY MR. KASS:

10 Q. Is that part of your strategy and part --
11 some of the things that you consider as part of the
12 leadership of Corydon Palmer, are ways to keep the
13 membership fees, the membership dues for your
14 members, as low as possible?

15 A. Yes.

16 Q. Okay. And was this program designed to
17 help Corydon Palmer and its members by lowering
18 the -- ultimately the fees that members would have
19 to pay in order for the Corydon Palmer to be able to
20 continue providing its services?

21 MS. GOFF: Objection to form.

22 THE WITNESS: I think that was our goal
23 when we entered into this agreement with Schein.

24 BY MR. KASS:

25 Q. And just to address the objection, could

1 you please explain for the record what you believe
2 the purpose of entering into a rebate program was
3 with respect to Corydon Palmer and its members.

4 A. I think it was strictly to find another
5 revenue stream for -- for the society.

6 Q. And how would that benefit members?

7 A. Again, we had seen declining membership.
8 We do have a executive director of our society, and
9 our costs with having -- hiring a person and
10 staffing is certainly going up. So I think it --
11 from a budgetary standpoint, we need to look at all
12 possible revenue we can generate.

13 Q. And how would that benefit members?

14 A. We --

15 MS. GOFF: Sorry. Objection to form and
16 foundation.

17 Go ahead.

18 THE WITNESS: I think if we can't afford to
19 have an executive director, we do the work
20 ourselves.

21 BY MR. KASS:

22 Q. When you say "we," who do you mean, "we"?

23 A. It would be probably the members.

24 Q. And so just to -- I know I'm asking the
25 question a number of times, but I just want to make

1 sure we have a fulsome record.

2 How would entering into the rebate program
3 benefit, directly or indirectly, the members of
4 Corydon Palmer?

5 MS. GOFF: Objection to form and
6 foundation.

7 THE WITNESS: I think, as I stated, it's --
8 directly or indirectly, I think they look at it,
9 again, as a way to generate money for the society.

10 BY MR. KASS:

11 Q. Okay. Did you have discussions about
12 entering into a program that would provide for
13 reduced prices or discounts on the purchase of
14 supplies that the members themselves pay?

15 A. The only conversation I had was with
16 Mark Sirney, probably at the first meeting. And it
17 was brief, and I don't think there was any talk of a
18 buying group after that or any type of rebate -- not
19 rebate, but a discount.

20 Q. Did you ask for a discount on behalf of the
21 members?

22 A. Only in that initial conversations.

23 Q. And did he say no to that?

24 A. To the best of my recollection, he said
25 it's something that we can work on in the future,

1 and that the rebate program was something that we
2 could start up and get up and running as quickly as
3 possible.

4 Q. And was that attractive to you?

5 A. Absolutely.

6 Q. Okay. And was it -- so did you feel as
7 though Schein had found ways to support Corydon
8 Palmer and meet the needs that you had presented?

9 MS. GOFF: Objection to form and
10 foundation.

11 THE WITNESS: I feel at the time it was --
12 going in and not really knowing what we could do
13 with Henry Schein, I was satisfied to have this
14 rebate program to bring back to our society.

15 BY MR. KASS:

16 Q. And then -- so you entered into a program,
17 a program with Henry Schein, in January of 2015; is
18 that right?

19 A. I believe so.

20 Q. And did you have any further dealings with
21 Henry Schein with respect to this program while you
22 were either president or immediate past president?

23 A. The terms of the contract, I think, were
24 signed by the current president. And I forget how
25 many years that contract was in force. And I think

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1 they contacted me when they wanted to re-sign a new
 2 practice only because I had been the contact person
 3 at the initial onset of this program. And then our
 4 current president had signed the next contract with
 5 Schein.
 6 Q. And who was the president -- when you say
 7 "current president," that was the president after
 8 you were president?
 9 A. Correct.
 10 Q. Who was that person?
 11 A. Dr. James Ramunno.
 12 Q. Did he negotiate any of the terms of the
 13 agreement, or did he just renew the existing
 14 agreement?
 15 A. I think he just -- well, he signed the
 16 initial agreement.
 17 Q. He signed the initial agreement?
 18 A. Yes.
 19 Q. And that's because you had laid out the
 20 terms, agreed to the terms while you were president,
 21 but it didn't get signed until he was president?
 22 A. Correct. And really there wasn't a
 23 negotiating. I think they presented -- Mark Sirney
 24 presented a program to our society, and we accepted
 25 what he had proposed.

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1 Diagnostic Direct.
 2 Q. When did you reach out to Diagnostic
 3 Direct?
 4 A. I think it was in the last year or two.
 5 Q. Are they limited to gloves?
 6 A. Gloves and very limited number of dental
 7 supplies.
 8 Q. Why did you reach out to them?
 9 A. I think in -- it was -- it may be the other
 10 way -- actually mistaken.
 11 I think the company had tried to contact us
 12 to set up, and so we -- we worked with them on this
 13 program.
 14 Q. And did you enter into a program with
 15 Diagnostic Direct?
 16 A. Yes.
 17 Q. And what's the nature of that program?
 18 A. Where the members of our dental society
 19 could purchase materials at a reduced rate from the
 20 company, at 20 percent off their list price -- 15 to
 21 20 percent off their list price, and then a
 22 5 percent rebate would come back to the dental
 23 society.
 24 Q. And do you provide any services, promotion,
 25 marketing, with respect to either Henry Schein or

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1 Q. Did you engage in any further -- I mean,
 2 did you -- why didn't you engage in further
 3 negotiations? Were you happy with the terms?
 4 A. I think we were happy with the terms that
 5 they had presented. There may have been one item
 6 that we had rewritten in the initial contract.
 7 Q. And what was that item?
 8 A. I think it concerned continuing education.
 9 Q. And what with respect to continuing
 10 education was the issue?
 11 A. I think they had asked to have the fee
 12 waived for them to participate as a vendor if we
 13 engaged in this agreement. And we had asked that if
 14 we did not meet the target goals for the rebates,
 15 that we then could come back and charge them
 16 retroactively for the ability to display at our
 17 continuing education courses.
 18 Q. Did you reach out to Patterson or Benco
 19 with respect to any rebate programs?
 20 A. No, we did not.
 21 Q. Did you reach out to anybody else with
 22 respect to rebate programs?
 23 A. Yes, we have.
 24 Q. Who else?
 25 A. A local glove supply company called

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1 Diagnostic Direct to your members?
 2 A. The only thing we do is list on our dental
 3 society web page the companies that we have
 4 partnered with.
 5 Q. And why do you do that?
 6 A. Just to let it be known that this is a
 7 member benefit for -- for our society.
 8 Q. So do you view the listing of Henry Schein
 9 and others on your website as reflecting the fact
 10 that there's a benefit to the members of your
 11 partnership with them?
 12 MS. GOFF: Objection to form.
 13 THE WITNESS: Yes.
 14 BY MR. KASS:
 15 Q. Have you gotten any feedback from members
 16 with respect to the programs that you established
 17 with Henry Schein and others?
 18 A. No, I have not.
 19 MR. KASS: Okay. I'm going to hand you
 20 what will be marked as Exhibit No. 1.
 21 (Marked for identification purposes,
 22 Exhibit 1.)
 23 MR. KASS: For the record, it's Bates
 24 numbered Henry Schein 001525841.
 25 ///

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1 BY MR. KASS:
 2 Q. And you can just take a look at the
 3 document.
 4 MS. GOFF: I'm going to object to the
 5 introduction of this e-mail under the protective
 6 order. It doesn't look like Dr. Baytosh is
 7 actually --
 8 MR. KASS: It's a Henry Schein document.
 9 MS. GOFF: -- on this e-mail.
 10 MR. KASS: I'm perfectly free to show him a
 11 Henry Schein document.
 12 MS. GOFF: I'm just going to state for the
 13 record that the protective order, paragraph 7, says
 14 that:
 15 "Confidential material may only be
 16 disclosed to the administrative law
 17 judge, judges, and other court personnel,
 18 outside counsel of record for any
 19 respondent, anyone retained to assist
 20 outside counsel, and any witness or
 21 deponent who may have authored or
 22 received the information in question."
 23 And I don't believe that Dr. Baytosh fits
 24 into any of those categories, and the document is
 25 marked confidential.

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1 A. The name sounds familiar. Is he the CEO
 2 of --
 3 Q. Henry Schein.
 4 A. Okay. Okay.
 5 Q. But did you have an independent knowledge
 6 of that?
 7 A. I think just from my meetings and our ADA
 8 news.
 9 Q. Have you met Mr. Bergman?
 10 A. No, I have not.
 11 Q. Okay. Do you know who Tim Sullivan is?
 12 A. I may have met him. I don't know if he is
 13 the regional or -- I'm not sure of his position. I
 14 may have heard the name.
 15 Q. Do you recall meeting him?
 16 A. No, I do not.
 17 Q. Okay. So Ms. Shaffer, in her e-mail to
 18 Stanley Bergman, notes in the last paragraph on
 19 page 843, she says:
 20 "I must point out that our local
 21 dental society has 300 members, and many
 22 are disturbed by the discounts and
 23 preferential service offered to larger
 24 chains by Henry Schein."
 25 Do you see that?

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1 Otherwise, you are free to proceed. I just
 2 want to note my objection for the record.
 3 MR. KASS: Okay. And I'll just note for
 4 the record that this is a Henry Schein document, so
 5 there's no third party who has a confidential
 6 interest in this document.
 7 BY MR. KASS:
 8 Q. Okay. So this document, if you look at the
 9 page Bates numbered 843, the last three digits, 843,
 10 you can see there's an e-mail from Marybeth Shaffer
 11 to Stan Bergman.
 12 Do you see that?
 13 A. M-hm.
 14 Q. Have you seen that -- this e-mail before?
 15 A. This is the first time.
 16 Q. Okay. Who is Marybeth Shaffer?
 17 A. This is the doctor who I referred to who
 18 had contacted me in November of 2014.
 19 Q. Okay. You can see that her e-mail does not
 20 actually reference any buying group; is that right?
 21 MS. GOFF: Objection to form.
 22 THE WITNESS: I don't see anything that
 23 directly says anything about buying group.
 24 BY MR. KASS:
 25 Q. Do you know who Stan Bergman is?

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1 A. Yes.
 2 Q. It then goes on and says:
 3 "We have a hard time competing with
 4 advertising dollars of larger chains, and
 5 this practice gives them additional
 6 dollars for an unfair competitive edge in
 7 our opinion."
 8 Do you see that?
 9 A. Yes.
 10 Q. Corydon Palmer never sort of expressed that
 11 view as an entity to Henry Schein; is that right?
 12 MS. GOFF: Objection to form. Foundation.
 13 The document speaks for itself.
 14 BY MR. KASS:
 15 Q. Okay. I'm asking independent of this
 16 document, did Corydon Palmer ever take that position
 17 with Henry Schein?
 18 A. I don't believe so.
 19 Q. And in Ms. Shaffer's e-mail, she doesn't
 20 offer a solution. She doesn't ask for Schein to
 21 give additional discounts; is that right?
 22 MS. GOFF: Objection to form and
 23 foundation. Again, the document speaks for itself.
 24 Dr. Baytosh has never seen this document.
 25 THE WITNESS: Can you rephrase -- repeat

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1 the question, please.
 2 BY MR. KASS:
 3 Q. There's no actual request by Henry Schein
 4 to provide additional discounts, create a buying
 5 group, do anything else in this e-mail. She's just
 6 pointing out an opinion?
 7 MS. GOFF: Objection to form and
 8 foundation.
 9 THE WITNESS: That seems to be a fair
 10 assessment.
 11 BY MR. KASS:
 12 Q. Okay. And did you have discussions with
 13 Ms. Shaffer about -- about this issue?
 14 A. No.
 15 Q. Okay. At some point -- this is in October
 16 of 2014. Was it short -- how long after October --
 17 well, let me step back.
 18 When Ms. Shaffer reached out to you about
 19 entering into some sort of arrangement with Henry
 20 Schein, was that before or after October 2014?
 21 A. Dr. Shaffer contacted me in, I think, early
 22 November of that year.
 23 Q. So about a month after this e-mail,
 24 Dr. Shaffer reached out to you; is that right?
 25 A. That sounds reasonable, yes.

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1 Q. Okay. And you can see from Mr. Bergman's
 2 response, he says:
 3 "We would be happy to meet
 4 individually with you or any of the more
 5 than 300 valuable members of your local
 6 dental society to discuss how we can best
 7 help your individual practices thrive in
 8 this changing market. Our regional
 9 manager, Mark Sirney, will be in touch
 10 with you to follow up."
 11 Do you see that?
 12 A. Yes.
 13 Q. And eventually Mark Sirney did reach out to
 14 you; is that right?
 15 A. That is correct.
 16 Q. And he ultimately reached an agreement with
 17 you with respect to providing benefits to the
 18 Corydon Palmer Dental Society on behalf of its
 19 members; is that right?
 20 A. That's correct.
 21 MS. GOFF: Objection to form.
 22 BY MR. KASS:
 23 Q. You can see from this e-mail, Mr. Bergman
 24 copies a number of Schein employees, including
 25 Jimmy Breslawski.

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1 Do you know who he is?
 2 A. No, I do not.
 3 Q. Tim Sullivan. You've heard the name
 4 Tim Sullivan, though; is that right?
 5 A. Yeah. May have heard of it.
 6 Q. Dave Steck, have you heard of him?
 7 A. (Nonverbal response.)
 8 Q. And Mark Sirney, who is he?
 9 A. As far as I know, he's the regional manager
 10 of our area.
 11 Q. Okay. When you entered -- so after -- so
 12 when did Mr. Sirney reach out to you? Do you
 13 recall?
 14 A. Probably within a day or two after being
 15 contacted by Dr. Shaffer.
 16 Q. And how long did it take for you to work
 17 out the terms of the agreement?
 18 A. I would say up to the time that it was
 19 signed by the president of the dental society at
 20 that time, which was Dr. Ramunno.
 21 Q. Okay. Turning now to this -- this matter,
 22 have you had prior discussions with anybody from the
 23 FTC?
 24 A. Yes.
 25 Q. And when was your first discussion with

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1 somebody from the FTC?
 2 A. The time and date I don't recall, but I
 3 believe -- is it Karen -- D-A-W is the last name.
 4 One attorney had called several members of the
 5 dental society.
 6 Q. And who -- what members of the dental
 7 society did the personal from the FTC call?
 8 A. I think it was myself. The executive
 9 director. The dentist, I think, who signed the
 10 contract. And then the current -- the current
 11 president at that time.
 12 Q. Okay. And who were these people by name?
 13 The executive director, who was that?
 14 A. Her name is Amanda Mastropietro. And
 15 the -- I believe the current dentist was Dr. Joseph
 16 Bedich. And then Dr. Ramunno, who was the person
 17 who signed the original contract. And myself.
 18 Q. And was that -- this contact, was that part
 19 of a conference call, or were there separate
 20 reach-outs or --
 21 A. I think they were just individual phone
 22 calls.
 23 Q. Were you ever on a call with multiple
 24 people, including the FTC?
 25 A. Initially, no. There was a conference call

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1 with -- for the first person was a Ron Solomon from
 2 the FTC.
 3 Q. When you say there was a conference call
 4 with Ron Solomon, was that a conference call with
 5 multiple members from Corydon Palmer or a conference
 6 call including yourself and multiple FTC people?
 7 A. Just myself and the two attorneys from the
 8 FTC.
 9 Q. Got it.
 10 And were you on more than one call with the
 11 FTC?
 12 A. I've had several conversations with them
 13 since that initial phone call.
 14 Q. And when was the first one?
 15 A. I don't recall the exact date.
 16 Q. When was the -- so you say you had multiple
 17 calls?
 18 A. Yes.
 19 Q. Do you remember how many?
 20 A. I would say maybe a half dozen.
 21 Q. How many were related to substantive issues
 22 as opposed to just scheduling?
 23 A. I would say probably half of them.
 24 Q. So three or four?
 25 A. Three or four. yeah. Yes.

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1 Q. And what did you tell the FTC during those
 2 three or four substantive communications?
 3 A. Basically, the same information we've been
 4 talking about today.
 5 Q. Did you tell the FTC that Schein was
 6 willing to engage with Corydon Palmer?
 7 A. Engage?
 8 Q. Engage. Enter into discussions about
 9 entering into an agreement, that they were willing
 10 to do so.
 11 A. An arrangement for?
 12 Q. For the rebate program.
 13 A. Yes.
 14 Q. Okay. Did you tell them that Schein
 15 expressed any form of hostility, reluctance,
 16 unwillingness to enter into discussions or
 17 negotiations with Corydon Palmer?
 18 A. I don't believe that came up.
 19 Q. Is it your view that Schein expressed any
 20 form of hostility, reluctance, or unwillingness to
 21 enter into discussions with Corydon Palmer?
 22 MS. GOFF: Objection to form.
 23 THE WITNESS: As I said, the first meeting,
 24 it was brought up, and then it really has never come
 25 back up again with me.

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1 BY MR. KASS:
 2 Q. Okay. When you say "it was brought up,"
 3 what was brought up?
 4 A. Setting up a buying group.
 5 Q. And do you feel -- again, do you feel that
 6 Schein listened to your needs and presented you with
 7 a proposal that satisfied your needs?
 8 MS. GOFF: Objection to form.
 9 THE WITNESS: I think at the time, setting
 10 up the rebate program, yes, fulfilled what -- what I
 11 was attempting to do at the time as president.
 12 BY MR. KASS:
 13 Q. Why haven't you gone back to Schein and
 14 said, Hey, we would like to set up a buying group?
 15 MS. GOFF: Objection to form. Foundation.
 16 THE WITNESS: I think initially Dr. Shaffer
 17 had said she had some interest in starting it up,
 18 and I was more than willing to let her -- if she
 19 wanted to pursue that, let her pursue it.
 20 BY MR. KASS:
 21 Q. Did you have a discussion with her?
 22 A. I think it was just a interpretation of
 23 initial contact from her.
 24 Q. So you didn't actually have any interest in
 25 setting up some additional program beyond the rebate

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1 program that Schein entered into?
 2 A. No.
 3 Q. Okay. What did the FTC ask you?
 4 MS. GOFF: Objection to the form.
 5 THE WITNESS: Pretty much similar questions
 6 that you had asked.
 7 BY MR. KASS:
 8 Q. Can you think any other additional subjects
 9 or points that they were trying to establish?
 10 MS. GOFF: Objection to form.
 11 THE WITNESS: No. I can't come up with
 12 anything particular.
 13 BY MR. KASS:
 14 Q. Okay. Do you believe that the arrangement
 15 that you have with Henry Schein has been a success
 16 both for Corydon Palmer and for the members of
 17 Corydon Palmer?
 18 MS. GOFF: Objection to form.
 19 THE WITNESS: It's probably still in its
 20 infancy, but so far it has been beneficial.
 21 MR. KASS: Okay. I have no further
 22 questions at this time.
 23 MS. GOFF: Can we take a quick break.
 24 (Recess taken, from 9:49 to 10:07.)
 25 ///

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1 EXAMINATION BY MS. GOFF
 2 BY MS. GOFF:
 3 Q. Dr. Baytosh --
 4 A. Yes.
 5 Q. -- hello. I just wanted to -- after we
 6 went off the record earlier, you mentioned that you
 7 wanted to clarify something about your memory of who
 8 you spoke with at the Federal Trade Commission. I
 9 just wanted to give an opportunity to do that on the
 10 record.
 11 A. Off the top of my head, I can't think of
 12 her name, but I probably have it in my records at
 13 home.
 14 Q. Okay.
 15 A. If there's a point later on I could clarify
 16 this?
 17 Q. Sure. Yes. There will be an opportunity
 18 for you to review your transcript and make any
 19 corrections, if necessary.
 20 So just to be clear, the person that
 21 reached out to you from the Federal Trade
 22 Commission, you just are saying you cannot recall
 23 her name?
 24 A. Correct.
 25 Q. Thank you.

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1 And then I just wanted to go back to the --
 2 your discussion with Mr. Kass about your
 3 conversations with Mr. Sirney at Henry Schein.
 4 Actually, even taking a step back before that, you
 5 testified, I believe, that it was Dr. Shaffer that
 6 first gave you the idea to reach out to Henry Schein
 7 about a program with Corydon Palmer; is that right?
 8 MR. KASS: Mischaracterizes his testimony.
 9 THE WITNESS: Yes, I believe that's
 10 correct.
 11 BY MS. GOFF:
 12 Q. And was it Dr. Shaffer's idea to form a
 13 rebate program or a buying group or both?
 14 MR. KASS: Objection. Foundation.
 15 THE WITNESS: I think Dr. Shaffer had
 16 reached out, saying that she had heard that there
 17 was a rebate program in force with another dental
 18 society, and she mentioned something about trying to
 19 establish a buying group.
 20 BY MS. GOFF:
 21 Q. Okay. And then after she reached out, at
 22 some point did you speak with Mr. Sirney at Henry
 23 Schein?
 24 A. Yes.
 25 Q. And just to get a little bit more

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1 background information about that, did you speak
 2 with him on the phone or in person?
 3 A. Just in person.
 4 Q. Okay. And where was that?
 5 A. We had lunch one day at a restaurant in --
 6 in Youngstown.
 7 Q. Okay. You said you had lunch at --
 8 somewhere in Youngstown?
 9 A. Yes.
 10 Q. Approximately when was that?
 11 A. Maybe early December of 2014.
 12 Q. And can you tell me what you spoke with
 13 Mr. Sirney about at that lunch meeting?
 14 A. Basically, that we were put together
 15 through this -- Dr. Shaffer, to look into a rebate
 16 program or a buying group.
 17 Q. Okay. So -- go ahead.
 18 A. And that's when he mentioned that the
 19 buying group -- the logistics of it would be pretty
 20 difficult to set up, and that he had a contract from
 21 the Stark County Dental Society, the rebate program
 22 that they already had in place. And then we talked
 23 about setting that up with our dental society.
 24 Q. Okay. So you spoke about -- with
 25 Mr. Sirney about both a buying group option and a

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1 rebate program option; is that right?
 2 A. Correct.
 3 MR. KASS: Objection. Form.
 4 BY MS. GOFF:
 5 Q. And you said Mr. Sirney said it would be --
 6 I don't know how you characterized it.
 7 What did Mr. Sirney say about the buying
 8 group program?
 9 A. Just that the logistics of trying to put a
 10 buying group together would take a lot of time and a
 11 lot of effort on his part. But he said the rebate
 12 program is something that he could put in place
 13 quickly and benefit our society.
 14 Q. Did you feel that Mr. Sirney was urging you
 15 towards the rebate program over the buying group
 16 program?
 17 MR. KASS: Objection. Form. Foundation.
 18 THE WITNESS: I don't -- no. No, I didn't
 19 feel he was pushing the rebate over the buying
 20 group.
 21 BY MS. GOFF:
 22 Q. You felt that he was or he was not?
 23 A. No, that he was not. That he was just
 24 offering that as a -- something that we could put in
 25 quickly.

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1 Q. So he said that the rebate program could be
 2 done quickly?
 3 A. Yes.
 4 Q. And the buying group program would be more
 5 difficult to do?
 6 A. Yes.
 7 MR. KASS: Objection to form.
 8 THE WITNESS: Yes. And take more time to
 9 put together.
 10 BY MS. GOFF:
 11 Q. And did he give you any specifics about why
 12 the buying group program would take more time to put
 13 together?
 14 A. Not that I recall.
 15 Q. Did he give you -- did he tell you anything
 16 else about a potential buying group program?
 17 A. Not that I can recall.
 18 Q. Did he -- did he ever provide you with
 19 terms of a potential buying group program?
 20 MR. KASS: Objection. Form.
 21 THE WITNESS: No.
 22 BY MS. GOFF:
 23 Q. But eventually Mr. Sirney provided you
 24 terms of a rebate program; is that right?
 25 A. Yes.

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1 Q. Okay. With regard to the rebate program,
 2 you mentioned that that was attractive to you; is
 3 that right?
 4 A. Correct.
 5 Q. Was a buying group program attractive to
 6 you as well?
 7 MR. KASS: Objection. Improper
 8 hypothetical and form and foundation.
 9 THE WITNESS: I don't think my knowledge of
 10 a buying group at that time is maybe what it is
 11 today. But I think anything that would have
 12 benefited our society or our members would have
 13 certainly been something worth -- worth looking
 14 into.
 15 BY MS. GOFF:
 16 Q. And do you -- did you view the buying group
 17 program as something that would benefit your
 18 members?
 19 MR. KASS: Objection. Calls for
 20 speculation. Improper hypothetical.
 21 THE WITNESS: I think if something could
 22 save dentists money, it's worth looking into.
 23 BY MS. GOFF:
 24 Q. And is it your understanding that buying
 25 groups save dentists money?

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1 MR. KASS: Objection. Foundation.
 2 Speculation.
 3 THE WITNESS: If it's going to mean lower
 4 prices and help our ability to -- our practices,
 5 yeah.
 6 BY MS. GOFF:
 7 Q. Is it your understanding that buying groups
 8 save dentists money?
 9 MR. KASS: Same objections.
 10 THE WITNESS: Yes.
 11 BY MS. GOFF:
 12 Q. And how would you describe a buying group?
 13 MR. KASS: Form.
 14 THE WITNESS: I guess -- I think like a
 15 Costco or Sam's Club, where you're either buying
 16 dental supplies in bulk or buying a limited number
 17 of supplies -- multiple dentists buying a limited
 18 number of supplies at a discount.
 19 BY MS. GOFF:
 20 Q. So buying groups allow dentists to receive
 21 discounts off of supplies?
 22 MR. KASS: Objection. Form and calls for
 23 speculation.
 24 THE WITNESS: Yes.
 25 ///

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1 BY MS. GOFF:
 2 Q. And then does -- going back to a rebate
 3 program, does a rebate program allow dentists to get
 4 discounts on supplies?
 5 MR. KASS: Same objection.
 6 THE WITNESS: No.
 7 BY MS. GOFF:
 8 Q. And does the rebate program that Corydon
 9 Palmer entered into with Henry Schein offer
 10 discounts on supplies to dentists?
 11 MR. KASS: Objection. Form.
 12 THE WITNESS: No, it does not.
 13 BY MS. GOFF:
 14 Q. Talking about the rebate program, the
 15 rebate that is received under the rebate program
 16 with Henry Schein, is that provided to -- who was
 17 that provided to?
 18 A. That goes into our general fund of the
 19 Corydon Palmer Dental Society.
 20 Q. So the rebate does not go back to the
 21 dentists directly; is that right?
 22 MR. KASS: Objection. Form.
 23 THE WITNESS: No, it does not.
 24 BY MS. GOFF:
 25 Q. And is there a maximum rebate?

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1 A. I believe there's a maximum that is stated
 2 in the contract.
 3 Q. Do you have any idea what that maximum is?
 4 MR. KASS: Objection. Form.
 5 THE WITNESS: No, I do not. I would have
 6 to reference the contract.
 7 BY MS. GOFF:
 8 Q. So under the rebate program, there's no
 9 money going directly to dentists; correct?
 10 MR. KASS: Objection. Asked and answered.
 11 Form.
 12 THE WITNESS: No, there is not.
 13 BY MS. GOFF:
 14 Q. But it's your understanding that buying
 15 programs provide discounts directly to dentists?
 16 MR. KASS: Same objection. Form.
 17 Foundation.
 18 THE WITNESS: Correct.
 19 BY MS. GOFF:
 20 Q. When you were discussing with Mr. Sirney
 21 the rebate program versus the buying club program,
 22 am I correct, did you testify earlier that
 23 Mr. Sirney said that you could set up the rebate
 24 program faster than a buying group program?
 25 A. Yes.

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1 Q. And was that important to you?
 2 A. Yes, it was.
 3 Q. Why was it important?
 4 A. I think I really wanted to come back with
 5 something to our membership that we could put into
 6 place very quickly, and the rebate program met that.
 7 And I think he may have alluded to the fact that if
 8 we wanted to come back and set up a buying club or a
 9 buying group, that that's certainly something we can
 10 do in the future.
 11 Q. Did he give you a specific timeline or how
 12 long it would take to set up a buying group?
 13 A. No, he did not.
 14 Q. Did you ever ask him how long it would
 15 take?
 16 A. I never followed up with that because I
 17 think initially -- my initial contact from
 18 Dr. Shaffer was that she was possibly looking into
 19 setting up a buying group, and so that's why I
 20 really never pursued it with Mr. Sirney.
 21 Q. I'm handing you what has been marked as
 22 CX4092.
 23 (Previously marked exhibit introduced,
 24 Exhibit CX4092.)
 25 ///

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1 BY MS. GOFF:
 2 Q. Have you had a chance to review CX4092?
 3 A. Yes.
 4 Q. And what is CX4092?
 5 A. This appears to be a copy of the original
 6 contract between Henry Schein and our dental
 7 society.
 8 Q. Now, you did not sign this contract;
 9 correct?
 10 A. Correct.
 11 Q. But you negotiated the contract with
 12 Mr. Sirney; is that right?
 13 A. I initiated the conversations with him on
 14 this. And, like I said, I think there was, like,
 15 one item we had discussed changing. But this is
 16 pretty much the agreement that he had presented to
 17 us as well as -- based on the agreement that he had
 18 with -- for the Stark County Dental Society.
 19 Q. So Mr. Sirney presented something that
 20 looked quite similar to CX4092 to you as his
 21 proposal for a buying group program?
 22 MR. KASS: Objection. Form.
 23 THE WITNESS: This was a proposal for
 24 the --
 25 ///

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1 BY MS. GOFF:
 2 Q. I mean, sorry. Let me rephrase.
 3 Proposal for the rebate program --
 4 A. Correct.
 5 Q. Let me reask the whole question.
 6 So Mr. Sirney presented to you something
 7 similar to CX4092 which were the terms of his
 8 proposed rebate program between Corydon Palmer and
 9 Henry Schein Dental?
 10 A. Correct.
 11 MR. KASS: Objection. Form.
 12 BY MS. GOFF:
 13 Q. And so what was eventually signed that
 14 we're looking at here, CX4092, was, in large part,
 15 similar to what Mr. Sirney initially presented to
 16 you; is that right?
 17 MR. KASS: Same objection.
 18 THE WITNESS: Yes.
 19 BY MS. GOFF:
 20 Q. And you said that there might have been one
 21 term that was changed from what Mr. Sirney initially
 22 proposed to what we're looking at here on CX4092?
 23 A. Correct.
 24 Q. And which term was that?
 25 A. The bullet point would be the seventh one

<p style="text-align: right;">Page 54</p> <p>1 down. It's the ability to exhibit at all the 2 Corydon Palmer Society seminars at no charge. 3 Q. I just wanted to talk to you a little bit 4 more about your practice as a dentist, if that's 5 okay. So switching topics a little bit. 6 A. M-hm. 7 Q. Are you a owner of a dental practice? 8 A. Correct, yes. 9 Q. And are you the sole dentist at your 10 practice? 11 A. Yes. I'm the sole proprietor. 12 Q. And how long have you been the sole 13 proprietor of your dental practice? 14 A. Since 1988, when I took over the practice. 15 Q. Do you have any support staff? 16 A. Yes. 17 Q. How many? 18 A. Three full-time and one part-time. 19 Q. And what are the roles of each of those 20 support staff? 21 A. I have a full-time office manager. I have 22 a full-time dental hygienist, and a full-time 23 assistant/expanded function dental assistant. 24 Q. And are you involved in making decisions 25 regarding purchasing supplies and equipment for your</p>	<p style="text-align: right;">Page 55</p> <p>1 office? 2 A. Yes. 3 Q. And from which -- do you purchase supplies 4 and equipment from a distributor? 5 A. Yes. 6 Q. From which distributor do you purchase most 7 of your supplies? 8 A. Through Henry Schein Dental. 9 Q. And approximately what percentage of your 10 supplies do you estimate that you purchase from 11 Schein? 12 A. Probably over 90 percent. 13 Q. And do you purchase supplies from other 14 companies as well? 15 A. Yes, I do. 16 Q. Which other companies? 17 A. I do use Diagnostic Direct for purchasing 18 gloves. There's a couple of other companies that 19 are direct to the dentist, and they're -- that do 20 not work with supply companies. 21 Q. So there are a few other companies that are 22 direct to dentists that you purchase your supplies 23 from? 24 A. Correct. 25 Q. And do you recall the names of those</p>
<p style="text-align: right;">Page 56</p> <p>1 companies? 2 A. One is Ultradent. The other may be Tulsa 3 Dental Supply. At one point there was a company 4 called Kettlebach [sic] that I purchased some 5 supplies through. 6 Q. Have you ever purchased supplies from 7 Patterson or Benco? 8 A. I have purchased from Benco in the past, 9 yes. 10 Q. Have you ever purchased supplies from a 11 direct selling manufacturer? 12 A. Yes. 13 Q. What supplies specifically? 14 A. It was just dental bonding agent and 15 composite material. 16 Q. Could you buy everything that you need as a 17 dentist in terms of supplies from a direct selling 18 manufacturer, to your knowledge? 19 MR. KASS: Objection. Form. 20 THE WITNESS: I would think, but I've never 21 attempted to do that. 22 BY MS. GOFF: 23 Q. You've never attempted to purchase all 24 supplies from a direct selling manufacturer? 25 A. Correct.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. So do you know either way whether you could 2 purchase all of the supplies that you need from a 3 direct selling manufacturer? 4 MR. KASS: Objection. Form. 5 THE WITNESS: I think you probably could. 6 BY MS. GOFF: 7 Q. Have you ever asked a direct selling -- a 8 manufacturer whether you could purchase supplies 9 directly from them? 10 A. Yes. 11 Q. And what did they say? 12 A. This is usually at a large dental meeting, 13 when the vendors and the companies are present, and 14 most -- the times that I have asked, most of them 15 sell through a dental supply company. 16 Q. Okay. And so the manufacturer said that 17 they sell their products through a dental supply 18 company? 19 A. Correct. 20 Q. Okay. And then just going back to the 21 direct selling manufacturers, have you ever gone to 22 the direct selling manufacturers and asked whether 23 you could purchase, you know, every supply that you 24 need from them? Have you ever investigated that? 25 MR. KASS: Objection. Form. Foundation.</p>

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1 THE WITNESS: Most of the companies that I
 2 have dealt with deal with specific -- like, whether
 3 it's endodontic supplies, orthodontic supplies.
 4 They are not full-service companies. They just have
 5 a limited scope of what they're -- the materials
 6 that I'm buying from them.
 7 BY MS. GOFF:
 8 Q. Okay. So the direct selling manufacturers
 9 that you've dealt with before sell specific
 10 products?
 11 A. Correct.
 12 Q. They don't sell, you know, the whole gamut
 13 of supplies that a dentist needs to run its
 14 practice?
 15 A. Correct.
 16 MR. KASS: Objection. Form and foundation.
 17 BY MS. GOFF:
 18 Q. And then turning to equipment, do you --
 19 actually, going back to the direct selling
 20 manufacturers, which direct selling manufacturers
 21 have you purchased from?
 22 A. That would be the ones I had mentioned
 23 earlier.
 24 Q. The Ultradent -- sorry. Go ahead.
 25 A. Yes, the Ultradent. The Diagnostic Direct.

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1 Q. Okay. How long have you been purchasing
 2 supplies and equipment from Henry Schein?
 3 A. The representative -- the sales rep that I
 4 have currently with Henry Schein was with another
 5 dental supply company. And I don't recall when
 6 Henry Schein purchased that -- that company, but I
 7 stayed with that rep, that salesperson, and that's
 8 why I'm with Henry Schein today.
 9 Q. Okay. So whenever it was that Henry Schein
 10 purchased this company that you were working with
 11 previously, that's when you started purchasing from
 12 Schein?
 13 A. Yes.
 14 Q. Any sense for how many years ago that was?
 15 A. No. I'm not sure at all.
 16 Q. Okay. And what was -- do you recall the
 17 name of the company that Henry Schein purchased?
 18 A. It was Muir Dental.
 19 Q. So you mentioned that you have a sales
 20 representative that comes to your office; is that
 21 right?
 22 A. Correct.
 23 Q. That's a Henry Schein sales representative?
 24 A. Yes.
 25 Q. And is having a sales representative come

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1 Kettlebach.
 2 Q. Okay. So those are manufacturers --
 3 A. Correct.
 4 Q. -- in your understanding?
 5 A. Yes.
 6 Q. And they sell sort of specialty items?
 7 A. Yes.
 8 Q. Turning to equipment, do you purchase --
 9 from which companies do you purchase your equipment?
 10 A. Most of it has been purchased from --
 11 either between Henry Schein or Benco.
 12 Q. Approximately what percentage do you
 13 estimate that you purchase from Henry Schein?
 14 A. I would say, in my 30 years of practice,
 15 probably a majority of the equipment. Initially,
 16 when I started my practice, I think I purchased a
 17 lot of startup materials from Benco and then just
 18 have switched over the years to Schein.
 19 Q. Other than Schein and Benco, are there any
 20 other companies that you've purchased equipment from
 21 that you can think of?
 22 A. I did purchase some equipment from
 23 Patterson, but maybe two or three items over the
 24 years. I have not done much business with
 25 Patterson.

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1 to your office important to you?
 2 A. Yes, it is.
 3 Q. And why is that?
 4 A. I feel having the sales rep allows me to
 5 ask a lot of questions, get support on supplies,
 6 answer questions on new materials, bring samples
 7 into my office. She helps facilitate returns very
 8 easily and has been very helpful in purchasing new
 9 equipment for the office as far as directing me to
 10 manufacturers that would work well with what I have
 11 in my office.
 12 Q. Anything else?
 13 A. That's -- there may be others, but that's
 14 what rolls off the top of my head now.
 15 Q. Okay. Thank you.
 16 And are you familiar with what are
 17 sometimes called mail order distributors?
 18 A. Yes.
 19 Q. And what are those?
 20 A. When I started practice, it was basically
 21 catalog companies, such as Darby. And Henry Schein
 22 initially was just a catalog or mail order company.
 23 Q. Okay. Do mail order companies typically
 24 have sales representatives, in your understanding?
 25 A. No, they do not.

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1 Q. Have you ever heard of a company called
 2 Darby?
 3 A. Yes.
 4 Q. What is -- is that a mail order
 5 distributor, in your understanding?
 6 A. I think so. I've never looked into that
 7 company or have purchased anything from that
 8 company.
 9 Q. Okay. Can you think of any examples,
 10 sitting here today, of mail order distributors?
 11 A. No.
 12 Q. And would you consider switching your
 13 purchasing from Henry Schein to a mail order
 14 distributor if the discount on supplies was
 15 significant enough?
 16 MR. KASS: Objection. Form.
 17 THE WITNESS: If it was significant.
 18 MR. GEORGE: Object to form.
 19 THE WITNESS: I would consider that.
 20 BY MS. GOFF:
 21 Q. And how significant of a discount would you
 22 need to switch?
 23 MR. KASS: Objection. Form.
 24 THE WITNESS: I think maybe if it was in
 25 the 10 or 20 percent range.

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1 BY MS. GOFF:
 2 Q. Turning back to equipment, as a dentist, do
 3 you have certain pieces of equipment that you use?
 4 A. Yes.
 5 Q. And do you ever need to have that equipment
 6 serviced?
 7 A. Yes.
 8 Q. In what circumstances might you need to
 9 have it serviced?
 10 A. If something breaks or is not operating
 11 correctly.
 12 Q. And typically, when you -- when a piece of
 13 equipment breaks or is not operating correctly, what
 14 do you do to get it serviced?
 15 A. I usually deal with three different
 16 entities to repair work. Henry Schein. There's a
 17 new company called Dental Fix. And there is a
 18 gentleman who is basically, I guess, an independent.
 19 And then I had another person who was like an
 20 independent repair -- dental repair service.
 21 Q. And -- with regard to those three, is there
 22 one that you use more frequently than the other?
 23 A. Currently, I probably use this Dental Fix
 24 more than the others.
 25 Q. Okay. And when a piece of equipment breaks

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1 down, how quickly do you typically get it fixed?
 2 MR. KASS: Objection. Form.
 3 THE WITNESS: As soon as possible.
 4 Usually, if I can get it within one to two days.
 5 And, again, it depends on -- there's some things in
 6 the office it could wait a few days. But critical
 7 pieces of equipment, compressors, suction, there's
 8 almost an immediate need to get it fixed as soon as
 9 possible.
 10 BY MS. GOFF:
 11 Q. And why is there an immediate need?
 12 A. Because I cannot operate without some of
 13 these pieces of equipment.
 14 Q. Did you correspond with Mr. Sirney via
 15 e-mail?
 16 A. Yes.
 17 Q. And what e-mail address did you use?
 18 A. My e-mail or his e-mail?
 19 Q. Which e-mail address did you use to --
 20 A. It would be my personal e-mail address.
 21 Q. And what's that?
 22 A. It is jjbdds@aol.com.
 23 Q. And did you ever speak with Mr. Sirney on
 24 the telephone?
 25 A. I may have. I'm not certain. I believe

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1 most of our correspondence may have been on --
 2 through -- via e-mail.
 3 Q. So you're not sure whether you spoke with
 4 Mr. Sirney on the telephone?
 5 A. It may have been briefly setting up a
 6 meeting at one point. I don't think there was any
 7 substantive conversations on the phone.
 8 Q. And if you did use the telephone, would you
 9 have used your office phone or your cell phone, or
 10 you don't know?
 11 MR. KASS: Objection. Form.
 12 THE WITNESS: One of the two.
 13 MS. GOFF: Can we go off the record,
 14 please.
 15 (Recess taken, from 10:36 to 10:36.)
 16 BY MS. GOFF:
 17 Q. Have you ever spoken with counsel for Henry
 18 Schein?
 19 A. Yes.
 20 Q. And who did you speak with?
 21 A. John McDonald.
 22 Q. And when did you speak with Mr. McDonald?
 23 A. I'm not sure of the date. I would say
 24 maybe -- I think it was after we started planning
 25 this deposition.

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1 Q. Okay. And was that in person or on the
2 phone?
3 A. On the phone.
4 Q. And about what did you speak with
5 Mr. McDonald?
6 A. Basically, the logistics of a subpoena.
7 And he asked some basic questions as to what I knew
8 about the case and what I knew about buying groups,
9 as well as the rebate program we had with Schein.
10 Q. Okay. And who contacted whom? Did you
11 reach out to him, or he reached out to you?
12 A. I think he reached out to me.
13 Q. Okay. And have you ever spoken with
14 counsel for Patterson, to your knowledge?
15 A. No, I have not.
16 Q. And what about counsel for Benco? Have you
17 ever spoken with them, to your knowledge?
18 A. No, I have not.
19 MS. GOFF: I don't have any other questions
20 for you at this time. I may have further questions
21 after the other respondents ask you questions.
22 MR. KASS: So I'll have a little bit of a
23 redirect, but I'll -- let's see if Patterson or
24 Benco have any additional questions.
25 MS. AMEZCUA: No questions.

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1 THE WITNESS: I just look at them as
2 other -- as one of several dental supply companies
3 that have salespeople in my area.
4 BY MR. GEORGE:
5 Q. Are you aware that the FTC is alleging in
6 this case that Patterson, Schein, and Benco entered
7 into an agreement in 2013 not to do business with
8 buying groups?
9 MS. GOFF: Objection to form. Objection to
10 foundation.
11 THE WITNESS: I've read the -- that
12 information, yes.
13 BY MR. GEORGE:
14 Q. Do you have any knowledge of such an
15 agreement?
16 MS. GOFF: Objection to form. Objection to
17 foundation.
18 THE WITNESS: No, I do not.
19 MR. GEORGE: Thank you. Nothing further.
20 MR. KASS: Can we go off the record for a
21 second.
22 (Recess taken, from 10:40 to 10:40.)
23 EXAMINATION BY MR. KASS
24 BY MR. KASS:
25 Q. So, Dr. Baytosh, you were asked a number of

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1 MR. GEORGE: Just a handful. This is
2 Andrew George.
3 EXAMINATION BY MR. GEORGE
4 BY MR. GEORGE:
5 Q. Hi, Mr. -- or Dr. Baytosh. This will be
6 very quick.
7 A. Great.
8 Q. My name is Andrew George, and I represent
9 Patterson.
10 Just to confirm, has Corydon Palmer ever
11 sought to enter into a buying group or a rebate
12 program with Patterson?
13 A. Not to my knowledge.
14 Q. Okay. And you said that you originally
15 purchased most of your equipment from Benco but have
16 switched to Schein mostly; is that right?
17 A. Correct.
18 Q. And you've also purchased a handful of
19 items from Patterson over the years?
20 A. Very few.
21 Q. In your time dealing with Benco, Schein,
22 and Patterson, have you known them to behave as
23 anything other than competitors?
24 MS. GOFF: Objection to form. Objection to
25 foundation.

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1 questions by Ms. Goff, and I just have a few
2 follow-ups.
3 You were drawing a distinction between a
4 buying group program and a rebate program.
5 Do you recall that discussion, that
6 distinction that you were drawing?
7 A. Yes.
8 Q. Okay. To be clear, the rebate program that
9 you entered into, that one related to the collective
10 purchases of Corydon Palmer's members; is that
11 right?
12 MS. GOFF: Objection to form.
13 THE WITNESS: Correct.
14 BY MR. KASS:
15 Q. Okay. And so this was a group, the Corydon
16 Palmer Dental Society, that got a rebate based on
17 the collective purchases of its members?
18 MS. GOFF: Objection to form and
19 foundation.
20 THE WITNESS: To the best of my
21 understanding, yeah. That sounds about right.
22 BY MR. KASS:
23 Q. Okay. And the benefits that were received
24 were based on a percentage of the collective
25 purchases of the members; right?

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1 A. Yes.
 2 MS. GOFF: Objection to the form.
 3 BY MR. KASS:
 4 Q. And one of the things that you did in
 5 trying to set up the -- this program with Henry
 6 Schein was to focus on the fact that you had a large
 7 number of members who would buy from Henry Schein,
 8 and you wanted a rebate based on their collective
 9 purchases?
 10 MS. GOFF: Objection to form. Leading.
 11 THE WITNESS: Sounds about correct.
 12 BY MR. KASS:
 13 Q. Now, when you discussed with
 14 Michael Sirney -- or Mark Sirney the program, did
 15 you -- you had not put together a buying group at
 16 that time; right? You had not put together what you
 17 considered to be a buying group?
 18 A. No.
 19 MS. GOFF: Objection to form.
 20 BY MR. KASS:
 21 Q. And when you spoke with Mark Sirney, you
 22 suggested that you wanted a program that was based
 23 on the collective purchases of your members; right?
 24 MS. GOFF: Objection to form.
 25 THE WITNESS: I went in to talk to him

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1 about what opportunities were out there. I really
 2 came -- didn't go to this meeting with any
 3 preconceived idea of anything.
 4 BY MR. KASS:
 5 Q. And one of the topics that came up was the
 6 concept of a buying group?
 7 MS. GOFF: Objection to form.
 8 THE WITNESS: Correct.
 9 BY MR. KASS:
 10 Q. Okay. And he told you that it would take
 11 some time to put one together?
 12 A. Correct.
 13 MS. GOFF: Objection to form.
 14 BY MR. KASS:
 15 Q. He was willing to do that, but it would
 16 take more time; is that right?
 17 MS. GOFF: Objection to form.
 18 THE WITNESS: It -- yeah. Yes. According
 19 to our -- what I recollect from our conversation,
 20 yes.
 21 BY MR. KASS:
 22 Q. Okay. Now, at the time you didn't have any
 23 sort of understanding or agreement with your members
 24 that they would, in fact, purchase from Henry
 25 Schein? There was no commitment from the members?

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1 MS. GOFF: Objection to form. Foundation.
 2 THE WITNESS: I'm not sure I understand the
 3 question.
 4 BY MR. KASS:
 5 Q. So you didn't put together a group where
 6 you would go to Henry Schein and say, Look, we've
 7 got all of our members together. They're going to
 8 commit to purchasing from Henry Schein?
 9 MS. GOFF: Objection to form and
 10 foundation.
 11 THE WITNESS: No, I didn't go in with that
 12 idea at all.
 13 BY MR. KASS:
 14 Q. And you didn't go in with a process where
 15 you would say, I want to negotiate a formulary of
 16 very specific products, where we can get additional
 17 discounts on these select products that our members
 18 would buy, so that you can negotiate a lower price?
 19 MS. GOFF: Objection to form and
 20 foundation.
 21 BY MR. KASS:
 22 Q. Did you do that?
 23 A. No, I did not.
 24 Q. Okay. To do those kinds of things, that
 25 might take some time; is that right?

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1 MS. GOFF: Objection to form and
 2 foundation.
 3 THE WITNESS: Correct.
 4 BY MR. KASS:
 5 Q. You would actually have to go to your
 6 members and have discussions with them about the
 7 scope of their commitment and what they were willing
 8 to do?
 9 MS. GOFF: Objection to form.
 10 THE WITNESS: It's my understanding that --
 11 that sounds like what it would take to set up a
 12 buying group, yes.
 13 BY MR. KASS:
 14 Q. And you weren't really that interested in
 15 doing that; is that right?
 16 MS. GOFF: Objection to form.
 17 BY MR. KASS:
 18 Q. You personally.
 19 A. No.
 20 Q. You thought maybe Mary Shaffer might be
 21 interested in doing that?
 22 MS. GOFF: Objection to form.
 23 THE WITNESS: Yeah, I thought Dr. Shaffer
 24 would be willing to do this.
 25 ///

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1 BY MR. KASS:
 2 Q. Okay. And you left it up to her to do
 3 that; is that right?
 4 A. Yes.
 5 MS. GOFF: Objection to form.
 6 Sorry. Could you please just pause and
 7 give me a chance to object.
 8 THE WITNESS: Okay. I'm sorry.
 9 MS. GOFF: Thank you.
 10 BY MR. KASS:
 11 Q. Now, I think you testified that Mr. Sirney
 12 said that you could set up a buying group in the
 13 future if you would like.
 14 Do you recall that testimony?
 15 MS. GOFF: Objection to form.
 16 THE WITNESS: Yes.
 17 BY MR. KASS:
 18 Q. And you were asked the question, well,
 19 Mr. Sirney didn't give you a specific time frame of
 20 how long it would take to set up such a buying
 21 group; is that right?
 22 MS. GOFF: Objection to form.
 23 THE WITNESS: Repeat that again.
 24 BY MR. KASS:
 25 Q. You were asked the question of did

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1 Mr. Sirney give you a time frame for setting up a
 2 buying group?
 3 MS. GOFF: Objection to form.
 4 BY MR. KASS:
 5 Q. And I think your answer was, No.
 6 Do you recall that?
 7 A. Yes. He did not set up a time frame.
 8 Q. Okay. And you didn't, either, propose a
 9 time frame; is that right?
 10 MS. GOFF: Objection to form.
 11 THE WITNESS: No, I did not.
 12 BY MR. KASS:
 13 Q. Now, at the end of the negotiations, what
 14 occurred was that you entered into a contract with
 15 Henry Schein based on the collective purchases of
 16 the Corydon Palmer group that provided a rebate on
 17 their purchases; is that fair?
 18 MS. GOFF: Objection to form and
 19 foundation.
 20 THE WITNESS: Yes.
 21 BY MR. KASS:
 22 Q. Okay. And, again, you consider this to be
 23 a benefit to the members of the Corydon Palmer
 24 Society?
 25 MS. GOFF: Objection to form.

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1 THE WITNESS: Yes.
 2 BY MR. KASS:
 3 Q. Now, you talked earlier about whether
 4 setting up a buying group was worth looking into.
 5 Do you remember that testimony?
 6 A. Yes.
 7 Q. And I think you said it's worth looking
 8 into; is that right?
 9 A. Sounds correct.
 10 Q. Okay. But you personally didn't think it
 11 was worth looking into for yourself. You thought --
 12 MS. GOFF: Objection.
 13 BY MR. KASS:
 14 Q. -- it's worth -- somebody might,
 15 theoretically, be -- it might be worth looking into,
 16 but you yourself weren't interested in doing that;
 17 is that fair?
 18 MS. GOFF: Objection to form and
 19 foundation.
 20 THE WITNESS: I think because my knowledge
 21 of what a buying group was at that time was pretty
 22 limited, that I really didn't have an opinion on,
 23 you know, whether we should set this up or pursue
 24 this.
 25 ///

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1 BY MR. KASS:
 2 Q. Okay. And you were asked whether buying
 3 groups reduce the price of supplies.
 4 Do you remember that testimony?
 5 A. Yes.
 6 Q. And I think you thought that they might?
 7 A. Yes.
 8 Q. Have you ever compared the prices that
 9 buying groups offer versus the individual prices
 10 that dentists actually pay?
 11 MS. GOFF: Objection to form.
 12 THE WITNESS: I've never looked at another
 13 buying group or don't know where I would even start
 14 to look for a comparison.
 15 BY MR. KASS:
 16 Q. And you understand that buying groups often
 17 take a cut; they actually get paid by the suppliers,
 18 so there's an added cost of dealing with a buying
 19 group; is that right?
 20 MS. GOFF: Objection to form. Leading.
 21 THE WITNESS: I really don't know.
 22 BY MR. KASS:
 23 Q. Okay. So is it fair to say that you don't
 24 know whether buying groups actually lower the costs
 25 or don't lower the costs?

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1 MS. GOFF: Objection to form.
 2 THE WITNESS: I don't have an opinion one
 3 way or the other on that.
 4 MR. KASS: Okay. I think that's all I
 5 have.
 6 MS. GOFF: Let's go off the record.
 7 (Recess taken, from 10:48 to 10:58.)
 8 EXAMINATION BY MS. GOFF
 9 BY MS. GOFF:
 10 Q. Dr. Baytosh, just a few more questions for
 11 you.
 12 A. Sure.
 13 Q. Going back to what you were just discussing
 14 with Mr. Kass, talking about the proposal, do you
 15 recall that you testified that Mr. Sirney gave you a
 16 proposal for a rebate program at your in-person
 17 meeting with him sometime in late 2014?
 18 A. Yes.
 19 Q. And am I correct that the rebate program
 20 started effective January 1st, 2015? And feel free
 21 to look at CX4092 if that's helpful.
 22 A. Correct.
 23 Q. And at the meeting with Mr. Sirney, the
 24 in-person meeting that you've testified about, did
 25 you discuss the specific terms of a rebate program

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1 at that meeting?
 2 A. No, we did not.
 3 Q. What did you discuss at that meeting in
 4 terms of the terms of the rebate program?
 5 A. Just basically what he had in -- I think he
 6 gave me a copy of the agreement that he had with the
 7 Stark County Dental Society.
 8 Q. And did he tell you that Corydon Palmer
 9 could set up something similar to what was set up
 10 with Stark County Dental Society?
 11 A. Yes.
 12 Q. Okay. So he showed you at that meeting
 13 what was set up with Stark County Dental Society?
 14 A. Yes.
 15 Q. And did Mr. Sirney, at that meeting, say
 16 anything that would lead you to believe that Schein
 17 was open to doing a buying group?
 18 MR. GEORGE: Objection. Asked and
 19 answered.
 20 THE WITNESS: Would you repeat the
 21 question, please.
 22 BY MS. GOFF:
 23 Q. Sure.
 24 Did Mr. Sirney say anything to you at that
 25 meeting with him, that in-person meeting, that would

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1 lead you to believe that Schein was open to doing a
 2 buying group?
 3 MR. KASS: Same objection. And form.
 4 MR. GEORGE: Same objection.
 5 THE WITNESS: He had mentioned the buying
 6 club, and he said that it would be -- or buying
 7 group. And that it would be difficult to set up.
 8 That's probably the extent of our conversation.
 9 BY MS. GOFF:
 10 Q. Am I correct that you testified that you
 11 never dealt with a buying group before; is that
 12 right?
 13 A. That is correct.
 14 Q. You talked about, with Mr. Kass, what it
 15 would take to set up a buying group.
 16 Do you recall that?
 17 MR. KASS: Objection to the form.
 18 MS. GOFF: I'll withdraw my question.
 19 THE WITNESS: Okay.
 20 BY MS. GOFF:
 21 Q. Do you have any personal knowledge of what
 22 it takes up to set up a buying group? I was just
 23 trying to sort of set the background.
 24 A. Oh.
 25 Q. But let me just ask the question.

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1 Do you have any personal knowledge of what
 2 it would take to set up a buying group?
 3 A. I have no idea.
 4 Q. Okay. So beyond what Mr. Sirney told you
 5 about setting up a buying group, do you have any
 6 other information about what it would take to set up
 7 a buying group?
 8 MR. KASS: Objection. Form.
 9 THE WITNESS: No, I really don't.
 10 BY MS. GOFF:
 11 Q. And when you went into the meeting with
 12 Mr. Sirney, did you have any information at that
 13 time about what it would take to set up a buying
 14 group?
 15 MR. KASS: Same objection.
 16 THE WITNESS: No, I did not.
 17 BY MS. GOFF:
 18 Q. Okay. With regard to the rebate program
 19 that was set up between Corydon Palmer and Henry
 20 Schein, is it correct that the more that Corydon
 21 Palmer members purchase from Henry Schein, the
 22 greater the potential rebate that goes back to
 23 Corydon Palmer?
 24 A. Yes. Up to -- up to the capped limit that
 25 they would be willing to rebate our dental society.

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1 Q. Okay. And does Corydon Palmer guarantee
2 that its members will purchase any minimum amount
3 from Henry Schein?
4 A. We don't guarantee that our members will
5 stay with Schein or we don't encourage them to
6 purchase for this rebate.
7 Q. Okay. So Corydon Palmer doesn't require
8 its members to purchase from Henry Schein?
9 A. Absolutely not.
10 Q. And its members are free to buy from
11 whomever, whichever company they choose?
12 A. That is correct.
13 Q. Just going back to the discussion of a
14 buying group versus a rebate program, when you spoke
15 with Mr. Sirney about a buying group, did you have
16 in mind something where the individual members of
17 Corydon Palmer would get a discount on their
18 purchases?
19 MR. KASS: Objection. Form.
20 MR. GEORGE: Objection. Asked and
21 answered.
22 THE WITNESS: That would be my basic
23 understanding of what a buying group would be, yes.
24 BY MS. GOFF:
25 Q. And did you understand that Mr. Sirney had

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1 those supplies.
2 MS. GOFF: I don't have any other questions
3 right now.
4 MR. KASS: I don't either.
5 MS. GOFF: Okay. Thank you very much for
6 coming in, Dr. Baytosh.
7 THE WITNESS: My pleasure.
8 MS. GOFF: Anyone else on the phone have
9 questions? Sorry. Before we close.
10 MS. AMEZCUA: No questions.
11 MR. GEORGE: Nothing more. Thank you.
12 (Deposition concluded at 11:06 a.m.)
13 ---oOo---
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1 the same understanding of what a buying group would
2 be?
3 MR. KASS: Objection. Form. Foundation.
4 Calls for speculation.
5 THE WITNESS: I wouldn't -- wouldn't know.
6 BY MS. GOFF:
7 Q. Did Mr. Sirney explain to you what he
8 thought a buying group would be?
9 A. I think in pretty basic terms, he did. And
10 it would be -- again, taking the information from
11 all the dentists in our society, what materials they
12 buy, paring it down to a formulary, and then being
13 able to purchase those materials at a discount.
14 Q. Okay. And the -- and who would get the
15 benefits of those discounts?
16 MR. KASS: Objection. Form. Calls for
17 speculation. Improper hypothetical.
18 THE WITNESS: I would expect it to be the
19 offices who were purchasing and participating in --
20 you're talking about within a buying group, if we
21 had set one up?
22 BY MS. GOFF:
23 Q. Yes.
24 A. I think it would be the offices, the
25 individual group of dentists who would be purchasing

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1 CERTIFICATE OF WITNESS
2
3
4
5 I, the undersigned, declare under penalty
6 of perjury that I have read the foregoing
7 transcript, and I have made any corrections,
8 additions or deletions that I was desirous of
9 making; that the foregoing is a true and correct
10 transcript of my testimony contained therein.
11
12 EXECUTED this ____ day of _____,
13 2018 at _____,
14
15
16
17 _____
18 JOSEPH J. BAYTOSH, DDS
19
20
21
22
23
24
25

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
)	
IN THE MATTER OF:)	Docket No.
)	D09379
BENCO DENTAL INC., et al.)	
_____)	

VIDEOTAPED DEPOSITION OF JOSEPH CAVARETTA
Chicago, Illinois
Thursday, July 26, 2018

Reported by:
RACHEL F. GARD, CSR, RPR, CLR, CRR
JOB NO. 142941

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July 26, 2018
9:10 a.m.

Videotaped deposition of JOSEPH CAVARETTA,
at the offices of Locke Lord, LLP, 111 South
Wacker Drive, Suite 4100, Chicago, Illinois,
pursuant to notice before Rachel F. Gard,
Illinois Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, Certified Realtime Reporter.

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1 THE VIDEOGRAPHER: We are now on the
2 record. This marks the beginning of media
3 No. 1 in the deposition of Joseph Cavaretta
4 in the matter of Benco Dental, Inc., et al.

5 This deposition is being held at
6 111 South Wacker Drive, Chicago, Illinois,
7 on July 26th, 2018, and the time is now
8 9:10 a.m.

9 Will attorneys please identify
10 themselves.

11 MR. SOLOMON: Ronnie Solomon, on
12 behalf of complaint counsel for the FTC.

13 MR. McDONALD: John McDonald on
14 behalf of Henry Schein and the witness.

15 MR. LONG: Jim Long on behalf of
16 Patterson.

17 MR. RACOWSKI: Ken Racowski of
18 Buchanan, Ingersoll & Rooney representing
19 Respondent Benco Dental Supply Company.

20 THE VIDEOGRAPHER: Will the court
21 reporter please swear in the witness.
22 (Witness sworn.)

23 //
24 //
25 //

1 JOSEPH CAVARETTA,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. SOLOMON:

6 Q. Good morning, Mr. Cavaretta.

7 A. Cavaretta.

8 Q. My name is Ronnie Solomon. I'm an
9 attorney at the Federal Trade Commission. You
10 understand you're testifying under oath today,
11 right?

12 A. I do.

13 Q. You've had your deposition taken
14 before?

15 A. I have.

16 Q. So you know how this works. I'm
17 just going to go over a few quick things for
18 the record.

19 First, I'll ask that you please let
20 me finish my question completely when I ask you
21 a question today. Just so we have a clean
22 record, give your counsel a chance to object
23 before providing a response.

24 Is that okay?

25 A. Okay.

1 Q. The second thing is, in response to
2 all of my questions, I'll ask you provide a
3 clear verbal response and avoid anything like
4 head nods and gestures. That's hard for the
5 court reporter to take down. Okay?

6 A. I understand.

7 Q. The third thing is, if at any point
8 today you want to take a break, go to the
9 bathroom, grab a drink of water, just let me
10 know, and we can go ahead and take a break?

11 A. Sounds good.

12 Q. If at any point today I ask you a
13 question that you don't understand a question,
14 do let me know, and I'll do my best to rephrase
15 the question.

16 Mr. Cavaretta, is there any reason
17 why you can't provide truthful and accurate
18 testimony here today?

19 A. No.

20 Q. And how did you prepare for today's
21 deposition?

22 A. I had a meeting yesterday with my
23 legal counsel.

24 Q. Are you referring to outside
25 counsel?

1 A. Referring to John.

2 Q. And was anyone else present at the
3 meeting?

4 A. Yes. Colin was present at the
5 meeting also.

6 Q. Colin Cass?

7 A. Correct.

8 Q. Was anyone else present?

9 A. Sarah came in and out, but it was
10 unrelated to anything that we're discussing.

11 Q. Is Sarah -- is Sarah also your legal
12 counsel?

13 MR. McDONALD: Yes, Sarah Lancaster
14 with my firm.

15 Q. Anyone else?

16 A. I did call Andrea Height yesterday,
17 as I know I am part of the -- represent the
18 corporation as it pertains to buying groups,
19 and I had a question about one of the groups
20 called IDA, and I just needed clarification
21 because I wasn't sure if they were a DSO or a
22 buying group. So I asked her a couple
23 questions.

24 And then after that, she had
25 transitioned that relationship over to a

1 gentleman by the name of Daniel Hobson, who I
2 also called to try to get an update on the IDA.

3 Q. And Daniel Hobson Andrea Height are
4 both Schein employees?

5 A. They are.

6 Q. Did you speak with anyone else to
7 prepare for today's deposition?

8 A. No, I did not.

9 Q. Okay. How did you prepare, in
10 addition to meeting with your legal counsel and
11 talking to Ms. Height and Mr. Hobson, did you
12 review any documents?

13 A. I did review some documents, yes.

14 Q. How many documents did you review?

15 A. 30, 35.

16 Q. Were these all Henry Schein internal
17 documents?

18 A. Yes, they were.

19 Q. And did any documents that you
20 reviewed in preparation for today's deposition
21 refresh your recollection as to anything?

22 A. I -- some of the emails I read, I
23 had to -- I don't remember writing them. So,
24 yeah, it helped me be aware of subject content.

25 Q. Do you recall any specific emails?

1 A. That I -- that refreshed my memory?

2 Q. Right.

3 A. There was an email about PMGS, and
4 there was -- now I'm trying to remember which
5 ones refreshed my memory. There were several
6 conversations that I said, okay, I don't
7 remember those conversations, but I'm reading
8 the email, and now I remember.

9 Q. Did you do anything else to prepare
10 for today's deposition?

11 A. No.

12 Q. So you met with your legal counsel,
13 you spoke to Ms. Height and Mr. Hobson, and you
14 reviewed about 30 to 35 documents prior to
15 today?

16 A. Correct.

17 Q. Do you recall giving sworn testimony
18 to the FTC on March 23rd, 2017, in Chicago?

19 A. I do.

20 Q. I'm going to refer to that
21 throughout the day as your investigational
22 hearing testimony.

23 Does that make sense?

24 A. I believe so, yes.

25 Q. That was what the proceeding was

1 called, an investigational hearing.

2 A. Okay.

3 Q. And I just want to get a few
4 preliminary things on the record before we
5 start today.

6 You told the truth when you
7 testified at your investigational hearing last
8 year; is that correct?

9 A. I did.

10 Q. And after the investigational
11 hearing, did you review the transcript?

12 A. Yes, I did.

13 Q. Okay. When did you review it?

14 A. It was probably within 30 to 45 days
15 after the hearing.

16 Q. Was it the only time you reviewed
17 the transcript again?

18 A. Yes.

19 Q. And you didn't review the transcript
20 in preparation for today's testimony?

21 A. I did not.

22 Q. And why did you review the
23 transcript last year after the investigational
24 hearing?

25 A. I was asked to do so.

1 Q. Did you provide corrections to it?

2 A. I believe there were a couple of
3 grammatical corrections.

4 Q. Did you find any inaccuracies in
5 your testimony when you reviewed the
6 transcript?

7 MR. McDONALD: Well, there's --
8 there's an errata sheet, and the errata
9 sheet will speak for itself as to whether
10 or not it's a typographical error or an
11 inaccuracy.

12 MR. SOLOMON: Got it.

13 Q. So any inaccuracies that you noticed
14 in your investigational hearing you would have
15 documented and provided to your legal counsel
16 last year; is that right?

17 A. Not -- not that I recall. But if --
18 if we want to review it again, I have no
19 problem doing so.

20 Q. Okay. But sitting here today, you
21 don't recall anything inaccurate in your
22 investigational hearing testimony?

23 A. I don't recall anything.

24 Q. Okay. And sitting here today, do
25 you have any reason to believe that any portion

1 of your testimony was not truthful or accurate
2 last year?

3 A. No.

4 Q. And you were deposed by the Texas
5 Attorney General's office on May 4th, 2016; is
6 that right?

7 A. I was deposed by them, correct.

8 Q. And you were also deposed by the
9 plaintiffs in the Source One litigation on
10 January 24, 2016; is that right?

11 A. That is correct.

12 Q. And you told the truth during those
13 depositions also, correct?

14 A. I did.

15 Q. You have no reason to believe that
16 any portion of your testimony in those two
17 proceedings was not truthful or accurate?

18 MR. McDONALD: Well, I'll object to
19 the form on that. He has an errata sheet
20 for the Source One and class case, and he's
21 never seen his EUO transcript.

22 MS. KAHN: Got it.

23 Q. So for the Source One litigation, I
24 understand that you provided an errata sheet
25 with some corrections to the transcript; is

1 that correct?

2 A. Yes.

3 Q. Okay. And aside from what's listed
4 in your errata sheet, do you have any reason to
5 believe that any portion of your testimony was
6 not accurate?

7 A. No, I don't.

8 Q. And do you have any reason to
9 believe that any portion of your testimony was
10 not truthful?

11 A. No, I don't.

12 Q. Okay. And your counsel just
13 informed me that for your deposition in the
14 Texas Attorney General proceeding, you were not
15 able to review your transcript.

16 Sitting here today, do you have any
17 reason to believe that any portion of it was
18 not -- strike that.

19 Sitting here today, do you have any
20 reason to believe that any portion of your
21 testimony was not truthful?

22 A. No, I don't.

23 Q. And sitting here today, do you have
24 any reason to believe that any portion of your
25 testimony was not accurate?

1 MR. McDONALD: Object to the form.

2 A. No, I don't.

3 Q. Mr. Cavaretta, are you still the VP
4 of sales for the western area of Henry Schein
5 Dental?

6 A. No, I'm not.

7 Q. What is your current position?

8 A. I'm currently the VP of sales for
9 the eastern area for Henry Schein Dental.

10 Q. And when did you start in that
11 position?

12 A. January of 2018.

13 Q. So prior to January of 2018, you
14 were VP of sales for the western area in Henry
15 Schein Dental?

16 A. I was.

17 Q. And you were in that role since
18 February of 2015?

19 A. That is correct.

20 Q. Okay. So you've had a title change
21 since you provided -- since you last provided
22 testimony in May of 2017. Has your title
23 change involved -- strike that.

24 Has your change in title come with
25 any new duties and responsibilities?

1 A. I'm now responsible for the east
2 instead of the west.

3 Q. And what does the eastern area
4 consist of?

5 A. If you looked at the map and
6 followed the Mississippi River, I'm essentially
7 responsible for the states that are east of the
8 Mississippi instead of the west.

9 Q. So the entire Continental United
10 States east of the Mississippi River is within
11 your purview?

12 A. Essentially, yes.

13 Q. Apart from the geographic change,
14 are your duties and responsibilities different
15 in any way from your duties and
16 responsibilities as VP of sales for the western
17 area?

18 A. No, they are not.

19 Q. Okay. Do you still report to
20 Mr. Steck?

21 A. I do.

22 Q. And Mr. Sullivan, as head of HSD, is
23 still your boss?

24 MR. McDONALD: Object to the form.

25 A. Dave reports to Tim, so -- and I

1 report to Dave.

2 Q. Do you still provide quarterly
3 updates to Mr. Sullivan?

4 A. I -- we have meetings, but there's
5 not a specific quarterly update that I provide.

6 Q. How often would you say that you
7 meet with Mr. Sullivan?

8 A. We have meetings probably between
9 every 2 to 3 months, and it's group meetings.

10 Q. Do these meetings have a specific
11 name?

12 A. They used to be called 6 by 6
13 meetings. I don't know what they're called, if
14 we changed the name or not.

15 Q. What is the purpose of these
16 meetings?

17 A. The meetings is just to give an
18 update on what's happening in the industry and
19 what is happening in everyone's scope of
20 responsibility.

21 Q. Who else is usually present at these
22 meetings?

23 A. Dave --

24 MR. McDONALD: Object to the form.
25 Go ahead.

1 A. Dave Steck, Jake Meadows, Glen
2 Showgren, Chiprian Thomas, Jim Loiacono, Paul
3 Hinsch. He's retiring now, so I don't think
4 he's part of the meetings. We haven't had one
5 in a little while, so ...

6 Q. All of these individuals are
7 employed within Henry Schein Dental?

8 A. Correct.

9 Q. How long or -- strike that.

10 When did you first start having
11 occasional meetings where Mr. Sullivan was
12 present?

13 A. Well, I have been part of the
14 corporate office since 2006, so I've had --
15 I've been part of meetings with him since 2006.

16 Q. So since 2006, how often would you
17 say, on average, you meet with Mr. Sullivan on
18 a yearly basis?

19 MR. McDONALD: Object to the form.

20 You need to -- Ronnie, to be clear, I think
21 you need to tell him what you mean by
22 "meet." I mean, if you just mean run into
23 him, because they've worked in the same
24 building for a number of years, or formal
25 meetings or what?

1 Q. So I'm referring to any informal or
2 formal meeting where you have had a discussion
3 with Mr. Sullivan, other than, Hello, how are
4 you?

5 A. In 12 years, I don't know if I could
6 give an accurate number on that just because
7 our offices have been pretty close, and there's
8 different -- there's different, you know,
9 meetings on sales and there could be a
10 half-hour meeting and we don't talk to each
11 other. It's just an update on sales. So I'm
12 just struggling a little bit with giving you an
13 accurate number. I'm not really sure.

14 Q. Would you say it's more than ten
15 times per year?

16 A. I would say it's less than ten where
17 there's a 6 by 6 type of meeting.

18 Q. Okay. And how often do you
19 communicate with Mr. Sullivan by telephone?

20 A. Just probably in a year, four to
21 five times maybe. Again, I can't be completely
22 sure or accurate on that. It's just ...

23 Q. How often would you communicate with
24 Mr. Sullivan directly via email?

25 MR. McDONALD: Object to the form.

1 Overly broad. Vague.

2 A. Over ten times.

3 Q. And do I understand this correctly,
4 that you and Mr. Sullivan work in the same
5 physical location in West Allis, Wisconsin?

6 A. We do.

7 Q. How far is Mr. Sullivan's office
8 from yours?

9 A. Five offices away now.

10 Q. Do you ever pop in and talk to
11 Mr. Sullivan on occasion?

12 A. Yes. I'm just -- as I'm pausing,
13 I'm thinking of it's not -- it's not on a
14 rare -- it's not on a regular occasion just
15 because everyone is so busy, so a little bit
16 over ten times a year.

17 Q. Do you ever see Mr. Sullivan outside
18 of work?

19 A. I have.

20 Q. How often?

21 A. We essentially run the Tough Mudder
22 each year.

23 Q. Any other instances where you would
24 see Mr. Sullivan outside of work?

25 A. Earlier on in my career I would,

1 just because we were moving into Wisconsin and
2 didn't know anybody. So maybe a couple times a
3 year.

4 Q. Are you a part of any trade or
5 industry associations such as the Dental Trade
6 Alliance?

7 A. I'm not.

8 Q. Do you sit on any boards -- do you
9 sit on the boards of any dental industry
10 associations?

11 MR. McDONALD: Currently? Is that
12 what your question is, currently?

13 Q. Currently.

14 A. No, I do not.

15 Q. Have you ever?

16 A. I was on the Oral Health America
17 board in 2007/2008.

18 Q. How long were you on that board?

19 A. 2007 and 2008. It would be -- it
20 was a 2-year term, and I believe the years were
21 '07-'08.

22 Q. What is the oral health -- strike
23 that.

24 What is the Oral Health America?

25 A. Their mission is to provide better

1 oral healthcare to those who are not able to
2 afford it.

3 Q. And what were your duties and
4 responsibilities on that board?

5 A. Show up to a board meeting twice a
6 year, usually around the Chicago Midwinter
7 meeting, and vote on things.

8 Q. Got you.

9 Was anyone from any of Schein's
10 competitors also a board member?

11 A. Not that I remember.

12 Q. So no one from Benco was on the
13 board?

14 A. Not that I recall.

15 Q. No one from Patterson was on the
16 board?

17 A. Not that I recall.

18 Q. Do you attend any dental conferences
19 or trade shows as part of your job at Schein?

20 A. I do.

21 Q. Which ones?

22 A. So this year, I attended the Yankee
23 Dental Conference in Boston, I attended the
24 Hinman meeting in Atlanta, and I attended the
25 Chicago Midwinter meeting in Chicago.

1 Q. Do you attend these three
2 conferences regularly?

3 A. The Yankee and the Hinman I have
4 been to many, many years ago. This is the
5 first year I've probably been to them in
6 probably 10 years.

7 The Chicago Midwinter is probably
8 every other year for me. But now that I'm
9 responsible for the east, that's why I was
10 going to those meetings.

11 Q. Chicago is in your geography
12 currently?

13 A. Yeah, correct.

14 Q. How about the Hinman meeting?

15 A. How about it in what way?

16 Q. How often do you attend that one?

17 A. This was my first year back in
18 probably 10 years.

19 Q. So in the last 10 years, have you
20 attended any other dental industry conferences
21 or trade shows?

22 A. I have.

23 Q. Do you recall which ones?

24 A. I do. I have attended the CDA
25 south. Do you want to know how many times

1 or ...

2 Q. If you have an approximation.

3 A. Ten times.

4 CDA north, five to six times.

5 Depending on where the ADA meeting is, I've
6 attended that five to six times. I've attended
7 the TDA meeting twice.

8 Q. Which years did you attend the TDA
9 meetings?

10 A. The first time, I don't recall the
11 exact date, but I would tell you it was in the
12 time frame of '09/'11, and then the most recent
13 time was 2 years ago.

14 Q. So 2016?

15 A. I'm just trying to think if it's '16
16 or '17. But it -- so I didn't go this year,
17 which would have been -- so it could have been
18 '17.

19 Q. Okay.

20 A. I believe it was '17.

21 Q. Any other meetings that you've
22 attended as part of your job in the last 10
23 years?

24 A. I have. There's -- there's various
25 regional meetings. I don't know if that's what

1 you're asking me also.

2 Q. Sure. Do you recall which ones?

3 A. Sure. I've -- I've attended the
4 Arizona state meeting, and I've -- I've
5 attended the Utah state meeting.

6 Are you asking for my career or are
7 you asking for time frame?

8 Q. Just the last 10 years.

9 A. So Utah, Utah state meeting. Let's
10 see here. I've attended the Wisconsin state
11 meeting. I'm just going through all the
12 states. Hawaii. And I believe that's what I
13 remember, that's what I recall.

14 Q. Does Mr. Sullivan ever attend any of
15 the meetings you listed as well?

16 MR. McDONALD: Object to the form.
17 Lack of foundation.

18 A. I know he has attended the CDA at
19 some point, the ADA at some point. I don't
20 know exactly when those years because we don't
21 go to all of them. I know he's attended
22 Chicago. So at some point during the last 10
23 years, he's attended those meetings.

24 Q. Okay. For the national meetings, so
25 not the regional ones, the ones you listed like

1 Hinman, Chicago, CDA, ADA, how many people from
2 Schein usually attend those meetings?

3 MR. McDONALD: Object to the form.

4 Vague. Overly broad. Lack of foundation.

5 A. So the Yankee meeting -- are you
6 talking sales reps and everyone?

7 Q. Anyone who's --

8 A. From Schein?

9 Q. -- from Schein there on behalf of
10 Schein.

11 MR. McDONALD: Same objection.

12 A. It could be anywhere from a hundred
13 to potentially 300 people.

14 Q. From Schein?

15 A. From Schein. So, for example,
16 Chicago. That would be one where -- there's a
17 lot of people that register. So if I could
18 take a step back. Registration is usually
19 that. How many people actually attend, I
20 don't -- you know, I don't have a tracker, so I
21 don't count, but that's the registrations, I
22 would say.

23 Q. Do you think it's half of the amount
24 of people that register who actually attend?

25 MR. McDONALD: Object to the form.

1 A. I don't know.

2 Q. Have you ever attended the Dental
3 Trade Alliance annual meeting?

4 A. I have not.

5 Q. Do you know who attends those
6 meetings from Schein?

7 MR. McDONALD: Object to the form.
8 Lack of foundation.

9 A. Through conversation, I know that --
10 I know that Tim has attended those meetings. I
11 know that Dave has attended those meetings.

12 Q. What is the purpose of Schein
13 attending trade shows and dental industry
14 meetings such as the ones we just discussed?

15 MR. McDONALD: Object to the form.

16 A. So you're talking about the shows of
17 the Chicago, the CDAs?

18 Q. Correct.

19 A. Okay. The objective there is to
20 sell our stuff, sell equipment, sell
21 merchandise.

22 Q. To customers who are presently at
23 the show?

24 A. Correct.

25 Q. Are there any other objectives to

1 Schein's attendance at those meetings?

2 A. A benefit of that meeting is being
3 able to talk to sales representatives and CT
4 members. It's part of our culture.

5 Q. Anything else?

6 A. We have met with manufacturers to
7 touch base with manufacturers.

8 Q. Anything else?

9 A. And then, of course, to support the
10 dental societies. The shows are not real
11 profitable, and really the main reason we do it
12 is to support the dental societies.

13 Q. Any other reasons?

14 A. Not that I can think of sitting here
15 right now.

16 Q. So when you said one objective is to
17 sell products to customers -- I think that's
18 what you said -- how does Schein do that at
19 trade shows and meetings?

20 A. We have a booth, or several booths.
21 We have a big footprint. We actually don't
22 even call it a booth. We set up our equipment.
23 So we'll have technology set up there. We'll
24 have traditional equipment set up there.

25 We'll have merchandise displayed

1 there. We have then -- our sales reps will
2 come in, and, unfortunately, there's too much
3 standing around, and you're waiting for
4 customers or by appointment.

5 The customers show. We take them to
6 whatever they're potentially interested in, and
7 we talk to them about how it benefits their
8 practice, and hopefully they sign the deal.

9 Q. So you discuss potential agreements
10 at these shows with customers?

11 MR. McDONALD: Object to the form.

12 A. Agreements to buy equipment or to
13 buy something? Is that what you're asking?

14 Q. Correct.

15 A. Sure. If someone is going there and
16 they want to buy a pan, then we do a quote for
17 them, they sign it, we agree to sell it to
18 them, they agree to buy it and put it in sell
19 date together.

20 Q. Do you ever discuss long-term supply
21 agreements at trade shows?

22 MR. McDONALD: Object to the form.

23 Overly broad.

24 A. So in our offerings to the customer,
25 there's a potential that they would be signing

1 up on a privileges program or something like
2 that where they're committing to do merchandise
3 to us. So, yeah, that -- that could happen.

4 Q. How often would you say that
5 happens?

6 MR. McDONALD: Object to the form.

7 A. That would be a total guess.

8 Q. Okay. I don't want you to guess.
9 If you know --

10 A. I don't.

11 Q. Okay. You're familiar with -- well,
12 actually, first let me just go through a few
13 definitions for the record. You'll understand
14 that today when I say "Schein," I'm referring
15 to Henry Schein, correct?

16 A. Henry Schein Dental?

17 Q. Just Henry Schein, the company.

18 A. Okay.

19 Q. And, obviously, you just mentioned
20 it. There's a lot of different divisions.
21 There's a medical division, a veterinary
22 division. But when I say "Schein," I'm
23 referring to anything relating to its dental
24 business.

25 Does that make sense?

1 A. It does.

2 MR. McDONALD: Well, I mean, I don't
3 understand that, and, as his lawyer, I need
4 you to clarify because you first said, When
5 I say "Schein," I'm referring to Henry
6 Schein, and he said, Henry Schein Dental?
7 And you said, No, just Henry Schein, the
8 company, meaning the mother ship. And then
9 now you just said Henry Schein means Henry
10 Schein Dental. So what -- which is it?

11 MR. SOLOMON: So I said -- when I
12 say "Henry Schein," I'm referring to
13 Schein. That was the distinction I was
14 making there.

15 MR. McDONALD: So Henry -- Henry
16 Schein means Henry Schein, Inc. Schein
17 means Henry Schein Dental?

18 MR. SOLOMON: No. I don't have the
19 realtime in front of me, but I think what I
20 said was, if I say "Schein," I'm referring
21 to Henry Schein. That was the simple
22 distinction I was trying to make. I'm not
23 going to say "Henry Schein" every time.
24 I'm just going to say "Schein." Is that
25 okay?

1 MR. McDONALD: But then you later
2 said when I say "Schein" I mean Henry
3 Schein Dental.

4 MR. SOLOMON: So let me just -- let
5 me just get through it.

6 Q. So if I say Henry Schein, I'm
7 referring to Schein. You'll understand that,
8 right?

9 A. I'll answer it as it's Henry Schein
10 Dental.

11 Q. Okay. That's great.

12 And when we talk about Schein today,
13 we'll be talking about Schein's dental
14 business, not its medical or veterinary
15 business?

16 Does that make sense?

17 A. That makes sense.

18 Q. You referred to something called
19 Henry Schein Dental. Is that sometimes
20 referred to as HSD?

21 A. It is.

22 Q. And that's different from Henry
23 Schein special markets division within the
24 dental business, correct?

25 MR. McDONALD: Object to the form.

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1 A. So the reason why I'm pausing there
 2 is that it has different leadership, HSD
 3 compared to special markets with inside the
 4 company, yes.
 5 Q. And Tim Sullivan is the head of HSD,
 6 correct?
 7 MR. McDONALD: Object to the form.
 8 Go ahead.
 9 A. Yeah, he's -- he's head of HSD.
 10 Q. And within Schein's dental business,
 11 private practice, dentists have been
 12 traditional customers of Henry Schein Dental or
 13 HSD?
 14 A. Correct.
 15 Q. You've heard the term "buying group"
 16 before, correct?
 17 A. I have.
 18 Q. And do you understand a buying group
 19 to be a collection of independent private
 20 practice dentists?
 21 MR. McDONALD: Object to the form.
 22 A. That's one of the definitions, or
 23 that could be a definition. But there's
 24 varying degrees of buying groups that are out
 25 there.

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1 There's also potentially doctors who
 2 own several practices, so it's just not one.
 3 And they are offering a unique value
 4 proposition that they also have the ability to
 5 influence purchasing. So there's a third-party
 6 endorsement. And also, they can show they can
 7 drive compliance.
 8 So when you have those things, then
 9 we have discussions with these groups and
 10 figure out where they -- where they lay and
 11 decide whether or not to do business with them
 12 or not.
 13 Q. When you say that they're comprised
 14 sometimes of dentists who own multiple offices,
 15 are you referring to small group practices?
 16 A. Yeah, there's --
 17 MR. McDONALD: Object to the form.
 18 Go ahead.
 19 A. There's several definitions, but I
 20 would say that it could be, you know, two to
 21 three offices. It potentially could be up to
 22 seven or more.
 23 With the industry changing the way
 24 it is, we're having to adjust even our
 25 definitions and how -- and how we go to market

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1 Q. When you've used the term "buying
 2 group" in the last 10 years, to what type of
 3 organizations were you referring?
 4 MR. McDONALD: Object to the form.
 5 Overly broad.
 6 A. Over the last 10 years, well, I can
 7 tell you the ones I'm familiar with that were
 8 labeled as buying groups or the ones that -- I
 9 can tell you some of the ones that we have done
 10 business with.
 11 Q. I'm just asking generally when you
 12 used the term "buying group," do you use that
 13 term to refer to a specific type of
 14 organization, such as one that's comprised of
 15 independent private practice dentists?
 16 MR. McDONALD: Object to the form.
 17 A. So Smile Source is a buying group.
 18 So if you're asking me if I was defining that,
 19 that's how I would do it.
 20 Q. So what's your definition of buying
 21 group?
 22 A. My definition of a buying group
 23 is -- it's less of a definition, it's more of a
 24 process for me -- is that we have independent
 25 dentists. So that part is true.

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1 because it's changing quickly.
 2 Q. Are you referring to DSOs as well?
 3 A. DSOs in what way? As a buying group
 4 or DSOs changing quickly?
 5 Q. The small group practices that we're
 6 talking about that can be anywhere from two to
 7 seven offices, do you refer to those as DSOs or
 8 small group practices?
 9 MR. McDONALD: Object to the form.
 10 A. My definition for those individuals
 11 would be more of a small group practice.
 12 Q. Okay.
 13 A. And that's my definition as it
 14 currently stands today.
 15 Q. Do you understand that independent
 16 dentists sometimes choose to become members of
 17 buying groups?
 18 A. I do. Some private practice dentist
 19 would be interested in being part of a buying
 20 group.
 21 Q. And do you understand that buying
 22 groups may offer a variety of services to their
 23 members?
 24 A. Some may; some may not.
 25 Q. Do you understand that one service

1 offered by buying groups may be to negotiate
2 lower supply prices on behalf of their dentist
3 members?

4 MR. McDONALD: Object to the form.

5 A. I'm aware that that's one of the
6 benefits that they will promote to potential
7 members.

8 Q. Do you understand that buying group
9 pool their members' purchasing power to secure
10 discounts on dental products from distributors?

11 MR. McDONALD: Object to the form.

12 A. So they will -- they will promote
13 that. It doesn't necessarily mean that's what
14 will happen, but that's one of the things that
15 they promote.

16 Q. Do you understand that having more
17 purchasing power may allow a buying group to
18 get lower prices on dental products for its
19 members?

20 MR. McDONALD: Object to the form.

21 A. When you're saying "purchasing
22 power," does that mean -- what exactly -- is
23 that volume of customers in the buying group
24 or ...

25 Q. Correct.

1 A. Okay. So based on the amount of
2 business a buying group can bring to the table
3 and when they say that we can drive the
4 compliance of what they're purchasing, we can
5 give volume discounts.

6 So that's how -- I believe what
7 you're referring to as purchasing power is the
8 amount of the volume of business that could
9 come over to Henry Schein.

10 Q. Do you understand that buying groups
11 do not have centralized ownership?

12 A. I'm aware that some buying groups --
13 I'm aware that most buying groups don't own all
14 the practices that are members of the buying
15 group.

16 Q. When you say "most," what do you
17 mean?

18 A. Well, there's --there's some that --
19 there's some buying groups that have -- that
20 have practices, the multiple practices that --
21 an owner could have five practices. So they
22 own those practices but they could still be
23 part of the buying group.

24 Q. And, again, are you referring to
25 small group practices?

1 A. In our definition before, the small
2 group practices would be that definition.

3 Q. Would Schein categorize those
4 practices as private practices?

5 MR. McDONALD: Object to the form.

6 A. Which practices? The small groups?

7 Q. Correct.

8 A. Right now, we would classify those
9 as -- we just changed -- we just changed the
10 verbiage on that, so that would actually be
11 regional group practices -- or local group
12 practices. Sorry.

13 Q. When did that verbiage change?

14 A. Pretty much February/March of this
15 year.

16 Q. So prior to February/March of this
17 year, were those practices referred to as
18 private practices at Schein?

19 A. They're referred to as small group
20 practices.

21 Q. And they fell within HSD?

22 A. Last year they did, yes.

23 Q. And what about this year?

24 A. This year, this year, the numbers,
25 the sales numbers will still show in the P&L

1 for HSD. The responsibility, though, of the
2 strategy and whatnot has changed over to other
3 leadership. It's complicated.

4 Q. Are they within special markets now?

5 MR. McDONALD: Object to the form.

6 A. They would be under special markets
7 and Jake Meadows right now.

8 Q. While you've worked at Schein,
9 you've used the term "group purchasing
10 organization" or "GPO" to refer to buying
11 groups of independent dentists, correct?

12 MR. McDONALD: Object to the form.

13 A. Based on reviewing some documents,
14 GPO is being used in those documents.

15 Q. So you've used the term "group
16 purchasing organization" interchangeably with
17 buying groups of independent dentists while
18 you've been at Schein?

19 MR. McDONALD: Object to the form.

20 A. At times I have, just because there
21 was -- when I was using GPOs, it was new to me.
22 So I didn't know exactly what I was dealing
23 with. But yeah.

24 Q. Do you have an understanding of what
25 a dental service organization or DSO is?

1 A. I do.
 2 Q. And do you understand DSOs to be
 3 dental practices that have common ownership?
 4 A. My definition, as it stands today,
 5 would be that they pretty much own all of or
 6 most of the offices or have ownership in the
 7 offices that they -- under their umbrella,
 8 yeah.
 9 Q. And do you understand that DSOs have
 10 the ability to drive purchasing compliance
 11 based on a formulary?
 12 MR. McDONALD: Object to the form.
 13 A. They have the ability to drive
 14 compliance in those offices, and the pricing
 15 they have is off of a formulary.
 16 Q. Do you understand that DSOs employ
 17 dentists under contract?
 18 MR. McDONALD: Object to the form.
 19 Overly broad. Lack of foundation.
 20 A. That's a hard one to answer because
 21 the DSOs have various business models, and some
 22 may be under contract, some may not. I can't
 23 speak to each business model.
 24 Q. So in some instances the dentists
 25 who work there are not employed under contract

1 component. DSOs can drive the compliance and
 2 buying groups, historically have struggled with
 3 that.
 4 Q. And I think my question was just
 5 directed at they're different because buying
 6 groups don't have ownership in the practices
 7 they work with.
 8 Do you understand that to be a
 9 difference between DSOs and buying groups?
 10 MR. McDONALD: Same objection.
 11 A. Generally, I would say that would be
 12 one of the differences between a DSO and a
 13 buying group.
 14 Q. Are there any other differences
 15 between DSOs and buying groups that you haven't
 16 mentioned that you can think of?
 17 MR. McDONALD: Object to the form.
 18 Overly broad. Vague. Lack of foundation.
 19 A. The main one, the main ones that
 20 come to my head is the ownership component of
 21 it and the compliance component of it.
 22 Q. When you say "compliance," what do
 23 you mean?
 24 A. Well, when you're dealing or
 25 handling a customer that's a DSO, you're

1 but might be an owner in the practice?
 2 A. Like I said, I've heard of business
 3 models that are like that, but I can't
 4 confidently say that every single one is like
 5 it.
 6 Does that make sense or no?
 7 Q. Yeah.
 8 A. Okay.
 9 Q. Is it your understanding that DSOs
 10 are not made up of independent private practice
 11 dentists?
 12 MR. McDONALD: Object to the form.
 13 Overly broad. Lack of foundation.
 14 A. So based on the definition that we
 15 just used, I would say DSOs, no. It would
 16 be -- there would be ownership from a central
 17 group in those practices.
 18 Q. Do you understand that DSOs are
 19 different from buying groups because buying
 20 groups do not have ownership in the practices
 21 they work with?
 22 MR. McDONALD: Object to the form.
 23 Overly broad.
 24 A. Yeah, I would say DSOs, that would
 25 be a difference and then the compliance

1 dealing with the C-Suite, and you're dealing
 2 with one decision-maker, that when you have an
 3 agreement with them and you agree that, hey,
 4 I'm going to buy my products from Henry Schein,
 5 there is a form that's signed, an agreement
 6 form that's signed. And then they're able to
 7 go to however many offices they have in the DSO
 8 and say our vendor partner is Henry Schein, so
 9 we need to buy X amount of products from Henry
 10 Schein. And they monitor that and drive the
 11 compliance of that through all their individual
 12 owners.
 13 With a buying group, they -- they
 14 don't own the practices, so even though they
 15 can say we endorse a dealer, if someone in a
 16 buying group chooses not to purchase from that
 17 dealer, they can.
 18 Q. So in buying groups, the independent
 19 dentist members can still purchase how they
 20 like?
 21 A. From my experience, they still can,
 22 yes.
 23 Q. Okay. Would you say that buying
 24 groups can't drive compliance?
 25 MR. McDONALD: Can you say that

1 again?

2 MR. SOLOMON: Sure.

3 Q. Would you say that buying groups
4 cannot drive compliance?

5 A. Buying groups cannot drive
6 compliance. That's the question?

7 Q. Correct.

8 A. Okay. I would say they're not able
9 to drive compliance like a DSO is able to.

10 Q. So they can drive compliance but not
11 to the extent that DSOs can. Is that what
12 you're saying?

13 MR. McDONALD: Object to the form.

14 A. They have the ability to sell the
15 vision and strongly endorse a dealer. So
16 some -- some members will follow that
17 endorsement. So I guess there is some ability
18 to endorse compliance or promote compliance,
19 but it's different than saying, hey, you will
20 buy from this company.

21 Q. So there's no binding contractual
22 clause that would require members to purchase
23 from a buying group's endorsed distributor?

24 MR. McDONALD: Object to the form.
25 Overly broad. Lack of foundation.

1 A. So we make an agreement with the --
2 with a buying group's leadership. So that
3 happens. We know there's a potential for the
4 compliance not to be there, and it is on Henry
5 Schein Dental to go to those individual
6 dentists that are part of the buying group and
7 sell Henry Schein Dental's value proposition so
8 they buy from Henry Schein Dental.

9 Q. Just to go over a few more
10 definitions, you've heard the term "community
11 health center" or CHC for short, correct?

12 A. I have.

13 Q. And do you understand a community
14 health center to be a federally qualified
15 health group that provides medical care to
16 indigent patients?

17 MR. McDONALD: Object to the form.
18 Lack of foundation.

19 A. The general definition of that, I
20 don't know if a hundred percent of their
21 patients are indigent or not.

22 Q. And you understand that CHCs are not
23 comprised of independent private practice
24 dentists, correct?

25 MR. McDONALD: Object to the form.

1 Lack of foundation.

2 A. I personally don't know that for --
3 the general statement, I don't know if a
4 hundred percent are all community health
5 centers or if there's a potential for an
6 independent practice to be part of it. I don't
7 do an audit on CHCs. Generally, they're
8 community health centers.

9 Q. Are you aware of any community
10 health centers that are comprised of
11 independent private practice dentists?

12 A. Me, personally, other than private
13 practice dentists working in a CHC at times,
14 I'm not aware of a private practice being part
15 of CHC.

16 Q. And do you understand that some CHCs
17 are members of CHC-specific GPOs or buying
18 groups?

19 A. I'm aware that some of the community
20 health centers are a part of specific groups,
21 yes.

22 Q. And you understand that those
23 CHC-specific GPOs do not include independent
24 private practice dentists among their members?

25 MR. McDONALD: Object to the form.

1 Lack of foundation.

2 A. So, as I think I said before, I'm
3 not personally aware of a specification one,
4 but I'm not saying that can't happen.

5 Q. And we've also used the term "GPO"
6 or "group purchasing organization." So you
7 understand that term, correct?

8 MR. McDONALD: Object to the form.
9 Vague.

10 A. So when you're saying "GPO," you're
11 referring to group purchasing organization?

12 Q. Correct.

13 A. I understand.

14 Q. And you understand that GPOs in the
15 medical industry are different from GPOs in the
16 dental industry, correct?

17 MR. McDONALD: Object to the form.

18 A. So that's what I said before is
19 learning. I don't -- I don't -- I can't
20 confidently say here what the differences are.
21 I know it's more prominent and prevalent in the
22 medical industry.

23 But can you ask the question again
24 because I want to make sure I'm answering it?

25 Q. Sure. Do you understand that GPOs

1 in the medical industry are different from GPOs
2 in the dental industry?

3 MR. McDONALD: Object to the form.
4 Lack of foundation.

5 A. I would say I'm not educated enough
6 on the GPOs in the medical industry to answer
7 that confidently.

8 Q. Okay. Have you heard the term "MSO"
9 or "management service organization" before?

10 A. I have.

11 Q. And what is a management service
12 organization?

13 A. So my definition of an MSO, we have
14 groups that offer services to historically
15 manage the front end of an office that these
16 independent practices in some cases pay for
17 those services.

18 There have been MSOs that also
19 manage these services in exchange for equity in
20 a practice. And then there's a situation where
21 there may be a case where a group offers a
22 capital outlay to an individual doctor that
23 owns maybe a group practice that gives them the
24 capital by other practices, and, in turn,
25 there's an exchange of a commitment in years to

1 how many -- to the services. So if I'm going
2 to sell it to you, I'm going to give you the
3 money. You're signing up for a certain amount
4 of years of my services. So that's what an MSO
5 would be to me.

6 Q. So there's varying arrangements that
7 can be made in the MSO world?

8 A. Yes. And we learn different ones
9 every day.

10 Q. The primary purpose, however, is to
11 provide management services to practices; is
12 that right?

13 MR. McDONALD: Object to the form.

14 A. The primary reason for it is so that
15 they can help run the front desk of an office.

16 Q. Are you familiar with what kinds of
17 services MSOs provide?

18 A. I could give you a general
19 understanding of what they provide, yes.

20 Q. Okay. What, generally speaking,
21 what kinds of services do they provide?

22 A. They could provide appointing and
23 reappointing patients. They could provide HR
24 services. They could provide marketing
25 services. They could provide helping with

1 insurance.

2 And, as I sit here, I'm just
3 thinking of other services, but I'm -- you
4 know, anything that really has to do with the
5 front desk.

6 Q. Do they offer procurement or
7 purchasing services to their members?

8 MR. McDONALD: Object to the form.
9 Lack of foundation. Overly broad.

10 A. Are you asking if they help with --
11 so are you asking if they help doctors buy from
12 certain individual dealers?

13 Q. Correct.

14 A. Okay. So we do have agreements with
15 some MSOs that are out there that -- with their
16 corporate office that they are going to do
17 business with Henry Schein. And, yeah, they
18 will tell the doctors that they -- in their MSO
19 that we're buying from Henry Schein.

20 Q. So will the MSO in those instances
21 make the purchasing decisions for the doctors?

22 MR. McDONALD: Object to the form.

23 Lack of foundation.

24 A. Some MSOs have the ability to drive
25 the compliance, and it usually happens when

1 they have equity in the practices. There's
2 other MSOs that are just providing the
3 services, and they let the independent -- they
4 let the doctor run the practice however they
5 want without the procurement component of it.

6 Q. Okay. Mr. Cavaretta, you're
7 familiar with Henry Schein's field sales
8 operations, correct?

9 A. I am.

10 Q. Okay. About how many FSCs do you
11 oversee?

12 A. Currently?

13 Q. Currently.

14 A. A little over 400.

15 Q. Has that -- has the number of FSCs
16 you've overseen grown over time?

17 MR. McDONALD: Object to the form.

18 Vague as to job title and that kind of
19 thing.

20 A. So as the -- as my position has
21 changed within the company over the years, the
22 responsibility has grown. So there's more FSCs
23 that would fall under the umbrella, my
24 umbrella.

25 Q. How large is the geographic region

1 that a typical FSC would service at Schein?

2 MR. McDONALD: Object to the form.

3 Overly broad. Vague. Lack of foundation.

4 A. The geographies vary, but I would
5 say, on average, our representatives call on
6 between 100 and 110 customers.

7 Q. Okay. So in more populated
8 geographies, that number might be higher?

9 MR. McDONALD: Object to the form.

10 A. So that's a general number. So some
11 reps may have more; some may only have 40,
12 yeah.

13 Q. Okay. Is the number higher or lower
14 in rural areas?

15 MR. McDONALD: Object to the form.

16 A. Well, we have reps that call both on
17 rural and then a city. So that's why the -- I
18 can't say that from a geographical standpoint.

19 Q. How far do FSCs generally have to
20 travel in order to call on customers?

21 MR. McDONALD: Object to the form.

22 Overly broad. Lack of foundation.

23 A. Some FSCs take the subway and they
24 go up and down these buildings, and there could
25 be 40 doctors, and there's others that could

1 drive 3 hours each way to see customers. So,
2 again, it varies. I've never averaged out.

3 Q. Is there a limit?

4 A. To?

5 Q. Is there a limit to how far an FSC
6 will travel to call on customers?

7 A. We do our best to keep it within the
8 regional -- within the regional boundaries. So
9 if you're in Cincinnati, Ohio, we don't really
10 want you calling on somebody in Cleveland,
11 Ohio.

12 Q. So an FSC is able to call on
13 customers in any part of his or her regional
14 area; is that right?

15 A. There's the ability to do that.

16 Q. And how are FSCs assigned accounts
17 and customers?

18 A. Well, if you're hired today, you
19 have regional managers that take the list of
20 the house accounts that are unassigned, and you
21 try to make it as efficient as possible. And
22 they would assign it to the rookie FSC.

23 Historically, what has happened is,
24 over the years, you know, with acquisitions of
25 different dental companies and just years of

1 service, you may have someone that is calling
2 on a customer 3 hours away or customers 3 hours
3 away and then some that are 5 minutes away from
4 their house. So we allow that just because of
5 the relationship component of it with that
6 customer.

7 Q. Okay. And we also talked a little
8 bit about the regional areas that an FSC
9 operates within. How are those regional
10 areas -- or strike that.

11 How are the boundaries of the
12 regional areas determined?

13 MR. McDONALD: Object to the form.

14 Lack of foundation.

15 A. So those also vary. There's
16 situations -- again, I'll go back to -- I'll go
17 to Iowa where there's a lot of -- there's a lot
18 of rural area, a lot of geography, so there's
19 natural boundaries. So those representatives
20 may -- it's easy for them, hey, you call on
21 Iowa.

22 But we also have reps that are in
23 Davenport and Dubuque that we -- the reps that
24 are in Dubuque, we try to keep in Dubuque, and
25 the ones that are in Davenport, you try to keep

1 in Davenport for efficiencies.

2 There's a lot of historical
3 components of how the regionals are put
4 together, so we don't really change the
5 regional lines too much, unless we're splitting
6 up a big region.

7 And then you also take into
8 consideration certain, you know, landmark or
9 boundaries. For example, in Southern
10 California, you have the I-10 that separates
11 L.A., so you have north and south L.A., and we
12 just chose the I-10 as a boundary. So
13 that's -- that's a lot of how we establish the
14 regions.

15 Q. And so within a region, there may be
16 multiple local offices?

17 MR. McDONALD: Object to the form.

18 A. We may have -- so I'm trying to
19 think here. In a rural area -- so yes. So
20 I'll take Kansas as an example. We have an
21 office in K.C. and one in Wichita.

22 Q. Okay.

23 A. But in most regions, there's usually
24 only one location. So, for example, L.A., even
25 though it's L.A., we look at south L.A. and

1 north L.A. as in two different regions.

2 Q. I see. Why in some instances are
3 there multiple offices within a region?

4 MR. McDONALD: Object to the form.

5 Q. So in the Kansas City/Wichita
6 example you just gave me, do you know why
7 there's two offices in that region?

8 MR. McDONALD: Object to the form.

9 A. In some cases, the geography. So
10 I'll use North Carolina and South Carolina.
11 Again, it's under one region, so we have
12 offices -- we have an office in North Carolina.
13 We have representatives that are in South
14 Carolina, and at times we need -- because we
15 still deliver equipment, so we need a place to
16 store the equipment and at times show the
17 equipment. So because that's still one region,
18 North and South Carolina, we need to have a
19 location in both.

20 Q. And will reps in North Carolina call
21 on customers in South Carolina and vice versa?

22 MR. McDONALD: Object to the form.

23 A. It's possible if someone lived in
24 the southern part of North Carolina and there
25 was a northern doctor in South Carolina -- a

1 Doctor in South Carolina that's north, that
2 they potentially could. I don't know if that's
3 happening or not.

4 Q. In regions where there are multiple
5 offices, are there areas of overlap between
6 those multiple offices where reps from either
7 one office or another might call on customers
8 in the same area?

9 MR. McDONALD: Object to the form.
10 Overly broad.

11 A. So we may have FSCs who are in north
12 L.A. go south of the 10, based on legacy
13 relationships, and someone could buy a practice
14 there that they could venture into south L.A.,
15 but we also try to -- we also try to contain
16 that a little bit because, you know, if you're
17 calling on someone who's 3 hours away in north
18 L.A. it doesn't make sense because we have 40
19 other reps that are in south L.A. that could
20 call on those customers. So we try to minimize
21 it.

22 Q. Got it. So Schein tries to minimize
23 the amount of travel the FSCs might have to do
24 in order to call on customers?

25 A. We try to make it as efficient as

1 possible, because you also have service
2 component in there. You know, each of the
3 individual regions have P&Ls, so the customer
4 follows the FSC, so if an FSC is going into
5 south L.A. and all those revenue dollars will
6 go to north L.A., yet all the service, which is
7 expensive, to keep that customer up and going,
8 all that expense goes to south -- could
9 potentially go to south L.A. because they're
10 paying for the technician. So it gets
11 complicated in that case.

12 Q. Got it. So we talked a little about
13 the geographic areas the FSCs operate in. Do
14 those general guidelines also apply to the
15 geographic areas in which service technicians
16 operate in?

17 MR. McDONALD: Object to the form.

18 A. We also try to use those resources
19 and service because -- one of the most precious
20 resources we have right now. We try to keep
21 them within the region that they work. In most
22 cases, it's -- it's easy to do because there's
23 not a lot of south L.A./north L.A. situations.

24 However, one region can lend a
25 service technician to another region if they're

1 doing a big install or need help. But because
2 we're short on techs, it doesn't happen as much
3 anymore.

4 Q. And are you aware of any limit as to
5 how far a service tech will travel to service a
6 customer?

7 MR. McDONALD: Object to the form.
8 Overly broad.

9 A. I'm not aware of anything that
10 states a technician can't travel 2 hours to
11 service a customer.

12 Q. Okay. Would it be typical for
13 service technicians to travel more than 2 hours
14 to service a customer?

15 A. Typical? Is typical every day? Is
16 it on a regular occurrence?

17 Q. Correct.

18 MR. McDONALD: Object to the form.

19 A. I wouldn't say it's regular. I
20 don't know any that go 2 hours every day to
21 start calling on customers.

22 Q. Do service technicians ever travel
23 more than 2 hours to service customers, as far
24 as you know?

25 MR. McDONALD: Object to the form.

1 Overly broad.

2 A. Has it potentially happened in the
3 past? I would imagine there was a situation
4 where a tech had to drive 2 hours to service a
5 customer.

6 Q. But it's not a regular occurrence,
7 you'd say?

8 A. No, well, because the expense of it
9 is mileage and gas. Again, we try to be as
10 efficient as possible with that.

11 Q. And how about for equipment
12 specialists, how large is the geographic area
13 that an equipment specialist will service?

14 MR. McDONALD: Object to the form.
15 Overly broad.

16 A. So they are responsible for the same
17 regions that I just outlined earlier. There's
18 less of them, so they may drive more. But they
19 are typically responsible for, again, the same
20 geographic area that I just explained earlier.

21 MR. SOLOMON: John, I'm at a natural
22 breaking point here. Do we want to take a
23 break?

24 MR. McDONALD: Sure.

25 THE VIDEOGRAPHER: Going off the

1 record at 10:13 a.m.

2 (A short break was taken.)

3 THE VIDEOGRAPHER: Going on the
4 record. This marks the beginning of media
5 No. 2. The time is 10:24 a.m.

6 Q. Mr. Cavaretta, welcome back.

7 So we've been talking a little bit
8 about buying groups. Have you seen an increase
9 in the number of buying groups in the dental
10 industry as time has passed?

11 A. As our company also has transitioned
12 in small groups and whatnot, I have been
13 exposed more to buying groups and, you know,
14 potential buying groups.

15 Q. Would you say that the number of
16 buying groups that has cropped up has grown
17 over time?

18 MR. McDONALD: Object to the form.

19 A. I don't -- I don't know if that's
20 the reason or if that's the case or the fact
21 that, you know, again, how we transition as a
22 company, that more inquiries come my way just
23 because of the responsibility.

24 Q. When did more inquiries from buying
25 groups start coming your way?

1 A. I would say -- well, they started
2 back in 2004, but it increased in 2014, I would
3 say, when what we called the Mid-Market space
4 moved to HSD.

5 Q. And am I correct in understanding
6 Mid-Market was created as a division in 2014?

7 A. Yeah.

8 MR. McDONALD: Object to the form.
9 Go ahead.

10 A. So it was -- I don't know if I'm
11 calling -- if I'd call it a division or a
12 carveout of customers. It went to the -- it
13 went to HSD. So that's a division. So we were
14 just responsible for the Mid-Market group. I
15 don't know if I'm explaining that right or not.
16 But I'm not sure if it was a division as much
17 as it was now our responsibility.

18 Q. So since the creation of Mid-Market,
19 you've seen an increase in the number of buying
20 group inquiries?

21 A. Yeah, I've seen an increase in the
22 team asking me about them because of the group
23 practice space.

24 Q. So since the creation of Mid-Market,
25 how often are you asked about buying groups?

1 MR. McDONALD: Object to the form.
2 Overly broad. Vague.

3 A. Well, so today, though, the APC
4 space reports to me. So that is -- part of the
5 APC space is also buying groups. So I would
6 say when we created the Mid-Market space where
7 maybe I didn't get many inquiries about buying
8 groups. It was probably maybe one or two a
9 month. That is a guess, not -- there's no
10 factual information to support that.

11 Q. So you're not sure; you're just
12 guessing?

13 A. I'm not sure.

14 Q. Do you know how many inquiries from
15 buying groups you were receiving prior to the
16 creation of Mid-Market?

17 MR. McDONALD: Object to the form.
18 If you know, tell him but don't guess.

19 A. I'd be guessing.

20 Q. Do you think that Schein working
21 with buying groups has the potential to affect
22 Schein's business in any way?

23 MR. McDONALD: Object to the form.

24 A. It's -- buying groups are an
25 opportunity and, at the same time, they have

1 the ability to endorse and have the third-party
2 endorsement to bring business over to Henry
3 Schein, yeah.

4 Q. So in what ways are buying groups
5 opportunities for Schein?

6 A. Well, I'll take Smile Source as an
7 example. We have -- we were on with them, off
8 with them, and going back to probably I think
9 it was maybe '07/'08, and then when we had the
10 agreement -- when we established the agreement
11 with them in 2017, we saw our business increase
12 by roughly 30 percent, I want to say, which
13 represented over a million dollars in business.
14 So it was business we didn't have.

15 Q. So Schein gained business from its
16 competitors by working with Smile Source?

17 MR. McDONALD: Object to the form.

18 A. That's one way that we could have
19 won business. The other way is that the share
20 of wallet in those practices, because they
21 could have still been buying from Henry Schein,
22 but now that we were part of the Smile Source
23 team, the doctors would have purchased more
24 products from us, those same doctors, so market
25 share increases.

1 there was -- you saw some shift in business,
2 some increase in those customers.

3 Q. And do you know why the customers
4 shifted their business?

5 MR. McDONALD: Object to the form.

6 A. Not specifically --

7 MR. McDONALD: Lack of foundation.

8 A. Not specifically. I haven't talked
9 to a customer to say why did you shift your
10 business, so ...

11 Q. Do you have any understanding as to
12 why customers would shift their business from
13 Schein as a result of being a part of Smile
14 Source?

15 MR. McDONALD: Same objection.

16 A. I would be -- I would be guessing
17 would be my opinion.

18 Q. I don't want you to guess, but if
19 it's something you have an opinion on or have
20 an understanding of as a result of your
21 position at Henry Schein, I'd like you to tell
22 me.

23 MR. McDONALD: Well, if you know,
24 tell him. But, again, don't guess.

25 A. Okay. So, again, I haven't talked

1 Q. So new customers and existing
2 customers shifted their business over to Schein
3 as a result of Smile Source. Is that what
4 you're saying?

5 MR. McDONALD: Object to the form.

6 A. Again, I'm saying some did, not --
7 again, we have the compliance issue. Even with
8 a Smile Source, it's still there.

9 Q. Do you know why some doctors who
10 previously were not customers of Schein
11 switched their business to Schein as a result
12 of being a Smile Source member?

13 MR. McDONALD: Object to the form.

14 Overly broad.

15 A. So there were some doctors that due
16 to, hey, Schein is now part of Smile Source,
17 felt, okay, now I can buy from Schein, and they
18 wanted to buy from us, so they did.

19 Q. Why couldn't they buy from Schein
20 previously?

21 MR. McDONALD: Object to the form.

22 A. They could. And, quite frankly,
23 they did. We still had a lot of people who
24 were Smile Source members buying from Henry
25 Schein. But once the endorsement came out,

1 to customers specifically, so I would be
2 assuming.

3 Q. Okay. Do you know why customers
4 join Smile Source?

5 MR. McDONALD: Object to the form.

6 Lack of foundation.

7 A. So, once again, I haven't talked to
8 a customer saying why did you join Smile
9 Source. I do know what Smile Source promotes
10 to their members.

11 Q. What do they promote?

12 A. They promote education and a
13 community to their -- to their member base.

14 Q. Anything else they promote?

15 A. They'll promote -- they do promote
16 that they have, you know, special pricing or
17 discounts.

18 Q. How do they --

19 A. And they also will promote --
20 they'll help a doctor, you know, grow their
21 practice in which -- that's how the doctor is
22 paying Smile Source.

23 Q. Do they promote to -- strike that.

24 You mentioned that they promote
25 special discounts, correct?

1 A. I did.

2 Q. Do they promote the availability of
3 special discounts through Henry Schein
4 specifically? Or let me rephrase that. Sorry,
5 that's a little confusing.

6 A. Yeah.

7 Q. Do they promote that special
8 discounts are available through their
9 relationship with Henry Schein?

10 A. They will promote that now Henry
11 Schein is part of Smile Source, we endorse
12 Henry Schein, and with that comes pricing from
13 Henry Schein that could benefit Smile Source
14 members.

15 Q. Were you involved in the negotiating
16 of Smile Source's current agreement with Henry
17 Schein which I believe dates back to March
18 of 2017?

19 A. I was.

20 Q. How were you involved in negotiating
21 that agreement?

22 A. Trevor and I -- Trevor Mauer, who is
23 the CEO of Smile Source, and I had several
24 conversations, several exchanges over a long
25 period of time. And, you know, we negotiated

1 back and forth on what the pricing would be,
2 potential rebate levels. And then, you know,
3 we agreed we'd figure out equipment and
4 technology at some point.

5 I've moved a little bit away from
6 the negotiations because we -- I hired someone
7 on to help with the APC space. So that was my
8 involvement.

9 Q. So you were involved with
10 negotiating the discounts and rebates?

11 A. I was involved, correct.

12 Q. How were the discount levels
13 determined?

14 A. So we did -- we did two things. One
15 is we looked -- I'm thinking, so give me some
16 space here.

17 Q. Sure.

18 A. We took our -- we reviewed our
19 formularies that existed within the DSO space
20 because the volume of business is really big,
21 and you have to be very aware and understanding
22 of that.

23 So we used that as one landmark.
24 And then we also were able to gather some
25 invoices from customers to get a better

1 understanding of, you know, some of the more
2 frequently purchased products. So the method
3 wasn't -- wasn't really accurate. But that's
4 how we put a formulary together for Smile
5 Source.

6 And then the rebates were
7 negotiated. We went back and forth, and there
8 was a lot of negotiating there, that we created
9 a baseline on Henry Schein business that
10 already existed, and then we put rebate levels
11 into -- based if they hit something above the
12 baseline, that they would get rebates back.

13 Q. Focusing on the discount portion, am
14 I correct that there is a formulary of products
15 that are discounted that are available to Smile
16 Source members?

17 A. Yes.

18 Q. Are you familiar with that
19 formulary?

20 A. I know the formulary exists. But I
21 am not familiar with every single product on
22 that formulary.

23 Q. Understood.

24 A. Okay.

25 Q. Did you help compile that formulary

1 at any point in the negotiations process with
2 Smile Source?

3 MR. McDONALD: Object to the form.
4 Overly broad. Vague.

5 A. My -- my role in putting that
6 formulary together was working with our
7 internal team to use our, you know, baseline
8 formulary that exists and, you know, then
9 receiving the formulary back after the pricing
10 was put in place and then being able to share
11 that with the Smile Source team. I didn't look
12 at line items and put discounts in there.

13 Q. Do you have any understanding as to
14 what the average discount on products is under
15 the Smile Source formulary?

16 MR. McDONALD: Object to the form.

17 A. So they vary based on if it's a
18 manufacturer. So it's a branded manufacturer.
19 There's not a lot of private label on there,
20 but there's some -- there's some products that
21 we can discount higher than others.

22 On an average, I would say that we
23 have talked to Smile Source between an 18 and
24 24 percent discount off of our catalog.

25 Q. And with that range, are you

1 referring specifically to the formulary
2 products?

3 A. Yes, the products on formulary.

4 Q. And am I correct that if a product
5 is not on formulary but a dentist wants to
6 purchase it through Schein, there's an
7 18 percent off discount with respect to
8 merchandise?

9 MR. McDONALD: Object to the form.
10 The contract speaks for itself. If you
11 know, tell him, but if you don't guess
12 because they have got the contract.

13 A. I'd be assuming and guessing.

14 Q. Okay. Are there any consequences to
15 a Smile Source member if he or she decides not
16 to purchase any products from Henry Schein?

17 MR. McDONALD: Object to the form.
18 Lack of foundation. Go ahead.

19 A. Not that I'm aware of.

20 Q. You mentioned earlier driving
21 compliance with respect to the current Smile
22 Source relationship. Can you talk a little bit
23 about that?

24 MR. McDONALD: Object to the form.
25 Vague.

1 A. Who's driving -- Smile Source
2 driving compliance?

3 Q. I believe that's what you had
4 mentioned earlier. You talked generally about
5 driving compliance with respect to the current
6 Smile Source relationship, and I can't remember
7 your exact quote. But do you believe that
8 under the current agreement, Smile Source can
9 drive compliance among its members?

10 MR. McDONALD: Object to the form.

11 A. Smile Source, the way they attempt
12 to drive compliance, is that they will tell
13 their members -- excuse me -- that here are the
14 dealers and here are the manufacturers that
15 support Smile Source. We want you to support
16 those manufacturers and dealers that are
17 supporting the Smile Source mission. That's
18 how it's been explained to me.

19 Q. Do you have any understanding as to
20 whether Smile Source does drive compliance
21 among its members?

22 MR. McDONALD: Object to the form.

23 A. Can you repeat the question? I'm
24 sorry.

25 Q. Sure. Do you have any understanding

1 as to whether Smile Source does drive
2 compliance among its members?

3 MR. McDONALD: Same objection.

4 A. The only -- the only way I know they
5 will drive compliance is what I just explained.
6 Our business has grown with them because of --
7 to me, with the Henry Schein name and the
8 brand, but I don't know how much that has to do
9 with the compliance that they drive.

10 Q. Are they successful in driving
11 compliance?

12 MR. McDONALD: Object to the form.
13 Lack of foundation.

14 A. I have no data to say they do or
15 they don't.

16 Q. Have you ever looked at data to
17 determine whether or not Smile Source does, in
18 fact, drive compliance among its members?

19 A. So as Henry Schein, we have a
20 handful of groups that are in the APC space
21 that make up I'm going to say the majority of
22 the business. There's plenty of others that
23 are not on that list that I review.

24 And I would say that our compliance
25 issues still exist, or the compliance challenge

1 still exists, based on the number of members
2 that are part of Smile Source group compared to
3 how much each of those members are purchasing.

4 Q. So what exactly is the compliance
5 issue there?

6 A. For us, it's they didn't -- they
7 didn't move, you know, 80 percent of their
8 business over to Henry Schein.

9 Q. And you're referring to Smile
10 Source?

11 A. In general, I would say that it's a
12 similar challenge, but since we were talking
13 about Smile Source at this point, specifically
14 yes.

15 Q. Why does Schein continue to do
16 business with Smile Source if it does not
17 effectively drive compliance?

18 A. Well, we have a lot of independent
19 dentists who are members of Smile Source, and
20 that's where our business comes from. So even
21 though they're members of Smile Source, we
22 still look at them as Henry Schein customers.

23 And Smile Source has told a story,
24 and they believe in their story, that doctors
25 are interested in being part of their

1 membership, so they're paying to do it. And
2 they have a membership base of probably
3 under -- just under 600 now if I had to -- if I
4 had to guess. And because of that, and because
5 of our relationship with Smile Source and
6 because we are partnering together with similar
7 interests with those independent dentists, that
8 makes sense for us to continue to do business
9 with them.

10 Q. So Schein has determined it makes
11 sense to do business with Smile Source even
12 though it cannot effectively drive compliance
13 among its members?

14 MR. McDONALD: Object to the form.
15 Mischaracterizes his testimony.

16 A. Yeah. So I would say this, that the
17 compliance, if you're comparing it to a DSO, is
18 very different. That's what I'm saying.

19 Smile Source in this case has
20 services and a value proposition that they're
21 offering to customers which is in alignment
22 with Henry Schein.

23 So they have the ability to endorse
24 us, and they have the ability to drive some
25 compliance, but it's not to the level of the

1 DSOs, which is how I'm answering your question.

2 Q. So DSOs can fully drive compliance
3 while Smile Source can't?

4 A. DSOs, I would say the success rate
5 of driving compliance to the contract is -- is
6 much higher than it would be with a Smile
7 Source.

8 Q. What would you say the success rate
9 is for DSOs in driving compliance?

10 MR. McDONALD: Object to the form.
11 Lack of foundation.

12 A. I don't have the data on that.

13 Q. And what would you say the success
14 rate is for Smile Source in driving compliance?

15 MR. McDONALD: Object to the form.
16 Lack of foundation.

17 A. How are you measuring the success
18 rate? I haven't measured success rate. I've
19 measured dollars in business that they do with
20 us.

21 Q. I didn't have a specific definition
22 in mind. I think you had mentioned success
23 rate a moment ago in your answer, so I'm just
24 going with that phrase.

25 A. Okay.

1 Q. What does that mean to you, success
2 rate?

3 MR. McDONALD: Object to the form.

4 A. To me is if you are signing an
5 agreement with a customer that owns offices,
6 that you would see -- and let's just say they
7 do \$200,000 in business -- you would see 150,
8 180 move over or a monthly basis trending that
9 way, moving quickly.

10 With a Smile Source, you see some
11 business move but not at that rate. So that is
12 a very subjective way for me to measure success
13 rate.

14 Q. Has -- strike that.

15 Has Schein ever had discussions with
16 Smile Source about how to better drive
17 compliance among its members?

18 A. Yes.

19 Q. And what were those discussions?

20 A. We have discussed -- and so they
21 have their formulary. They have pretty rigid
22 structure to their formulary. That's the way
23 they've always done business, and I can
24 appreciate that. But that doesn't always work
25 in every market. The markets are different.

1 So we talked about having more price
2 flexibility on a certain amount of products in
3 certain markets.

4 We've talked about having special
5 discounts or special product discounts, let's
6 just say, on digital impressioning where
7 there's a Smile Source deal only to Smile
8 Source members for 30 days on this digital
9 impressioning.

10 I've talked to them about using our
11 analytics. And there's just so much we can do
12 as Henry Schein in order to show these doctors
13 why they should be buying from Henry Schein and
14 how we can help Smile Source help them grow
15 their practice.

16 So there's ongoing discussions, and
17 those are the discussions I've had.

18 Q. So these have been ongoing
19 discussions that haven't actually resulted in
20 any official actions to better drive
21 compliance?

22 A. Well, the digital impressioning
23 example I gave you, we were able to sell quite
24 a few scanners in Q2. But I'm not sure if it
25 was -- I don't -- I'm not sure if it's because

1 of their driving the compliance or because we
 2 as Henry Schein provided a deal that was --
 3 that the Smile Source members were made aware
 4 of and they said, okay, I want to buy that. So
 5 it wasn't Smile Source saying you will buy
 6 these scanners. It was saying here's a deal.
 7 You can buy them if you want. So that's the --
 8 I mean, that's the example I would give you
 9 based on your question.

10 Q. You talked a few moments ago about
 11 other buying groups within the APC division,
 12 correct?

13 A. I have.

14 Q. And APC refers to alternate
 15 purchasing channel; is that right?

16 A. That is correct.

17 Q. Okay. And you talked about buying
 18 groups with which Schein has had difficulty
 19 driving compliance among their members, right?

20 A. Correct.

21 Q. Okay. Can you name those buying
 22 groups?

23 MR. McDONALD: Object to the form.

24 A. The buying groups in the APC or the
 25 ones that were having trouble driving

1 compliance or ...

2 Q. I'm referring specifically to the
 3 ones you think Schein is having trouble driving
 4 compliance with.

5 A. Well, again, compliance, in general,
 6 with buying groups is -- is a big challenge.
 7 The ones that we have decided to partner with
 8 came through -- again, going back to -- like, I
 9 started a buying group in 2004 or a study club.

10 Going all the way to Smile Source,
 11 what we do is, there's an inquiry, and we vet
 12 them out. We see if they have a value
 13 proposition. We see how they potentially could
 14 drive compliance, even though we know it's not
 15 going to be as good as a DSO. We see if they
 16 have a centralized structure. We see what
 17 other services that they're offering.

18 So there's a lot that goes into it
 19 before we decide if we're going to partner with
 20 somebody or not, but the compliance challenge
 21 is always there.

22 Q. So the compliance challenge is
 23 present with respect to all of the buying
 24 groups that Schein has worked with?

25 A. Yeah. At various degrees, but yes.

1 Q. Are there any other buying groups
 2 that Schein believes is an opportunity -- and
 3 we talked for a while about Smile Source being
 4 an opportunity. Are there other buying groups
 5 that Schein views as an opportunity?

6 MR. McDONALD: Object to the form.

7 A. That's out there today, like,
 8 just ...

9 Q. Sure. Let's start with currently.

10 MR. McDONALD: Object to the form.

11 Overly broad. Vague.

12 A. Well, I can only say that we -- we
 13 just signed our most recent one, and we did
 14 that because they have a consulting and
 15 education arm with a big following already of a
 16 couple hundred dentists. But if there's -- if
 17 you're asking me for who are we going after to
 18 try to bring on, no, I don't -- I couldn't give
 19 you the name of potential groups.

20 Q. Are there other examples of buying
 21 groups that have been beneficial to Schein as a
 22 result of doing business with that group?

23 MR. McDONALD: Object to the form.

24 Overly broad.

25 A. So we were doing business with a

1 group called Break Away, and they're actually
 2 the reason why -- one of the big reasons why we
 3 created the APC space, because they had DSO,
 4 MSO, and buying group qualities to them.

5 So we had success with Break Away,
 6 but it wasn't due to really the buying group
 7 arm, per se. It was that they had DSO and MSO
 8 control.

9 Q. So you said that they have aspects
 10 of a DSO, MSO, and a buying group, correct?

11 A. Uh-huh.

12 Q. How would you characterize Break
 13 Away?

14 A. As an APC.

15 Q. Would you call them a DSO, an MSO,
 16 or a buying group?

17 MR. McDONALD: Object to the form.

18 Asked and answered.

19 A. APC.

20 Q. And what does that mean?

21 A. Alternative purchasing channel.

22 Q. So what does that --

23 A. What does that mean?

24 Q. What does that definition mean?

25 A. So, again, when we made the

1 transition in 2014, there was a lot of stuff
2 that we were being educated on and exposed to
3 that we didn't know existed in the past or that
4 the customer was changing. So we had a meeting
5 with Break Away, and we learned about them
6 because we were doing business with them, and
7 that's what I mean, the inquiring and vetting
8 out process.

9 And they walked us around, and I
10 wasn't at that meeting, but they walked Henry
11 Schein around the building, and you couldn't
12 put them in one group. You couldn't put in the
13 DSO, you couldn't put them in the MSO, and the
14 buying group component of it was there, but it
15 wasn't the most prevalent part. So what do you
16 do with it? We don't have an offering.

17 So just like we've done with
18 Mid-Market, we created something to provide an
19 offering for this customer. And you're seeing
20 some customers do that more. And we realized,
21 okay, we have to create something that focuses
22 on these customers because they take a lot of
23 time, and they're emerging, and that's where
24 APC came from.

25 Q. What was it about Break Away that

1 was so unique?

2 A. They had DSO components, MSO
3 components, and a buying group component to it.

4 Q. When you say they had DSO component,
5 do you mean some of the offices were under
6 common ownership?

7 A. Correct.

8 Q. And those offices were able to drive
9 compliance in purchasing supplies?

10 A. Correct.

11 Q. When you say they had an MSO
12 component, do you mean that Break Away provided
13 management services to some of the
14 independently owned offices?

15 A. So at that time with Break Away,
16 what we understood it to be was that they were
17 offering services to these doctors in exchange
18 for equity. I don't know if that was the case
19 in all of them or not, but that was my
20 understanding. So the compliance within those
21 groups was -- was pretty good because of the
22 equity component.

23 Q. So in instances where there was
24 equity in the practice on the part of the MSO,
25 did the MSO conduct centralized purchasing of

1 supplies on behalf of the practices?

2 MR. McDONALD: Object to the form.

3 Lack of foundation.

4 A. Break Away had a centralized -- it
5 existed, the centralized purchasing existed,
6 meaning there was a formulary, there was
7 someone tracking the purchases. But even with
8 that, the DSO space, we were good. The MSO
9 space, for the most part, we were good, but we
10 still had some members in the buying group
11 space that weren't complying like others.

12 Q. So when you say we were good in the
13 DSO and MSO space, what do you mean
14 specifically?

15 A. That the business, the percent of
16 business in that office was to the agreement
17 that we had with them.

18 Q. So the DSO and MSO components were
19 able to drive compliance because of a
20 centralized purchasing mechanism?

21 MR. McDONALD: Object to the form.

22 Misstates his testimony.

23 A. No, they were -- it was more because
24 of the ownership, either all out or having some
25 type of vested interest via equity or the

1 services that the doctor signed up for from
2 Break Away.

3 Q. So am I correct that, in those
4 instances, Break Away was able to make the
5 purchasing decisions, and that helped drive
6 compliance?

7 MR. McDONALD: Object to the form.
8 Misstates his testimony. Also lack of
9 foundation.

10 A. So we provided the formulary to
11 Break Away. How they actually -- how they
12 actually drove the compliance within those
13 offices, I don't know. I just know the
14 business in that office was -- was close to the
15 contract.

16 Q. So the MSO and DSO component aside,
17 you also mentioned the buying group component
18 to Break Away. What did you mean by that?

19 A. Well, Break Away was learning
20 themselves, and they must have changed their
21 model three or four times from the time we were
22 working with them. So they had affiliates I
23 think they called them at one point. Then they
24 called them -- then they gave them a different
25 name.

1 And as we were working with them, we
2 were trying to understand there was this group
3 here that they were trying to help out but they
4 didn't own or have equity with, and they had
5 the opportunity to use the formulary because
6 they were part of Break Away, but they
7 themselves were struggling to have the doctors
8 be in compliance with where Break Away was
9 going.

10 So what they were doing was trying
11 to understand what these offices were like, and
12 the compliance just wasn't as good.

13 Q. When did Break Away bring on the
14 buying group component to its business?

15 MR. McDONALD: Object to the form.
16 Lack of foundation.

17 A. I don't know.

18 Q. Did Break Away at some point add the
19 buying component to its business?

20 MR. McDONALD: Object to the form.
21 Lack of foundation.

22 A. I don't know. The only -- the only
23 thing I know is what -- the meeting in --
24 whether it was 2014 or '15 -- what was shared
25 with us. That's what I would say.

1 MR. McDONALD: Object to the form.

2 A. In -- when we brought the Mid-Market
3 space over to HSD, Break Away already existed,
4 and since Break Away existed, we had to learn
5 more about this customer because it was a
6 different customer to us.

7 I don't know what their model
8 started out with and then exactly the dates it
9 changed. I just know that they were always
10 trying to figure out how to make their model
11 efficient.

12 Q. Before they were with Mid-Market,
13 were they with Special Markets?

14 A. Yes.

15 Q. Are there other examples of buying
16 groups that you can name sitting here today
17 that have had a beneficial effect on Schein's
18 business?

19 A. So the new group we have is Dental,
20 DSN, Dental Sales Network, and we are seeing
21 new business, but we're also seeing the similar
22 challenges that I've already explained today.

23 We have a group called Klear Impakt
24 that, once again, we've seen business,
25 especially in the beginning, that moved over.

1 Q. You mentioned that Break Away
2 changed its model three or four times, correct?

3 A. That's a guess, but yeah.

4 Q. Do you know when Break Away changed
5 its model?

6 A. No.

7 Q. Okay. And how did it change its
8 model?

9 A. Well, during various meetings, we
10 would go there, and they had at one point four
11 different groups. They had TVs on the screen,
12 and they named the four different groups
13 something. So we set them up in our system.
14 This is how I know. We set them up in our
15 system a certain way so we knew which groups
16 were what. And then they'd come back and say,
17 well, wait a second, we're changing it now.
18 And then we had to go back internally and try
19 to match how we were designating those
20 customers according to how Break Away was
21 labeling them. So I don't know how many times
22 it was. I just know that the event happened.

23 Q. So was Schein already doing business
24 with Break Away when it first changed its
25 model?

1 But again, similar challenges.

2 I don't have the list in front of me
3 that I get on a regular basis now. So those
4 are the ones that come to my mind.

5 Q. You mentioned Dental Sales Network.
6 When did Schein first start doing business with
7 the Dental Sales Network?

8 A. Probably a couple months ago.

9 Q. So sometime --

10 A. Within the -- within Q2.

11 Q. Of 2018?

12 A. Correct.

13 Q. Do you think that buying groups can
14 pose any risks to Schein's business?

15 A. Well, the challenges that can come
16 with a buying group is that if they don't have
17 the ability to have that endorsement that
18 strong and then drive the compliance, it
19 doesn't make sense to partner with a buying
20 group because typically buying groups want an
21 admin fee or they want to be paid for their
22 services. And then they want, potentially, you
23 know, some type of pricing discount.

24 So the risk, as you put it, could be
25 the fact that our margins could go down based

1 on having an agreement with a group, yet if
2 they're not driving the compliance and it's
3 only, hey, we want a discounted price, there's
4 no value there. So it doesn't make any sense.
5 So that would be -- that would be a risk.

6 Q. Any other risks you can think of
7 sitting here today?

8 A. The only other risk would be if they
9 decide to, after having a partnership with us,
10 and, you know, the business grows, that they
11 decide not to partner any longer, and so that's
12 a risk.

13 Q. And why would that be a risk to
14 Schein?

15 A. Well, it gets confusing in the
16 marketplace, both sales reps, customers, and
17 now we were a partner with this group and
18 helping each other, and the next thing you
19 know, we're not.

20 So what happens then is now they
21 want to potentially take their business to the
22 endorsed groups, and then, of course, as Henry
23 Schein -- because we still look at them as our
24 customers -- is retaining the business. So,
25 yeah, that could be a risk. That could happen.

1 Q. When you say "take business over to
2 endorsed groups," do you mean competing
3 distributors?

4 A. Correct.

5 Q. So when Schein evaluates a potential
6 buying group customer, what are all the factors
7 that Schein looks at in determining whether to
8 do business with the buying group?

9 MR. McDONALD: Object to the form.
10 Overly broad. Vague as to time.

11 A. So I can't give you all of the
12 factors. I don't have them listed in front of
13 me. But I can tell you the first thing we want
14 to understand is how they're structured.

15 I'm going to give you the main ones,
16 Ronnie, okay?

17 Q. Sure. Yeah.

18 A. The next would be what is their
19 value proposition, and then, of course, is how
20 are you going to drive the compliance? And we
21 will tell them. We struggle with compliance.

22 Q. So are those -- you said those are
23 the main factors?

24 A. For me, sitting here talking today,
25 those would be the general ones that I would

1 talk to somebody about.

2 Q. Are there other factors that Schein
3 takes into consideration that you haven't
4 listed?

5 MR. McDONALD: Object to the form.

6 Overly broad. Vague as to time.

7 A. I guess the only other one would be
8 is if we got to the point of vetting it out and
9 understanding the member list, if the business,
10 we already have it, it doesn't make any sense
11 businesswise for us to cannibalize our
12 business. They already see value in Henry
13 Schein, so it doesn't make any sense.

14 Q. Any other factors that you haven't
15 already listed that Schein takes into
16 consideration when evaluating a buying group?

17 MR. McDONALD: Object to the form.

18 Overly broad. Vague as to time.

19 A. There could be more, and if there's
20 something you want to show me, you know, I'll
21 review it with you, but sitting here today,
22 that's all I would tell you off the top of my
23 head.

24 Q. So the four factors that we talked
25 about, are these factors memorialized somewhere

1 in a memo, for example?

2 A. I know Darci has put together some
3 questions on it just for her own ability to run
4 through the questions. But I don't know if
5 there is or don't remember or recall this memo
6 going out to everybody saying, hey, these are
7 the questions that we ask the APC groups.

8 Q. So as far as you know, prior to
9 Darci Wingard joining Schein in 2016, there's
10 never been a formal memo listing out factors
11 that are considered in doing business with
12 buying groups?

13 MR. McDONALD: Object to the form.

14 A. A formal memo, I don't recall. If
15 you have it, we can review it. I'm sure
16 there's people writing some questions in an
17 email, but I wouldn't call that a formal memo.

18 Q. The factors you mentioned, are these
19 formal factors or criteria that Schein takes
20 into consideration, or are they just things
21 that you consider when evaluating a buying
22 group?

23 MR. McDONALD: Object to the form.

24 A. So nobody gave me those factors, I
25 guess. There wasn't a memo from somebody

1 saying, here, here are the factors.

2 How those factors, quite frankly,
3 came about was when Kathleen and I were running
4 the Mid-Market space, started handling
5 inquiries about buying groups, and we're, like,
6 okay, this is -- this is interesting. So we
7 started asking questions, and that's really how
8 it came about.

9 Q. When was that?

10 A. I would say in the 2014/2015 time
11 frame.

12 Q. Prior to that time frame in 2014 or
13 2015, what factors did Schein use to consider
14 buying group business?

15 MR. McDONALD: Object to the form.
16 Overly broad.

17 A. So there's -- I don't recall having
18 meetings or discussions about, hey, these are
19 the factors when we decide on if we want to do
20 business with a buying group.

21 I can tell you from my own
22 experience when I was regional manager in New
23 York, and there was a group called the Farber
24 Group that was positioned as a study club, and
25 I have doctors attending, it would be great for

1 Henry Schein to sponsor us, and, by the way, I
2 think I can drive business to Henry Schein in
3 both merchandise and equipment.

4 So really our process at that time
5 is me, as a regional manager, I called to Dave
6 Steck, and I said, hey, here's the situation.
7 It seems like it makes sense. Are we okay with
8 this? And, you know, is there anything that
9 I -- is there anymore questions I should ask or
10 anything more I should do?

11 And I don't remember exactly what
12 the answer was, but we decided to do business
13 with the Farber Group.

14 Q. And what were the factors you took
15 into consideration in deciding to do business
16 with that group in 2004?

17 A. It's 2004, all right, so we're going
18 back a ways, but I would tell you that the
19 first thing was did Farber have the influence
20 to, again, drive business to Henry Schein, so
21 move business to Henry Schein?

22 Did the ROI make sense from the
23 standpoint of, again, did we have the
24 customers? This wasn't in a formal document.
25 And, you know, locally, it seemed to be worth a

1 try to do this.

2 Q. And the factors you just mentioned,
3 where did those come from?

4 A. My head.

5 Q. So you came up with those?

6 A. Yeah. Yeah.

7 Q. At the time, do you know whether
8 there were formal criteria governing how to
9 engage with or determine whether to do business
10 with a buying group?

11 A. Not -- not that I was aware of.

12 Q. Okay. So focusing on the 2009 to
13 2014 to 2015 time period, when you say that you
14 and Kathleen came up with some of these
15 factors, what did Schein look at in determining
16 whether to do business with a buying group?

17 MR. McDONALD: Object to the form.
18 Misstates his testimony. You said 2009 to
19 2014?

20 MR. SOLOMON: 2014 to 2015 because
21 he gave that approximate date range
22 earlier.

23 MR. McDONALD: But if you look at
24 your question, you said 2009 to 2014 and
25 '15.

1 MR. SOLOMON: Okay.

2 MR. McDONALD: If you meant to say
3 2014/'15, then we're on the same page. So
4 to be clear, why don't you restate the
5 question.

6 MR. SOLOMON: Sure. It would help
7 to be able to see the question.

8 MR. LONG: Here, you want mine? You
9 can read your question again. It was a
10 great question, except for the wrong date.

11 Q. So, again, my question is you say
12 you came up with factors in or around 2014 or
13 2015, correct?

14 A. We were -- we were learning
15 questions to ask based on the inquiries that
16 were coming in.

17 Q. Okay. Prior to that, and going back
18 to 2009, how did Schein determine whether to do
19 business with a buying group?

20 MR. McDONALD: Object to the form.

21 Overly broad. Lack of foundation.

22 A. I don't know if there were any
23 factors, formal factors that I recall that
24 existed.

25 Q. Do you recall anyone ever telling

1 you what factors should be considered when
2 determining whether to do business with a
3 buying group?

4 A. I don't recall ever having a
5 conversation with somebody about, hey, these
6 are the factors when we decide if we're going
7 to do business with a buying group. Just don't
8 recall that.

9 Q. In your experience working at Schein
10 during that time period, how did Schein
11 employees determine whether to work with a
12 buying group?

13 MR. McDONALD: Object to the form.
14 Overly broad. Lack of foundation.

15 A. So the process I would say is we
16 would have, similar to what I did in Long
17 Island, you may have a regional manager or an
18 FSC that knows somebody or there was a study
19 club and they were making inquiries about, hey,
20 I'm thinking about doing this.

21 And, typically, that would go to, if
22 it was an FSC, to the regional manager, and the
23 regional manager would be like, well, this
24 isn't really part of our business, you know,
25 and they'd make a call. I've had -- I've had

1 people call me before saying this is something
2 I'm interested in doing. And, you know, the
3 questions again are, well, can they drive the
4 compliance? Typically we have a major
5 challenge with that. Is it mostly our business
6 or where is the business coming from? You
7 know, what are they doing for these members?

8 It was pretty basic questions,
9 logical questions, business questions.

10 Q. Are you aware of any buying groups
11 that Schein worked with that were able to drive
12 compliance in the 2009 to 2015 time frame?

13 MR. McDONALD: Object to the form.
14 Lack of foundation.

15 A. So I can't tell you one specifically
16 off the top of my head.

17 Q. You just don't recall or you're not
18 aware of any?

19 A. Well, when you're asking me if
20 they -- if they drove compliance, I'm thinking
21 of, again, using the DSO component as to me
22 being compliance, so I'm not aware of any that
23 were able to drive compliance to that level,
24 no.

25 Q. Are you aware of any buying groups

1 that Schein worked with in the 2009 to 2015
2 time frame that brought new business to Schein?

3 MR. McDONALD: Object to the form.
4 Lack of foundation.

5 A. So there was -- there was a group
6 that was growing with Henry Schein, and I don't
7 know -- I can't say, once again, is it because
8 of their compliance, them driving compliance or
9 it's the Henry Schein value offering that was
10 given.

11 But that's why the vetting out
12 process is so important, because we wouldn't --
13 it doesn't make sense to do business with a
14 buying group if they weren't going to drive
15 business to Henry Schein.

16 Q. What was the name of the group that
17 you just mentioned a moment ago?

18 A. The example I was giving you would
19 be -- there was a group in Utah that at the
20 time we had been working with, and, you know,
21 you could see some business growth there.

22 Q. Are you referring to the Dental
23 Cooperative of Utah?

24 A. I am.

25 Q. And that is a buying group?

1 A. It is.

2 Q. And were you involved in that
3 relationship?

4 A. I didn't --

5 MR. McDONALD: Object to the form.
6 Vague.

7 A. I didn't start the relationship or
8 create the relationship. I inherited it and
9 had, you know, contact with them, especially
10 understanding who they are and getting to know
11 them better.

12 And then when we -- when we decided
13 to part ways, I was aware of it. I'm not the
14 one who did it, but I was aware of it.

15 Q. When did Schein part ways with the
16 Dental Co-op of Utah?

17 A. I would say roughly in the 2014 time
18 frame.

19 Q. Did Schein terminate its agreement
20 with the Dental Co-op of Utah?

21 MR. McDONALD: Object to the form.

22 A. Yeah, so we realized that the
23 original agreement and the alignment we had
24 from that original agreement, the commitments
25 that were made were no longer being honored.

1 So yes, we had a business discussion saying,
2 hey, look if we can't get back into alignment,
3 then we can't offer the deal that we're
4 offering to you any longer. The co-op will
5 still exist, and we'll still do business with
6 the members because they're Schein customers
7 too, but the formalized program we had with
8 them would have to go away.

9 Q. So Schein terminated the agreement?

10 A. We were the ones who ended up
11 walking away from the agreement because they
12 were no longer honoring the agreement.

13 Q. Whose decision was it to walk away
14 from the agreement?

15 A. I was part --

16 MR. McDONALD: Hang on. Object to
17 the form. Go ahead.

18 A. I was part of the decision, and
19 Kathleen Titus was part of the decision. Jeff
20 Harmon was involved in the decision, just
21 because he was a local regional manager, but it
22 was really, from what I remember, Kathleen and
23 I.

24 Q. Did Tim Sullivan have any
25 involvement?

1 MR. McDONALD: Object to the form.

2 A. The -- through the course of
3 litigation, the only involvement that I was
4 reminded of is that Tim had -- I had mentioned
5 to Tim about a vendor that was not exclusive
6 with Henry Schein and also not part of the
7 agreement that we had with the Dental Co-op,
8 and I made an inquiry to him. And I don't
9 remember the exact inquiry, what it was. But
10 that was the only involvement that I remember
11 Tim having.

12 Q. Who reminded you of that instance?

13 MR. McDONALD: Object to the form.

14 A. Just through the course of prep.

15 Q. In preparation for what?

16 A. This today.

17 Q. Okay. So we talked about Smile
18 Source. We talked about the Dental Cooperative
19 of Utah. Can you think of any other buying
20 groups that Schein worked with between 2009 and
21 2015?

22 MR. McDONALD: Object to the form.

23 A. I believe there's a list that we're
24 going to be reviewing later today.

25 Q. So this part of the deposition is

1 just you in your individual capacity. And I'm
2 curious, I'd like you to respond, as to which
3 groups you have personal knowledge of.

4 So sitting here today, in your
5 individual capacity, can you tell me any other
6 groups that Schein worked with between 2009 and
7 2015, other than the ones we've just discussed?

8 MR. McDONALD: Object to the form.

9 A. Other than the ones we discussed, I
10 would say there was a group -- and when I say
11 "group," I use that term lightly -- that was in
12 Las Vegas, and I believe the group's name was
13 MeritDent, but they didn't have a formalized
14 buying group.

15 And this was the time where the
16 economy was terrible in Las Vegas. If you were
17 there, it was probably one of the worst hit
18 cities when the economy tanked.

19 And also insurance reimbursement was
20 going down at the same time. So not only was
21 patient flow down, but reimbursement levels
22 went down.

23 And the doctor reached out along
24 with the office manager, and I was the western
25 zone manager at the time, so Vegas was my

1 responsibility.

2 And they said, hey, we have
3 challenges here. Our doctors are suffering.
4 And they inquired about doing some type of
5 buying group. They didn't really know what
6 they wanted.

7 So it didn't make sense for us to do
8 a buying group because we have 64 percent
9 market share in Las Vegas. But what we decided
10 to do is help them and work with manufacturers
11 to provide special deals on whitening.

12 And then we also offered to practice
13 them the HSPA -- that's our practice
14 analysis -- and the other analytics that help
15 our doctors run a more efficient practice.

16 Other than that, as I sit here
17 today, without a list, I can't add to that.

18 Q. So did Schein have a formal
19 agreement with MeritDent for discounts off of
20 products, equipment, and services?

21 A. Not that I recall.

22 Q. Okay. And you mentioned that one of
23 the reasons that Schein thought it did not make
24 sense to work with MeritDent was because Schein
25 already had a 64 percent market share in the

1 Las Vegas area market, correct?

2 MR. McDONALD: Object to the form.
3 Misstates his testimony.

4 A. Right. So they didn't know what
5 they wanted either. It was asking for help.
6 But since it was a group, a small group of
7 doctors putting together a pricing program and
8 a formal agreement I don't recall doing, and it
9 didn't make sense. It is a lot of
10 administrative work to do it too, and it didn't
11 make sense.

12 Q. So why specifically did it not make
13 sense?

14 A. Well, using the same factors that I
15 just went through with you is, they weren't
16 organized or centralized. They didn't know
17 what they actually wanted. They just knew they
18 wanted help.

19 We have a high market share there.
20 I would imagine most of the customers we were
21 already doing business with. But because we
22 always want to help our customers, we
23 decided -- I decided to sit down with them and
24 hear them out and see what their challenge and
25 their pains were and help them out.

1 recall anything more than that.

2 Q. Do you recall being concerned about
3 the development of MeritDent as a buying group?

4 A. I don't recall that, but if there's
5 something where I used concerned, you can show
6 me the document. But I don't remember being
7 concerned about that. I remember being
8 concerned about the market.

9 Q. What do you mean?

10 A. The economy was imploding. It
11 wasn't a good time.

12 Q. So whose decision was it ultimately
13 not to work with MeritDent?

14 MR. McDONALD: Object to the form.
15 Mischaracterizes his testimony.

16 Q. I'll say this: Whose decision was
17 it not to enter into an agreement with
18 MeritDent?

19 A. It would have been mine.

20 Q. Did you have to run it by anyone?

21 A. That decision?

22 Q. Correct.

23 A. No.

24 Q. Generally speaking, when you are
25 making decisions with respect to buying groups,

1 Q. Okay. So the decision not to do
2 business, it sounds like you're saying there
3 were two main reasons. One, they weren't
4 organized or centralized, and the second, that
5 Schein had already had a high market share in
6 the area. Am I getting that right?

7 MR. McDONALD: Objection. Misstates
8 his testimony.

9 A. Okay. They definitely weren't
10 organized. You threw in the word centralized.
11 They weren't organized because they were small.
12 They didn't know what they wanted.

13 And it didn't make business sense to
14 do a formal -- any type of agreement, because
15 they were, again, so small, low market share.
16 So our -- we had a high market share. And we
17 did help them, actually. We didn't say we're
18 not going to help you. We did.

19 And we said, look, we're going to
20 give you the HSPA at this price. There was a
21 couple of other things that I don't remember,
22 and I do remember that we were going to
23 manufacturers saying can we give a special
24 price on these specific items.

25 Don't recall a formulary. Don't

1 am I correct that you would need to speak to
2 Mr. Sullivan or Mr. Steck?

3 MR. McDONALD: Object to the form.
4 Mischaracterizes the evidence.

5 A. There's -- in my mind, there's
6 nothing formal, but because we're a big company
7 and we go coast to coast, and with Henry
8 Schein, it's a tight knit group, if we do
9 something, for example, Klear Impakt in Nevada,
10 and we don't have the ability to communicate
11 that out to everybody, it could go to the east
12 coast to, like Kentucky and say, hey, we have
13 an agreement with Schein, this is great, and
14 then it creates mass confusion.

15 So what I will do -- plus I report
16 to them, of course, report to Dave, of
17 course -- is I will make them aware in some
18 cases of potentially national groups and let
19 them know what I'm working on or not working
20 on. And, ultimately, you know, Dave and Tim
21 both give a lot of leeway to make decisions on
22 things. So if you make a compelling case to
23 work with somebody, they'll absolutely listen.

24 Q. Whose decision -- strike that.

25 If you bring a potential buying

1 group opportunity to Tim or Dave and they
2 provide you with feedback as to what their
3 thoughts are on the group, is it still
4 ultimately your decision as to whether to
5 proceed with working with the group?

6 MR. McDONALD: Object to the form.
7 Overly broad.

8 A. My thoughts on the group carries a
9 lot of influence. But as we have learned more
10 about just the business overall, we now run
11 financial models. So it's no longer just --
12 so, MeritDent, for example, I don't think I got
13 anybody involved with them, and I just made the
14 decision. But a bigger nationwide group, now
15 we have to run a financial model on it, and
16 others will be involved, and it's more of a
17 collaborative decision. But, like I said, if I
18 go to somebody and say, we really need to do
19 this, this makes sense, I believe that I would
20 have the leeway or the freedom to make that
21 decision.

22 Q. What if Mr. Sullivan told you he was
23 not in favor of working with a buying group?

24 MR. McDONALD: Object to the form.
25 Improper hypothetical.

1 A. If Tim or anyone said I'm concerned
2 about this or, hey, you know, it doesn't make
3 sense, we'd have a discussion from a business
4 standpoint of why not. And, again, the factors
5 I gave you, those four factors, would -- would
6 most likely dominate the conversation.

7 Q. And if Mr. Sullivan is not in favor
8 of working with the buying group, would you be
9 able to still form an agreement with the buying
10 group?

11 MR. McDONALD: Object to the form.

12 Asked and answered.

13 A. I wouldn't -- if he told me no,
14 we're not doing this, I wouldn't say, oh, okay,
15 and then go do it. It wouldn't make sense.

16 Q. So has Mr. Sullivan ever provided
17 you with guidance as to how to approach or
18 evaluate buying group business?

19 A. Well, let's take Smile Source, for
20 example. Tim is actually the one who brought
21 Smile Source to me. And when he brought Smile
22 Source to me -- and I put in quotes "to me" --
23 he brought it to my attention, because the APC
24 space at that time was not really developed
25 yet, but we were moving in that direction.

1 We went and met with Smile Source,
2 through some of the questions, and then the
3 followup, again, revolved around those
4 business -- those four business topics. So
5 yeah.

6 Q. When did Mr. Sullivan bring Smile
7 Source to you?

8 A. Well, I've always been aware of
9 Smile Source because, again, we've been on
10 again and off with them. But at one point -- I
11 don't know the year -- Trevor had reached out
12 to Tim, and they always had a really good
13 relationship. So, you know, they were dancing
14 a little bit. And I would say maybe '13, '14.
15 I don't know. Sorry, I don't know the exact
16 date.

17 Q. I don't want you to guess. If you
18 know --

19 A. I don't know the exact year.

20 Q. Okay. My earlier question was just
21 a little different. Does Mr. Sullivan ever
22 provide you with guidance as to how to approach
23 or engage with buying groups?

24 A. You know --

25 MR. McDONALD: Hang on. Object to

1 the form. Overly broad.

2 A. By the time a potential agreement
3 gets to Tim, it has now been, you know, vetted
4 out with the questions. We now run a financial
5 model. You know what his guidance would be?
6 Did we run the financial model on it yet? Did
7 we get the financial team involved with it yet?
8 Yes or no? And then I'll get the financial
9 model involved, and then we have the, you know,
10 the data to make the good decision.

11 Q. So that has been Mr. Sullivan's
12 advice to you with respect to engaging buying
13 groups or getting involved with buying groups?

14 MR. McDONALD: Object to the form.

15 Vague as to time.

16 A. If there is -- I don't know how to
17 answer it, but if there is something else
18 specific that you're -- you know, from a
19 guidance standpoint, that you want to ask, I
20 can answer it. But as I sit here today, in the
21 stuff that we've already outlined, I don't know
22 how else to answer it.

23 Q. Okay. And, again, I'm just asking,
24 generally speaking, your experience working at
25 Henry Schein and interacting with Tim Sullivan

1 as it relates to buying groups, if he's ever
2 given you any specific guidance as to when it
3 makes sense to deal with or engage with a
4 buying group?

5 A. Other than what I've already
6 answered, I can't recall additional guidance.

7 Q. And your answer was just look at the
8 financial modeling, correct?

9 MR. McDONALD: Object to the form.

10 A. My answer was also when I sat
11 with -- when we met with Smile Source, you
12 learn the questions that could be important to
13 Tim. But did he sit down and say, Joe, when
14 we're going to engage in a -- in a buying
15 group, these are the, you know, five things you
16 need to ask? No.

17 Q. Okay.

18 A. No.

19 Q. What are the questions that are
20 important to Mr. Sullivan?

21 MR. McDONALD: Object to the form.

22 Overly broad. Vague as to time.

23 A. Well, as the last example, the
24 financial model would be important. The
25 ability to drive compliance is important. You

1 know, since there's now more of a separation,
2 is there any ownership in the practices is
3 important. But, off the top of my head, that's
4 the only thing. And market share.

5 Q. Anything else?

6 A. Not that I remember specifically.

7 Q. Okay.

8 A. Again, there's no specific
9 discussion on here is our guidance for buying
10 groups.

11 Q. Okay. Are these factors that you
12 just listed that are important to Tim? If a
13 buying group does not meet each of these four
14 factors that you listed, is it Mr. Sullivan's
15 view that Schein should not work with that
16 group?

17 MR. McDONALD: Object to the form.

18 Lack of foundation. Calls for speculation.

19 A. Yeah, I would be speculating on
20 Tim's view. So he -- I've never had guidance
21 that if it doesn't meet these four criteria,
22 it's a no.

23 Q. Do you know whether Mr. Sullivan has
24 ever rejected a potential agreement between
25 Schein and a buying group?

1 A. So what I'm thinking about right now
2 is, again, through the course of litigation and
3 being exposed to a document yesterday, I don't
4 recall if he chimed in on whether we should do
5 business with a group or not. And that was the
6 group I was talking about earlier. So I just
7 don't remember the communication flow and what
8 he had said.

9 But the groups that we're involved
10 in right now, I don't recall him ever saying,
11 you know, stop doing business with them or why
12 are we doing business with them.

13 Q. Well, I'm not limiting my question
14 just to the groups you're doing business with
15 now. Since you've worked at Schein and have
16 interacted with Mr. Sullivan, can you think of
17 any groups that Mr. Sullivan has rejected
18 Schein doing business with?

19 MR. McDONALD: Object to the form.

20 Overly broad.

21 A. Other than what I just laid out with
22 my thought process earlier, I don't recall Tim
23 rejecting a group.

24 Q. Do you recall Mr. Sullivan ever
25 telling you or anyone else that Schein did not

1 want to work with buying groups?

2 MR. McDONALD: Object to the form.

3 A. No. I don't recall we don't work
4 with buying groups, no.

5 Q. Do you recall something similar to
6 that from Mr. Sullivan?

7 MR. McDONALD: Object to the form.

8 A. What would be similar to that other
9 than we don't work with buying groups? I
10 don't -- what would be similar?

11 Q. Anything to the effect of Schein
12 doesn't want to work with or deal with buying
13 groups?

14 MR. McDONALD: Object to the form.

15 A. Not that I recall.

16 Q. Okay. Has Mr. Sullivan ever
17 characterized buying groups as a bad thing for
18 Schein's business?

19 MR. McDONALD: Object to the form.

20 A. I don't recall. But if there's
21 something out there that he has, I can review
22 it with you, but I don't recall him saying
23 that.

24 Q. Do you recall Mr. Sullivan ever
25 saying that Schein did not want to be the first

1 distributor to work with buying groups?

2 MR. McDONALD: Object to the form.

3 A. Not that I recall.

4 Q. Okay. Do you recall Mr. Sullivan
5 ever referring to buying groups as a slippery
6 slope?

7 MR. McDONALD: Object to the form.

8 A. I don't recall that. But, again, if
9 there's something out there, we can review it,
10 but I don't recall him saying that.

11 Q. Has Mr. Sullivan generally always
12 been in favor of working with buying groups?

13 MR. McDONALD: Object to the form.

14 A. I think -- I think Tim has always
15 been open to business opportunities and how it
16 could grow our business, you know, whether it
17 was a buying group or a DSO or a private
18 practice. He was more interested in growing
19 our overall market share than anything else.

20 Q. Has he ever expressed a negative
21 opinion about buying groups?

22 MR. McDONALD: Object to the form.

23 A. A negative opinion? Not that I --
24 not that I recall.

25 Q. Has anyone within Schein ever

1 expressed a negative opinion about working with
2 buying groups?

3 MR. McDONALD: Object to the form.

4 Overly broad.

5 A. I know that people not close to it
6 and not understanding it, there may be some
7 concern over, you know, okay, so why are we
8 going -- why are we doing business with this
9 group? But outside of that, no.

10 Q. Who are you referring to
11 specifically?

12 A. So I can recall a conversation with
13 a gentleman named Eric Nuss in Business
14 Solutions, and when we had the agreement with
15 Smile Source, we are trying to put some
16 Business Solutions stuff together for them.
17 And, you know, coming in here -- coming into my
18 office and saying, you know, explain this. You
19 know, how are we working with Smile Source?
20 What's going on? You know, and then help me
21 understand the direction we're going.

22 But other than that, I don't
23 remember like a negative outcry of why we're
24 doing this.

25 Q. Do you recall anyone at Schein ever

1 saying that Schein has a practice of not
2 working with buying groups or GPOs?

3 MR. McDONALD: Object to the form.

4 A. Not that I recall. If something's
5 out there, let's review it. But I don't recall
6 it.

7 Q. Would you be surprised if someone at
8 Schein has said that in the last 10 years?

9 MR. McDONALD: Object to form.

10 A. Surprised? I don't know if I'd be
11 surprised. I don't know what the right word
12 is. But because, historically, the buying
13 groups haven't been able to drive any type of
14 compliance, it just -- if it came up, it was,
15 well, how are they going to drive compliance?
16 And there was never a good answer, so we moved
17 on. It's almost an insignificant part of our
18 business, and we really weren't exposed to it
19 that much. So I think it's a lack -- one, it
20 was a potential lack of understanding, but two
21 is, you know, we didn't have groups, we weren't
22 exposed to groups like a Smile Source who
23 actually had some type of value proposition.
24 And I'm talking about the '04/'06, talking
25 about going back then.

1 Q. So my question is in the last 10
2 years, so going back to 2008.

3 MR. McDONALD: Object to the form.

4 A. I don't recall. I can't recall
5 specifically if someone had, you know, the
6 negative opinion of a buying group. I know --
7 I know, for me, there was definitely an
8 understanding of challenges and risk there. I
9 definitely know that. But as the industry has
10 evolved and changed, it's -- I've educated
11 myself, so ...

12 Q. In preparing for today's deposition,
13 have you looked at any documents where someone
14 at Schein has said we don't work with buying
15 groups or GPOs?

16 A. That specific statement I don't
17 recall seeing.

18 Q. Something similar to that?

19 MR. McDONALD: Object to the form.

20 If you've got a document, show him.

21 A. Yeah, I don't recall that
22 specifically.

23 Q. Okay. Did Mr. Sullivan ever express
24 concerns to you about the ability of buying
25 groups of GPOs to drive compliance?

1 A. Ask the question again. I'm sorry.

2 Q. Sure. Did Mr. Sullivan ever express
3 to you concerns about the ability of buying
4 groups of GPOs to drive compliance?

5 A. Well, I think the questions that you
6 asked me before about Tim's guidance and
7 whatnot, that that is a general understanding
8 of our experience with buying groups is
9 compliance. Driving compliance is a problem.

10 Q. So Mr. Sullivan has expressed that
11 as a specific concern with respect to buying
12 groups?

13 A. So I don't remember a specific
14 conversation, so I'm going based off of, you
15 know, just I guess different questions I've
16 heard. I don't remember a specific
17 conversation with Tim where he said that to me.

18 MR. McDONALD: When you get to a
19 point, let's take a break.

20 MR. SOLOMON: Totally. Yeah, I'm
21 trying to finish up. I think we've been
22 going an hour.

23 MR. McDONALD: We've been going more
24 than that, an hour and 20, or something.

25 Q. You said you don't remember a

1 specific conversation. What do you recall with
2 respect to Tim Sullivan expressing concerns
3 about buying groups driving compliance?

4 A. So you're asking me something that's
5 specific to Tim's opinion, and, like, I can't
6 tell you a specification event or conversation.
7 And I'm not sure if I'm thinking of, you know,
8 just the questions that I had in my own head or
9 when we were having conversations with Smile
10 Source, so I can't point an event out. So I
11 guess I'm assuming that that would be a
12 question that Tim would ask.

13 Actually, during -- when we were
14 talking about -- about Smile Source, he
15 actually, he did ask that question about Smile
16 Source, now that I'm talking about it. So I
17 have heard him ask that question.

18 Q. And was that in relation to the most
19 recent Smile Source agreement in March of 2017?

20 A. That -- that question came up when
21 we met with Smile Source, which was probably in
22 '15 or '16. Probably '15.

23 Q. Do you recall what year it was, 2015
24 or 2016?

25 A. I'd be guessing on the exact date.

1 Q. So you're not sure?

2 A. I'm not -- I'm not positive.

3 Q. But you think it was either in 2015
4 or 2016?

5 A. I know it was in one of those two
6 years.

7 MR. SOLOMON: Okay. We can take a
8 break.

9 THE VIDEOGRAPHER: Going off the
10 record at 11:43 a.m.

11 (A short break was taken.)

12 THE VIDEOGRAPHER: Going on the
13 record. This marks the beginning of media
14 No. 3. The time is 11:55 a.m.

15 Q. Welcome back, Mr. Cavaretta.

16 A. Thank you.

17 Q. Before the break, we were talking
18 about buying groups. Are you familiar with the
19 term price-only buying group?

20 A. That specific term, no, but I'm
21 aware of price buying groups. I mean ...

22 Q. What are price buying groups?

23 A. Just groups that the -- when you are
24 having -- when you're asking them questions
25 about their value proposition, that the only

1 thing that they're looking for is a better
2 price.

3 Q. How -- strike that.

4 What would you call those groups?

5 A. I guess I'm not sure if I ever put a
6 designation on them. I mean, their value
7 proposition is price only, I guess. I don't
8 know.

9 Q. Does Schein want to work with buying
10 groups who focus on price?

11 MR. McDONALD: Object to the form.

12 A. Well, as you were talking about
13 before with buying groups, when someone says,
14 hey, I'm interested or I have a buying group,
15 we ask the questions, we find out more about
16 them. And if it turns out that there's not a
17 value proposition there, that's beyond, hey,
18 can I get a better deal, then it doesn't make
19 sense.

20 Q. So when you say, "beyond can I get a
21 better deal," do you mean buying groups that
22 are focused on getting a better deal through
23 better pricing?

24 MR. McDONALD: Object to the form.
25 Mischaracterizes testimony.

1 A. So if there's not a value
2 proposition beyond, hey, I'm getting a couple
3 people together and we want better pricing,
4 then that doesn't make sense from a business
5 standpoint --

6 Q. What if --

7 A. -- to do business with them.

8 Q. What if the group is made up of more
9 than a couple people and is trying to get
10 better pricing through Schein?

11 MR. McDONALD: Object to the form.

12 A. I guess I would just stick to the
13 process that I've outlined is we'd have to take
14 a look at them, take a look at what their
15 business model is, take a look at how many
16 customers they have and decide from there if it
17 makes sense for us to do business with them or
18 not.

19 Q. So with respect to buying groups
20 that are focused on price, Schein looks at
21 other factors other than the fact they're just
22 looking at price in determining on whether to
23 do business?

24 MR. McDONALD: Object to the form.

25 A. We look at several different

1 factors.

2 Q. Are you aware of any buying groups
3 focused only on price that Schein has worked
4 with since 2009?

5 A. That we've -- that we have agreement
6 with? I don't -- I don't know.

7 Q. You can't think of any sitting here
8 today?

9 A. I just don't -- I can't say that one
10 group specifically we're doing business with is
11 a price-only group and I can designate them
12 that way. I just don't know.

13 Q. Have you ever heard anyone at Schein
14 say that Schein doesn't like to work with
15 buying groups that focus only on price?

16 A. That specific statement, I don't
17 know if it came out that way, but I know one of
18 the questions is what is the value proposition,
19 and so that's part of the process. If it's --
20 there's more to it than just, hey, I want a
21 better price.

22 Q. So I just would like to walk through
23 you the factors that we talked about earlier,
24 four factors that you said you and Kathleen
25 Titus came up with sometime around 2014 or 2015

1 in determining whether to do business with a
2 buying group.

3 And you mentioned structure, value
4 proposition, driving compliance, and the fourth
5 was whether Schein already had a high market
6 share with members who are part of that group.

7 A. I just want to be clear. Those were
8 the four that you asked me off the top of my
9 head of questions that I would ask, and I also
10 stated that we were learning, Kathleen and I
11 were learning, and that's how we were
12 developing questions.

13 I don't know if the question came
14 off that way, but I just want to be clear. So
15 those were the four factors that you mentioned
16 sitting here that I was able to share with you.

17 Q. Okay. Would you say those are the
18 four most important factors?

19 MR. McDONALD: Object to the form.

20 A. Those are the four factors I thought
21 of sitting here. If there's, again, a document
22 that I could look at, you know, the questions
23 that others have asked, they may be more
24 important.

25 Q. I don't have a document to show you.

1 I'm just asking sitting here today.

2 A. Okay. Right. So if I had more time
3 to think of some questions, maybe I would think
4 of some that would maybe be more important,
5 but, again, those are the four that come to my
6 mine.

7 Q. So with respect to the first factor,
8 structure, what does that mean?

9 A. So we would -- we would go in and
10 we'd ask, tell us about your group, tell us
11 what you're doing, tell us, you know, your
12 mission, how many members do you currently
13 have, and how are you administering this buying
14 group. And, depending on the answers, we ask
15 additional questions.

16 Q. Are there any structures that Schein
17 would not want -- strike that.

18 Are there any specific buying group
19 structures that Schein would not want to work
20 with?

21 MR. McDONALD: Object to the form.

22 A. So there's nothing that says we
23 won't work with this group here because of X,
24 Y, and Z. We go through the process of vetting
25 it out. And if there is not an actual business

1 structure in place, it usually leads to there's
2 no value proposition, there's no compliance,
3 and it's just a loose group and from a business
4 standpoint makes very little sense for us to do
5 business with them.

6 Q. And what do you mean by if there's
7 no business structure?

8 A. I'll take -- again, I'll use Smile
9 Source. They have a corporate office in
10 Houston. They have resources dedicated to, you
11 know, helping members, working with
12 manufacturers. They run it like a business.
13 There's a value proposition. There's people
14 you can talk to. So that would be structure.
15 That would be an example of structure.

16 Q. So those are just examples. They're
17 not necessary in order for a buying group to
18 have a structure that Schein would find to be
19 one that makes business sense?

20 MR. McDONALD: Object to the form.

21 Q. They don't have to have a corporate
22 office and specifically resources dedicated to
23 helping members. Those are just some examples
24 that you're giving?

25 A. So I gave you an example of Smile

1 Source. But do they have to have a corporate
2 headquarters like Smile Source? It doesn't
3 have to be exactly like Smile Source.

4 Q. Okay. You also talked about value
5 proposition. What sort of things are important
6 there?

7 A. Well, what are they doing for their
8 members? Is there education? Do they do any
9 type of consulting? Do they help improve their
10 profitability or their production? Are they
11 offering help with insurance reimbursement?
12 Are they helping with the front-desk services?
13 Do they do any type of HR, marketing?

14 So there's some groups that are out
15 there that actually truly are helping dentists.

16 Q. Why are those factors important to
17 Schein?

18 A. Well, they're important because
19 if -- again, if you're Smile Source and you
20 come and say, hey, we have how many members and
21 we want to figure out a deal with you, we want
22 to know how they're helping the doctors because
23 we want to be aligned, first.

24 But then, second, if it is only,
25 hey, we just want to see if we can get a better

1 price, Henry Schein can do that without having
2 now to pay an admin fee to a third party to
3 lower a price. It's like, it's ridiculous. It
4 doesn't make any sense.

5 Q. So if a buying group just wants to
6 get a lower price, they wouldn't be aligned
7 with Henry Schein?

8 MR. McDONALD: Object to the form.

9 Mischaracterizes his testimony.

10 A. That would be -- if they have
11 nothing else as part of a value proposition,
12 then, to me, from a business decision, it
13 doesn't make any -- it doesn't make a lot of
14 sense to do business.

15 Q. And how does the fact that a buying
16 group is offering these additional services to
17 members, how does that benefit Schein?

18 MR. McDONALD: Objection. Asked and
19 answered.

20 A. Because they are helping their
21 members grow, which are our customers, grow,
22 and when that happens, you know, depending on
23 how much share we have within that buying
24 group, that means our business will grow. And
25 then the services that Henry Schein is also

1 offering, we can also bring those services in
2 to those members. So it makes sense.

3 Q. Turning to the third factor, driving
4 compliance, what's important there?

5 MR. McDONALD: Objection. Asked and
6 answered.

7 A. Compliance is important because, if
8 you are making an agreement with somebody and
9 we're going to give you X, you're going to give
10 us Y, if they can't give Y, then, from a
11 business standpoint, it doesn't make any sense
12 to do business. So the compliance piece is
13 huge.

14 Q. And how does Henry Schein analyze
15 the compliance piece when considering a buying
16 group? What do they look at in determining
17 whether the group could potentially drive
18 compliance?

19 A. So that also goes back to the
20 structure piece, and that's a component of it
21 is, okay, so now you have X amount of members.
22 What does this group do internally to help
23 continue to promote the benefits of working
24 with Henry Schein?

25 From a reporting standpoint, you

1 know, of course, we have the purchases of what
2 those customers are buying. And then is there
3 a way that you can strategize with these --
4 with these groups on how we can improve our
5 business together.

6 When we're talking to them and
7 finding out, it's -- it's around their
8 influence we're trying to understand. So,
9 again, in Smile Source's case, our customer,
10 they outlined how they have an internal group
11 of people that, once a customer is onboarded to
12 Smile Source and using Henry Schein, how
13 they'll do check-ins with them. Okay. That
14 helps with compliance.

15 The messaging to the group, that
16 helps with compliance. Are the members
17 invested into the mission of the actual buying
18 group? Because that helps with compliance.

19 So whenever you do an agreement, you
20 really don't know how well the compliance is
21 going to be until you actually do the deal.

22 Q. When you said the messaging is
23 important with respect to driving compliance,
24 what did you mean?

25 A. Well, if we signed up with a group

1 and we just signed up with a group and there
2 was no communication out to their members of,
3 hey, we're now going to do business with Henry
4 Schein or, hey, we're excited to announce that
5 we have an agreement with Henry Schein, they're
6 going to be our preferred dealer, this is great
7 news. Just a way to message out to the
8 customers, to the members.

9 Q. So by "messaging," you mean
10 promoting the relationship with Henry Schein?

11 A. Announcing the relationship with
12 Henry Schein and why it would benefit the
13 members and why they did it.

14 Q. And the fourth factor we talked
15 about was Schein's existing market share with
16 members of a buying group. What is important
17 with respect to that factor?

18 A. Well, that's important because if
19 there is a group that is out there and it's
20 determined that we already are -- have
21 80 percent of the business, 70 percent of the
22 business, whatever it is, and part of doing a
23 deal with a buying group is, hey, we want to
24 negotiate, you know, a certain price down, and
25 you're also going to give us an admin fee for

1 that, so, thank you, you're going to
2 potentially make us less profit on these
3 customers. We're already preventing the
4 services, and you want us to pay you to do
5 that. So from a market share standpoint, from
6 a business standpoint, that has to be in
7 consideration.

8 Now, if we're in a market where we
9 have 5 percent share and the influence is great
10 and they can drive a lot of business, we may be
11 interested.

12 Q. Now, what if a buying group exists
13 in a market where Schein has 5 percent share
14 but they're focused on Schein, is that
15 something Schein would want to do business
16 with?

17 MR. McDONALD: Object to the form.

18 A. So most of our shares is much higher
19 than that. I know you're using my example.

20 I would go back to the process, and
21 I would still say, from a business decision, if
22 they're not bringing a value proposition above
23 and beyond that to customers, I still don't
24 understand the reason why we would do that.

25 Q. So in instances where Henry Schein

1 has lower market share in a certain region, you
2 don't see business sense in working with a
3 price-only buying group to capture greater
4 market share?

5 A. Overall, if the -- if the only
6 reason why a group exists is to -- just to
7 lower a price to the market, again, we can do
8 that on our own as Henry Schein, and we don't
9 have to pay somebody to do that for us. So we
10 would just change our strategy in that market
11 and go at it alone.

12 Q. So I understand Henry Schein can do
13 that. But it sounds like Schein would be
14 unwilling to work with the buying group; is
15 that right?

16 MR. McDONALD: Object to the form.
17 Mischaracterizes his testimony.

18 A. Can you ask the question again?

19 Q. Sure. I understand Schein can
20 target the customers individually.

21 A. Yeah.

22 Q. But what about working with the
23 customers as part of a buying group?

24 MR. McDONALD: Object to the form.
25 Vague.

1 A. And I'm going to repeat myself.
2 Again, if there's not an additional value
3 proposition where we're not aligned in how we
4 want to help our customers, then I still
5 don't -- wouldn't understand why we would do
6 that solely just for that.

7 Q. So sitting here today, other than
8 structure, value proposition, driving
9 compliance, and market share, can you think of
10 any other factors that Schein would look at in
11 evaluating a buying group?

12 MR. McDONALD: Object to the form.
13 Asked and answered. Overly broad. Vague
14 as to time.

15 A. I think I mentioned, you know, the
16 membership, existing membership. So, I mean, I
17 would just -- I guess I'm comfortable with
18 that.

19 Q. And by "existing membership," what
20 exactly do you mean?

21 A. Well, you may have a group that
22 comes to you and they have the structure, they
23 have the value proposition, and they say, hey,
24 Joe, we have 300 members. This is what our
25 philosophy is. They're buying. We have

1 influence over them. And then that's when the
2 compliance questions come in.

3 And because they already have 300
4 members that exist and it's actually a
5 structured group, then there's opportunity
6 there for us as Henry Schein.

7 Conversely, if it's someone that
8 says, I'm thinking of doing this and ten of my
9 buddies, which has been historically what a lot
10 of the traditional buying groups have been, we
11 want to get together and see what we can do to
12 negotiate a price, it doesn't necessarily make
13 a lot of sense.

14 Q. Have you used any specific term to
15 refer to those kind of groups, the latter kind,
16 where it's just a dentist and some of his
17 buddies getting together to get a better price?

18 A. Have I used a term to describe
19 those?

20 Q. Do you call them something specific
21 or do you also just refer to those as buying
22 groups?

23 MR. McDONALD: Objection to form.
24 Overly broad.

25 A. Well, you know, again, when you

1 opened the deposition today and you asked me
2 about the definition of a buying group, I think
3 that's why I was explaining why there's just so
4 many layers and so many different kinds and
5 exactly why we had to create the APC space.

6 If I had to label them, I would say
7 it's a potential group trying to put, you know,
8 a buying group together. Yeah, I don't know if
9 I had a label for them specifically.

10 Q. Okay. So I'd like to look at some
11 documents with you.

12 A. Okay.

13 Q. I don't have someone here pulling
14 documents for me, so ...

15 MR. McDONALD: Do you want me to
16 help you?

17 MR. SOLOMON: I wouldn't mind that,
18 actually.

19 MR. McDONALD: I'll come over there.
20 As long as I can give you questions.

21 Q. Okay. So I'm handing you -- I'm
22 handing you a document that's been premarked as
23 CX2458. Please take a look at it and let me
24 know when you've had a chance to review.

25 A. Sure.

1 Okay.

2 Q. Okay. Mr. Cavaretta, do you
3 recognize the document, CX2458?

4 A. Yes.

5 Q. Okay. What is this document?

6 A. It's an email.

7 Q. And you're sending this email to
8 someone within Henry Schein?

9 A. I am.

10 Q. Okay. Did you write portions of
11 CX2458 as part of your job at Henry Schein?

12 A. Yeah, I wrote the email.

13 Q. Okay. And did you have personal
14 knowledge of what you wrote on this email in
15 CX2458?

16 A. Personal knowledge as far as ...

17 Q. Did you have personal knowledge of
18 what you wrote?

19 A. So reading it, I don't remember
20 writing this exact email, but I'm reading my
21 words.

22 Q. At the time you wrote this email,
23 did you have personal knowledge of what you
24 wrote?

25 MR. McDONALD: Object to the form.

1 A. If I wrote the email, I would
2 imagine that these were my words.

3 Q. Okay. And this CX2458 describes a
4 meeting you had with Tim, Dave, and John.
5 Do you see that?

6 A. I do.

7 Q. And did you write this email close
8 in time to the meeting you describe in the
9 email?

10 A. The email is from 2011, so I don't
11 know when my meeting with them happened
12 compared to when I wrote the email.

13 Q. Okay. Looking at it sitting here
14 today, does it look like you wrote it right
15 after you had just met with Tim, Dave, and
16 John?

17 MR. McDONALD: Objection to form.
18 Asked and answered.

19 A. It was 2011. I don't know from the
20 time I met with them to the time I wrote the
21 email how much time elapsed.

22 Q. You say in the first sentence: I
23 just met with Tim, Dave, and John. Do you see
24 that?

25 A. I do.

1 Q. Do you have any reason to doubt you
2 wrote this shortly after you met with them?

3 A. Again, I don't know the amount of
4 time that lapsed between meeting with them and
5 writing the email. If that's the question, I
6 have no idea.

7 Q. Did you write it 6 months or a year
8 later?

9 A. I doubt it.

10 Q. Okay. And does CX2458 appear to be
11 a true and accurate representation of the email
12 that you wrote?

13 A. Yeah, these are my words.

14 Q. Okay. And is CX2458 a document that
15 Schein keeps on record in the ordinary course
16 of its business?

17 A. Was that a question?

18 Q. It was a question, yeah.

19 A. If Schein keeps the email?

20 Q. Yep.

21 A. If we were able to produce it for
22 this deposition, I would have to believe we do.

23 Q. Okay. I'm going to ask lots more
24 questions like that today, so ...

25 A. Okay.

1 Q. So does CX2458 refresh your
2 recollection about a group you discussed
3 earlier called MeritDent, which I believe you
4 described as a buying group?

5 A. Parts of it, yes.

6 Q. And based on CX2458, it sounds like
7 you met with Tim, Dave, and John to discuss the
8 MeritDent group. Is that referring to Tim
9 Sullivan, Dave Steck, and John Chatham?

10 A. Yes.

11 Q. So you met with Sullivan, Steck, and
12 Chatham to discuss the MeritDent group in
13 December 2011?

14 A. I have to believe so, yes.

15 Q. And this was around the time that
16 you were considering whether to form an
17 agreement with this buying group; is that
18 right?

19 A. They must have made an inquiry about
20 forming a buying group, so there had to have
21 been contact with them trying to determine,
22 again, those factors that I was talking about.

23 Q. Why did you bring it to
24 Mr. Sullivan's attention?

25 MR. McDONALD: Object to the form.

1 A. When -- this wasn't part of how we
2 were doing business or comfortable doing
3 business, even though we had buying group
4 relationships. So the fact that a small group
5 of doctors in Vegas -- and again, at the time,
6 it was tough -- were looking to put a group
7 together, I think that it could be important to
8 see if this makes any sense. And, like I said
9 before, the factors going into it, it just
10 didn't make any sense.

11 But what did make sense is the value
12 proposition that we offered as Henry Schein.
13 So that's where the other bullet points came
14 from.

15 Q. So Mr. Sullivan told you that he was
16 not in favor of forming an agreement with the
17 MeritDent buying group?

18 MR. McDONALD: Object to the form.

19 A. I don't recall him saying he's not
20 in favor.

21 Q. Do you recall what he did say?

22 A. Not in a conversation from 2011 I
23 don't.

24 Q. So you don't have a recollection one
25 way or the other as to what you discussed with

1 Mr. Sullivan during the meeting described in
2 this email?

3 A. I don't recall any meeting with
4 them.

5 Q. Okay. So I just want to, you know,
6 read your statements here in this email. In
7 your email to Steve Dutson and Diane Zurko, you
8 state: As you can imagine, they feel the same
9 way as we do, that we don't want to be the
10 first company to open the floodgates to the
11 dangerous world of GPOs.

12 Do you see that?

13 A. I do.

14 Q. So did Mr. Sullivan tell you that he
15 didn't want Schein to be the first to open up
16 the floodgates to the dangerous world of GPOs?

17 MR. McDONALD: Object to the form.

18 A. I don't remember Tim saying that
19 specifically. Again, I don't remember the
20 conversation from 2011.

21 Q. Got it. You wrote it here on this
22 page with respect to your meeting with
23 Mr. Sullivan, Mr. Steck, and Mr. Chatham,
24 correct?

25 A. It's in the email, correct.

1 Q. Do you have any reason to doubt that
2 that's what Mr. Sullivan told you during the
3 meeting?

4 MR. McDONALD: Object to the form.
5 Mischaracterizes the document.

6 A. I do because I don't remember the
7 conversation. So I doubt that -- of course I
8 have doubt that that was said.

9 Q. So sitting here today, how do you
10 understand the statement that Schein doesn't
11 want to be the first company to open up the
12 floodgates to the dangerous world of GPOs?

13 A. Well, as we talked about before, in
14 my own experience, going back to even the
15 Farber Group in '04, the success of buying
16 groups was very limited. Our experience with
17 buying groups was very limited. And at that
18 point, it still didn't make sense to, you know,
19 go into, in this case -- and this is Las
20 Vegas -- a high market share area, to negotiate
21 a price down and start a potential precedent
22 when we didn't need to.

23 So I think that's, you know, a
24 decision that made sense at the time not to --
25 not to play with it.

1 Q. So at this point in time, Schein did
2 not want to play with buying groups?

3 MR. McDONALD: Object to the form.

4 Mischaracterizes his testimony.

5 A. So in this specific example, this
6 specific opportunity, it didn't make sense to
7 have some type of formal agreement. But,
8 obviously, we had other agreements with buying
9 groups already. So in this example, in this
10 case, it didn't make complete sense to do a
11 formal agreement with them.

12 Q. The focus of your statement,
13 however, is about the world of GPOs, in
14 general. You don't say specifically there that
15 you're concerned about this specific buying
16 group. You're referring to GPOs in general,
17 correct?

18 MR. McDONALD: Object to the form.

19 Mischaracterizes his testimony and the
20 document.

21 A. I'm talking about MeritDent Group in
22 this document, and I generalize in here, you
23 know, the world of GPOs.

24 Q. Why did Schein not want to be the
25 first to work with GPOs?

1 MR. McDONALD: Object to the form.
2 Mischaracterizes his testimony and the
3 document.

4 A. Well, we may have. We may have been
5 the first, because if you go back to 2004,
6 there could have been -- that could have been
7 the first one.

8 What I'm referring to here is, if
9 you are going to engage in a group of small
10 members of a buying group, that is a change to
11 what our business model has been and our
12 business strategy has been.

13 Times were different at this time.
14 So it could have been a short-term opportunity
15 to help people. It could have been a
16 short-term opportunity that turned into a
17 long-term gain and made sense.

18 But at this time, it didn't make
19 sense for us to get involved with this buying
20 group and other buying groups that could
21 potentially be like it because, from a business
22 standpoint, again, it didn't make sense for us
23 to do it.

24 Q. Are you aware of other buying groups
25 like MeritDent that Schein refused to form an

1 agreement with?

2 A. As I sit here today, I do not
3 recall. Actually, during the course of
4 litigation, the one I referred to earlier with
5 the PMGS was one that I clearly -- my memory
6 has been refreshed, and I remember that.

7 Q. And you're referring to Pacific
8 Group Management Services?

9 A. Or PGMS. I believe that's the
10 group. I need to see the email to confirm
11 that, yes.

12 Q. Any others?

13 A. And what's the time frame that we're
14 referring to?

15 Q. In the last 10 years.

16 A. So even recently?

17 Q. Correct.

18 A. Okay. Yes, we've had -- I mean, now
19 that we're part of the APC space, there is
20 inquiries that come in. I can't tell you how
21 many in a week or in a month. But after
22 reviewing what the value proposition is, all
23 those factors I've already outlined, we've
24 definitely decided not to do business with
25 certain groups, sure.

1 A. So, again, I'm not sure if we were
2 or weren't. We can go back to 2004 and look at
3 the history of groups that we've worked with.
4 Because, I mean, I also write in there based on
5 the fact that we will not guarantee all our
6 business will come to Schein and will not fall
7 into the CAG world either.

8 So we're clearly talking about
9 compliance, trying to understand where a group
10 like this would fit. The CAG world is a
11 special markets world, so it's still separate,
12 so it just -- it didn't make business sense to
13 do a formal agreement with MeritDent.

14 Q. You were concerned that doing
15 business with MeritDent would open the
16 floodgates on other similar type groups; is
17 that right?

18 MR. McDONALD: Object to the form.
19 Mischaracterizes his testimony.

20 A. I'm not sure how else to answer it.
21 But, yeah, I don't know how else to answer your
22 question other than what I've already answered.

23 Q. So I'm just trying to figure out if
24 Schein has always worked with buying groups and
25 GPOs why you would say that Schein didn't want

1 Q. So you say that at this time you
2 thought it didn't make sense to do business
3 with MeritDent, correct?

4 A. Correct.

5 Q. And did Mr. Sullivan share that
6 opinion?

7 MR. McDONALD: Object to the form.

8 A. I can only go by this email of what
9 potentially could have been discussed in that
10 2011 conversation.

11 Q. But you also say that it was
12 important that Schein did not act as the first
13 company to open the floodgates.

14 Why was it important that Schein
15 wasn't first?

16 MR. McDONALD: Object to the form.

17 Mischaracterizes his testimony.

18 A. I don't know if that's important or
19 not. I wrote it, but I don't know at the time
20 of writing it why that could have been
21 important.

22 Q. Did you mean that Schein didn't want
23 to be the first distributor to work with GPOs?

24 MR. McDONALD: Object to the form.
25 Asked and answered.

1 to be the first, that Schein didn't want to
2 open the floodgates and that the world of GPOs
3 is dangerous?

4 MR. McDONALD: Objection. Object to
5 the form. Asked and answered.

6 A. Yeah, so I would imagine part of
7 this is I could have worded it differently
8 because we clearly were already working with
9 them. But a group like this, where it is a
10 small group, was not the business model that we
11 existed with today, for the most part.

12 So did we want to change that or
13 not? And there wasn't a business reason to
14 change it because of the factors that I've
15 already reviewed with you. So the decision was
16 made not to do a formal agreement, but,
17 clearly, if you see everything else that we've
18 outlined here, we were trying to help our
19 customers.

20 Q. You also mentioned earlier that at
21 this point in time, Schein did not have a lot
22 of experience with buying groups. So what did
23 you mean by that?

24 A. For me, personally, other than the
25 Farber Group, I was aware of -- I was aware of

1 Smile Source. At this point, Dental Co-op was
2 around, so there was some familiarity.

3 But a group -- but a group like
4 this, where there was smaller groups, we
5 weren't engaged with them because, again, they
6 can't drive the compliance. So I'm comparing
7 it to what I know now and my experience now, as
8 I sit here today, responsible for the APC
9 group.

10 Back to 2011, that's 7 years ago,
11 that's a lot of learning and a lot of
12 transition along the way. So my knowledge of a
13 buying group today -- and I'm calling them
14 GPOs -- so it's vastly different than it was in
15 2011.

16 Q. So at this point in 2011, your
17 experience with buying groups included the
18 Dental Co-op of Utah and what you've referred
19 to as the Farber Group; is that right?

20 MR. McDONALD: Mischaracterizes his
21 testimony. He also said Smile Source.

22 Q. Well, were you involved at all in
23 the Smile Source relationship with Schein prior
24 to 2012?

25 A. Involved, which is broad, yes.

1 Q. Okay. So Smile Source, the Dental
2 Co-op of Utah and the Farber Group were three
3 groups you're testifying that Schein worked
4 with around the time of this email?

5 A. I'm testifying that those are, as I
6 sit here now, those are the ones that I was
7 familiar with. The Farber Group I hadn't been
8 part of for 5 years, so at that point I
9 wouldn't have known if it still existed or not,
10 but yeah.

11 Q. Okay.

12 A. Yeah.

13 Q. When did Schein start working with
14 the Dental Co-op of Utah?

15 A. Can I give a general?

16 Q. Sure.

17 A. I would say 2007/2008.

18 Q. Okay. And what about the Farber
19 Group?

20 A. 2004ish.

21 Q. Does the Farber Group refer to the
22 Long Island Dental Forum?

23 A. Forum, yes.

24 Q. So that's the same group as the Long
25 Island Dental Forum?

1 A. Is the way I understand it now, it
2 is, yes.

3 Q. So they're not two separate groups?

4 A. My understanding of it is Faber is
5 the head of the group and the head of the Long
6 Island Dental Forum group. So if it's listed
7 out separately, I don't know if anything has
8 changed since then.

9 Q. As far as you're aware, it's a
10 single group?

11 A. As far as I know, it's a single
12 group.

13 Q. And do you know when the
14 relationship with Smile Source and Schein began
15 prior to 2012?

16 A. I was brought into conversations
17 with Smile Source by Glen Meltzer. That, most
18 likely, would have been '07/'08.

19 Q. Okay. I want to direct your
20 attention to, in this email, numeral 1. You
21 write: I will explain to Dr. Ball --

22 A. Bally.

23 Q. Bally -- that the one-price-fits-all
24 strategy doesn't translate well in our world.

25 Do you see that?

1 A. I do.

2 Q. Did you mean that Schein didn't want
3 every customer to pay the same price with
4 respect to dental products?

5 MR. McDONALD: Object to the form.

6 A. As I sit here reading that, I can't
7 tell you exactly what I was meaning when I
8 wrote that.

9 Q. Okay.

10 A. Because the one-price-fits-all, I
11 don't -- even when I'm reading it, I don't
12 understand it.

13 Q. Okay. Is there anything that you
14 could look to, either in your email or your
15 files or records, that would help refresh your
16 recollection as to what you discussed with
17 Mr. Sullivan in the meeting referenced in
18 CX2458?

19 A. No, because through the course of
20 discovery, I think we had -- you have
21 everything.

22 Q. So sitting here today, you can't
23 think of anything that you could look to that
24 would refresh your recollection as to what you
25 might have discussed or what Mr. Sullivan might

1 have said?

2 A. As I sit here today, no.

3 Q. And you just don't recall one way or
4 the other what Mr. Sullivan told you about
5 MeritDent and the meeting referenced in CX2458?

6 MR. McDONALD: Objection to form.
7 Mischaracterizes his testimony.

8 A. This meeting was -- conversation was
9 in 2011. I don't remember that conversation.

10 Q. Okay.

11 MR. McDONALD: If you're going to
12 another document, why don't we take a
13 break. It's 12:37 or something like that.

14 MR. SOLOMON: Okay. I'm fine with
15 that.

16 THE VIDEOGRAPHER: Going off the
17 record at 12:36 p.m.

18 (A lunch break was taken.)

19 THE VIDEOGRAPHER: Going on the
20 record, this marks the beginning of Media
21 Number 4. The time is now 1:27 p.m.

22 Q. Hello, Mr. Cavaretta. Welcome back.

23 So I'd like to look at a few more
24 documents with you.

25 A. Okay.

1 Q. I'm handing you a document that's
2 been premarked as CX2504. Please look it over
3 and let me know when you've had a chance to
4 review it.

5 A. Sure. Okay.

6 Q. Okay. Mr. Cavaretta, do you
7 recognize CX2504?

8 A. As -- as an email, I recognize it,
9 yes.

10 Q. Okay. So what is CX2504?

11 A. It's an email regarding the Dental
12 Co-Op.

13 Q. And did you receive CX2504 as part
14 of your job at Schein?

15 A. Meaning the -- the involvement
16 in ...

17 Q. You received some of the emails in
18 this chain, correct?

19 A. I did.

20 Q. And you received them as part of
21 your job at Schein?

22 A. Yes.

23 Q. And you wrote portions of CX2504, as
24 well, correct?

25 A. I did.

1 Q. And you wrote that as part of your
2 job at Schein?

3 A. I did.

4 Q. Okay. So I'd like to direct your
5 attention first to 2504-003. And Ms. Titus, on
6 January 28th, 2011, at 2:19 p.m., says -- and I
7 think she's referring to Dental Cooperative --
8 They are essentially a GPO, which is not a good
9 fit for either of our divisions. However, it
10 is a better fit for HSD than SM.

11 Do you see that?

12 A. I do.

13 Q. Do you understand by SM, Ms. Titus
14 is referring to special markets?

15 A. I do.

16 Q. And so she's saying GPOs are better
17 fit for HSD than they are for special markets;
18 is that right?

19 A. That's what she --

20 MR. McDONALD: Hang on.

21 Object to the form.

22 A. In her email, she writes: However,
23 it's a better fit for HSD than SM.

24 Q. And do you understand her to be
25 saying that because that the Dental Co-Op of

1 Utah is comprised of independent dentists?

2 MR. McDONALD: Object to the form.

3 A. You'd have to ask Kathleen. She
4 wrote the email, so ...

5 Q. Do you agree with her statement?

6 A. That it -- that it's a better fit
7 for HSD than special markets?

8 Q. Uh-huh.

9 A. Since it's private practices, HSD
10 would -- would do business with the private
11 practices.

12 Q. And she's referring to the GPO,
13 Dental Co-Op of Utah. I don't think she was
14 referring to the private practices themselves.

15 MR. McDONALD: Object to the form.

16 Are you telling him what the email says --

17 Q. Well, is that your --

18 MR. McDONALD: -- or are you -- are
19 you just making that up?

20 Q. Is that your understanding, as well,
21 Mr. Cavaretta?

22 MR. McDONALD: Object to the form.

23 A. Can you ask that question again?

24 Q. Sure. Ms. Titus is referring to the
25 GPO, Dental Co-Op of Utah, being a better fit

1 for HSD, rather than for special markets,
2 correct?

3 A. The way I'm taking the email is
4 the -- the private practices that are part of
5 Dental Co-Op is the reason why she's saying
6 that.

7 Q. And would you agree with her
8 assessment?

9 A. Well, if it's private practices,
10 then HSD would have been dealing with that.
11 That would have been our P&L.

12 Q. So buying groups of independent
13 dentists would fall within HSD?

14 MR. McDONALD: Object to the form.

15 A. So I think that was part of the --
16 the confusion. The concern is they -- there
17 wasn't really a specific division that they
18 went to. So because it was private practices
19 in this case, that's why Kathleen was pushing
20 it back to us or sending it back to us.

21 Q. Okay. And then if you turn to the
22 first page of CX2504, I'd like to direct your
23 attention to your email to Randy Foley on
24 January 30th, 2011. Do you see where I'm
25 pointing you to?

1 A. I do.

2 Q. Again, sorry, it's 1:06 p.m.

3 A. I do.

4 Q. Okay. And you tell Mr. Foley -- I
5 assume you're talking about the Dental Co-Op of
6 Utah -- They're out of SLC, but this is not the
7 IDA.

8 And Salt Lake City there refers
9 to -- or SLC refers to Salt Lake City?

10 A. Correct.

11 Q. Okay. They are in AZ, Boise, Utah,
12 and are trying to get into Vegas.

13 Did I read that correctly?

14 A. You did.

15 Q. Okay. And so you're stating here
16 the Dental Co-Operative of Utah was a buying
17 group that was trying to expand into Vegas in
18 2011, correct?

19 A. Correct.

20 Q. And was it your understanding that
21 they were trying to expand outside of Salt Lake
22 City, generally speaking, or just in Vegas?

23 MR. McDONALD: Object to the form.

24 Lack of foundation.

25 A. In this email, they're specifically

1 referencing Vegas.

2 Q. Okay.

3 A. So Vegas.

4 Q. You go on to write one sentence
5 down: However, they insist on making pricing
6 one of the reasons to join them. This is the
7 rub and why we'll not support them outside of
8 SLC.

9 Do you see that?

10 A. I do.

11 Q. Okay. So you're saying here that
12 Schein was not supporting the Dental Co-Op of
13 Utah's expansion outside of Salt Lake City in
14 January of 2011, correct?

15 MR. McDONALD: Object to the form.

16 A. What I was saying there -- and I --
17 I remember it -- is that in Utah, they had a
18 robust offering, which is pretty much
19 everything that was in the first part of this
20 email, and they were able to execute on that in
21 Utah.

22 As they asked for -- for, you know,
23 endorsement in helping them roll out in Arizona
24 and Boise, which I did, we were learning that
25 their valued service were -- were not reaching

1 out there, were not -- it was not replicating
2 like it was in Utah.

3 And they hired somebody, and all
4 this individual was doing was talking about
5 the -- the price. So that became their value
6 proposition.

7 In Vegas, the same thing was
8 happening. So once again, Vegas, we have a 64
9 or -5 percent market share at that time, and we
10 have an individual that is not talking about
11 insurance reimbursement and fees and CEU
12 courses and -- and everything else. He was
13 going in there and just talking about join us
14 and we'll be able to reduce their price. So
15 that was when we fell out of alignment there.

16 Q. So Schein did not want to support
17 the Dental Co-Op of Utah's expansion outside of
18 Utah because they were just making the focus on
19 price outside of Utah; is that correct?

20 MR. McDONALD: Object to the form.

21 A. Their value proposition and what we
22 both agreed to each other that we were going to
23 be doing, stopped.

24 Q. When did that stop?

25 A. Well, the only data I have in front

1 of me that I can remember now is this email
2 that -- so I would imagine 2011, it stopped --
3 it started to -- they started to get away from
4 what their offering was.

5 Q. Okay. And so because they were
6 getting away from what their offering was,
7 Schein did not want to support their expansion?

8 A. It didn't make sense for us to
9 continue to support the expansion. And
10 secondly is, I believe in this letter, he was
11 rolling it out, and we hadn't discussed it. So
12 the -- the alignment was -- was definitely
13 faltering there.

14 Q. Okay. And which letter are you
15 referring to?

16 A. The overview from the member
17 services, isn't that --

18 Q. What page are you on?

19 A. That -- I'm reading that -- 004,
20 rolling into 005, rolling into 006, where it
21 outlines -- where it outlines what they were
22 doing. And I'm assuming this was a letter that
23 was sent out to their members, because it says
24 from member services, unless I'm reading it
25 wrong.

1 Dental Co-Op into other states, into other
2 regions with our team. He could have -- he --
3 I think they still exist, and they're expanding
4 without Henry Schein's endorsement. But you --
5 you can't go into a state or a region, saying,
6 hey, this is Schein supporting and endorsing
7 us, without that actually happening.

8 Q. So Andy, who are you referring to?
9 Andy Eberhardt?

10 A. He was the head of Dental Co-Op.

11 Q. Okay. So Andy Eberhardt was using
12 Schein's name in other states without Schein's
13 consent. Is that what you're stating?

14 A. He was in -- when it started in
15 Vegas, it was rolling out into Vegas -- this is
16 from what I remember -- without us being
17 onboard, without me being able to communicate
18 to my team, without us being aligned. So
19 from -- what I remember is, he went and -- and
20 started rolling it out.

21 And, yeah, I didn't say, yeah, let's
22 go, team. Here's what's going on. I didn't
23 get a chance to educate anybody. I don't even
24 remember if we actually agreed to continue to
25 roll out in Vegas.

1 Q. Okay. So what in this part of
2 CX2504 caused concern for Schein specifically?

3 MR. McDONALD: Well, object to the
4 form. He can tell what you caused him
5 concern.

6 A. From this letter, it was, this is
7 what their value proposition was in Utah. What
8 they were now doing in Vegas was not the same
9 value proposition. So they started sending out
10 to members in Vegas that, you know, they're
11 rolling in and -- and from what I remember,
12 hey, Schein is endorsing this. Yet we hadn't
13 come to any type of agreement on that. So
14 that's how I remember it came out.

15 Q. So Schein was okay what the Dental
16 Co-Op of Utah was doing in Utah, but was
17 against what they were doing outside of Utah?

18 MR. McDONALD: Object to the form.

19 Vague as to time.

20 A. No. Our working relationship in
21 Utah was very good. We were aligned. We were
22 talking. We were doing everything that we
23 committed to.

24 What Andy wanted to do, when he was
25 expanding, is he wanted me to endorse the

1 I know at one point, after we
2 started talking and we got on the same page,
3 that I did give him access to our team. We
4 actually did do one or two joint seminars,
5 which didn't go well.

6 So he went first into Vegas without
7 me being able to educate the team, without me
8 being able to give an endorsement, saying, hey,
9 you know, this is something that we've decided
10 to do.

11 In addition, as you can see in here,
12 once it started rolling out, things were
13 happening in Vegas that didn't happen in Utah.
14 He was endorsing other dealers. He was
15 starting to get in with other manufacturers.
16 So it was, like, okay, what's going on here?
17 This is not what we agreed to. This is --
18 we're not aligned.

19 Q. Was that happening in this time
20 frame of January 2011?

21 A. So I can say by this email, when
22 they're talking about Darby now being endorsed,
23 I have to assume, based on this email, it was.

24 Q. Okay. And can you identify any
25 other concerns in this email that you expressed

1 with respect to Dental Co-Op of Utah?

2 A. I don't know if I completely
3 understand the question, but I don't --

4 Q. Sure.

5 A. -- I don't know if I need to go any
6 further -- I mean, I don't feel like I need to
7 go further with this email, but -- if that's
8 the question.

9 Q. Okay. Again, focusing on the
10 January 30th, 2011 email, at 1:06 p.m. on the
11 first page, you talk specifically about the
12 fact that the Dental Co-Op of Utah making
13 pricing a focus is the reason why Schein will
14 not support their growth outside of Utah. Am I
15 correct?

16 MR. McDONALD: Object to the form.
17 Mischaracterizes the document and his
18 testimony.

19 A. So once again --

20 Q. And I'm just focusing on the
21 statement right here we're looking at.

22 A. I -- I understand focusing on the
23 statement. But the statement doesn't represent
24 everything that was going on, is -- in Utah,
25 there was an agreement. There was a direction,

1 and everyone was doing what they agreed to.

2 As they started going away from
3 Utah, it became about -- they hired some
4 individual who was just going around talking
5 about the pricing piece of it, which was not
6 what the Dental Co-Op had agreed to with us and
7 not what we agreed to allow to endorse them
8 to go to other markets.

9 So when that changes, that's -- it's
10 not okay. So I don't know a better way to
11 answer that, other than we -- we were becoming
12 further from being aligned.

13 Q. And you were concerned about that at
14 the time of this email?

15 MR. McDONALD: Well, I object to the
16 form. Vague as to you're -- what's "that"?

17 Q. You were concerned about what you
18 just described at the time of this email with
19 respect to the price focus?

20 A. It was -- yeah. I said, this
21 doesn't make sense because the value
22 proposition you're offering in Utah is changing
23 outside of Utah. So that needed to be
24 addressed and discussed and -- yeah, it's in
25 the email.

1 Q. You mentioned earlier that you had
2 inherited this group when you had started as VP
3 of the western area at some point, correct?

4 A. To be clear, I became the western
5 zone manager. And when I took over the western
6 zone, that's -- I wasn't the VP -- that's when
7 the relationship was inherited.

8 Q. And what -- or when was that?

9 A. I believe I started as a western
10 zone manager in 2009, yeah.

11 Q. So you would have inherited the
12 Dental Co-Op of Utah relationship sometime in
13 2009?

14 A. So when I took over, yes, it was --
15 the relationship already existed in Utah.

16 Q. Okay. When you took over, do you
17 recall when you first learned about the Dental
18 Co-Op of Utah?

19 A. I -- I remember Jeff Harmon making
20 me aware of it, and I remember having to
21 understand it. But beyond that, I don't
22 remember, you know, specific details.

23 Q. When you first learned about the
24 Dental Co-Op of Utah in 2009, did you think
25 that the concept was a good one?

1 A. When I first heard about it, of
2 course, you -- it was so unique, and it was --
3 it was -- it was different than what I was used
4 to, that I had to explore and ask more
5 questions. So between Jeff explaining it to me
6 and then going in and meeting with Andy, I -- I
7 understood better what it was.

8 Q. And do you --

9 A. Yeah. Go ahead.

10 Q. Do you recall what you learned about
11 the Dental Co-Op of Utah when you asked those
12 questions in the 2009 time frame?

13 A. The only thing I remember -- I
14 remember learning two things: One is what our
15 offering was to them, and the second thing is
16 going and meeting Andy and him outlining to me
17 how -- their main focus was really, again,
18 going after the insurance reimbursement and
19 helping doctors that are being hurt by
20 insurance reimbursement in Utah.

21 Q. And in 2009, did you think that the
22 relationship with the Dental Co-Op of Utah was
23 a beneficial one?

24 A. From I recall, after -- yeah, after
25 learning more about it and -- and getting

1 educated on it, I did, because they were also
2 introducing Schein into these offices, and we
3 were doing HSPAs for these offices. So it
4 seemed like a mutually beneficial relationship.
5 That's what I recall.

6 Q. How else was the relationship
7 mutually beneficial?

8 A. I think we were growing each
9 other's -- we were helping them grow their
10 membership, and our business was growing within
11 their membership.

12 Q. Any other ways in which the
13 relationship was mutually beneficial?

14 A. Off the top of my head, I -- I can't
15 think of one.

16 Q. Did Schein increase the amount of
17 business it was doing with Dental Co-Op of Utah
18 members over time starting in 2009 when you
19 took over?

20 A. I don't remember the exact dollars
21 or percentages, but I do know that our -- that
22 our business with them was growing. Part of it
23 was because the -- the members we helped Dental
24 Co-Op sign up, so the volume went up. But
25 there was definitely some growth in those --

1 those accounts.

2 Q. And dentists were receiving a
3 discount from Schein, who were a part of the
4 Dental Co-Op of Utah?

5 A. They did.

6 Q. Can you recall what those discounts
7 were?

8 A. If -- if -- do you have the
9 contract?

10 Q. I don't.

11 A. Okay.

12 MR. McDONALD: Well, if we have one,
13 it's been produced.

14 THE WITNESS: Okay.

15 Q. I'm just saying I don't have it with
16 me here at this moment.

17 MR. McDONALD: Okay. So don't
18 guess.

19 THE WITNESS: Okay.

20 MR. McDONALD: I mean, you're under
21 oath to tell the truth. You're not under
22 oath to guess.

23 A. I know there was a -- a discount
24 associated with it and an admin fee going back
25 to the co-op. That was the structure of it.

1 Q. If you look at Mr. Foley's email to
2 you on January 30th, 2011, at 1:13 p.m., he
3 asks: Is it Thorup? They're doing about
4 1 million with HSD. Kind of hard to rock that
5 boat.

6 Do you understand Mr. Foley to be
7 saying at the time of this email, the Dental
8 Co-Op of Utah members were doing \$1 million in
9 business with HSD?

10 A. Oh, it's where he says: Is this the
11 Thorup group of SLC -- out of SLC?

12 Q. It's on the first page?

13 MR. McDONALD: He's looking at the
14 first page.

15 A. Okay. I'm sorry.

16 Q. Starting with, is it Thorup, just
17 that whole sentence.

18 A. So can you ask me the question
19 again --

20 Q. Sure.

21 A. -- because now I've found the email.

22 Q. My question was: At the time of
23 this email in January 2011, did you understand
24 Mr. Foley to be saying that Dental Co-Op of
25 Utah members were doing \$1 million in business

1 with HSD?

2 MR. McDONALD: Object to the form.

3 A. No, because, as I put in there, I'm
4 not sure if Thorup is part of it. So I didn't
5 know if Randy was talking about a group that
6 special markets was doing business with or if
7 this was the Dental Co-Op.

8 Q. So you're not certain what Mr. Foley
9 was referring to there?

10 A. Not exactly.

11 Q. Okay. You can put that document
12 aside.

13 I'm going to show you one.

14 MR. SOLOMON: I'm showing
15 Mr. Cavaretta a document that has been
16 premarked CX2505.

17 Q. Please look it over and let me know
18 when you've had a chance to review.

19 A. Okay.

20 Q. Mr. Cavaretta, you've had a chance
21 to review CX2505?

22 A. I have.

23 Q. And what is CX2505?

24 A. It's an email about the Dental Co-Op
25 of Utah.

1 Q. And you drafted part of CX2505,
2 correct?

3 A. I did.

4 Q. And you did so as part of your job
5 at Henry Schein?

6 A. Correct.

7 Q. Okay. And I want to focus on the
8 first email from -- well, I want to focus on
9 the first page. There's an email from
10 Mr. Steck to you, July 25th, 2011 at 9:01 a.m.
11 Do you see that?

12 A. I do.

13 Q. And Mr. Steck is emailing you about
14 the Dental Co-Op of Utah, which is the subject
15 of this email, right?

16 A. That is correct.

17 Q. And he asks -- the second line --
18 well, he says to you: This one group in Utah
19 is our largest single regular dental customer
20 in the United States.

21 Do you see that?

22 A. I do.

23 Q. So Mr. Steck is telling you here as
24 of the time of this email, the Dental Co-Op of
25 Utah was Schein's largest regular dental

1 customer in the U.S., correct?

2 A. In Dave's words, that's what he's
3 saying, yes.

4 Q. Okay. Did you understand that to be
5 the case, as well?

6 A. Probably not before I read the
7 email.

8 Q. Do you have any reason to doubt that
9 that was the case at the time of this email?

10 A. I -- I took Dave for his word.

11 Q. Okay. Turning to the next email,
12 this is from you to Mr. Steck in response at
13 9:15 a.m. I'd like to focus on the second
14 paragraph beginning with "we really should."
15 Do you see that?

16 A. Yes.

17 Q. Okay. And the second sentence, you
18 write: This concept, as you know, is becoming
19 more and more common, and I get about one
20 request every two months from a group looking
21 to start a co-op ... my answer is always no.
22 Do you see that?

23 A. I do.

24 Q. I read that correctly?

25 A. You did.

1 Q. And you're saying in -- in this
2 email that at this point in 2011, you believed
3 inquiries from buying groups to Schein were
4 becoming more and more common, correct?

5 MR. McDONALD: Object to the form.

6 A. I can only go back to what my email
7 said, so one request every two months.

8 Q. Okay. And you say that you would
9 say no to all of the buying groups that would
10 approach Schein, correct?

11 MR. McDONALD: Object to the form.

12 A. In my email, I did say: My answer
13 is always no.

14 Q. Okay. And do you have any reason to
15 doubt -- or strike that.

16 With respect to the Dental Co-Op of
17 Utah, in the next sentence, you say: However,
18 with this group, they already had roots in Utah
19 before I took over, so I'm managing the
20 relationship carefully.

21 Do you see that?

22 A. I do.

23 Q. So you're saying that with respect
24 to the Dental Co-Op of Utah, this was an
25 exception since it was a group that was already

1 established before you took over; is that
2 right?

3 MR. McDONALD: Object to the form.

4 The document speaks for itself.

5 A. Okay. Again, what I -- I'm saying
6 is that this relationship existed, and -- and
7 I'm managing it.

8 Q. And in the earlier sentence, you're
9 saying with respect to other co-ops, your
10 answer is always no, correct?

11 A. So I say that in the email, but once
12 again, at the time is -- the co-op component or
13 the buying group component of what was being in
14 front of us didn't make sense. So the co-ops
15 that -- or the people that were asking us to
16 become a buying group -- and I'll use MeritDent
17 as an example. They weren't established like
18 Dental -- the Dental Co-Op of Utah, so there
19 wasn't a structure in place, and there wasn't a
20 value proposition. So at that time, my answer
21 must have been no.

22 Q. Okay. So all of the co-ops or
23 buying groups that were approaching you at the
24 time were not established or organized, and so
25 you would say no to doing business to them?

1 MR. McDONALD: Object to the form.

2 Overly broad.

3 A. I can't say that all of them were --
4 what structure they all had. But if they
5 didn't have the -- the structure that made
6 sense, then the answer was no.

7 Q. Okay. Turning to -- going back up
8 to the first paragraph, and underneath it,
9 there's some numerals listing out various
10 items. Do you understand that to be a list of
11 the services and value that the Dental Co-Op
12 offered to their members at this time?

13 A. It was a summary of what I knew off
14 the top of my head at the time of writing the
15 email.

16 Q. Okay. And, again, this represents
17 those services and value that the Dental Co-Op
18 of Utah member -- strike that.

19 This represents the value and
20 services that the Dental Co-Op of Utah provided
21 to their members at the time of this email,
22 correct?

23 A. That's what I understood the Dental
24 Co-Op was offering specifically in Utah, yeah.

25 Q. Okay. You can put that document

1 aside.

2 A. Okay.

3 Q. I'm going to hand you another
4 document, Mr. Cavaretta. This has been
5 premarked as CX2255 [sic]. Please look this
6 over and let me know when you've had a chance
7 to review it all. And I would just like to
8 point out for the record that -- Mr. Cavaretta,
9 CX2225-002. Do you see that?

10 A. Yes.

11 Q. So this is an email that is not a
12 part of this email chain.

13 MR. SOLOMON: And, John, we've
14 looked at this example before. And this is
15 an example of something that inadvertently
16 was -- was added in as part of this email
17 chain. But I think we can agree, and
18 hopefully counsel will agree with me, that
19 you can disregard 2252-002.

20 MR. McDONALD: Didn't we go over
21 this with Tim?

22 MR. SOLOMON: Yeah, we did.

23 MR. McDONALD: I thought -- I
24 thought you guys were going to fix that.

25 MR. SOLOMON: We had this stuff

1 preprinted.

2 MR. McDONALD: So do you understand
3 what he's saying, Joe?

4 THE WITNESS: No.

5 MR. McDONALD: So the back of this
6 first page, this email here --

7 THE WITNESS: Yeah.

8 MR. McDONALD: -- is not part of the
9 chain. It was inadvertently added by
10 somebody. And so it goes from Page 001 to
11 Page 003.

12 THE WITNESS: Got it.

13 MR. McDONALD: Okay.

14 THE WITNESS: Yes.

15 A. Okay.

16 Q. Okay. Mr. Cavaretta, do you
17 recognize CX2225?

18 A. I recognize it as an email, yes.

19 Q. And what is CX2225?

20 A. It is an email regarding -- subject
21 line: Our meeting today with PGMS.

22 Q. And you wrote portions of CX2225 as
23 part of your job at Schein, correct?

24 A. I did.

25 Q. Okay. I want to focus, Mr.

1 Cavaretta, on the first page of the exhibit.

2 And so this is about a group, again, called
3 Pacific Group Management Services. And do I
4 have that correct?

5 A. Yes.

6 Q. Okay. And what is your
7 understanding of what Pacific Group Management
8 Services, or PGMS, was?

9 A. Again, based on the email, they were
10 a group looking to do business with Henry
11 Schein, and I -- I didn't know a lot about
12 them.

13 Q. What kind of group were they?

14 MR. McDONALD: Object to the form.

15 If you know, then tell him. If you
16 don't know, just say you don't know.

17 A. I don't know what type of group they
18 were --

19 Q. Okay.

20 A. -- or are.

21 Q. Do you know whether Schein ended up
22 doing business with Pacific Group Management
23 Services?

24 A. Based on this email, I would say
25 Pacific Group Management Services, I -- I don't

1 believe so.

2 Q. And do you know --

3 A. But --

4 Q. Do you know --

5 A. Sorry.

6 Q. Sorry. Go ahead.

7 A. I -- I -- from my understanding,
8 part of this was, we ended up doing business
9 with the -- the doctor who is responsible or in
10 charge of -- of PMGS -- PGMS.

11 Q. So Schein did business with the
12 doctor who was in charge of PGMS, but didn't
13 form a relationship with PGMS as a buying
14 group, or GPO, correct?

15 A. That's my understanding.

16 Q. Okay. And do you know whose
17 decision it was not to do business with PGMS as
18 a buying group?

19 A. Well, in the email from Kathleen,
20 she mentions Tim and I made the decision, so I
21 would have to assume that Tim and I made the
22 decision.

23 Q. Do you have any recollection making
24 the decision regarding PGMS in 2014?

25 A. No. Until the -- really, until the

1 course of litigation came through, I -- I
2 didn't really recall the situation.

3 Q. Do you recall now?

4 A. Just what I've been educated on
5 after reading the emails. But I don't
6 remember, you know, the specific occurrences
7 and even discussing PGMS.

8 Q. Sitting here today, do you remember
9 why Schein declined to do business with PGMS?

10 A. Sitting here today, do I remember
11 why we declined? No. Reading the email, I
12 can -- I -- I read -- I'm reading the same
13 email you are. It's talking about compliance.

14 Q. And does it say anywhere in this
15 email what exactly you based your decision with
16 respect to PGMS on?

17 A. It says here that if there was a
18 time in the future they become an MSO that
19 could demonstrate compliance, we would be
20 pleased to revisit.

21 Q. So that's Ms. Titus stating that,
22 correct?

23 A. That's correct.

24 Q. So she's saying if PGMS would be an
25 MSO, which is a management services

1 organization, Schein would work with it?

2 A. Yeah. So she's saying that the MSO
3 component -- which, again, we talked about it
4 from an equity owner standpoint. If they could
5 drive better compliance, then they'd be
6 interested in it.

7 Q. Okay. But as long as PGMS was not
8 an MSO and didn't have a common -- or
9 structure, Schein was not interested in working
10 with PGMS; is that right?

11 MR. McDONALD: Object to the form.
12 Mischaracterizes his testimony.

13 A. What I'm reading this is as is that
14 because they can't drive compliance, that would
15 be the reason why.

16 Q. But you also just mentioned the fact
17 that they're not an MSO as one of the reasons
18 why Schein wasn't doing business with them?

19 A. Well --

20 MR. McDONALD: Object to the form.
21 He's just reading the document.

22 A. Right. I'm reading -- so, again,
23 become an MSO. That could demonstrate
24 compliance. We could be pleased to revisit.
25 So in Kathleen's words, that's, I guess, what

1 I'm reading back to you.

2 Q. So what would PGMS need to do to
3 become an MSO that Schein would be interested
4 in working with?

5 MR. McDONALD: Object to the form.

6 A. As I -- as we mentioned before, if
7 you're an MSO, you have some type of equity
8 ownership, of what I understood it at this
9 time, in the practice. So you could
10 demonstrate the ability to have compliance,
11 meaning the offices would need to purchase from
12 the dealer that the MSO corporate team has
13 signed up for.

14 So it doesn't sound like PGMS had
15 that. It sounded like they are -- owned an
16 office or two, and then the rest were non-owned
17 offices.

18 Q. So you wanted there to be a common
19 ownership structure?

20 MR. McDONALD: Object to the form.

21 A. Wanted there to be the ability to
22 drive compliance. So whether that is a hundred
23 percent owned or -- you know, from my
24 experience, equity-owned that was able to drive
25 compliance. So that's what I was familiar

1 with.

2 Q. Okay. So was Schein only interested
3 in working with groups that had equity
4 ownership in the practices?

5 MR. McDONALD: Object to the form.
6 Mischaracterizes the evidence.

7 A. So is it -- are -- are we ignoring
8 the other conversations we had about the -- the
9 buying groups we were already doing business
10 with and, you know, engaged with?

11 Q. I'm just trying to understand your
12 testimony with respect to this document and the
13 statement that we talked about that they need
14 to be an MSO with equity ownership, which you
15 just stated.

16 A. Okay. I believe I was reading
17 the -- the document that's in front of me,
18 so -- and I explained what an MSO was in my
19 mind and that we have more compliance with
20 MSO -- or MSOs drive more compliance.

21 You keep mentioning that it's a
22 centralized ownership piece of it, so I -- I
23 don't know a different way to answer your --
24 your question, other than what I've answered
25 already.

1 Q. Okay. Turning to the next part of
2 this email, you forward this on to Mr. Sullivan
3 on July 16th, 2014 at 1:12 p.m. and you tell
4 Mr. Sullivan: Bringing KT and Andrea back has
5 a benefit I didn't think of as it pertains to
6 the GPO world. They know how to be watch --
7 the watchdogs and take it seriously.

8 Did I read it correctly?

9 A. You did.

10 Q. And KT refers to Kathleen Titus?

11 A. Correct.

12 Q. And Andrea is Andrea Hight?

13 A. Correct.

14 Q. Okay. So you're saying -- you're
15 telling Mr. Sullivan that a benefit of working
16 with Ms. Titus and Ms. Hight as it relates to
17 GPOs is that they know how to be watchdogs with
18 respect to GPOs, right?

19 MR. McDONALD: Object to the form.

20 A. So in this -- in this email, I can
21 tell you in the time frame of 2014, we're
22 transitioning business that was in the special
23 markets world over to the Henry Schein Dental
24 world, which includes the group practices.

25 There was a lot of distrust within

1 the internal organization between, quite
2 frankly, Hal and myself. Since Andrea and
3 Kathleen had come from the special markets
4 world, they were able to, one, help us with
5 understanding what the markets were like,
6 which -- you know, we weren't always dealing
7 with MSOs.

8 But, two, also understanding that,
9 you know, potentially some of the deals that
10 the -- the special markets team was doing in
11 order to bring business from the -- you know,
12 the private practice P&L to special markets
13 P&L.

14 So what we were uncovering is -- is,
15 you know, one, new customer, on the face of a
16 new customer, but, two, also stuff the special
17 markets team was doing, like offering, you
18 know, pricing to private practices that were
19 really supposed to be for special markets.

20 So they were both an internal
21 watchdog -- and, you know, if I could have used
22 different terminology, I would have -- but also
23 externally, they were able to understand this
24 new customer and explain how they were
25 structured and how they were set up.

1 So I know that was a long
2 explanation, but I think that's important.

3 Q. So you're saying you just -- you
4 just used the wrong terminology; you didn't
5 mean to call them GPO watchdogs?

6 MR. McDONALD: Object to the form.
7 It doesn't say GPO watchdogs. You -- you
8 are.

9 A. Yeah. I didn't say that.

10 Q. Well, you're saying that they know
11 how to be watchdogs as it pertains to the GPO
12 world. Is that not what you're saying there?

13 MR. McDONALD: It absolutely does
14 not say that, Mr. Solomon. You're just
15 making that up.

16 Q. Okay. What do you understand you to
17 be -- what are you saying there?

18 MR. McDONALD: Object to the form.
19 Asked and answered. He just gave you a
20 long answer of what he meant.

21 A. It's a benefit to have KT and Andrea
22 on the team because they're explaining the
23 different customer segments to us. And since
24 they know the customer segments and they also
25 know how the special markets team worked,

1 it's -- it's benefiting us.

2 Q. Well, you're not -- you don't
3 actually say that in this sentence. You just
4 said that now. The sentence says: Bringing KT
5 and Andrea back has a benefit I didn't think of
6 as it pertains to the GPO world.

7 And in the next sentence you say:
8 They know how to be watchdogs and take it
9 seriously.

10 A. But it also doesn't say I -- we
11 brought them over to be GPO -- GPO watchdogs,
12 which is what you said.

13 Q. So what are you referring to in the
14 second sentence: They know how to be watchdogs
15 and take it seriously?

16 MR. McDONALD: Objection to form.

17 Asked and answered.

18 A. Okay. I'll explain it again. At
19 this time, there was a lot of distrust between
20 the different divisions with Henry Schein. You
21 had special markets over here. You had private
22 practice over here. Distrust was mainly with
23 Hal and I.

24 There were P&L battles. There was
25 new customers that we weren't familiar with

1 that Kathleen and Andrea were, from the world
2 they came from. Plus they knew how the special
3 markets world operated.

4 So when you combine the ability to
5 understand what special markets was trying to
6 do and then also how customers, you know, were
7 changing and how they were segmented, it -- it
8 was a benefit.

9 Q. So are you saying they were being
10 watchdogs as it relates to special markets and
11 Hal Muller?

12 MR. McDONALD: Object to the form.

13 Asked and answered.

14 A. So from -- from my answer the
15 previous two times, yes, it was understanding,
16 to making sure special markets wasn't bringing
17 private practice business under their P&L, and
18 it was staying appropriately with the private
19 practice world.

20 Q. How did you know that's what you
21 meant here?

22 MR. McDONALD: Object to the form.

23 A. Well, back in 2014, I can tell you
24 what we were experiencing in putting together
25 the Mid-Market space. So I know internally

1 what was going on and the -- the battles that
2 were happening.

3 And Kathleen and Andrea came to us
4 from the special markets world. So there was
5 way too much time, effort, and emotion spent on
6 the internal fighting.

7 So I guess I'm just answering the
8 question on what I believe this to say.

9 Q. Why did you forward this email to
10 Mr. Sullivan?

11 A. So at the time we were making the
12 transition, there's a lot of confusion of
13 what -- where customers go and who owns the
14 customer or which customers.

15 And because of the fact that special
16 markets and private practice couldn't get
17 along, Tim had to get involved so he could have
18 peaceful, constructive meetings. So I wanted
19 to make sure Tim could understand the benefits
20 that Andrea and Kathleen were bringing to us.

21 Q. So you thought this email could be
22 of interest to Mr. Sullivan?

23 A. I -- I -- well, I sent it to him.

24 Q. Okay. You can put that document
25 aside.

1 I'm going to hand you another
2 document, Mr. Cavaretta, that's been premarked
3 as CX2509. Just let me know when you've had a
4 chance to --

5 A. Sure.

6 Q. -- look it over.

7 A. Okay.

8 Q. Okay. Mr. Cavaretta, do you
9 recognize CX2509?

10 A. I recognize the it as an email, yes.

11 Q. Okay. And what is CX2509?

12 A. It's an email with the subject line:
13 How do you define buying groups.

14 Q. Okay. And you wrote part of this
15 email chain, correct?

16 A. I did.

17 Q. And you did so as part of your job
18 at Henry Schein?

19 A. I did.

20 Q. Okay. Focusing on the first
21 earliest in time portion of this email chain,
22 it's from someone named Chad Campbell to Philip
23 Toh. Do you know who they are?

24 A. I don't know or remember who Chad
25 Campbell is.

1 Q. Okay.
 2 A. I know Phil Toh used to work for us
 3 in the special markets division.
 4 Q. Do you know whether Mr. Campbell was
 5 somebody who worked internally at Schein?
 6 A. I don't recognize his name.
 7 Q. Okay. And I notice that -- I just
 8 turned to 2509. On the second page it has a
 9 signature block for Mr. Campbell, and it says
 10 he's a financial inventory specialist with
 11 Henry Schein Canada.
 12 A. He's a financial inventory
 13 specialist for Henry Schein Canada.
 14 Q. So Mr. Toh at some point copies you
 15 on this email at 4:12 p.m. And do you know why
 16 Mr. Toh copied you on this email?
 17 A. I don't.
 18 Q. Okay. Was Mr. Toh seeking guidance
 19 from you with respect to buying groups?
 20 MR. McDONALD: Object to the form.
 21 Calls for speculation.
 22 A. I -- I can only read the email he --
 23 he wrote. I mean, I don't know what he was
 24 seeking.
 25 Q. And Mr. Toh, in this portion of the

1 email, writes: Henry Schein Dental manages
 2 customers who are buying groups, not special
 3 markets.
 4 Did I read this correctly?
 5 A. You did.
 6 Q. Would -- would you agree with what
 7 Mr. Toh wrote here?
 8 A. Back in 2013, I can't say I would
 9 entirely agree, because at that point, we were
 10 still transitioning -- or, actually, we hadn't
 11 made the transition yet to mid-markets. So I
 12 think buying groups were still in a -- in a
 13 gray space.
 14 Q. In a --
 15 A. A gray -- like, a gray space. I --
 16 I think there was potentially buying groups in
 17 special markets and buying groups in HSD. So
 18 there was no APC --
 19 Q. Uh-huh.
 20 A. -- space that we could say
 21 definitively that's where they belong.
 22 Q. So would you say that Mr. Toh's
 23 statement here was inaccurate?
 24 MR. McDONALD: Objection to form.
 25 Asked and answered. He just told you.

1 A. So based on what I just said, I
 2 would -- I would say that it belonged probably
 3 in both groups at that time.
 4 Q. Did you correct Mr. Toh in this
 5 email?
 6 A. No, I did not.
 7 Q. Do you know why you didn't correct
 8 him?
 9 A. Nope.
 10 Q. Okay. Turning to your email to
 11 Mr. Toh, at 4:16 p.m., you write: We try to
 12 avoid buying groups at all costs and,
 13 therefore, don't really recognize them.
 14 Did I read that correctly?
 15 A. You read it correctly.
 16 Q. So you're saying Schein was avoiding
 17 buying groups at all costs and that Schein does
 18 not recognize them, correct?
 19 MR. McDONALD: Object to the form.
 20 A. By reading the statement, I know how
 21 the statement reads. But I can go back to, at
 22 that time, we didn't completely understand
 23 buying groups, other than some of the ones that
 24 we were working with. So, therefore, from a
 25 business standpoint, it didn't make sense. And

1 we weren't really doing business with buying
 2 groups at that time, so -- and in not really
 3 recognizing them, they didn't fit either in HSD
 4 at that time or special markets. And it was
 5 gray because we didn't have the APC space,
 6 so ...
 7 Q. What did you mean by Schein not
 8 recognizing them?
 9 A. We didn't actually have a customer
 10 segment for buying groups. So there were some
 11 relationships that existed in special markets.
 12 There were some relationships that existed in
 13 HSD.
 14 But today, for example, we have the
 15 APC group. We can measure and acknowledge
 16 where those groups lie in the APC group. We
 17 did not have an APC group in 2013.
 18 Q. So Schein was not doing business
 19 with buying groups in 2013?
 20 MR. McDONALD: Object to the form.
 21 Mischaracterizes the testimony and the
 22 evidence.
 23 A. So I -- I think we've already
 24 established that we -- we were, so I wouldn't
 25 say that is accurate.

1 Q. I think you mentioned just a few
2 moments ago that at this time, you were not
3 working with buying groups.

4 MR. McDONALD: Object to the form.

5 A. I -- I don't recall saying that we
6 weren't working with buying groups.

7 Q. We can read the record back.

8 A. Okay.

9 MR. SOLOMON: Would you mind just,
10 when you have a moment, scrolling back up.

11 Q. You said: By reading this
12 statement, I know how that statement reads --
13 well, I guess we can't.

14 So Mr. Toh was a direct report of
15 yours at this time in 2013. Do I have that
16 correct?

17 A. No, you do not.

18 Q. No. So who did Mr. Toh report to?

19 A. I know he was in the special markets
20 division. I don't know who he reported to.

21 Q. Okay. What did Mr. Toh do in the
22 special markets division, if you know?

23 A. Sitting in front of me, I don't know
24 exactly what his job title was.

25 Q. Okay. Did you think that your

1 statement would cause Mr. Toh and Mr. Campbell
2 to believe that Schein was not recognizing or
3 working with buying groups?

4 MR. McDONALD: Object to the form.

5 A. Can you -- can you repeat the
6 question? I --

7 Q. Did you think that your statement
8 would cause Mr. Toh and Mr. Campbell to believe
9 that Schein doesn't recognize buying groups?

10 MR. McDONALD: Object to form.

11 A. I -- I don't know. I was just
12 answering Phil's question to me.

13 Q. So you don't know what effect your
14 statement had on Mr. Toh and Mr. Campbell?

15 A. I do not.

16 Q. Okay. You said earlier before: I
17 know how this statement sounds. What did you
18 mean by that?

19 A. Well, I know, you know, the
20 questions you're asking and why you're asking
21 them, and -- and it's -- it's avoiding buying
22 groups and, therefore, don't really recognize
23 them.

24 So in an email, it's easy to -- it's
25 easy to point one sentence out. But without

1 the -- the information behind it and the
2 knowledge behind it, it's -- I -- you know, I
3 thought that I needed to explain it a little
4 bit more.

5 Q. And what -- what other information
6 would one need to understand your statement
7 here?

8 A. Other than the -- other than my
9 explanation before?

10 Q. Uh-huh.

11 A. The fact that at that time, there
12 weren't a lot of buying groups that had a
13 value. From a business standpoint, it didn't
14 make sense from my knowledge and what I knew.
15 So we didn't have a spot for buying groups,
16 quite frankly, until we even created the APC
17 space.

18 And buying groups would float
19 between special markets and private practice,
20 so there was no real way to recognize them. So
21 that's what I meant.

22 Q. You don't say that in this email,
23 correct?

24 A. I don't give that long of an
25 explanation, no, I do not.

1 Q. Why not?

2 MR. McDONALD: Object to the form.

3 A. I -- I guess I don't remember why
4 not. I was just answering the question.

5 Q. Okay. You can put that document
6 aside.

7 And I don't have a realtime in front
8 of me, but I just want to go back and make sure
9 your testimony is clear, Mr. Cavaretta.

10 So a moment ago in response to my
11 question, you said: We weren't really working
12 with buying groups?

13 MR. McDONALD: Well, object to the
14 form. If you don't have realtime and
15 you're not reading what the transcript
16 says, then why don't you ask him a question
17 as opposed to -- as opposed to you telling
18 him what he may or may not have said.

19 Q. Well, I mean, did you just say that
20 a moment ago?

21 MR. McDONALD: Object to the form.

22 A. Ask me the question. I'll answer
23 it. I'm sorry. Which -- which is the
24 question?

25 Q. You said a few moments ago in

1 response to my question: We weren't really
2 working with buying groups at that time.

3 MR. McDONALD: Object to the form.

4 A. At that time, we absolutely had
5 buying group relationships. We were working
6 with buying groups. My job wasn't a lot of
7 working with buying groups, so I wasn't really
8 working with a lot of buying groups at that
9 time. So, again, the -- the market is
10 changing. The dynamics were changing. And,
11 you know, I was learning as we went.

12 Q. Okay. So I'd like to -- we can go
13 off the record for a second, but I'd like to
14 find that statement, have the court reporter
15 read it back, and make sure that your response
16 is accurate.

17 MR. McDONALD: We don't need to go
18 off the record to do that.

19 MR. SOLOMON: Well --

20 MR. McDONALD: You just need to stop
21 talking.

22 MR. SOLOMON: Correct.

23 MR. McDONALD: And she can find it.
24 (Record read as requested.)

25 Q. So she just read back your

1 testimony, Mr. Cavaretta, and you said: We
2 weren't really doing business with buying
3 groups at the time.

4 A. That was part --

5 MR. McDONALD: Hang on.

6 Object to the form. You're
7 mischaracterizing his five-sentence answer
8 and reading a little snippet of it, but go
9 ahead.

10 A. As part of my response, I mentioned
11 we weren't really doing business with buying
12 groups. I explained that part of the
13 statement, but also beforehand, I mentioned
14 that we were doing business with buying groups.
15 So I did say we were doing business with buying
16 groups. It wasn't a predominant part of our --
17 our business at the time, so I don't know if
18 that clarifies it or not.

19 Q. So by you stating, we weren't really
20 doing business with buying groups at the time,
21 you meant it wasn't a predominant part of your
22 business at that time?

23 A. Yeah. It wasn't -- it -- it wasn't
24 the majority of our business that we were
25 doing. So we just -- it was mostly private

1 practice business.

2 Q. Okay. You can put that document
3 aside. I'm going to hand you another document.

4 MR. McDONALD: Before you do that,
5 you want to --

6 MR. SOLOMON: Yeah.

7 MR. McDONALD: -- can we take a
8 quick break?

9 MR. SOLOMON: Sure.

10 THE VIDEOGRAPHER: Going off the
11 record, the time is 2:29 p.m.

12 (A short break was taken.)

13 THE VIDEOGRAPHER: Going on the
14 record, this marks the beginning of Media
15 Number 5. The time is now 2:40 p.m.

16 Q. Okay. Mr. Cavaretta, I'm handing
17 you another document that's been premarked
18 CX2474. Please look it over and let me know
19 when you've had a chance to review it.

20 MR. McDONALD: While he's reading,
21 don't ask him a question. I'll be right
22 back.

23 Sorry, I needed my reading glasses.

24 MR. SOLOMON: Oh.

25 MR. McDONALD: I'm getting a

1 headache.

2 A. Okay.

3 Q. Okay. Do you recognize CX2474?

4 A. I recognize it as an email, yes.

5 Q. And what is CX2474?

6 A. It's an email regarding -- the
7 subject line regarding Smile Source.

8 Q. Okay. And you wrote portions of the
9 emails in CX2474, correct?

10 A. I did.

11 Q. And you did so as part of your job
12 at Henry Schein, correct?

13 A. I did.

14 Q. Okay. So I'd like to direct your
15 attention, Mr. Cavaretta, to your email to
16 Mr. Meadows and Mr. Gantos at 4:27 p.m. on
17 November 14, 2014, and it straddles Pages 2
18 and 3 in this exhibit.

19 A. I see that.

20 Q. Okay. And I'd like to -- so the --
21 the subject of the email is Smile Source, and
22 I'd like to direct your attention to this
23 statement in this email. You say: I'm going
24 to add Smile Source --

25 MR. McDONALD: Hang on. Hang on.

1 He's -- you're on the wrong page.

2 THE WITNESS: Oh, I'm sorry.

3 MR. McDONALD: Next page.

4 MR. SOLOMON: Page 3.

5 MR. McDONALD: Page 3 here at the
6 top. Are you with him?

7 THE WITNESS: I am now.

8 Q. I'm going to add Smile Source to the
9 GPO list for the off-site meeting discussion.
10 Even though we do not support them, it seems
11 fair to give examples of GPOs that we don't
12 support who are taking business from us.

13 Did I read that correctly,
14 Mr. Cavaretta?

15 A. You did.

16 Q. And do you recall the off-site
17 meeting that you're referring to in this
18 statement here?

19 A. I know there was an off-site meeting
20 in November. So I -- I know that I'm referring
21 to that meeting.

22 Q. It's a -- it's an off-site that
23 happens every year?

24 A. Typically, we have an off-site in
25 November. I don't know if it happens every

1 single year, but, yeah.

2 Q. Do you recall the off-site meeting
3 in November of 2014 that you reference in this
4 email?

5 MR. McDONALD: Object to the form.

6 If you read the document, he said he wasn't
7 going to be there.

8 A. Okay.

9 Q. So you weren't in attendance?

10 A. No.

11 Q. Okay. So you state in this email --
12 again, you're talking about adding Smile Source
13 to the GPO list for the off-site meeting
14 discussion, correct?

15 A. I do see that.

16 Q. And then you state that Schein did
17 not support Smile Source, correct?

18 A. It says: Even though we do not
19 support them, it seems fair to give examples of
20 GPOs. So ...

21 Q. So Smile Source was an example of a
22 GPO that Schein didn't support as of the time
23 of this agreement?

24 A. Yeah. We didn't -- we didn't have
25 an agreement with Smile Source. But I know we

1 had Smile Source members still purchasing from
2 Henry Schein.

3 Q. So my question was: Was Smile
4 Source an example of a GPO that Schein didn't
5 support as of this time, as of the time of the
6 email?

7 MR. McDONALD: Object to the form.

8 Asked and answered.

9 A. We -- we didn't have a formal
10 agreement with Smile Source at this time.

11 Q. So you're using the word "support."
12 You're not saying formal agreement.

13 MR. McDONALD: Well, object to the
14 form. You asked him what it meant, and he
15 told you.

16 A. So if we have members from Smile
17 Source purchasing from us, we're supporting
18 those members. We don't have an agreement with
19 Smile Source, so we're not able to attend or,
20 you know, support their -- their educational
21 meetings.

22 Q. So you're saying what you meant here
23 was that Schein didn't have an agreement with
24 Smile Source?

25 A. Yeah.

1 Q. Do you normally use the word
2 "support" to refer to an agreement with a group
3 or customer?

4 MR. McDONALD: Object to the form.

5 A. I don't -- I don't know. I mean, I
6 don't know if I've used the word "support" to
7 mean agreement in the past.

8 Q. So how do you know that's what you
9 meant here?

10 MR. McDONALD: Object to the form.

11 A. Well, I know what us supporting
12 Smile Source would mean, is that we would have
13 to have an agreement with them to be doing
14 business.

15 Since we don't have an agreement
16 with them doing business, that's why the
17 support component of it would mean we -- we
18 don't have an agreement with them.

19 Q. So you're saying that the word
20 "support" has significance in this context
21 solely with respect to Smile Source?

22 MR. McDONALD: Object to the form.

23 A. Instead of what?

24 Q. I'm just trying to understand how
25 you know, sitting here today, that the word

1 "support" meant agreement.

2 A. I'm explaining to you what our
3 relationship was with Smile Source. So I don't
4 know exactly what "we don't support them"
5 means, because if we don't have an agreement
6 with them, we're not endorsed by them, so we
7 can't support Smile Source.

8 However, we can support the Smile
9 Source members that are doing business with us.
10 So I -- I don't know -- I mean, I honestly
11 don't know a different way to say it.

12 Q. So sitting here today, you don't
13 know what you meant by "we don't support Smile
14 Source"?

15 MR. McDONALD: Object to the form.

16 Asked and answered, I think, three times
17 now.

18 A. To me, supporting Smile Source would
19 have an agreement with them, which we did not
20 have an agreement with them. But we supported
21 members of Smile Source that were purchasing
22 from us.

23 Q. Okay. And -- okay. You also say
24 that Smile Source is a GPO that is taking
25 business away from Schein, correct?

1 A. Given that -- that we don't
2 support who are taking business from us, yes, I
3 put in there.

4 Q. And what did you mean by that?

5 A. Well, the email below from Dr. Cosby
6 mentions that she joined Smile Source and is
7 changing a dealer. So because we didn't have
8 an agreement with Smile Source, and we weren't
9 endorsed by Smile Source, they went to a
10 different dealer.

11 Q. So customers were going to other
12 dealers?

13 A. In this case, she went to a
14 different dealer, yes.

15 Q. Do you know which dealer the
16 specific customer you're referring to -- or
17 strike that.

18 What dealer are you specifically
19 referring to?

20 A. She doesn't mention it in this -- in
21 this email.

22 Q. Okay. Was it your understanding
23 that as of -- as of the time of this email in
24 November 2014, Schein was losing customers
25 to -- strike that.

1 Was it your understanding as of the
2 time of this email in November 2014, Schein was
3 losing customers who were Smile Source members
4 because they were going to other dealers?

5 A. Based on the example with Dr. Cosby,
6 she joined Smile Source, and it appears she
7 went to a different dealer. So that's what I
8 was basing.

9 Q. Do you recall other examples of that
10 happening in this time frame?

11 A. Not off the top of my head.

12 Q. And then I'd just like to turn your
13 attention to Page 2 of this email chain, your
14 email on November 15th, 2014 at 3:03 p.m. Do
15 you see that?

16 A. I do.

17 Q. And you write in response to
18 Mr. Gantos: I agree. This is getting worse
19 and will continue to get worse unless we act on
20 the action items we discussed with Tim during
21 our last meeting.

22 Did I read that correctly?

23 A. You did.

24 Q. And what meeting are you referring
25 to there?

1 A. I -- I don't know. I don't recall
2 the meeting.

3 Q. Okay. Sitting here today, you don't
4 recall the meeting that you're referring to in
5 this email?

6 A. I don't.

7 Q. Okay. Are -- were you saying that
8 buying groups were getting worse and will
9 continue to get worse unless you acted on the
10 action items you had discussed with Tim
11 Sullivan?

12 MR. McDONALD: Object to the form.

13 A. You know, reading it right now, at
14 the time of writing the email, I don't know
15 exactly what I was meaning. But I can -- I --
16 I see the email.

17 Q. So sitting here today, you don't
18 recall what you meant in that statement?

19 A. I can just read -- I can -- no, I
20 don't recall what I meant in that statement.
21 But I can -- I see what is written on the
22 email.

23 Q. Uh-huh. Okay. But you don't have a
24 specific recollection, one way or the other,
25 what you meant?

1 A. I'm writing that it was -- it was
2 getting worse and will continue to get worse,
3 which most likely meant that -- that Smile
4 Source was gaining some business.

5 Q. So you're referring to Smile Source
6 in this statement here?

7 A. You know what? Right now I'm
8 assuming, so --

9 Q. Okay.

10 A. I ...

11 Q. So you're guessing?

12 A. I am.

13 MR. McDONALD: Well, don't guess.
14 If he -- he only wants you to the -- tell
15 the truth and that your testimony be
16 accurate. So if you know, tell him. And
17 if you don't know, then just tell him that,
18 too.

19 A. No. I mean, I -- at the time I
20 wrote the email, I -- I don't know exactly if I
21 was referring to Smile Source, if I was
22 referring to other GPOs, so ...

23 Q. Okay. Is there anything that you
24 could look to that would help refresh your
25 recollection as to what you meant in this

1 statement?

2 A. Meaning other documents or other
3 emails?

4 Q. As an example, or anything else that
5 you might have in your files or records that
6 you could look to to help understand or
7 interpret what you meant here.

8 A. No. I didn't -- I didn't take notes
9 on, you know, the emails that I wrote.

10 Q. Okay. Mr. Cavaretta, before we go
11 on to any further documents, I just want to ask
12 you a few more questions.

13 Do you know who Chuck Cohen is?

14 A. I know that he is -- I don't know
15 what his title is, but I -- I know he -- he's
16 the owner of Benco. So I guess he's the owner
17 of Benco.

18 Q. And Benco is one of Schein's primary
19 competitors, correct?

20 MR. McDONALD: Object to the form.

21 A. We compete with Benco, correct.

22 Q. Benco is another dental products
23 distributor, correct?

24 A. Benco is another distributor,
25 correct.

1 Q. Have you ever met with Mr. Cohen?

2 A. No, I have not.

3 Q. Okay. Have you ever spoken with
4 Mr. Cohen on the phone?

5 A. No.

6 Q. Have you ever exchanged any text
7 messages with Mr. Cohen?

8 A. No.

9 Q. Okay. Has anyone ever asked you
10 whether Chuck Cohen would be contacting you?

11 A. No.

12 Q. Okay. Are you aware of anyone else
13 within Schein who may have spoken with
14 Mr. Cohen at any point?

15 A. No.

16 Q. Are you aware of anyone else within
17 Schein who discussed speaking with Mr. Cohen at
18 any point?

19 A. No.

20 Q. Okay. I'm going to hand you a
21 document that's been premarked as CX2516.
22 Please look it over and let me know when you've
23 had a chance to review.

24 A. Okay.

25 Q. Okay. Mr. Cavaretta, do you

1 recognize CX2516?

2 A. I recognize the email.

3 Q. Okay. And what is CX2516?

4 A. It's an email from Brandon Schmidt
5 with the subject: Chuck Key.

6 Q. Okay. And who is Brandon Schmidt?

7 A. Brandon Schmidt is our -- let's see,
8 in 2015, regional manager in San Diego.

9 Q. Okay. And did you receive this
10 email as part of your job at Henry Schein?

11 A. I did.

12 Q. Okay. So Mr. Schmidt, a regional
13 manager -- or strike that.

14 Mr. Schmidt, a Schein regional
15 manager from San Diego, is asking you whether
16 Chuck Cohen contacted you, correct?

17 MR. McDONALD: Object to the form.

18 MR. RACOWSKI: Objection to form.

19 MR. McDONALD: The subject is Chuck
20 Key, not Chuck Cohen.

21 MR. SOLOMON: Did I say the subject?

22 MR. McDONALD: No, but the subject
23 says that -- you -- and you -- you read
24 Chuck Cohen. You said: So Mr. Schmidt, a
25 regional manager, is asking you whether

1 Chuck Cohen contacted, correct? No. You
2 totally misread the document. It doesn't
3 say Chuck Cohen. And the subject line says
4 Chuck Key.

5 MR. SOLOMON: Understood.

6 Q. So who is Chuck from Benco referring
7 to there?

8 A. Who is Brandon referring to?

9 Q. Uh-huh.

10 A. The subject line says Chuck Key.

11 Q. Who is Chuck Key?

12 A. I don't even recall.

13 Q. Do you know if that's a person?

14 A. I would -- I'm -- have to imagine
15 it's a -- a representative from -- no, I don't
16 know who it is.

17 Q. Okay. You've never heard of a
18 person named Chuck Key before?

19 A. Other than reading this email, if
20 you would have said that name to me, I wouldn't
21 recognize it.

22 Q. Okay. Do you have any understanding
23 what Mr. Schmidt means when he says Chuck from
24 Benco?

25 A. Well, since the subject line says

1 Chuck Key, I'm assuming it means Chuck Key.

2 Q. Okay. So you don't have any
3 understanding as to whether this refers to
4 Mr. Chuck Cohen from Benco?

5 MR. RACOWSKI: Objection. Form.

6 A. No.

7 Q. Okay. Do you have any understanding
8 as to what this email is about?

9 A. No.

10 Q. Okay.

11 A. But, you know, he says: I say no go
12 but wanted your input.

13 So I'm assuming he's trying to
14 recruit a competitive rep in the San Diego
15 market. That's how I would interpret this.

16 Q. And so he's reaching out to you to
17 discuss the prospect of recruiting potentially
18 somebody from Benco; is that right?

19 A. So I'm -- everything right now I'm
20 going to be talking about is assumption,
21 because I don't remember the specific
22 situation.

23 Q. Okay. Well, I don't want you to
24 guess.

25 A. Then I'm guessing.

1 Q. Okay. So you don't have any
2 specific recollection as to what this email is
3 about?

4 A. I don't.

5 Q. Okay. You can put that document
6 aside.

7 I'm going to hand you another
8 document. It's been premarked as CX2517.
9 Please look it over and let me know when you've
10 had a chance to review it.

11 A. Okay.

12 Q. Okay. Mr. Cavaretta, do you
13 recognize CX2517?

14 A. I recognize it as an email, yes.

15 Q. Okay. And is this an email that you
16 sent to yourself on August 27, 2015?

17 A. It is.

18 Q. Okay. Do you normally send emails
19 to yourself?

20 A. Sometimes I will, but not -- not as
21 a normal occurrence.

22 Q. Why do you sometimes send emails to
23 yourself?

24 A. If I'm about to go into a meeting
25 and need to write a quick outline, then I'll

1 email myself.

2 Q. Do you recall whether the email
3 reflected in CX2517 related to a specific
4 meeting?

5 A. Based on this email as it stands, I
6 can't tell you what meeting it was.

7 Q. Okay. Sitting here today, reviewing
8 CX2517, do you have any sense as to what the
9 contents related to?

10 A. So in 2015, we're now a year and a
11 half into the Mid-Market space. So with Brian
12 involved, we're putting more and more structure
13 to the Mid-Market space.

14 At the same time, when you look at
15 the buying groups, Klear Impakt, Bright Way,
16 Unchained, and -- and CDA, is you're now seeing
17 the start of -- the beginnings of the APC
18 space.

19 So trying to understand the
20 structure, trying to understand what's going
21 on, and then making sure that our offerings
22 that we're putting together as Henry Schein is
23 meeting the needs and the demands of the
24 customers in the -- in the industry.

25 Q. So that is what these notes relate

1 to?

2 A. Yeah, so ... uh-huh.

3 Q. Okay. And you refer to buying
4 groups at various places throughout this email,
5 correct?

6 A. I see BGs, Number 2. But I'm not
7 seeing it anywhere else, unless I'm missing it
8 and you see it.

9 Q. I see BG, as well, under E: Would
10 like Jake and I to run the program of BGs?

11 A. Ah, okay. I do see that.

12 Q. Are there any other places where
13 you're referring to or speaking about buying
14 groups as relates to CX2517?

15 A. No.

16 Q. Okay. What about in the part of
17 CX2517 where you list components of price,
18 services, and admin fees, do you have any
19 understanding what that relates to?

20 A. What we were finding out is when you
21 were having inquiries or talking to potential
22 buying group customers, price would come up,
23 and the services, so the -- the value prop, but
24 also services that we have. And across the
25 board, they were asking for admin fees.

1 Q. So this part of CX2517 is also a
2 reference to buying groups?

3 A. I would -- because the admin fees
4 are in there, yes.

5 Q. Okay. And then underneath that, you
6 write: They need us more than we need them.
7 What does that refer to?

8 A. Because of the scope of our business
9 in the private practices, many of the private
10 practices run buying groups. So as far as a
11 growth strategy for our business, we didn't
12 necessarily need to do business with buying
13 groups. But based on the fact that they were
14 becoming more structured, had better offerings,
15 that's why we were discussing a program or a
16 plan to work with them.

17 Q. Okay. So that sentence also refers
18 to buying groups?

19 A. Yes.

20 Q. Okay. How about: Moving from CQ
21 structure G plan in the PP world and the items
22 listed underneath that? Do you know whether
23 that referred to anything with respect to
24 buying groups?

25 A. No. That would have been the

1 Mid-Market space.

2 Q. Okay. And how do you know that?

3 A. Because, again, with our acronyms,
4 the G -- G plan, private practice world, so the
5 G plan was more, at this time, a formulary that
6 we were offering with the -- the Mid-Market
7 space, plus Brian was involved.

8 Q. Is that a formulary that --
9 formulary that has been offered to buying
10 groups or buying group customers?

11 A. Our -- our offering -- current
12 offering right now to buying groups, what we
13 learned was that it was what they wanted, and
14 it was easier for us to manage with a
15 formulary. So it was an evolution of what our
16 offering is now to the APC space.

17 Q. Uh-huh. Okay. Turning to the
18 second page: Hal doesn't want it. Do you know
19 what that refers to?

20 A. Yeah. Hal -- and, again, as I
21 mentioned before, the internal struggles. Hal,
22 from what I recall, wasn't wanting the
23 formulary approach in the Mid-Market space. He
24 wanted to keep the formulary approach in the --
25 in the DSO space.

1 Q. Okay. Did that have any reference
2 at all to buying groups?

3 A. That statement, I don't believe so.

4 Q. Okay. And then the statement:
5 Finance team doesn't want it. Brody is the guy
6 that people are saying want it. Present why we
7 are doing this. E4D.

8 Are those statements at all in
9 reference to buying groups?

10 A. No. I would say that the -- it
11 falls in line with the formulary component in
12 the Mid-Market space. And then, present why we
13 were doing this, E4D, I don't know what I was
14 saying there.

15 Q. Do you know what E4D is?

16 A. Yeah. It -- it's our CAD/CAM,
17 chairside CAD/CAM system.

18 Q. Okay. So half of this email relates
19 to buying groups, and the other half relates to
20 Mid-Market and pricing structures, right?

21 MR. McDONALD: Object to the form.

22 A. Those were two topics that were
23 covered in this email, yeah.

24 Q. Okay. And then if you turn to the
25 first topic that's covered in this email, under

1 Numeral 1, it says Benco, and then underneath
2 it, under A, Chuck was sick.

3 Is that referring to Chuck Cohen
4 from Benco?

5 A. Yes.

6 Q. And what did you mean by: Benco,
7 Chuck was sick?

8 A. At some point, obviously, clearly
9 before this meeting, I was informed by a
10 manufacturer that Chuck had been sick.

11 Q. What did you learn specifically?

12 A. That he had cancer.

13 Q. And you included that topic in the
14 notes that are part of this email, correct?

15 A. I did.

16 Q. Did you want to share that news with
17 anyone else?

18 A. Well, when I was coming into the
19 meeting, I -- I must have shared with whoever
20 was in that meeting that he was sick.

21 Q. Okay. And why would you include
22 information about Mr. Cohen in an email in
23 which you discussed buying groups and
24 Mid-Market pricing?

25 MR. McDONALD: Object to the form.

1 A. No connection whatsoever. It's an
2 individual who's -- had cancer, and, you know,
3 people know his name in the industry because he
4 owns Benco. So figured it was -- you know,
5 our -- people in this meeting may want to be
6 aware of that.

7 Q. Okay. And, again, do you recall
8 what meeting this was in reference to?

9 A. Not -- based on the subject and
10 everything, I can't recall what this meeting
11 was specifically about.

12 Q. Okay. You can put that document
13 aside.

14 A. Okay.

15 Q. I'm going to hand you another
16 document that's been premarked as CX2482.
17 Please just look this over and let me know when
18 you've had a chance to review it.

19 A. Sure. Okay.

20 Q. Okay. Mr. Cavaretta, do you
21 recognize CX2482?

22 A. I recognize it as an email, yes.

23 Q. Okay. And do you recognize this as
24 an email that you received?

25 A. I am a recipient of this email, yes.

1 Q. Okay. And do you recognize it also
2 as an email, part of which you drafted and
3 sent?

4 A. Yes.

5 Q. Okay. And did you do so as part of
6 your job at Henry Schein?

7 A. Yes.

8 Q. Okay. Mr. Cavaretta, I'd like to
9 focus your attention on the first page and the
10 top email from you to Tim Sullivan, with others
11 copied, at 3:46 p.m. Do you see where I'm at?

12 A. I do.

13 Q. And you list three groups here for
14 Mr. Sullivan: Breakaway, DG, and Smile Source.

15 Do you see that?

16 A. I do.

17 Q. And DG, is that a reference to
18 Dental Gator?

19 A. It is.

20 Q. Okay. So focusing first on
21 Breakaway, you write: Breakaway is DSO/MSO
22 combo with complete control of the checkbook.

23 Do you see that?

24 A. I do.

25 Q. So you -- are you telling

1 Mr. Sullivan is DSO/MSO combo that essentially
2 manages all of the purchases for the
3 independent practices or for the -- strike
4 that.

5 Are you telling Mr. Sullivan that
6 Breakaway is a DSO/MSO combo that centrally
7 manages purchases for its practices?

8 A. Yeah. What -- so what we've
9 described DSOs and MSOs before is that they --
10 at the time, I understood Breakaway as being a
11 DSO and an MSO, so they were able to drive
12 compliance, yes.

13 Q. And they did -- what do you mean,
14 they had complete control of the checkbook?

15 A. They either owned the offices, so
16 they controlled the checkbook there, or the
17 fact that customers were signing up for -- and
18 the way I understood it at the time, signing up
19 for Breakaway to run their practice. They were
20 giving them control over, you know, where they
21 received their services, including supplies.

22 Q. They were giving who control?

23 A. Breakaway.

24 Q. Breakaway --

25 A. The -- the doctor, the practice was

1 giving Breakaway control of the services.

2 Q. And so Breakaway had control over
3 purchases of dental products and supplies?

4 A. So at the time of the email, what
5 I -- what I wrote, yes.

6 Q. Okay.

7 A. It would be -- they could tell
8 their -- their offices, we're buying from Henry
9 Schein.

10 Q. Did that change at any point?

11 A. Well, as I had mentioned to you
12 earlier, is when we -- when Kathleen started
13 talking to Breakaway and went there and met
14 them and, you know, realized they had two
15 floors and a whole support team, and they
16 explained their model, it -- it changed then
17 because they started telling us about, you
18 know, the affiliates and the buying group
19 component.

20 So at that time, I don't know if
21 we -- we knew that it was, you know, that
22 involved.

23 Q. So as of the time of this email in
24 August 2015, you weren't aware of the buying
25 group component?

1 A. No.

2 Q. Okay.

3 A. As -- as to what I remember, no.

4 Q. Okay. And do you recall when you
5 found out about it?

6 A. I'm sure there's emails there.

7 Whenever Kathleen went there to meet with
8 Breakaway, which -- Tim mentions in here that
9 I'm trying to get a meeting with Breakaway. So
10 it had to have been right around this time
11 where Kathleen went and did a visit and found
12 some of this out.

13 Q. Okay. The next -- or the third
14 sentence down, you write: Smile Source is a
15 flat-out buying group. If we are going to do
16 business with buying groups now, then we should
17 meet with them and bring the business over to
18 HSD ASAP.

19 Do you see that?

20 A. I do.

21 Q. Did I read that correctly?

22 A. You did.

23 Q. So by buying group, are you
24 referring to price-only buying group?

25 A. So what I understand Smile Source

1 being is that they didn't have any type of
2 ownership in their practices --

3 THE WITNESS: Can I have a napkin?

4 MR. McDONALD: A what?

5 THE WITNESS: A napkin.

6 A. -- ownership in their practices, so
7 they weren't a DSO or an MSO, and I didn't know
8 a different way to describe them. Plus, you
9 know, from the various experience we had with
10 them going back to '07/'08, it -- we knew they
11 were a buying group.

12 Q. Okay. And then you say: If we are
13 going to do business with buying groups now.

14 Are you referring to a change in
15 practice here?

16 MR. McDONALD: Object to the form.

17 A. So as I mentioned previously is --
18 the buying group component wasn't a very big
19 part of our business. We did business with
20 buying groups. We had buying group
21 relationships. But when we talked, in our
22 strategic meetings, about our business plan,
23 that wasn't a strategic way to grow our
24 business at the time.

25 So in this meeting -- or what I'm

1 referring to here is that if Smile Source is
2 out there and we have an opportunity to get an
3 agreement with them, and we can figure that
4 out, then, you know, they could help us grow
5 our business.

6 Q. So why would you be saying that
7 Schein could pursue Smile Source now?

8 A. The only way I can explain that is I
9 know we had been dating and dancing with Smile
10 Source for years, even prior to my email here.
11 And we couldn't come to an agreement.

12 So based on their structure, based
13 on their value prop, and based on -- even they
14 will say they have, you know, evolved as a -- a
15 group, it seemed to make sense that -- to do
16 business with them potentially.

17 Q. So did something change as of August
18 of 2015 where you're now saying we can do
19 business with Smile Source now?

20 MR. McDONALD: Object to the form.

21 A. I mean, a lot changed with our
22 business in 2015. The Mid-Market space had
23 moved over. We were learning about, you know,
24 different customers and the way they were
25 structured. They weren't simply DSOs, MSOs,

1 and private practice. They were, in -- in some
2 cases, turning into hybrid customers, which was
3 new, not only to us, but to the industry.

4 So when you start learning what's
5 going on in the industry, then, yeah, you -- I
6 mean, you always can adjust your strategy and
7 understand what's going on. So we had to
8 understand what was out there. We had to
9 understand Smile Source. So it's an
10 opportunity.

11 Q. Are you referring to a change here?

12 MR. McDONALD: Object to the form.

13 A. A change in -- in what way?

14 Q. Well, you -- you're saying: If
15 we're going to do business with buying groups
16 now, as opposed to earlier on. Why were you
17 making that distinction between now and earlier
18 on in this email?

19 MR. McDONALD: Object to the form.

20 Asked and answered.

21 A. I would say that, again, if -- if we
22 see buying groups, specifically Smile Source,
23 as a way to grow the business. In the past we
24 haven't -- it may not have been the main focus,
25 even though we were talking to them and -- and

1 working a deal out. But once the deal didn't
2 work, you just move away, and you go on about
3 your business. So we weren't pursuing them.

4 Q. Why wasn't Schein pursuing them?

5 MR. McDONALD: Object to the form.

6 Asked and answered.

7 A. So I know that we had several
8 meetings with Smile Source leading from
9 whatever it was, 2010, even up to this point.
10 And the deal that we put in front of them, they
11 didn't like, and so they decided not to do
12 business with us.

13 We didn't pursue them, at least in
14 my mind, any further until a little bit later
15 on. And like I just explained, as our business
16 was transitioning as Henry Schein, we were
17 learning more about the opportunities that were
18 out there.

19 Q. So your email here doesn't refer to
20 a change at all with respect to Smile Source.
21 Smile Source hadn't changed its -- its model at
22 this point, correct?

23 MR. McDONALD: Object to the form.

24 Lack of foundation.

25 A. I don't know if they -- I mean --

1 ask me the question again. I want to make sure
2 I'm hearing that right.

3 Q. Sure. Your email here, you're not
4 referring to a change at Smile Source. Smile
5 Source hadn't changed its model as of the date
6 of the email, correct?

7 MR. McDONALD: Object to the form.

8 Lack of foundation.

9 A. I don't know if I could tell you the
10 exact structural changes of Smile Source. But
11 I -- I do know that, you know, through some of
12 the -- like the Dr. Cosby email, there was
13 clearly something, you know, going on there
14 that was different.

15 Q. Are you aware of whether Smile
16 Source has ever changed its model?

17 A. According to them, when you have
18 discussions with them, they will tell you that,
19 you know, they've -- they evolved from, you
20 know, being just a -- a loose collection of
21 doctors with not a lot of structure to, you
22 know, an organization. And that would come
23 from Trevor.

24 Q. So what exactly was the change?

25 A. And you'd have to ask Smile Source.

1 But what they would say is they were just able
2 to put more resources and structure behind how
3 they support the members and then how they deal
4 with the manufacturers and dealers.

5 Q. Are you -- do you believe that to be
6 the only change that occurred at Smile Source?

7 MR. McDONALD: Object to the form.

8 A. As I sit here talking to you, that's
9 what I recall. There could be more. I don't
10 know.

11 Q. Okay. So you're not aware of a
12 change in their overall model?

13 A. I mean, I -- I'm trying to think
14 about it, but I can't think of -- I can't think
15 of an answer for you there that I could say
16 yes.

17 Q. Okay. So is the answer no, then, or
18 is it that you don't know?

19 A. I don't know.

20 Q. Okay. I'm going to hand you --
21 shifting topics just quickly, I'm going to hand
22 you another document that's been premarked as
23 CX2022. It's a long email, but I'll let you
24 know that I'm just going to ask you mostly
25 about the last couple of pages in this chain as

1 it relates to a customer acquisition program.

2 MR. McDONALD: Ronnie, to help you
3 out, I know you're rushing because you have
4 20 minutes. When you say first couple of
5 pages, what do you mean?

6 MR. SOLOMON: Yeah. So --

7 MR. McDONALD: Do you mean the first
8 couple of pages or the --

9 MR. SOLOMON: Sorry.

10 MR. McDONALD: -- last?

11 MR. SOLOMON: Last and --

12 Q. So I'll just give you the last page
13 numbers, pages around 4 to 7.

14 A. 4 to 7?

15 Q. Yes.

16 MR. McDONALD: You're -- feel --
17 feel free to read the rest of it, too, but
18 know that that's where he's going to focus.

19 THE WITNESS: Okay.

20 Q. Mr. Cavaretta, have you had a chance
21 to look over...

22 A. I'm on 4 right now.

23 Q. Okay.

24 A. So the other pages have nothing to
25 do with the questions you're going to ask me?

1 Q. That's correct.

2 A. Okay. I just wanted to make sure.

3 Q. So starting around Page 4.

4 A. Yeah.

5 Q. So this email relates to a customer
6 acquisition program that Schein had sometime
7 around 2012, correct?

8 A. Yes.

9 Q. Okay. And can you tell me what a
10 customer acquisition program is?

11 A. You know, as it states in Michael's
12 email, it was just a way, in a short period of
13 time, to give our team additional tools and --
14 and discounts to win some business, low-volume
15 business that we don't have.

16 Q. Okay. And this was focused on
17 low-volume business?

18 A. Yes.

19 Q. Okay. And why was Schein trying to
20 win low-volume business?

21 A. Well, we're always trying to grow
22 our market share.

23 Q. So it was aimed at increasing
24 Schein's market share? Okay.

25 A. Yes.

1 Q. And was this targeted at dentists
2 who were doing business with competitors or
3 dentists who were already doing business with
4 Schein or a combination of both?

5 A. When we run these programs, the
6 focus is on business that we don't have, so
7 customers that we don't have. There's times
8 where there may be a customer that's doing
9 15,000 and could be doing 100,000. So we would
10 offer it that, but it would need special
11 exception. But it's usually customers that are
12 doing under \$7,500 of business with us.

13 Q. Okay. And -- sorry, I forgot to ask
14 you, CX2022, this is an email chain that you
15 were part of and received as part of your job
16 at Schein, correct?

17 A. Correct.

18 Q. And you wrote portions of CX2022 as
19 part of your job at Schein, correct?

20 A. Correct.

21 Q. Okay. I just wanted to have that
22 for the record.

23 Okay. So going back to Mr. Porra's
24 email, it straddles 5 through 6 and mostly
25 focusing on Page 6. He points out that the

1 targets of this program were private practice
2 dentists who had purchased less than \$10,000
3 from Schein in the last 12 months, correct?

4 A. That is correct.

5 Q. Okay. And is that what you were
6 referring to when you said low-volume
7 customers?

8 A. And I used 7,500 earlier, so in this
9 case, it was 10,000.

10 Q. Okay. So dentists doing less than
11 10,000 in merchandise business were able to
12 qualify for this program, right?

13 A. Correct.

14 Q. Okay. And a little bit further down
15 there's a list of program perks. Do you see
16 where I'm at?

17 A. I do.

18 Q. Number 1 is service certificates.
19 And then moving to Number 2, it's a discount
20 program. It says: PB02 BPA. And it says:
21 7 percent branded/14 percent HS branded
22 discount.

23 Do you see that?

24 A. I do.

25 Q. What does that mean?

1 A. That means that that -- BPA allowed
2 it -- allowed the FSCs to give a 7 percent
3 discount off of branded products, so 3M, and
4 then 14 percent discount off of Henry Schein
5 brand products, so Henry Schein.

6 Q. Were there any volume commitments
7 involved in this customer acquisition program?

8 A. Typically -- and I'd -- I would need
9 to read through it to make sure, but typically,
10 they have to sign up and enroll as -- also as a
11 privileges customer, so the minimum would be
12 15,000.

13 Q. Okay.

14 A. Yeah.

15 Q. So dentists who were committing to
16 doing \$15,000 worth of business with Schein and
17 who were doing less than \$10,000 in business
18 previously were able to qualify for these
19 discounts here?

20 A. 15,000 is a minimum. But, of
21 course, we're -- what our agreements would say
22 is 80 percent of the business, so we're not
23 just looking for 15,000.

24 Q. Uh-huh. Okay. Those dentists were
25 able to qualify for the discounts listed here,

1 correct?

2 A. Correct.

3 Q. Okay. And how were those discounts
4 determined, if you know?

5 MR. McDONALD: Object to the form.

6 A. I don't -- I don't know.

7 Q. Okay. Do you know whether these
8 discounts represented in CX2022 are the level
9 of discounts that Schein usually uses for
10 customer acquisition programs targeting private
11 practice dentists?

12 MR. McDONALD: Object to the form.

13 Overly broad. Vague. Lack of foundation.

14 A. This is -- we've run programs
15 before, and this is the -- the pricing or the
16 discount offer for this program.

17 Q. Are the discounts usually higher,
18 lower, or somewhere around this range with
19 respect to customer acquisition programs?

20 MR. McDONALD: Object to the form.

21 A. I -- I can't confidently give you
22 specific data on that because I don't have it
23 in front of me, and I don't have the other
24 programs in front of me. But I know we've --
25 we've run other programs that have a 10 percent

1 offering.

2 Q. 10 percent off of branded or
3 HSD-branded merchandise?

4 A. I think it was just overall.

5 Q. Okay. And then turning to your
6 email straddling Pages 4 through 5, you write
7 under Numeral 2: Please submit five plus names
8 (20 is more than okay) to your RM as soon as
9 possible.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. So is it fair to say you
13 wanted to sign up as many dentists as possible
14 on this program who weren't already doing
15 business with Schein?

16 A. Well, yeah. I wanted to grow market
17 share, so, yeah.

18 Q. Okay. And then under Roman
19 Numeral III -- or, sorry, Number you write: I
20 do expect two customers signed up on this
21 program from everyone. Yep, that means you,
22 too.

23 What do you mean by that?

24 A. I mean, I -- I've known the team for
25 a while. So it's -- it's the people who go,

1 oh, it's not talking about me. And then they
2 read the email and say, yeah, okay, I do mean
3 you.

4 Q. So is it fair to say you wanted FSCs
5 to sign up as many dentists as possible on this
6 program?

7 A. Yes.

8 Q. Okay. Do you know whether this
9 program was successful?

10 A. I don't know if this specific
11 program was successful or not.

12 Q. Okay. Okay. You can put that
13 document aside.

14 MR. SOLOMON: I will just reserve
15 the rest of my time, whatever that may be.

16 MR. McDONALD: Okay. Go off the
17 record.

18 THE VIDEOGRAPHER: Going off the
19 record at 3:31 p.m.

20 (A short break was taken.)

21 THE VIDEOGRAPHER: Going on the
22 record, this marks the beginning of Media
23 Number 6. The time is now 3:46 p.m.

24 //

25 //

1
2 EXAMINATION
3 BY MR. McDONALD:
4 Q. Mr. Cavaretta, I have a few
5 questions for you.
6 A. Okay.
7 Q. I'm going to ask you a series of
8 questions, and I'm going to use the word
9 "communication." And I want you to view the
10 word "communication" in its broadest sense: In
11 person, telephone, email, text message, instant
12 message, smoke signal, telegraph, whatever, any
13 form of communication. Okay?
14 A. Okay.
15 Q. Since being a Henry Schein employee,
16 other than recruiting, have you ever
17 communicated with anyone from Benco, other than
18 to say hello or have small talk?
19 A. No.
20 Q. Since being a Henry Schein employee,
21 other than recruiting, have you ever
22 communicated with anyone from Patterson, other
23 than to say hello or have small talk?
24 A. No.
25 Q. Have you ever communicated with

1 knowledge of your allegation.
2 Q. So do you have any knowledge of the
3 FTC's allegation regarding an agreement
4 between -- between Henry Schein, Benco, and
5 Patterson?
6 MR. SOLOMON: Objection. Calls for
7 a legal -- a legal conclusion.
8 A. No.
9 Q. Would such an agreement, if it
10 existed, be contrary to your understanding of
11 Henry Schein's business practices?
12 MR. SOLOMON: Objection. Calls for
13 speculation. Hypothetical. Legal
14 conclusion.
15 A. Yes.
16 Q. Does Henry Schein have a policy to
17 not do business with or offer discounts to
18 buying groups?
19 A. No.
20 Q. Has anyone at Henry Schein ever
21 encouraged you or told you to not work with
22 buying groups?
23 A. No.
24 MR. McDONALD: That's all the
25 questions I have.

1 anyone at Benco regarding buying groups, GPOs,
2 or any other kind of customer?
3 MR. SOLOMON: Object to the form.
4 A. No.
5 Q. Have you ever communicated with
6 anyone from Patterson regarding buying groups,
7 GPOs, or any other kind of customer?
8 MR. SOLOMON: Object to the form.
9 A. No.
10 Q. The FTC alleges in this case that
11 Henry Schein had an agreement with Benco and
12 Patterson to not do business with buying groups
13 or offer them discounts. Do you have any
14 knowledge of such an agreement?
15 MR. SOLOMON: Objection. Calls for
16 a legal conclusion.
17 A. No.
18 MR. McDONALD: How does asking him
19 if he has knowledge call for a legal
20 conclusion?
21 MR. SOLOMON: It's asking about an
22 agreement, and as we allege it, that's a
23 legal conclusion.
24 MR. McDONALD: I'm not asking about
25 the agreement. I'm asking if he has

1 MR. LONG: I have no questions on
2 behalf of Patterson.
3 MR. RACOWSKI: I have no questions.
4 MR. SOLOMON: I don't think I have
5 any cleanup, so no further questions.
6 MR. McDONALD: So let's go off the
7 record so we have a new transcript or
8 whatever.
9 THE VIDEOGRAPHER: Going off the
10 record, the time is 3:48 p.m.
11 (Witness excused, 3:48.)
12 -----
13
14 JOSEPH CAVARETTA
15
16 Subscribed and sworn to before me
17 this _____ day of _____ 2018.
18
19 -----
20
21
22
23
24
25

1 CERTIFICATE
 2 STATE OF ILLINOIS)
) ss.:
 3 COUNTY OF COOK)
 4 I, RACHEL F. GARD, CSR, RPR, CLR, CRR,
 5 within and for the State of Illinois do hereby
 6 certify:
 7 That JOSEPH CAVARETTA, the witness whose
 8 deposition is hereinbefore set forth, was
 9 duly sworn by me and that such deposition
 10 is a true record of the testimony given by
 11 such witness.
 12 I further certify that I am not
 13 related to any of the parties to this
 14 action by blood or marriage; and that I am
 15 in no way interested in the outcome of this
 16 matter.
 17 IN WITNESS WHEREOF, I have hereunto
 18 set my hand this 30th day of July, 2018.
 19
 20 -----
 21 RACHEL F. GARD, CSR, RPR, CLR, CRR
 22
 23
 24
 25

1 NAME OF CASE: In re: Benco
 2 DATE OF DEPOSITION: 7/26/18
 3 NAME OF WITNESS: Joseph Cavaretta
 4 Reason codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8
 9 Page _____ Line _____ Reason _____
 10 From _____ to _____
 11 Page _____ Line _____ Reason _____
 12 From _____ to _____
 13 Page _____ Line _____ Reason _____
 14 From _____ to _____
 15 Page _____ Line _____ Reason _____
 16 From _____ to _____
 17 Page _____ Line _____ Reason _____
 18 From _____ to _____
 19 Page _____ Line _____ Reason _____
 20 From _____ to _____
 21 Page _____ Line _____ Reason _____
 22 From _____ to _____
 23 Page _____ Line _____ Reason _____
 24 From _____ to _____
 25

ERRATA SHEET

DEPOSITION OF: Joseph Cavaretta

DATE DEPOSITION: July 26, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
9	16	Change "Height" to "Hight"	Typographical error
9	17-18	Change "represent the corporation" to "corporate representative"	Clarification
19	2	Change "Chiprian" to "Ciprian"	Typographical error
19	2	Change "Loiacono" to "Lociano"	Typographical error
29	3	Change "CT" to "CDA"	Typographical error
29	21-22	Delete "actually don't even"	Clarification
30	18	Change "in sell" to "in the sell"	Clarification
31	3	Change "to us" to "with us"	Typographical error/clarification
49	3	Change "specification" to "specific"	Typographical error
57	3	Change "the regionals are" to "the regional boundaries are"	Clarification
71	16	Change "space" to "time"	Typographical error/clarification
85	11	Change "Uh-huh." to "Yes."	Typographical error
93	17-18	Change "to have that endorsement that strong" to "to have a strong endorsement"	Typographical error/clarification
109	12	Change "practice" to "give"	Clarification
127	6	Change "specification" to "specific"	Typographical error
132	14	Change "off" to "out"	Typographical error/clarification
133	6	Change "mine" to "mind"	Typographical error
140	3	Change "preventing" to "providing"	Typographical error
140	6-7	Change "has to be in consideration" to "has to be taken into consideration"	Typographical error/clarification

156	5-6	Change "we will not guarantee that all our business will come to Schein" to "they cannot guarantee that all of its business will come to Schein"	Clarification
169	9	Change "-5 percent" to "65 percent"	Typographical error
169	11	Change "CEU" to "CE"	Typographical error
200	17	Change "he" to "we"	Typographical error/clarification
208	12	Change "had a value" to "had any value"	Typographical error/clarification
220	8	Change "what I was basing" to "what I was basing it on"	Clarification
238	1	Change "services" to "purchases"	Typographical error/clarification
250	1	Change "BPA" to "VPA"	Typographical error
throughout		Change "special markets" to "Special Markets"	Typographical error
throughout		Change "Break Away" to "Breakaway"	Typographical error

I, Joseph Cavaretta, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 28th day of August, 2018.

at West Allis _____, Wisconsin
(City) (State)



Joseph Cavaretta

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
)	
IN THE MATTER OF:)	Docket No.
)	D09379
BENCO DENTAL INC., et al.)	
_____)	

VIDEOTAPED 30(b)(6) DEPOSITION
OF JOSEPH CAVARETTA
Chicago, Illinois
Thursday, July 26, 2018

Reported by:
RACHEL F. GARD, CSR, RPR, CLR, CRR
JOB NO. 142941

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July 26, 2018
3:53 p.m.

Videotaped deposition of JOSEPH CAVARETTA,
at the offices of Locke Lord, LLP, 111 South
Wacker Drive, Suite 4100, Chicago, Illinois,
pursuant to notice before Rachel F. Gard,
Illinois Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, Certified Realtime Reporter.

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ALSO PRESENT: JEREMY MANGAN, Videographer

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E X H I B I T S

CX EXHIBIT	PAGE
Exhibit 2523 Complaint Counsel's Notice of Deposition to Henry Schein, Inc.	7
Exhibit 2525 Respondent Henry Schein's Supplemental Objections and Responses to Complaint Counsel's Interrogatories Numbers 1 through 2	13

1 THE VIDEOGRAPHER: We are now on the
2 record. This marks the beginning of Media
3 Number 1 in the deposition of Joseph
4 Cavaretta in the matter of Benco Dental,
5 Inc., et al. This deposition is being held
6 at 111 South Wacker Drive, Chicago,
7 Illinois, on July 26, 2018, and the time is
8 now 3:53 p.m.

9 Will attorneys please identify
10 themselves.

11 MR. SOLOMON: Ronnie Solomon on
12 behalf of complaint counsel for the FTC.

13 MR. MCDONALD: John McDonald with
14 Locke Lord on behalf of Henry Schein and
15 the witness.

16 MR. LONG: Jim Long of Briggs &
17 Morgan on behalf of Patterson.

18 MR. MURKOWSKI: Ken Murkowski,
19 Buchanan Ingersoll & Rooney, representing
20 Benco.

21 THE VIDEOGRAPHER: Will the court
22 reporter please swear in the witness.

23 (Witness sworn.)

24 EXAMINATION

25 BY MR. SOLOMON:

1 Q. Hello, Mr. Cavaretta.

2 A. Hi.

3 Q. I understand you are here to testify
4 as a corporate representative of Henry Schein;
5 is that correct?

6 A. I am.

7 Q. Okay. And I've placed a few
8 documents in front of you. The first one I'd
9 like you to take a look at is CX2523, which is
10 a document titled Complaint Counsel's Notice of
11 Deposition to Henry Schein, Inc.

12 Do you see that?

13 A. I do.

14 Q. And then starting on Page 1, there's
15 a list of deposition topics. Do you see where
16 I'm at?

17 A. I do.

18 Q. And if you turn to the second page,
19 I'd like to direct your attention to Topic 3.
20 Would you mind reading Topic Number 3?

21 A. Yes. Schein's corporate pricing
22 strategies, policies, and practices for dental
23 products sold to each customer segment during
24 the relevant time period, including, but not
25 limited to, the corporate policies on pricing

1 tiers, pricing overrides, and the offering of
2 rebates, discounts, and free goods.

3 Q. Okay. I directed you to the wrong
4 topic. I'd actually like to have you --

5 MR. LONG: You had me confused.

6 Q. So can you please read, instead,
7 Deposition Topic Number 2?

8 A. Yes. Schein's agreements with any
9 buying groups for dental products during the
10 relevant time period, including the identities
11 of the buying groups, the general terms and
12 scope of each agreement, including, but not
13 limited to, general pricing and discount terms,
14 ways to determine the members of the buying
15 groups, the Schein employee/employees who
16 negotiated and entered into each agreement, and
17 the operative dates of each agreement.

18 Q. Okay. Mr. Cavaretta, do you
19 understand that you are here to testify as a
20 corporate representative on behalf of Henry
21 Schein as to Topic Number 2 that you just read?

22 MR. McDONALD: Well, and let me
23 interject, it's subject to our objections,
24 and for Henry Schein Dental, not Henry
25 Schein Special Markets.

1 Q. So you're here to testify as a
2 corporate representative of Henry Schein, and
3 you're here to testify about the buying groups
4 that were a part of Henry Schein Dental; is
5 that right?

6 A. Correct.

7 Q. Okay.

8 MR. McDONALD: But, again, subject
9 to the objections we've lodged.

10 Q. Okay. So, Mr. Cavaretta, how did
11 you prepare for this deposition?

12 A. Yesterday I was able to see a list
13 of -- of buying groups that we do business
14 with.

15 Q. And do you know how that list was
16 compiled?

17 MR. McDONALD: Well, to the extent
18 that it would reveal communications with
19 counsel, then I direct you to not do that.

20 A. Okay. I was provided the list.

21 Q. Okay. So you weren't involved in
22 compiling that list at all?

23 A. Well --

24 MR. McDONALD: Object to the form.

25 A. So I was -- I was asked of knowledge

1 of buying groups that I'm aware of, and I did
2 submit the ones that I was aware of.

3 Q. When were you asked that?

4 MR. McDONALD: Well, Ronnie,
5 you're -- I'm going to give a little bit of
6 leeway, but you're getting into my
7 communications and my other co-counsel's
8 communications with our client in order to
9 respond to discovery requests that have
10 been propounded upon us.

11 Obviously, we consulted with people
12 within the company in order to respond to
13 your discovery requests. And one of those
14 people was Mr. Cavaretta, but I'm not going
15 to let him get into the details of what we
16 communicated with each other about.

17 MR. SOLOMON: Sure.

18 Q. So it sounds like you're talking
19 about your legal counsel asked you for input in
20 this list?

21 A. Correct.

22 Q. Okay. And that's Mr. McDonald
23 sitting here today?

24 A. Well --

25 MR. McDONALD: Object to the form.

1 A. Part of the legal counsel would be
2 Mr. McDonald, yes.

3 Q. Okay. Do you know whether anyone
4 else, other than your legal counsel, was
5 involved in compiling this list?

6 A. Not that I'm aware of.

7 Q. Okay. Do you have -- the list we're
8 referring to, do you have personal knowledge of
9 each of the groups on the list?

10 A. I'm -- I'm familiar with the -- some
11 more than others.

12 Q. Okay. So do you have a baseline
13 familiarity with every group on the list?

14 MR. McDONALD: Well, object to the
15 form. Again, he's only here for HSD buying
16 groups. And the list includes special
17 markets and HSD buying groups.

18 A. Not every single one.

19 Q. So for each of the groups that
20 relate to HSD, do you have a baseline
21 familiarity with each of those groups?

22 A. I believe I do.

23 Q. Okay. And did you have a baseline
24 familiarity with each of those groups before
25 you began preparing for this deposition?

1 A. The ones I noticed, it -- it was
2 based on my familiarity with them, not any
3 prep.

4 Q. Were there any groups that you
5 needed to educate yourself on for purposes of
6 today's deposition?

7 A. Yes.

8 Q. Okay. So we'll look at the list in
9 a moment, but I'll ask you some questions today
10 about what you did to prepare for today's
11 deposition in terms of educating yourself as to
12 certain groups. Okay?

13 A. Okay.

14 Q. And one other thing I'd just like to
15 look at with you in CX2523, if you turn to the
16 definitions section on Page 3, there's a
17 definition of buying group. Could you please
18 read that definition over.

19 A. Okay.

20 Q. Okay.

21 MR. McDONALD: And for the record,
22 we've objected to that definition.

23 Q. So today when I'm -- when I ask you
24 whether something is a buying group, I'll be
25 referring to this definition here. Do you

1 understand that?

2 MR. McDONALD: Again, we've objected
3 to that definition.

4 A. Does that include what I was
5 understanding buying groups to be, or is it
6 just based on G?

7 Q. I don't know what you mean by what
8 you were understanding buying groups to be.

9 A. That there -- there's, you know,
10 varying definitions and varying degrees of
11 buying groups.

12 Q. I'm not sure. You can tell me, as
13 we go through the list, why or why not you
14 think something falls into this definition.

15 A. Okay.

16 Q. But this is the definition I'll be
17 referring to.

18 A. Okay.

19 Q. I'd also like you to turn,
20 Mr. Cavaretta, to the other document you have
21 in front of you, CX2525, which is a document
22 entitled: Respondent Henry Schein's
23 Supplemental Objections and Responses to
24 Complaint Counsel's Interrogatories Numbers 1
25 through 2.

1 Do you see that?

2 A. I do.

3 Q. And do you understand this to be a
4 copy of Schein's responses to complaint
5 counsel's discovery requests?

6 A. I do.

7 Q. Okay. And I'd like you to turn to
8 Page 9 of CX2525, where it says Supplemental
9 Response to Interrogatory Number 1.

10 Do you see where I'm at?

11 A. I do.

12 Q. Okay. And there's a list of 49
13 different entities listed here, and it spans
14 Pages 9 through -- 9 through 11, correct?

15 A. I do see that.

16 Q. Okay. And do you understand this to
17 be a list of entities that Schein is asserting
18 are buying groups that Schein has had an
19 agreement with?

20 A. From my understanding, the names on
21 the list would be -- would fall under that
22 category.

23 Q. Okay. Do you have any other
24 understanding as to what the names listed in
25 response to -- strike that.

1 Do you have any other understanding
2 as to what the names listed in response to
3 Supplemental Response to Interrogatory Number 1
4 represent?

5 MR. McDONALD: Object to the form.

6 I have no idea what that means, but
7 if you do, you can answer it.

8 MR. SOLOMON: I'll just rephrase.

9 Q. Do you have any idea what the names
10 on the -- do you have -- strike that.

11 Do you have any other idea as to
12 what the names listed here represent, other
13 than groups with which Schein has had an
14 agreement?

15 MR. McDONALD: Again, object to the
16 form.

17 If you understand the question, you
18 can answer it.

19 A. Can you just ask it one more time?

20 Q. Let's just move on. That's fine.

21 So I'm going to go through and --
22 I'm going to walk through with you each of the
23 names listed here and ask questions about each.

24 So let's start with Number 1, a
25 group called Acurity. Is this a group Schein

1 has or had an agreement with?

2 A. I'm personally not familiar with
3 Acurity.

4 Q. Okay. Did you do anything to
5 educate yourself on this group in preparation
6 for today's deposition?

7 A. No, I didn't.

8 Q. Okay. Do you know whether this is a
9 group that has had a relationship with Henry
10 Schein Dental?

11 A. So I'm not familiar with this
12 specific group.

13 Q. Okay. So you didn't -- you don't
14 know anything about this group, and you didn't
15 do anything to educate yourself on this group
16 for today's deposition?

17 A. I did not.

18 Q. Why not?

19 A. When I was made aware of the actual
20 list, I didn't have time to prepare for every
21 single one.

22 Q. Okay. Did -- is this a group your
23 counsel had asked you to -- strike that.

24 Is this a group that your counsel
25 has told you're here to testify about today?

1 MR. McDONALD: Object to the form.

2 Don't reveal communications with
3 counsel.

4 A. Okay. I'm just not familiar with
5 this specific group.

6 MR. SOLOMON: Okay. So, I mean,
7 John, is -- is he testifying about this one
8 or --

9 MR. McDONALD: He -- he told you he
10 doesn't know about it. So move on, Ronnie.
11 And if we need to figure out something else
12 to get you a different witness on it, then
13 we'll do it.

14 MR. SOLOMON: Okay. This is not one
15 of the groups that was covered for Hal
16 Muller for special markets.

17 MR. McDONALD: It wasn't on the
18 list, I don't think.

19 MR. SOLOMON: Okay. Are there other
20 groups here that he will not be testifying
21 about because he doesn't know?

22 MR. McDONALD: I don't know. I
23 think you should go through the list and
24 ask him. There are clearly groups on
25 here -- for example, the Arizona

1 Association of Community Health Centers,
 2 that's in special markets, that he's not
 3 going to be here to testify about.
 4 MR. SOLOMON: Sure.
 5 MR. McDONALD: And there are other
 6 groups in here that are -- you know, you
 7 know were covered with Hal Muller as
 8 special market groups that he's not going
 9 to testify about.
 10 MR. SOLOMON: Sure.
 11 MR. McDONALD: I think you'll find
 12 he knows about the vast majority of these
 13 buying groups.
 14 MR. SOLOMON: Okay. So Acurity was
 15 not one covered by Mr. Muller, but
 16 Mr. Cavaretta is not prepared to testify
 17 about today.
 18 Q. Is that right?
 19 A. I'm not prepared to testify; that's
 20 right.
 21 Q. Okay.
 22 MR. McDONALD: I -- I believe that a
 23 witness -- I -- I believe where that name
 24 came from is from a deposition that you-all
 25 took in this case where a Henry Schein

1 employee who was responsible for that
 2 account told you all about it.
 3 So it's irrelevant that this guy --
 4 that Mr. Cavaretta tell you anything more
 5 about it. And I can't --
 6 MR. SOLOMON: So --
 7 MR. McDONALD: -- tell you off the
 8 top of my head who that witness is, but I
 9 believe that's where that list -- that's
 10 where that name came from.
 11 MR. SOLOMON: Okay. Well, we asked
 12 for a corporate representative to testify
 13 about all the names here, so I would
 14 disagree that we don't --
 15 MR. McDONALD: You know, Ronnie, if
 16 we have to -- let's stop wasting time, I
 17 mean, seriously. If we need to have a
 18 conversation at a later date that you-all
 19 need to have an additional corporate
 20 representative answer some question about
 21 this, then we'll figure it out.
 22 MR. SOLOMON: I think there's
 23 definitely a need, so I'll move on --
 24 MR. McDONALD: Well, other than
 25 you've already asked a -- a witness -- I

1 believe you've already asked a witness, and
 2 you haven't been at every deposition,
 3 Ronnie.
 4 MR. SOLOMON: I haven't asked a
 5 witness is what I'm saying.
 6 MR. McDONALD: Okay. You, complaint
 7 counsel, that's what you refer to yourself,
 8 like God or something, complaint counsel.
 9 Complaint counsel, I believe, has asked a
 10 Henry Schein witness about this.
 11 MR. SOLOMON: Not in their corporate
 12 capacity, though, correct?
 13 MR. McDONALD: Just move on, Ronnie.
 14 Okay? We'll -- we'll figure this out.
 15 MR. SOLOMON: Okay.
 16 MR. McDONALD: I mean, I -- it's now
 17 after 4:00 o'clock. You said you need an
 18 hour or two. Let's get going.
 19 MR. SOLOMON: Sure. I just want to
 20 make sure we can talk about this after.
 21 MR. McDONALD: We can always talk,
 22 Ronnie.
 23 MR. SOLOMON: Great.
 24 Q. So turning to Group Number 2,
 25 Mr. Cavaretta, Advantage Dental Group, is

1 that -- is Advantage Dental Group an entity
 2 with which Schein has had -- or had -- strike
 3 that.
 4 Is Advantage Dental Group an entity
 5 with which Schein has had an agreement?
 6 A. Not that I'm aware of.
 7 Q. Okay. So Schein has never had an
 8 agreement with Advantage Dental?
 9 MR. McDONALD: Object to the form.
 10 A. I'm not -- I'm not familiar with
 11 Advantage Dental Group.
 12 Q. Did you do anything to educate
 13 yourself about Advantage Dental prior to
 14 today's deposition in order to testify about
 15 it?
 16 A. No, I didn't.
 17 Q. Okay. So you're not prepared to
 18 testify about Advantage Dental here today?
 19 A. No, I'm not.
 20 Q. Turning to Group Number 3, Dr. Alan
 21 Farber Study Group, do you see where I'm at?
 22 A. I do.
 23 Q. Is Dr. Alan Farber Study Group a
 24 group with which Schein has had an agreement?
 25 A. Yes.

1 Q. Was this a written agreement?

2 A. I -- I don't -- the -- the
3 relationship goes back a long way, so I don't
4 remember if it's a written agreement or not.

5 Q. Okay.

6 MR. McDONALD: If there's a written
7 agreement, it's been produced to you. And
8 he's not prepared to recite the terms of
9 any agreement that we entered into. Any
10 agreement has -- to the extent we have one,
11 has been produced to you. And it's your
12 burden to put it in front of him, and if
13 you have a question about it, to ask him
14 about it.

15 Q. When was the relationship between
16 Dr. Alan Farber Study Group and Schein first
17 formed?

18 A. I remember that to be in the
19 2005/2006 time frame.

20 Q. Okay. It says here 2009 through
21 2016. Do you have any understanding as to why
22 2009 is listed here?

23 A. No, I do not.

24 Q. Okay. Was the Dr. Alan Farber Study
25 Group a buying group comprised of private

1 practice dentists?

2 A. Yeah. What I remember it being is
3 really more of a study club that Dr. Farber was
4 looking for endorsement dollars and
5 sponsorship. He wanted to use the -- the Henry
6 Schein name.

7 And so when I was a regional manager
8 in New York, Long Island, I did meet with him,
9 and we agreed to participate in the study club.
10 And I don't -- I don't remember the -- the
11 deals [sic] of the contract or the -- any type
12 of agreement, but I know we participated.

13 Q. What do you mean when you say it was
14 an endorsement or sponsorship?

15 A. Well, typically, with the study
16 club, is that they ask us to -- say, hey, we
17 have a group of doctors here, and -- and we're
18 based on education. We educate our doctors on
19 X, Y, Z. I have X amount of members that --
20 that come, and this is what we do. We have a
21 website. So we would love for Henry Schein to
22 be part of our study club.

23 And, therefore, in exchange, we
24 would put the Henry Schein logo on the --
25 the -- what -- the Dr. Alan Farber Study Group.

1 So that's the endorsement component of it.

2 Q. Okay. Did members of this group
3 receive discounts based on aggregated volume of
4 the group members?

5 A. Yeah. So I would -- I would have to
6 review the contract with you. I don't remember
7 the specific details of it.

8 Q. Do you recall who was responsible
9 for the relationship with this entity?

10 A. I created -- or I started the
11 relationship. And at that time, Dr. Farber's
12 FSC was someone named Sue Cerullo. And so that
13 was put in front of me at that time. As
14 regional manager, I went there and spoke to
15 Dr. Farber, and we decided that it was
16 something we would attempt to do.

17 Q. Were all of the members of this
18 group private practice dentists?

19 A. Back then, as -- as far as I know,
20 they were.

21 Q. Okay. And you have personal
22 knowledge -- knowledge of this relationship
23 because, as you just mentioned, you were
24 involved in setting up the relationship; is
25 that right?

1 A. Correct.

2 Q. Okay.

3 A. So I met Dr. Farber. I haven't had
4 a conversation with him in 12, 13 years, but,
5 yes.

6 Q. Okay. Is this the same group as the
7 Long Island Dental Forum listed in Number 29?

8 A. I believe that to be the case.

9 Q. Okay. So Numbers 3 and Number 29
10 are the same exact group; is that your
11 understanding?

12 A. That is my understanding.

13 Q. Okay. So do you know why they're
14 listed twice on this list?

15 A. I do not.

16 Q. And do you know why the dates listed
17 in Number 3 and Number 29 are different?

18 A. I do not. The Long Island Dental
19 Forum, which is Number 29, started in 2006,
20 would have been when I started -- I guess it's
21 possible that the Long Island Dental Forum
22 potentially could have disbanded and went -- or
23 changed names to -- under Dr. Alan Farber Study
24 Group. But I'm not aware of any type of
25 specific changes there.

1 Q. Do you know whether Schein still
2 does business with the Dr. Alan Farber Study
3 Group?

4 A. I believe we do.

5 Q. Okay. Number 4, Alpha Omega.
6 Schein has an agreement with Alpha Omega?

7 MR. McDONALD: Again, to the
8 extent -- to the extent we do, it's been
9 produced.

10 A. Yeah. So I -- I don't know if
11 there's a -- an actual documented agreement.
12 What I know about Alpha Omega, at this time, I
13 was the regional manager in Arizona, and this
14 was to focus on the Jewish community of
15 dentists.

16 And I know that we were putting
17 together something for them, and there was a --
18 a form of a rebate. I don't recall the amount
19 of rebate, and I don't even -- I don't recall
20 the discount we were giving them. But I'm
21 familiar with the relationship.

22 Q. Do you know whether there was a
23 discount component to this relationship?

24 A. I don't recall specifically. And
25 again, if we had the agreement, we could go

1 through it.

2 Q. Okay. Do you recall whether there
3 was a written agreement between Schein and
4 Alpha Omega?

5 A. No. I wouldn't have done -- so I'm
6 not aware of that.

7 Q. Okay. It says here, under Number 4,
8 that the relationship lasted from 2009 to 2016.
9 Do you understand that to be the term of the
10 relationship between Alpha Omega and Schein?

11 MR. McDONALD: Well -- and I'll tell
12 you the beginning date is wrong, based upon
13 prior testimony from our witnesses. But go
14 ahead.

15 A. So I -- I believe this relationship
16 to have started in 2003.

17 Q. Okay. So 2009 is not correct?

18 A. I don't believe it to be correct.

19 Q. Okay. And did it end in 2016?

20 A. I believe it did. I haven't heard
21 about Alpha Omega at all, so I wasn't the --
22 the corporate owner of the relationship, so
23 it's possible.

24 Q. Who was the corporate owner of the
25 relationship?

1 A. From what I remember, it was Steve
2 Kess.

3 Q. And who's Steve Kess?

4 A. Steve is in our New York office.
5 And at the time, he was working in professional
6 relations. So he had, I think, a relationship
7 with the head of the Alpha Omega chapter that
8 was based out of New York.

9 Q. Were all of the members of Alpha
10 Omega private practice dentists?

11 MR. McDONALD: Object to the form.

12 A. I can't say for sure. A majority.

13 Q. And is that based on your personal
14 knowledge or something you did to get educated
15 in preparation for today?

16 A. Personal knowledge.

17 Q. Okay. And how do you have personal
18 knowledge of this group? Did you -- were you
19 involved in working with them at any point?

20 A. So when I was a regional manager in
21 Arizona, which would be that time frame that I
22 gave you, 2001 to 2004, when the agreement was
23 communicated to us, I was responsible for
24 meeting with the head of the Alpha Omega
25 chapter in Arizona.

1 Q. Okay. And do you know whether Alpha
2 Omega is a group in which -- or strike that.

3 Let's turn to Number 7 Breakaway
4 Practice. My understanding is that Numbers 5
5 and 6 were covered by another corporate
6 representative, Mr. Hal Muller?

7 A. Okay.

8 Q. Okay. So Number 7, Breakaway
9 Practice, is that a group with which Schein has
10 had an agreement?

11 A. Yes.

12 Q. Do you know whether it was a written
13 agreement?

14 A. I know that we had a PVA signed with
15 Breakaway Practice.

16 Q. Okay. And do you know when the
17 relationship first formed?

18 A. So I don't know exactly when the
19 relationship first formed because this was a
20 relationship with special markets first, and
21 then Henry Schein Dental took over the
22 relationship.

23 Q. When did Henry Schein Dental take
24 over?

25 A. Formally, it would have been 2015,

1 and the reason why those dates are 2016 is
2 because we created new purchase volume
3 agreements for Breakaway.

4 Q. Is Breakaway a buying group
5 comprised of private practice dentists?

6 A. Breakaway was one of the hybrid
7 accounts that we had and -- and really one of
8 the big reasons why we created the APC space.
9 It had a DSO component, an MSO component, and I
10 believe what they called affiliates, which,
11 because they didn't own the offices or have any
12 type of equity ownership in those offices, that
13 we considered that arm being more of a buying
14 group.

15 Q. Do you know when the affiliates
16 portion was added to Breakaway's model?

17 A. From Breakaway's standpoint, I
18 don't. What I do know is when Kathleen Titus
19 went down to meet with them and doing discovery
20 and just asking more about their business,
21 that's when it was discovered.

22 Q. Okay. Who was responsible for the
23 relationship with Breakaway?

24 A. When it came to Henry Schein Dental?

25 Q. Uh-huh.

1 A. It started out with -- it started
2 out with Kathleen Titus. Then it moved to
3 Andrea Hight. And then we had Kip Rowland
4 cover Breakaway. Kip retired. Then it went
5 to -- I think Andrea covered it for a little
6 bit of time, and then it ultimately ended up
7 with Darci.

8 Q. Is Breakaway, to your knowledge,
9 still a Schein customer?

10 A. Breakaway is -- from a formal
11 agreement, no, they are not. But what we do
12 is, the Breakaway members that exist, a
13 majority of them, well over 80 percent of them,
14 still do business with us.

15 Q. So Schein no longer has an agreement
16 with Breakaway?

17 A. Correct. We don't have a -- we're
18 not their agreed-upon, endorsed prime vendor.

19 Q. Do you know when the relationship
20 between Schein and Breakaway ended?

21 A. Yes. It was March/April of this
22 year.

23 Q. Do you know why it ended?

24 A. Yes. There was a company called
25 Dental Whale that ended up purchasing Breakaway

1 Dental. And -- and through negotiations with
2 Dental Whale, all of 2017 into '18, they
3 decided to, as a corporation, move their prime
4 agreement with Darby Dental.

5 Q. When Schein did business with
6 Breakaway, did Breakaway members receive
7 discounts based upon aggregated volume of the
8 group?

9 MR. McDONALD: Object to the form.

10 The contract speaks for itself.

11 A. Based on the -- the PVA, there was
12 discounts offered to the members, and there was
13 a form of an admin fee that went to the
14 Breakaway corporate office.

15 Q. When Schein did business with
16 Breakaway, was centralized purchasing an aspect
17 of Breakaway's model?

18 MR. McDONALD: Object to the form.

19 A. So I -- it may be a long -- a little
20 bit long-winded. When we did discovery, what
21 we found out is that they are able to drive
22 compliance with the DSO/MSO component. Where
23 they struggled with compliance was the
24 affiliate component. So their -- the -- each
25 individual office did their own ordering. And

1 then the corporate office would monitor where
2 purchases were coming from.

3 So what they did with that data, I
4 don't know. But I do know that we had a higher
5 engagement with the DSOs and MSOs compared with
6 the affiliates.

7 Q. And for the DSO and MSO portion of
8 the business, there was a common ownership
9 among the practices; is that right?

10 A. Well, what I understood Breakaway to
11 be is that there was some practices -- I don't
12 know how many off of my head -- that were DSO,
13 so fully owned. There -- there were more that
14 were MSO, so the equity in exchange for the
15 services. And then, yes, there was an
16 affiliate arm. I don't know how it segmented
17 internally for Breakaway.

18 Q. And did you have personal knowledge
19 of this relationship, or were you educated on
20 this group for purposes of today's deposition?

21 A. I had personal knowledge of this
22 relationship.

23 Q. And what was your personal knowledge
24 based on?

25 A. So in 2015, the mid-market space --

1 or 2014, the mid-market space moves over to
2 Henry Schein. Roughly 2015, this Breakaway
3 relationship is transitioned to Henry Schein.

4 Kathleen Titus reported to me. She
5 did all the discovery. She would report, you
6 know, back to me. We'd have conversations
7 about this new way of -- new customer that, you
8 know, is a hybrid customer. It was new.

9 And then eventually, the APC space
10 was created, which reports to me. And Darci
11 Wingard is the one who's responsible for the
12 relationship, so ...

13 Q. Okay. Number 8 I understand to be a
14 group that fell within special market's purview
15 and was covered with another witness.

16 Ciradin, was Ciradin a group with
17 which Henry Schein has had an agreement?

18 A. I am not familiar with this group.

19 Q. So you have no personal knowledge
20 about this group, and you were not educated on
21 this group, either, correct?

22 A. I was not.

23 Q. Number 10, Colorado Community Health
24 Network, again, I understand that to be a group
25 that fell within special markets and not HSD.

1 Number 11, Columbia Dental Group, is
2 this a group -- did Schein have an agreement
3 with the Columbia Dental Group?

4 A. I'm not familiar with this group.

5 Q. Okay. You -- so you have no
6 personal knowledge of the Columbia Dental
7 Group, and you didn't educate yourself on this
8 group in preparation for today's deposition?

9 A. I did not.

10 Q. Okay. Turning to Number 12, Comfort
11 Dental, is Comfort Dental a group with which
12 Schein has had an agreement?

13 A. Yes.

14 Q. Okay. Was this a written agreement?

15 A. I believe this to be a formalized
16 prime vendor agreement.

17 Q. Okay. And do you know when the
18 relationship between Comfort Dental and Schein
19 was first formed?

20 A. I -- I don't know the exact date,
21 but I know it was in the -- it's been in place
22 since -- the relationship has been there since
23 the late '90s. I don't know when, you know,
24 the official agreement was created.

25 Q. Okay. Is Comfort Dental a buying

1 group of private practice dentists?

2 A. Yeah. It's made of independent
3 dentists, but there is some ownership in some
4 of those practices.

5 Q. So Comfort Dental has some stake of
6 ownership in the various practices that are a
7 part of Comfort Dental?

8 A. Yeah. I don't know how many, but
9 there is ownership in some of them.

10 Q. Okay. Do you know whether Comfort
11 Dental has centralized purchasing of dental
12 products?

13 A. I -- I believe the individual
14 offices still do their purchases. But based
15 on -- on -- Comfort Dental has managed to drive
16 compliance through those offices. And it's
17 partially because they're -- they're a heavier,
18 more MSO component, Comfort Dental is, than, I
19 guess, a buying group where there's -- there's
20 not services being offered.

21 Q. So Comfort Dental contracts with
22 practices to provide management services?

23 A. That's my understanding.

24 Q. Okay. Do Comfort Dental practices
25 receive discounts on dental products from Henry

1 Schein?

2 A. There is a discount provided.

3 Q. Okay. Do you know what the discount
4 is?

5 A. I do not.

6 Q. Do you know who was responsible for
7 this relationship within HSD?

8 MR. McDONALD: Object to the form.

9 A. So it's -- it's somewhat a team with
10 the relationship. We have -- our special
11 markets team helps with Comfort Dental. We
12 have an FSC by the name of Susan Feldner out of
13 Colorado who -- that's where Comfort Dental's
14 headquarters is. So she has a relationship
15 with the -- with the headquarters. But beyond
16 that, I -- I don't know what other
17 relationships we may have with them.

18 Q. When you say their headquarters,
19 what do you mean?

20 A. The individual who started Comfort
21 Dental started it out of Colorado. So he is
22 known as the leader and the head of Comfort
23 Dental. So that's what I mean by that.

24 Q. What's his name?

25 A. And I cannot remember it off the top

1 of my head right now. I -- I'm sure I'll think
2 of it. I -- I can find out, but I -- I -- it's
3 slipping my mind right now.

4 Q. And do you have personal knowledge
5 of this relationship, or were you educated on
6 this group for purposes of today's deposition?

7 A. The personal knowledge I provided
8 to -- today, and the education ahead of time, I
9 did not do.

10 Q. Okay. So your testimony today is
11 based on your personal knowledge of dealing
12 with this group?

13 A. Correct.

14 Q. Okay. Number 13 is Commonwealth
15 Purchasing Group. I understand that to be a
16 group that falls within special market's
17 purview and was previously testified about by
18 another witness.

19 Number 14, Corydon Palmer Dental
20 Society, do you recognize that as an entity
21 that had an agreement with Schein?

22 A. So I recognize the name. I was not,
23 you know, a part of any type of relationship or
24 agreement with them.

25 Q. Okay. So you have no personal

1 knowledge of Schein's relationship or agreement
2 with the Corydon Palmer Dental Society?

3 A. I do not.

4 Q. Okay. And you were not educated
5 about this group for purposes of today's
6 deposition?

7 A. I was not.

8 Q. Okay. The next group, Council
9 Connections, I understand that to be a group
10 that falls within the special market's purview,
11 so we'll skip that.

12 Number 16, The Denali Group, is The
13 Denali Group an entity that had an agreement
14 with Henry Schein?

15 A. So The Denali Group was another
16 group that we -- was transitioned from special
17 markets to Henry Schein Dental. Learned about
18 The Denali Group, I want to say in 2013. I
19 can't tell you if there's a formal agreement
20 with them.

21 What Denali Group focuses on is
22 consulting on equipment and designing offices,
23 equipment and technology and designing offices.

24 So we have sold, to The Denali Group
25 equipment, based on the gentleman -- and I

1 don't remember his name, but I have spoke to
2 him. But based on his relationships, we then
3 sell equipment into those dental offices. So
4 we're his preferred vendor of choice for
5 equipment and technology.

6 Q. Is the gentleman you're referring to
7 named Robert Lowther?

8 A. That sounds familiar. I can't
9 confirm exactly who -- that I spoke to him.

10 Q. Okay.

11 A. But that sounds familiar.

12 Q. Is The Denali Group a buying group
13 comprised of private practice dentists?

14 A. I -- I would -- from my
15 understanding, the majority of the doctors he
16 works with are private practice, but it is
17 possible that he -- he now has some groups,
18 because as these independent dentists --
19 they're adding practices, they -- they could
20 have multiple practices at this point.

21 Q. So Denali itself, is it a buying
22 group or consulting group, or what -- how would
23 you describe Denali's business model?

24 A. I describe it as an APC. It is --
25 they -- they are consulting with the customer

1 in the field. They are designing the office,
2 and then they come to us for the equipment. So
3 that's -- I don't know a better way to explain
4 it.

5 Q. Does Denali Group fall within the
6 definition of buying group that we looked at
7 earlier?

8 MR. McDONALD: Object to the form.
9 Calls for a legal conclusion.

10 A. I can't answer that.

11 MR. McDONALD: You like that, don't
12 you?

13 A. I -- I -- the only reason why I'm
14 pausing is I can't really answer for sure,
15 because it's equipment and technology. It's
16 not merchandise, so it's a unique group.

17 They do receive special pricing
18 because of the volume of business that he's
19 brought to us. But, again, that's -- that's
20 the best answer I can give you.

21 Q. Would you categorize it as a buying
22 group?

23 A. I'd categorize it as an APC.

24 Q. So not a buying group?

25 A. An alternative purchasing channel,

1 which is a catchall for -- yeah. I -- I can't
2 give you a definitive answer on whether it's a
3 buying group or not.

4 Q. Okay. Do you know who was
5 responsible for the relationship between Schein
6 and The Denali Group?

7 A. The original relationship I -- I
8 don't know for sure. I know the relationship
9 resides right now with a gentleman named Steve
10 Aaron, who's our director of equipment out of
11 the west. And the reason why it's with him
12 right now is The Denali Group is out of Texas,
13 which was -- which is in the west. And when I
14 was in the west, Steve and I worked with them.
15 So Steve would be the one who -- who is the
16 closest to them right now.

17 Q. Do members of The Denali Group
18 receive discounts based on the aggregated
19 volume of the group?

20 A. I don't know the exact details of
21 the contract.

22 Q. Okay. Do you know at all whether
23 they receive discounts?

24 A. I know the equipment that he
25 purchased from us has discounts associated with

1 it. I don't know the level, but I know there's
2 discounts provided.

3 Q. So the discounts apply only to -- to
4 equipment; is that right?

5 MR. McDONALD: Object to the form.

6 A. He -- he predominantly sells -- he
7 predominantly works with customers on designing
8 an office with equipment and technology. So I
9 don't recall doing merchandise with him, so ...

10 Q. Okay. And do you know whether all
11 members of The Denali Group have access to the
12 same discounts?

13 A. I don't know that for a fact. But
14 based on -- when he designs an office and he
15 comes to Henry Schein and says, hey,
16 Dr. Cavaretta wants to -- is -- is going to be
17 buying equipment, the pricing program that we
18 have, this doctor gets it.

19 Q. Okay. And do you have personal
20 knowledge of this relationship, or were you
21 educated about this group for purposes of
22 today's deposition?

23 A. I -- I've had personal knowledge of
24 it over the time -- the time frame I gave you,
25 2013, until -- I mean I haven't really talked

1 to them in probably a couple years or a year.

2 Q. Okay. The next group is Dental
3 Associates. Is Dental Associates a group that
4 had an -- an agreement with Henry Schein?

5 A. So we have a Dental Associates in
6 Connecticut. And for the purposes of this
7 discussion, I'm assuming this is the group
8 we're talking about.

9 Q. You're not -- you're not sure?

10 A. I'm not positive if this is the
11 group in Connecticut or not.

12 Q. So it's possible that this might be
13 referring to another group?

14 A. You know, all I'm saying is that --
15 that's why I was getting clarification if this
16 is the group in -- in Connecticut.

17 MR. McDONALD: Well, don't guess.

18 THE WITNESS: Okay.

19 MR. McDONALD: And we have produced
20 the contract to complaint counsel.

21 THE WITNESS: Okay.

22 MR. McDONALD: And -- and for the
23 record, Ronnie, it says special markets.

24 MR. SOLOMON: Dental Associates is?

25 MR. McDONALD: It's -- I'm looking

1 at it. It's Dental Health Associates, and
2 it says Henry Schein Special Markets.

3 MR. SOLOMON: Okay. I don't believe
4 this is a group that Mr. Muller testified
5 about, so I think it was not on the list
6 earlier. So we haven't gotten any
7 testimony on it from a corporate designee.

8 MR. McDONALD: Well, I'm telling you
9 it's -- the contract I'm looking at says
10 special markets. And it's been produced to
11 you.

12 MR. SOLOMON: Okay.

13 Q. So, Mr. Cavaretta, I'll ask you some
14 questions about Dental Associates, the one
15 you're familiar with.

16 MR. McDONALD: Well, and -- so I
17 don't want to play games here, Ronnie. You
18 know --

19 MR. SOLOMON: Me either.

20 MR. McDONALD: -- I'm not big on
21 playing games. It says special markets.
22 And this says Dental Health Associates with
23 its primary place of business in Madison,
24 Wisconsin.

25 MR. SOLOMON: Okay. I'm just going

1 to ask questions anyway because I don't
2 have that agreement in front of me, and I
3 don't know one way or the other.

4 Q. So, Mr. Cavaretta --

5 MR. McDONALD: Well, hopefully you
6 can take my representation to you that
7 that's what it says.

8 MR. SOLOMON: I -- I believe you.

9 Q. Mr. Cavaretta, what do you
10 understand Dental Associates to be?

11 A. So knowing that now it -- it's out
12 of Madison, Wisconsin, I'm aware of Dental
13 Associates out of Madison. It historically has
14 been a special markets customer. I know the
15 representative that goes in and calls on Dental
16 Associates.

17 I personally have been in that
18 office. I don't know how many offices they
19 actually have. So, yeah, I mean, what other
20 questions do you have?

21 Q. So Dental Associates had an
22 agreement with Schein at some point?

23 A. I believe the agreement still
24 exists, as -- as John mentioned. So I don't
25 know the specifics of it.

1 Q. Do you know when it was formed?

2 A. I'd be guessing. I could give a
3 time frame, but I'd be guessing.

4 Q. Okay. I don't want you to guess.

5 A. Then I'm not going to answer, then.

6 Q. Okay. Is Dental Associates a buying
7 group comprised of private practice dentists?

8 A. In -- in looking at Dental

9 Associates, I would have believed them to be a
10 DSO. So I -- we'd have to refer back to the
11 individuals that put Dental Associates on the
12 list, because it is very possible they have now
13 some form of affiliates.

14 Q. Okay. As far as you're aware, the
15 group, Dental Associates, is a DSO, but may
16 have changed at some point?

17 A. I -- that would be -- my knowledge
18 of them would have been a DSO, but it's
19 possible that that could have expanded.

20 Q. Okay. And so as a DSO, it was a
21 corporate group that had some type of common
22 ownership structure, to your knowledge?

23 A. To my knowledge, yes.

24 Q. Okay. And do you know who was
25 responsible for this relationship?

1 A. I know our FSC -- the local FSC on
2 it is Eddie Dahm. The corporate representative
3 or the mid-market representative at one point
4 was Andrea Hight. That has -- that has
5 changed, and I don't know who is actually
6 working with Eddie on that account as we
7 talk -- as we speak here today.

8 Q. How do you spell Mr. Dahm's last
9 name?

10 A. D-a-h-m.

11 Q. Anyone else who was involved in the
12 agreement between Dental Associates and Henry
13 Schein?

14 A. Not that I'm aware of.

15 Q. Okay. Let's turn to the next group
16 on this list -- actually, I think that's
17 already been covered by -- Dental Gator has
18 been covered by a corporate representative who
19 testified on special markets groups. The same
20 is true for Dental Georgia Partners.

21 The next group on the list is Dental
22 Smart. Is Dental Smart a group that Henry
23 Schein has had an agreement with?

24 A. I'm not familiar with Dental Smart.

25 Q. Okay. So you have no personal

1 knowledge of this group?

2 A. No.

3 Q. And you did not -- strike that.

4 You were not educated about this
5 group in preparation for today's deposition?

6 A. I was not.

7 Q. Okay. So you don't know whether or
8 not it's a buying group, sitting here today?

9 A. I don't.

10 Q. Okay. Number 21, Dentists for a
11 Better Huntington, in parens, Partnership
12 Support Program. Is Dentists for a Better
13 Huntington an entity with which Schein has had
14 an agreement?

15 A. I'm not familiar with them.

16 Q. Okay. So you have no personal
17 knowledge of this group, and you were not
18 educated about it for today's deposition?

19 A. As it reads, Dental -- Dentists for
20 a Better Huntington, I'm not familiar with
21 them, so I haven't prepared for it.

22 Q. And you don't know who would be most
23 knowledgeable about this group?

24 A. Well, Huntington is in Long Island,
25 so I would have to refer to someone in Long --

1 in New York.

2 Q. Okay. Number 22, Dr. Greg Kalmar,
3 do you have any knowledge as to what Dr. Greg
4 Kalmar represents on this list?

5 A. I do not.

6 Q. Okay. So you have no personal
7 knowledge of Dr. Greg Kalmar, and you were not
8 educated about this name in preparation for
9 today's deposition?

10 A. I was not.

11 Q. Okay. EHI, do you know what EHI is?

12 A. I do not.

13 Q. Okay. So you don't know whether or
14 not it's a buying group?

15 A. No.

16 Q. And you have no personal knowledge
17 of a group called EHI?

18 A. No.

19 Q. And you were not educated about it
20 in preparation for today's deposition?

21 A. No.

22 Q. Okay. Number 24 is the Illinois
23 Primary Health Care Association, and I believe
24 that is something that fell within the purview
25 of special markets, so we'll skip that one.

1 Number 25 is Infinity Dental. Do
2 you recognize that name?

3 A. I do recognize this name.

4 Q. Is Infinity Dental an entity with
5 which Henry Schein has had an agreement?

6 A. I believe we have an agreement with
7 them.

8 Q. Okay. And did -- well, do you know
9 when the agreement first started?

10 A. I don't know for sure. I would be
11 assuming.

12 Q. You're -- you'd be guessing or
13 speculating?

14 A. I'd be speculating.

15 Q. Okay. Is this a buying group
16 comprised of private practice dentists?

17 A. I believe this to be one of the
18 hybrids, again, where they do have some
19 ownership, and they also have affiliates.

20 Q. So it's a hybrid DSO?

21 A. Yes.

22 Q. Okay. Do you know whether there's a
23 written agreement between Schein and Infinity
24 Dental?

25 A. I have personally never seen a

1 written agreement between them.

2 Q. Do you know whether there is one?

3 A. I'm not -- I'm not completely sure.

4 MR. McDONALD: Well, I'm looking at
5 it, so, yes.

6 MR. SOLOMON: Okay.

7 Q. Do you know who was responsible for
8 this relationship?

9 A. This relationship came to us via
10 John Chatham, Eric Nuss, and then from what I
11 remember, they're based out of Michigan. So
12 I -- I believe the local manager, Mark DeMonaco
13 is aware of Infinity.

14 And they were offering -- they wrote
15 a book and were offering specific services on
16 how to expand from a private practice into
17 group practices. So that's how they came to
18 us.

19 And because we had something called
20 our Dental Business Institute, they were then
21 incorporated into the Dental Business
22 Institute, and that's how the relationship
23 formed.

24 Q. You mentioned that it's a hybrid
25 DSO. Is there a component of this business

1 that are private practice dentists, where
2 there's no common ownership or no centralized
3 management?

4 MR. McDONALD: Object to the form.

5 A. There's the potential there for
6 there to be affiliates to Infinity, meaning
7 that they wouldn't own those practices.

8 Q. Do you know whether they would
9 manage or provide management services to those
10 practices?

11 A. As we speak here today, I don't.

12 Q. Okay. Did you know at some point?

13 A. No. I know the name of Infinity. I
14 know how they came to us. And I know roughly
15 what they do, but I don't know the specifics
16 that you're asking me.

17 Q. Okay. And do you -- do you have
18 personal knowledge of this group, or were you
19 educated about this group in preparation for
20 today's deposition?

21 A. What I provided was my personal
22 knowledge.

23 Q. Okay. Number 26, Intermountain
24 Dental Associates. I believe this was covered
25 by a special markets representative. But you

1 also testified earlier that you had made some
2 calls about this group in preparation for your
3 testimony today. What did you learn about
4 Intermountain Dental Associates?

5 A. Well, I called Andrea Hight, and
6 I -- because I remembered them as a DSO. And I
7 asked Andrea about it. At the time, she had
8 the relationship, I wasn't sure who was working
9 with IDA at this point. She also, at that
10 time, believed she -- would have classified
11 them as a DSO.

12 But she also mentioned that she
13 hadn't worked with them in a couple of years,
14 so I needed to call -- or, you know, Daniel
15 Hobson's working with IDA.

16 So I called Daniel Hobson, and I
17 said, hey, Daniel, how would you classify IDA?
18 Are they a DSO? That's what I remember them
19 as, or would you say they are a buying group?

20 And Daniel said, I would classify
21 them as a buying group, because they've
22 apparently expanded from ten practices, which I
23 knew they owned, to roughly 25.

24 Daniel is no longer the -- the
25 primary relationship holder for IDA. I believe

1 them to be a DSO/MSO affiliate.

2 Q. You -- so you don't believe them to
3 be a buying group?

4 A. Well --

5 MR. McDONALD: Object to the form.

6 A. I -- I believe there's a buying
7 group component to it, because I know they also
8 have ownership in practices that -- under IDA.
9 So for Daniel to mention them as a buying
10 group, he believes there's affiliates
11 associated with the IDA.

12 Q. So when you say affiliates, do you
13 mean practices that IDA does not own or manage?

14 A. So through the course of educating
15 myself, they still could provide services, so
16 there could be an MSO component to it, but I
17 don't know if equity exchanged hands with the
18 MSO component. But I also know that on the
19 affiliate component, if those individuals chose
20 to buy from someone other than Henry Schein, I
21 don't believe IDA has the ability to -- to
22 completely drive the compliance there.

23 Q. Okay. So just to be clear, for the
24 affiliate component, there is some aspect of
25 central management services being provided to

1 the practices; am I correct?

2 A. I don't -- I didn't ask that
3 specific question to Daniel. I -- the
4 information he provided to me is he knows
5 they -- they have ownership in some offices,
6 but he could also classify them as a buying
7 group because there's offices that he doesn't
8 believe that they own.

9 Q. Okay. Do you know when IDA added
10 the affiliate offices?

11 A. I don't know specifically.

12 Q. Okay. Did Mr. Hobson tell you?

13 A. I didn't ask him the -- the dates
14 when that happened.

15 Q. And did Mr. Hobson tell you whether
16 Schein has always worked with the affiliate
17 offices?

18 A. I didn't ask that question to
19 Daniel.

20 Q. Okay. And you mentioned that as far
21 as Ms. Hight understood, they were solely a
22 DSO?

23 A. Correct.

24 Q. When did Ms. Hight hand off the IDA
25 account to Ms. Hobson?

1 A. The exact year, I -- don't know.
2 But at the time, they were still 10 and 11 --
3 10 practices, I believe, so I don't know the
4 exact year.

5 Q. Okay. And do members of IDA's
6 affiliate component receive discounts based on
7 aggregated volume of the group?

8 A. I'm not familiar with the contract
9 that -- that IDA has with potential affiliate
10 members, so, no.

11 Q. Okay. And apologies if I asked you
12 this. Who has the -- primarily been
13 responsible for this relationship?

14 MR. McDONALD: Object to the form.

15 Asked and answered. Vague as to time.

16 A. And so like I said, it was Andrea
17 and Daniel. I know we have a local FSC
18 assigned to the account. I don't know who is
19 responsible for it potentially from a -- a
20 group standpoint at the moment.

21 Q. Okay. And it sounds like you did
22 some stuff to get educated about this group.
23 You spoke to Ms. Hight -- Ms. Hight and
24 Mr. Hobson. Did you have any personal
25 knowledge of this relationship?

1 A. When I was a zone manager in the
2 west, I met with them a long time ago, so
3 I've -- I'm familiar with the name. When the
4 name came up, I -- I, you know, knew some of
5 the history, met the customer, but -- so, yeah,
6 there was some personal knowledge of them.

7 Q. Okay. Number 27, Khyber Pass, is
8 Khyber Pass an entity that has had an agreement
9 with Henry Schein?

10 MR. McDONALD: Object to the form.

11 A. So I learned of Khyber Pass
12 recently. And I believe this relationship was
13 started by Brian Brady when he was region
14 manager in San Diego.

15 Q. And how did you learn that?

16 A. Through just -- through just seeing
17 this name on the -- on the list and just asking
18 about it.

19 Q. Who did you ask?

20 A. It was -- it was from -- it was from
21 yesterday, so --

22 MR. McDONALD: Don't reveal your
23 communications with counsel.

24 THE WITNESS: Okay.

25 MR. McDONALD: Mr. Brady testified

1 at length about Khyber Pass.

2 Q. I'm just trying to understand how
3 you learned about Khyber Pass. What you did to
4 educate yourself about it?

5 A. I didn't educate myself about it.
6 When I understood they were in San Diego, I --
7 I remembered the -- the relationship that Brian
8 had with them, and it was more when Brian
9 reported to me as a -- when I was a western
10 zone manager, I remember him talking to this
11 group and -- and putting a -- a deal together.

12 Q. Okay. So you had personal knowledge
13 of the relationship between Khyber Pass and
14 Schein?

15 A. So through Brian, I -- I had
16 personal knowledge of the relationship.

17 Q. Through your conversations with
18 Mr. Brady?

19 A. When Brian was a regional manager
20 at -- in San Diego. I haven't -- I haven't
21 thought of this group in, I don't know, a long
22 time, so ...

23 Q. Do you know when the relationship
24 between Schein and Khyber Pass was first
25 formed?

1 A. Not the exact year.

2 Q. Do you know an approximate year when
3 it was formed?

4 A. Brian and I worked together 2009 to
5 2012, so somewhere in -- along those lines.

6 Q. And is the Khyber Pass a buying
7 group comprised of private practice dentists?

8 A. It's possible that they have
9 multiple groups in there. But from what I
10 recall at the time, they were private
11 practices.

12 Q. Okay. And does Schein currently
13 still have an agreement with the Khyber Pass
14 group?

15 A. I'm not --

16 MR. McDONALD: Object to the form.

17 A. I'm not -- I'm not sure if we do or
18 not at this point.

19 Q. Okay. Did Khyber Pass members
20 receive discounts on dental products based on
21 aggregated volume of the group?

22 A. I know they were -- they had a
23 discount program offered to them. I don't know
24 the specifics, but I know that there was
25 discounts.

1 Q. Okay. Do you know whether the
2 Khyber Pass members -- or strike that.

3 Do you know whether there was common
4 ownership or management among the practices of
5 the Khyber Pass group?

6 A. Not that I am aware of. Brian would
7 have to answer that.

8 Q. Okay. And so Mr. Brady was
9 responsible for this relationship, correct?

10 A. He was.

11 Q. Was anyone else responsible?

12 A. No.

13 Q. Okay. Turning to No. 28, Klear
14 Impakt, do you recognize that name?

15 A. I do.

16 Q. Is Klear Impakt an entity with which
17 Schein has had an agreement?

18 A. Yeah -- yes.

19 Q. Okay. And was it -- the
20 relationship formed in 2016?

21 A. That sounds right.

22 Q. Okay. And does Schein currently
23 still have a relationship with Klear Impakt?

24 A. We do.

25 Q. Okay. Is Klear Impakt a buying

1 group of private practice dentists?

2 A. Yes.

3 Q. Okay. So all the members are
4 private practices?

5 A. Yeah. I -- I -- there's a potential
6 that a couple could have multiple practices.
7 But for my knowledge, they're independent, solo
8 practices.

9 Q. And do the members of Klear Impakt
10 receive discounts based on the aggregated
11 volume of the group's members?

12 A. Yeah. We have an agreement with
13 them that they have certain discounts when
14 they're part of Klear Impakt.

15 Q. And who has been responsible for the
16 relationship between Schein and Klear Impakt?

17 A. It started with Kathleen Titus and
18 myself. Nicole Lena was also part of it. And
19 we got the relationship going and the -- you
20 know, all the details figured out. We launched
21 it. And then as the APC group was expanded,
22 that relationship has been handed over to
23 Darci.

24 Q. Okay. And did you have personal
25 knowledge of this relationship, or were you

1 educated on this group for purposes of today's
2 deposition?

3 A. Personal knowledge.

4 Q. Okay. Turning to the next group --

5 MR. McDONALD: Well, and before you
6 move on, I'll just note for the record that
7 2016 is incorrect. I'm looking at the --
8 at the contract, and it's dated April 17,
9 2015.

10 MR. SOLOMON: Okay. Well, I'm
11 asking Mr. Cavaretta.

12 Q. You're here as a corporate designee.
13 You said 2016 --

14 MR. McDONALD: You -- you --

15 Q. -- is correct?

16 MR. McDONALD: -- you asked him if
17 it was 2016. I'm telling you, Ronnie. And
18 you have this. It's been produced to you.
19 I can read you the Bates number.

20 MR. SOLOMON: I'm also reading
21 Schein's discovery responses that say 2016
22 to the present, so --

23 MR. McDONALD: And -- and you know
24 what, Ronnie? We made a mistake. It
25 should have said 2015. So I'm telling you

1 that now --

2 MR. SOLOMON: Okay.

3 MR. McDONALD: -- in the event you
4 want to ask him about that. But I'm
5 looking at the contract, and it's dated
6 April 17, 2015. The Bates number that has
7 been produced to you is Henry Schein
8 0000038287.

9 Q. Are you aware of any agreement
10 between Henry Schein and Klear Impakt in 2015?

11 A. It's -- so I'm -- I'm assuming now
12 that that date is 2015, the Klear Impakt date.

13 Q. Well, I don't want you to guess, but
14 if you know or were educated prior to today's
15 deposition, please tell me that, but --

16 A. Well, I just heard it was 2015 based
17 on the contract.

18 Q. Okay. Do you know that to be true
19 for a fact, or are you just saying that because
20 your counsel told you?

21 MR. McDONALD: Well, Ronnie, do you
22 really -- don't play games. I mean, come
23 on, man. You have --

24 MR. SOLOMON: I'm not.

25 MR. McDONALD: You are -- you are

1 ill-prepared to take this deposition. I
2 mean, you have these contracts that have
3 been produced to you. You can ask him --
4 and if I need to do a cross-examination and
5 mark the agreement and put it in front of
6 him and get him to acknowledge and read the
7 English language that says that it's dated
8 April 17, 2015, I can do it.

9 MR. SOLOMON: Okay. I'm just
10 reading your discovery responses, which you
11 guys have provided to us under oath. It
12 says 2016.

13 MR. McDONALD: I'm sorry, Ronnie.
14 We made a mistake, and it should have been
15 2015, instead of 2016.

16 MR. SOLOMON: Okay. Well, hopefully
17 you guys will supplement your responses to
18 make that clear.

19 MR. McDONALD: I'm sure we will.

20 MR. SOLOMON: Great.

21 MR. McDONALD: I'm just telling you
22 now so you can ask this witness if you want
23 to.

24 Q. Okay. Turning to Number 29, we
25 discussed this group earlier. And you told me

1 that Number 29 is the same, exact group as is
2 listed in Number 3.

3 A. Yeah. So what I -- what I remember
4 is Long Island Dental Forum was the group that
5 worked with -- Farber was the leader of that
6 group. I don't know if there's been a
7 separation or anything. But Long Island Dental
8 Forum, yes, I remember them.

9 Q. Okay. The next group is Number 30,
10 Louisiana Primary Health Care Association. I
11 understand that to be a group that fell within
12 the purview of special markets.

13 Number 31 is the Mastermind Group.
14 Do you recognize that name?

15 A. I do.

16 Q. And did the Mastermind Group have a
17 relationship with Henry Schein?

18 A. They do.

19 Q. Was it a written agreement?

20 A. There's a --

21 Q. Or is it a written agreement?

22 A. There is a formal agreement that we
23 have with the Mastermind Group.

24 Q. Okay. And is the Mastermind Group a
25 buying group comprised of independent private

1 practice dentists?

2 A. Yes. It's possible that they have
3 some members that have multiple offices, but,
4 yes.

5 Q. Okay. And do the members receive
6 discounts based on the aggregated volume of the
7 group's members?

8 A. They do receive discounts, yes.

9 Q. Are you familiar with what the
10 discounts are?

11 A. I don't know the specifics.

12 Q. Okay. Do you know who was primarily
13 responsible for the Mastermind Group
14 relationship at Schein?

15 A. Darci Wingard.

16 Q. And did you have personal knowledge
17 of this group, or were you educated about it in
18 preparation for today's deposition?

19 A. Darci reports to me, so I have
20 personal knowledge. I have not met with them
21 directly, but I have personal knowledge via
22 Darci.

23 Q. Okay. Number 32, Mid-Atlantic
24 Dental Partners, do you recognize that name?

25 A. I'm not familiar with Mid-Atlantic.

1 Q. So you have no personal knowledge of
2 this group, and you were not educated about it
3 in preparation for today's deposition?

4 MR. McDONALD: That's special
5 markets.

6 A. Correct.

7 Q. Okay. And you're not sure whether
8 or not it's a buying group?

9 A. I have no knowledge of Mid-Atlantic.

10 Q. Okay. Okay. Number 33, Minnesota
11 Multistate Contracting Alliance for Pharmacy,
12 MMCAP, I believe that's an entity that falls
13 within special markets.

14 Number 34, The Dental Co-Op of Utah.
15 Do you recognize that name?

16 A. I do.

17 Q. And did Schein have a relationship
18 or agreement with The Dental Co-Op of Utah
19 beginning in 2007?

20 A. So I know we had the relationship
21 with Dental Co-Op. I would have to look at the
22 agreement to find if the start date is exactly
23 2007. That time frame sounds right.

24 Q. Okay. And did the relationship
25 between Schein and The Dental Co-Op of Utah end

1 in 2014?

2 A. That sounds correct.

3 Q. Okay. And is the Dental Co-Op of
4 Utah a buying group of private practice
5 dentists?

6 A. What I understand it to be would be
7 private practice dentists. There's -- it's
8 possible there are a couple in there that have
9 groups.

10 Q. Okay. When The Dental Co-Op of Utah
11 worked with Schein, did its members receive
12 discounts based on the aggregated purchasing
13 volume of its members?

14 A. There was a discount program for
15 Dental Co-Op.

16 Q. And who was primarily responsible
17 for the relationship with The Dental Co-Op of
18 Utah?

19 A. That was more of a locally -- it
20 started out with Brian Peterson, regional
21 manager. He created it. It was inherited by
22 Jeff Harmon. So for the most part, we ran it
23 locally. I was involved with, one, Utah
24 because Jeff reported to me, and I was
25 responsible for Utah. But as The Dental Co-Op

1 wanted to expand, the areas they wanted to
2 expand to, I was responsible for.

3 And then it ultimately -- once, you
4 know, Kathleen Titus joined, because they were
5 going over to multiple states, I couldn't do
6 it. She then took on the relationship.

7 Q. Okay. And you have personal
8 knowledge of the relationship between Dental
9 Co-Op of Utah and Schein?

10 A. I do.

11 Q. Okay. Number 35, National Dental
12 Association, do you recognize that name?

13 A. No.

14 Q. Okay. So you don't have personal
15 knowledge of it, you weren't educated about it,
16 and you don't know whether it's a buying group?

17 A. As it stands today, I don't.

18 Q. Okay.

19 MR. McDONALD: Jake Meadows, for the
20 record, testified about it.

21 Q. Number 36, Nevada Dental
22 Cooperative, do you recognize that name?

23 A. I do.

24 Q. Did Schein have an agreement with
25 the Nevada Dental Cooperative beginning in

1 2011?

2 A. What I remember is we had an
3 agreement with The Dental Co-Op of Utah, and
4 this is when they started expanding into
5 Nevada, which would have been roughly 2011.

6 Q. Okay. So do you understand this to
7 be the same entity as The Dental Co-Op of Utah
8 or something else?

9 A. It was just the Nevada chapter.

10 Q. Was it a separate group, or was it
11 part and parcel of The Dental Co-Op in -- of
12 Utah?

13 MR. McDONALD: Object to the form.

14 A. What I remember it to be is a
15 chapter of Utah. So Andy ran The Dental Co-Op.
16 He lived in Utah. He was expanding into
17 Nevada, and, yeah, so it was just a chapter of
18 the overall co-op group.

19 Q. Okay. And Schein ended the
20 relationship with the Nevada Dental Cooperative
21 in 2014?

22 A. I believe the relationship with
23 the -- the different chapters of The Dental
24 Co-Op ended all at the same time.

25 Q. Okay. So at the same time as The

1 Dental Co-Op of Utah?

2 A. Correct.

3 Q. Okay. And is -- so just like The
4 Dental Co-Op of Utah, I assume the Nevada
5 Dental Cooperative was a buying group of
6 private practice dentists, correct?

7 A. Correct.

8 Q. And there were discounts that were
9 offered to the members that were based on the
10 aggregated volume -- volume of the members'
11 purchases, correct?

12 A. We had a discount program for them.

13 Q. Okay. And who was primarily
14 responsible for this relationship?

15 A. It was a locally-owned relationship.
16 I helped -- helped it expand into Nevada. But
17 the day-to-day was -- it was local.

18 Q. Okay. So you don't know specific
19 names?

20 A. Whoever the regional manager was at
21 the time. We've had a lot of turnover in the
22 Nevada market with regional managers.

23 Q. Okay.

24 A. Can't handle it there.

25 Q. Next name, North Shore - LiJ

1 Alliance, Inc., do you recognize that name?

2 A. No.

3 Q. Okay. So you have no knowledge --
4 personal knowledge of it, you weren't educated
5 about it, and you don't know whether or not
6 it's a buying group?

7 A. No.

8 Q. Okay. So Number 38 is a group I
9 understand that falls within special markets,
10 so we'll skip that one.

11 Number 39, Pugh Dental Alliance, do
12 you recognize that name?

13 A. No.

14 Q. Okay. So you -- you don't have
15 personal knowledge of it, you weren't educated
16 about it, and you don't know whether or not
17 it's a buying group?

18 A. No.

19 Q. And you've never heard of it?

20 A. I've never heard of it.

21 Q. Okay. Number 40, Quatrius, do you
22 recognize the name?

23 A. I'm familiar with the name.

24 Q. Okay. What do you understand
25 Quatrius to be?

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1 A. I'm not familiar with the
 2 relationship we have with them.
 3 Q. Okay. You've just --
 4 A. I've heard the name before.
 5 Q. You've just heard the name?
 6 A. Yes.
 7 Q. And so you don't know -- you have no
 8 personal knowledge about it, you weren't
 9 educated about it, and you don't know whether
 10 it's a buying group?
 11 A. That's correct.
 12 Q. Okay. Smile Source, you're familiar
 13 with Smile Source?
 14 A. Yes.
 15 Q. And you're here to testify today
 16 about Smile Source's relationship with HSD,
 17 correct?
 18 A. Yeah.
 19 Q. Okay. And you'll notice that for
 20 Smile Source, the relationship dates are 2008
 21 to 2012, as well as 2017 to the present,
 22 correct?
 23 A. That would be correct.
 24 Q. Okay. And so what is your
 25 understanding of when Smile Source worked with

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1 Then Tim and I went to meet with Smile Source.
 2 From that point, I owned the
 3 relationship with Smile Source. I was the
 4 individual who finalized the deal with Smile
 5 Source.
 6 Then at that point, we hired Darci
 7 Wingard to be -- she was already part of the
 8 team, but she was going to be responsible for
 9 the relationship.
 10 Smile Source, at that point, did not
 11 want her to be their representative. So then
 12 we ended up having a -- a gentleman by the name
 13 of Matt Woodend take on the responsibility.
 14 THE WITNESS: Bless you.
 15 A. He had that responsibility from
 16 March of '17 until pretty much the end of this
 17 year, or the end of '17.
 18 After that, Darci took it on for a
 19 short period of time. And then now we have an
 20 individual by the name of Annika Swenson, who's
 21 the owner of the Smile Source relationship.
 22 Q. Do you know why Smile Source wanted
 23 to switch their rep from Darci Wingard to
 24 someone else?
 25 MR. McDONALD: Object to the form.

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1 HSD?
 2 A. My -- you know, the intimate
 3 knowledge I have is the 2017 to the present,
 4 the -- the current relationship. In 2008 and
 5 2012, I -- I know it went back and forth
 6 between special markets and HSD.
 7 Then in between the 2012 and 2017
 8 time frame, I know there was several
 9 discussions about, you know, getting back
 10 together and having a relationship, but it
 11 wasn't formalized until 2017.
 12 Q. Okay. So Smile Source is a buying
 13 group of independent dentists?
 14 A. Yes.
 15 Q. And they receive discounts from
 16 Henry Schein based on the aggregated volume of
 17 their members?
 18 A. They do.
 19 Q. And who is primarily responsible for
 20 the relationship with Smile Source at HSD?
 21 MR. McDONALD: Currently?
 22 Q. Or who has been since 2017?
 23 A. The history? Well, Trevor and --
 24 has tremendous amount of trust in Tim. So
 25 he -- it started with conversation with Tim.

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1 A. For some reason, Trevor was more
 2 comfortable with a different representative.
 3 Q. Okay. And you have personal
 4 knowledge -- knowledge of Smile Source's
 5 relationship with Schein as of 2017, correct?
 6 A. I do.
 7 Q. And were you educated at all about
 8 anything else with respect to Smile Source's
 9 relationship with Schein as of 2017?
 10 A. No. It's all personal knowledge.
 11 Q. Okay. And do you have any knowledge
 12 of Schein's prior relationship with Smile
 13 Source in the 2008 to 2012 period in which you
 14 mentioned they switched from special markets to
 15 HSD?
 16 A. So I was familiar with Smile Source.
 17 I had been on a -- I remember a phone call
 18 being -- with the -- at that time, the
 19 individuals who ran Smile Source, and Glenn
 20 Meltzer, who was in our special markets
 21 decision of Henry Schein. So I remember being
 22 on a phone call.
 23 And at that point, they were
 24 mentioning how their main goal is to be a
 25 marketing arm for private practice dentists. I

1 think Glenn was trying to explain Smile Source
 2 to me a little better. And that's what I
 3 remember my involvement being.
 4 Q. Okay. And do you know whether Smile
 5 Source changed its model between when Schein
 6 did business with it in 2008 through 2012 and
 7 when Schein is currently doing business with
 8 it?
 9 MR. McDONALD: Object to the form.
 10 A. I can just go by what I've heard,
 11 you know, Trevor mentioned and the fact that,
 12 you know, back then, they didn't know what they
 13 were doing. And now that essentially he's
 14 running it, they are a more structured group,
 15 able to help practices in a much deeper way.
 16 Q. Okay. Do you understand that to
 17 have been a model change?
 18 MR. McDONALD: Object to the form.
 19 A. I -- I can't answer that.
 20 Q. Because you -- you don't know or you
 21 don't -- you weren't educated about it?
 22 A. I -- I was not educated about it.
 23 Q. Okay. The next group is Stark
 24 County Dental Society. Are you familiar with
 25 that name?

1 towards a buying group.
 2 Q. Do you know whether Stark County
 3 Dental Society members receive discounts off of
 4 dental products from Schein?
 5 A. I don't know the exact agreement and
 6 exact discounts, but I -- I know there's
 7 discounts for them, yes.
 8 Q. Okay. And who has been responsible
 9 for the relationship? Has it been Kevin --
 10 A. He no longer is with our company.
 11 It is managed more at the local level. So the
 12 regional manager for that market is Mark
 13 Sirney.
 14 Q. And it seems like you have personal
 15 knowledge of this group. Did you do anything
 16 to educate yourself about this group for
 17 purposes of today's deposition?
 18 A. No, I did not.
 19 Q. Okay. The next group is Steadfast
 20 Medical. Do you recognize that name?
 21 A. I do.
 22 Q. Okay. And what is Steadfast
 23 Medical?
 24 A. Steadfast Medical was more of a -- a
 25 procurement group, which -- the way I remember

1 A. I am.
 2 Q. And what is the Stark County Dental
 3 Society?
 4 A. The Stark County Dental Society is a
 5 state dental society out of Cleveland.
 6 Q. Okay. And did Schein form an
 7 agreement with the Stark County Dental Society
 8 in 2004?
 9 A. I don't know if there was a formal
 10 agreement with them. But I do know that Kevin
 11 Dillon was regional manager at the time. And I
 12 actually also at one point had met with the
 13 head of the dental society. So that would have
 14 been in 2006/2007. I don't know what their,
 15 you know, agreement and deal is, but I'm
 16 familiar with who they are.
 17 Q. Okay. And is this Stark County
 18 Dental Society a buying group of independent
 19 dentists?
 20 A. I would -- I would classify them as
 21 a -- as an APC because they're a state
 22 association. But it is -- they -- they -- the
 23 state association can't drive compliance.
 24 So -- and they don't have ownership in the
 25 practices, so I would -- I would move them more

1 it, they would -- they had people sign up under
 2 Steadfast, and then I believe they would submit
 3 orders through Steadfast, and then Steadfast
 4 would then parse it out to the lowest bidder.
 5 And then if I had -- if I was an
 6 office and I had, you know, 20 items on -- on
 7 the list, it could potentially come from five
 8 or six different places.
 9 This was a relationship that was
 10 inherited from special markets, so once again,
 11 where you see 2014, that's when the mid-market
 12 space was being moved over to Henry Schein
 13 Dental.
 14 And it was one of the new -- we
 15 didn't know it existed. And when we found out
 16 it was just a procurement company, and the
 17 model I just explained to you, there's no value
 18 proposition, and it didn't make sense for us to
 19 do business with them.
 20 Q. Okay. So the relationship started
 21 in 2011?
 22 A. I don't know that for a fact, but
 23 based on this document, it says 2011.
 24 Q. And the relationship ended in 2014?
 25 A. That is correct.

1 Q. Okay. And is Steadfast Medical a
2 buying group?

3 MR. McDONALD: Object to the form.

4 A. It would be my own opinion that --
5 what I would share, but I wouldn't classify
6 them as a buying group.

7 Q. Why not?

8 A. I think it would -- it would be
9 because it was just a place for doctors to
10 submit orders to. I guess potentially, it
11 could be a buying group, but I don't even know
12 how to classify them.

13 Q. Would you classify them as a buying
14 group?

15 MR. McDONALD: Object to the form.
16 Calls for a legal conclusion.

17 A. Yeah. I would classify them as an
18 APC group because they just don't fit in nice,
19 neat little box.

20 Q. So you wouldn't classify them as a
21 buying group?

22 A. I classify them as an APC.

23 MR. McDONALD: Objection. Form.
24 Asked and answered.

25 Q. Okay. And who was responsible for

1 the relationship between Schein and Steadfast
2 Medical?

3 MR. McDONALD: Object to the form.
4 Vague as to time.

5 A. I don't know who had the
6 relationship when it was at special markets. I
7 know once the relationship came over to HSD, it
8 was Kathleen Titus.

9 Q. Okay. Anyone else who's been
10 responsible for that relationship?

11 A. Not that I'm familiar with.

12 Q. Okay. And did you have personal
13 knowledge of this relationship before today, or
14 were you educated about this group for purposes
15 of today's deposition?

16 A. I had personal knowledge.

17 Q. Okay. The next group, Teeth
18 Tomorrow, do you recognize that, Number 45?

19 A. I recognize the name.

20 Q. Okay. Do you have personal
21 knowledge of this group?

22 A. I have limited knowledge. I know --
23 so in the APC space, this was a group in the
24 east, and I believe out of Michigan. Matt
25 Woodend is the individual who was the primary

1 individual on -- on this account. So he signed
2 them up under the APC space, which I -- I
3 believe they would be a buying group.

4 Q. Okay. And so Teeth Tomorrow is
5 comprised of private practice dentists?

6 A. Yes. There's potential for some
7 group practices in there, but private practice
8 for the most part.

9 Q. And the members receive discounts
10 based on the aggregated volume of their --
11 their members' purchasing?

12 A. Yeah. There is an agreement with
13 them that they are provided discounts.

14 Q. Do you know what the discounts are?

15 A. Off the top of my head, I do not.

16 Q. And do you know who's been primarily
17 responsible for this relationship?

18 A. Darci took the relationship over
19 after Matt went to special markets.

20 Q. Okay. Matt Woodend?

21 A. Woodend, yeah.

22 Q. Okay. And Schein started doing
23 business with Teeth -- Teeth Tomorrow in 2017?

24 A. Yes.

25 Q. Do you know what month?

1 A. Yeah.

2 Q. Okay. The next group, 46, Texas
3 Association of Community Health Centers, I
4 understand that to be a group covered or under
5 the purview of special markets, so we'll skip
6 that.

7 Number 47 is Tralongo. Do you
8 recognize that name?

9 A. I do.

10 Q. Did Schein have an agreement with
11 Tralongo?

12 A. So Tralongo was with the special
13 markets group.

14 Q. Okay.

15 A. Near the --

16 MR. McDONALD: Mr. Miller testified
17 about Tralongo.

18 MR. SOLOMON: I'm sorry?

19 MR. McDONALD: Mr. Miller testified
20 about Tralongo.

21 MR. SOLOMON: Okay.

22 MR. McDONALD: But you can ask him
23 if you want.

24 Q. So what do you know about Tralongo?

25 A. They were in the special markets

1 umbrella. They had some ownership in
2 practices, and in others they had a buying
3 group component.

4 They have been purchased by Dental
5 Whale. And I know Dr. Tralongo sits on --
6 is -- works for Dental Whale, and he runs their
7 clinical services.

8 Q. Did Tralongo ever have any
9 relationship with HSD?

10 A. From what I recall seeing, I think
11 the -- you know, all the offices purchase,
12 like, \$35,000. We inherited the relationship
13 literally at the very end, maybe only a couple
14 of months. So there really wasn't a
15 relationship with HSD there.

16 Q. At the very end of what?

17 A. Well, they were purchased by Dental
18 Whale.

19 Q. Oh.

20 A. So they no longer were Tralongo.
21 They're now Dental Whale.

22 Q. Does Schein still do business with
23 Tralongo?

24 A. So now, because Dental Whale owns
25 Breakaway and they own Tralongo, we look at

1 them as one group. So I don't believe the
2 Tralongo offices we have much business in.

3 Q. Okay. So Tralongo had members who
4 were private practice dentists?

5 A. From my understanding, they had a --
6 a DSO component and then some private practice
7 dentists in there.

8 Q. Okay. Do you know whether the
9 private practice dentists were -- strike that.

10 Do you know whether Tralongo
11 provided management services or had any equity
12 ownership in the private practices?

13 A. I also -- I do know there was a
14 services component to them. I don't know how
15 many offices were part of it. So they also
16 had -- they had moved towards -- or were moving
17 more towards a hybrid model also.

18 Q. Okay. So Tralongo was providing
19 central management services to some of the
20 private practice offices?

21 A. From what I remember, they have some
22 services that they were offering to -- to the
23 offices under the Tralongo umbrella.

24 Q. Was centralized purchasing of
25 supplies one of those services, to your

1 knowledge?

2 A. I don't know.

3 Q. Okay. And do you know who was
4 primarily responsible for that account?

5 A. Tralongo?

6 Q. Yeah.

7 A. When it was in special markets, Dave
8 Muller. Then it moved over to the APC space.
9 And I know -- I would say Jake was probably the
10 most familiar with it, potentially Matt
11 Woodend. But, again, we weren't -- we really
12 didn't spend much time with them.

13 Q. Okay. And it sounds like you have
14 some personal knowledge of this relationship?

15 A. Yes.

16 Q. And did you do anything to educate
17 yourself on this group for purposes of today's
18 deposition?

19 A. No.

20 Q. Okay. Number 48, Washington
21 Association of Community and Migrant Health
22 Centers, I understand that to be a group that
23 falls under special markets, so we'll skip
24 that.

25 49, Dr. Woody Oakes - The Profitable

1 Dentist, do you recognize that name?

2 A. No.

3 Q. Okay. So you don't know whether
4 it's a buying group?

5 A. I'm not familiar with them at all.

6 Q. Okay. And you have -- you have no
7 personal knowledge, and you didn't do anything
8 to prepare yourself for today's deposition
9 about this group?

10 A. No.

11 Q. Okay. And then I'd like to ask you
12 about a group that's not on this list called
13 Premise Health. Are you familiar with that
14 name?

15 A. No.

16 Q. Okay. So you don't know whether --
17 you don't know what Premise Health is?

18 A. Where are they out of? No.

19 Q. Okay. And you don't know whether or
20 not they're a buying group?

21 A. No.

22 Q. Okay. So that covers my questions
23 about these groups.

24 MR. SOLOMON: Are you going to ask
25 any questions, John?

1 MR. McDONALD: No.
 2 MR. SOLOMON: Okay. I don't have
 3 any further questions. I think we're off
 4 the record.
 5 MR. McDONALD: No questions. Thank
 6 you.
 7 THE VIDEOGRAPHER: Going off the
 8 record at 5:21 p.m.
 9 (Witness excused, 5:21.)

10
 11 -----
 12 JOSEPH CAVARETTA

13
 14 Subscribed and sworn to before me
 15 this _____ day of _____ 2018.

16
 17 -----
 18
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 22
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 25

1 CERTIFICATE
 2 STATE OF ILLINOIS)
) ss.:
 3 COUNTY OF COOK)
 4 I, RACHEL F. GARD, CSR, RPR, CLR, CRR,
 5 within and for the State of Illinois do hereby
 6 certify:

7 That JOSEPH CAVARETTA, the witness whose
 8 deposition is hereinbefore set forth, was
 9 duly sworn by me and that such deposition
 10 is a true record of the testimony given by
 11 such witness.

12 I further certify that I am not
 13 related to any of the parties to this
 14 action by blood or marriage; and that I am
 15 in no way interested in the outcome of this
 16 matter.

17 IN WITNESS WHEREOF, I have hereunto
 18 set my hand this 30th day of July, 2018.

19
 20 -----
 21 RACHEL F. GARD, CSR, RPR, CLR, CRR
 22
 23
 24
 25

1 NAME OF CASE: In re: Benco
 2 DATE OF DEPOSITION: 7/26/18
 3 NAME OF WITNESS: Joseph Cavaretta
 4 Reason codes:
 5 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.

8
 9 Page _____ Line _____ Reason _____
 10 From _____ to _____
 11 Page _____ Line _____ Reason _____
 12 From _____ to _____
 13 Page _____ Line _____ Reason _____
 14 From _____ to _____
 15 Page _____ Line _____ Reason _____
 16 From _____ to _____
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 20 From _____ to _____
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 22 From _____ to _____
 23 Page _____ Line _____ Reason _____
 24 From _____ to _____
 25

ERRATA SHEET

DEPOSITION OF: Joseph Cavaretta – 30(b)(6)

DATE DEPOSITION: July 26, 2018

CASE NAME: In the Matter of Benco Dental, Inc., et al., Docket No. D09379

The following are the corrections which I have made to my transcript:

PAGE	LINE #	CORRECTION	REASON FOR CORRECTION
27	16	Change "2003" to "2001"	Clarification/misspoke
58	13	Change "region" to "regional"	Typographical error
61	21	Change "That sounds right." to "It was formed in 2015."	Clarification/misspoke
69	9	Change "groups" to "multiple offices"	Clarification
throughout		Change "special markets" to "Special Markets"	Typographical error

I, Joseph Cavaretta, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 28th day of August, 2018.

at West Allis, Wisconsin
(City) (State)



Joseph Cavaretta

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

In the Matter of
Benco Dental Inc., et al.
Docket No. D09379

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DEPOSITION OF BENTON MASON, DMD
ALBUQUERQUE, NEW MEXICO
MONDAY, JULY 23, 2018

REPORTED BY:
DANA SREBRENICK, CRR, NM-CCR
ASSIGNMENT NO. 144831

1
 2 DEPOSITION OF BENTON MASON, DMD,
 3 taken on behalf of the U.S. Federal Trade
 4 Commission, at Regus, 500 Marquette
 5 Avenue, NW, Suite 1200, Albuquerque, New
 6 Mexico, commencing at 9:30 a.m., Monday,
 7 July 23, 2018, before Dana Srebrenick,
 8 Certified Shorthand Reporter No. 518, a
 9 Certified Realtime Reporter.
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1
 2 BENTON MASON, DMD,
 3 after having been first duly sworn under
 4 oath, was questioned and testified as
 5 follows:
 6 EXAMINATION BY MR. LONG:
 7 Q. Good morning, Dr. Mason. We met
 8 earlier. My name is Jim Long. I
 9 represent Patterson in this matter,
 10 brought on behalf of the FTC.
 11 I want to start out by
 12 apologizing that we're starting late. It
 13 is not the result of anything that any of
 14 us in the room did.
 15 A. Sure.
 16 Q. But again, I value your time and
 17 we'll try to be as expeditious here as we
 18 can.
 19 Would you state your name and
 20 address for the record, please?
 21 A. Benton, B-E-N-T-O-N, Mason,
 22 M-A-S-O-N, 8401 Desert Sunrise Road, NE,
 23 Albuquerque, New Mexico 87122.
 24 Q. Have you had your deposition
 25 taken before?

1 B. Mason
 2 A. Yes.
 3 Q. More than once?
 4 A. Yes.
 5 Q. All right. Then I guess you
 6 know the basics. I'll just say a couple
 7 of things. It's important that you hear
 8 the entire question that I ask you, so
 9 please wait until I'm finished asking the
 10 question before you start answering. It's
 11 also important that I hear your complete
 12 answer, so I will do my best to not ask
 13 you another question until you finished
 14 your answer. Does that make sense?
 15 A. Yes.
 16 Q. As you know, you'll have to give
 17 me audible responses, yes or no or a
 18 statement as opposed to a gesture or an
 19 uh-huh or something like that.
 20 A. Correct.
 21 Q. If you do not understand a
 22 question that I ask you, please let me
 23 know and I'll try to rephrase it.
 24 If my voice trails off and you
 25 didn't hear something or you didn't

1 B. Mason
 2 understand a word that I said, please let
 3 me know and I'll restate it. I'll speak
 4 up. Again, it's important that you and I
 5 be on the same page.
 6 A. Correct.
 7 Q. If you need a break at any point
 8 in time, just let me know. So long as
 9 there isn't a question pending, we'll take
 10 a break. I want you to be comfortable
 11 while we're doing this, all right?
 12 A. Yes.
 13 Q. Do you have any questions for me
 14 about the process?
 15 A. Not at this time.
 16 Q. Did you do anything to prepare
 17 for this deposition?
 18 A. I visualized some e-mails that I
 19 had written yesterday.
 20 Q. And when you say you visualized,
 21 you saw them?
 22 A. Yes.
 23 Q. And were those shown to you by
 24 Mr. Gold?
 25 A. Yes, they were.

1 B. Mason
 2 A. I believe it was just three.
 3 Q. All right. So let's start with
 4 the one several years ago. Do you recall
 5 who you spoke with?
 6 A. I have no clue.
 7 Q. Was it with Lin Kahn?
 8 A. I really don't know.
 9 Q. Okay. And how long did that
 10 conversation last?
 11 A. Seems like they all take about
 12 an hour.
 13 Q. All right. Do you recall what
 14 you discussed?
 15 A. I do not.
 16 Q. Do you recall generally what was
 17 discussed in that first one several years
 18 ago?
 19 A. If I was involved in setting up
 20 a co-op in the State of New Mexico.
 21 Q. Do you recall anything else?
 22 A. No.
 23 Q. The call six months ago, do you
 24 recall who from the FTC was on that?
 25 A. I believe there were multiple

1 B. Mason
 2 Q. How long did you meet with
 3 Mr. Gold yesterday?
 4 A. Hour and a half to two hours.
 5 Q. How many e-mails did you look
 6 at?
 7 A. Maybe 12.
 8 Q. Have you met with anyone on
 9 behalf of the FTC or complaint counsel
 10 prior to meeting with Mr. Gold yesterday?
 11 A. Not in person.
 12 Q. You had had telephone
 13 conversations with attorneys from the FTC?
 14 A. They contacted me in the past.
 15 Q. Can you recall when those were?
 16 A. I would say one was about six
 17 months ago and there was a second one and
 18 it was either the beginning of this year,
 19 early end of last year, and it seems like
 20 there was another one several years back
 21 that we actually had conversations. They
 22 have contacted me each time before those
 23 meetings to set up the meeting.
 24 Q. But as far as substantive
 25 conversation --

1 B. Mason
 2 people.
 3 Q. Can you give me the names of
 4 any?
 5 A. The only person that I'm aware
 6 of her last name is Noble.
 7 Q. Danica Noble?
 8 A. I have to be honest, I don't
 9 know. I know she was out of Seattle.
 10 Q. Do you recall what was discussed
 11 then?
 12 A. Again, they asked questions
 13 about the co-op.
 14 Q. No more detail than that in your
 15 mind?
 16 A. No.
 17 Q. All right.
 18 A. I don't recall what the
 19 substance of the conversation was, the
 20 details of it.
 21 Q. In either of those first two
 22 conversations, had counsel sent you any
 23 documents?
 24 A. No.
 25 Q. Did you have documents yourself

1 B. Mason
 2 that related to setting up a co-op that
 3 you looked at?
 4 A. Not that I've looked at. I'm
 5 sure they were buried in my e-mails
 6 somewhere, but I have not reviewed any.
 7 Q. And then the most recent call,
 8 do you know who was on the phone for that?
 9 A. There were multiples.
 10 Q. Yes.
 11 A. And the only one I really know
 12 is Noble.
 13 Q. All right. Do you recall any of
 14 the substance of that call?
 15 A. I do not.
 16 Q. You and I have never spoken or
 17 communicated?
 18 A. That's correct.
 19 Q. And to your knowledge, no one
 20 from Patterson either an attorney or
 21 businessperson has talked to you about
 22 this matter?
 23 A. That's correct.
 24 Q. Have you communicated with
 25 anyone from Henry Schein, an attorney or

1 B. Mason
 2 businessperson, about this matter?
 3 A. No, sir.
 4 Q. Have you communicated with
 5 anyone from Benco, an attorney or a
 6 businessperson, about this matter?
 7 A. No, sir.
 8 Q. You're not being compensated for
 9 your time here; are you?
 10 A. No, I'm not.
 11 Q. Are you aware that you're on the
 12 most recent witness list presented by
 13 complaint counsel?
 14 A. I was made aware of that
 15 recently.
 16 Q. Do you plan to go to Washington
 17 D.C. to testify?
 18 A. If I'm required to.
 19 Q. Have you been asked to by
 20 complaint counsel?
 21 A. Recently.
 22 Q. Yesterday?
 23 A. No.
 24 Q. Oh.
 25 A. I want to say within the last

1 B. Mason
 2 short period of time. I don't know the --
 3 how many weeks.
 4 Q. That's fine. And was that
 5 Ms. Noble?
 6 A. Correct.
 7 Q. What specifically did she ask
 8 you about to testify?
 9 A. The -- I don't remember the
 10 specifics. Generally speaking, my
 11 testimony would be needed in Washington
 12 D.C. -- or actually, I rephrase that.
 13 Originally, I was told Seattle.
 14 Q. Did Ms. Noble indicate to you
 15 what she -- what subjects she expected you
 16 would be needed to testify on?
 17 A. No.
 18 Q. Do you have an understanding as
 19 to what the subject or subjects of your
 20 testimony at trial would be if you so
 21 testified?
 22 A. Not yet.
 23 Q. Okay. And what was your
 24 response to Ms. Noble when she told you
 25 that the complaint counsel would like you

1 B. Mason
 2 to testify in Washington?
 3 A. If I'm required to.
 4 Q. So I think, as you know, the
 5 reason I'm hear asking you questions is
 6 because you've been listed on complaint
 7 counsel's witness list.
 8 Earlier before we went on the
 9 record to save time, I showed you the
 10 Protective Order governing confidential
 11 material in this case dated February 13,
 12 2018. I believe you had the opportunity
 13 to read that, correct?
 14 A. I did.
 15 Q. And I just want to direct your
 16 attention to paragraph 7 and 8. Paragraph
 17 7 relates to who may be showed material
 18 that's been marked confidential under this
 19 Protective Order and under 7-E, any
 20 witness or deponent who may have authored
 21 or received the information in question.
 22 I am going to show you some
 23 documents today that had been marked
 24 confidential in this matter, but would
 25 show on their face that you either were

1 B. Mason
2 the author and/or a recipient of those.
3 I showed you the Protective Order so that
4 you would understand you've got an
5 obligation to keep that information
6 confidential and only use it for the
7 purposes of responding to my questions
8 today.

9 Does that make sense and do you
10 agree to abide by that?

11 A. Yes.

12 Q. All right. And just so you
13 understand, I'm going to show you some
14 documents that will have some material
15 blacked out or, as lawyers like to call
16 it, redacted and the reason for that is
17 that I don't think you've seen that part
18 of the document in the way that it was
19 produced.

20 A. Okay.

21 Q. Acceptable?

22 Real briefly, could you give me
23 your educational chronology?

24 A. I went to high school in
25 Turlock, California. I graduated there in

1 B. Mason
2 1990. I went to California State
3 University at Stanis Laus; graduated
4 there, I believe it was 1996 and attended
5 Temple University School of Dentistry in
6 Philadelphia and graduated there in 2000.

7 Q. Any additional degrees since
8 then?

9 A. No, sir.

10 Q. Do you have any specialization
11 at Temple or is it just a general degree
12 in dentistry?

13 A. Just general dentistry.

14 Q. Have you worked as a dentist
15 since your graduation in 2000?

16 A. I have. I went part-time in
17 2014.

18 Q. If you can give me a brief
19 chronology of your dental employment or
20 practice since graduating in 2000?

21 A. 2000, I worked for the U.S. Army
22 as a contract civilian at Fort Bliss. In
23 2000 or 2001, I worked for Denver
24 Community Health Hospital in Denver,
25 Colorado. In 2001 to 2002, I worked for

1 B. Mason
2 Thomas Meade and I do not recall the name
3 of his practice. 2001 and 2002, I worked
4 for Absolute Dental.

5 Q. Did you do that the same time
6 than with Thomas Meade?

7 A. I was with Thomas Meade for 90
8 days.

9 Q. And I'm sorry, the entity after
10 Thomas Meade was?

11 A. 2001/2002 was Absolute Dental.

12 Q. Thank you.

13 A. 2002, I believe it was 2002, I
14 worked for Tierra Amarilla Community
15 Health, I believe is the name. It is a
16 public health practice; medical, dental
17 psychiatry, vision, various needs out of
18 Chama or Tierra Amarillo, New Mexico.

19 In 2002, I also opened my first
20 practice.

21 Q. And where was that?

22 A. On the corner of Wyoming and San
23 Antonio.

24 Q. In Albuquerque?

25 A. Yes.

1 B. Mason

2 Q. Okay.

3 A. In 2006 we separated the
4 practice into two. I owned one and my
5 partner at the time moved his practice
6 across the hall.

7 Q. Was that Dr. Chapman?

8 A. Dr. Tilson.

9 In 2007, '8, '9, I'm not sure
10 what year it was, I opened River Point
11 Family Dental with Dr. Chapman. In the
12 same years, I also opened Chamisa Hills
13 Family Dental with Dr. Chapman. In those
14 same years, I also signed a contract to
15 take back over Cherry Hills Family --
16 Cherry Hills Family Dental. That was
17 Dr. Tilson's practice.

18 And by the year 2014, we had
19 sold all of the practices and I worked as
20 an employee for the lady who purchased
21 Bear Canyon Family Dental.

22 Q. Which practice was Bear Canyon
23 Family Dental?

24 A. Bear Canyon, Chapman and Mason,
25 which was the practice on the corner of

1 B. Mason
2 Wyoming and San Antonio. The name was
3 changed to Bear Canyon Family Dental
4 either prior to her purchase or shortly
5 after her purchase. I worked two days a
6 week for her for two years and left that
7 to do locum work.

8 Q. To do local? I'm sorry.

9 A. Locum work, locum.

10 Q. I'm sorry. I'm not familiar --

11 A. So the doctor gets hurt and
12 needs somebody to work for them for six
13 weeks, two weeks, a short period of time.
14 I worked for the University of New Mexico
15 doing locum work in their public health
16 sector throughout New Mexico, and I also
17 worked in two private practices assisting
18 doctors who needed services.

19 In 2016 I also went to work for
20 Pacific Dental. I worked three days a
21 week for Pacific Dental. For -- until
22 last week I went to work for a company
23 called Valencia Family Dental.

24 Q. Pacific Dental is a DSO?

25 A. Yes. There were periods of time

1 B. Mason
2 when I was working for Pacific Dental when
3 one of the doctors would be on maternity
4 leave. I worked four days a week.

5 Q. Valencia Family Dental?

6 A. Correct.

7 Q. What type of practice is that?

8 A. General dentistry in Valencia.
9 It is in Los Lunas, New Mexico.

10 Q. Would you characterize it as an
11 individual practice or more a corporate
12 dentistry?

13 A. I would characterize it as
14 neither. It's not a private practice with
15 one practice and it's not a large DSMO --
16 DSO. It is a gentleman out of Arizona who
17 owns, I believe, 11 practices.

18 Q. From roughly 2007/2008 until
19 2014 when you sold all the practices, were
20 you partners with Dr. Chapman in two and
21 the owner of one yourself?

22 A. I was partners with Dr. Chapman
23 in three and we had -- Dr. Mason's DMD,
24 Inc. was the name of our company. Dr.
25 Mason DMD, Inc., had a contract with

1 B. Mason
2 Cherry Hills Dental Center.

3 Q. Which was Dr. Tilson's?

4 A. Correct.

5 Q. You used the term, I believe,
6 earlier in the deposition of dental
7 cooperative?

8 A. Correct.

9 Q. What in your mind is a dental
10 cooperative?

11 A. A collection of private practice
12 dentists working together to move forward
13 in better competition.

14 Q. In your mind does a dental
15 cooperative work through a written
16 agreement that the participating dentists
17 are a party to?

18 A. A written agreement?

19 Q. Yes.

20 A. I don't think you necessarily
21 think you have to have a written
22 agreement, but I do believe you have to
23 have a set of rules and understandings and
24 you also have to -- each individual member
25 has to contribute financially to the

1 B. Mason
2 co-op.

3 Q. So the set of rules and
4 understandings could be either written or
5 verbal?

6 A. I think it could, but it's
7 probably clearer to have a set of bylaws
8 when you set up the co-op.

9 Q. And then the monetary -- did you
10 say monetary contribution by each of the
11 dentists?

12 A. Yes.

13 Q. In what form would that take?

14 A. Monthly, monthly payment.

15 Q. Based on what?

16 A. Based upon the expenses of the
17 co-op to further the business of the
18 dental community.

19 Q. Have you ever been a member of a
20 dental cooperative?

21 A. Yes.

22 Q. Which one or ones?

23 A. The New Mexico Dental
24 Cooperative Chapter out of Utah.

25 Q. For what period of time were you

1 B. Mason
2 a member?
3 A. One year.
4 Q. Can you give me the start and
5 the end dates?
6 A. From the date it started until
7 my first term on the board was over.
8 Q. Can you approximate for me when
9 the date was it started?
10 A. I want to say it was 2014 and my
11 term was up in 2015.
12 Q. So you were on the board of the
13 New Mexico Dental Cooperative for some
14 period after you sold your practices?
15 A. I believe that is true. They
16 called it -- it wasn't the board. They
17 called it the advisory council or
18 something of that nature. There were five
19 of us. And it could have been the years
20 2013/2014. I'm not a hundred percent
21 sure.
22 Q. I guess what I'm trying to get
23 straight in my mind is when you were on
24 the advisory council for the New Mexico
25 Dental Cooperative Chapter out of Utah,

1 B. Mason
2 were you practicing in private practice?
3 A. Yes, I was.
4 Q. Did your term end when you sold
5 your practices in 2014?
6 A. I don't believe it did.
7 Q. You think it continued on?
8 A. I do believe because we
9 continued at Bear Canyon participating in
10 the co-op, but I don't recall when my term
11 was set and ended. And the advisory
12 council was for the State of New Mexico.
13 It was just part of the Utah council. I
14 was not affiliated with the advisory
15 council of Utah.
16 Q. Were there a written set of
17 rules and understandings of the New Mexico
18 Dental Cooperative Chapter?
19 A. Yes, there were.
20 Q. Has complaint counsel asked for
21 those from you?
22 A. I don't have them and, no, they
23 have not asked.
24 Q. Tell me what the Utah -- is it
25 the Utah Dental Cooperative?

1 B. Mason
2 A. Yes.
3 Q. Tell me what that is.
4 A. It -- the dentists in Utah
5 started the dental cooperative -- and I'm
6 guessing -- 15 to 20 years ago. Since
7 then, multiple states have joined. Last I
8 heard New Mexico, Nevada and Idaho were
9 part of that organization and I heard Ohio
10 was trying to become a member.
11 Q. Since you left the New Mexico
12 Chapter of the Utah Dental Cooperative
13 somewhere in 2015, have you kept
14 up-to-date with what's going on with the
15 Utah Dental Cooperative?
16 MR. GOLD: I'm going to object
17 just because I think he later
18 testified that it might have been 2014
19 that he had left.
20 MR. LONG: I'll rephrase.
21 BY MR. LONG:
22 Q. Since you left the advisory
23 council of the New Mexico Chapter of the
24 Utah Dental Cooperative, have you kept
25 up-to-date on what's been occurring at the

1 B. Mason
2 Utah Dental Cooperative?
3 A. I have not.
4 Q. So your knowledge would just go
5 up -- your knowledge of the Utah Dental
6 Cooperative would just go up to the point
7 that you ceased being a member of the New
8 Mexico Advisory Council?
9 A. Correct.
10 Q. All right. In the witness
11 disclosure by complaint counsel, one of
12 the topics that has been identified for
13 you is your attempt to establish a buying
14 group.
15 Could you give me a general
16 description of what your attempt to
17 establish a buying group entailed?
18 A. We attempted to put together a
19 group of individually-owned offices to
20 increase our buying power.
21 Q. And did you start that -- and
22 when you say "we," who are the we?
23 A. Jason Chapman, Frank Montoya and
24 myself.
25 Q. And Dr. Montoya is a dentist as

1 B. Mason
 2 well?
 3 A. Correct.
 4 Q. Did Dr. Montoya have any
 5 ownership interest in the Mason/Chapman
 6 practices?
 7 A. No, he did not.
 8 Q. Where did he practice,
 9 Dr. Montoya?
 10 A. Dr. Montoya practiced on
 11 Montgomery and I don't recall the name of
 12 his practice.
 13 Q. But that would be in Albuquerque
 14 again?
 15 A. Yes.
 16 Q. All right. Did that group
 17 eventually become the New Mexico Chapter
 18 of the Utah Dental Cooperative?
 19 A. Yes.
 20 Q. And when did that occur?
 21 A. I don't recall the exact date.
 22 Q. Okay. How far after you started
 23 your efforts to establish this cooperative
 24 did you become a member of the Utah Dental
 25 Cooperative?

1 B. Mason
 2 ended up rejecting the offer from
 3 Heartland?
 4 A. Yes.
 5 Q. And for the record, Heartland is
 6 a large DSO?
 7 A. Yes.
 8 Q. Why did you reject the offer?
 9 A. The contract, we weren't
 10 comfortable with.
 11 Q. Anything in particular?
 12 A. It said we would not generate,
 13 produce, create a biohazard or store it.
 14 And that was a violation of the contract,
 15 but yet in dentistry, every day we produce
 16 blood. We attempted to explain that to
 17 them, but according to the paralegal we
 18 were working with, the executive counsel
 19 did not agree. So we had
 20 100-some-odd-pages of contract that we
 21 weren't overly comfortable with.
 22 Q. Did you ever establish a fee
 23 structure for the New Mexico Dental
 24 Cooperative?
 25 A. Me personally, no. The -- Utah,

1 B. Mason
 2 A. To the best of my recollection,
 3 I want to say it was within 12 months.
 4 Q. When did you, Mr. Chapman --
 5 you, Dr. Chapman and Dr. Montoya first
 6 discuss establishing a dental cooperative?
 7 A. I don't recall the exact date.
 8 Q. Was there a time in the fall of
 9 2012 that you and Dr. Chapman were looking
 10 to sell your practices to a larger
 11 corporate group?
 12 A. We did have an offer from
 13 Heartland Dental to sell our three
 14 practices plus the additional practice we
 15 had under contract. I don't recall the
 16 timeframe in which that occurred, but we
 17 did have an offer.
 18 Q. Did that offer pre-date your
 19 discussions of Dr. Chapman, yourself and
 20 Dr. Montoya of creating a buying group, a
 21 dental cooperative?
 22 A. I don't recall. At that point
 23 in time, Dr. Chapman and I were exploring
 24 a lot of different options.
 25 Q. I take it you were not -- you

1 B. Mason
 2 where the main office is, they have
 3 individuals that take care of that for the
 4 dentists.
 5 Q. So there was a fee structure
 6 first beginning at the point that you
 7 became associated with the Utah Dental
 8 Cooperative?
 9 A. No, the fee structure -- and
 10 maybe I'm not understanding your
 11 question -- the fee structure that they
 12 generate is each individual office sends
 13 in their fees to the Utah -- the company
 14 headquarters or corporate or whatever they
 15 call it. And they then generate a --
 16 averages based off every -- all the
 17 members. Those are then used to negotiate
 18 with insurance companies; used to -- and
 19 that's done by the cooperative. It's used
 20 to also give us information as to what the
 21 averages are.
 22 Q. But there was never a fee
 23 structure for the New Mexico Dental
 24 Cooperative prior to affiliation with
 25 Utah?

1 B. Mason

2 A. No. There was no New Mexico
3 Dental Co-Op prior to Utah.

4 Q. If you could, give me a
5 chronology of what are the key events in
6 your mind concerning your efforts to
7 establish the New Mexico Dental
8 Cooperative from the point that you,
9 Dr. Chapman and Dr. Montoya first began
10 discussing the concept to the point in
11 time that it became affiliated with the
12 Utah Dental Cooperative?

13 A. The original discussion started
14 when Dr. Montoya sent us a letter
15 requesting to purchase our practice. And
16 that was a bulk general letter he sent
17 out, I believe, to all if not all dentists
18 in the city because he was in the -- at
19 that time, he was in the acquisition mode.

20 Jason and I were in the
21 exploration and our meetings brought us to
22 the conversation on setting up a
23 cooperative. Frank was in charge of doing
24 certain things and getting information.
25 Jason was in charge of doing other stuff

1 B. Mason

2 and getting information and I was in
3 charge of different stuff and getting
4 information.

5 We continued the dialogue over
6 time and we elected to try to set it up.
7 We then found the Utah Group after a
8 period of time, had meetings with them and
9 it seemed a lot easier to join their group
10 than recreate the wheel.

11 Q. As I understand your testimony,
12 each of the three of you had separate
13 areas of responsibility in the process of
14 attempting to set up this dental co-op.
15 Do I have that right?

16 A. Some of the areas did overlap
17 because we had different relationships,
18 but we all had separate areas that we
19 would gather our information.

20 Q. So what areas was Dr. Montoya
21 responsible for?

22 A. Dr. Montoya was responsible for
23 chatting with Benco. He also was
24 responsible for -- he was also the one
25 that found the Utah Group and did all of

1 B. Mason

2 our earlier communications with Utah.

3 Q. What was Dr. Chapman responsible
4 for?

5 A. I don't recall.

6 Q. What were you responsible for?

7 A. I worked on a lot of pricing
8 issues, seeing if we could get purchasing
9 power, group -- like a group buying power.
10 I worked on some -- seeing if we could get
11 better pricing on our credit card
12 machines. So most of the things I worked
13 on were -- had to do with purchasing.

14 Q. Also in the witness disclosure
15 concerning yourself submitted by complaint
16 counsel is the topic quote,
17 "Communications with distributors about
18 buying groups."

19 Did you yourself have
20 communications with Benco?

21 A. No.

22 Q. That was Dr. Montoya?

23 A. Correct.

24 Q. Do you have knowledge of those
25 communications?

1 B. Mason

2 A. He gave us the information
3 that -- when he got it. I don't recall
4 any of that information.

5 Q. Did you have communications with
6 Schein?

7 A. I spoke with the sales rep, Rick
8 Dolk. And I spoke with him on it very
9 briefly.

10 Q. And did you have communications
11 with Patterson?

12 A. Yes.

13 Q. Would you outline in a
14 chronology, if you can for me and then
15 I'll go back and ask some more questions,
16 those communications to Patterson?

17 A. I would not be able to outline
18 in a chronology. Those are too many years
19 ago.

20 Q. Okay. With whom did you speak
21 from Patterson?

22 A. I spoke with Jeff Katt was my
23 rep. Scott -- and I don't recall his last
24 name -- Belcher.

25 Q. Could it have been Scott

1 B. Mason
2 Belcheff?
3 A. Belcheff, the manager, and we
4 had one meeting with Reinhardt.
5 Q. That would be Dan Reinhardt?
6 A. Tall bald-headed guy and I
7 believe his first name is Dan.
8 Q. And he was the region manager?
9 A. I don't know his position, but
10 he was above everybody in our state.
11 Q. Had you spoken with
12 Mr. Reinhardt other than in that one
13 meeting?
14 A. I had met him in the past.
15 Q. Had you spoken with him
16 concerning anything relating to setting up
17 a dental cooperative other than that one
18 meeting?
19 A. No.
20 Q. You said Mr. Katt was quote "our
21 rep." Does that indicate that you and
22 Dr. Chapman purchased dental supplies and
23 equipment from Patterson?
24 A. Correct.
25 Q. For what period of time did you

1 B. Mason
2 do that?
3 A. I believe it was the entire time
4 we were open. There were times we were
5 ordered some stuff from Schein, but we've
6 always had a Patterson account and we
7 always had a Schein account.
8 In the very beginning, I ordered
9 exclusively from Patterson, very little
10 from Schein, maybe 90/10. Then there was
11 a change and we went to Schein and that
12 might have lasted two-ish years, maybe
13 three, one, some period of time. We were
14 90 percent Schein, 10 percent Patterson.
15 And then we went back to Patterson for the
16 bulk of our career, we were 90/95 percent
17 Patterson.
18 Q. Why did you start out 90/10 with
19 Patterson?
20 A. Some things Patterson just
21 doesn't sell.
22 Q. Let me ask it a different way.
23 Why did you start out
24 predominantly with Patterson?
25 A. I like their equipment better.

1 B. Mason
2 They're the distributors for A-DEC and
3 they are the distributors for W&H Hand
4 Pieces.
5 Q. And hand pieces are the various
6 things that you and dentists work with
7 inside a patient's mouth?
8 A. Yeah. They're the drills.
9 Q. Why then did your practice
10 switch to 90/10 Schein?
11 A. Because the representative we
12 had from Patterson Dental, we had a
13 program on the computer for both Patterson
14 Dental ordering and Henry Schein ordering.
15 The Henry Schein version was called Aruba.
16 I don't recall the version for Patterson.
17 Our staff would go onto those
18 programs, place the orders, submit it and
19 the product would show up. The Patterson
20 Dental rep deleted the Henry Schein
21 program Aruba.
22 Q. Who was that rep?
23 A. Caroline, and I don't remember
24 her last name.
25 Q. And I take it Caroline was

1 B. Mason
2 replaced by Mr. Katt?
3 A. Caroline was replaced by John
4 Fiddler, but the entire Patterson group
5 was asked to leave our office at that
6 point.
7 Q. And then why did you go back to
8 Patterson?
9 A. Because we were in expansion
10 mode and we needed equipment.
11 MR. LONG: I'm going to mark
12 maybe four to six documents so we're
13 going to number these Mason 1, Mason
14 2, Mason 3.
15 (Exhibit Mason 1, Document Bates
16 numbered 00108816 through 00108817,
17 marked for identification.)
18 BY MR. LONG:
19 Q. I'm handing you what we marked
20 as Mason Exhibit 1. It is a redacted
21 version of the document Bates stamped PDCO
22 108816 to -17 and I ask that you take a
23 moment to read this and when you've read
24 it and are ready for me to ask questions,
25 let me know.

1 B. Mason
 2 A. Okay.
 3 Q. Is Exhibit 1 an e-mail that you
 4 sent to Jeff Katt along with Dr. Chapman,
 5 Dr. Montoya, and Robert Lehm?
 6 A. Yes.
 7 Q. And Robert Lehm is an equipment
 8 specialist with Patterson?
 9 A. Correct.
 10 Q. This December 15, 2012 e-mail
 11 states, quote, "We are in the process of
 12 affiliating our two corporations together
 13 for the benefit of everyone."
 14 Do you see that in the third
 15 line?
 16 A. Yes, I do.
 17 Q. And at this point, December 15,
 18 2012, were you and Dr. Chapman in the
 19 process of affiliating your practices with
 20 that of Dr. Montoya?
 21 A. We were in a single corporation.
 22 We were in that process in those
 23 discussions of setting up a single entity
 24 with five offices.
 25 Q. In Exhibit 1, are you telling

1 B. Mason
 2 Mr. Katt that once you combine those five
 3 offices that you will be seeking certain
 4 discounts based upon the fact that there
 5 are five practices buying?
 6 A. We were already receiving
 7 discounts for Dr. Chapman and I. However,
 8 once we were a single entity, we wanted to
 9 make sure that Frank's practice was also
 10 receiving the same benefits. The club
 11 pricing plan we were already under.
 12 Q. So as of December 15, 2012, you
 13 were not yet discussing a dental
 14 cooperative with Patterson?
 15 A. Not in this e-mail.
 16 Q. Had you discussed a dental
 17 cooperative with anyone at Patterson prior
 18 to this e-mail?
 19 A. I don't recall the dates we
 20 started discussing or had those
 21 discussions.
 22 Q. Does this e-mail help you place
 23 a time that those discussions didn't occur
 24 until after this date?
 25 A. No, it does not.

1 B. Mason
 2 Q. So you don't know one way or the
 3 other?
 4 A. I have absolutely zero clue the
 5 dates of the discussions. This e-mail was
 6 based on our personal businesses. In this
 7 e-mail we actually did not merge the two
 8 offices. Frank Montoya instead ended up
 9 purchasing one of our offices.
 10 Q. Which one was that?
 11 A. Chamisa Hills in Rio Rancho,
 12 New Mexico.
 13 Q. And he purchased that on what
 14 date?
 15 A. I don't recall the date.
 16 Q. Was it 2013?
 17 A. I don't recall.
 18 Q. All right. Exhibit 1 doesn't
 19 have anything to do with your efforts to
 20 establish a dental cooperative?
 21 A. No. This is personal --
 22 personal business.
 23 Q. Can you tell me how many
 24 meetings you had with Jeff Katt concerning
 25 a dental cooperative?

1 B. Mason
 2 A. I have no clue. He was one of
 3 two reps that were allowed to come in my
 4 office freely and he was in our office
 5 minimum once a week.
 6 Q. Who was the other rep?
 7 A. 3M rep.
 8 Q. And why was he allowed to come
 9 in -- why was Mr. Katt allowed to come in
 10 to your office freely?
 11 A. We purchased a couple hundred
 12 thousand dollars. And I believe we were
 13 the largest private practice purchasers in
 14 the State of New Mexico for Patterson
 15 Dental.
 16 Q. Did you ever have any meeting
 17 with Mr. Katt specific to the topic of
 18 establishing a dental cooperative?
 19 A. No, I don't believe I did. Most
 20 of my meetings with Jeff Katt were based
 21 on -- he showed up passing in the hall
 22 discussing information.
 23 Q. And the information he would
 24 discuss would relate to your purchases in
 25 various products that Patterson had?

1 B. Mason

2 A. We would discuss our purchases.
3 We would discuss purchases of other
4 offices. We would discuss briefly if he
5 had a deal, if there was a manufacture
6 that was running a special. If whatever
7 he felt was pertinent, he would let me
8 know. It was always between patients. I
9 didn't have a set time so those meetings
10 were kind of, as you can say, fly by your
11 seat.

12 Q. But the discussions that you're
13 referring to related to Patterson selling
14 equipment and supplies to your practice
15 and your purchase of those?

16 A. It would -- those discussions
17 would have been co-op. Those discussions
18 would have been private. Those
19 discussions would have been the other
20 offices we own or manage.

21 Q. Okay. On these discussions in
22 between patients, what, if anything, can
23 you tell me of discussions that related to
24 co-op?

25 A. I don't recall any of those

1 B. Mason

2 conversations.

3 Q. So you don't recall any of your
4 conversation -- you don't recall the
5 substance of any of your conversations
6 with Mr. Katt about establishing a dental
7 co-op?

8 A. I don't recall any of those
9 conversations. It's been way too many
10 years and I had way too many
11 responsibilities at that point.

12 Q. Did you have any meeting with
13 Mr. Belcheff that was specific to
14 establishing a dental co-op?

15 A. Scott Belcheff and I never had a
16 sit-down formal meeting. I do believe at
17 some point we would have talked via phone
18 or via e-mail, but the only formal meeting
19 I had on the co-op was with Jeff Katt,
20 Scott and Mr. Reinhardt at an Outback
21 restaurant.

22 Q. And we'll get to that. But
23 before we get to it, with respect to
24 discussions with Mr. Belcheff, do you
25 recall the substance of any discussions

1 B. Mason

2 you had with him concerning a dental
3 cooperative?

4 A. Not any on the phone or
5 in-person chats, I do not.

6 Q. So excepting out the dinner at
7 the Outback, you don't have recollections
8 as you sit here today of the substance of
9 any discussions with Mr. Belcheff about a
10 dental cooperative?

11 A. I do not. The only thing that I
12 recall is the e-mails that I've seen.

13 (Exhibit Mason 2, Document Bates
14 numbered PDCO 00108808 00108809,
15 marked for identification.)

16 BY MR. LONG:

17 Q. Dr. Mason, I'm handing you what
18 I've marked as Exhibit 2. It is a
19 two-page document Bates numbered PDCO
20 108808-09.

21 Please take a minute to review
22 it and then let me know when you're ready.

23 A. Okay.

24 Q. Can you identify Exhibit 2 for
25 me?

1 B. Mason

2 A. An e-mail I sent on Monday,
3 February 4, 2013 at 2:18 p.m.

4 Q. Can you generally describe to me
5 who the people are that you sent this?

6 A. Majority of them look to be
7 manufacturers of dental products and
8 supplies.

9 Q. And would these be
10 representatives, the manufacturers'
11 representatives?

12 A. Correct. I do believe that is
13 the reps, the representatives we had at
14 the time.

15 Q. In Exhibit 2 you say quote, "We
16 are inviting all dental manufacturers and
17 representatives to a {sic} our vendors'
18 meeting March 13, 2013, 6:00 p.m. The
19 location is Patterson Dental Branch in
20 Albuquerque, New Mexico."

21 Do you see that?

22 A. Yes, I do.

23 Q. Patterson wasn't aware that you
24 were sending out this e-mail inviting a
25 number of manufacturer reps to a meeting

1 B. Mason
2 at their branch on March 13th; were they?

3 A. I believe they were.

4 Q. Why do you say that?

5 A. Because I wrote in a date and
6 time.

7 Q. Other than that you wrote in a
8 date and time, do you have any other
9 reason for that?

10 A. I don't have any recollections
11 of the conversations, but we would not
12 have written a date and time.

13 Q. But as you sit here today and I
14 realize that it's a number of years past
15 February 2013, you don't have any
16 substantive recollection of having
17 informed Patterson of this meeting?

18 A. I don't have any recollection of
19 any single conversation.

20 Q. Nor do you have any recollection
21 of a group of conversations in which you
22 notified them?

23 A. I don't recall any
24 conversations.

25 Q. Do you have any recollection as

1 B. Mason
2 you sit here today of what the basis --
3 strike that.

4 Do you have any recollection as
5 you sit here today of conversations with
6 anyone at Patterson that would provide the
7 bases for the statement in the first
8 paragraph, quote, "We have partnered with
9 Patterson Dental to provide the individual
10 office the same opportunities as the
11 larger corporations"?

12 A. I don't recall any specific
13 conversations.

14 Our feeling was that we were
15 well on our way to working out a general
16 agreement with Patterson Dental.

17 Q. But as you sit here today, you
18 don't recall any conversation -- the
19 substance of any conversations with either
20 Mr. Katt or Mr. Belcheff that would lead
21 you to that?

22 A. Yeah, I do not recall the exact
23 conversations we had. The only
24 conversation that I have a vague memory of
25 was the meeting at the Outback Steakhouse.

1 B. Mason
2 Q. All right.
3 A. But prior to the meeting at
4 Outback Steakhouse, we were under the
5 understanding that we were well on our way
6 to partnering with Patterson.

7 Q. Okay. But you can't point me to
8 anything that you recall that lead to that
9 understanding?

10 A. That's correct.
11 (Exhibit Mason 3, Document Bates
12 numbered PDCO 00164676 through
13 00164678, marked for identification.)

14 BY MR. LONG:

15 Q. Handing you what's been marked
16 as Exhibit 3, this is a redacted version
17 of PDCO 164676-78.

18 Please take a moment to look at
19 this and let me know when you're ready to
20 answer questions.

21 A. Okay.

22 Q. Is Exhibit 3 an e-mail string
23 between yourself and Mr. Belcheff on
24 February 5, 2013?

25 A. Yes, it is. The last e-mail

1 B. Mason
2 does not have a date.

3 Q. Not that it matters much, but if
4 you look at the bottom of page 2, isn't
5 the last e-mail referring -- doesn't that
6 start with a February 5th e-mail?

7 A. It does. I don't know if that
8 goes to that, but yes.

9 Q. All right. If you'd look at
10 page 2 and the top half on page 2 of
11 Exhibit 3, do you see an e-mail from
12 Mr. Belcheff to yourself?

13 A. Yes.

14 Q. And in the fourth paragraph,
15 Mr. Belcheff writes, "I also want to
16 confirm our dinner for Monday night with
17 Dan." Do you see that?

18 A. Yes.

19 Q. Is this, to the best of your
20 knowledge, referring to the meeting with
21 Mr. Reinhardt that you told me that you
22 have a vague recollection of?

23 A. Yes.

24 Q. So as of February 5th, a meeting
25 had been set up with Mr. Reinhardt?

1 B. Mason
 2 A. Correct.
 3 Q. Do you recall how far in advance
 4 of February 5th that was set up?
 5 A. I do not.
 6 Q. Had it been set up some days
 7 before that?
 8 A. I don't recall if it was a week
 9 or two weeks, a day, I don't recall.
 10 Q. Who attended the meeting with
 11 Mr. Reinhardt?
 12 A. To the best of my recollection,
 13 it was Frank Montoya, Jason Chapman,
 14 myself, Scott, Reinhardt and Jeff Katt.
 15 Q. Was the meeting just a general
 16 meet the region manager type of thing?
 17 A. No, we met him in the past.
 18 The meeting was to establish
 19 a -- we felt it was to establish a method
 20 of moving forward with the co-op.
 21 Q. What do you recall occurring at
 22 this meeting?
 23 A. Walking out of there saying
 24 that's not what we expected because we're
 25 not doing business with Patterson and

1 B. Mason
 2 Q. Do you recall statements by
 3 anyone else from Patterson at that
 4 meeting?
 5 A. I don't recall any statements by
 6 anyone else in the meeting. And the only
 7 thing that I do recall was Mr. Reinhardt
 8 giving a reason they couldn't do it, but I
 9 couldn't tell you what those reasons were
 10 now.
 11 Q. And you looked at some documents
 12 yesterday with Mr. Gold and those didn't
 13 refresh your recollection as to what
 14 specifically Mr. Reinhardt said other than
 15 what you've testified to here?
 16 A. Yeah. The only documents I've
 17 seen are the ones you're handing me are my
 18 own e-mails.
 19 Q. Did you have any other
 20 conversations with anyone at Patterson
 21 concerning the New Mexico Dental
 22 Cooperative other than what you've
 23 testified to?
 24 A. I am sure we had conversations
 25 after that meeting because we were an

1 B. Mason
 2 moving forward with the co-op.
 3 Q. And what was that based upon?
 4 A. The contents of the meeting,
 5 which I don't recall the general
 6 discussion in the meeting. The only
 7 recollection I have of the vague
 8 recollection I have of the meeting is when
 9 we walked out of there, Jason and I
 10 stopped and we both said, Well, that
 11 didn't go the way we thought it was.
 12 Q. As you sit here today, do you
 13 recall anything that Mr. Reinhardt said in
 14 the meeting?
 15 A. That Patterson Dental and -- let
 16 me rephrase that.
 17 I don't recall the exact
 18 wording. Vaguely, that Patterson Dental
 19 wasn't going to participate in the co-op.
 20 Q. Do you recall anything -- any
 21 other details what Mr. Reinhardt said?
 22 A. I do not.
 23 Q. So you don't recall any reasons
 24 that Mr. Reinhardt gave?
 25 A. I do not.

1 B. Mason
 2 extremely large private practice buyer. I
 3 don't recall any of those conversations,
 4 but I know I saw an e-mail yesterday that
 5 I've sent as a followup to that meeting
 6 and I'm sure that Jeff Katt may have had a
 7 conversation. And I'm probably -- Scott
 8 would have reached out to us, but I don't
 9 recall any of those.
 10 Q. You believe you had
 11 conversations with Mr. Belcheff and
 12 Mr. Katt following the meeting with
 13 Mr. Reinhardt concerning a dental
 14 cooperative, but you don't have a
 15 recollection of what occurred?
 16 A. Correct.
 17 Q. Do you recall reaching out to
 18 Henry Schein seeking their participation
 19 in this dental cooperative by the end of
 20 February 2013?
 21 A. I spoke with a Rick Dolk, but I
 22 don't know the dates and I don't know any
 23 of the conversations, recalling any of the
 24 conversations that I had.
 25 (Exhibit Mason 4, Document Bates

1 B. Mason
 2 numbered HS-00269214 through
 3 HS-00269215, marked for
 4 identification.)
 5 BY MR. LONG:
 6 Q. I'm handing you what's been
 7 marked as Mason Exhibit 4. This is a
 8 redacted version of a two-page document
 9 produced by Henry Schein marked Henry
 10 Schein 516026-27. Let me know when you've
 11 had an opportunity to review that.
 12 A. Okay.
 13 Q. Can you identify this as an
 14 e-mail that you sent to Roderick Dolk,
 15 copying Mr. -- Dr. Chapman and Dr. Montoya
 16 on February 20, 2013?
 17 A. Yes, it is. And I'm not sure on
 18 that e-mail from Frank. I think that's
 19 his e-mail, but it has his name in front
 20 of it.
 21 Q. At this point were you inviting
 22 Henry Schein to participate in
 23 establishing a dental cooperative?
 24 A. Yes.
 25 Q. And Henry Schein gave you

1 B. Mason
 2 Q. Do you have a recollection as to
 3 what you were trying to say there?
 4 A. Well, Jason and I have always
 5 put our supplies out for bid. Even though
 6 we worked with Patterson Dental, we would
 7 contact the manufacturers directly and let
 8 the manufacturers know I'm about to
 9 purchase 5,000 burs or 10,000 burs or
 10 purchase a large quantity of something, and
 11 what is their best price? And oftentimes,
 12 their best price would be in terms of free
 13 goods. So if I bought 5,000 burs, they
 14 would give me X number of burs at no
 15 charge. I would buy the 5,000 through
 16 Patterson and the manufacturer would mail
 17 it to me directly. So we considered what
 18 we were doing all along as putting our
 19 supplies out to bid.
 20 Q. Did your dental distributor
 21 assist you in that, what you called bid
 22 process, or did you just do that on your
 23 own?
 24 A. They assisted us. The
 25 individual rep would assist and that would

1 B. Mason
 2 positive response to that?
 3 A. No. Henry Schein said no.
 4 Q. Do you not recall Henry Schein
 5 agreeing to have a meeting in the summer
 6 of 2013 at its offices in Albuquerque?
 7 A. I do not recall that.
 8 Q. Okay. We'll get to that
 9 shortly.
 10 In the second paragraph of
 11 Exhibit 4, two-thirds of the way down, you
 12 have -- you write quote, "My e-mail that
 13 caused a stir." Do you see that?
 14 A. Yes.
 15 Q. Is the e-mail that you're
 16 referring to your February 4, 2013 e-mail
 17 that we've marked as Exhibit 2?
 18 A. I believe that is the case.
 19 Q. And you write, quote, "My e-mail
 20 that caused a stir, was because our
 21 concept of a bid was not view in the same
 22 e-mail, the same as Jason, Frank and I
 23 view what we have been doing in the past."
 24 Do you see that?
 25 A. Correct.

1 B. Mason
 2 have been more so John, not Jeff.
 3 Q. John Fiddler?
 4 A. John Fiddler.
 5 Q. When you write, quote, "Was
 6 because our concept of a bid was not view
 7 in the e-mail as the same as Jason, Frank
 8 and I view what we have been doing in the
 9 past," do you recall what you meant by
 10 that?
 11 A. I do not.
 12 (Exhibit Mason 5, Document Bates
 13 numbered Henry Schein-001402796,
 14 marked for identification.)
 15 BY MR. LONG:
 16 Q. I'm handing you what I've marked
 17 as Mason Exhibit 5. This is a redacted
 18 version of Henry Schein-1402796. Let me
 19 know when you've had an opportunity to
 20 read that.
 21 A. Okay.
 22 Q. Can you identify this as an
 23 e-mail you sent to Roderick Dolk on July
 24 30, 2013?
 25 A. Yes, it is.

1 B. Mason

2 Q. You write, "Rick, the co-op
3 meeting is going to be held 8/22/13, 6:00
4 p.m. at the branch conference room." Do
5 you see that?

6 A. Correct.

7 Q. Does this refresh your
8 recollection that Schein was going to host
9 a co-op meeting at their branch?

10 A. This is a different co-op. This
11 is after we had already joined up with the
12 Utah Group and Henry Schein was doing
13 business with the Utah Group.

14 Q. So Exhibit 5 indicates that
15 Henry Schein was going to host a meeting
16 of the New Mexico Chapter of the Utah
17 Dental Cooperative?

18 A. Correct.

19 Q. Tell me what occurred from the
20 end of February 2013 to the date of this
21 e-mail dated July 30, 2013 in which your
22 effort lead to discussions with the Utah
23 Dental Cooperative?

24 A. The Dental Utah -- repeat the
25 question for me, please.

1 B. Mason

2 Q. Describe for me what occurred
3 between the end of February 2013 and the
4 date of this e-mail, Exhibit 5, of July
5 30, 2013, concerning your group
6 affiliating with the Utah Dental
7 Cooperative?

8 A. Okay. I can give you the
9 general concept, but I don't know the
10 exact dates and I don't know the
11 timeframes.

12 Q. All right. Tell me what you
13 recall and then I may ask you some
14 followups.

15 A. We, being Jason Chapman, Frank
16 Montoya and myself reached out to start
17 looking at how to set up and set up a
18 dental co-op. When we walked out of the
19 Patterson meeting, we knew we didn't have
20 a supplier -- we didn't have a distributor
21 with Patterson.

22 Rick Dolk had told us that, in
23 verbal, that they weren't working with a
24 dental co-op. And I don't know what
25 happened with Benco because I never spoke

1 B. Mason

2 with him, but after the fact, sometime ago
3 -- sometime after the fact, once we said,
4 okay, let's not recreate the wheel,
5 they're already doing it. It's not
6 exactly what we wanted in Utah, but it's
7 already a format so let's join that group.

8 As soon as we joined that group,
9 Schein came back to us, Rick Dolk came
10 back to us and said, We've worked with
11 those guys. We'll participate with you.

12 Q. And did you come to find out
13 what Mr. Dolk said concerning Schein
14 working with the Utah Dental Cooperative
15 was correct?

16 A. Yes.

17 Q. You say in Exhibit 5 in your
18 e-mail to Mr. Dolk, "The special markets
19 division is working with the Utah co-op in
20 three states in about 300 offices."

21 Do you see that?

22 A. Correct.

23 Q. When you say "the special
24 markets division," you were referring to
25 the special markets division of Schein?

1 B. Mason

2 A. Correct.

3 Q. And this statement that the
4 special markets division of Schein is
5 working with the Utah co-op in three
6 states in about 300 offices, that was
7 correct?

8 A. To the best of my knowledge. I
9 believe we were state -- New Mexico was
10 State No. 4.

11 Q. And at some point in time in
12 either 2013 or 2014, the New Mexico
13 Chapter of the Utah Dental Cooperative was
14 established?

15 A. Yes.

16 Q. And how many members in New
17 Mexico were there of that chapter while
18 you were on the advisory council?

19 A. I don't recall. I do not
20 recall. It was over 50 and it was getting
21 to the point where they were looking at
22 hiring a second rep for our state.

23 Q. Did the Utah Dental Cooperative
24 New Mexico Chapter provide cooperative
25 purchasing benefits?

1 B. Mason
 2 A. Please rephrase the question.
 3 Q. What benefits did the New Mexico
 4 Chapter of the Utah Dental Cooperative
 5 provide its members?
 6 A. They had a bank, a credit union
 7 available that we could work with. They
 8 had a reduced-fee service plan. They had
 9 an HSA plan. They had negotiated with
 10 insurance companies for fees. They had
 11 negotiated with vendors for purchasing
 12 dental supplies and equipment. They had a
 13 program where if you paid an additional
 14 fee and then you were disabled or
 15 dismembered or killed, then your practice
 16 would be taken on by the co-op. Those
 17 were the generality. There may be more.
 18 I just don't recall the rest.
 19 Q. One of the vendors that they had
 20 negotiated with was Henry Schein?
 21 A. Yes, it was.
 22 Q. And had they negotiated with
 23 other vendors?
 24 A. Yes, there were.
 25 Q. Can you recall who those were?

1 B. Mason
 2 through the Utah Dental Cooperative?
 3 A. No, they did not.
 4 Q. Did Dr. Chapman continue to
 5 purchase supplies through Patterson while
 6 the practice was part of the Utah buying
 7 group New Mexico Chapter?
 8 A. I'm sure there were some things.
 9 We had switched most of our supplies to
 10 Darby Dental.
 11 Q. Did Darby Dental sell through
 12 the Utah buying group?
 13 A. I do not recall. We were buying
 14 through Darby through a company called --
 15 or a buying group called Synergy out of
 16 the Carolinas I believe is where they were
 17 from.
 18 Q. So although your practices were
 19 members of the New Mexico Chapter of Utah
 20 Dental Cooperative, you purchased supplies
 21 through Darby through a different buying
 22 group?
 23 A. Correct.
 24 Q. Again, give me the name of that
 25 buying group.

1 B. Mason
 2 A. I want to say it's Ultradent.
 3 Q. Ultradent?
 4 A. I believe it was Ultradent and I
 5 believe it was Brasseler. I believe there
 6 was three -- and I want to say, to the
 7 best of my recollection, there might have
 8 been a half a dozen.
 9 Q. What is Brasseler?
 10 A. It's a company that sells burs.
 11 Q. In Exhibit 5 that's dated July
 12 30, 2013, you write, "We have joined up
 13 with the Utah Group to open a New Mexico
 14 Chapter." Do you see that?
 15 A. Yes.
 16 Q. How far in advance of July 30th
 17 had you joined up with the Utah Group?
 18 A. I don't recall.
 19 Q. But within a four-month period
 20 from February to July, your group had
 21 joined with Utah?
 22 A. I don't recall the dates.
 23 Q. Did members of the New Mexico
 24 Chapter of the Utah Dental Cooperative
 25 have to purchase through -- their supplies

1 B. Mason
 2 A. Synergy. We also purchased
 3 through some Patterson and I'm sure we
 4 purchased through some Schein and we
 5 purchased some through Ultradent.
 6 Q. And what is Ultradent?
 7 A. It's another manufacturer that
 8 sells directly.
 9 Q. What products does Ultradent
 10 manufacture?
 11 A. They manufacture -- they are big
 12 into preventatives. So we're talking
 13 fluoride paste. We're talking prophylaxis
 14 angles, hygiene supplies. They also are
 15 big in bonding. So we do prefer some of
 16 their stuff.
 17 Q. Dr. Mason, you don't have any
 18 direct knowledge supporting an allegation
 19 that Benco, Schein and Patterson conspired
 20 to refuse to offer discounted prices or
 21 otherwise negotiate with buying groups; do
 22 you?
 23 A. No, I do not.
 24 Q. You don't have any direct
 25 knowledge that would support the

1 B. Mason
2 allegation that Benco, Schein and
3 Patterson executives agreed not to provide
4 discounts to or otherwise contract with
5 buying groups?

6 A. I do not.

7 Q. You don't have any direct
8 knowledge to support an allegation that
9 Benco, Schein and Patterson entered into
10 an agreement to refuse to provide
11 discounts to or compete for the business
12 of buying groups?

13 A. I do not.

14 MR. LONG: Let's go off the
15 record and take a quick break. I
16 think I'm done subject to following up
17 on what Mr. Gold might ask you, but
18 let me just take a quick look.

19 A. Okay.

20 (Whereupon, a brief recess is
21 taken from 10:50 a.m. to 11:00 a.m.)

22 MR. LONG: I pass the witness
23 subject to any followup of Mr. Gold's
24 questions when he asks those.

25 MR. GOLD: Does anybody from --

1 B. Mason
2 representing Schein or Benco have
3 anything at this point?

4 MR. McDONALD: Yeah, this is
5 John McDonald. I have a few
6 questions.

7 MR. GOLD: Okay. Can we proceed
8 with those?

9 MR. McDONALD: Sure.

10 EXAMINATION BY MR. McDONALD:

11 Q. Dr. Mason, my name is John
12 McDonald and I represent Henry Schein.
13 Can you hear me okay?

14 A. Yes, I can.

15 Q. I have just a couple of
16 questions for you.

17 What, if anything, do you recall
18 about your conversation with Rick Dolk
19 regarding the New Mexico Dental Co-Op?

20 A. The New Mexico Dental Co-Op pre
21 or post joining Utah?

22 Q. Pre.

23 A. We -- I don't recall the exact
24 dialogue of the conversation we had, but
25 we did reach out to them to see if they

1 B. Mason
2 would -- if they were willing to
3 participate. And generally speaking, it
4 was a very quick no. That just wasn't
5 something they do.

6 Q. And do you recall anything more
7 about that conversation you had with
8 Mr. Dolk?

9 A. No. I don't recall the
10 specifics of the conversation just the
11 generality.

12 Q. Right. And that's -- you know,
13 I realize it's years ago and I can only
14 ask you what I recall, but I just want to
15 be sure that you don't recall any
16 specifics about the conversation other
17 than Mr. Dolk told you that wasn't
18 something that he was interested in,
19 correct?

20 A. That's correct.

21 Q. Did you speak with anyone else
22 at Henry Schein about doing business with
23 the New Mexico Dental Co-Op?

24 A. To the best of my recall, I do
25 not recall speaking with anyone else.

1 B. Mason

2 Q. Okay.

3 A. It seems like --

4 Q. Now I want to -- I'm sorry. Go
5 ahead.

6 A. It was seems like Rick was the
7 only individual that I really had a
8 relationship there with.

9 Q. Okay. Now I want to switch to
10 after New Mexico became part of the Utah
11 Dental Co-Op, do you recall any
12 conversations you had with Mr. Dolk about
13 the Dental Co-Op of Utah?

14 A. No, I do not.

15 Q. What about anyone else at Henry
16 Schein, do you recall conversations with
17 anyone else at Henry Schein about the
18 Dental Co-Op of Utah?

19 A. I do not recall any
20 conversations with him.

21 Q. Okay.

22 A. Once we joined up with the Utah
23 Group, I took a back seat to a lot of
24 things because it was already done through
25 the Utah Chapter.

1 B. Mason

2 Q. Okay.

3 MR. McDONALD: Okay. That's all
4 the questions I have at this time.

5 Thank you.

6 MR. MANNING: This is Thomas
7 Manning. I have no questions on
8 behalf of Benco.

9 EXAMINATION BY MR. GOLD:

10 Q. Okay. Well, this is Matthew
11 Gold on behalf of the FTC and I do have a
12 few questions. I just want to just follow
13 up and clarify one of the questions that
14 Mr. McDonald just asked.

15 Dr. Mason, you testified, I
16 believe, that you reached out to Schein at
17 some point about the Utah Group that you
18 were looking to -- I mean, excuse me,
19 about the New Mexico Group that you were
20 looking to form and he got back to you
21 with a response. Now, I think at one
22 point you said that -- I just want to -- I
23 just want to clarify what it is about the
24 response that you recall.

25 Do you recall him saying that he

1 B. Mason

2 wasn't interested in pursuing it or that
3 Schein was not interested in pursuing it
4 or it's not the type of thing that we do?
5 I kind of think we heard a couple of those
6 things and if you can clarify as much as
7 you can about what Mr. Dolk's response
8 was.

9 MR. LONG: Objection, form,
10 leading.

11 When I make an objection, you
12 can still go ahead and answer.

13 A. So --

14 MR. LONG: That was Mr. McDonald
15 and what he was saying is that we have
16 agreement that one objection is good
17 for all. So if you hear an objection
18 on the phone, you don't need to guess
19 whether it's Mr. McDonald or
20 Mr. Manning.

21 A. Can you repeat the question?

22 BY MR. GOLD:

23 Q. Generally, what I'm interested
24 in is just as much detail as you can about
25 the conversation with Mr. Dolk. I

1 B. Mason

2 realized you said you don't remember much,
3 but I think we might have heard two
4 separate statements and I just want to
5 make sure we heard it from you what it is
6 that you remember him telling you about
7 his reaction to your request that Schein
8 participated in the Utah -- in the New
9 Mexico Dental Cooperative?

10 A. So pre --

11 MR. McDONALD: Object to the
12 form.

13 A. When Jason, Frank and I started
14 discussions to set up our own cooperative
15 here in the State of New Mexico, we were
16 not familiar that there was another co-op
17 already up and running. So during the
18 very early phases of it when we reached
19 out to the Patterson, the Benco and the
20 Schein, I did have a discussion with Rick
21 Dolk. Rick Dolk -- and I don't recall
22 the -- any of the details of the
23 discussion. However, Rick Dolk did come
24 back to us and say that Schein was not
25 participating. Now, I don't remember any

1 B. Mason

2 of the discussions of that.

3 Once we left the meeting at
4 Outback, we knew that there was nothing
5 for us in terms of a distributor. That
6 was kind of what we had been lead to
7 believe that we were going to do. So we
8 ended up going to -- we found the Utah
9 Group and the Utah -- once we joined that,
10 they had already established relationships
11 with Schein. So at that point I reached
12 back out to Rick Dolk to reestablish that
13 connection.

14 Q. Okay. Thank you for that.

15 You also testified earlier in
16 response to one of Mr. Long's questions
17 that, I believe in the early days of
18 trying to form the New Mexico Dental
19 Co-Op, that Dr. Chapman had certain tasks,
20 Dr. Montoya had certain tasks and you had
21 certain tasks. Do you recall that?

22 A. Yes.

23 Q. And I think you said that one of
24 Dr. Montoya's tasks was communicating with
25 Benco because he had a connection with

1 B. Mason
2 Benco?
3 A. Correct.
4 Q. And what was your understanding
5 of Dr. Montoya's tasks with regard to
6 reaching out to Benco?
7 A. His tasks and my tasks were the
8 same. We were trying to find a
9 distributor to see if any of them would
10 participate with the New Mexico Dental
11 Co-Op.
12 Q. And I believe when Mr. Long
13 asked you what the result of Dr. Montoya's
14 communications with Benco were, you
15 testified that you don't recall the
16 substance of that conversation. Do you
17 recall saying that?
18 A. Yes, I do.
19 Q. Do you recall the -- do you
20 recall whether it was a positive or
21 negative reaction from Benco as to his
22 overture?
23 MR. LONG: Objection,
24 foundation.
25 A. The -- it was not favorable for

1 B. Mason
2 Q. And Mason 3 is dated the next
3 day and it includes what you testified
4 earlier on page 2 about the upcoming
5 dinner at Outback Steakhouse at the end --
6 on the middle of page 2. Do you see that?
7 A. Yes.
8 Q. And do you recall testifying
9 about that?
10 A. Yes.
11 Q. I would like to hand you what
12 has been marked as CX 4090.
13 (Exhibit CX 4090.001, Document
14 Bates numbered PDCO 00151225 through
15 PDCO 00151227, marked for
16 identification.)
17 MR. GOLD: It is a three-page
18 document.
19 A. I have --
20 MR. LONG: Thank you.
21 BY MR. GOLD:
22 Q. It is a three-page document
23 previously --
24 A. I don't have a document.
25 MR. LONG: You gave them both

1 B. Mason
2 the co-op because we never set up another
3 meeting after that. So he had a
4 discussion with Benco and we never had a
5 meeting with the cooperative, so it was a
6 negative.
7 Q. But beyond knowing that it was a
8 negative reaction from Benco, you don't
9 recall any specifics?
10 A. I don't recall any of those
11 dialogues.
12 THE RESPONDENTS: Objection,
13 form.
14 Q. I want to draw your attention
15 back to Mason 2 and Mason 3 that were
16 identified this morning and you might want
17 to set the others aside just for
18 convenience.
19 And you'll notice that the
20 e-mail that's been marked as Mason 2 was
21 the general -- the e-mail that you sent to
22 a number of manufacturers and others on
23 February 4th announcing the upcoming
24 meeting at Patterson; is that right?
25 A. Correct.

1 B. Mason
2 back.
3 A. You took both of them just now.
4 BY MR. GOLD:
5 Q. All right. We're together here.
6 This is a three-page document previously
7 Bates stamped PDCO 00151225 through -27
8 and I'd like you to look this over and let
9 me know when you have done so.
10 A. Okay.
11 Q. Do you recognize this e-mail
12 string?
13 A. I do.
14 Q. And do you recognize that this
15 is a -- a back and forth between yourself
16 and Scott Belcheff of Patterson?
17 A. It is.
18 Q. And the way things work is from
19 the bottom to the top, so the earliest
20 e-mail is at the end of this string. Do
21 you see an e-mail that starts on the
22 bottom of page 1, Thursday, February 7th
23 at 2:01 from Scott Belcheff to you?
24 A. Yes.
25 Q. And then a little further up,

1 B. Mason
 2 there is a reply from you to Scott
 3 Belcheff at 2:19?
 4 A. Yes.
 5 Q. And then further up there's a
 6 reply from Mr. Belcheff at 2:44 to you?
 7 A. Yes.
 8 Q. And at the very top, there is a
 9 final reply in this string from you back
 10 to Mr. Belcheff at 3:50.
 11 A. Yes.
 12 Q. And these are all on the same
 13 day, February 7th, correct?
 14 A. Correct.
 15 Q. So this is two days after the
 16 e-mail that was previously -- the string
 17 that was previously marked as Mason 3. Do
 18 you see that?
 19 A. Okay.
 20 Q. And so the -- when the -- do
 21 you -- turning back to Mason 3, the dinner
 22 at Outback was the upcoming Monday,
 23 correct?
 24 A. Correct.
 25 Q. And this was dated February

1 B. Mason
 2 5th -- the -- excuse me, in Mason 3, CX
 3 4090 is dated February 7th, which is a
 4 Thursday. So it's a few days before the
 5 upcoming Outback Steakhouse meeting?
 6 A. You lost me right there.
 7 Q. Okay. Sorry about that.
 8 A. The Exhibit 3 e-mail is a couple
 9 days before Exhibit CX 409 {sic}, which is
 10 a couple of days before the meeting at
 11 Outback Steakhouse.
 12 Q. That's all I'm trying to get at.
 13 A. Okay.
 14 Q. Is that --
 15 A. Yes.
 16 Q. Does that make sense?
 17 A. Correct.
 18 Q. Okay. Now, you testified
 19 earlier that you couldn't recall the
 20 substance of any conversations with Katt
 21 or Belcheff about the New Mexico buying
 22 Utah -- excuse me -- the New Mexico Dental
 23 Cooperative. Do you recall that?
 24 A. Yes, I do.
 25 Q. Do you recall the general tenor

1 B. Mason
 2 of the meeting? Do you recall that there
 3 were some conversations between you and
 4 either Mr. Katt or Mr. Belcheff about the
 5 Utah Dental Cooperative prior to the
 6 Outback Steakhouse meeting?
 7 MR. LONG: Objection,
 8 foundation.
 9 A. Yes, there were conversations.
 10 Q. And how do you know that there
 11 were conversations?
 12 A. We were working on this. Jason,
 13 myself and Frank Montoya, we were working
 14 on this pretty extensively. In fact, in
 15 one of the e-mails that I read here today,
 16 I opened my office and myself up to any
 17 manufacturer rep that wanted to come in
 18 working on the co-op.
 19 Q. Okay. And how about details
 20 with -- how about whether there had been
 21 conversations between you and either
 22 Dr. -- either Mr. Belcheff or Mr. Katt of
 23 Patterson about the cooperative?
 24 MR. LONG: Objection, form,
 25 foundation.

1 B. Mason
 2 BY MR. GOLD:
 3 Q. Do you recall that there had
 4 been some conversations between --
 5 A. Yeah, there had been
 6 conversations between all of us. I don't
 7 recall the details of the conversations.
 8 Q. And who's "all of us" just so
 9 we're clear?
 10 A. Myself, Jason Chapman because we
 11 sat side by side in the same office
 12 together. We had e-mails and discussions
 13 with Frank, with Jeff Katt and, to some
 14 degree, Scott.
 15 Q. If I could draw your attention
 16 to -- well, actually, what do you
 17 recognize about, if anything, about the
 18 e-mail in CX 4090 now? You can put the
 19 others aside.
 20 A. Okay.
 21 Q. The long e-mail from Scott
 22 Belcheff to you dated February 7th at 2:01
 23 starts at the bottom of page 1 and goes
 24 towards the bottom of page 2.
 25 A. And what's the question?

1 B. Mason
 2 Q. I'd like to know what -- what do
 3 you understand Mr. Belcheff telling you in
 4 that e-mail?
 5 MR. LONG: Objection,
 6 foundation.
 7 A. We had an understanding. I sent
 8 out an e-mail and I don't recall what
 9 exhibit it was. This is a response to
 10 that e-mail and it's walking back the
 11 meeting that was going to take place at
 12 Patterson Dental.
 13 In the last paragraph, he does
 14 talk about, It could be a huge
 15 opportunity, but we need to get guidelines
 16 in place.
 17 Q. Okay. When you -- drawing your
 18 attention to that last paragraph, where he
 19 says, "This has the opportunity to be
 20 huge."
 21 A. Uh-huh.
 22 Q. What do you understand that to
 23 mean? What do you understand this to mean
 24 in that sentence?
 25 MR. LONG: Objection,

1 B. Mason
 2 foundation.
 3 A. I -- from my standpoint for
 4 looking -- if I were in his shoes, he may
 5 be getting a lot more customers.
 6 Q. If what happens?
 7 MR. LONG: Same objection.
 8 A. If Patterson Dental were to take
 9 on the co-op. So there's multiple
 10 dentists who don't work with Patterson
 11 that work with Benco or work with Schein.
 12 And if we were able to get a pricing deal,
 13 they would get more business.
 14 Q. Did you have any expectations
 15 going into the Outback Steakhouse meeting
 16 as to what was going to take place at the
 17 Outback Steakhouse meeting?
 18 A. We did.
 19 Q. And what were those
 20 expectations?
 21 A. We expected to work out the --
 22 the guidelines on how we were proceeding.
 23 Q. And with the -- proceeding with
 24 what?
 25 A. With Patterson Dental being the

1 B. Mason
 2 distributor for the co-op, the preferred
 3 vendor for the co-op.
 4 Q. And what were those expectations
 5 based on?
 6 A. Based on the previous
 7 conversations and communications.
 8 Q. Between?
 9 A. Myself and Patterson Dental
 10 employees, including this e-mail which has
 11 helped set up the guidelines.
 12 Q. Can you point out to where that
 13 is?
 14 A. Last paragraph I believe of the
 15 e-mail, "Our dinner on Monday will help"
 16 us -- "will help with this and also help
 17 get the guidelines in place."
 18 MR. GOLD: Thank you. I have no
 19 more questions.
 20 MR. LONG: Dr. Mason, I have a
 21 few.
 22 EXAMINATION BY MR. LONG:
 23 Q. First off, I want to make sure
 24 that nowhere in your responses to
 25 Mr. Gold's questions were you changing any

1 B. Mason
 2 of the testimony that you gave in response
 3 to my questions this morning, correct?
 4 A. No, I was not changing.
 5 Q. You don't recall any substance
 6 of any conversation with Patterson, with
 7 Mr. Katt or Mr. Belcheff now as opposed to
 8 what you recalled when I asked you?
 9 MR. GOLD: Objection. I think
 10 that does a little bit mistake his
 11 testimony.
 12 MR. LONG: He can answer it one
 13 way or the other.
 14 A. I don't recall the details of
 15 all the conversations I had six years ago.
 16 BY MR. LONG:
 17 Q. And you were not basing your
 18 answers to Mr. Gold's questions on
 19 anything other than what you recalled when
 20 you answered my questions?
 21 A. Some of his questions I was
 22 basing it off the response of Scott.
 23 Q. So some of the questions -- your
 24 answers you were basing off what was
 25 written in CX 4090?

1 B. Mason
 2 A. Correct.
 3 Q. Did Mr. Gold show you this
 4 yesterday?
 5 A. I did.
 6 Q. So you had had an opportunity
 7 yesterday to see that and have your
 8 recollection refreshed?
 9 A. Correct.
 10 Q. And having had that opportunity
 11 yesterday, you gave me the answers you
 12 gave me this morning about what you did or
 13 did not recall about conversations with
 14 Patterson, correct?
 15 A. Repeat the question?
 16 MR. GOLD: Yeah, I'd have to
 17 object to that.
 18 BY MR. LONG:
 19 Q. After -- so you met with
 20 Mr. Gold yesterday?
 21 A. Correct.
 22 Q. And he showed you what's now
 23 been marked as CX 4090, which in bulk is
 24 the February 7, 2013 e-mail from
 25 Mr. Belcheff?

1 B. Mason
 2 Q. As you sit here today, you don't
 3 recall the substance of any of those prior
 4 conversations with either Mr. Katt or
 5 Mr. Belcheff concerning the New Mexico
 6 Dental Cooperative?
 7 MR. GOLD: I think I'm going to
 8 have to object to that. It slightly
 9 misstates his testimony.
 10 MR. LONG: He can answer it yes
 11 or no. You can object to form and
 12 nothing else.
 13 THE WITNESS: Repeat the
 14 question.
 15 MR. LONG: Would you read that
 16 one back, please?
 17 (Whereupon, the question is read
 18 back by the reporter.)
 19 A. I don't recall the details of
 20 any of the discussions. The premise that
 21 we were working on is we were going to the
 22 meeting to work out the details to get a
 23 deal, and that was supported by the e-mail
 24 right here.
 25 BY MR. LONG:

1 B. Mason
 2 A. Correct.
 3 Q. And having reviewed that
 4 yesterday, you then answered my questions
 5 this morning concerning what, if anything,
 6 you recalled substantively about
 7 conversations with Mr. Belcheff and
 8 Mr. Katt concerning the New Mexico Dental
 9 Cooperative, correct?
 10 A. Correct, with preference.
 11 Because with some -- I mean, with
 12 generality, not specifically.
 13 Q. But you answered my questions
 14 accurately this morning, correct?
 15 A. The best as I recall.
 16 Q. Okay. And so Mr. Gold then
 17 asked you a couple of minutes ago what
 18 your expectation was going into the
 19 February 11th meeting. Do you recall
 20 that?
 21 A. I do.
 22 Q. And I believe that you testified
 23 that your expectation was based upon prior
 24 conversations. Do you recall that?
 25 A. Yes, I do.

1 B. Mason
 2 Q. Well, you pointed again to
 3 CX 4090, the February 7th e-mail from
 4 Mr. Belcheff, correct?
 5 A. Correct.
 6 Q. So you're relying on what's
 7 written on this exhibit for the answer you
 8 just gave, correct?
 9 A. Correct, to some degree.
 10 Q. And so I will -- other than
 11 what's just written here, which you saw
 12 yesterday, do you recall the substance of
 13 any conversation with Mr. Katt or
 14 Mr. Belcheff prior to February 7th
 15 concerning the New Mexico Dental
 16 Cooperative?
 17 A. I don't recall any of the
 18 conversations I had with him specifically.
 19 Q. All right. And you also can't
 20 give me a chronology of when you had
 21 discussions with either Mr. Katt or
 22 Mr. Belcheff about the New Mexico Dental
 23 Cooperative, correct?
 24 A. Correct. I have no clue on the
 25 dates.

1 B. Mason

2 Q. If you would look at CX 4090,
3 the February 7, 2013 e-mail of
4 Mr. Belcheff, at the bottom of the first
5 page, do you see where he writes quote, "I
6 wanted to take some time to think about
7 this meeting before I reached out to you."

8 Do you see that?

9 A. Yes.

10 Q. Does this indicate to you that
11 Mr. Belcheff was thinking about what he
12 would say to you about the meeting for a
13 period of time prior to writing
14 Exhibit CX 4090?

15 MR. GOLD: Objection,
16 foundation.

17 A. Repeat that.

18 Q. Let me ask it a different way.

19 You had copied Mr. Belcheff on
20 the invitation for the March 13, 2013
21 meeting at the Patterson Dental branch,
22 Exhibit 2, which went out at 1:18 p.m. on
23 February 4th.

24 A. 2:18, but, yes, that's correct.

25 Q. And at the bottom of CX 4090,

1 B. Mason

2 Mr. Belcheff is saying that after
3 receiving that e-mail on the 4th, he
4 wanted to take some time to think about
5 the meeting before he reached out to you?

6 A. Correct.

7 Q. And then if you go to the
8 paragraph that begins, "First." Do you
9 see that?

10 A. Yep.

11 Q. He writes, "The e-mail you sent
12 out has greatly confused the dental
13 community and actually Patterson's role in
14 the dental business community as well.
15 Dan Reinhardt, my regional manager and
16 myself have been getting calls with
17 questions because manufacturers are
18 confused as to the purpose of the meeting
19 you called."

20 Do you have any reason to
21 dispute that statement?

22 A. No.

23 MR. LONG: Those are all the
24 questions I have in follow up to
25 Mr. Gold.

1 B. Mason

2 MR. GOLD: And I may have one
3 follow-up question.

4 I have two follow-up questions.

5 EXAMINATION BY MR. GOLD:

6 Q. Looking back at Mason 2, which
7 is the e-mail dated February 4th, do you
8 notice you copy -- in addition to many
9 manufacturers, you copied on this or,
10 excuse me, you sent it to Jeff Katt and
11 Larry Belcheff and Robert Lehm, all of
12 Patterson?

13 A. Correct.

14 Q. To the best of your
15 recollection, was this e-mail the first
16 time that these gentlemen were hearing
17 about your plans to form a dental
18 cooperative in New Mexico?

19 MR. LONG: Objection,
20 foundation, asked and answered.

21 A. No, it was not.

22 BY MR. GOLD:

23 Q. Mr. Long asked you whether your
24 testimony this morning in response to his
25 questions was still accurate in light of

1 B. Mason

2 my questions to you. Do you recall that?

3 A. I do.

4 Q. Same question in reverse.

5 Is -- are -- do you stand by all
6 of your answers to my questions in light
7 of Mr. Long's follow-up questions that he
8 just asked you?

9 A. I --

10 MR. GOLD: Object to the form.

11 A. I do.

12 Q. I have no more questions.

13 MR. McDONALD: I have a couple
14 of questions for you.

15 EXAMINATION BY MR. McDONALD:

16 Q. Dr. Mason, can you get out
17 Exhibit 4 for me, please?

18 A. Okay.

19 Q. This is the e-mail that you sent
20 to Rick Dolk on February 20, 2013; is that
21 right?

22 A. Correct.

23 Q. And is this the first time you
24 reached out to someone at Henry Schein
25 about the New Mexico Dental Co-Op?

1 B. Mason
 2 A. I do not recall.
 3 Q. Is the concept of the New Mexico
 4 Dental Co-Op that's outlined in your
 5 e-mail to Mr. Dolk accurate as of this
 6 date, that is February 20, 2013?
 7 A. Repeat that, please?
 8 Q. Sure.
 9 Is the concept of what you were
 10 trying to do with New Mexico Dental Co-Op
 11 accurately outlined in your e-mail to
 12 Mr. Dolk?
 13 A. The New Mexico Dental Co-Op at
 14 this phase was -- there was no accuracy to
 15 it. We were trying to find the path so we
 16 were in an exploration phase at this
 17 point.
 18 Q. Well, you -- go ahead.
 19 A. We -- we were trying to put
 20 together members and we were trying to put
 21 together offices and we were trying to put
 22 together a whole lot of different stuff to
 23 even make a co-op. So there -- there was
 24 a kind of a guidance that we had, but
 25 there wasn't specific details nailed down

1 B. Mason
 2 conversation that happened, what, five
 3 years ago.
 4 Q. How soon after this e-mail did
 5 Mr. Dolk tell you that Henry Schein was
 6 not interested? I'll just restate it.
 7 How soon after this February 20,
 8 2013 e-mail did Mr. Dolk get back to you
 9 and tell you that Henry Schein was not
 10 interested?
 11 MR. GOLD: I'm going to have to
 12 object that that was not his
 13 testimony.
 14 A. I don't --
 15 MR. McDONALD: He can tell me.
 16 A. I don't know. I don't have -- I
 17 never kept a log of conversations; no
 18 clue.
 19 Q. All right. It was after you
 20 sent this e-mail though, correct?
 21 A. I'm assuming. I really don't
 22 know.
 23 Q. Well, he didn't tell you no
 24 before you sent the e-mail; did he?
 25 A. That's why I said I'm assuming.

1 B. Mason
 2 yet. So it was still fluid, moving.
 3 Q. So is the guidance as or the
 4 status or whatever you want to call it as
 5 it existed as of February 20th outlined in
 6 this e-mail to Mr. Dolk?
 7 A. I think there's some aspects of
 8 it that were outlined here.
 9 Q. Right. And my point being, what
 10 you outlined to him here was accurate at
 11 least as of that date?
 12 A. Yeah.
 13 Q. Or what was your current
 14 thinking, correct?
 15 A. Correct, that's correct.
 16 Q. And did anything in this e-mail
 17 change before Mr. Dolk got back to you and
 18 told you that Henry Schein was not
 19 interested?
 20 A. Oh, I have no idea.
 21 Q. You don't recall one way or the
 22 other?
 23 A. I mean, there's a bunch of
 24 things outlined here. I have no idea what
 25 did or didn't change between the

1 B. Mason
 2 I don't know the --
 3 Q. You would agree with me that it
 4 would be logical that he told you after he
 5 sent this e-mail that Henry Schein was not
 6 interested, correct?
 7 A. That, I agree with.
 8 Q. All right. In the last sentence
 9 of this e-mail you say, "Thus, we have
 10 clarified the language to ensure it is
 11 understood, we are not moving dentists
 12 from one distributor to another or trying
 13 to set the price to a distributor." Do
 14 you see that?
 15 A. Yes, I do.
 16 Q. Did that concept ever change?
 17 A. That concept never even came to
 18 fruition because we never opened the
 19 New Mexico Dental Co-Op. We joined
 20 another state.
 21 Q. All right.
 22 A. In the end --
 23 Q. That concept of New Mexico --
 24 that concept was in the New Mexico Dental
 25 Co-Op never changed; is that fair?

1 B. Mason
 2 A. No, I don't think that's fair
 3 because the -- this is an e-mail that was
 4 talking pre-joining Utah. The pre-joining
 5 Utah e-mails never came to fruition
 6 because the New Mexico Dental Co-Op ended
 7 up joining Utah, which was already
 8 established, so we used their bylaws and
 9 their vendors and their everything. So
 10 any concept --
 11 Q. Well, Mr. --
 12 A. -- any concept prior to joining
 13 Utah, for the most part, went in the
 14 trash.
 15 Q. So the concept that Henry Schein
 16 told you it wasn't interested in went in
 17 the trash?
 18 A. No. Henry Schein said they
 19 weren't interested and then when we joined
 20 Utah, Henry Schein already had a -- a
 21 working relationship with the Utah
 22 organization so we jumped onboard with
 23 that as-needed. The doctors had were
 24 available to jump onboard with that
 25 relationship, but the work that we were

1 B. Mason
 2 putting forward and the work we were
 3 trying to establish we negated because
 4 Utah already had it done.
 5 Q. What I'm trying to understand,
 6 Dr. Mason and I want to be sure it's clear
 7 is that the concept that Henry Schein told
 8 you it was not interested in was the New
 9 Mexico Dental Co-Op concept before it
 10 joined the Dental Co-Op of Utah; is that
 11 correct?
 12 A. That is correct. Henry Schein
 13 informed us that it was not interested
 14 before we joined the New Mexico Dental
 15 Co-Op -- I'm sorry, before we joined the
 16 Utah Dental Co-Op Group.
 17 MR. McDONALD: Great. That's
 18 all I have. Thank you.
 19 MR. MANNING: Hi, this is Mr.
 20 Manning. I just have a few questions.
 21 EXAMINATION BY MR. MANNING:
 22 Q. You had testified earlier that
 23 Dr. Montoya had contacted Benco and that
 24 you had not contacted them yourself; is
 25 that correct?

1 B. Mason
 2 A. That is correct.
 3 Q. Okay. You testified in response
 4 to Mr. Long's question that you don't
 5 recall any of the information regarding
 6 Dr. Montoya's conversations with Benco --
 7 A. I testified --
 8 Q. -- is that correct?
 9 A. I'm testifying that I don't
 10 recall any of the specific details of
 11 those conversations.
 12 Q. Okay. When Mr. Long asked you
 13 that earlier, you had testified that you
 14 don't recall any of the information. Are
 15 you changing your testimony now?
 16 A. No, my testimony is not change
 17 being. I don't recall the conversations.
 18 I only recall the general outcome.
 19 Q. Okay, but you don't know what
 20 information Dr. Montoya conveyed to Benco
 21 in those conversations?
 22 A. I do not have --
 23 Q. Is that correct?
 24 A. I do not know what information
 25 was conveyed.

1 B. Mason
 2 Q. And you do not know what
 3 information was conveyed by Benco to
 4 Dr. Montoya; is that correct?
 5 A. That is correct.
 6 MR. MANNING: Those are all the
 7 questions I have.
 8 MR. GOLD: I just have one
 9 follow-up to that.
 10 EXAMINATION BY MR. GOLD:
 11 Q. Do you recall when I asked you
 12 about the Montoya conversations with
 13 Benco?
 14 A. Yes.
 15 Q. Do you stand by your testimony
 16 that you gave me in response to that or
 17 are you changing it based on what
 18 Mr. Manning just said?
 19 A. I stand by my testimony. I
 20 don't know the specific details of the
 21 conversation. The general outcome was
 22 negative. I don't know what was said
 23 either way. I just don't recall any of
 24 that after five years.
 25 MR. GOLD: That's all I have.

1 B. Mason
 2 Thank you, Dr. Mason.
 3 MR. LONG: Yeah, thank you again
 4 for your time, Dr. Mason.
 5 MR. McDONALD: Thank you for
 6 your time.
 7 THE WITNESS: Thank you.
 8 THE COURT REPORTER: Can you
 9 state your transcript orders?
 10 MR. McDONALD: Whatever my
 11 standing order is with them which I
 12 have no idea.
 13 MR. GOLD: I think all the
 14 parties have standing orders.
 15 MR. MANNING: Yes, I think so
 16 too.
 17 (Time noted: 11:41 a.m.)

22 _____
 23 Benton Mason, DMD
 24
 25

1
 2 CERTIFICATION
 3
 4
 5 I, DANA N. SREBRENICK, a Certified
 6 Court Reporter for and within the State of
 7 New Mexico, do hereby certify:
 8 That the witness whose testimony as
 9 herein set forth, was duly sworn by me;
 10 and that the within transcript is a true
 11 record of the testimony given by said
 12 witness.
 13 I further certify that I am not
 14 related to any of the parties to this
 15 action by blood or marriage, and that I am
 16 in no way interested in the outcome of
 17 this matter.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this 26th day of July 2018.

22 _____
 23 DANA N. SREBRENICK, CLR, CRR
 24
 25

* * *

ERRATA SHEET

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 22 Signature of Deponent
 23 SUBSCRIBED AND SWORN BEFORE ME
 24 THIS ____ DAY OF _____, 2018.
 25 _____
 (Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

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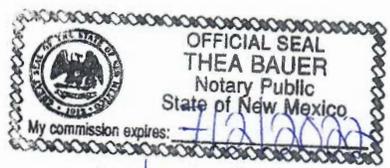
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME
THIS 24th DAY OF August, 2018.

[Handwritten Signature]

(Notary Public)

MY COMMISSION EXPIRES: 7/1/2020



1 B. Mason

2 Thank you, Dr. Mason.

3 MR. LONG: Yeah, thank you again
4 for your time, Dr. Mason.

5 MR. McDONALD: Thank you for
6 your time.

7 THE WITNESS: Thank you.

8 THE COURT REPORTER: Can you
9 state your transcript orders?

10 MR. McDONALD: Whatever my
11 standing order is with them which I
12 have no idea.

13 MR. GOLD: I think all the
14 parties have standing orders.

15 MR. MANNING: Yes, I think so
16 too.

17 (Time noted: 11:41 a.m.)

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22 Benton Mason, DMD

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A			B	
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Appendix A to Complaint Counsel’s Pre-Trial Brief – Cast of Characters

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

	Area Director, Managed Group Practice and Community Health (2014-2018) Regional Account Manager (started 2008)	
Jackson, Paul	VP of Marketing (1996-Present)	Benco
Kois, John Jr.	CEO of Kois Center, Manager of Kois Buyers Group (2015-Present)	Kois Buyers Group
Kois, John Sr.	Director of Kois Center (1994-Present) Founder of Kois Buyers Group	Kois Buyers Group
Lauerman, Michelle	Director of Network & Patient Ambassador (2018-Present) Director of Marketing & Administration (2014-2018) Dental Services Advisor (2010-2014)	Advantage Dental
Lepley, Joe	Director of Strategic Pricing (2015-Present)	Patterson
Mason, Brent	Dentist in New Mexico Member of NM Dental Co-op (2014-2015)	New Mexico Dental Cooperative
Maurer, Trevor	President	Smile Source
McElaney, Mike	Director of Sales, Northeast, and Regional Manager of New England (2015-2017) VP of Sales, Northeast (2013-2015) Director of Northeast (2011-2013)	Benco
McFadden, Neal	President, Special Markets (2013-2017) Regional Manager, Southeast (2009-2013)	Patterson
Meadows, Jake	VP of Sales, Special Markets (2017-Present) VP of Sales, Eastern Area (2014-2017) Northwest Zone General Manager (2011-2014)	Henry Schein
Misiak, Dave	President (2016-2018) VP of Sales (2010-2016)	Patterson
Moody, Tracy	Co-Founder of Smile Source	Smile Source
Muller, Hal	President, Special Markets (2008-Present)	Henry Schein
Nease, Devon	Branch Manager, Chesapeake Virginia (2011-2014)	Patterson
Osio, Donovan	General manager, TDA Financial Services, Inc. (wholly owned subsidiary of TDA)	Texas Dental Association
Porro, Michael	Director of Technology for Sales, East (2018-Present) Zone Manager, Atlantic South (2016-2018) Zone Manager, Atlantic Coast (2014-2016) Corporate Director of HSD (2012-2013)	Henry Schein
Puckett, Justin	President (2013-Present)	MB2 Dental Solutions
Reece, Jeffrey	VP of Sales and Marketing (2008-Present)	Burkhart
Rogan, Tim	VP and General Manager (2017-Present) VP of Marketing/Merchandise (2009-2017)	Patterson
Ryan, Patrick	Director of Sales, Strategic Markets (2007-Present)	Benco

	Director of Bus. Development (2011-2014) Director of Equipment Sales (Pre-2016)	
Showgren, Glenn	VP of Sales, West (2017-Present) Zone General Manager, California (2013-2017) Regional Manager, South Texas Region (2010-2013)	Henry Schein
Steck, Dave	VP & General Manager (2005-Present)	Henry Schein
Sullivan, Tim	President of Henry Schein Dental (1997-Present)	Henry Schein
Titus, Kathleen	Director of Group Practices, Western Area (2014-2018) Zone Manager, Special Markets (1990s-2014)	Henry Schein
Wingard, Darci	Director of Alternative Purchasing Channel (2018-Present) Group Practice Development Manager (2016-2018)	Henry Schein

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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CERTIFICATE OF ELECTRONIC FILING

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

October 10, 2018

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