ORDER SPECIFYING FACTS WITHOUT SUBSTANTIAL CONTROVERSY
[Provisionally Redacted Public Version]

Pursuant to Rule 3.24(a)(5) of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.24(a)(5), the Commission hereby specifies the following statement of facts that appear without substantial controversy. Accordingly,

IT IS ORDERED that the following facts shall be deemed established for purposes of this proceeding:

1. Patterson has been distributing dental equipment (e.g., X-Ray and CAD/CAM machines, digital radiography sensors, and integrated operatory treatment centers), and consumable supplies (gloves, cotton rolls, rinse cups, disposable syringes) for over 140 years. See https://www.pattersoncompanies.com/who-we-are/default.aspx#section=history.
2. Patterson has more than 70 local branches. See https://www.pattersoncompanies.com/who-we-serve/default.aspx#section=animal.

3. Patterson Exhibit 5 (PDCO 00023794, slide 21).

4. CX0317 (Rogan IH Tr. 140:14-141:16).

5. Corporate dental practices, known as “dental service organizations” (“DSOs”). Patterson Exhibit 5 (PDCO 00023794, slide 39).


7. In recent years, Patterson Exhibit 5 (PDCO 00023794, slide 49).


9. Patterson launched its Special Markets division in 2013 to manage large accounts. Patterson Exhibit 47 (PattersonDental 00024687); Patterson Exhibit 48 (PattersonDental 00024688).
10. 

11. Neal McFadden testified at his deposition that Patterson Exhibit 4 (McFadden 6-21-2018 FTC Dep. 76:25-77:3).

12. 

CX0158-001, 002 (PDCO 00031277-78).
On February 8, 2013, Benco’s Charles Cohen sent Patterson’s Paul Guggenheim a message forwarding an email chain including the email from Cohen’s message read, in part: “Just wanted to let you know about some noise I’ve picked up from New Mexico. FYI: Our policy at Benco is that we do not recognize, work with, or offer discounts to buying groups (though we do work with corporate accounts) and our team understands that policy.” CX0056-001 (BDS-FTC00009442).

A few hours later, Guggenheim replied to Cohen, in part: “Thanks for the heads up. I’ll investigate the situation. We feel the same way about these.” CX0090-001 (PDCO 00010912).

In early 2013, Patterson’s Chesapeake branch manager was approached by Atlantic Dental Cooperative (“ADC”). CX0093-001 (PDCO 00051886).

David Misiak sent Patterson’s an email message That message read, in part:

These co op situations can be very challenging so stay connected. You may have to help him at the meeting communicate our position verbally to the reps. It’s in their best interest long term as well not to take our business in that direction. When I get these calls directly I politely say that I appreciate the opportunity, but currently we [don’t] participate with group purchasing organizations. Be cautious so that reps don’t miss communicate our position. Continue to help Devon stay out of this with grace.
18. On June 2013, Patterson’s Paul Guggenheim, [redacted] sent an email to Benco’s Chuck Cohen. The email read, in part:

Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? I’m wondering if your position on buying groups is still as you articulated back in February?

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

19. Chuck Cohen sent an email to Paul Guggenheim. That email read, in part:

As we’ve discussed, we don’t recognize buying groups.
Paul Guggenheim sent an email to Chuck Cohen. That email read, in part: Just wanted to clarify where you guys stand.”

On August 4, 2013, Patterson’s Tim Rogan sent an email to That message read, in part: “We don’t need GPO’s in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry.”

On September 3, 2013, David Misiak sent an email message to The message read, in part:

My guidance has been to politely say no [to buying groups] and w[ea]ther the storm with these.

On November 20, 2013, Patterson’s Tim Rogan sent an email message to Patterson employee That email read, in part: “We don’t sell to buying groups. Let’s talk live.”

On October 23, 2014, Neal McFadden sent an email message The message read, in part: “As a rule we are
trying our best to steer clear of all buying groups.” CX3128-001 (PDCO 00026075).

25. Patterson declined to work with Kois Buyers Group. CX0321 (Kois, Jr. IH Tr. 76:15-77:7); CX3084-001 (PDCO 00029940).

26. Patterson Exhibit 54 (PDCO 00026237).

27. That same day, Neal McFadden sent an email to Anthony Fruehauf. That email read, in part: “does he own all these offices - - if not then he is a GPO - - we don’t deal with GPO’s – Id.

28. Patterson Exhibit 54 (PDCO 00026237).

29. Smile Source approached Patterson in late 2013. Patterson declined to work with Smile Source. CX0147-001 (PDCO 00021163); CX0297-001 (PDCO 00021213).
30. Patterson Exhibit 61 (Mauer 8-9-2018 FTC Dep. 54:3-56:9; 64:4-9); Patterson Exhibit 14 (Misiak 7-25-2018 FTC Dep. 154:23–156:2); Patterson Exhibit 8 (Lepley 7-24-18 FTC Dep. 37:9–13); Patterson Exhibit 62 (Rogan IH Tr. 397:16-399:19).

31. In October 2013, the Texas Dental Association (“TDA”) created the TDAPerks buying group. Patterson Exhibit 166 (PattersonDental00033124).

32. Patterson Exhibit 186 (PATTERSON 0000941).

33. On Dave Steck, identified as “Vice President & General Manager” of Henry Schein Dental, sent an email to Patterson’s David Misiak with the subject “Texas.” The message read, in part: “I’ll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days.” CX0112-001 (PDCO 00013330).

34. That same day, David Misiak sent an email forwarding that message and stating: “He already told me they were out. Full blown!” Patterson’s Tim Rogan replied: “That sucks. You should call him. ‘Thought I could trust you’ type of conversation.” CX0112-001 (PDCO 00013330).
35. Patterson had chosen not to attend TDA’s 2014 annual meeting.
Patterson Exhibit 186 (PATTERSON 0000244, PATTERSON 0000941).

36. A few weeks before TDA’s annual meeting, Cohen (Benco) emailed Sullivan (Schein) and Guggenheim (Patterson) on the same chain, forwarding an article promoting TDAPerks. CX1062-001 (BDS-FTC00001789). Guggenheim created a calendar entry to call Cohen about the article. CX0101-001 (PDCO 00011057).

37. Patterson Exhibit 53 (PDCO 00026064).


By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: November 26, 2018