

3. Plaintiff's claims are made on information and belief (except as to allegations specifically pertaining to it and its own actions, which are made on personal knowledge of its employees) based on the investigation conducted by and under the supervision of Plaintiff's counsel.

I. INTRODUCTION

4. Defendants are the three principal distributors of Dental Supplies in the United States. Dental Supplies include, but are not limited to: acrylics, adhesive agents, alloys, anesthetics, articulating products, burs, cements and liners, crown and bridge products, dental instruments, endodontics, implants, impression materials, pins and posts, retraction materials, rubber dam materials, and waxes as well as infection control products, x-ray accessories, imaging devices, dental chairs, dental CAD/CAM systems, and other dental office equipment.

5. Defendants dominate the Dental Supplies market and wield market power. During the Class Period Defendants have accounted for over 80% of all Dental Supplies sales in the United States.

6. Beginning on a date unknown to Plaintiff but believed to be at least as early as February 2012, Defendants have conspired to limit competition in the Dental Supplies market by, among other anticompetitive actions, engaging in and/or threatening group boycotts in order to block or substantially impair the ability of rivals to compete in the Dental Supplies market. As a result of the conduct alleged herein, Defendants were able not only to maintain but consistently to increase prices of Dental Supplies, and thereby extract supra-competitive prices from Plaintiff and the members of the Class, even in periods of decreasing demand over the Class Period.

7. Plaintiff, on behalf of itself and the members of the Class, seeks redress for the overcharge injuries both it and they have sustained as a result of Defendants' unlawful group boycotting and other anticompetitive conduct in violation of Section 1 of the Sherman Act.

II. JURISDICTION AND VENUE

8. This action is brought pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and treble damages and injunctive relief for the injuries Plaintiff and the Class sustained as result of Defendants' agreement, combination, and conspiracy to restrain competition in the Dental Supplies market. Accordingly, the Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and Clayton Act §§ 4 and 16, 15 U.S.C. §§ 15, 26.

9. Venue is proper in this district pursuant to Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15(a), 22, and 28 U.S.C. §§ 1391(b), (c), and (d), because during the Class Period each Defendant resided, transacted business, was found, or had agents in this district, and a substantial portion of the alleged activity affecting interstate trade and commerce has been carried out in this district.

10. During the Class Period, Defendants advertised, sold, and shipped Dental Supplies in a continuous and uninterrupted flow of interstate commerce, including in this district, and Defendants' conduct had a direct, substantial, and reasonably foreseeable effect on interstate commerce, including commerce within this district.

11. This Court has personal jurisdiction over each Defendant. Each Defendant has transacted business, maintained substantial contacts, or committed overt acts in furtherance of the illegal scheme throughout the United States and including in this district. The scheme has

been directed at, and has had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in this district.

III. PARTIES

12. Plaintiff Sander I. White, D.D.S., P.C., is a professional corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and located in Broomall, Delaware County, Pennsylvania. The corporation employs Dr. Sander I. White, D.D.S. who, continuously during the Class Period, practiced dentistry at the corporation's Broomall location. During the Class Period, Plaintiff purchased Dental Supplies directly from one or more of the Defendants.

13. Defendant BENCO DENTAL SUPPLY CO. ("Benco") is a Delaware corporation with its principal place of business in this District in Pittston, PA. Benco sells Dental Supplies to dentists throughout the United States, including to dentists located in this district.

14. Defendant PATTERSON COMPANIES, INC. ("Patterson") is a Minnesota corporation with its principal place of business in St. Paul, Minnesota. Patterson sells Dental Supplies to dentists throughout the United States, including to dentists located in this district.

15. Defendant HENRY SCHEIN, INC. ("Schein") is a Delaware corporation with its principal place of business in Melville, New York. Schein sells Dental Supplies to dentists throughout the United States, including to dentists located in this district.

16. All of the actions described in this complaint are part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized, ordered, and/or done by Defendants' officers, agents, employees, or other representatives while actively engaged in the conduct of Defendants' affairs within the course and scope of their duties and employment, and/or with Defendants' actual, apparent, and/or ostensible authority.

IV. CLASS ALLEGATIONS

17. Plaintiff, on behalf of itself and the Class, seeks damages, measured as overcharges, trebled, against Defendants arising from their anticompetitive conduct in the market for Dental Supplies during the period February 10, 2012 through and until the anticompetitive effects of Defendants' conduct cease (the "Class Period"). In addition, Plaintiff seeks injunctive relief for itself and the Class against Defendants because of the loss and harm it and they are threatened with on account of Defendants' unlawful conduct.

18. Plaintiff brings this action on behalf of itself and, under Rules 23(a) and (b)(2) and (b)(3), as a representative of the Class defined as follows:

All persons who or entities which purchased Dental Supplies directly from one or more of Defendants in the United States at any time during the Class Period.

Excluded from the Class are Defendants, their respective subsidiaries and affiliates, the officers, directors, employees, and agents of each of them, and all governmental entities.

19. The members of the Class are so numerous that joinder is impracticable. Plaintiff believes that the Class is composed of thousands of dentists and others. The members of the Class are readily identifiable from information and records in Defendants' possession.

20. Plaintiff's claims are typical of the Class claims. Plaintiff and all Class Members were damaged by the same wrongful conduct of the Defendants by paying prices for Dental Supplies that were artificially inflated as a result of the Defendants' wrongful conduct.

21. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are coincident with, and not antagonistic to, those of the Class.

22. Plaintiff is represented by counsel with experience in the prosecution of class action antitrust litigation.

23. Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

24. Because Defendants have acted on grounds generally applicable to the entire Class, damages measured by the overcharges to the Class as a whole are appropriate. Accordingly, questions of law and fact are common to the members of the Class and predominate over questions that may affect only individual Class members.

25. Questions of law and fact common to the Class include:

- a. whether Defendants conspired to exclude from, and/or impair rivals in, the Dental Supplies market;
- b. whether Defendants agreed to boycott or threaten to boycott rivals and other market participants with the purpose of restraining interstate trade or commerce;
- c. whether and to what extent Defendants entered into exclusionary agreements which substantially foreclosed rivals from competing in the Dental Supplies market;
- d. whether Defendants in fact boycotted and/or threatened to boycott rivals and other market participants;
- e. whether Defendants' collusive conduct restrained trade in interstate trade and commerce in the United States, including its territories and possessions;
- f. whether and to what extent Defendants collectively possess market power in the Dental Supplies market;

- g. whether Defendants' conduct constitutes a per se violation of Sherman Act § 1;
- h. whether, and if so to what extent, Defendants' conduct caused antitrust injury (*i.e.*, overcharges) to Plaintiff and Class members; and
- i. the quantum of aggregate damages to the Class.

26. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons and entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would entail. The benefits of proceeding through the class mechanism—including providing injured Class members redress on claims that could not practicably be pursued individually—substantially outweigh potential difficulties in management of this class action.

27. Plaintiff anticipates no particular difficulty in maintaining this action as a class action.

V. FACTUAL ALLEGATIONS

A. The Market for Distribution of Dental Supplies

28. Dentists and others across the United States routinely purchase and consume a wide variety of Dental Supplies in their daily operations. Such purchases may amount to as much as 6-10% of a dentist's annual income.

29. There are more than 300 manufacturers that produce one or more of the vast array of Dental Supplies that dentists and others purchase.

30. Most manufacturers of Dental Supplies do not sell their products directly to dentists and other consumers but instead rely upon intermediate distributors such as Defendants to resell those products to dentists and others. Because dentists and others require many different

supplies from many different manufacturers, dentists and others generally purchase Dental Supplies from distributors offering a range of products from many different manufacturers, rather than from numerous manufacturers.

31. As a part of the business, distributors of Dental Supplies have traditionally employed a sales model in which a distributor's sales representative interacts directly with a purchaser.

32. To succeed, a distributor must be known by manufacturers, dentists, dental laboratories, and others as offering a range of Dental Supplies. This requires that the distributor be able both to purchase Dental Supplies in large volumes at low enough prices to compete and to market itself effectively to its customers, such as dentists, dental laboratories, and others.

33. Because they carry a broad range of Dental Supplies from nearly all Dental Supplies manufacturers, Defendants offer purchasers the ability to one-stop shop, a convenience for which Defendants have traditionally charged a premium.

34. The Dental Supplies market in the United States is highly concentrated, with Defendants collectively making up over 80 percent of all sales in the market.

35. Defendants, through their employees, enjoy close relationships with one another, both personally and professionally. Many sales representatives, and even higher level employees, have previous employment relationships with other distributors. These individuals regularly interact in person at various social, industry, and trade association meetings, and remotely through personal and company email, cellphone calls, and text messaging. These close contacts provide the opportunity for the sharing of competitively-sensitive information among the Defendants and manufacturers of Dental Supplies.

36. While Defendants sell Dental Supplies nationwide, most other distributors are much smaller, regional, and local companies serving specific areas. Due to the conduct alleged herein, Defendants' competitors have been unable to establish a solid nationwide presence that could put competitive pressure on Defendants to reduce prices.

37. There have been distributors of Dental Supplies that were willing to forego charging a premium like Defendants. These additional distributors generally pay manufacturers more than Defendants pay while charging Plaintiff and Class members less than Defendants charge. Thus, these additional distributors can be more profitable for manufacturers while also being less expensive suppliers for dentists and other purchasers.

38. One way a new distributor can expand its sales into the Dental Supplies market is by partnering with or receiving the endorsement of state dental associations. In this way, dental associations in practice serve as gatekeepers by validating—or withholding validation of—new entrants.

39. Accordingly, lower-cost distributors have attempted to enter the market, and many state dental associations have been actively interested in sponsoring, and partnering with, these new distributors as a benefit to their members.

40. In order to protect their collective market share, revenues, and profits, Defendants have responded to the potential competition by new Dental Supplies distributors by collectively employing threatened and actual group boycotts to pressure the dental associations into not dealing with the new, less expensive distributors.

41. Defendants' dominant collective market power has allowed them to substantially foreclose the market to rival competition, thereby impairing competition, maintaining and en-

hancing market power, and enabling Defendants to charge Plaintiff and Class members inflated prices above competitive levels for Dental Supplies.

B. Defendants Wield Market Power.

42. Plaintiff's claim is based upon Defendants' *per se* violation of Sherman Act § 1. Alternatively, if the Court determines that Plaintiff's claim under cannot proceed on a *per se* theory, Defendants' anticompetitive conduct and agreements constitute a "rule of reason" violation of the statute.

43. The relevant product or service market in this case is the distribution and sale of Dental Supplies. The relevant geographic market is the United States.

44. There are many hundreds of manufacturers that produce various Dental Supplies, while there are over 135,000 dental practices that consume Dental Supplies. It is inefficient for each of the manufacturers to sell its products to all of the dental practices, while it is also inefficient for dental practices and others, which are predominantly small businesses, to purchase needed Dental Supplies separately from many different vendors. Accordingly, the market uses distributors, like Defendants, as intermediaries which aggregate the products of hundreds of manufacturers of Dental Supplies and resell them to the multitude of dentists and others that consume those products, thereby minimizing for both the producers and the consumers the number of entities with which they must do business.

45. For Dr. White and other purchasers, there are no reasonably available substitutes for distributors of Dental Supplies. Even if individual manufactures sell supplies directly, they do not carry a wide range of supplies, and it is not economically efficient for dentists and other small-business purchasers to maintain relationships with hundreds of different vendors.

46. At all relevant times Defendants possessed market power—the ability to raise prices significantly above competitive levels while not losing significant sales—as evidenced by

Defendants' abnormally high profit margins in what should, if it were competitive, be a low profit margin distribution market.

47. A small but significant non-transitory increase in price by Defendants would not have caused them to lose a significant amount of sales.

48. Suppliers of one or a limited range of Dental Supplies do not meaningfully discipline Defendants' pricing power, and products sold by suppliers of a limited range of Dental Supplies do not exhibit significant cross-elasticity of demand with respect to products sold by Defendants.

49. Defendants sell Dental Supplies at prices well in excess of both marginal costs and the competitive price, and therefore have enjoyed artificially high profit margins, especially when compared with distributors of other types of medical products, like prescription pharmaceuticals.

50. At all relevant times, Defendants collectively have had substantial market power in the relevant market.

51. Defendants abused their dominant collective market power by privately communicating and reaching an agreement to engage in an anticompetitive scheme to foreclose and impair competition, maintain and enhance market power, and artificially inflate prices of Dental Supplies above competitive levels.

C. Defendants Conspired to Limit Competition.

1. Defendants Colluded to Resist a Competitive Online Program Through the Texas Dental Association.

52. In 2013, SourceOne Dental, Inc. ("SourceOne"), a new distributor, created a Dental Supplies distribution platform in partnership with the Texas Dental Association ("TDA"), planning to offer many of the same products offered by Defendants, at lower prices. The result-

ing “TDA Perks Supplies” online sales platform allowed TDA members to purchase Dental Supplies manufactured by many different manufacturers.

53. The TDA endorsement allowed SourceOne to secure contracts with a significant number of Dental Supplies manufacturers, which in turn enabled it to offer dentists the one-stop shopping convenience that only distributors such as Defendants had previously offered while charging prices that were substantially less than Defendants’ prices for similar products.

54. Encouraged by the initial success of the TDA website, SourceOne and other competitors planned to partner with other state dental associations and national organizations to develop similar distribution platforms. The nationwide expansion of online distribution platforms would have significantly increased competition in the distribution market, resulting in lower Dental Supplies prices for Plaintiff and Class members.

55. Building on their historic culture of cooperation and communication among them, and even though they were direct competitors, Defendants engaged in ongoing communications with each other over several months to reach an agreement on a collective response to the threat posed by SourceOne and other new competitors. For instance, Defendants frequently communicated with each other using cellphone, texting and other electronic and telephonic methods and in-person conversations—means of communication that are difficult to trace—to discuss boycotting strategies and reach anticompetitive agreements.

56. Pursuant to their joint strategy and contrary to their traditional practice, Defendants agreed to boycott and not attend the 2014 annual meeting of the TDA and not to do business with either SourceOne or manufacturers who supplied products to SourceOne.

57. Boycotting the TDA meeting was contrary to the economic interest of each of the Defendants individually, since at such meetings Defendants had historically made sales directly

to attendees and developed relationships with dentists through which Defendants could continue to make sales throughout the year.

58. Pursuant to their agreement, Defendants also contacted other distributors and manufacturers of Dental Supplies to pressure those entities to discontinue any relationships that ultimately supplied TDA Perks Supplies. These efforts were in large measure successful, causing TDA Perks Supplies to lose access to products to sell.

59. In April 2015, the Texas Attorney General filed a petition in Texas state court against Defendant Benco, in which the Attorney General alleged that in response to the October 2013 launch of TDA Perks Supplies, Defendant Benco had agreed with its competitors, as is alleged here, to boycott the 2014 TDA annual meeting, and to threaten boycotts of various Dental Supplies manufacturers who supported or supplied TDA Perks Supplies. Defendant Benco consented to a judgment and stipulated injunction the same day the Texas Attorney General filed the petition. Although Benco denied the allegations, it nevertheless paid \$300,000 in legal costs and fees, and agreed to substantial relief, including (a) refraining from a broad manner of unlawful conduct consistent with and responsive to the anticompetitive boycotting allegations, and (b) complete cooperation with and ongoing monitoring by the Texas Attorney General's office. A key component of Benco's required cooperation is a semiannual "log of all oral and written communications, relating in whole or in part to the distribution or sale of dental supplies in the United States" between Benco's agents and the agents of each of the other Defendants.¹

¹ See *Texas v. Benco Dental Supply Co.*, D-1-GN-15-001386 (Dist. Ct. Travis Cty. Petition and Agreed Final Judgment and Stipulated Inj. filed Apr. 9, 2015). Months later, SourceOne filed its own suit against Defendants concerning the same conduct at issue in the Texas Attorney General's petition. See *SourceOne Dental, Inc. v. Patterson Companies, Inc.*, 2:15-cv-05440-JMA-GRB (E.D.N.Y. Compl. filed Sept. 21, 2015).

2. Defendants Agreed to Pressure Manufacturers to Refrain From Doing Business With Competitors.

60. Many manufacturers of Dental Supplies rely upon distributors to purchase their products and resell them to the end-users, such as dentists and dental laboratories. Thus a substantial proportion of the manufacturers' total sales are made to Defendants. If Defendants were to stop selling products from one of these manufacturers, or if Defendants were to reduce their efforts to sell a manufacturer's products, that manufacturer would suffer significant financial losses. Thus, Defendants can wield significant economic power over such manufacturers.

61. Defendants conspired to exercise that power collectively to pressure and threaten manufacturers and other distributors to coerce them into discontinuing and refraining from supplying Dental Supplies to new lower-priced distributors. In furtherance of this conspiracy, Defendants threatened that if a manufacturer did business with a new lower-priced distributor, Defendants would not purchase and resell or would not actively promote that manufacturer's products.

62. Because Defendants collectively hold a dominant share of the Dental Supplies market, and because many manufacturers are thus beholden to Defendants, these threats were successful in coercing manufacturers to cease doing business with other distributors, such as SourceOne.

63. Notably, the relatively few manufacturers who did not rely on Defendants for a substantial portion of their revenues generally did not cease to do business with Defendants' competitors, such as SourceOne. These manufacturers were not as impacted by Defendants' boycotts and threats because their profitability was not dependent on sales to Defendants.

64. In a competitive market, it would contravene a single distributor's economic interest to boycott a Dental Supplies manufacturer unilaterally. A customer wishing to purchase

products of the boycotted manufacturer would simply purchase the products through a competing distributor. That competing distributor would, in turn, gain market share and profits at the expense of the distributor unilaterally conducting the manufacturer boycott. Accordingly, a manufacturer boycott of the type alleged here only makes economic sense if the entities engaging in the manufacturer boycott do so collectively, and by agreement.

65. In addition to Defendants' anticompetitive collective actions pressuring manufacturers not to deal with SourceOne and the TDA, another example of Defendants' concerted threats and pressuring of manufacturers is reflected in their conduct directed against their competitor, Archer and White Sales, Inc. ("Archer"). In a complaint filed in the United States District Court for the Eastern District of Texas in August 2012,² Archer asserted that Defendant Schein had engaged in similar actions targeting Archer. In its complaint, Archer alleged that Schein had agreed with its competitors, as alleged here, to pressure the American Dental Cooperative, Inc. to revoke the membership of Archer's sales agent, and to pressure Dental Supplies manufacturers to stop supporting and/or supplying Archer. As a result of that pressure, the membership was revoked and manufacturers stopped supplying Archer. Archer further alleged that Schein offered to cease the boycott if Archer would agree to fix Dental Supply prices.

3. Defendants Agreed to Pressure State Dental Associations to Refrain From Doing Business With Competitors, and to Boycott State Dental Associations That Endorsed, or Partnered With, Competitors.

66. Distributors of Dental Supplies, including Defendants, regularly send sales representatives to attend and participate in state dental association annual meetings and trade shows. State dental associations depend on the attendance of Dental Supplies distributors at their annual

² See *Archer and White Sales, Inc. v. Schein, Inc.*, 2:12-cv-00572-JRG-RSP (E.D. Tex. Compl. filed Aug. 31, 2012).

expos—especially major distributors like Defendants—because revenues from these shows account for a substantial portion of the dental associations’ annual incomes.

67. Defendants conspired to boycott the annual trade shows and meetings of state dental associations which did or were considering doing business with Defendants’ competitors, such as SourceOne. As part of the conspiracy alleged herein, Defendants also pressured Dental Supplies manufacturers and other distributors to join these boycotts.

68. In furtherance of this conspiracy, Defendants threatened to boycott the annual meetings and trade shows of the TDA, the Arizona Dental Association (“AZDA”); and the Louisiana Dental Association (“LDA”). Defendants not only threatened, but actually did boycott the annual meetings and trade shows of the TDA and the AZDA. In the face of Defendants’ threatened boycott, the LDA reversed its previous plan to endorse SourceOne’s online platform, and abandoned that plan.

69. Knowing of the Defendants’ successful boycotts of the TDA and AZDA, other state dental associations were deterred from partnering with new distributors.

70. Defendants’ boycotts of state dental associations that did business with new distributors were highly effective. State dental associations, including the LDA, were deterred from doing business with, and abandoned plans to endorse or partner with, Defendants’ competitors.

71. In a competitive market, a single distributor’s unilateral boycott of a state dental association annual meeting or trade show would contravene that distributor’s self-interest. Sending sales representatives to trade shows allows a distributor to promote its brand and market its services to thousands of state dental association members. In many cases, distributors that withdrew from trade shows to boycott a dental association lost significant security deposits. Thus, had Defendants not been acting jointly as a part of a conspiracy, it would have been contrary to

the economic interest of any single Defendant to have unilaterally boycotted state dental association trade shows.

D. The Market for Distribution of Dental Supplies in the United States Is Highly Susceptible to Anticompetitive Conspiracy.

72. The market for the distribution of Dental Supplies exhibits a number of characteristics that make it susceptible to an anticompetitive conspiracy among Dental Supplies distributors. These factors—for example, high concentration among firms in the market, barriers to entry caused by Defendants’ anticompetitive conduct, stable or constant demand, and a record of anti-trust inquiry—indicate the potential for successful collusion among Dental Supplies distributors.

1. The Dental Supplies Market Is Highly Concentrated.

73. Defendants’ combined market share has steadily increased over the past five years. Together, Defendants comprise well over 80 percent of the Dental Supplies distribution market.

74. The Herfindahl-Hirschman Index (“HHI”) is a measure of industry concentration that economists often use to quantify the degree of market concentration. The U.S. Department of Justice considers an HHI value higher than 2,500 to be a “highly concentrated” industry. The HHI for the market for Dental Supplies distribution is above 3,000.

75. A concentrated market makes it easier for distributors to coordinate behavior and more difficult for their customers to avoid the adverse effects of such collusive behavior.

2. The Market Has High Barriers to Entry.

76. High barriers to entry caused by Defendants’ anticompetitive conduct increase the likelihood that they can successfully continue to conspire to increase barriers to entry, thereby further restricting the ability of new low-cost Dental Supplies distributors to enter the market.

77. The market has certain chokepoints—such as the importance of state dental associations to the success of new distributors, and the market power of the Defendants over the manufacturers, that make manufacturers reliant upon the Defendants, collectively—that make the market susceptible to a Defendant-driven group boycott and joint effort to maintain supra-competitive prices.

3. Aggregate Demand is Relatively Constant.

78. In a competitive market, firms faced with static or declining demand conditions will attempt to increase their sales by lowering prices in order to take market share from competitors. For this reason, firms faced with static or declining demand have an incentive to collude to avoid such price competition. Rising or stagnant prices and high profit margins with constant or declining demand are inconsistent with a competitive market in which demand remains relatively constant.

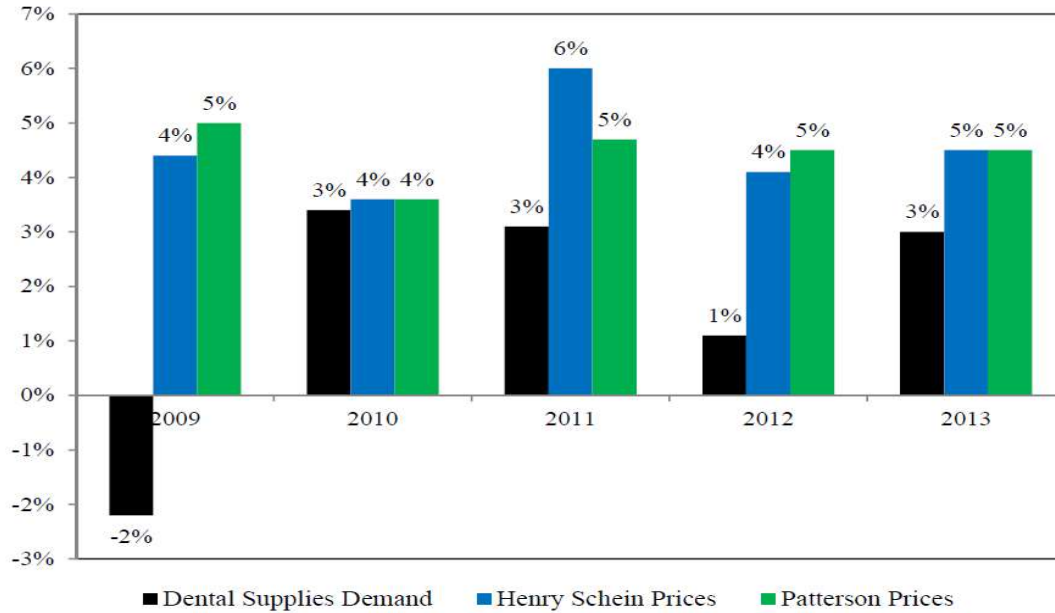
79. Aggregate demand among purchasers of Dental Supplies has been relatively constant over the past eight years.

80. Demand for Dental Supplies is a function of the demand for dental services. Because many dental patients are covered by insurance for routine dental care, demand for such care tends to remain constant. As a result, demand for Dental Supplies also tends to remain constant.

81. Nevertheless, Defendants have consistently increased their prices during that period of time.

4. Changes in Demand for Dental Supplies versus Distributor List Prices.

82. As shown in the chart below, Defendants Schein and Patterson have increased list prices for Dental Supplies every year since 2009, even in the face of the 2009 economic recession that caused demand for Dental Supplies to fall by over 2 percent.



83. Defendants are highly profitable. Defendant Patterson, for example, had profit margins of approximately 11% in 2010 and 2011. Profit margins among distributors in related health care product distribution markets are significantly lower. For example, profit margins for the “big three” distributors of pharmaceuticals in the United States (McKesson, Cardinal Health, and AmerisourceBergen) typically hover between 0.2 and 1.5 percent. The most recent public data for the “big three” show quarterly profit margins between 1.03 and 1.37 percent.

84. Rising prices in the face of declining or even constant demand are consistent with an industry in which sellers are conspiring to exert market power. The Dental Supplies distribution market has experienced consistently increasing list prices while demand has either declined or stagnated.

E. Investigations of, and Actions Against, Defendants

85. In addition to the antitrust enforcement action brought by the State of Texas against Defendant Benco in 2015 and the private actions brought by SourceOne and Archer previously mentioned, the Arizona Attorney General initiated an investigation of Benco and other yet-unnamed Dental Supplies distributors for anticompetitive conduct in violation of Arizona

law. In October 2014, the Arizona Attorney General issued Civil Investigative Demands requiring Benco to produce documents and electronic materials relating to the investigation, and in response thereto Benco has produced documents. That investigation is ongoing.

86. After the Texas and Arizona Attorneys General launched investigations of Defendants, the U.S. Federal Trade Commission opened an investigation of Benco and other unnamed Dental Supplies distributors. That investigation is ongoing.

87. Notwithstanding the government investigations and private enforcement actions, Defendants' anticompetitive conduct and its consequences remain unabated.

F. Harm to Competition Resulting from Defendants' Conspiracy

88. An estimated 75 percent of all purchases of Dental Supplies are made from distributors, and single-dentist dental practices account for the bulk of these purchases. Because most dentists and other purchasers of Dental Supplies cannot expend the resources necessary to coordinate the purchasing of all of their required Dental Supplies directly from hundreds of different manufacturers, distributors like Defendants can resell products and equipment at significant profit margins.

89. The anticompetitive conduct described in this Complaint maintained and increased Defendants' collective market power, enabling Defendants to maintain prices above competitive levels, to the detriment of Plaintiff and the Class. Plaintiff and the Class have paid artificially inflated prices for Dental Supplies, and this harm constitutes cognizable antitrust injury and harm to competition under the antitrust laws.

90. The anticompetitive actions alleged in this Complaint caused other competitive harms as well. As a result of the successful boycotts of new entrants, other potential competitors were discouraged from partnering with manufacturers and/or state dental associations to compete with Defendants.

91. Thus, the anticompetitive effects of the conspiracy alleged herein include, among other things: artificially inflated prices charged to Plaintiff and the Class, reduced competition in the Dental Supplies distribution market, reduced consumer choice, and harm to consumer welfare generally.

92. Because Defendants' conduct is a *per se* violation of Sherman Act § 1, any supposed procompetitive justifications of their conduct are irrelevant. Alternatively, under a "rule of reason" analysis, there are no legitimate procompetitive justifications for the anticompetitive conduct alleged in this Complaint, or for any aspect of Defendants' conspiracy standing alone, and even if there were, there are less restrictive means of achieving those putative procompetitive effects. To the extent that Defendants' anticompetitive conduct or any aspect of their conspiracy has any cognizable procompetitive effects, they are substantially outweighed by the anticompetitive effects.

G. Antitrust Injuries Suffered By Plaintiff and Class Members

93. As a result of Defendants' anticompetitive conduct alleged herein, during the Class Period, Plaintiff and Class members paid Defendants prices for Dental Supplies that were inflated above competitive levels.

94. If new low-cost distributors had not been unlawfully prevented by Defendants' collusive actions from partnering with state dental associations and/or Dental Supplies manufacturers, such distributors and others would have emerged as viable nationwide competitors to Defendants, resulting in greater competition and substantially lower prices for Dental Supplies, and Plaintiff and the members of the Class would have paid substantially less for Dental Supplies during and throughout the Class Period.

95. Because Defendants were successful in unlawfully preventing new low-cost distributors and other competitors from partnering with state dental associations and Dental Sup-

plies manufacturers to compete with Defendants, competition in the market was substantially harmed, and Plaintiff and Class members have sustained, are sustaining, and will, absent injunctive relief, continue to sustain substantial injury to their business and property in the form of artificially inflated prices paid to Defendants. The full amount of such damages will be calculated after discovery and upon proof at trial.

96. Injury to Plaintiff and Class members was a direct and foreseeable result of Defendants' anticompetitive conduct. Defendants' group boycotts foreclosed new entrant competitors, thereby suppressing competition, enhancing market power, and enabling Defendants to charge artificially inflated prices for Dental Supplies sold to dentists and dental laboratories.

97. Although the conduct causing antitrust injury to Plaintiff and the Class is the same conduct that has injured Defendants' competitors, the damages caused to Plaintiff and the Class in the form of artificially inflated higher prices is distinct from, and not duplicative of, any damages caused to Defendants' competitors in the form of lost profits and business opportunities.

98. Defendants' anticompetitive conduct is continuing, and so are the overcharges suffered by Plaintiff and the Class as a result of Defendants' conduct. Accordingly, Plaintiff and the Class are threatened with continuing loss and harm by Defendants' ongoing conduct.

CLAIMS FOR RELIEF

COUNT I

DAMAGES FOR VIOLATION OF SECTION 1 OF THE SHERMAN ACT

99. Plaintiff incorporates by reference all preceding allegations.

100. As set forth above, Defendants entered into agreements with one another to boycott and threaten to boycott state dental associations, Dental Supplies distributors, and Dental

Supplies manufacturers that were doing business or considering doing business with new low-cost distributors and other competitors.

101. Each Defendant has committed at least one overt act—such as boycotting and/or threatening to boycott entities that did business with competitors—to further the conspiracy alleged herein.

102. Through their collusive conduct, Defendants have exercised their dominant position in the relevant market to deny competitors of the ability to compete effectively, thereby making the market for distribution of Dental Supplies less competitive than it otherwise would be.

103. Defendants' anticompetitive conduct and agreements constitute horizontal price maintenance and group boycott, *per se* violations of Section 1 of the Sherman Act. In the alternative, Defendants have violated Sherman Act § 1 under "rule of reason" standards.

104. The effect of Defendants' conduct has been to reduce available distributors, and hence supply, of Dental Supplies distribution, with the result of maintaining prices at, or elevating prices to, higher than competitive levels.

105. The injury to Plaintiff and the Class consists of paying such supra-competitive prices for Dental Supplies.

106. Plaintiff and the Class have thus been injured in their business or property by Defendants' antitrust violations.

107. This injury is of the type that the antitrust laws were designed to prevent, and flows directly from Defendants' unlawful conduct.

108. Accordingly, Plaintiff and the Class have suffered antitrust injury to the extent of the inflated prices they have paid Defendants for Dental Supplies.

COUNT II

**INJUNCTIVE RELIEF FOR THREATENED LOSS FROM
VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

109. Plaintiff incorporates by reference all preceding allegations.

110. Plaintiff and the Class are threatened with loss or damage by the continuing effects of Defendants' violation of Sherman Act § 1.

111. Absent injunctive relief, Plaintiff and the Class will continue to be threatened with loss or damage by the effects of Defendants' violation of Sherman Act § 1.

112. Plaintiff and the Class have no adequate remedy at law.

113. Accordingly, the Court should enjoin Defendants' from any conduct that would perpetuate their violation of Sherman Act § 1 or the effects thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the Class, prays that the Court enter judgment in its favor and in favor of the Class against the Defendants and each of them, jointly and severally, as follows:

- A. Determining that this action may be maintained as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and (3);
- B. Awarding the Class three-fold the damages to be determined at trial, plus interest in accordance with law;
- C. Enjoining Defendants from further violations of Section 1 of the Sherman Act and from any conduct the perpetuates the effects of their prior violations thereof;
- D. Awarding Plaintiff and the Class their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and

- E. Affording such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff, on behalf of himself and the Class, demands a jury trial on all issues so triable.

Dated: February 25, 2016

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