

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

<b>ROBERT W. GRODNER, DDS, on behalf of himself and all others similarly situated,</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. _____</b>
	)	
<b>v.</b>	)	<b>CLASS ACTION COMPLAINT</b>
	)	
<b>PATTERSON COMPANIES, INC., HENRY SCHEIN, INC., and BENCO DENTAL SUPPLY COMPANY,</b>	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
<b>Defendants.</b>	)	
	)	

Plaintiff Robert W. Grodner, DDS (“Plaintiff”), on behalf of himself and all others similarly situated who have purchased dental supplies (defined below) directly from one or more of Defendants Patterson Companies, Inc., Henry Schein, Inc., and Benco Dental Supply Company (collectively, “Defendants”), brings this action for treble damages and injunctive relief under the federal antitrust laws. Plaintiff alleges the following based upon personal knowledge as to matters relating to himself and upon information and belief as to all other matters:

**I. INTRODUCTION**

1. This case is about Defendants, the dominant firms in the market, acting in concert to eliminate competition instead of competing against each other and their upstart competitors on the merits. This coordinated conduct has enabled Defendants to charge their customers, dental offices and dental laboratories (members of the Class, as defined below), supra-competitive prices. This action seeks to put a stop to this misconduct and to provide monetary compensation to the members of the Class for the harm they have suffered and continue to suffer.

2. Defendants are the three dominant distributors of dental supplies and dental equipment (collectively, “dental supplies”) in the United States. Defendants foreclosed competition in the market for the distribution of dental supplies and dental equipment (the “dental supplies market”) in the United States by engaging in an anticompetitive conspiracy to boycott competitor dental supplies distributors and other entities that do business with those competitors. This misconduct permitted Defendants to maintain their collective market power and to overcharge their customers for dental supplies.

3. Defendants—Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company—are the three largest distributors of dental supplies in the country. Collectively, and at all relevant times, they have possessed between 80% and 90% of all sales in the domestic dental supplies market.

4. Plaintiff—like all members of the Class he seeks to represent—purchased dental supplies directly from one or more Defendants during the Class Period (defined below). These direct purchasers have paid artificially inflated prices for these products because of the misconduct described herein. The Class totals over 135,000 dental and orthodontic practices (“dental practices”) in the United States, most of which are small offices employing a single dental practitioner along with staff. The Class also includes about 7,000 dental laboratories that purchase dental supplies directly from Defendants.

5. Defendants unlawfully abused their collective market power by foreclosing competition through a multi-faceted conspiracy. Pursuant to this conspiracy, Defendants: (a) excluded or impaired the entry of actual and potential competitors; (b) engaged in a group boycott of competitors; and (c) engaged in a group boycott of entities that did or planned to do business with competitors.

6. Defendants' scheme has worked. As a result of their conspiracy, Defendants have maintained and increased entry barriers for competitors in the dental supplies market. Because these competitors have been unable to meaningfully penetrate Defendants' market dominance, these competitors' efforts to increase their market presence have languished, and Defendants have been able to charge supra-competitive prices to members of the Class.

7. Not surprisingly, Defendants' misconduct has given rise to antitrust lawsuits filed by competitors as well as to multiple governmental investigations.

8. One competitor, SourceOne Dental, Inc. ("SourceOne"), created an innovative way for class members to bypass the costly and inefficient distribution model that Defendants have perpetuated for years. In particular, SourceOne established an online marketplace where Class members could purchase their dental supply needs directly from the manufacturers at significantly cheaper prices than what Defendants offer. But due to Defendants' decision to not compete against SourceOne on the merits, and instead engage in an anticompetitive conspiracy targeting it and other actual and potential competitors, SourceOne's efforts to gain market share have floundered. SourceOne recently filed a federal lawsuit against Defendants challenging these practices; it is pending in this District, and is titled *SourceOne Dental, Inc. v. Patterson Companies, Inc., et al.*, No. 15-cv-5440 (E.D.N.Y. Sept. 21, 2015) (Azrack, J.).

9. Another competitor, Archer and White Sales, Inc. ("Archer"), a lower-priced distributor of dental supplies, filed an antitrust complaint against certain Defendants in the United States District Court for the Eastern District of Texas in August 2012. That case, which is proceeding in arbitration, alleges various forms of misconduct in which certain Defendants have engaged to protect themselves from legitimate competition. That misconduct bears strong similarities to some of the misconduct alleged here. In that case, Archer alleges that certain

Defendants conspired to impede Archer's growth in certain parts of the country, engaged in bid-rigging, obstructed Archer's membership in a national dental cooperative, and implemented boycotts against Archer by threatening to stop buying equipment from certain suppliers and to cease selling equipment from certain manufacturers.

10. The attorneys general of at least two states have initiated their own investigations into this misconduct. The Texas Attorney General recently launched an investigation, and in April 2015, this resulted in a consent judgment against Defendant Benco. This judgment requires Benco to cooperate with the Texas Attorney General's ongoing investigation of its co-Defendants, Henry Schein and Patterson, for their alleged participation in the conspiracy described herein.

11. The Arizona Attorney General also has launched an investigation into the same misconduct, and that investigation is ongoing as well.

12. The Federal Trade Commission ("FTC"), which is tasked with enforcing the nation's antitrust laws and protecting the interests of consumers, also has launched an investigation into Defendants' conduct. That investigation is ongoing.

13. Despite the scrutiny on multiple fronts that Defendants are now and have been facing, their conduct has not abated. As a result, they continue to charge Plaintiff and members of the Class supra-competitive prices for dental supplies.

14. The anticompetitive conduct alleged herein constitutes an unreasonable restraint of trade that violates Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Defendants' misconduct has had the purpose and effect of permitting them to maintain and enhance their stranglehold on the market and to thus charge supra-competitive prices to members of the Class, including Plaintiff, for dental supplies.

## **II. PARTIES**

### **A. PLAINTIFF**

15. Plaintiff Robert W. Grodner, DDS (“Plaintiff”) owns and operates a private dental practice located in Albuquerque, New Mexico. During the Class Period, Plaintiff directly purchased dental supplies from one or more Defendants and was harmed by paying inflated prices for those products as a result of the misconduct alleged herein.

### **B. DEFENDANTS**

16. Defendant Henry Schein, Inc. (“Henry Schein”) is the largest distributor of dental supplies in the United States. Henry Schein is incorporated in Delaware, and its principal place of business is in Melville, Long Island, New York. It sells dental supplies to dental practices and laboratories nationwide, including those in this District.

17. Defendant Patterson Companies, Inc. (“Patterson”) is the second largest distributor of dental supplies in the United States. Patterson is incorporated in Minnesota, and its principal place of business is in St. Paul, Minnesota. It sells dental supplies to dental practices and laboratories nationwide, including those in this District.

18. Benco Dental Supply Co. Inc. (“Benco”) is the third largest distributor of dental supplies in the United States. Benco is incorporated in Delaware, and its principal place of business is in Pittston, Pennsylvania. It sells dental supplies to dental practices and laboratories nationwide, including those in this District.

### **C. CO-CONSPIRATORS AND AGENTS**

19. Various other individuals, firms and corporations, not named as defendants herein, may have participated as co-conspirators with Defendants and performed acts and made

statements in furtherance of the conspiracy. Plaintiff reserves the right to name some or all of those individuals or entities as defendants.

20. Whenever this Complaint references an act, deed or transaction of any corporation or company, the allegation means that that entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business.

### **III. JURISDICTION AND VENUE**

21. The claims alleged in this Complaint arise under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and Plaintiff seeks treble damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15(a). Plaintiff also seeks injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1337(a).

22. Venue is proper in this District under 28 U.S.C. § 1391(b) and 15 U.S.C. § 22 because (a) Defendants reside, transact business, committed an illegal or tortious act, have an agent, or are found in this District, and (b) a substantial portion of the events described below have been carried out in this District.

### **IV. TRADE AND COMMERCE**

23. The activities of Defendants and their co-conspirators, as described herein, were within the flow of and substantially affected interstate commerce.

24. During the Class Period, Defendants and their co-conspirators sold substantial quantities of dental supplies in a continuous and uninterrupted flow of interstate commerce, including through and into this District.

25. Defendants' conduct caused direct, substantial, and reasonably foreseeable and intended anticompetitive effects upon interstate commerce within the United States.

## **V. FACTUAL ALLEGATIONS**

### **A. THE DENTAL SUPPLIES INDUSTRY**

26. Dental supplies are items that dental practices and dental laboratories purchase and use in their daily business. Examples of dental supplies that such entities frequently purchase include acrylics, alloys and amalgam, anesthetics, burs, cements and liners, disposable paper and cotton suppliers, endodontic products, hand pieces, impression materials, instruments, orthodontics, preventative products, retraction materials, surgical products, sterilization products, waxes, and x-ray films. These entities also regularly purchase specialty dental equipment, including dental chairs, high-tech equipment like dental CAD/CAM systems, and imaging devices.

27. The amount of money that dental offices and dental laboratories spend on dental supplies is quite substantial. On average, dental practices spend between 5% and 7% of their annual income on dental suppliers.

28. A substantial majority of dental supplies are sold by manufacturers to distributors such as Defendants. Distributors occupy an intermediate position in the supply chain, as they resell these products to end-users, namely dental practices and laboratories. These entities typically require many different types of dental supplies made by many different manufacturers, so they typically choose to purchase them from full line distributors, *i.e.*, distributors that offer a wide range of products from numerous manufacturers. These full line distributors serve as a "one-stop-shop," which provides important benefits to customers. Buying these supplies from a single vendor significantly reduces customers' transaction costs, as the purchases of dental

supplies are characterized by regular, repeat purchases, each of which is of relatively small value. Purchasing dental supplies from wide range, or full line, suppliers also offers customers convenience and service characteristics that set those suppliers apart from other sellers, including an efficient way to obtain dental supplies through centralized warehousing, delivery, and billing services that enable customers to avoid carrying large inventories, dealing with numerous vendors, and negotiating numerous transactions. Because customers strongly prefer to buy dental supplies from a single supplier, firms selling only a partial line of supplies will not compete effectively with full line firms. These full line distributors are thus able to and do charge customers appreciable amounts for this service.

29. The relatively high price that Defendants traditionally have charged customers for their services has prompted other distributors and competitors to enter the market. These new entrants have the opportunity to become lower-cost distributors for manufacturers (by paying manufacturers more for their supplies than Defendants have) as well as lower-cost suppliers to customers (by charging them less for these supplies than Defendants). They are able to do this yet still make money by operating more efficiently than Defendants and living with lower, but still positive, profit margins than Defendants.

30. To become meaningful competitors to Defendants, new competitors must be able to do several things. *First*, they must be able to provide a full line, or a wide range, of supplies from the more than 300 manufacturers of those supplies. *Second*, they must be able to buy supplies in large enough volumes and at low enough prices to compete with competitor distributors, including Defendants. *Third*, they must be able to position themselves to offer dental supplies to a large number of customers. They must possess sufficient volumes of



supplies, and they must possess a sizeable roster of customers to purchase those supplies, for their businesses to achieve economies of scale that will enable them to succeed.

31. State dental associations play a pivotal role in the ability of new distributors to connect with, and obtain, a critical mass of new customers for their business. These associations, which are voluntary in nature and comprised of dentists, do not themselves buy or sell dental supplies. Their significance for present purposes is that they can help facilitate the entry of new distributors by endorsing or partnering with distributors that they perceive to provide benefits to their membership. Consequently, these associations serve an important “gatekeeper” role in supporting new entrants. By the same token, Defendants have discovered that they can pressure these associations, through group boycotts, to frustrate or impede the entry of new entrants.

32. For years, Defendants have thwarted the entry of lower-cost distributors despite the interest of state dental associations in sponsoring and partnering with these newcomers. Defendants have largely succeeded in doing so by engaging in the anticompetitive boycotts described herein. Defendants have refused to do business with any new competitor and have frustrated other entities’ attempts to do business with actual and potential competitors.

33. The successful entry of a new competitor in the dental supplies market would cause prices to decrease. This increased competition, in the form of lower prices to customers, would substantially threaten Defendants’ market dominance, and thus ability to continue to charge supra-competitive prices. As discussed below, Defendants responded to the threat of new entrants by colluding to boycott and threaten entities in order to prevent the successful entry of new competitors into the dental supplies market.

## **B. THE RELEVANT MARKET**

34. Because Defendants' anticompetitive conduct constitutes a horizontal group boycott that is a *per se* violation of Section 1 of the Sherman Antitrust Act, Plaintiff does not need to define a relevant market.

35. If the Court, however, determines that Plaintiffs' Sherman Antitrust Act claim cannot proceed under a *per se* theory of liability, but instead must be analyzed under the "rule of reason" test, then Plaintiff defines the relevant market as follows.

36. The relevant market is the United States market for distributing and selling a wide range, or full line, of dental supplies, including offering direct purchasers the convenience of purchasing a variety of suppliers from a single distributor.

37. As discussed throughout, more than 300 dental supply manufacturers exist, but most if not all of the more than 140,000 Class members are small companies or individuals who lack the ability to purchase their supplies directly from hundreds of manufacturers. That is why these customers use distributors, like Defendants, who can meet most or all of their needs for supplies in one fell swoop.

38. For members of the Class, there are no reasonably available substitutes for distributors of a wide range, or full line, of dental supplies. Even if some individual manufacturers do sell supplies to dental offices or laboratories directly, they do not carry a wide range of supplies, and it would not be economically efficient for Class members to establish, let alone maintain, relationships with hundreds of manufacturers.

39. At all relevant times, Defendants have possessed market power, *i.e.*, the ability to profitably increase prices significantly above competitive levels without sacrificing sales, as shown by their unusually high profit margins in what should be, under competitive

circumstances, a low margin industry. A small but significant non-transitory price increase by Defendants would not have caused them to lose a significant amount of sales.

40. Suppliers possessing less than a wide range, or full line, of dental supplies do not meaningfully temper Defendants' market, and thus pricing, power. And products sold by such suppliers do not exhibit significant positive cross-price elasticity of demand concerning products sold by Defendants.

41. Defendants sell dental supplies at prices considerably in excess of their marginal costs and the competitive price. They therefore have experienced artificially high profit margins, particularly as compared to distributors of other kinds of medical products, like prescription pharmaceuticals.

42. An alternative relevant market is the United States market for the distribution and sale of dental supplies.

43. Defendants collectively possess substantial market power in the relevant market or markets, however defined.

### **C. DEFENDANTS' ANTICOMPETITIVE CONDUCT**

44. Defendants have abused their collective market power by privately communicating and entering into an agreement to engage in an anticompetitive scheme to foreclose and impede competition, maintain and enhance their market power, and artificially raise prices of dental supplies above competitive levels.

45. As the Texas Attorney General alleged in a complaint recently filed against one of the Defendants (and which is discussed in more detail below):

- Benco and its competitor distributors engaged in ongoing communications over several months about [a new low-cost distributor]. They shared information about market players' reactions to the new firm's entry, they

collectively developed a response, and they provided reassurances to market participants about the collective response.

- Benco and its competitor distributors (1) agreed to break with their traditional pattern and boycott the annual TDA [Texas Dental Association] meeting held in May 2014 because they perceived that [a new low-cost distributor] had positioned itself as a competitor to the traditional distributors, and (2) agreed to pressure other distributors and manufacturers to discontinue supplying [the new low-cost distributor] and/or end any relationships with manufacturers or distributors that ultimately supplied [the new low-cost distributor] in order to stifle the competition provided by the new TDA offering.
- Benco and its competitor distributors did not attend the annual TDA meeting, despite the economic gains Benco and other distributors historically derived from the event.
- Benco and its competitor distributors contacted other distributors and manufacturers to pressure those entities to discontinue any relationships that ultimately supplied [the new low-cost distributor]. As a result of this pressure, other distributors and manufacturers discontinued such relationships, causing [the new low-cost distributor] to lose access to products.

The new low-cost distributor referenced above was SourceOne, and these and related anticompetitive acts taken by Defendants as part of their conspiracy are described below.

46. In 2013, a new distributor, SourceOne, created an innovative online dental supplies distribution platform in partnership with the Texas Dental Association (“TDA”). The platform was to offer many of the same products offered by Defendants, but at lower prices. In addition, the online platform, called “TDA Perks Supplies,” allowed TDA members to buy dental supplies directly from many different manufacturers.

47. SourceOne reached an agreement with several manufacturers to offer dental suppliers to TDA members at prices that were significantly less than Defendants’ prices for comparable products. The TDA endorsement allowed SourceOne to secure contracts with a significant number of dental supplies manufacturers. This, in turn, allowed it to offer customers

the “one-stop shopping” convenience previously offered only by wide range, or full line, distributors such as Defendants.

48. Bolstered by the initial success of the TDA Perks Supplies site, SourceOne and other competitors planned to partner with other state dental associations and national organizations to develop similar distribution platforms. This nationwide expansion of online platforms would have significantly increased competition in the dental supplies market, and thus would have resulted in lower prices for suppliers across-the-board.

49. Defendants, however, had other plans. Although they were direct competitors, they communicated regularly with each other in order to reach an agreement on a collective response to the threat posed by their new competitors. Defendants’ employees and representatives frequently communicated with each other during in-person meetings, via e-mail and texts, and through telephone calls. Defendants’ employees’ improper communications were facilitated by their prior familiarity with one another; many of these employees previously worked at another Defendant, and these overlapping business and personal relationships assisted the sharing of competitively sensitive information and furthered the conspiracy.

50. Defendants ultimately reached an agreement to impede the progress of new competitors through unlawful threats and boycotts of competitors, such as SourceOne, and entities that dealt with competitors, such as state dental associations and manufacturers who supplied these competitors with dental supplies.

51. Because of this misconduct, SourceOne filed a federal lawsuit against Defendants challenging these practices late last year. This action is pending in this District, and is titled *SourceOne Dental, Inc. v. Patterson Companies, Inc., et al.*, No. 15-cv-5440 (E.D.N.Y. Sept. 21, 2015) (Azrack, J.).

52. Defendants' conspiracy included the following elements, among others.

**1. Defendants Pressured Manufacturers to Not Do Business with Competitors.**

53. Defendants conspired to collectively pressure and threaten manufacturers and other distributors to stop and refrain from supplying new lower-priced distributors with dental supplies. In furtherance of this scheme, Defendants threatened that if manufacturers did business with these distributors, Defendants would not sell or would not actively promote the manufacturers' products.

54. Many dental supplies manufacturers make substantial portions of their total sales through Defendants. (This is not surprising, given that Defendants collectively possess an overwhelming share of the dental supplies market.) These manufacturers substantially rely on Defendants to market and resell their products to dental offices and laboratories. If Defendants were to stop reselling the products of a manufacturer, or if Defendants were to reduce their efforts to sell a manufacturer's products, then that manufacturer would suffer serious financial repercussions.

55. Due to Defendants' collective market dominance and the reliance that many manufacturers have for Defendants' services, Defendants' threats succeeded in coercing many manufacturers to stop doing business with SourceOne and other new competitors.

56. Manufacturers that did not rely on Defendants for a substantial portion of their business generally did not cease doing business with SourceOne and the other new competitors. This is because these manufacturers' profitability was not dependent on sales to Defendants, as opposed to those who sold numerous products to Defendants and thus had to accede to Defendants' demands in order to stave off financial hardship.

57. Defendants' acts of threatening manufacturers were against each Defendant's individual economic self-interest. In other words, but for the agreement that all Defendants would take the same action, it would have been financially injurious to any given Defendant if it were to have gone this route alone. In a competitive market, a lone distributor's boycott of a dental supplies manufacturer would simply result in that manufacturer turning to that distributor's competitors. And the boycotting distributor would lose market share, revenue, and profits to its competitors in the process. Consequently, a boycott of the type described here would only occur, and would only make economic sense, if those entities engaging in the boycott were doing so together and as part of an agreement.

**2. Defendants Pressured State Dental Associations to Not Do Business with Competitors, and Boycotted Those Associations That Did So.**

58. Manufacturers were not the only targets of Defendants. Defendants also conspired to boycott the annual trade shows and meetings of state dental associations that were doing business with Source One. They also conspired to threaten to boycott state dental associations that were considering doing business with SourceOne and other competitors. Defendants also pressured dental supplies manufacturers and other distributors to join these boycotts.

59. Dental supplies distributors, including Defendants, regularly send sales representatives to attend state dental association annual meetings and trade shows. The associations depend on the attendance of such distributors at these events, particularly major distributors like Defendants, because revenues from these events make up a substantial portion of the associations' annual incomes.

60. In furtherance of the conspiracy, Defendants threatened to boycott the annual meetings and trade shows of the TDA as well as the Arizona Dental Association ("AZDA") and

the Louisiana Dental Association (“LDA”). Defendants carried their threats to the TDA and the AZDA one step further: they actually did boycott these associations’ annual meetings and trade shows. Defendants did not need to do so with respect to the LDA, but only because the LDA, which previously had planned to endorse SourceOne’s online platform, reversed course and abandoned those plans in the face of Defendants’ threats.

61. Defendants’ actions towards the three state dental associations discussed above had a cascade effect on other state dental associations across the country. With knowledge of Defendants’ successful boycotts of the TDA and AZDA events, other state dental associations were deterred from working with these new competitors.

62. Defendants’ acts of threatening to and actually boycotting state dental association events were against each Defendant’s individual economic self-interest. Sending representatives to trade shows and meetings allows a distributor to promote its brand and tout its services and abilities to thousands of state dental association members, *i.e.*, thousands of potential customers. If only one Defendant chose not to attend these important business-generating event, it would lose significant business opportunities and sales to its co-Defendants who did choose to do so. Furthermore, in many cases, distributors that withdrew from the shows lost substantial security depositions. Consequently, if Defendants had not been acting together and in agreement, it would have made no economic sense for any individual Defendant to have unilaterally boycotted these events.

### **3. Defendants’ Anticompetitive Conduct Has Been Ongoing.**

63. The instant allegations bear strong similarities to other anticompetitive conduct that Defendants have taken in the recent past to protect their market dominance in the dental supplies market.



64. In August 2012, Archer, a lower-priced distributor of dental supplies, filed an antitrust case in the United States District Court for the Eastern District of Texas alleging that certain Defendants engaged in anticompetitive conduct, including: (a) conspiring to thwart Archer's growth in certain areas of the nation; (b) participating in a price-fixing conspiracy by agreeing not to submit competitive bids against horizontal competitors; (c) blocking Archer's membership in the American Dental Cooperative, an organization tasked with aiding smaller companies in competing against large national dental supplies distributors such as Defendants; and (d) organizing boycotts against Archer by threatening to cease buying equipment from certain suppliers and to cease selling equipment from certain manufacturers.

65. That case is ongoing and is proceeding in arbitration.

#### **D. THE DOMESTIC DENTAL SUPPLIES MARKET IS HIGHLY SUSCEPTIBLE TO COLLUSION**

66. The dental supplies market contains certain characteristics that increase the likelihood that it would be susceptible to a successful antitrust conspiracy among distributors. They are discussed below.

##### **1. The Market is Highly Concentrated.**

67. A concentrated market share makes it easier for firms to coordinate behavior and makes it more difficult for their customers to avoid the adverse effects of such collusion.

68. Defendants' collective market share steadily has increased over the past five years. At all relevant times, Defendants have possessed between 80% and 90% of the United States dental supplies market.

69. Defendants have a nationwide presence. Most of their distributor competitors, however, are local and regional entities with limited service areas. In light of Defendants'

misconduct, their competitors have been unable to establish a legitimate nationwide presence that could exert downward pressure on Defendants' pricing.

70. The Herfindahl-Hirschman Index ("HHI") measures industry concentration. Economists frequently utilize this index to measure the degree of concentration in a given market. The United States Department of Justice considers an HHI value higher than 2,500 to evidence a "highly concentrated" market. The dental supplies market has an HHI over 3,000.

## **2. The Market Possesses High Entry Barriers.**

71. High barriers to entry increase the market's susceptibility to a coordinated effort by the largest suppliers in the industry to maintain supra-competitive prices. This is because customers have no legitimate competitive outlets to which to turn to avoid the effects of the entrenched suppliers' supra-competitive pricing.

72. The dental supplies market has certain pressure points, like the prominence and importance of state dental associations to the success of new distributors and the market power of Defendants over manufacturers that make them reliant on Defendants, which collectively make it susceptible to Defendants' group boycott.

73. The already high entry barriers in this market have been made even higher due to Defendants' misconduct, and thus further increase the ability of Defendants to implement a successful group boycott of the type alleged here.

74. These entry barriers increase the market's susceptibility to a coordinated effort by Defendants to maintain artificially high prices.

## **3. Demand Has Been Relatively Constant.**

75. In a competitive market, firms presented with constant or declining demand will try to boost sales by lowering prices and take market share from competitors. Accordingly, firms

faced with such demand conditions have a greater incentive to conspire to avoid price competition. Level or rising prices and high profit margins, paired with constant or declining demand, are inconsistent with a competitive market. These indicia are consistent with firms conspiring to exert market power.

76. Because demand for dental supplies is a function of the demand for dental services, and many privately insured individuals receive routine dental care coverage, demand for dental supplies among dental practices is consistent.

77. Although aggregate demand among dental supplies purchasers has been relatively constant over the past eight years, Defendants nonetheless have consistently raised prices during that period.

78. Defendants Henry Schein and Patterson have raised list prices for dental supplies every year since 2005, even in 2009 (the worst financial year of the Great Recession), when demand for dental supplies fell by more than 2%.

79. Defendants are highly profitable. Indeed, Patterson obtained profit margins as high as 11% in 2010 and 2011. Comparatively, profit margins among distributors in related health care products markets, such as prescription pharmaceuticals, are much lower. For instance, the three largest pharmaceutical distributors—AmerisourceBergen, Cardinal, and McKesson—typically maintain profit margins of between 0.2% and 1.5%, with the most recent publicly available data indicating quarterly profit margins for these companies between 1.03% and 1.37%.

#### **E. GOVERNMENTAL INVESTIGATIONS**

80. State and federal governmental entities are investigating Defendants for their anticompetitive conduct.

### **1. Texas Investigation**

81. In 2014, the Texas Attorney General began investigating Defendants for anticompetitive conduct in violation of Texas antitrust statutes. On April 9, 2015, the Texas Attorney General filed a complaint against Defendant Benco, alleging that Benco conspired with other distributors to boycott the 2014 TDA annual meeting because of TDA's partnership with SourceOne to form TDA Perks Suppliers, and that Benco and other distributors pressured manufacturers and distributors to stop doing business with SourceOne.

82. The allegations in that complaint, discussed above, comprise much of the same anticompetitive conduct alleged here.

83. The same day the complaint was filed, the Texas Attorney General and Benco agreed to a consent judgment. That judgment required Benco to reimburse the Texas Attorney General \$300,000 for costs and fees, and it also required Benco to cooperate in the Attorney General's ongoing investigation of other distributors.

### **2. Arizona Investigation**

84. Also in 2014, the Arizona Attorney General initiated an investigation against Benco and other presently unknown dental supplies distributors for anticompetitive conduct in violation of Arizona law.

85. In October 2014, the Arizona Attorney General issued Civil Investigative Demands that required Benco to produce documents and electronically stored information relating to the investigation. Benco has since produced responsive documents and information. This investigation, like the Texas investigation, is ongoing.

### **3. Federal Investigation**

86. Subsequent to the launches of the Texas and Arizona investigations, the FTC initiated its own investigation of Benco and other presently unnamed dental supplies distributors. This investigation is ongoing.

### **VI. EFFECTS OF THE CONSPIRACY**

87. The existence of multiple governmental investigations and competitor lawsuits unfortunately has not deterred Defendants from continuing to engage in the anticompetitive conduct alleged in this complaint. Nor have they remedied the harmful effects of Defendants' misconduct.

88. The anticompetitive conduct alleged herein maintained and increased Defendants' collective market power and enabled them to maintain prices at supra-competitive levels. This conduct injured Plaintiff and the other Class members because they paid artificially inflated prices for dental supplies. This is a cognizable antitrust injury and constitutes harm to competition under the federal antitrust laws.

89. Defendants' misconduct produced other anticompetitive effects as well. As a result of the successful group boycotts, other potential competitors were dissuaded from partnering with manufacturers and state dental associations to compete with Defendants. The misconduct produced reduced competition in the dental supplies market, reduced consumer choice and general harm to consumer welfare.

90. To the extent relevant (*i.e.*, if the Court does not find that the conduct should be deemed illegal *per se* ), there are no legitimate procompetitive justifications for Defendants' behavior, either standing alone or viewed in a wholesale manner, because there were less restrictive means of achieving any purported procompetitive effects. To the extent that

Defendants' anticompetitive conduct, or any individual part of that misconduct, has any cognizable procompetitive effects, they are outweighed substantially by the anticompetitive effects.

91. During the Class Period, Plaintiff and members of the Class purchased dental supplies from Defendants. As a result of the misconduct alleged herein, members of the Class paid Defendants prices for dental supplies above competitive levels during the Class Period.

92. If new low-cost distributors had not been illegally prevented from partnering with state dental associations and manufacturers as a result of Defendants' conspiracy, they would have emerged as legitimate, major competitors to Defendants. This, in turn, would have resulted in greater competition and substantially lower prices for dental supplies, and Plaintiff and the other members of the Class would have paid substantially less for dental supplies during the Class Period.

93. Due to Defendants' success in conspiring to thwart the entry and growth of new low-cost distributors and other competitors through their actions detailed above, competition in the market was substantially harmed, and Plaintiff and members of the Class have sustained and continue to sustain substantial losses in the form of artificially raised prices paid to Defendants. The full amount of such damages that the Class and its members have incurred will be calculated after discovery and upon proof at trial.

94. Injury to Plaintiff and members of the Class was a direct and foreseeable result of Defendants' anticompetitive conduct. Defendants' group boycotts foreclosed the entry of new competitors, thus impeding competition, enhancing market power, and enabling Defendants to price dental supplies to Class members at supra-competitive levels.

95. Defendants' anticompetitive conduct is continuing, as are the overcharges incurred by Plaintiff and the members of the Class as a result of this misconduct.

## **VII. CLASS ALLEGATIONS**

96. Plaintiff brings this action under Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) on behalf of himself and the following Class:

All persons in the United States who directly purchased dental supplies or dental equipment (collectively, "dental supplies") from Henry Schein, Inc., Patterson Companies, Inc. or Benco Dental Supply Company at any time during the period from January 20, 2012 until the conduct challenged in this Complaint ends ("Class Period"). Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company and their subsidiaries are not included in the Class. Also excluded from the Class are federal and state entities that directly purchased dental supplies from one or more Defendants.

97. Members of the class are so numerous that joinder is impracticable. The class includes thousands of private dental practices and dental laboratories.

98. There are numerous questions of law and fact common to the class, including but not limited to:

- a. the extent to which Defendants collectively possess market power in the dental supplies market;
- b. whether, through the conduct alleged herein, Defendants maintained or enhanced their collective market power;
- c. whether Defendants conspired to engage in unlawful exclusionary conduct to impair the opportunities of rival competitors in the market for dental supplies in the United States;
- d. whether Defendants agreed to illegally boycott one or more competitors;
- e. whether Defendants in fact illegally boycotted one or more competitors;

- f. whether Defendants agreed to illegally boycott or threaten to boycott state dental associations that did or planned to do business with competitors;
- g. whether Defendants in fact illegally boycotted or threatened to boycott state dental associations that did or planned to do business with competitors;
- h. whether Defendants agreed to illegally boycott or threaten to boycott dental supplies manufacturers in order to deter manufacturers from doing business with rival competitors of dental supplies;
- i. whether Defendants in fact illegally boycotted or threatened to boycott dental supplies manufacturers in order to deter manufacturers from doing business with rival competitors of dental supplies;
- j. whether Defendants entered into exclusionary agreements that unreasonably restrained trade and impaired competition;
- k. whether Defendants' conduct as alleged herein constitutes a *per se* illegal violation of the federal antitrust laws;
- l. whether, and to what extent, Defendants' conduct caused direct purchasers (members of the Class ) to pay supra-competitive prices or fees, thus incurring antitrust injuries.

These and other common questions of law and fact predominate over any questions affecting only individual members of the Class.

99. Plaintiff's claims are typical of the claims of the Class because all Class members incurred antitrust injuries in the same way as a result of Defendants' misconduct, and the claims of each Class member arise out of the same core facts and are based on the same legal theories.

100. Plaintiff will fairly and adequately represent and protect the interests of the Class.



101. Plaintiff has retained counsel experienced in antitrust class action litigation, and Plaintiff has no interest in this litigation that conflicts with or is antagonistic to the interest of the other members of the Class.

102. A class action is superior to any other available method for the fair and efficient adjudication of this controversy. Plaintiff is unaware of any difficulty that the Court would encounter in managing the claims of the Class that would preclude class certification.

## **VIII. CAUSES OF ACTION**

### **COUNT I**

#### **Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1: Unlawful Agreements in Unreasonable Restraint of Trade**

103. Plaintiff incorporates by reference the preceding allegations.

104. As set forth above, in violation of Section 1 of the Sherman Antitrust Act, Defendants entered into agreements with one another to boycott and threaten to boycott state dental associations, dental supplies laboratories, and dental supplies manufacturers that were doing business or considering doing business with new lost-cost distributors and other competitors. This conspiracy was a *per se* unlawful group boycott, or alternatively, was an unlawful restraint of trade under the rule of reason.

105. Each Defendant has committed at least one overt act, such as boycotting entities that did business with new low-cost distributors, to further the conspiracy alleged in this complaint.

106. Plaintiff and the members of the Class have been injured in their business or property by Defendants' anticompetitive conduct. The injury that they have suffered consists of paying prices above competitive levels for dental supplies. Such injury is of the type that the antitrust laws were designed to prevent, and flows directly from Defendants' illegal conduct.

**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following:

- A. Certification of the Class proposed in this Complaint;
- B. Judgment in favor of himself and the Class he seeks to represent and against Defendants, and damages, measured as the overcharges that Plaintiff and other members of the Class paid as a result of Defendants' anticompetitive conduct, trebled;
- C. Pre- and post-judgment interest;
- D. Injunctive relief to prevent further anticompetitive conduct; and
- E. Costs of suit, including reasonable attorneys' fees.

**X. JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all the claims asserted in this Complaint so triable.

Dated: January 21, 2016

/s/ Sharon K. Robertson  
Sharon K. Robertson  
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[rkoffman@cohenmilstein.com](mailto:rkoffman@cohenmilstein.com)

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[nglauser@dpelaw.com](mailto:nglauser@dpelaw.com)  
[gervy@dpelaw.com](mailto:gervy@dpelaw.com)

*Counsel for Plaintiff and the Proposed Class*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

**JURY DEMAND:**    ☐ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, \_\_\_\_\_, counsel for \_\_\_\_\_, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? \_\_\_\_\_
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? \_\_\_\_\_
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? \_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes

No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes

(If yes, please explain)

No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

*Grodner v. Patterson Companies, Inc., et al.*  
Attachment to Civil Cover Sheet

The following are listed as Attorneys for the Plaintiff and the Proposed Class in the foregoing complaint:

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nglauser@dpelaw.com  
ggervey@dpelaw.com

**Section VIII: Related Case Statement**

This case should be related to the following civil cases:

**Docket Number: 2:15-cv-05440-JMA-GRB**

Judge: Joan M. Azrack

**Docket Number: 1:16-cv-00282-MKB-LB**

Judge: Margo K. Brodie

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
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)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER  
CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

V.

Civil Action No.

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*Defendant(s)*

To: *(Defendant's name and address)*

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

[illegible]

V.

Civil Action No.

Defendant(s)

To: *(Defendant's name and address)*

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: