

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

INDIANOLA FAMILY DENTISTRY,  
P.L.C. on behalf of itself and all others  
similarly situated,

Plaintiff,

vs.

PATTERSON COMPANIES, INC.,  
HENRY SCHEIN, INC., AND BENCO  
DENTAL SUPPLY COMPANY,

Defendants

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

**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED**

Plaintiff Indianola Family Dentistry, P.L.C. (“Plaintiff”) on behalf of itself and all other similarly situated persons and entities who have purchased Dental Supplies directly from one or more of the above-named Defendants, bring this action against Defendants Patterson Companies, Inc., Henry Schein, Inc., and Benco Dental Supply Company for treble damages and injunctive relief for Defendants’ group boycott among horizontal competitors in violation of United States antitrust laws. Plaintiff demands a jury trial, and alleges as follows:

**NATURE OF THE CASE**

1. Defendants, three horizontally competing distributors who dominate their industry and the market for the sale of Dental Supplies to Dental Practitioners and laboratories, abused their substantial market power pursuant to their illegal conspiracy. Defendants abused their market power by, among other things, foreclosing competition

through a concerted effort to exclude or impair competition and competitors, engaging in a group boycott of competitors, and engaging in a group boycott of entities that did business or planned to do business with Defendants' competitors. Defendants took these actions to stifle innovation and competition from competing distributors who would lower prices of Dental Supplies for dentists, laboratories, and ultimately, patients. Defendants' misconduct foreclosed competition, maintained and extended their dominant collective market power in the market for distributing Dental Supplies and dental equipment (collectively "Dental Supplies") in the United States, and caused Plaintiff and other members of the proposed Class to pay more for Dental Supplies than they would have absent Defendants' wrongful conduct.

2. Defendants carried out their agreement in a market that was susceptible to collusion. As distributors, during the relevant period the three Defendants controlled over 80 % of the market for distribution and sale of Dental Supplies to dentists and laboratories. In contrast, as a market Defendants' customers were highly fragmented: over 135,000 dental and orthodontic practices ("Dental Practitioners") and approximately 7,000 laboratories buy Dental Supplies, mostly from Defendants. Defendants' suppliers were also quite fragmented: over 300 manufacturers compete with each other to sell Dental Supplies, mostly through the three Defendants. Consequently, Defendants had substantial market power over both entities that sold to them, and entities that bought from them. Market entry barriers, as taken advantage of by Defendants, further restricted new companies from competing successfully against Defendants.

3. Pursuant to their conspiracy, Defendants exerted their substantial economic influence over manufacturers to coerce and pressure manufacturers to boycott both (a) competing distributors, and (b) potential business allies of competitors, such as state dental associations.

4. As a result of Defendants' wrongful conduct as alleged in this Complaint, they succeeded in increasing barriers to the entry and expansion of rival Dental Supplies distributors, thereby maintaining and enhancing Defendants' market power. Their actions against competing distributors harmed competition and allowed Defendants to charge supracompetitive prices to Plaintiff and other dentists and laboratories.

5. The industry has a history of recent government investigation, as well as private antitrust litigation. The Federal Trade Commission and the Arizona Attorney General have both launched ongoing investigations into Defendants' conduct. The Texas Attorney General's investigation resulted in a consent judgment against Defendant Benco in April 2015 related to some of the misconduct alleged in this Complaint.

6. As alleged in the Texas Attorney General's complaint against Defendant Benco, "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 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.” This conspiracy allowed Defendants to injure Plaintiff and other members of the Class (defined below) by charging them prices for Dental Supplies that were substantially above the competitive levels that would have prevailed but for their illegal activities.

7. Defendants’ collusive and anticompetitive conduct constitutes an unreasonable restraint of trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Defendants’ conduct has had the purpose and intended effect of allowing Defendants to maintain and enhance their collective market power, harm competition and consumers, stifle innovation, and thereby to charge supracompetitive prices to Plaintiff and other members of the Class for Dental Supplies.

### **JURISDICTION AND VENUE**

8. Plaintiff brings this Class Action Complaint under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. Plaintiff seeks treble damages, costs, and reasonable attorneys’ fees from Defendants for the injuries Plaintiff and other Class members sustained due to Defendants’ violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. Plaintiff also seeks injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent Defendants from further violating Sherman Act, Section 1. Plaintiff continues to need and purchase Dental Supplies. Absent injunctive relief, the agreements and industry structure alleged herein will continue to violate or threaten violations of U.S. antitrust laws.

10. This Court has subject matter jurisdiction of this case pursuant to 28 U.S.C. § 1331 and § 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

11. Venue is proper in the District of Minnesota 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, and/or are found in this District, and (b) a substantial portion of the events described below have been carried out in this District.

12. This Court has personal jurisdiction over each Defendant because each Defendant transacts business and is subject to personal jurisdiction within the District of Minnesota. Each Defendant sells Dental Supplies to dental practices and laboratories located in the District of Minnesota.

13. At all material times, Defendants sold their products to dental practices and laboratories located nationwide, operating in a continuous and uninterrupted flow of commerce across state lines. Defendants' conduct alleged herein has substantially affected interstate commerce.

## **PARTIES**

### **A. Plaintiff Class Representative**

14. Plaintiff Indianola Family Dentistry, P.L.C. is a general practice dentistry firm located at 2000 North 4th Street in Indianola, Iowa. Plaintiff is registered as a professional limited liability company in the State of Iowa. Plaintiff purchased Dental Supplies from one or more Defendants during the relevant period, and has suffered antitrust injury as a result of the conduct alleged in this Complaint.

**B. Defendants**

15. Defendant Patterson Companies, Inc. is the second largest distributor of Dental Supplies in the United States. Patterson is incorporated in Minnesota and is headquartered in St. Paul, Minnesota. During the relevant period, Patterson sold Dental Supplies to dental practices and laboratories nationwide, including dental practices and laboratories in the District of Minnesota.

16. Defendant Henry Schein, Inc. is the largest distributor of Dental Supplies in the United States. Henry Schein is incorporated in Delaware and has its principal place of business in Melville, Long Island, New York. Henry Schein is the world's largest provider of health care products and services to office-based dental, animal health, and medical practitioners. It is a Fortune 500 Company and a member of the S&P 500 and NASDAQ 100 indexes. Henry Schein has more than 18,000 employees and services over a million customers. It claims to have over 100,000 products in stock. Its 2014 sales were \$10.4 billion. During the relevant period, Henry Schein sold Dental Supplies to dental practices and laboratories nationwide, including dental practices and laboratories in the District of Minnesota.

17. Benco Dental Supply Co. Inc. is the third largest distributor of Dental Supplies in the United States. Benco is incorporated in Delaware, with its principal place of business in Pittston, Pennsylvania. During the relevant period, Benco sold Dental Supplies to dental practices and laboratories nationwide, including dental practices and laboratories in the District of Minnesota.

18. The actions taken by the corporate Defendants in this Complaint were authorized, ordered, or taken by their officers, agents, employees, or representatives, while actively engaged in the management of Defendants' businesses.

19. Defendants acted in concert with other co-conspirators, whose actions were on some occasions coerced by Defendants. All averments against any unnamed co-conspirator are also averred against these unnamed co-conspirators. The acts alleged in this Complaint as taken by each of these co-conspirators were fully authorized by each of the co-conspirators, or ordered or taken by duly authorized officers, agents, employees, or representatives of each co-conspirator while actively engaged in the management, direction, or control of its business.

### **CLASS ACTION ALLEGATIONS**

20. Plaintiff brings this action on behalf of itself and as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of itself and all members of the following Class (the "Class"):

All persons in the United States that directly purchased Dental Supplies and/or dental equipment from Henry Schein, Inc., Patterson Companies, Inc., and/or Benco Dental Supply Company at any time during the period from February 2, 2012 until the conduct challenged in this Complaint ceases ("Class Period"). Defendants Henry Schein, Inc., Patterson Companies, Inc., and/or 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 and/or dental equipment from one or more of the Defendants.

Plaintiff reserves its right to amend the Class definition to include separate classes or sub-classes or in other respects in its motion to certify the Class. Plaintiff also reserves its right to amend the Class Period if discovery demonstrates a different period.

21. Members of the Class are so numerous that joinder is impracticable. Over 135,000 Dental Practitioners and approximately 7,000 laboratories buy Dental Supplies, mostly from Defendants. Accordingly, the Class includes tens of thousands of private dental practices and laboratories.

22. Numerous questions of law and fact are common to the Class, including, without limitation:

- a. the structure of the market for distribution of Dental Supplies in the United States;
- b. the extent to which Defendants collectively possess market power in the market for distribution of Dental Supplies in the United States;
- c. whether, through the conduct alleged in this Complaint, Defendants maintained or enhanced their collective market power;
- d. whether Defendants conspired to and did engage in unlawful exclusionary conduct to impair the opportunities of rivals in the market for distribution of Dental Supplies in the United States;
- e. whether Defendants agreed to illegally boycott one or more competitors;
- f. whether Defendants did in fact illegally boycott one or more competitors;

- g. whether Defendants agreed to illegally boycott or threaten to boycott manufacturers of Dental Supplies as a means to deter manufacturers from doing business with competing rival distributors of Dental Supplies;
- h. whether Defendants did in fact illegally boycott and/or threaten to boycott manufacturers of Dental Supplies;
- i. whether Defendants pressured manufacturers to boycott one or more of Defendants' distributor competitors;
- j. whether Defendants agreed to illegally boycott and/or threaten to boycott state dental associations that did business or planned to do business with competitors;
- k. whether Defendants pressured dentists and laboratories to illegally boycott one or more of Defendants' distributor competitors;
- l. whether Defendants entered into exclusionary agreements that unreasonably restrained trade and impaired competition;
- m. whether Defendant's conduct alleged in this Complaint constitutes a per se illegal violation of the antitrust laws;
- n. whether and to what extent Defendants' conduct caused direct purchasers to pay supracompetitive prices or fees and, thereby, to sustain antitrust injuries.

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

24. Plaintiff's claims are typical of the claims of members of the Class because Plaintiff and all Class members are all direct purchasers of dental products who paid artificially inflated prices for dental products due to Defendants' combination or conspiracy alleged in this Complaint.

25. Plaintiff will fairly and adequately protect the interests of the Class because Plaintiff's interests coincide with, and are not antagonistic to, the interests of the Class. In addition, Plaintiff has retained counsel who are experienced and competent in prosecuting complex class action and antitrust litigation.

26. Individual Class members prosecuting separate actions would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

27. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims simultaneously in a single forum, moving forward efficiently and without the duplication of expense and effort that numerous individual actions would entail. No difficulties are likely to be encountered in managing this class action that would preclude maintaining it as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class is readily ascertainable from Defendants' records.

28. Defendants have acted on grounds generally applicable to the entire Class, making final injunctive relief or corresponding declaratory relief appropriate for the Class as a whole.

## **OVERVIEW OF THE DENTAL SUPPLY INDUSTRY**

29. Dental practices and laboratories routinely purchase and consume Dental Supplies, such as acrylics, waxes, impression materials, sterilization products, and x-ray film. Dental practices and laboratories also purchase durable dental equipment, such as imaging devices, dental chairs, and high-tech equipment such as dental CAD/CAM systems. These businesses require a wide variety of Dental Supplies in their day-to-day operations. The United States has over 135,000 dental practices and approximately 7,000 dental laboratories. Dental practices on average spend over \$80,000 annually on supplies and equipment. On average, they spend 6 percent of their annual income on Dental Supplies. They require a broad range of products in the course of treating their patients, and on average use 100 or more different types of supplies each much. The market for Dental Supplies in the United States is approximately \$10 billion per year.

30. For example, during the Class period, Plaintiff Indianola Family Dentistry regularly purchased filling materials, composites, cements for crowns, anesthetics, and other day-to-day materials for its practice from Defendants Henry Schein and Patterson.

31. A significant majority of Dental Supplies are sold by manufacturers to intermediate distributors such as Defendants, who then resell those products to dental practices and laboratories. Because dental practices and laboratories require many different supplies from many different manufacturers, they generally opt to purchase Dental Supplies from distributors that offer a wide range of products from many different manufacturers, instead of placing individual orders from dozens of different manufacturers. Dental Supplies distributors such as Defendants carry comprehensive

ranges of products from different manufacturers that allow customers to “one-stop shop” for dental supplies. Distributors charge for that service.

32. This relatively high price traditionally charged by Defendants for their services has left economic space for additional distributors to enter the market by being more efficient, earning lower margins, or both. Such new distributors can both pay manufacturers more than Defendants are paying and charge purchasers like Plaintiff and Class members less, all while still making a profit. New entrants have the opportunity to become lower-cost distributors for manufacturers and lower-cost suppliers for dental practices and laboratories.

33. However, because of Defendants’ anticompetitive conduct as described herein, the market for the distribution of dental supplies remains highly concentrated, with significant barriers to entry caused by Defendants’ anticompetitive conduct. Together, Defendants make up over 80 percent of all sales in the market for distribution of dental supplies in the United States.

34. For an entity to enter the distributor market and successfully sell Dental Supplies to dental practices and laboratories in the U.S., several key elements are required. The distributor must be able to offer a wide range of products from the more than 300 dental supplies manufacturers that make such products. The distributor must be able to purchase Dental Supplies in large enough volumes and at low enough prices to compete with competitor distributors. Finally, the entity must be able to market itself and offer dental supplies to large numbers of dental practices. To achieve success and be able to buy and stock the large quantity of supplies necessary to achieve economies of scale that

allow for lower prices, new distributors must be able to reach large numbers of dental practices, laboratories, and dental supplies manufacturers efficiently.

35. State dental associations—voluntary associations of dentists—possess an important ability to connect a new distributor with dental practitioners statewide by endorsing and/or partnering with the distributor. State dental associations are not in the business of purchasing and selling dental supplies, but they can facilitate the entry of new distributors by partnering with new distributors and endorsing the distribution platform for their members. In this way, state dental associations serve an important gatekeeper function in validating new entrants. However, state dental associations are also a convenient “choke point” that Defendants can and have pressured through group boycotts to block the entry of less expensive new distributors.

36. Lower-cost distributors have for years attempted to enter the market, and many state dental associations have been actively interested in sponsoring and partnering with new distribution platforms as a benefit to their members. However, new distributors largely have been unsuccessful in partnering with or securing the endorsement of state dental associations because of Defendants’ unlawful coordinated boycotts alleged herein. Defendants have refused to do business with any new competitor in the dental supplies market, and have frustrated other entities’ attempts to do business with actual and potential rival distributors. Any successful entry of a new competitor into the Dental Supplies distribution market, and the resulting price discounts that would result from increased competition, would substantially threaten Defendants’ collective market share, revenues and profits. As further detailed below, Defendants responded to the threat of competitive

new rival distributors by conspiring to boycott and threaten entities in order to prevent the successful entry of new competitors into the dental supplies distribution market.

37. Defendants' dominant collective market power has allowed them to foreclose the market to rival competition, thereby impairing competition, maintaining and enhancing market power, and charging inflated prices above competitive levels to Plaintiff and the Class.

#### **DEFENDANTS EXERCISE MARKET POWER IN THE RELEVANT MARKET**

38. Defendants' anticompetitive conduct and agreements constitute a horizontal group boycott that is a per se violation of Section 1 of the Sherman Act. Thus, Plaintiff need not define a relevant market.

39. Alternatively, if the Court determines that Plaintiff's Sherman Act claim cannot proceed under a theory of per se group boycott, Defendants' anticompetitive conduct and agreements constitute a violation of the Sherman Act under the rule of reason. In this case, the relevant geographical market is the United States. The relevant product market is the market for the sale of Dental Supplies to Dental Practitioners and laboratories.

40. As detailed in this Complaint, many hundreds of manufacturers make Dental Supplies, but most of the over 135,000 dental practices are small companies that lack the ability to efficiently fulfill their Dental Supplies needs by purchasing through hundreds of different vendors. Instead, dental practices and other direct purchasers use distributors like the Defendants who can fulfill most or all of their needs for Dental Supplies.

41. For direct purchasers, there are no reasonably available substitutes for distributors of a wide range 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 dental practices and laboratories to maintain relationships with hundreds of different vendors.

42. At all relevant times Defendants possessed market power—the ability to profitably raise prices significantly above competitive levels while not losing sales—as evidenced by Defendants’ abnormally high profit margins in what should be, if it were competitive, a tight, low profit margin, distribution market.

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

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

45. Defendants sell Dental Supplies at prices well in excess of 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.

46. An alternative set of relevant markets, limited geographically to the United States, are the markets or submarkets for the distribution and sale of specific types of Dental Supplies.

47. A second alternative relevant market is the submarket for the distribution and sale of durable dental equipment, limited geographically to the United States.

48. Defendants collectively have substantial market power in all relevant markets, however defined.

49. 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.

#### **DEFENDANTS' ONGOING ANTICOMPETITIVE CONDUCT**

50. Defendants have acted in concert to foreclose competition by excluding competitors, especially through illegal group boycotts of the competitors or entities that planned to do business or started doing business with the competitors.

51. Many Dental Supplies manufacturers make substantial portions of their total sales through Defendants. These manufacturers substantially rely on Defendants to market and resell their products to Dental Practices and laboratories. If Defendants were to reduce their sales efforts or stop selling products from such a manufacturer, that manufacturer would suffer significant financial losses.

52. Defendants conspired to collectively pressure and threaten manufacturers and other distributors to discontinue and refrain from supplying new lower-priced distributors with Dental Supplies. In furtherance of this conspiracy, Defendants threatened that if manufacturers did business with new lower-priced distributors, Defendants would not sell or would not actively promote the manufacturer's products.

53. Because Defendants collectively hold a dominant share of the Dental Supplies distribution market, and because many manufacturers are beholden to Defendants, these threats were successful in coercing many manufacturers to cease doing business with new or price-cutting distributors.

54. Two examples of Defendants' anticompetitive conduct involve Defendants' group boycotts of SourceOne and its prospective allies, and Defendants' group boycotts of Archer and White Sales. These examples show Defendants' continuing Sherman Act violations, and highlight their anticompetitive methods. Based on these examples and the industry market structure, including Defendants' close relationships, Plaintiff has good reason to believe that discovery will reveal further examples of Defendants' continuing violations.

**A. Defendants Boycotted SourceOne And Its Prospective Business Allies.**

55. As one example of Defendant's anti-competitive conduct, in 2013 a new distributor—SourceOne—created a Dental Supplies distribution platform in partnership with the Texas Dental Association (“TDA”), and planned to offer many of the same products offered by Defendants at lower prices. The online sales platform, called “TDA Perks Supplies,” allowed members of the TDA to purchase Dental Supplies from many different manufacturers.

56. SourceOne reached an agreement with several manufacturers to offer Dental Supplies to TDA members at prices that were substantially less than Defendants' prices for similar products. TDA's endorsement allowed the new distributor to secure contracts with a significant number of Dental Supplies manufacturers, which in turn enabled it to offer

dental practices the “one-stop shopping” convenience that was previously only offered by distributors such as Defendants.

57. SourceOne posed a particularly strong competitive threat to Defendants’ market control because of its approach to customers through an online marketplace linked to state dental associations.

58. SourceOne’s business model also involved use of buyer groups through the state dental associations. A group purchasing organization (GPO) is an entity that helps healthcare providers — such as hospitals, nursing homes, and home health agencies — realize savings and efficiencies by aggregating purchasing volume, potentially using that leverage to negotiate discounts with manufacturers, distributors, and other vendors.

59. In its own lawsuit against these same Defendants, SourceOne describes itself as “an online marketplace connecting manufacturers and dentists, founded with the objective of making Dental Supplies and equipment available to dentists directly from manufacturers, bypassing distributors (including the Defendants) at the wholesale level and thereby reducing dental and equipment prices to dentists. With a broad product line of over 50,000 distinct types of Dental Supplies and equipment, SourceOne offers dentists a one-stop shopping platform that replicates the convenience and efficiency of purchasing through traditional distributors, but at substantially lower prices than those charged by Defendants.” Complaint ¶ 25, *SourceOne Dental, Inc. v. Patterson Companies, Inc., et al.*, No. 2:15-cv-5440 (E.D.N.Y. Sept. 21, 2015). SourceOne was designed as a lower cost alternative for manufacturers than using their own sales force or selling through Defendants. SourceOne claims its “broad product line, low cost structure and low prices make it a unique

competitive threat to the Defendants.” *Id.* ¶ 26. In other words, SourceOne could become a powerful price-cutter.

60. SourceOne claims it further intended to compete by partnering with state dental associations to offer dentists a GPO purchasing system. SourceOne could lower its costs, lower its prices, and gain substantial market share from Defendants. Using its e-commerce platform, SourceOne sought to build, manage and service online sales platforms for state dental association.

61. For many years, lower-cost distributors have attempted to enter the market, and many state dental associations have been actively interested in sponsoring and partnering with new distribution platforms as a benefit to their members. However, new distributors have largely been unsuccessful in partnering with or securing the endorsement of state dental associations because of Defendants’ unlawful coordinated boycotts alleged herein. Defendants have refused to do business with any new competitor in the Dental Supplies market, and have frustrated other entities’ attempts to do business with actual and potential rival distributors. Any successful entry of a new competitor into the Dental Supplies distribution market and the resulting price discounts that would result from increased competition would substantially threaten Defendants’ collective market share, revenues and profits. As further detailed below, Defendants responded to the threat of new competitors by conspiring to boycott and threaten entities to prevent the successful entry of new competitors into the Dental Supplies distribution market.

62. SourceOne claims that customers who switch from purchasing Dental Supplies from Defendants to purchasing supplies from a GPO SourceOne operates on average would save over 30 percent on their supply expenditures.

63. In October 2013, SourceOne launched TDA Perks Supplies, an online sales platform and GPO for dental professional members of the Texas Dental Association. The platform experienced rapidly increasing membership and sales. Other state dental associations observed and discussed its success. TDA's growth and efficacy posed a particularly disruptive risk to Defendants' established market structure.

64. Henry Schein stated in its recent Form 10-K that expansion of group purchasing organizations may place it "at a competitive disadvantage." It recognized that such organizations could shift purchasing decisions to entities with which it had no historical relationship, which could "threaten our ability to compete effectively, which would in turn negatively affect our results of operations."

65. Consequently, the emergence of SourceOne and its business model gave Defendants a particular motive to collude to foreclose SourceOne from the market.

66. Based on their historic relationships, Defendants discussed SourceOne's GPO platform and TDA Perks Supplies from at least October 2013 through April 2015, sharing information about market participants' reactions to SourceOne's market entry.

67. As alleged in more detail below, Defendants collectively developed a dual response to the competitive threat posed by SourceOne.

- a. First, Defendants agreed with one another, and with as-yet unknown distributors of Dental Supplies, to pressure

manufacturers and other distributors to discontinue supplying SourceOne and SourceOne's GPO platform, including TDA Perks Supplies. Defendants agreed to threaten manufacturers who allowed their products to be sold through SourceOne that Defendants would shelve or not promote their products. Because Defendants control an overwhelming share of the market for Dental Supplies, these threats were effective and caused manufacturers to stop selling their products through SourceOne.

- b. Second, Defendants agreed with one another to boycott the trade shows and annual meetings of the TDA and other state dental associations that considered doing business with or actually did business with SourceOne. Because revenues from these trade shows and annual meetings constitute a substantial portion of state dental association's operating income, these threats, and their damaging implementation on several associations, effectively deterred state associations from adopting or endorsing SourceOne's GPO platform.

68. Defendants' anticompetitive conduct had no legitimate business or competitive justification. Defendants' boycott of manufacturers, dental associations, and dentists was intended to eliminate lower-cost, high quality, and innovative competition from SourceOne, and had the purpose and effect of artificially maintaining Defendant's market

power and maintaining or increasing the prices dentists and laboratories pay for Dental Supplies.

**1. Defendants' Boycott of Manufacturers And Distributors That Dealt With SourceOne.**

69. As the first part of their collusive response to SourceOne's launch of its GPO platform including TDA Perks Supplies, Defendants collectively agreed to and did contact other distributors and manufacturers to pressure those entities to stop supplying Dental Supplies to SourceOne and its GPO platform, including TDA Perks Supplies, and threatened to reduce or entirely stop their purchases from those manufacturers unless they complied.

70. Between October 2013 and April 2014, SourceOne obtained Dental Supplies directly from manufacturers or through two distributors, Arnold Dental Supply and DDS Dental Supplies.

71. Between October 2013 and at least April 2014, Defendants applied substantial pressure on manufacturers of Dental Supplies that supplied Source One and SourceOne's GPO platform through Arnold and DDS. Defendants pressured these manufacturers to stop dealing with SourceOne, through Arnold and DDS or otherwise. At the request of these manufacturers, Arnold and DDS removed dozens of product lines from SourceOne, including many of SourceOne's most important and highest selling items. These removals were due to Defendants' boycott of manufacturers dealing with SourceOne. On several occasions Arnold and DDS advised SourceOne that the manufacturers whose products they were removing from SourceOne and its GPO platform were reacting to

pressure, applied by Defendants, to stop doing business with SourceOne. For example, DDS informed SourceOne that DMG America, a dental restoration products manufacturer, had told DDS that DMG America was pulling its products from SourceOne and its GPO platform due to pressure applied by Patterson and Henry Schein. Other manufacturers who instructed Arnold and DDS to remove their products from SourceOne and its GPO platform include Sultan Healthcare, Danaher, Heraeus Kulzer, Ivoclar Vivadent, Quala, and Septodont. By April 2014, SourceOne had lost access to thousands of key Dental Supplies, and at least 75 top selling products for the TDA Perks Supplies and SourceOneDental.com platforms. The same month, both Arnold and DDS informed SourceOne that they would no longer deal with SourceOne. DDS explained to SourceOne that this decision was the result of the pressure Defendants applied to manufacturers supplying DDS.

72. The Dental Supplies manufacturers' decisions, often simultaneous, to discontinue dealing with SourceOne was unprecedented and inexplicable in the absence of collusion among Defendants to impose coordinated pressure on multiple manufacturers simultaneously to pull their products from SourceOne and its GPO platform. These manufacturers had voiced no concerns with SourceOne or its GPO platform until October 2013 when they began requiring Arnold and DDS to discontinue the availability of their products to SourceOne. The manufacturers had enjoyed increasing sales and revenues through SourceOne's platform. Similarly, before October 2013, both Arnold and DDS had realized increasing sales and revenues from dealing with SourceOne, and were highly motivated to continue growing their business with SourceOne and its GPO platform. At the same time as their products were being removed from SourceOne and its GPO platform,

these manufacturers continued to sell the products they pulled from SourceOne on other electronic marketplaces that were less threatening competitively to Defendants.

73. In significant contrast to those many manufacturers that rely on Defendants to distribute their products, some manufacturers historically sold directly to dentists, bypassing Defendants. Because those manufacturers were immune to Defendants' boycott threats, they generally did not pull their products from SourceOne during that period.

74. Dental supplies manufacturers that Defendants coerced into boycotting SourceOne also manufacture equipment. Defendants' boycott had the purpose and effect of deterring manufacturers from selling equipment, as well as supplies, through SourceOne or its GPO platforms.

75. After Defendants' boycott forced Arnold and DDS to discontinue their sales to SourceOne, SourceOne sought alternative distributors to supply it with Dental Supplies and equipment. Defendants' demonstrated success in forcing manufacturers to pull their products from SourceOne deterred other potential distributors from dealing with SourceOne. One example is DHP Dental. DHP met with managers from several Dental Supplies and equipment manufacturers, and learned of the effect of Defendants' boycott in forcing manufacturers to stop dealing with SourceOne, and conveyed this information to SourceOne.

## **2. Defendants' Boycott of State Dental Associations That Dealt With SourceOne.**

76. Despite Defendants' boycott of manufacturers and distributors that did business with SourceOne and TDA Perks Supplies, state dental associations outside of

Texas communicated to SourceOne, and to each other, substantial interest in offering SourceOne's GPO platform to their members.

77. To deter state dental associations from dealing with SourceOne, and thereby to forestall the substantial competitive threat that SourceOne's GPO platform posed to their revenues and profits, Defendants agreed with one another to break with their traditional practice of attending the trade shows of state dental associations and to boycott the trade shows and annual meetings of state dental associations that did or considered business with SourceOne.

78. Defendants' conspiracy was successful in deterring state dental associations from proceeding with their planned partnership with SourceOne. Defendants' boycott of the state association trade shows threatened to impose substantial financial losses on state associations adopting SourceOne's GPO platform, because revenues from those trade shows are substantial components of a state association's budget, and Defendants' participation is essential to a successful trade show. Confronted with the choice of partnering with SourceOne weakened by Defendants' boycott of manufacturers dealing with SourceOne, and enduring the consequences of Defendants' boycotts of their own trade shows, or alternatively, assenting to Defendants' demands to refrain from doing business with SourceOne, the state dental associations almost uniformly chose to refrain from doing business with SourceOne. As a result, SourceOne's GPO platform has been adopted by only three state dental associations, rather than the scores of state dental associations that would likely have adopted the platform but for Defendants' illegal conduct.

79. In March 2014, Patterson representatives met privately with TDA representatives and demanded that TDA end its contractual relationship with SourceOne and TDA Perks Supplies, or Patterson would no longer attend TDA's annual trade show or advertise in TDA's publications. A month later, in April 2014, Henry Schein representatives met privately with TDA representatives and delivered the same demands and threats.

80. When TDA did not assent to Defendants' demands, the Defendants boycotted the TDA's annual meeting and trade show, held between April 30 and May 3, 2014. Defendants' decision not to attend TDA's annual meeting and trade show was historically unprecedented and not announced publicly by Defendants in advance. Moreover, absent collusion among Defendants, such a move would have been risky in a competitive market, since each Defendant stood to lose revenues from sales at the trade show and afterwards if its main rivals, the other Defendants, did not also boycott the show. Dental association trade shows are a substantial source of revenue, promotion, and goodwill for Dental Supplies distributors, including the Defendants. Defendants canceled their reserved spaces immediately before the 2014 TDA show, forfeiting significant deposits for prime location and associated promotions, all of which were non-refundable and had been arranged well in advance. Smaller distributors — not a part of Defendants' conspiracy — did attend.

81. Dozens of Dental Supplies and equipment manufacturers also stayed away from the TDA annual meeting and trade show, pulling out — like Defendants — at the last minute without warning, and at material commercial risk and cost. Many of these manufacturers explained to the TDA that their decision to pull out of the annual meeting

and trade show was a result of pressure applied by Patterson and Henry Schein to boycott the TDA for its support of SourceOne's GPO platform.

82. The boycott of the TDA trade show was against the independent individual interests of Defendants and the manufacturers in the absence of collusion because of the risk of lost sales and market shares.

83. As a result of the Defendants' boycott, and the concerted pressure Defendants brought to bear on Dental Supplies and equipment manufacturers to similarly boycott the TDA's 2014 annual meeting and trade show, that meeting and trade show had significantly fewer exhibitors, and was significantly less profitable for the TDA than previous shows. The Defendants' boycott of the TDA was specifically intended to send a message to TDA and to other state dental associations, many of which were actively interested in doing business with SourceOne, to refrain from doing so or suffer harms similar to those the Defendants inflicted on the TDA.

84. The Defendants' tactics were successful in coercing state dental associations across the country to abandon their plans to endorse SourceOne and promote SourceOne's GPO platform to their members. After the boycott of TDA's annual meeting and trade show, other state associations that had expressed interest in promoting SourceOne's GPO platform to their members changed course and declined to do so, citing concerns about the coordinated pressure of Defendants and the risk of being targeted with a boycott similar to the one aimed at TDA.

85. Although after substantial delay due to concerns about being targeted with a boycott, the Arizona Dental Association ("AZDA") finally went forward in a business

relationship with SourceOne. After AZDA agreed to endorse SourceOne's GPO platform for the benefit of Arizona dentists, the Defendants retaliated against the AZDA by boycotting its annual meeting and trade show in March 2015. The Defendants were aware at the time of their boycott of an existing, enforceable contract between SourceOne and the AZDA calling for the promotion and endorsement of SourceOne's GPO platform, due to AZDA's last-minute attempts to ward off the threatened boycott through negotiations with the Defendants. In these negotiations, AZDA disclosed the existence of its contract with SourceOne, and offered to make certain changes to the GPO platform that SourceOne had developed for the benefit of its members, including the name and trade dress of the platform, if Defendants would abandon their planned boycott. AZDE agreed to distance its name and associated goodwill from the marketing of SourceOne's GPO platform, diluting the benefit of AZDA's endorsement of SourceOne's GPO platform, making the platform less attractive to AZDA's members and a less effective competitor to Defendants. Unappeased, Defendants boycotted AZDA's trade show anyway. Defendants were the only distributors that did not attend this meeting; other, smaller rivals did attend. Defendants inflicted substantial damage on AZDA and its trade show, causing AZDA lost revenue and profits. Since chastened by Defendants' boycott, AZDA has not actively promoted SourceOne's GPO platform to its members.

86. Another state dental association, the Louisiana Dental Association ("LDA"), sought to do business with SourceOne, but to simultaneously avoid the impact of the Defendants' boycott. To achieve this, the LDA planned to announce its endorsement of SourceOne's GPO platform only after the annual LDA meeting and trade show, to be held

in April 2015, despite requiring SourceOne to agree to indemnify LDA against revenues lost because of Defendants' boycott. Nevertheless, Defendants Henry Schein and Patterson learned of LDA's planned business relationship with SourceOne – which LDA's Board of Directors had approved in January 2015 – and in April 2015 threatened to boycott LDA's annual meeting and trade show if LDA did not abandon its planned relationship with SourceOne. With the example of Defendants' boycott of the TDA and AZDA fresh in mind, and with members voicing concern that such a boycott would follow from LDA's planned deal with SourceOne, the LDA abandoned plans to endorse SourceOne's GPO platform.

87. The Nevada Dental Association endorsed SourceOne's GPO platform, but only because it has no trade show that the Defendants could hold hostage with boycott threats.

88. But as intended, Defendants' threats to boycott state associations dealing with SourceOne deterred dozens of other associations from endorsing SourceOne's GPO platform, including the California Dental Association and the Colorado Dental Association.

89. For example, after enthusiastically reacting to possibly endorsing SourceOne's GPO platform, the Colorado Dental Association advised SourceOne in January 2015 that it was “concerned about the major dental suppliers in our area, Schein, Patterson and others pulling their support to the CDA [Colorado Dental Association] and our largest component society which hosts the Rocky Mountain Dental Conference each year” if it consummated its endorsement of SourceOne's platform. Like dozens of other

state dental associations, the Colorado Dental Association abandoned plans to deal with SourceOne due to Defendants' anticompetitive conduct.

**B. Defendants' Archer & White Boycott Shows Defendants Have Engaged In Ongoing Anticompetitive Conduct For Years**

90. Defendants have engaged in other collective anticompetitive conduct against distributors of dental supplies for many years, as shown by the example of their illegal group boycotts against Archer and White Sales, Inc. ("Archer"), a lower-priced distributor of dental supplies.

91. In 2012, Archer filed an antitrust case claiming that certain Defendants engaged in anticompetitive conduct including:

- Conspiring to thwart Archer's growth in certain parts of the country;
- Engaging in a price-fixing conspiracy by agreeing not to competitively bid against horizontal competitors;
- Obstructing Archer's membership in the American Dental Cooperative, an organization created to help smaller companies compete against large national dental supplies distributors; and
- Coordinating boycotts against Archer by threatening to stop buying equipment from certain suppliers and to stop selling equipment from certain manufacturers.

92. For examples, as a result of pressure from Defendants (including Defendant Henry Schein and "Company X"), a manufacturer told Archer to "back off" from selling to a dentist in the State of Washington. On another occasion, the manufacturer forbade Archer to sell to a dentist in California.

93. Eventually, the manufacturer reduced Archer's distribution territory from a national territory to only the state of Texas, using language suspiciously similar to language a Schein manager had used.

### **THE DENTAL SUPPLIES MARKET IS HIGHLY SUSCEPTIBLE TO COLLUSION**

94. The market for the distribution of dental supplies exhibits a number of characteristics that increase its susceptibility to anticompetitive conspiracy among distributors. These characteristics—including high concentration among firms in the market, barriers to entry caused by Defendants' anticompetitive conduct, stable or constant demand, frequent communications among Defendants, and a record of antitrust inquiry—increase the potential for successful collusion among dental supplies distributors.

#### **A. The Dental Supply Distribution Market Is Highly Concentrated.**

95. Defendants acted in a market that was susceptible to their collusion and gave them market power. 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, making Defendants oligopolists.

96. 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. In the market for Dental Supplies, the HHI is above 3,000.

97. A concentrated market makes it easier for distributors to coordinate behavior and makes it more difficult for direct purchasers to avoid the adverse effects of collusive behavior.

**B. Defendants Deal With Fragmented Counterparties.**

98. Defendants' market position gave them market power to coerce both manufacturers and customers and enforce their anticompetitive goals. As noted above, Defendants control over 80 percent of the Dental Supplies distribution market.

99. Below Defendants in the supply chain, their customers tend to be small and highly fragmented. Over 135,000 dental and orthodontic practices ("Dental Practitioners") and approximately 7,000 laboratories buy Dental Supplies, mostly from Defendants. The disparity in concentration between three Defendants and over 142,000 counterparties gives Defendants great bargaining power.

100. Above Defendants in the supply chain, the manufacturers are also fragmented. Over 300 manufacturers compete with each other to sell Dental Supplies, mostly through the three Defendants, making Defendants oligopsonists. Consequently, Defendants had substantial market power over both firms that sold to them and firms that bought from them.

101. For example, Morningstar investment services report that "[i]n the dental and veterinary markets, Patterson is a critical intermediary between a highly fragmented base of customers and suppliers, which helps protect the company's pricing power. Patterson serves a significant portion of the estimated 186,000 dentists and 63,000 veterinarians in the U.S. market, many of which operate as resource-constrained sole

practitioners. Patterson sources its products from thousands of vendors, and its top supplier represents less than 8% of [Patterson's] revenue.”

**C. The Dental Supply Distribution Market Has High Barriers To Entry.**

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

103. Several key elements are required for an entity to enter the distributor market and successfully sell Dental Supplies to United States dental practices and laboratories. The distributor must be able to offer a wide range of products from the more than 300 Dental Supplies manufacturers that make such products. The distributor must be able to purchase Dental Supplies in large enough volumes and at low enough prices to compete with other distributors. Finally, the entity must be able to market itself and offer Dental Supplies to large numbers of dental practices. To achieve success, and be able to buy and stock the large quantity of supplies necessary to achieve economies of scale that allow for lower prices, new distributors must be able to reach large numbers of dental practices, laboratories, and Dental Supplies manufacturers efficiently.

104. Distributors must carry a wide range of products because none of the over 300 Dental Supply manufacturers offer the full range of Dental Supplies necessary to run a dental practice. Manufacturers sell a substantial majority of Dental Supplies to intermediate distributors such as Defendants, who then resell those products to dental

practices and laboratories. Therefore, distributors carry broad product lines and Defendants employ expensive sales representatives to service their customers.

105. The market has certain chokepoints, such as prominence and importance of state dental associations to the success of new distributors, and the market power of the Defendants over the manufacturers that make manufacturers particularly reliant upon the Defendants, collectively, that make it susceptible to a Defendant-driven group boycott.

106. Lower-cost distributors have attempted to enter the Dental Supplies market. However, new distributors have largely been unsuccessful because of Defendants' unlawful coordinated boycotts alleged herein. Defendants have refused to do business with any new competitor in the Dental Supplies market, and have frustrated other entities' attempts to do business with actual and potential rival distributors. As described in this Complaint, Defendants responded to the threat of new competitors by conspiring to boycott and threaten entities in order to prevent the successful entry of new competitors into the Dental Supplies distribution market. Defendants' anticompetitive actions have taken advantage of their concentrated bargaining power and a prospective distributor's need for a wide range of suppliers to foreclose competitors from obtaining broad product lines they need to compete successfully with Defendants.

107. These barriers to entry increase the market's susceptibility to coordinated efforts among the largest distributors in the industry to maintain supracompetitive prices.

**D. The Dental Supply Market Has Steady Aggregate Demand.**

108. In a competitive market, firms faced with static or declining demand will attempt to increase sales by decreasing prices to take market share from competitors. For

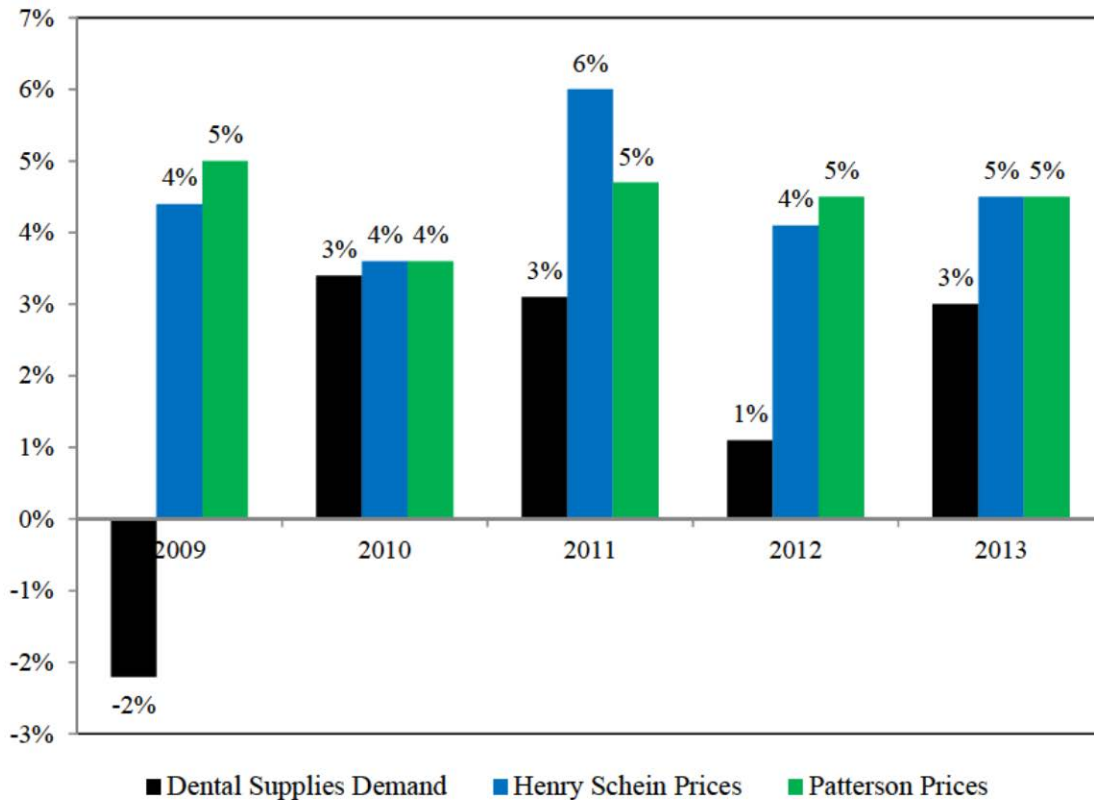
this reason, firms faced with static or declining demand have a greater incentive to collude to avoid price competition. Rising or stagnant prices and high profit margins with constant or declining demand are inconsistent with a competitive market.

109. While aggregate demand among purchasers of Dental Supplies has been relatively constant over the past eight years, Defendants have consistently increased their prices during that time.

110. An estimated 75 percent of all sales are made through Dental Supplies distributors, and single-dentist dental practices account for the bulk of purchases. Because most dental practices and laboratories 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.

111. Because demand for Dental Supplies is a function of the demand for dental services, and many privately insured adults and children receive routine dental care coverage, demand for Dental Supplies among dental practices is especially consistent.

112. Defendants Henry Schein and Patterson have increased list prices for Dental Supplies every year since 2005. As illustrated in Figure 1 below, these distributors' list prices increased even when the economic recession of 2009 caused demand for Dental Supplies to fall by over 2 percent.

**Figure 1: Changes in Dental Supplies Demand versus Distributor List Prices**

113. Defendants are highly profitable, with profit margins ranging as high as 11 percent (for Patterson in 2010 and 2011). Profit margins among distributors in related health care product markets are significantly lower. For example, profit margins for the “big three” distributors of pharmaceuticals in the U.S. (McKesson, Cardinal Health, and AmerisourceBergen) typically hover between 0.2 and 1.5 percent. The most recent public data for the “big three” shows quarterly profit margins between 1.03 and 1.37 percent.

114. Rising prices in the face of declining demand is consistent with an industry in which sellers are conspiring to exert market power. The Dental Supplies distribution

industry has experienced consistently increasing list prices while demand has either declined or stagnated.

**E. Dominant Industry Players Communicate Regularly With Each Other.**

115. Defendants, the dominant industry players, communicated with each other regularly, giving them opportunities to collude and encouraging a comfortable atmosphere for collusion.

116. For example, the Texas Attorney General recently stated:

The traditional dental supply distributors 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. The employees interact regularly in person, at various social gatherings, and industry or trade association meetings, and remotely, through company email, personal email, personal cell phone calls, company cell phone calls, and text messaging. These close contacts provide the opportunity for the sharing of competitively-sensitive information among the various distributors and manufacturers.

117. For further examples, executives from Defendant Patterson and Defendant Henry Schein both attended the Barclays Global Health Care Conference in Miami in 2013 and 2014.

118. As a result of this atmosphere, a Henry Schein executive described a “‘trust’ relationship” with another conspiring distributor.

**GOVERNMENT INVESTIGATIONS,  
CONSENT DECREE AND CIVIL LITIGATION**

119. Two states and the Federal Trade Commission have commenced investigations into Defendants’ anticompetitive conduct, resulting in a consent decree

against one Defendant. These proceedings and the beginnings of civil litigation support the occurrence of the misconduct alleged in this Complaint.

120. In 2014, the Arizona Attorney General initiated an investigation of Defendant Benco and other yet-unknown dental supplies distributors for anticompetitive conduct in violation of Arizona law. In October 2014, the Arizona Attorney General issued Civil Investigative Demands (“CIDs”) requiring Benco to produce documents and electronic materials relating to the investigation, and Benco produced documents in response to the CIDs. That investigation is ongoing.

121. In 2014, the Texas Attorney General initiated an investigation of Defendants for anticompetitive conduct in violation of Texas antitrust statutes. On April 9, 2015, the Texas Attorney General filed a complaint against Defendant Benco. The complaint alleged that Benco conspired with other distributors to boycott the 2014 TDA annual meeting because the TDA had partnered with SourceOne, and that Benco and other distributors pressured distributors and manufacturers to discontinue doing business with SourceOne.

122. The allegations in the Texas Attorney General complaint describe some of the same anticompetitive conduct alleged here. The allegations discuss Benco’s role in boycotting SourceOne, its business ally, the Texas Dental Association (TDA), and their business platform for TDA members, TDA Perks Supplies, including that:

- Consumable dental supplies are traditionally sold through a sales model by which a distributor’s sales representative interacts directly with a purchasing dentist. As a part of this business, many dental supply distributors and manufacturers participate in trade

shows sponsored by organizations, such as the annual meeting sponsored by the Texas Dental Association (TDA).

- The traditional dental supply distributors 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. The employees interact regularly in person, at various social gatherings, and industry or trade association meetings, and remotely, through company email, personal email, personal cell phone calls, company cell phone calls, and text messaging. These close contacts provide the opportunity for the sharing of competitively-sensitive information among the various distributors and manufacturers.
- Benco and its competitor distributors understood that TDA Perks Supplies, with its potentially disruptive new business model, directly competed with them, and perceived a competitive threat based on the lower prices offered by TDA Perks Supplies for many of the same goods offered by Benco and its competitor distributors.
- Building on their historic culture of cooperation and communication, Benco and its competitor distributors engaged in ongoing communications over several months about TDA Perks Supplies. 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 meeting held in May 2014 because they perceived that TDA had positioned itself as a competitor to the traditional distributors, and (2) agreed to pressure other distributors and manufacturers to discontinue supplying TDA Perks Supplies and/or end any relationships with manufacturers or distributors that ultimately supplied TDA 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 TDA Perks Supplies.

- As a result of this pressure, other distributors and manufacturers discontinued such relationships, causing TDA Perks Supplies to lose access to products.

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

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

125. A private antitrust action by Archer against certain Defendants was filed in the U.S. District Court for the Eastern District of Texas in August of 2012. *See generally Complaint, Archer and White Sales, Inc. v. Henry Schein, Inc.*, et al, No. 2:12-cv-00572 (E.D. Tex.) The *Archer* complaint alleges an illegal group boycott to support a price-fixing scheme. That case is proceeding in arbitration.

126. SourceOne has filed a separate individual private civil action against Defendants in the Eastern District of New York. *See generally Complaint, SourceOne Dental, Inc. v. Patterson Companies, Inc.*, *supra*. SourceOne's complaint alleges illegal group boycotts based on allegations similar to those of the present Complaint.

127. The other investigations and government and private litigation have not resolved the issues surrounding Defendants' anticompetitive conduct, or their threat to competition. Regarding the Texas investigation into Benco, SourceOne notes a dental association representative inquired in 2015 whether suit had been filed against Henry

Schein and Patterson, and how things stood with them. The association stated, “[t]hat’s not to say it isn’t significant that the State successfully clipped Benco’s wings. But, if there isn’t a similar threat to Schein and Patterson, there’s still quite a problem, I’d think.” *Id.* ¶ 57.

## **ANTICOMPETITIVE EFFECTS ON COMMERCE AND ANTITRUST INJURY TO PLAINTIFF AND CLASS MEMBERS**

### **A. Harm To Competition In United States Commerce**

128. As alleged in this Complaint, Defendants have engaged in a continuing conspiracy in restraint of trade in violation of the Sherman Act.

129. During the Class period, Defendants sold substantial quantities of Dental Supplies in a continuous and uninterrupted flow in interstate commerce to customers located in states other than where Defendants purchased and processed their Dental Supplies.

130. 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 other members of the Class. This harm to the Plaintiff and other Class members, in the form of paying artificially inflated prices for dental supplies, constitutes cognizable antitrust injury and harm to competition under the antitrust laws. To the extent relevant, the anticompetitive actions alleged in this Complaint had 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.

131. Besides the artificially inflated prices charged to Plaintiff and other Class members, the anticompetitive effects of the conspiracy alleged herein include, among other things: reduced competition in the Dental Supplies distribution market, reduced United States business opportunities, reduced consumer choice, and harm to consumer welfare generally.

132. 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 purported 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.

#### **B. Antitrust Injury To Plaintiff And Class Members**

133. During the Class Period, Plaintiff and members of the Class purchased substantial quantities of Dental Supplies from Defendants. As a result of Defendants' anticompetitive conduct alleged herein, during and throughout the Class Period members of the Class paid Defendants more for Dental Supplies than they would have paid in a competitive market, and suffered antitrust injury as a result.

134. If new low-cost distributors had not been unlawfully prevented from partnering with state dental associations and dental supplies manufacturers, they would have emerged as major 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. Defendants have maintained and extended their dominant market position because their anticompetitive agreements and abuse of economic power foreclosed competitors' access to suppliers, dental associations that could be strategic partners, and customers in the Dental Supplies market.

135. If Defendants had not unlawfully conspired to prevent new low-cost distributors from partnering with state dental associations and dental supplies manufacturers, other competitors would have partnered with state dental associations and manufacturers and emerged as viable nationwide competitors to Defendants, resulting in increased competition and substantially lower prices for dental supplies, and Plaintiff and the members of the Class would have paid substantially less for dental supplies as a result during and throughout the Class Period.

136. Because Defendants were successful in unlawfully preventing new low-cost distributors and other competitors from partnering with state dental associations and dental supplies manufacturers to compete with Defendants, competition in the market was substantially harmed. As a direct result of Defendants' anticompetitive agreement, prices have been inflated and maintained at supracompetitive levels. Plaintiff and members of the Class have directly and proximately sustained, and continue to sustain, substantial losses 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.

137. Injury to Plaintiff and members of the Class was a direct and foreseeable result of Defendants' anticompetitive conduct. Defendants' group boycotts foreclosed new entrant competitors, thereby suppressing competition, enhancing market power, and allowing Defendants to charge artificially inflated prices to dental practices and laboratories for Dental Supplies. Although the mechanism of antitrust injury to Plaintiff and to competitors is the same, the damages caused to Plaintiff and other members of the Class in the form of artificially inflated higher prices is distinct from, and not duplicative of, the damages caused to competitors in the form of lost profits and business opportunities.

138. Defendants' anticompetitive conduct is continuing, as are the overcharges suffered by Plaintiff and the Class because of Defendants' misconduct. Defendants' anticompetitive conduct complained of in this Complaint will continue absent an injunction. Plaintiff and members of the Class are likely to continue to buy Dental Supplies in the future and will be repeatedly injured unless the continuation of this anticompetitive conduct is enjoined.

### **CONCEALMENT AND TOLLING**

139. Defendants engaged in successful conspiratorial conduct that, by its nature was inherently self-concealing. On April 9, 2015, the Texas Attorney General filed a complaint against Benco, revealing some of the Defendants' anticompetitive conduct, and on September 21, 2015, SourceOne filed its private action revealing additional misconduct. But even those filings have given Plaintiff little information about some of

Defendants' anticompetitive activities that remain undiscovered and are not pled in this Complaint.

140. Plaintiff and the Class members could not have discovered Defendants' collusive conduct at an earlier date by the exercise of reasonable diligence. This is because of the inherently self-concealing nature of a conspiracy as well as the deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their conspiratorial conduct.

141. The Defendants' agreements alleged in this Complaint were wrongfully concealed and carried out in a manner that precluded detection. For example, the Texas Attorney General stated that Defendants' employees "interact regularly in person, at various social gatherings, and industry or trade association meetings, and remotely, through company email, personal email, personal cell phone calls, company cell phone calls, and text messaging. These close contacts provide the opportunity for the sharing of competitively-sensitive information among the various distributors and manufacturers."

142. For another example, Defendants falsely represented to Archer that the reasons taken for a manufacturer's adverse action regarding Archer's distribution rights were unilateral and based on legitimate business reasons, and falsely represented to customers that the prices they paid for dental equipment were fair and reasonable.

143. For another example, a Henry Schein executive used a code phrase of "keeping the integrity of the margins" for keeping prices artificially high.

144. By virtue of such conduct by Defendants and their co-conspirators, and for other reasons, the running of any statute of limitations has been tolled and suspended

with respect to any claims that Plaintiff and the other Class members have as a result of the unlawful conspiracy violations and conspiratorial conduct alleged in this Complaint.

145. For another example, in a private meeting, a Schein manager said to keep the distributors' collusion about prices secret, "to make it invisible with the customer because we don't want to compromise that end of it and make it look like we are ... having a big conspiracy going on...."

**COUNT 1 – SHERMAN ANTITRUST ACT, 15 U.S.C. § 1  
UNLAWFUL AGREEMENT IN UNREASONABLE RESTRAINT OF TRADE**

146. Plaintiff incorporates by reference the preceding allegations.

147. As set forth above, in violation of Section One of the Sherman Act, Defendants have combined and conspired to fix, inflate, raise and maintain prices for Dental Supplies sold to Plaintiff and members of the Class during the Class Period. Defendants effectuated their combination and conspiracy by, among other ways, entering into agreements with one another to boycott and threatening to boycott and boycotting 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. This conspiracy was a per se unlawful group boycott, or in the alternative, was an unlawful restraint under the rule of reason.

148. 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 herein.

149. Defendants' anticompetitive conduct alleged in this Complaint had a direct, substantial, and foreseeable proximate effect on United States trade and commerce.

150. Defendants' anticompetitive conduct alleged in this Complaint maintained and increased Defendants' collective market power in the Dental Supplies market, enabling Defendants to maintain prices above competitive levels, to the detriment of Plaintiff and other members of the Class.

151. Defendants' anticompetitive conduct alleged in this Complaint artificially inflated the prices paid for Dental Supplies by Plaintiff and Class members.

152. Plaintiff purchased Dental Supplies from Defendants that were affected by the illegal anticompetitive conduct alleged in this Complaint. Plaintiff purchased Dental Supplies from one or more Defendants and was affected by the illegal anticompetitive conduct alleged in this Complaint.

153. Plaintiff and members of the Class have been injured in their business or property by Defendants' antitrust violations. The injury to Plaintiff and the Class consists of paying prices for Dental Supplies that were inflated above competitive levels. Such injury, in the form of overcharges, is of the type that antitrust laws were designed to prevent, and flows directly from Defendants' unlawful conduct.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests:

1. That the Court determine that the Sherman Act claims contained herein may be maintained as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, and that Plaintiff be found to be an adequate representative;

2. A trial by jury of the claims asserted in this complaint, pursuant to Fed. R. Civ. P. 38;

3. That Defendants' unlawful agreements, conspiracies, or combinations alleged herein each be declared and decreed to be a per se violation of Section 1 of the Sherman Act;

4. That Plaintiff and the Class recover damages as provided by law, and that a joint and several judgment in favor of Plaintiff and the Class be entered against the Defendants in an amount to be trebled in accordance with the antitrust laws;

5. That Defendants, their affiliates, subsidiaries, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf, be compelled to implement appropriate antitrust compliance training and progress, and be permanently enjoined and restrained from in any manner: (a) continuing, maintaining, or renewing the conspiratorial conduct alleged herein or proved at trial; (b) entering into any conspiracy alleged herein or any other conspiracy or combination having a similar purpose or effect; (c) adopting or following any practice, plan, program, or device having a similar purpose or effect; (d) communicating or causing to be communicated to any other person engaged in distributing Dental Supplies, information concerning competitors or new or competing business models or delivery models, or prices or other terms or conditions of sale of Dental Supplies except to the extent necessary in connection with bona fide sale transactions between the parties to such communication; or (e) engaging in such other acts as the proof herein shall demonstrate to be appropriate for injunctive relief;

6. That Plaintiff and Class members be awarded pre- and post-judgment interest and that the interest be awarded at the highest legal rate from and after the date of the service of the initial complaint in this action;

7. That Plaintiff and Class members recover their costs of this suit, including reasonable attorneys' fees as provided by law;

8. That Plaintiff and Class members receive such other, further, and different relief as the case may require and the Court may deem just and proper under all the circumstances.

Dated: February 2, 2016

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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## 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"/> 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 \_\_\_\_\_