UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of **BENCO DENTAL SUPPLY CO.,** **a corporation,** **HENRY SCHEIN, INC.,** **a corporation, and** **PATTERSON COMPANIES, INC.,** **a corporation.**	**Docket No. 9379** **PUBLIC**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents, Benco Dental Supply Company ("Benco"), Henry Schein, Inc. ("Schein"), and Patterson Companies, Inc. ("Patterson") (collectively "the Distributors" or "Respondents"), have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Nature of the Case

1. This action arises out of a conspiracy among the country's only national full-service distributors of dental products. Benco, Schein, and Patterson conspired to refuse to offer discounted prices or otherwise negotiate with buying groups seeking to obtain supply agreements on behalf of groups of solo practitioners or small group dental practices ("independent dentists"). This conspiracy sought to prevent price competition for the business of independent dentists purchasing through buying groups, and the erosion of prices charged to such independent dentists if buying groups became more prevalent. By entering into a horizontal agreement to restrain price competition, Respondents have

engaged in a *per se* violation of Section 5 of the Federal Trade Commission Act. Respondents' conduct is unlawful, whether treated as a *per se* violation or otherwise.

2. Respondents Benco, Schein, and Patterson collectively control approximately 85% of the sale of all dental products and services made through distributors in the United States, and approximately 61% of the sale of dental products and services through all sales channels. They are competitors of one another. Respondents sell dental supplies and equipment to, among other buyers, a fragmented customer base of independent dentists.

3. Buying Groups are organizations of independent dentists that seek to aggregate and leverage the collective purchasing power of separately-owned and separately-managed dental practices in exchange for lower prices on dental products ("Buying Groups"). Buying Groups are also referred to as "group purchasing organizations," "GPOs," "buying clubs," and "buying cooperatives." Historically, Buying Groups were not common in the dental products industry. In recent years, however, Buying Groups have begun to grow due to mounting competitive pressures on independent dentists from corporate dental practices and declining insurance reimbursement rates.

4. In contrast to the historically fragmented customer base of independent dentists, Buying Groups create buyers that are larger, more sophisticated, and more powerful. Buying Groups are distinct from other large purchasers of dental products, such as corporate dental practices and community health centers, because Buying Groups offer independent dentists the opportunity to seek lower prices and other buying efficiencies without having to become part of a larger dental practice, corporate dental provider, or other entity.

5. The Distributors feared that Buying Groups would drive down prices and threaten their profit margins, and they sought to prevent independent dentists from obtaining greater bargaining power through Buying Groups. They also recognized that group purchasing organizations had led to lower prices and profit margins for distributors in the medical supplies industry, and they feared the same fate for the dental products industry.

6. While the Distributors saw Buying Groups as a threat to the industry's long term profit margins, they each nonetheless had unilateral incentives to provide discounts to and contract with Buying Groups. Buying Groups offer a distributor the opportunity to gain new customers and/or sales from competitors by offering discounts. A Buying Group could otherwise turn to another national, full-service distributor for their members' needs if one distributor refuses to work with the Buying Group.

7. Rather than respond to the threat of Buying Groups independently, the Distributors entered into an agreement to forestall this threat through collective, coordinated action.

8. Benco, Schein, and Patterson executives agreed not to provide discounts to or otherwise contract with Buying Groups composed of independent dentists (the "agreement"). The agreement sought to prevent the falling of prices charged by the Distributors to independent dentists. Senior executives of Benco, Schein, and Patterson entered into, ensured compliance with, and monitored the agreement through a series of private inter-

firm communications. They also reaffirmed their conscious commitment to concerted action on various occasions.

9. Prior to the conspiracy, each Distributor decided independently whether, and to what extent, to compete for business from Buying Groups by offering discounts to their members. After the start of the conspiracy, the Distributors coordinated their conduct with respect to this customer segment. Each Distributor informed its sales force not to provide discounts to or compete for the business of Buying Groups.

10. The agreement continued at least into 2015. By agreeing not to compete for Buying Group business, the Distributors denied Buying Groups discounted prices or access to products and services offered by national full-service distribution companies, and thereby deprived independent dentists of the benefits of Buying Groups, including lower prices. The agreement eliminated one form of price competition among the Distributors, restricted output to Buying Groups, and interfered with the setting of prices by free market forces.

11. In late 2013, Benco attempted to expand the conspiracy by inviting Burkhart Dental Supply ("Burkhart"), a regional distributor, to join the agreement. Burkhart is the fourth largest full-service distributor in the country.

12. Respondents' conduct has illegally restrained competition for the sale of dental products in the relevant markets.

Respondents

13. Respondent Benco Dental Supply Company is a private, for-profit corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business at 295 Centerpoint Boulevard, Pittston, Pennsylvania 18640. Benco is a full-service, national distributor that sells dental supplies, equipment, and services to dental practitioners throughout the United States. Benco is the third largest distributor of dental supplies and equipment in the United States.

14. Respondent Henry Schein, Inc. is a publicly traded corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business at 135 Duryea Road, Melville, New York 11747. Schein is a full-service, national distributor that sells dental supplies, equipment, and services to dental practitioners throughout the United States. Schein is the largest distributor of dental supplies and equipment in the United States.

15. Respondent Patterson Companies, Inc. is a publicly traded corporation organized, existing, and doing business under the laws of the State of Minnesota, with its principal place of business at 1031 Mendota Heights Road, St. Paul, Minnesota 55120. Patterson is a full-service, national distributor that sells dental supplies, equipment, and services to dental practitioners throughout the United States. After Schein, Patterson is the next largest distributor of dental supplies and equipment in the United States.

Jurisdiction

16. At all times relevant, Respondents Benco, Schein, and Patterson have each been, and are each now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

17. At all times relevant, the acts and practices of Respondents Benco, Schein, and Patterson, including the acts and practices alleged in this complaint, are in or affect commerce in the United States, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44. Respondents sell, or offer for sale, their products and services throughout the United States.

Overview of the Dental Products Industry

18. There are approximately 196,000 dentists currently practicing in the United States. Dentists require a broad range of products in the course of treating patients and operating a dental practice. A general practitioner can purchase hundreds of distinct products, or stock keeping units ("SKUs"), in a single month.

19. Dental products can be divided into two broad categories: (1) consumable supplies, often called "consumables" or "merchandise," (2) and equipment. Consumables include products such as, but not limited to, bibs, gloves, composites, cements, impression material, and sterilization and prevention products. Equipment includes products such as, but not limited to, x-ray machines, dental chairs, compressors, and lights. The cost of dental products is a substantial component of the expenditures of independent dental practices.

20. The market for dental products in the United States is approximately $10 billion annually. Dentists can purchase dental products and services through three channels: (1) full-service distributors, such as Benco, Schein, and Patterson; (2) mail-order or internet distributors; and (3) direct-selling manufacturers.

21. The vast majority of all dental products are sold by dental product distributors. Distributors allow dentists to centralize all of their purchases through one entity, offering an efficient way to obtain a wide range of products through centralized warehousing, delivery, and billing.

The Relevant Market

22. Where, as here, Respondents have engaged in a *per se* violation of 15 U.S.C. § 45, no allegations with respect to the relevant product market, geographic market, or market power are required.

23. To the extent such allegations may otherwise be necessary, the relevant product market for purposes of this action is the full line of dental products and services sold through full-service distributors to independent dentists.

24. No reasonable substitute exists for the products and services offered by full-service distributors to independent dentists. Full-service distributors offer a comprehensive selection of products, with thousands of SKUs across all major product categories. They also offer value-added services to customers through their sales and service teams, including equipment installation and repair, sales representative support, and business and practice-management solutions.

25. Mail-order and internet distributors are not an adequate substitute for full-service distributors to independent dentists. While some mail-order and internet distributors offer a comprehensive selection of products, none of them provides the breadth of additional services available through full-service distributors. Mail-order and internet distributors typically do not employ sales and service teams as part of their standard business model, nor do they offer other business and practice-management solutions.

26. Manufacturers are also not an adequate substitute for full-service distributors. Manufacturers that sell directly to dentists represent a small percentage of the total sale of dental products in this country. Direct-selling manufacturers do not offer a full array of dental products and cannot provide the convenience of “one-stop-shopping” available through distributors. Typically, direct-selling manufacturers sell niche and specialty products. Therefore, even if a dental practice were inclined to purchase only directly from manufacturers, it would be unable to access the comprehensive selection of products available from full-service distributors and some mail-order and internet distributors.

27. The relevant geographic markets are no larger than the United States, and regional geographic markets contained therein.

28. With the exception of Buying Groups whose members purchase products throughout the United States, competition among full-service distributors for the sale of dental products and services to independent dentists occurs regionally. Independent dentists typically cannot store and manage large quantities of supplies in-house, and rely on frequent, small quantity orders. Moreover, independent dentists require prompt equipment servicing because delays in service affect dentists’ ability to see patients. The need for prompt product delivery and same-day servicing to the customer’s office or member location(s) typically limits the scope of regional markets.

29. Independent dentists who are members of Buying Groups that span a broad geographic area require a distributor with a dispersed network of distribution centers and field sales representatives to provide prompt product delivery and same-day servicing to each, or nearly each, Buying Group member location.

30. Respondents are the only full-service distributors that compete nationally for independent dentists. Collectively, Benco, Schein, and Patterson control more than 85% of all full-service distributor sales of dental products and services nationwide. With sales and service centers interspersed throughout the nation, they are also the largest, or the only, full-service distributors in many regional areas. Respondents collectively have substantial market power in all, or most, of the relevant markets, however defined.

Benco, Schein, and Patterson Conspired to Prevent Price Erosion Due to the Rise of Buying Groups

31. The Distributors entered into an agreement to refuse to provide discounts to or compete for the business of Buying Groups for their core customer base of independent dentists. Through a series of inter-firm communications, top executives at Benco, Schein, and Patterson entered into, ensured compliance with, and monitored the agreement. They also reaffirmed their conscious commitment to concerted action on various occasions. In addition to the communications set forth below, the Distributors' executives had ample opportunity to communicate with each other about the agreement.

A. Evidence of the Distributors' Agreement and Benco's Invitation to Burkhart

32. Benco and Schein entered into an agreement to refuse to provide discounts to or compete for Buying Groups no later than July 2012.

33. Historically, Benco had a policy of refusing to sell or provide discounts to Buying Groups. Schein had historically worked with some Buying Groups, but began pursuing an anti-Buying Group strategy. This change followed frequent inter-firm communications between Benco's Managing Director Chuck Cohen and Schein's President Tim Sullivan prior to July 2012.

34. Sullivan and other top Schein executives began instructing its sales force to avoid selling to Buying Groups. As a result, Schein refused to provide discounts to or compete for the business of new Buying Groups.

35. In July 2012, Benco suspected that Schein was offering discounts to a Buying Group named Smile Source. On July 25, 2012, Smile Source contacted Benco for a dental supply agreement and informed Benco that it had purchased products from Schein and worked directly with Sullivan. Patrick Ryan, a Benco executive who oversaw its Buying Group policy, forwarded Smile Source's email inquiry to Chuck Cohen, stating: "Better tell your buddy Tim [Sullivan] to knock this shit off." Cohen responded: "Please resend this e-mail without your comment on top so that I can print & send to Tim [Sullivan] with a note. The good news is: perhaps they're looking to us because Schein told them NO. That works for me." A few days after this exchange, Ryan rejected Smile Source.

36. Patterson joined the agreement to refuse to provide discounts to or otherwise compete for Buying Groups no later than February 2013.

37. In February 2013, Benco suspected that Patterson was offering discounts to a Buying Group in New Mexico. On February 8, 2013, Cohen emailed Patterson's President, Paul Guggenheim:

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

38. Historically, Patterson did not have the same policy as Benco, and Patterson executives had not instructed its sales force to refuse to recognize, work with, or offer discounts to Buying Groups.

39. On February 8, 2013, upon receiving Cohen's email, Guggenheim forwarded Cohen's email to two other Patterson executives: then-Vice President of Sales, David Misiak, and Vice President for Marketing, Tim Rogan. Guggenheim responded to Cohen's email later that day: "Thanks for the heads up. I'll investigate the situation. We feel the same way about these."

40. Like Benco and Schein, top Patterson executives began instructing its sales force to avoid selling to Buying Groups no later than February 2013. As a result, Patterson refused to provide discounts to or compete for the business of new Buying Groups.

41. On February 26, 2013, in response to an inquiry from a Benco regional manager about the New Mexico Buying Group, Cohen stated: "I just sent [Guggenheim] a note about it. Don't want to call because it might be construed as price fixing."

42. In late February 2013, pursuant to the agreement, each of the Respondents refused to submit a bid for a customer called Atlantic Dental Care ("ADC"), as each of the Distributors believed it to be a Buying Group.

43. In a February 27, 2013 e-mail, Patterson's Misiak instructed his sales team to reject ADC, stating that both Benco and Schein were also rejecting Buying Groups: "Confidential and not for discussion..our 2 largest competitors stay out of these as well. If you hear differently and have specific proof please send that to me." Misiak also stated in an email to Guggenheim on February 27, 2013: "I'm concerned that Schein and Benco sneak into these co-op bids and deny it."

44. Benco, Schein, and Patterson executives then began communicating about whether ADC was, in fact, a Buying Group.

45. First, on March 25, 2013, Sullivan called Cohen, at Cohen's request. During the call, which lasted approximately 8.5 minutes, the executives discussed ADC, and Cohen informed Sullivan that Benco would not bid on ADC. Following the call, Cohen and Sullivan continued exchanging text messages about ADC and whether it qualified as a

Buying Group. On March 27, 2013, Cohen informed Sullivan by text message that Benco had determined ADC was not a Buying Group, but a corporate dental practice, and that Benco would bid for ADC's business:

> "Tim: Did some additional research on the Atlantic Care deal, seems like they have actually merged ownership of all the practices. So it's not a buying group, it's a big group. We're going to bid. Thanks."

46. The following day, on March 26, 2013, Cohen contacted a Benco sales representative to seek information about a Buying Group called Dental Alliance, to which Benco suspected Schein was offering discounts. The Benco sales representative provided Cohen details about the purported relationship between Schein and Dental Alliance. Later that day, Cohen copied this information into a text message to Sullivan, and commented: "As per my guy in Raleigh: . . . Could be a rumor, sometimes stories go around. Thanks." In the same text message, Cohen also reaffirmed Benco's commitment that it would not work with this Buying Group.

47. Cohen and Sullivan exchanged additional text messages and phone calls, culminating in a 5.5 minute phone call on April 3, 2013. Following these communications, both Schein and Benco changed course and submitted a bid for ADC. Benco won the ADC contract around May 2013.

48. Cohen and Guggenheim also communicated about whether ADC was a Buying Group. On June 6, 2013, after learning that Benco won ADC's business, Guggenheim emailed Cohen, replying to the email thread in which Cohen previously invited Patterson to join the agreement in February 2013. Guggenheim asked Cohen for more information about Benco's agreement with ADC:

> "Reflecting back on our conversation earlier this year, could you shed some light on your business agreement with Atlantic Dental Care? . . . I'm wondering if your position on buying groups is still as you articulated back in February? . . . Sometimes these things grow legs without our awareness!"

49. On June 8, 2013, Cohen responded to Guggenheim that ADC was a corporate dental practice, not a Buying Group, and that Benco's position on Buying Groups had not changed. Cohen assured Guggenheim that Benco's bid was consistent with the agreement. Cohen promised Guggenheim that Benco will "continue monitoring the process to ensure that ADC delivers on their commitment to us." Cohen offered to discuss the issue further. Guggenheim replied to Cohen on June 10, 2013: "Sounds good Chuck. Just want to clarify where you guys stand."

50. Following this exchange, Guggenheim informed Patterson's sales team to change course and pursue ADC's business. Patterson ultimately competed for ADC's business despite previously notifying ADC that it would not submit a bid.

51. Throughout 2013, Buying Groups continued to seek supply contracts with Patterson. On August 2, 2013, a new Patterson executive asked Rogan (Patterson Vice President of Marketing) and Misiak (Patterson Vice President of Sales): "Is it worth it to explore GPO??????? . . . I used to get 1 [request] per month . . . " Rogan responded: "We don't need GPO's in the dental business. Schein, Benco, and Patterson have always said no. I believe it is our duty to uphold this and protect this great industry."

52. On September 4, 2013, when Patterson announced the creation of its Special Markets Division—a division devoted to handling large accounts—it announced internally in a memorandum to regional and branch managers that it would exclude Buying Groups as a potential customer opportunity.

53. In or around September 2013, Benco learned that Burkhart had entered into a supply agreement with a Buying Group. Upon learning this news, Benco attempted to persuade Burkhart to stop discounting to Buying Groups.

54. On September 13, 2013, Benco's Vice President of Sales, Michael McElaney, called Burkhart's Vice President of Sales, Jeff Reece. During this phone call, McElaney expressed Benco's concerns about Burkhart's decision to sell to Buying Groups. McElaney told Reece that Buying Groups were a threat to the dental industry.

55. On September 16, 2013, McElaney reported his conversation with Reece to Cohen and Ryan: "I spoke with Jeff Reece at length late Friday about buying groups. JEFF DOES NOT GET IT!!!! . . . I will be meeting with Jeff at the ADA [American Dental Association] meeting to continue the discussion."

56. In response to McElaney's email on September 16, 2013, Ryan asked Cohen to reach out to Schein and Patterson: "CHUCK - - maybe what you should do is make sure you tell Tim [Sullivan] and Paul [Guggenheim] to hold their positions as we are."

57. On October 1, 2013, Benco's Ryan called his counterpart at Schein, Randy Foley. During this call, Ryan reaffirmed Benco's commitment against Buying Groups and informed Foley that Benco would not bid on the Buying Group Smile Source. Neither distributor bid on Smile Source in 2013.

58. On October 9, 2013, Foley informed his superior of this communication with Benco:

> "Next time we talk remind me to tell you about my conversation with Pat Ryan at SM Benco. They're anti Buying Group and Smile Source recently reached out to them. I'm being careful not to cross any boundaries, like collusion."

59. At the Dental Trade Alliance ("DTA") annual meeting in Ponte Vedra Beach, Florida in October 2013, Benco again attempted to persuade Burkhart to stop discounting to Buying Groups. Cohen told Reece that Burkhart's decision to sell to Buying Groups was not acceptable, and expressed concern and disappointment at Burkhart's Buying Group

strategy. Cohen attempted to convince Reece that Burkhart should stop selling to Buying Groups. Burkhart continued to sell to Buying Groups after these communications.

60. In January 2014, Benco's Ryan and Cohen discussed the Buying Group Smile Source. Ryan wrote: "Very familiar [with Smile Source]. Talked to them three times. Nothing is different. Randy [Foley] at Schein and I talked specifically about them. Buh-bye."

61. In 2014 and 2015, contemporaneous documents from the Distributors' executives continued to confirm the existence of a conscious commitment to a common scheme.

62. For example, in June 2014, a Patterson executive wrote in a text message: "[W]e've signed an agreement that we won't work with GPO's.**"**

63. In May 2015, Benco's Ryan rejected a Buying Group and commented in an internal email: "The best part about calling these [buying groups] is I already KNOW that Patterson and Schein have said NO."

64. In June 2015, Benco's Ryan informed a Benco sales representative: "We don't allow [volume discount] pricing unless there is common ownership. Neither Schein nor Patterson do either."

65. Through these and other inter-firm and intra-firm communications, the Distributors exchanged mutual assurances, reached a meeting of the minds, ensured compliance with, and monitored the agreement that no Distributor would provide discounts to or compete for the business of Buying Groups.

66. As a result of the agreement, Benco, Schein, and Patterson lost customers and sales to small, fringe distributors that did offer discounts to Buying Groups.

B. The Distributors Communicated about State Dental Association Buying Groups

67. The Distributors continued their pattern of private, inter-firm communications about Buying Groups when they learned that the Texas and Arizona Dental Associations were creating statewide Buying Groups.

68. The Texas Dental Association ("TDA") and Arizona Dental Association ("AZDA") are state dental associations with member dentists across the states of Texas and Arizona, respectively.

69. In October 2013, TDA launched a buying program for its members called "TDA Perks Supplies" (the "TDA Buying Group"), supplied by SourceOne Dental, an online dental distributor. The TDA Buying Group offered discounted supplies to its members.

70. The Distributors viewed the TDA Buying Group as another threat from a Buying Group.

71. Shortly after TDA announced the TDA Buying Group, employees at Benco, Schein, and Patterson engaged in repeated inter-firm communications to apprise each other of their intended response to this new Buying Group. The Distributors discussed collectively withdrawing from the TDA's 2014 annual trade show ("TDA Trade Show"). These communications spanned several months, including, but not limited to, the following:

    a. In October 2013, at Cohen's direction, Benco's Texas regional manager called a Schein Texas regional manager to inform him that Benco was considering pulling out of the TDA Trade Show. According to a summary of the call, the Benco regional manager stated: "Chuck Cohen will be reaching out to . . . Tim Sullivan to see if [Schein] would do the same thing." Benco's regional manager, at Cohen's direction, also communicated with Patterson's regional manager to discuss withdrawing from the TDA Trade Show.

    b. On December 11, 2013, Benco's Texas regional manager stated the following in regards to the TDA Buying Group: "I have been talking to the directors of Schein and Patterson. We are going to be taking a stand together against them." Also in December 2013, a Schein regional manager in Texas visited a Patterson branch manager, who informed him that Patterson would not be attending the TDA Trade Show. Schein's zone manager passed this information along to his boss, stating: "FYI Patterson pulled out of [the TDA] Convention. I firmly believe they made the move expecting us to follow suit."

    c. On January 6, 2014, Schein's Vice President of Sales, David Steck, and Patterson's Misiak (Vice President of Sales), communicated by phone regarding TDA. Misiak and Steck spoke for 14 minutes. On January 21, 2014, Steck sent Misiak a follow-up email with the subject, "Texas," and stated, "I'll be calling you to let you know about our decision on the matter we recently discussed in the next couple of days."

    d. On April 16, 2014, Benco's Cohen emailed Schein's Sullivan and Patterson's Guggenheim about the TDA Buying Group. Cohen forwarded an article about the Buying Group, and stated: "Thought you'd be interested in this 'essay' from our friends at the TDA."

72. Benco, Schein, and Patterson each informed the TDA that they would not attend the 2014 TDA Trade Show. Benco, Schein, and Patterson did not attend the 2014 TDA Trade Show.

73. Benco, Schein, and Patterson similarly discussed withdrawing from the AZDA annual trade show in response to AZDA's creation of a Buying Group in July 2014. On July 21, 2014, Benco's Arizona regional manager emailed a Patterson branch manager in Arizona about the AZDA Buying Group, and stated: "I know that Patterson, Schein and Benco boycotted the Texas Dental Association meeting this year after the TDA did the same thing and wanted to see if we could create the same message here in [Arizona]."

Following inter-firm communications in the summer of 2014, all three distributors withdrew from the AZDA Western Regional Conference ("AZDA Trade Show").

74. The Distributors' inter-firm communications and subsequent withdrawal from the TDA and AZDA Trade Shows are evidence of their conscious commitment to coordinate their response to the threat of Buying Groups.

Anticompetitive Effects of the Agreement

75. Respondents' conduct as alleged herein has had the purpose, capacity, tendency, and effect of restraining competition unreasonably and injuring customers and others in the following ways, among others:

    a. Unreasonably restraining price competition in the sale of dental products in the United States;

    b. Distorting prices and undermining the ability of independent dentists to obtain lower prices and discounts for dental products;

    c. Depriving independent dentists of the benefits of vigorous price and service competition among full-service, national distributors of dental products;

    d. Unreasonably reducing output of dental products to Buying Groups of independent dentists in the United States;

    e. Eliminating or reducing the competitive bidding process among the Distributors for sales to Buying Groups of independent dentists in the United States;

76. As a horizontal agreement that has restrained price competition, the agreement is *per se* unlawful. To the extent the agreement is not a *per se* violation of Section 5 of the FTC Act, the agreement is an inherently suspect violation thereof or is subject to a truncated rule of reason analysis.

Lack of Procompetitive Efficiencies

77. Respondents' acts and practices as alleged have not been, and are not, reasonably necessary for or reasonably related to any efficiency-enhancing objectives.

78. There are no legitimate procompetitive efficiencies that justify Respondents' conduct as alleged, or that outweigh the anticompetitive effects of that conduct.

79. Any legitimate objectives of Respondents' conduct as alleged were achievable through significantly less restrictive means.

FIRST VIOLATION ALLEGED:
RESTRAINT OF TRADE: CONSPIRACY (*PER SE* VIOLATION)

80. The allegations of Paragraphs 1 through 21 and Paragraphs 31 through 74 above are re-alleged as if fully set forth herein.

81. Respondents conspired not to provide discounts to or otherwise compete for the business of Buying Groups of independent dentists. Their concerted action unreasonably restrained trade and constituted an unfair method of competition in or affecting commerce in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

82. Respondents' concerted action is a *per se* violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

SECOND VIOLATION ALLEGED:
RESTRAINT OF TRADE: CONSPIRACY
(INHERENTLY SUSPECT VIOLATION)

83. The allegations of Paragraphs 1 through 79 above are re-alleged as if fully set forth herein.

84. Respondents conspired not to provide discounts to or otherwise compete for the business of Buying Groups of independent dentists. Their concerted action unreasonably restrained trade and constituted an unfair method of competition in or affecting commerce in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

85. Respondents' concerted action is an inherently suspect violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

THIRD VIOLATION ALLEGED:
RESTRAINT OF TRADE: CONSPIRACY
(TRUNCATED RULE OF REASON)

86. The allegations of Paragraphs 1 through 79 above are re-alleged as if fully set forth herein.

87. Respondents conspired not to provide discounts to or otherwise compete for the business of Buying Groups of independent dentists. Their concerted action unreasonably restrained trade and constituted an unfair method of competition in or affecting commerce in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

88. Respondents' concerted action is a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that is subject to a truncated rule of reason analysis.

FOURTH VIOLATION ALLEGED:
UNFAIR METHODS OF COMPETITION: INVITATION TO COLLUDE

89. The allegations of Paragraphs 1 through 66 and 75 through 79 above are re-alleged as if fully set forth herein.

90. Respondent Benco invited a competitor to collude in a joint agreement to refuse to provide discounts to or otherwise compete for the business of Buying Groups of independent dentists. Respondent Benco's actions constituted unfair methods of competition in or affecting commerce in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

Notice

Notice is hereby given to the Respondents that the sixteenth day of October is hereby fixed as the date, and 10:00 a.m. as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of the Federal Trade Commission Rules of Practice.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after an answer is filed by Respondents. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving the answer of Respondents, to make certain initial disclosures without awaiting a formal discovery request.

Notice of Contemplated Relief

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that Respondents have violated or are violating Section 5 of the FTC Act, as amended, as alleged in the complaint, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate ("Order"), including, but not limited to:

1. Ordering Respondents to cease and desist from the conduct alleged in the Complaint, and to take all such measures as are appropriate to correct or remedy, or to prevent the recurrence of, the anticompetitive practices engaged in by Respondents.

2. Prohibiting Respondents from conspiring or agreeing with each other, any competitor, or any person, to refuse to provide discounts to or compete for the business of any Customer, and from soliciting any Respondent, competitor, or any person to enter into any such conspiracy or agreement to refuse to provide discounts to or compete for the business of any Customer. The term "Customer," as used herein, is any purchaser of dental products and services, including but not limited to any dentist, dental practice, regardless of size, ownership or corporate structure, or any group purchasing organizations composed of dentists or dental practices, including but not limited to Buying Groups.

3. Prohibiting Respondents from punishing or threatening to punish any Customer, potential Customer, trade association, manufacturer, or any other person or business who wants to conduct business with any other Customer.

4. Requiring that each Respondent establish an antitrust compliance program.

5. Requiring, for a period of time, that Respondents document all communications with any competitor, including by identifying the persons involved, the nature of the communication, and its duration, and that Respondents submit such documentation to the Commission.

6. Requiring that each Respondent's compliance with the Order shall be monitored at its expense by an independent monitor, for a term to be determined by the Commission.

7. Ordering each Respondent to submit at least one report to the Commission sixty days after issuance of the Order, annual reports for a period of time, and other reports as required, describing how the Respondent has complied, is complying, and will comply with any Order.

8. An Order term of fifteen years. The Order would terminate fifteen years from the date it becomes final.

9. Any other relief appropriate to correct or remedy the anticompetitive effects in their incipiency of any or all of the conduct alleged in the Complaint.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twelfth day of February, 2018, issues its complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: