

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL**

I. ARGUMENT

Rule 3.43(b) expressly contemplates that this Court may admit prior testimony from other proceedings with the consent of the parties. Absent the consent of the parties, testimony meeting certain criteria may be admitted based on certain findings by the Court. Specifically, the rule provides that

. . . absent the consent of the parties, before admitting prior testimony (including expert reports) from other proceedings where either the Commission or respondent did not participate, except for other proceedings where the Commission and at least one respondent did participate, the Administrative Law Judge must make a finding upon a motion of a party seeking the admission of such evidence that the prior testimony would not be duplicative, would not present unnecessary hardship to a party or delay the proceedings, and would aid in the determination of the matter.

16 C.F.R. §3.43(b).

The prior testimony at issue here is in the form of sworn depositions of twelve people representing nine state dental associations that created or planned to create, buying groups for their members.¹ Their depositions were taken in connection with the private actions referenced above, which concern allegations of collusion by the Respondents. The depositions took place between August 2016 and January 2017.

Counsel for each of the Respondents participated in every one of the depositions. At each deposition, Respondents' counsel had the opportunity to object to questions and examine the witness. A review of the transcripts shows that counsel for Respondents participated actively in these depositions, and either questioned the witnesses or stated on the record that they had no questions.

¹ The transcripts involve dental associations for following states: Arizona, Colorado, Florida, Louisiana, Michigan, Nevada, Texas, Virginia, and Washington. The transcripts at issue have been marked as CX9024, CX9051, CX9052, CX9055, CX9056, CX9064, CX9065, CX9067, CX9068, CX9069, CX9070, CX9071, and CX9075. One of the witnesses was deposed twice, so there are thirteen transcripts containing the testimony of twelve witnesses.

These depositions meet all of the other requi

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

In the Matter of

**BENCO DENTAL SUPPLY CO.,
a corporation,**

**HENRY SCHEIN, INC.,
a corporation, and**

**PATTERSON COMPANIES, INC.
a corporation,**

Respondents.

Docket No. 9379

[PROPOSED] ORDER

After reviewing Complaint Counsel's Motion Pursuant to Rule 3.43(b) to Admit Prior Testimony from Other Proceedings, it is hereby ordered that the following exhibits be admitted: CX9024, CX9051, CX9052, CX9055, CX9056, CX9064, CX9065, CX9067, CX9068, CX9069, CX9070, CX9071, and CX9075.

D. Michael Chappell
Chief Administrative Law Judge

DATED this ____ day of October, 2018

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL**

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, I filed the foregoing documents electronically using the FTC's E-Filing System, which wi

T: 214.740.8000
F: 214.740.8800
jpmcdonald@lockelord.com

RespondentScheinCounsel@lockelord.com

Colin Kass, Esq.
Adrian Fontecilla
Owen Masters
Stephen Chuck
Proskauer Rose LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
T: 202.416.6800
F: 202.416.6899
ckass@proskauer.com;
afontecilla@proskauer.com;
omasters@proskauer.com;
schuck@proskauer.com

Austin, TX 78701
T: 512.305.4700
F: 512.305.4800
lfincher@lockelord.com;
slancaster@lockelord.com

Rucha Desai
David Munkittrick
David Heck
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036
T: 212-969-3628
rdesai@proskauer.com;
dmunkittrick@proskauer.com;
dheck@proskauer.com

Timothy J. Muris, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
T: 202 736 8000
F: 202 736 8711
tmuris@sidley.com

Counsel For Respondent Henry Schein, Inc.

Joseph Ostoyich
William Lavery
Andrew George
Jana Seidl
Kristen Lloyd
Baker Botts L.L.P.
1299 Pennsylvania Ave NW
Washington, DC 20004
T: 202.639.7905
joseph.ostoyich@bakerbotts.com;
william.lavery@bakerbotts.com;
andrew.george@bakerbotts.com;
jana.seidl@bakerbotts.com;
kristen.lloyd@bakerbotts.com

James J. Long, Esq.
Jay Schlosser, Esq.
Scott Flaherty, Esq.
Ruvini Jayasuriya, Esq.
William Fitzsimmons, Esq.
Briggs and Morgan
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
T: 612.977.8400
F: 612.977.8650
jlong@briggs.com
jschlosser@briggs.com
sflaherty@briggs.com
rjayasuriya@briggs.com
wfitzsimmons@briggs.com

Counsel For Respondent Patterson Companies, Inc.

October 9, 2018

By: /s/ Lin W. Kahn
Attorney

CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.