

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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JERSEY DENTAL LABORATORIES f/k/a Howard Hess :	:
Dental Laboratories Incorporated, and :	:
PHILIP GUTTIEREZ d/b/a Dentures Plus, on behalf of :	:
themselves and all others similarly situated, :	:
Plaintiffs, :	:
-against- :	:
DENTSPLY INTERNATIONAL, INC., :	Civil Action No.
ACCUBITE DENTAL LAB, INC., :	01-267 (SLR)
ADIUM DENTAL PRODUCTS, INC., :	
ARNOLD DENTAL SUPPLY COMPANY, :	Amended Class
ATLANTA DENTAL SUPPLY COMPANY, :	<u>Action Complaint</u>
BENCO DENTAL COMPANY, :	
BURKHART DENTAL SUPPLY COMPANY, :	
DARBY DENTAL LABORATORY SUPPLY CO., INC., :	JURY TRIAL DEMANDED
DENTAL SUPPLIES AND EQUIPMENT, INC., :	
EDENTALDIRECT.COM, INC., as successor to Crutcher :	
Dental, Inc., d/b/a Larry Hyman, as Assignee for the :	
Benefit of Creditors of EdentalDirect.Com, Inc., :	
HENDON DENTAL SUPPLY, INC., :	
HENRY SCHEIN, INC., and its affiliates including, :	
without limitation, Zahn Dental Co., Inc., :	
IOWA DENTAL SUPPLY CO., :	
JAHN DENTAL SUPPLY COMPANY, :	
JB DENTAL SUPPLY CO., INC., :	
JOHNSON & LUND CO., INC., :	
KENTUCKY DENTAL SUPPLY COMPANY, INC., :	
a/k/a KDSC Liquidation Corp. :	
MARCUS DENTAL SUPPLY CO., :	
MOHAWK DENTAL CO. INC., :	
NOWAK DENTAL SUPPLIES, INC., :	
PATTERSON DENTAL COMPANY, its subsidiaries, :	
predecessors, successors, assigns, affiliates and :	
related companies, :	
PEARSON DENTAL SUPPLIES, INC., :	
ZILA, INC., as successor to Ryker Dental of Kentucky, :	
Inc., :	
Defendants. :	
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Plaintiffs, Jersey Dental Laboratories f/k/a Howard Hess Dental Laboratories Incorporated, and Philip Guttierrez d/b/a Dentures Plus, (“Plaintiffs”) individually and on behalf of all others similarly situated, bring this action for damages, equitable relief and/or a declaratory judgment against Defendants Dentsply International, Inc. (“Dentsply”) and Accubite Dental Lab, Inc., Addium Dental Products, Arnold Dental Supply Company, Atlanta Dental Supply Company, Benco Dental Company, Burkhardt Dental Supply Company, Darby Dental Laboratory Supply Co., Inc., Dental Supplies and Equipment, Inc., EdentalDirect.Com, Inc., as successor to Crutcher Dental, Inc., d/b/a Larry Hyman, as Assignee for the Benefit of Creditors of EdentalDirect.Com, Inc., Hendon Dental Supply, Inc., Henry Schein, Inc. and its affiliates including, without limitation, Zahn Dental Co., Inc., Iowa Dental Supply Co., Jahn Dental Supply Company, JB Dental Supply Co., Inc., Johnson & Lund Co., Inc., Kentucky Dental Supply Company, Inc. a/k/a KDSC Liquidation Corp., Marcus Dental Supply Co., Mohawk Dental Co. Inc., Nowak Dental Supplies, Inc., Patterson Dental Company, its subsidiaries, predecessors, successors, assigns, affiliates and related companies, Pearson Dental Supplies, Inc., and Zila, Inc. as successor to Ryker Dental of Kentucky, Inc., (collectively the “Dealer Defendants” and collectively with Dentsply, “Defendants”) arising from their conspiracies in continuing violation of the antitrust laws, in the restraint of trade and commerce, and in the unlawful maintenance of a monopoly. The conduct complained of herein has had the effects of denying manufacturers of artificial teeth and/or premium artificial teeth who are competitors and/or potential competitors of Dentsply the ability to effectively distribute their teeth, and of fixing the prices of artificial teeth and/or premium artificial teeth charged to Plaintiffs, thereby, unlawfully limiting the choice among brands of artificial teeth and/or premium artificial teeth available to Plaintiffs, and raising the prices of artificial teeth and/or premium artificial teeth

charged to Plaintiffs, all of which has resulted, and is still resulting in, harm to Plaintiffs.

Moreover, the conduct complained of is not economically necessary in order for Dentsply or the Dealer Defendants to compete in the market for artificial teeth and/or premium artificial teeth.

The following allegations are made upon information and belief, except as to the allegations that pertain to each Plaintiff personally.

JURISDICTION, PARTIES AND VENUE

1. Plaintiffs file this complaint under Section 4 of the Sherman Act 15 U.S.C. § 15, as amended, and under Section 16 of the Clayton Act, 15 U.S.C. § 26. Plaintiffs seek damages, equitable relief and/or a declaratory judgment under sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1 and 2, for the Defendants' actions as members of conspiracies to restrain trade and monopolize, which are continuing violations.

2. Plaintiff Jersey Dental Laboratories f/k/a Howard Hess Dental Laboratories Incorporated ("Jersey Dental") is a dental laboratory located at 5531 Oriole Avenue, New Port Richey, Florida 34652. Jersey Dental has purchased Dentsply products, in particular Dentsply's Trubyte brand of artificial teeth, from certain Dealer Defendants, via drop shipment and otherwise, at artificially high prices caused by Defendants' unlawful restraint of trade and monopolization, which may continue unless enjoined by this Court. Jersey Dental brings this action on behalf of itself and the thousands of other similarly situated dental laboratories, which have purchased and regularly purchase Dentsply's Trubyte brand of artificial teeth.

3. Plaintiff Philip Gutierrez d/b/a Dentures Plus ("Dentures Plus") is a dental laboratory located at 1697 Havana Dr., San Jose, California, 95122. Dentures Plus has purchased Dentsply products, in particular Dentsply's Trubyte brand of artificial teeth, from certain Dealer Defendants, via drop shipment and otherwise, at artificially high prices caused by Dentsply's and Defendants' unlawful restraint of trade and monopolization, which may continue

unless enjoined by this Court. Plaintiff brings this action on behalf of itself and the thousands of other similarly situated dental laboratories, which have purchased and regularly purchase Dentsply's Trubyte brand of artificial teeth from the Defendants.

4. Defendant Dentsply is a Delaware corporation with corporate headquarters in York, Pennsylvania. Dentsply is a leading manufacturer and worldwide distributor of products and equipment for the dental market. Through its Trubyte Division, Dentsply manufactures and markets products used by dental laboratories to make dentures and other removable dental prosthetics. Its sales of artificial teeth generates most of the revenues of Dentsply's Trubyte Division. Dentsply's Trubyte division operates separately from and independently of the rest of Dentsply.

5. Accubite, Inc. ("Accubite") is a Michigan corporation with a business address of 2 Industrial Park Drive, Williamston, Michigan 48895. Accubite distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Accubite receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Accubite and the other Defendants have conspired to restrain competition from these manufacturers. Accubite's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

6. Adium Dental Products, Inc. ("Adium") is a California corporation with a business address of 3301 Olive Avenue, Signal Hill, California, 90807. Adium distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Adium receives substantial payments from interstate

commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Adium and the other Defendants have conspired to restrain competition from these manufacturers. Adium's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

7. Arnold Dental Supply Company ("Arnold") is a Washington corporation with a business address of 19231 36th Avenue W., Lynnwood, Washington, 98036. Arnold distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Arnold receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Arnold and the other Defendants have conspired to restrain competition from these manufacturers. Arnold's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

8. Atlanta Dental Supply Company ("Atlanta Dental") is a Georgia corporation with a business address of 3080 Presidential Drive, Atlanta, Georgia, 30340. Atlanta Dental distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Atlanta Dental receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Atlanta Dental and the other Defendants have conspired to restrain competition from these manufacturers. Atlanta Dental's and Dentsply's business activities that

are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

9. Benco Dental Company (“Benco”) is a Delaware corporation with a business address of 11 Bear Creek Blvd., Wilkes-Barre, Pennsylvania, 18702. Benco distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Benco receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Benco and the other Defendants have conspired to restrain competition from these manufacturers. Benco’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

10. Burkhart Dental Supply Company (“Burkhart”) is a Washington corporation with a business address of 2502 S. 78th Street, P.O. Box 11265, Tacoma WA 98409. Burkhart distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Burkhart receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Burkhart and the other Defendants have conspired to restrain competition from these manufacturers. Burkhart’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

11. Darby Dental Laboratory Supply Co., Inc., (“Darby”) is a New York corporation with a business address of 865 Merrick Avenue, Westbury, New York, 11590. Darby distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States

via interstate commerce. Further, Darby receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Darby and the other Defendants have conspired to restrain competition from these manufacturers. Darby's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

12. Dental Supplies and Equipment, Inc. ("DSE") is a West Virginia corporation with a business address of 3252 Route 60 East, Ona, West Virginia, 25545. DSE distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, DSE receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but DSE and the other Defendants have conspired to restrain competition from these manufacturers. DSE's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

13. EdentalDirect.Com, Inc., as successor to Crutcher Dental, Inc., d/b/a Larry Hyman, as Assignee for the Benefit of Creditors of EdentalDirect.Com, Inc., ("Edental") is a Delaware corporation with the business address: c/o Larry Hyman, Michael Moecker & Associates, Inc., 106 S. Tampania Ave., Suite 200, Tampa, Florida 33609. Edental distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Edental receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with

Dentsply, but Edental and the other Defendants have conspired to restrain competition from these manufacturers. Edental's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

14. Hendon Dental Supply, Inc. ("Hendon") is a Texas corporation with a business address of 1140 107th Street, Arlington, Texas, 76011. Hendon distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Hendon receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Hendon and the other Defendants have conspired to restrain competition from these manufacturers. Hendon's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

15. Henry Schein, Inc. and its affiliates under its control, including without limitation, Zahn Dental Co., Inc. ("Schein") is a Delaware corporation with a business address of 135 Duryea Road, Melville, New York, 11747. Schein distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Schein receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Schein, the other Dealer Defendants, and Dentsply have conspired to restrain competition from these manufacturers. Schein's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

16. Iowa Dental Supply Co. (“Iowa Dental”) is an Iowa corporation with a business address of 500 Laurel Street, Des Moines, Iowa, 50314. Iowa Dental distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Iowa Dental receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Iowa Dental and the other Defendants have conspired to restrain competition from these manufacturers. Iowa Dental’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

17. Jahn Dental Supply Company (“Jahn”) is a Texas corporation with a business address of 1202 N. Flores Street, San Antonio, Texas, 78212. Jahn distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Jahn receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Jahn and the other Defendants have conspired to restrain competition from these manufacturers. Jahn’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

18. JB Dental Supply Co., Inc. (“JB”) is a California corporation with a business address of 17000 Kingsview Avenue, Carson, California, 90746. JB has distributed Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, JB has received substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial

tooth manufacturers have attempted and are attempting to compete with Dentsply, but JB and the other Defendants have conspired to restrain competition from these manufacturers. JB's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce. By Order, dated September 14, 2006, the Court noted that JB Dental had "filed a Notice of Bankruptcy with this court on September 1, 2006," and ordered that JB Dental "shall be terminated as an active party [herein] until further order of the court."

19. Johnson & Lund Co., Inc. ("J&L") is a New York corporation with a business address of 3495 Winton Place, Building D, Rochester, New York, 14623-2807. J&L distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, J&L receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but J&L and the other Defendants have conspired to restrain competition from these manufacturers. J&L's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

20. Kentucky Dental Supply Company, Inc. a/k/a KDSC Liquidation Corp. ("Kentucky Dental") is a Kentucky corporation with a business address of 509 New Circle Road, N.W., Lexington, Kentucky, 40580. Kentucky Dental distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Kentucky Dental receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Kentucky

Dental and the other Defendants have conspired to restrain competition from these manufacturers. Kentucky Dental's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce. Any allegations herein as to a continuing violation do not apply to Kentucky Dental after the date of October 11, 2000.

21. Marcus Dental Supply Co. ("Marcus") is a Minnesota corporation with a business address of 219 Edgewood Avenue S., Minneapolis, Minnesota, 55426. Marcus distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Marcus receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Marcus and the other Defendants have conspired to restrain competition from these manufacturers. Marcus' and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

22. Mohawk Dental Supplies, Inc. ("Mohawk") is a New York corporation with a business address of 6060 Court Street Road, P.O. Box 6369, Syracuse, New York, 13206. Mohawk distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Mohawk receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Mohawk and the other Defendants have conspired to restrain competition from these manufacturers. Mohawk's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

23. Nowak Dental Supplies, Inc. (“Nowak”) is a Louisiana corporation with a business address of 6716 Hwy 11 North, Carriere, MS 39426. Nowak distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Nowak receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Nowak and the other Defendants have conspired to restrain competition from these manufacturers. Nowak’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

24. Patterson Dental Company Inc. (“Patterson”) is a Delaware corporation with a business address of 1031 Mendota Heights Road, St. Paul, Minnesota, 55120. Patterson distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Patterson receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Patterson and the other Defendants have conspired to restrain competition from these manufacturers. Patterson’s and Dentsply’s business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce. Patterson has recently purchased one or more other Dentsply dealers, their assets and/or their liabilities.

25. Pearson Dental Supplies, Inc. (“Pearson”) is a California corporation with a business address of 13161 Telfair Avenue, Sylmar, California, 91342. Pearson distributes Dentsply’s Trubyte artificial teeth and/or premium artificial teeth throughout the United States

via interstate commerce. Further, Pearson receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Pearson and the other Defendants have conspired to restrain competition from these manufacturers. Pearson's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

26. Zila, Inc., as successor to Ryker Dental of Kentucky, Inc. ("Zila"), is a Delaware Corporation with a business address of 5227 North 7th Street, Phoenix, AZ 85014-2800. Zila distributes Dentsply's Trubyte artificial teeth and/or premium artificial teeth throughout the United States via interstate commerce. Further, Zila receives substantial payments from interstate commerce from the sale of Dentsply products to dental laboratories including members of the Class. Other artificial tooth manufacturers have attempted and are attempting to compete with Dentsply, but Zila and the other Defendants conspired to restrain competition from these manufacturers. Zila's and Dentsply's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

27. Venue is proper in this District pursuant to 15 U.S.C. § 22.

RELEVANT MARKETS

28. The relevant markets that pertain to Plaintiffs' claims that Defendants conspired to unlawfully restrain trade or commerce and conspired to monopolize trade in the United States are the market for prefabricated, artificial teeth and/or the market for premium artificial teeth in the United States. Prefabricated, artificial teeth are highly differentiated in price and quality and are commonly segmented in the industry by the use of the terms "premium", "mid-range", "economy" and "subeconomy." "Premium" artificial teeth offer more life-like quality and greater wear resistance than less expensive teeth.

29. Dentsply now holds, and has held since at least 1987, monopoly power in these relevant markets, as a manufacturer of prefabricated, artificial teeth and/or premium artificial teeth.

30. The Plaintiff class of dental laboratories are the ultimate consumers of prefabricated, artificial teeth, and premium artificial teeth

31. Dental dealers have a controlling degree of access to the laboratories.

32. Dentsply's network of dealers, substantially comprised of the Dealer Defendants, is a dominant gateway to the laboratories.

33. The Dealer Defendants, as co-conspirators, have aided, abetted and conspired with Dentsply in maintaining its monopoly power, in excluding Dentsply's competitors from the relevant markets, in restricting the choices of the Plaintiff class, and in fixing the prices of artificial teeth paid by members of the Plaintiff class at anticompetitive levels.

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action as a class action under Rules 23(a), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. The class (the "Class") is defined as all dental laboratory purchasers of Dentsply artificial teeth or, alternatively, purchasers of premium artificial teeth, who purchased such products indirectly from Dentsply through the Dealer Defendants during the period commencing January 1, 1987, through the date hereof ("Class Period"). Excluded from the Class are Defendants, any subsidiaries or affiliates of any Defendant, and any co-conspirator of Defendants, whether or not named as a defendant in this Complaint.

35. The Class satisfies the requirements of Rule 23(a) – numerosity, commonality, typicality, and adequacy – and Rule 23(b)(3) – predominance and superiority – for the reasons set forth below.

36. In addition, the Class satisfies Rule 23(b)(2) as Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

37. The members of the Class are so numerous that joinder of all Class members is impracticable within the meaning of Rule 23(a)(1). Due to the nature of the trade and commerce involved, the members of the Class are geographically dispersed throughout the United States, and joinder of all Class members would be impracticable. While the exact number of the members of the Class is presently unknown, Plaintiffs believe that there are thousands of members. The names and addresses of most members of the Class can be ascertained through discovery.

38. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class within the meaning of Rule 23(a)(2). Among the questions of law and fact common to the Class are:

a. whether the Dealer Defendants conspired with each other and with Dentsply to restrict the available supply of artificial teeth and/or premium artificial teeth and thereby restrain trade in violation of federal law;

b. whether the Dealer Defendants conspired with each other and with Dentsply to enable Dentsply to establish and maintain a monopoly position in the artificial tooth and or/premium artificial tooth markets;

c. whether Dentsply possesses monopoly power in the relevant markets and, in combination with the Dealer Defendants, used unfair, anticompetitive practices to maintain its monopoly, which in turn, has led to an artificial limitation on the tooth brand choices available to members of the Class, and a loss of profits by members of the Class from their lost opportunities

to sell the teeth of Dentsply's competitors and potential competitors, and has been a substantial factor causing an artificial increase in prices paid by members of the Class for Dentsply teeth;

d. whether the Dealer Defendants conspired with each other and with Dentsply to fix the list prices for retail sales of Dentsply's teeth to dental laboratories, and the actual prices charged to dental laboratories, which, in turn, has been a substantial factor causing an artificial increase in prices paid by members of the Class for artificial teeth;

e. whether Plaintiffs and the Class are entitled to declaratory and/or injunctive relief to remedy Defendants' continuing violations of the antitrust laws;

f. whether Plaintiffs and the Class are being irreparably injured by Defendants' continuing violations of the antitrust laws; and

g. whether the conduct of Defendants caused and continues to cause injury to the business and property of Plaintiffs and the Class.

39. Plaintiffs' claims are typical of the claims of the other members of the Class within the meaning of Rule 23(a)(3). Plaintiffs and all other members of the Class made purchases of Dentsply artificial teeth indirectly from Dentsply and directly from the Dealer Defendants, at artificially maintained, non-competitive prices established by Dentsply and sold by Defendants to the Class. Plaintiffs and the other members of the Class have sustained damages arising out of the conduct of the Defendants in violation of federal law as complained of herein.

40. Plaintiffs will fairly and adequately protect the interests of the members of the Class as required by Rule 23(a)(4) and have retained counsel competent and experienced in class action and antitrust litigation.

41. As demonstrated above, this action is properly maintained as a class action pursuant to Rule 23(b)(3) in that questions of law and fact common to the claims of Plaintiffs and the members of the Class predominate over questions of law or fact affecting only individual members of the Class, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. All of these issues arise from the conduct of Defendants, as complained of herein.

42. Further, this action is properly maintained as a class action pursuant to Rule 23(b)(2) because Defendants have acted in a manner generally applicable to the Class, by:

- a. conspiring to restrict the distribution of brands of teeth other than Dentsply's;
- b. conspiring to maintain artificially high prices, as set by Dentsply and agreed to by and among the Dealer Defendants, for Dentsply artificial teeth and/or premium artificial teeth; and
- c. conspiring to maintain Dentsply's market power, thus making the grant of final relief appropriate on a class-wide basis.

43. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions by individual members of the Class against Dentsply and the Dealer Defendants would impose heavy burdens upon the courts and the members of the Class. It would also create the risk of myriad combinations of potential litigation and inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action, on the other hand, would achieve substantial economies of time, effort and expense, and would

assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

44. The interest of members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through representatives would be unobjectionable. The amounts at stake for many individuals, while substantial, are not great enough to enable them to maintain separate suits against the Defendants. Plaintiffs anticipate no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

45. Defendants, each with all of the others, have entered into two interrelated conspiracies: one conspiracy, to maintain Dentsply's monopoly of the manufacture of artificial teeth and/or premium artificial teeth for sale in the United States, to restrain trade for the sale of artificial teeth and/or premium artificial teeth in the United States by the implementation of an exclusive dealing arrangement, and to exclude Dentsply's competitors from the markets for such teeth in the United States; a second conspiracy, to sell such teeth to dental laboratories at anticompetitive prices determined by Dentsply and agreed to by the Dealer Defendants.

Dentsply's Monopoly Power

46. Dentsply has long dominated the market for artificial teeth used in the United States, and has a 75-80% share of the market, on a revenue basis. The teeth are purchased by Plaintiffs and the Class indirectly from Dentsply and directly from the Dealer Defendants.

47. Dentsply's market share for artificial teeth increased from 62% in 1987 to 80% during the 1990s; its market share of premium artificial teeth is even greater, and grew from 75% in 1987 to 89% in 1992.

48. Dentsply's market share is 15 times larger than that of the competitor with the next largest market share.

49. Dentsply sets its prices without any regard to the prices charged by competitors, and Dentsply raises its prices and keeps them raised, even when competitors do not follow its lead.

50. Despite the fact that the relevant markets have been relatively stagnant, in 1996, an internal Dentsply report stated that its profits had increased 32% since 1990.

The Market for Artificial Teeth and/or Premium Artificial Teeth

51. Almost all artificial teeth sold in the United States are used by dental laboratories to make dentures. There are approximately 7,000 dental laboratories in the United States that fabricate dentures.

52. A denture is a removable prosthetic device comprised of pre-fabricated artificial teeth fixed in an acrylic base, which is used to replace some or all of a person's natural teeth. Artificial teeth are the single most expensive component of a denture. Dental laboratories generally use pre-fabricated artificial teeth in making dentures.

53. Dental laboratories distinguish among artificial teeth based upon price and quality and pay significantly higher prices for premium teeth.

54. Dentsply manufactures artificial teeth in the premium, mid-range, and economy segments. The Dentsply Trubyte Division also manufactures other merchandise used by dental laboratories in the production of dentures.

55. Dentsply's artificial teeth, premium artificial teeth and other products are distributed and sold to dental laboratories only through dealers.

Attempts by Dentsply's Competitors to Enter the Relevant Markets

56. A handful of companies compete with Dentsply in the manufacture and sale of artificial teeth. Two manufacturers of premium artificial teeth, Vita Zahnfabrik ("Vita") and Ivoclar AG ("Ivoclar"), compete successfully outside the United States against Dentsply and have succeeded, in at least one country, to unseat Dentsply as the dominant brand. Vita's and Ivoclar's teeth are comparable in quality and value to Dentsply's premium teeth.

57. In the 1980's, Vita and Ivoclar began exporting their artificial teeth into the United States market. Despite their substantial success outside the United States, Vita and Ivoclar's combined sales of artificial teeth account for less than 10% of the total sales of artificial teeth in the United States.

58. Domestic artificial tooth manufacturers also compete more successfully with Dentsply outside the United States. For example, Austenal, Inc. ("Austenal") manufactures and sells the "Myerson" premium tooth line. While the Myerson line has sold well in countries outside the United States where it has better access to dealers, it has not sold well in the United States, where it is carried by only a small number of dealers. During the last five years, Austenal has attempted, without success, to obtain additional dealers in the United States for distribution of its Myerson line.

The Dealer Defendants' Control of Access To the Dental Laboratories

59. Dental dealers, including the Dealer Defendants, have been, and continue to be, the primary source of distribution of artificial teeth to dental laboratories. Indeed, distribution of teeth to laboratories by any means other than by dealers is not a practical alternative for making a significant amount of sales.

60. Dental laboratories prefer to buy from dealers rather than directly from manufacturers because dealers stock the full array of products needed to make dentures, not just artificial teeth, as well as the full array of products needed to make crowns and bridges, and generally employ skilled sales and service people to provide a variety of services to their dental laboratory customers, including regular ordering and restocking of inventory, new product demonstrations, artificial tooth returns and exchanges, technical support, and delivery services. Dealers also provide one-stop shopping for products manufactured by various suppliers, as well as one-stop returning of products manufactured by various suppliers.

61. Manufacturers also prefer to use dealers because they provide efficiencies of scale that reduce distribution costs, and take on credit risks that manufacturers otherwise would have to assume if selling to laboratories directly.

62. During the 1990's and subsequently there has been significant consolidation among dealers, with several large national or regional dealers growing at the expense of smaller local dealers.

63. Dentsply's Trubyte Division distributes its artificial teeth only through dealers specifically authorized by Dentsply to distribute its teeth. Dentsply requires that before any new dealer will be added to its network, the dealer must demonstrate that it will be able to add incremental business for Dentsply. As a result, Dentsply's dealers are the larger, more successful and efficient national and regional dealers.

64. During the 1990's Dentsply's dealer network was comprised of 33 dealers with 168 outlets, which constituted approximately 80% of all the outlets in the United States distributing artificial teeth and other dental laboratory products. During the period from 1987

through 1999, Dentsply's dealers distributed 90% of all artificial teeth sold in the United States, and 90% of the teeth that they distributed were Dentsply's Trubyte teeth.

65. As of 2003, Dentsply's dealer network was comprised of 23 authorized dealers.

66. Although, for reasons not necessarily related to the merits, a few of Dentsply's smaller dealers have not been named as defendants herein, during the 1990's, more than 90% of the sales of Dentsply teeth made in the U.S. were made by the Dealer Defendants.

67. As of 2001, 39% of all Dentsply teeth sold in the U.S. were sold by a single Dealer Defendant, namely, Henry Schein, Inc., or, more specifically, Henry Schein, Inc.'s dental dealer subsidiary and/or affiliate, Zahn Dental Co, Inc. ("Zahn").

68. As of 2001, 28% of all Dentsply teeth sold in the U.S. were sold by another single Dealer Defendant, namely, Patterson Dental Company.

69. Ivoclar and Vita have attempted, without much success, to establish an alternative network of dental laboratory dealers in the United States to sell and distribute their artificial teeth. More recently, Austenal and other manufacturers have attempted, without much success, to do the same.

70. Certain sales of Dentsply's teeth are made by means of drop shipments. Teeth sold by means of a drop shipment are ordered by a laboratory customer from a Dentsply dealer, but are shipped directly by and from Dentsply to the dental laboratory making the purchase, without the dealer ever having physical possession of the teeth. Like Dentsply teeth that are shipped to laboratories from a Dealer Defendant, Dentsply teeth that are drop shipped to laboratories directly from Dentsply are also sold pursuant to the conspiracy alleged herein.

The Exclusive Dealing/Monopoly Maintenance Conspiracy

71. Defendants have agreed, each with all of the others, to implement an exclusive dealing arrangement, pursuant to which (1) each existing member of Dentsply's dealer network

is prohibited from selling any brand of teeth manufactured by any of Dentsply's competitors, except any non-Dentsply brand that such dealer was already selling prior to the commencement of the agreement ("grandfathered" brands), and (2) any non-Dentsply dealer is required to stop selling the teeth of any of Dentsply's competitors, before such Dealer may be authorized and allowed by Dentsply to sell Dentsply's teeth.

72. Thus, the Dealer Defendants have conspired with Dentsply and with each other to, among other things, restrict Dentsply's dealers from carrying the artificial teeth of any competing manufacturer, and to restrict which dealers are allowed to carry Dentsply's artificial teeth.

73. At all relevant times, the intended effect of this exclusive dealing arrangement, known to each and every Defendant, has been the elimination of any and all competition to Dentsply sufficiently significant to pose a threat to its monopoly of the markets for artificial teeth and/or premium artificial teeth sold in the U.S.

74. At all relevant times, each and every Defendant knew that this exclusive dealing arrangement was and is an illegal restraint of trade designed to maintain Dentsply's monopoly.

75. At least as early as 1987, Dentsply began threatening to, and did, terminate any of its then current dealers who failed to agree to this exclusive dealing arrangement, while also refusing to authorize any new dealer who failed to agree to the arrangement.

76. Dealers were thus presented with an "all or nothing" choice: they could carry Dentsply's teeth or those of Dentsply's competitors, but, except for instances involving grandfathering, they could not carry both.

77. Because, at all relevant times, most laboratories primarily or exclusively used Dentsply Trubyte artificial teeth, dealers have had a strong economic incentive to agree to the

prohibition on carrying any teeth of Dentsply's competitors, so that they could sell Dentsply's teeth.

78. For example, most U.S. dental laboratories would expect their dealers to have the Trubyte line available. If a dealer that was selling Trubyte teeth suddenly became unable to supply such teeth to its customers, it could lose a significant volume of business.

79. Moreover, because a laboratory buys many products from its dealer, the dealer's loss of a laboratory account due to not having Trubyte teeth would likely lead to its losing significant business involving other products.

80. The detrimental impact on terminated dealers of losing the ability to sell Dentsply Trubyte teeth is enlarged by the fact that Dentsply also refuses to sell other Trubyte merchandise to dealers that add competing brands of artificial teeth. Even just the loss of the dealer's ability to sell this other Trubyte merchandise would cause some of its laboratory customers to switch their accounts in whole or in part to a dealer that has the ability to supply Dentsply products.

81. In short, given Dentsply's monopoly share of the market, and Dentsply's demand that its dealers participate with it in the exclusive dealing arrangement alleged herein, it would be economically irrational for a Dentsply dealer, or would-be Dentsply dealer, to carry the teeth of any of Dentsply's competitors—other than a brand “grandfathered in” for such particular dealer. The volume of business that a dealer would gain by taking on, or refusing to drop, non-Dentsply brands likely would be far smaller than the volume of business it would lose by losing the authorization to sell Dentsply's teeth.

82. In 1993, Dentsply issued written “Dealer Criteria” for dealers of the products of its Trubyte Division. The Dealer Criteria set forth various conditions for continuing as—or becoming—a dealer of Trubyte products. “Dealer Criterion Number 6” formalized the exclusive

dealing arrangement described herein, stating that dealers “may not add further tooth lines to their product offering.”

83. As Gordon Hagler, Trubyte’s Director of Sales and marketing from 1989-93 stated on the record in *United States v. Dentsply, Int’l, Inc.*, D. Del., No. Civ. A. 99-005, the purpose of Dealer Criterion Number 6 was “solely” to exclude Dentsply’s competitors from the dealers so that Dentsply’s competitors’ teeth could not effectively be sold to dental laboratories. As Hagler stated about Dealer Criterion 6: “you don’t want to give your end user, the customer, meaning a laboratory and/or a dentist, a choice. He has to buy Dentsply teeth.”

84. In demanding that each of its dealers agree to the exclusive dealing arrangement formalized in Dealer Criterion 6, Dentsply made clear to each such dealer that every other Dentsply dealer was also required to agree to the same exclusive dealing arrangement, and that every other Dentsply dealer had so agreed.

85. At all relevant times, each and every Defendant understood that the cooperation of each and every Defendant was necessary to the success of this exclusive dealing arrangement.

86. If only one of Dentsply’s dealers were to agree to this exclusive dealing arrangement, and if Dentsply’s other dealers were to refuse to comply, the complying dealer would face the prospect of possibly losing certain sales to competition from non-complying Dentsply dealers who, under this hypothetical situation, would retain their ability to sell non-Dentsply teeth to such laboratories as might, in certain instances, prefer them. Therefore, each Dentsply dealer who agrees to the exclusive dealing arrangement alleged herein benefits if all other Dentsply dealers also agree to, and implement, this exclusive dealing arrangement.

87. At all relevant times, each and every Defendant knew that the elimination of significant competition for Dentsply pursuant to the exclusive dealing conspiracy would lead to

an increase in the demand for Dentsply teeth, and, in fact, the demand for Dentsply teeth has grown during the course of the exclusive dealing conspiracy.

88. Because the Dealer Defendants are among a limited number of dealers who are authorized to carry Dentsply's teeth, and, in fact, have been responsible for more than 90% of the sales of Dentsply's teeth, the Dealer Defendants benefit from an increase in demand for Dentsply's teeth.

89. Each Dealer Defendant agreed with every other Dealer Defendant, as well as with Dentsply, and has continued to agree, to implement and abide by the exclusive dealing arrangement described herein and formalized in Dealer Criterion 6.

90. In addition, Dentsply has entered into formal written agreements with certain of the Dealer Defendants to assure their partial or complete compliance with this exclusive dealing arrangement.

Implementation and Policing of the Exclusive Dealing/Monopoly Maintenance Conspiracy

91. At least as early as 1987, Dentsply began policing the exclusive dealing aspect of Defendants' conspiracy. In that year, Dentsply threatened to terminate its relationship with a Dentsply dealer, Frink Dental ("Frink"), located in Elk Grove, Illinois, who had begun carrying Ivoclar's line of teeth. Dentsply's highest level officials, including its Chief Executive Officer and the General Manager of its Trubyte Division, flew to Illinois to personally inform Frink that it would be terminated as a Dentsply dealer, if it continued to sell Ivoclar teeth. At first, Frink continued to sell Ivoclar artificial teeth, and for that reason was terminated by Dentsply. Eventually, Frink agreed to cease its distribution of Ivoclar teeth in exchange for reinstatement of its relationship with Dentsply.

92. In the early 1990's, Atlanta Dental's customers requested that it carry Vita teeth. Atlanta Dental decided against carrying Vita, after Dentsply informed Atlanta that carrying Vita would cause Atlanta to lose its access to Dentsply's teeth.

93. In 1993 or 1994, Pearson displayed Vita Teeth... Dentsply warned Pearson that it would lose its Trubyte teeth, and Pearson returned its consignment of Vita teeth.

94. In 2000, because of a problem with Dentsply's teeth being out of stock, Marcus Dental started selling Kenson teeth. Dentsply insisted that Marcus Dental cease its sales of Kenson, and Marcus Dental complied.

95. On numerous occasions, Zahn rejected the possibility of carrying competitor's teeth, specifically, in order to abide by the exclusive dealing arrangement that it had agreed to with the other Defendants. In 1988, Zahn met with Ivoclar to discuss taking on its line of teeth, but ultimately decided against it. In 2001, Zahn turned down an advance from a German company, Heraeus Kulzer, that was attempting to compete with Dentsply. During the period 2000 through 2003, Zahn was repeatedly approached by Vident, but, each time, Zahn refused to even discuss carrying Vident's teeth.

96. Even Dentsply dealers who merely acquired non-Dentsply dealers were required to drop the non-Dentsply lines of the acquired dealers. Thus, Darby was terminated temporarily by Dentsply, after it acquired a non-Dentsply dealer that was carrying certain house brands of teeth. Eventually Darby agreed to stop the sale of the brands that were competitive with Dentsply's teeth, and was reinstated as a Dentsply dealer. Later, Darby acquired still another non-Dentsply dealer, and again, the acquired company had been selling non-Dentsply teeth. Dentsply insisted that Darby discontinue the sales of non-Dentsply teeth, and, eventually, Darby complied.

97. In 2001, Patterson acquired a non-Dentsply dealer that was selling Kenson teeth. Dentsply insisted that Patterson stop the sales of Kenson teeth, and Patterson complied.

98. Meanwhile, consistent with the exclusive dealing arrangement, new dealers were accepted by Dentsply, only when they dropped their sales of non-Dentsply teeth. In 1992, Dentsply authorized Jahn to sell its teeth, but only in return for Jahn's agreement to stop selling Vita teeth. Also in 1992, Dentsply authorized a dealer named The Tooth Counter to sell its teeth, but only after the Tooth Counter agreed to stop selling Vita teeth.

99. On more than one occasion Dentsply has authorized a new dealer whose services were duplicative with existing Dentsply dealers and therefore not needed by Dentsply, for the sole purpose of getting such dealer to stop selling a competitor's teeth. Dentsply authorized several new dealers in the early-to-mid 1990's, even though Trubyte's General Manager then believed that Dentsply had more dealers than it needed. The first time that The Tooth Counter requested authorization to carry Dentsply teeth, it was turned down. Dentsply changed its mind and authorized The Tooth Counter to carry its teeth, only after it learned that The Tooth Counter had been carrying Vita's produce, and Dentsply gave its authorization only in return for The Tooth Counter's agreement to drop Vita.

100. Defendants' exclusive dealing/monopoly maintenance conspiracy has successfully prevented Dentsply's dealers from adding competitive lines of artificial teeth. From 1987, when Dentsply first terminated Frink, until at least August 8, 2003, the date of the trial court's decision in United States v. Dentsply Int'l, Inc., D. Del. No. Civ. A. 99-005, no Dealer Defendant had successfully added a new tooth line.

Anticompetitive Impact of the Exclusive Dealing/Monopoly Maintenance Conspiracy

101. Defendants' agreement to and participation in the exclusive dealing arrangement alleged herein constitutes a conspiracy between and among the Dealer Defendants and Dentsply in restraint of trade, and a conspiracy to unlawfully maintain Dentsply's monopoly power.

102. The conspiracy has foreclosed to Dentsply's competitors and would-be competitors 77% to 81% of the United States distribution network for artificial teeth.

103. The conspiracy was designed to, and has, kept sales of competing teeth below the critical level necessary for any rival to pose a real threat to Dentsply's monopoly market share.

104. The conspiracy has thwarted Vita's, Ivoclar's and other competitors' attempts to build dealer networks and thus, to compete effectively in the relevant markets in the United States.

105. The conspiracy has also undermined the efforts of small domestic competitors of Dentsply in the United States to maintain or recruit dealers. Dentsply has successfully induced some dealers to stop distributing these small manufacturers' artificial teeth. Once a dealer drops a preexisting competing tooth line, "Dealer Criterion Number 6" prevents the dealer from renewing its distribution of that line.

106. The conspiracy has delayed the possible entry of potential competitors into the market, and has contributed to the decision of at least one major United States company not to begin manufacturing and selling artificial teeth in this country.

107. Competitors have no reasonable or effective means of combating the conspiracy. Effective, alternative channels of distribution simply do not exist.

108. For the reasons, alleged above, selling direct to dental laboratories is not an effective method for competitors to challenge Dentsply's monopoly.

109. Creating a network of non-Dentsply dealers also is not an effective alternative. Any dealers who are not part of the conspiracy are not equipped to serve as an effective distribution network. The conspiracy effectively reduces and/or maintains these non-Dentsply tooth dealers on a lower level where they are unable to fully compete against the Dealer Defendants for laboratory business.

110. The success of the conspiracy in raising entry barriers and excluding competition from other manufacturers has been facilitated and magnified by the fact that the relevant markets are stagnant, or low-growth markets.

111. Potential competitors' inability to fashion an effective alternative means of distribution has led them to curtail their promotional efforts. Because of Defendants' conspiracy it would be impossible to satisfy any demand generated by these promotional efforts.

112. The conspiracy is also designed to, and has succeeded in, limiting the choices of dental laboratories when they buy artificial teeth.

113. The exclusive dealing/monopoly maintenance conspiracy has been a substantial factor causing the prices that are charged to dental laboratories for artificial teeth to be raised to, and/or maintained at, anticompetitive levels.

114. Plaintiffs and members of the Class have been, and are being, significantly overcharged for artificial teeth, on a per unit basis.

115. The conspiratorial activities of Defendants, including, without limitation, their implementation of Dealer Criterion 6, provide no economic benefit to consumers and are not economically necessary for any or all of the Defendants to effectively compete in the marketplace.

116. The Defendants have intended, and may still be intending, to maintain, enforce and abuse Dentsply's monopoly position by the anticompetitive conduct alleged herein to the detriment of dental laboratories and consumers in the United States.

117. Plaintiffs and the other members of the Class have each been proximately injured in their business and property as a result of the conduct alleged herein, including, without limitation, by having paid artificially high prices for artificial teeth, as well as by having lost profits from unrealized sales of Vita, Ivoclar, Austenal and other manufacturers' artificial teeth, and have consequently suffered damages in an amount presently undetermined.

The Vertical Retail Price-Fixing Conspiracy

118. Since at least 1987, Dentsply has been setting a "suggested retail price" for sales by the Dealer Defendants to dental laboratories, and the Dealer Defendants have agreed with Dentsply and with each other that each Dealer Defendant will use Dentsply's "suggested retail price" as its own list price, and will make sales to dental laboratories only at such "suggested retail prices."

119. Thus, the retail list prices for Dentsply's artificial teeth and also the prices actually charged to dental laboratories for such teeth have been and are fixed by agreement among each and all of the Defendants.

120. Dentsply maintains a "price deviation" system, used by Dentsply and the Dealer Defendants to police the prices that they have agreed to fix. In order for a dealer to sell at a price below the suggested price set by Dentsply, a price deviation, in the guise of a "Robinson-Patman Act form," must be approved by a number of Dentsply's senior officers, including the General Manager of the Trubyte Division and the Chief Financial Officer. Price deviations are rarely granted, and they are only granted in order to dissuade dental laboratories from buying the brand of a would-be competitor of Dentsply.

121. Policing of the retail price-fixing agreement alleged herein is facilitated by the fact that, pursuant to the exclusive dealing arrangement also alleged herein, 90% of the tooth sales made by Dentsply dealers are sales of Dentsply's teeth. It is easier to compare, and thus police, the prices at which sales are made, when only one brand of teeth is being sold.

122. Policing of the retail price-fixing agreement alleged herein is also facilitated by the fact that a Dentsply representative will often attend one or another Dealer Defendant's sales call made on a dental laboratory, or will otherwise directly contact a dental laboratory to discuss the retail prices of Dentsply teeth.

123. This vertical retail price-fixing conspiracy, including Dentsply's participation in and policing of the conspiracy, is, among other things, a mechanism by which Dentsply compensates its dealers, including the Dealer Defendants, for their participation in the exclusive dealing/monopoly maintenance conspiracy alleged herein.

Anticompetitive Impact of the Vertical Retail Price-Fixing Conspiracy

124. Defendants' vertical retail price-fixing conspiracy has unreasonably restrained trade in the markets for artificial teeth and/or premium artificial teeth sold in the United States.

125. Defendants' vertical retail price-fixing conspiracy has been a substantial factor causing the Dealer Defendants' list prices to be raised to, and/or maintained at, anticompetitive levels.

126. Defendants' vertical retail price-fixing conspiracy has been a substantial factor causing the prices charged to dental laboratories for artificial teeth to be raised to, and/or maintained at, anticompetitive levels.

127. Plaintiffs and members of the Class have been, and are being, significantly overcharged for artificial teeth, on a per unit basis.

128. Defendants' vertical retail price-fixing conspiracy has facilitated Defendants' exclusive dealing/monopoly maintenance conspiracy.

129. Defendants have intended, and may still be intending, to enforce their vertical retail price-fixing conspiracy to the detriment of dental laboratories and consumers in the United States.

130. Plaintiffs and the other members of the Class have each been proximately injured in their business and property as a result of Defendants' vertical retail price-fixing conspiracy, including, without limitation, by having paid artificially high prices for artificial teeth, and have consequently suffered damages in an amount presently undetermined.

COUNT I

(Against All Defendants, for Damages and Injunctive Relief, for Conspiracy to Restrain Trade in Violation of Section 1 of the Sherman Act, By Means of Vertical Retail Price-Fixing)

131. Plaintiffs repeat and reallege the allegations in the introductory paragraph and in paragraphs 1 through 130.

132. From at least as early as 1987, Defendants have entered, each with all of the others, into a vertical retail price-fixing agreement and conspiracy, and have maintained, enforced and policed the agreement and otherwise acted in concert with each other, thereby unreasonably restraining trade and causing a substantial lessening of competition in the markets for prefabricated artificial teeth and/or premium artificial teeth sold in the United States, all in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

133. As a direct and proximate result of the violations alleged herein, Plaintiffs and members of the Class have been unable to, and may continue to be unable to purchase artificial teeth and/or premium artificial teeth at prices determined by free and open competition, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by

their respective purchases of artificial teeth and/or premium artificial teeth at prices higher than they otherwise would have paid, absent Defendants' unlawful conduct.

134. Defendants' agreement and conspiracy in restraint of trade violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

135. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.

136. Accordingly, Plaintiffs and the Class seek compensatory and treble damages from each and all of the Defendants, a declaratory judgment that Defendants' actions complained of herein are violations of Section 1 of the Sherman Act, and a permanent injunction enjoining the continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

COUNT II

(Against the Dealer Defendants, for Damages and Injunctive Relief, For Conspiracy to Monopolize, in Violation of Section 2 of the Sherman Act, By Means of Exclusive Dealing)

137. Plaintiffs repeat and reallege the allegations in the introductory paragraph and in paragraphs 1 through 130.

138. The Defendants have conspired, each with all of the others, to achieve and/or maintain a monopoly by Dentsply in the manufacture of prefabricated artificial teeth and/or premium artificial teeth, for sale in the United States, thereby causing a substantial lessening of competition in the markets for such teeth, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

139. From at least as early as 1987, Dentsply has had monopoly power in the United States markets for prefabricated artificial teeth and/or premium artificial teeth.

140. From at least as early as 1987, Defendants have agreed and conspired, each with all of the others, to implement and maintain a restrictive dealing arrangement, policed and

enforced by Dentsply, whose purpose, expected effect and actual effect have been the substantial exclusion of Dentsply's competition from the markets for prefabricated artificial teeth and/or premium artificial teeth in the United states.

141. Dentsply has sold artificial teeth and/or premium artificial teeth to the Dealer Defendants on the condition, agreed to by and among the Dealer Defendants, that they restrict their dealings with rival manufacturers, in order to maintain Dentsply's monopoly in the market for artificial teeth and/or premium artificial teeth sold in the United States.

142. On numerous occasions, Dentsply has refused to allow one or another dental dealer to carry its teeth who was carrying the teeth of one of Dentsply's competitors, and on numerous other occasions, one or another of the Dealer Defendants have dropped or declined to carry the teeth of one of Dentsply's competitors, each time, in furtherance of Defendants' conspiracy to monopolize the market for artificial teeth and/or premium artificial teeth sold in the United States.

143. Each and all of the Defendants have acted with the specific intent to unlawfully maintain a monopoly in violation of Section 2 of the Sherman Act, and with the expectation that they would succeed in so doing.

144. Defendants have conspired to monopolize in the relevant markets, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

145. As a direct and proximate result of the violations alleged herein, Plaintiffs and members of the Class have been unable to, and may continue to be unable to, purchase artificial teeth and/or premium artificial teeth at prices determined by free and open competition, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by

their respective purchases of artificial teeth and/or premium artificial teeth at prices higher than they otherwise would have paid, absent Defendants' unlawful conduct.

146. Also as a direct and proximate result of the violation alleged herein, the opportunities of Plaintiffs and the members of the Class to purchase the artificial teeth and/or premium artificial teeth of Dentsply's competitors have been, and may continue to be, restricted, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their loss of profits from their lost opportunities to sell Vita, Ivoclar, Austenal and other manufacturers' artificial teeth.

147. Defendants' actions violate the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act.

148. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.

149. Accordingly, Plaintiffs and the Class seek compensatory and treble damages from the Dealer Defendants, a declaratory judgment that the Dealer Defendants' actions complained of herein are violations of the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act, 15 U.S.C. § 2, and a permanent injunction enjoining the continuing violation of the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act, 15 U.S.C. § 2.

COUNT III

(Against Dentsply, for Injunctive Relief, For Conspiracy to Monopolize, In Violation of Section 2 of the Sherman Act, By Means of Exclusive Dealing)

150. Plaintiffs repeat and reallege the allegations in the introductory paragraph and in paragraphs 1 through 130.

151. The Defendants have conspired, each with all of the others, to achieve and/or maintain a monopoly by Dentsply in the manufacture of prefabricated artificial teeth and/or premium artificial teeth, for sale in the United States, thereby causing a substantial lessening in the markets for such teeth, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

152. From at least as early as 1987, Dentsply has had monopoly power in the United States markets for prefabricated artificial teeth and/or premium artificial teeth.

153. From at least as early as 1987, Defendants have agreed and conspired, each with all of the others, to implement and maintain a restrictive dealing arrangement, policed and enforced by Dentsply, whose purpose, expected effect and actual effect have been the substantial exclusion of Dentsply's competition from the markets for prefabricated artificial teeth and/or premium artificial teeth in the United states.

154. Dentsply has sold artificial teeth and/or premium artificial teeth to the Dealer Defendants on the condition, agreed to by and among the Dealer Defendants, that they restrict their dealings with rival manufacturers, in order to maintain Dentsply's monopoly in the market for artificial teeth and/or premium artificial teeth sold in the United States.

155. On numerous occasions, Dentsply has refused to allow one or another dental dealer to carry its teeth who was carrying the teeth of one of Dentsply's competitors, and on numerous other occasions, one or another of the Dealer Defendants have dropped or declined to carry the teeth of one of Dentsply's competitors, each time, in furtherance of Defendants' conspiracy to monopolize the market for artificial teeth and/or premium artificial teeth sold in the United States.

156. Each and all of the Defendants have acted with the specific intent to unlawfully maintain a monopoly in violation of Section 2 of the Sherman Act, and with the expectation that they would succeed in so doing.

157. Defendants have conspired to monopolize in the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

158. As a direct and proximate result of the violations alleged herein, Plaintiffs and members of the Class have been unable to, and may continue to be unable to, purchase artificial teeth and/or premium artificial teeth at prices determined by free and open competition, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their respective purchases of artificial teeth and/or premium artificial teeth at prices higher than they otherwise would have paid, absent Defendants' unlawful conduct.

159. Also as a direct and proximate result of the violation alleged herein, the opportunities of Plaintiffs and the members of the Class to purchase the artificial teeth and/or premium artificial teeth of Dentsply's competitors have been, and may continue to be, restricted, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their loss of profits from their lost opportunities to sell Vita, Ivoclar, Austenal and other manufacturers' artificial teeth.

160. Defendants' actions violate the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act.

161. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.

162. Dentsply's motivation for conspiring to monopolize in violation of Section 2 of the Sherman Act has been to use excess profits generated by the Trubyte division to subsidize other parts of the Dentsply corporation.

163. A Dentsply internal document authored by Chris Clark, the Trubyte division's Director of Sales and Marketing, from 1992-96, referred to the terms of the exclusive dealing conspiracy, which Dentsply formalized in a policy titled "Dealer Criterion 6," as one of the "Sales/Distribution Principles for [our] Cash Cow Business."

164. Thus, if the Trubyte division were a free-standing company, separate from the Dentsply corporation, it would lose its motive for implementing the exclusive dealing conspiracy in violation of Section 2 of the Sherman Act.

165. Accordingly, Plaintiffs and the Class seek a declaratory judgment that Dentsply's actions complained of herein are violations of the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act, 15 U.S.C. § 2, a permanent injunction enjoining the continuing violation of the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act, 15 U.S.C. § 2, and the Court-ordered divestiture of the Trubyte division from Dentsply.

COUNT IV

(Against the Dealer Defendants, for Damages and Injunctive Relief, for Conspiracy to Restrain Trade in Violation of Section 1 of the Sherman Act, By Means of Exclusive Dealing)

166. Plaintiffs repeat and reallege the allegations in the introductory paragraph and in paragraphs 1 through 130.

167. The Defendants have conspired, each with all of the others, to restrain trade in the markets for prefabricated artificial teeth and/or premium artificial teeth, for sale in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

168. From at least as early as 1987, Defendants have agreed and conspired, each with all of the others, to implement and maintain a restrictive dealing arrangement, policed and enforced by Dentsply, whose purpose, expected effect and actual effect have been the substantial exclusion of Dentsply's competition from the markets for prefabricated artificial teeth and/or premium artificial teeth in the United states, thereby substantially lessening competition in those markets, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

169. Dentsply has sold artificial teeth and/or premium artificial teeth to the Dealer Defendants on the condition, agreed to by and among the Defendants, that they restrict their dealings with rival manufacturers.

170. On numerous occasions, Dentsply refused to allow one or another dental dealer to carry its teeth who was carrying the teeth of one of Dentsply's competitors, and on numerous other occasions, one or another of the Dealer Defendants dropped or declined to carry the teeth of one of Dentsply's competitors, each time, pursuant to Defendants' exclusive dealing conspiracy in restraint of trade in the markets for artificial teeth and/or premium artificial teeth sold in the United States.

171. This exclusive dealing conspiracy is also a group boycott of Dentsply's competitors, in violation of Section 1 of the Sherman Act.

172. As a direct and proximate result of the violations alleged herein, Plaintiffs and members of the Class have been unable to, and may continue to be unable to, purchase artificial teeth and/or premium artificial teeth at prices determined by free and open competition, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their respective purchases of artificial teeth and/or premium artificial teeth at prices higher than they otherwise would have paid, absent Defendants' unlawful conduct.

173. Also as a direct and proximate result of the violation alleged herein, the opportunities of Plaintiffs and the members of the Class to purchase the artificial teeth and/or premium artificial teeth of Dentsply's competitors have been, and may continue to be, restricted, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their loss of profits from their lost opportunities to sell Vita, Ivoclar, Austenal and other manufacturers' artificial teeth.

174. Defendants' agreement and conspiracy in restraint of trade violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

175. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.

176. Accordingly, Plaintiffs and the Class seek compensatory and treble damages from the Dealer Defendants, a declaratory judgment that the Dealer Defendants' actions complained of herein are violations of Section 1 of the Sherman Act, and a permanent injunction enjoining the continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

COUNT V

(Against Dentsply, for Injunctive Relief, for Conspiracy to Restrain Trade in Violation of Section 1 of the Sherman Act, By Means of Exclusive Dealing)

177. Plaintiffs repeat and reallege the allegations in the introductory paragraph and in paragraphs 1 through 130.

178. The Defendants have conspired, each with all of the others, to restrain trade in the markets for prefabricated artificial teeth and/or premium artificial teeth, for sale in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

179. From at least as early as 1987, Defendants have agreed and conspired, each with all of the others, to implement and maintain a restrictive dealing arrangement, policed and

enforced by Dentsply, whose purpose, expected effect and actual effect have been the substantial exclusion of Dentsply's competition from the markets for prefabricated artificial teeth and/or premium artificial teeth in the United states, thereby substantially lessening competition in those markets, in violation of Section 1 of the Sherman Act, 15.U.S.C. § 1.

180. Dentsply has sold artificial teeth and/or premium artificial teeth to the Dealer Defendants on the condition, agreed to by and among the Defendants, that they restrict their dealings with rival manufacturers.

181. On numerous occasions, Dentsply refused to allow one or another dental dealer to carry its teeth who was carrying the teeth of one of Dentsply's competitors, and on numerous other occasions, one or another of the Dealer Defendants dropped or declined to carry the teeth of one of Dentsply's competitors, each time, pursuant to Defendants' exclusive dealing conspiracy in restraint of trade in the markets for artificial teeth and/or premium artificial teeth sold in the United States.

182. This exclusive dealing conspiracy is also a group boycott of Dentsply's competitors, in violation of Section 1 of the Sherman Act.

183. As a direct and proximate result of the violations alleged herein, Plaintiffs and members of the Class have been unable to, and may continue to be unable to, purchase artificial teeth and/or premium artificial teeth at prices determined by free and open competition, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their respective purchases of artificial teeth and/or premium artificial teeth at prices higher than they otherwise would have paid, absent Defendants' unlawful conduct.

184. Also as a direct and proximate result of the violation alleged herein, the opportunities of Plaintiffs and the members of the Class to purchase the artificial teeth and/or

premium artificial teeth of Dentsply's competitors have been, and may continue to be, restricted, and Plaintiffs and members of the Class have been damaged, and may continue to be damaged, by their loss of profits from their lost opportunities to sell Vita, Ivoclar, Austenal and other manufacturers' artificial teeth.

185. Defendants' agreement and conspiracy in restraint of trade violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

186. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.

187. Accordingly, Plaintiffs and the Class seek compensatory and treble damages from the Dealer Defendants, a declaratory judgment that the Dealer Defendants' actions complained of herein are violations of Section 1 of the Sherman Act, and a permanent injunction enjoining the continuing violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief,

Class Certification

A. That the Court certify this action to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and denominating Plaintiffs as representatives for the Class and their counsel as counsel for the Class.

Declaratory Judgment

B. That the Court adjudge and decree that Defendants:

(1) agreed and conspired to restrain trade in violation of
Section 1 of the Sherman Act;

(2) combined and conspired to monopolize in violation of the prohibition against combining or conspiring to monopolize, under Section 2 of the Sherman Act.

Compensatory Damages

C. That Plaintiffs and each and every member of the Class recover compensatory damages from Defendants for the injuries caused by the retail price-fixing conspiracy, and from the Dealer Defendants, for the injuries caused by the exclusive dealing conspiracy, in each instance, as provided by law, and as determined to have been sustained as to each of the Plaintiffs and members of the Class, and that judgment be entered against Defendants in favor of Plaintiffs and each and every member of the Class.

Treble Damages

D. That Plaintiffs and each and every member of the Class recover treble damages as provided by law.

Injunctive Relief, Including Divestiture

E. That this Court, in order to prevent the recurrence and to undo the anticompetitive consequences of the conduct alleged herein, permanently enjoin Dentsply and the Dealer Defendants from engaging in the anticompetitive practices embodied in Dealer Criterion 6, as well as from agreeing on retail prices and retail list prices.

F. That this Court, in order to prevent the recurrence and undo the anticompetitive consequences of the exclusive dealing conspiracy, order the divestiture of Dentsply's Trubyte division from Dentsply.

Costs, Attorneys' Fees and Other Relief

G. That Plaintiffs and the other members of the Class recover their costs of suit, including reasonable attorneys' fees and expenses, as provided for by law.

H. That this Court grant such further relief that this Court deems just and proper.

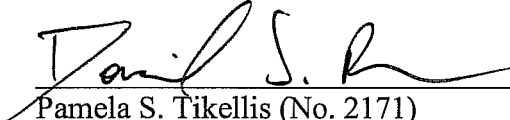
DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil

Procedure as to all issues so triable as a matter of right.

Dated, October 10, 2006

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