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1 MARK BRNOVICH
2 ATTORNEY GENERAL
3 (Firm State Bar No. 14000)
4 Dana R. Vogel (No. 030748)
5 Rebecca C. Salisbury (No. 022006)
6 Assistant Attorneys General
7 Office of the Attorney General
8 2005 North Central Avenue
9 Phoenix, Arizona 85004-1592
10 Telephone: (602) 542-7764
11 Facsimile: (602) 542-4377
12 consumer@azag.gov
13 Attorneys for Plaintiff

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16 STATE OF ARIZONA, *ex rel.* MARK
17 BRNOVICH, Attorney General,

18 Plaintiff,

19 vs.

20 BENCO DENTAL SUPPLY CO.,

21 Defendant.

Case No.:

CV 2018-013158

**ANTITRUST AND CONSUMER FRAUD
COMPLAINT**

1 The State of Arizona, through its Attorney General, Mark Brnovich (the “State”
2 or the “Attorney General”), brings this action against Benco Dental Supply Company
3 (“Benco”) for violations of the Arizona State Uniform Antitrust Act (“ASUAA”),
4 Arizona Revised Statutes (“A.R.S.”) § 44-1401, *et seq.*, and the Arizona Consumer
5 Fraud Act (“ACFA”), A.R.S. § 44-1521, *et seq.*

6 **I. INTRODUCTION**

7 1. The State of Arizona brings this action to hold Benco Dental Supply, Co.,
8 (“Benco”) accountable for its anticompetitive and deceptive acts and practices, which
9 have injured the dental industry in Arizona and Arizona consumers.

10 2. Benco and its two main competitors, Company 2 and Company 3, (the
11 “Big Three”), have dominated the dental supply distribution industry and have utilized
12 the same sales methods for decades, primarily using face to face and in-person sales
13 visits to dentists’ offices as their business model.

14 3. In 2014, a new consumable dental supply distributor, SourceOne Dental
15 (“SourceOne”) entered the market in Arizona with a new sales model, partnering with
16 the state dental association, offering its products through an online platform where
17 dentists could, directly from its website, purchase products at a lower cost.

18 4. To prevent this new, lower priced competition, the Big Three agreed to
19 take collective, coordinated action, attempting to force SourceOne out of the Arizona
20 consumable dental supply market.

21 5. The Big Three’s collective action included boycotting state dental
22 associations, which they claimed were now competing with them, and injuring dentists
23 and Arizona consumers by pressuring dentists to continue to purchase more expensive
24 products from the Big Three instead of lower-priced products offered by SourceOne.

25 6. In addition, Benco also engaged in a series of deceptive acts and practices
26 about its competitor, SourceOne.

1 7. In addressing the entrance of SourceOne, Benco spread word throughout
2 the dental community, to dentists and manufacturers, that SourceOne was selling gray
3 market products.

4 8. Benco spread word, to dentists and manufacturers, that SourceOne sold
5 gray market products even though at the time the statements were made, Benco knew
6 this to be false.

7 9. In the dental community, the term “gray market” is an unnerving
8 description used to refer to dental supply products, including consumable dental
9 supplies, that are sold from outside the brand owner’s approved distribution channels,
10 and may lack the manufacturer’s warranty and/or fail to comply with U.S. safety
11 regulations.

12 10. Through Benco’s deceptive statements, Benco attempted to preserve its
13 market share and influence dentists not to buy consumable dental supplies from
14 SourceOne.

15 11. Therefore, the State of Arizona brings this action against Benco under the
16 Arizona State Uniform Antitrust Act and the Arizona Consumer Fraud Act. Through this
17 action, the State of Arizona seeks to hold Benco accountable for the anticompetitive and
18 deceptive acts and practices alleged in the Complaint, to prevent future unlawful
19 anticompetitive and deceptive acts and practices, and to obtain other relief, including
20 restitution, disgorgement, civil penalties, costs of investigation, attorneys’ fees, and
21 further relief as the Court deems just and proper.

22 **II. PARTIES**

23 12. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General,
24 who is authorized to bring this action under the Arizona State Uniform Antitrust Act,
25 A.R.S. § 44-1401, *et seq.* and the Arizona Consumer Fraud Act, A.R.S. § 1521, *et seq.*
26

1 13. Defendant Benco Dental Supply Company is a private, for-profit Delaware
2 corporation, with its principal address at 295 Centerpoint Boulevard, Pittson, PA 18640.
3 Registered to do business in Arizona since 2006, Benco sells dental supplies and
4 equipment including consumable dental supplies to Arizona dentists.

5 **III. JURISDICTION AND VENUE**

6 14. This court has jurisdiction, pursuant to A.R.S. §§ 44-1405, 44-1528 and
7 12-1801, over the subject matter of this action.

8 15. The Plaintiff is the State of Arizona and venue in Maricopa County is
9 proper for all claims pursuant to A.R.S. § 12-401(17).

10 **IV. ANTICOMPETITIVE CONDUCT RELATING TO BOYCOTTING**
11 **OF THE ARIZONA DENTAL ASSOCIATION**

12 **A. Relevant Market**

13 16. On information and belief, the relevant product market is the full line of
14 consumable dental supplies sold to dental professionals by distributors.

15 17. On information and belief, consumable dental supplies include items such
16 as bibs, gloves, composites, cements, impression material, and sterilization and
17 prevention products.

18 18. The relevant geographic market is Arizona.

19 **B. The Dental Supplies Industry**

20 19. Dental professionals require a broad range of products in the course of
21 treating their patients.

22 20. Certain dental supplies are consumed by dental professionals in the
23 practice of dentistry.

24 21. Individual dental supply manufacturers do not offer the full range of dental
25 supplies necessary to run a dental practice.
26

1 22. Dental supply manufacturers sell their products either directly to dental
2 professionals, or to distributors, like Defendant, Benco.

3 23. The vast majority of dental supplies are sold by dental supply
4 manufacturers to distributors.

5 24. Many distributors carry broad product lines of consumable dental supplies
6 and equipment and employ sales representatives to service their customers.

7 25. Because dentists need a wide range of supplies and equipment in the daily
8 operation of their practices, direct purchases from manufacturers require a complicated
9 and time-consuming series of individual transactions, with additional paperwork and
10 recordkeeping.

11 26. In contrast, purchases from distributors allow dentists to consolidate their
12 purchases with a single supplier, with significant savings in time and effort.

13 27. The convenience of purchasing consumable dental supplies and equipment
14 through distributors allows distributors to charge a substantial mark-up on the price of
15 consumable dental supplies as compared to prices charged by manufacturers.

16 28. Benco is a dental distribution company selling dental equipment, services,
17 and consumable dental supplies.

18 29. Benco is a traditional distribution company because it utilizes a sales force
19 that makes in-person visits to dental offices, selling its equipment, services, and
20 consumable dental supplies to dentists face to face.

21 30. There are two other major companies in the distribution industry:
22 Company 2 and Company 3.

23 31. Company 2 and Company 3 also consider themselves traditional
24 distributors because they utilize in-person, face to face sales techniques and provide a
25 full range of consumable dental supplies, equipment, and services.
26

1 32. The dental supplies industry is an extremely concentrated market.
2 Together, the Big Three collectively control approximately 80% of the sale of all dental
3 products made through distributors in Arizona. Benco controls approximately 10% of
4 the market, Company 2 controls approximately 35% of the market, and Company 3
5 controls approximately 35% of the market (mirroring national market share).

6 33. The Big Three are competitors of one another. They sell consumable
7 dental supplies and equipment to, among other buyers, a fragmented customer base of
8 independent dentists.

9 34. The Herfindahl- Hirschman index, a commonly accepted measure of
10 market concentration for the dental supplies market in Arizona, is 2550 (.255), a level
11 characterized as “highly concentrated” by the federal antitrust enforcement agencies.

12 35. On information and belief, the market concentration for the consumable
13 dental supplies market for Arizona is materially comparable.

14 36. High-level employees of the Big Three frequently and privately
15 communicate with their Big Three counterparts, at in-person meetings, and through
16 electronic mail, text messages, and telephone calls. These communications provide the
17 opportunity for the exchange of competitively-sensitive information.

18 37. The substantial market power of the Big Three, and their control over the
19 vast majority of consumable dental supplies, has allowed the Big Three to frustrate and
20 delay the advent of Group Purchasing Organizations (“GPO’s”) for consumable dental
21 supplies and equipment in the dental industry.

22 38. A GPO is an entity that helps health care providers, such as dentists,
23 realize savings and efficiencies by aggregating purchase volume and using that leverage
24 to negotiate lower purchase prices from manufacturers and distributors. GPO’s can also
25 allow participants to share and standardize best practices related to product selection
26 and use, further benefiting dentists and consumers alike.

1 39. State dental associations are voluntary associations of dentists that provide
2 resources and services to support practicing dentists.

3 40. Since group purchasing requires a degree of coordination among the
4 members of a GPO, state dental associations are well-suited to assist members with
5 setting up a GPO because the state dental associations have the membership roster,
6 administrative infrastructure, and promotional resources necessary to drive and monitor
7 group purchasing participation.

8 41. State dental associations have the incentive to promote the rise of group
9 purchasing as a value-added business proposition for their members, and to earn
10 commission fees from the sale of consumable dental supplies through the GPO.

11 42. State dental associations including the Arizona Dental Association
12 (“AZDA”) have attempted to facilitate the use of GPO’s by the association’s members
13 for years.

14 43. State dental associations are not in the business of purchasing consumable
15 dental supplies or equipment, so, to facilitate a GPO, they would need to partner with
16 an entity that does facilitate the purchase of consumable dental supplies.

17 44. SourceOne, a new consumable dental supply distributor, uses an e-
18 commerce platform, selling consumable dental supplies directly to dentists.

19 45. SourceOne had gathered a number of dental supply manufacturers on its
20 online platform, but, wanting to expand, sought endorsement of a state dental
21 association as a way to reach more dentists through GPO’s.

22 46. SourceOne sought to compete with the Big Three by entering into an
23 “Endorsed Company Agreement” with state dental associations, which would leverage
24 the buying power of large groups of dentists that are members of the state dental
25 association, allowing SourceOne to offer even lower prices to dentists and lower the
26 selling costs to manufacturers.

1 47. SourceOne, an online platform, entering into an Endorsed Company
2 Agreement with a state dental association, is attractive to dentists because:
3 a. Dentists need a wide range of supplies consisting of products from
4 many different manufacturers;
5 b. SourceOne combines the convenience of a distributor gathering all
6 products to a single site, but without the substantial markup charged by
7 traditional distributors;
8 c. SourceOne's online platform lowered selling costs for manufacturers
9 and is then able to pass that savings along to the state dental
10 association's members;
11 d. SourceOne's online platform bypassed the traditional distributors' face-
12 to-face sales methods and sold products at the wholesale level, which
13 resulted in reduced prices; and
14 e. These benefits were easily available to any dentist member of the state
15 dental associations.

16 48. In October 2013, SourceOne entered into an Endorsed Company
17 Agreement with the Texas Dental Association ("TDA"), to offer its products to TDA
18 members through a platform called TDA Perks.

19 49. In July 2014, SourceOne entered into an Endorsed Company Agreement
20 with the AZDA, to offer its products to AZDA members through a program called
21 AZDA Perks.

22 50. SourceOne owns and operates the sales platform of TDA Perks and AZDA
23 Perks through which members make their purchases of consumable dental supplies.

24 51. SourceOne contracts with vendors and retains the net revenues and profits
25 generated by TDA Perks and AZDA Perks after paying a small commission to the state
26 dental association in exchange for its endorsement and promotion of the platform.

1 52. The consumable dental supplies sold on AZDA Perks are authentic, non-
2 counterfeit products, intended for sale by their manufacturer in the United States,
3 purchased through authorized distribution channels and in conformity with applicable
4 federal regulations.

5 **C. Boycott Of State Dental Associations**

6 53. The Big Three became concerned about the competitiveness of SourceOne
7 after SourceOne entered into the Endorsed Company Agreement with the TDA in 2013.

8 54. Through communications with each other, the Big Three agreed to break
9 with their traditional pattern of attendance and not attend the TDA meeting and trade
10 show in May, 2014.

- 11 a. On April 8, 2014, the day before Benco and Company 2 both
12 announced they would not attend the 2014 TDA state show, Benco's
13 Director of Sales told his direct report to "encourage more vendor
14 partners to join the big three dealers and boycott future conventions.
15 Their meeting dying a slow death will have more impact than matching
16 prices."
17 b. On April 9, 2014 Company 2 announced it would not attend the 2014
18 TDA state show. Later that day, Benco's Regional Manager for San
19 Antonio, Austin, and Houston informed his counterpart at Company 2
20 that Benco had also officially decided to pull out of the 2014 TDA state
21 show, even before notifying his own direct reports at Benco of the
22 decision.
23 c. Also on April 9, 2014, Benco's Regional Manager for San Antonio,
24 Austin, and Houston called a manager for Company 2 in Arizona (Zone
25 General Manager for the Western Pacific) to let him know as well.
26

1 55. The annual meeting and trade show was put on by the TDA every year and
2 was a popular place for vendors. The Big Three's decision not to attend the 2014 TDA
3 state show was historically unprecedented and each of the Big Three individually stood
4 to lose substantial revenues from sales at the trade show and afterwards if any one of
5 the Big Three backed out of the agreement and decided to attend.

6 56. The Big Three forfeited significant deposits for prime locations and
7 associated promotions at the 2014 TDA state show, all of which had been arranged well
8 in advance and were non-refundable. Smaller distributors, not part of the conspiracy,
9 attended and increased their revenues from the 2014 TDA state show at the Big Three's
10 expense.

11 57. The intention of this boycott was to send a message to the community and
12 other state dental associations that might want to enter a similar Endorsed Company
13 Agreement with SourceOne: Do not endorse SourceOne or suffer the same
14 consequences as the TDA.

15 58. The Big Three's tactics in pressuring state dental associations across the
16 country into abandoning their plans to endorse SourceOne were successful. After the
17 boycott of the 2014 TDA state show, other state associations that had expressed interest
18 in promoting SourceOne's platform to their members changed course and declined to
19 do so, citing concerns about the coordinated pressure of the Big Three and the risk of
20 being targeted with a boycott similar to the one aimed at the TDA.

21 59. As a result of the Big Three's boycott and non-attendance, the TDA's 2014
22 state show had significantly fewer exhibitors and was significantly less profitable for
23 the TDA than previous shows.

24 60. The decisions not to attend the 2014 TDA show were known by the Big
25 Three's decision-makers in Arizona and those Arizona decision-makers discussed the
26 decision with their Texas counterparts.

1 61. The AZDA was concerned at being targeted for a boycott by the Big
2 Three, but, recognizing the potential value to its members, ultimately entered into an
3 Endorsed Company Agreement with SourceOne in July 2014, shortly after the 2014
4 TDA and AZDA state shows.

5 62. The Texas boycott became the blueprint for the Big Three's response in
6 Arizona, and, using Texas as an example, Benco began reaching out to its competitors,
7 Company 2 and Company 3 once again.

8 63. On July 10, 2014 Benco internally confirmed that SourceOne had entered
9 into an Endorsed Company Agreement that was set to launch on July 14, 2014.
10 Benco's Regional Manager in Arizona emailed Benco's Director for the Western
11 District (including Arizona) informing him that "Just an FYI that things are about to get
12 interesting with AZDA... Spoke with Terry Xewloski at AZDA and he confirmed that
13 Sourceone has been given "Endorsed" Vendor status with the AZDA." Benco's
14 Director for the Western District (including Arizona) then emailed Benco's Managing
15 Director in an email chain where they had been discussing the Big Three's decision to
16 not attend the TDA state show and informed him that the AZDA had officially
17 confirmed that SourceOne was an "endorsed vendor."

18 64. That same day, Benco contacted Company 2 via telephone, attempting to
19 form an agreement to boycott the 2015 AZDA state show.

20 65. On July 10, 2014 Benco's Regional Manager in Arizona called Company
21 2's Zone General Manager for the Western Pacific to share information about
22 SourceOne's AZDA Perks Program.

23 66. Based upon the response, this call included efforts to come to an
24 agreement to boycott the AZDA state show the same way the boycott was instituted in
25 Texas.
26

1 67. In response to Benco's phone call, Company 2's Zone General Manager
2 for the Western Pacific called Benco's Regional Manager in Arizona back on July 14,
3 2014, the day of SourceOne's AZDA Perks Program launch, and left a voicemail
4 detailing the partnership between the AZDA and SourceOne and seeking agreement to
5 boycott the Arizona state show.

6 68. Benco's Regional Manager in Arizona and Company 2's Zone General
7 Manager for the Western Pacific exchanged telephone calls at least two more times
8 over the next couple of weeks.

9 69. The exchange of phone calls and emails noting the agreement to others,
10 solidified the two competitors, Benco and Company 2, agreeing to execute a boycott of
11 the AZDA state show.

12 70. Next, Benco's Regional Manager in Arizona contacted Company 3 via
13 email, to seek their agreement to the plan.

14 71. In an email exchange on July 21, 2014, Benco's Regional Manager in
15 Arizona wrote to the Arizona Branch Manager for Company 3 asking "his take on our
16 friends at AZDA becoming our competitors" and stating that Benco was "looking at
17 pulling all our [AZDA] sponsorship including the AZDA meeting." He continued
18 stating that he knew the Big Three "boycotted the Texas Dental Association meeting
19 this year after the TDA did the same thing and wanted to see if we could create the
20 same message here in AZ."

21 72. Company 3 accepted the offer of this agreement through the Arizona
22 Branch Manager's response an hour later: "If the AZDA has in fact signed on with
23 SourceOne (which it looks like they have), we will be pulling our sponsorship and
24 attendance of the state meeting as they will have positioned themselves as a
25 competitor."
26

1 73. To solidify the agreement with Company 3, Benco's Regional Manager in
2 Arizona concluded the email exchange: "We are of the same mindset. It would be
3 gratifying to see every distributor with a local presence make a unified statement on the
4 AZDA's ill-conceived idea to become a distribution competitor."

5 74. A week or so later, on July 30, 2014 Benco's Regional Manager in
6 Arizona emailed a dental supplies manufacturer asking if SourceOne was an authorized
7 dealer of that manufacturer's products and explaining the agreement the Big Three had
8 come to: "I have communicated with our competition at [Company 2 and Company 3]
9 and we are all of the same mind that we will not be supporting a competitor's meeting
10 next year."

11 75. On September 2, 2014 Benco announced that it would not attend the 2015
12 AZDA state show.

13 76. Benco, Company 2, and Company 3 did not attend the 2015 AZDA state
14 show.

15 77. Benco has not attended the AZDA annual state show since 2015, at least
16 through 2017.

17 78. The annual AZDA meeting and trade show is put on by the Arizona Dental
18 Association every year and is a popular place for vendors.

19 79. The Big Three's decision not to attend the AZDA's 2015 state show was
20 historically unprecedented and each of the Big Three individually stood to lose
21 substantial revenues from sales at the trade show and afterwards if any one of the Big
22 Three backed out of the agreement and decided to attend.

23 80. The intention of this boycott was to send a message to the community and
24 other state dental associations that might want to enter a similar Endorsed Company
25 Agreement with SourceOne: Do not endorse SourceOne or suffer the same
26 consequences as the TDA and the AZDA.

1 81. As a result of the Big Three's boycott and non-attendance, the AZDA's
2 state show had significantly fewer exhibitors and was significantly less profitable for
3 the AZDA than previous shows.

4 82. As a result of the Big Three's boycott and non-attendance, products sold
5 by the Big Three were unavailable to view or purchase at the AZDA state show
6 attendees.

7 83. Building on Benco's boycott and threat to the AZDA, Benco also involved
8 manufacturers.

9 84. In addition to placing pressure on manufacturers that actually sold to
10 SourceOne, Benco also reached out to manufacturers to get them to join the boycott of
11 the AZDA state show in furtherance of the conspiracy.

12 85. For example, on July 21, 2014, Benco's Regional Manager in Arizona
13 emailed a manufacturer to say "we greatly appreciate the support of outstanding vendor
14 partners such as [yourself] and we know we can count on you to stand with us as we
15 communicate our disapproval at the AZDA's foray into competition with your valued
16 distributor partners."

17 86. Benco spoke internally of getting the manufacturers on board as well as
18 evidenced by an August 3, 2014 email: "...if all the distribution companies stand firm
19 and we can pull some of the manufacturers our way maybe they will reconsider."

20 87. As a result of this boycott, the dental community and Arizona consumers
21 have been injured by the anticompetitive scheme and gray market scare campaign
22 discussed below, pressuring dentists to continue to purchase more expensive products
23 from the Big Three and deterring dentists from purchasing lower cost products offered
24 by SourceOne.

25 88. The Big Three took swift and coordinated action to eliminate the
26 competitive threat posed by SourceOne's AZDA Perks.

1 89. The Big Three communicated and reached agreement on a plan of action
2 to extinguish the threat of SourceOne's successful launch of AZDA Perks.

3 90. In furtherance of this plan, the Big Three boycotted the 2015 AZDA state
4 show to deter others from dealing with SourceOne.

5 91. This horizontal conspiracy was an unlawful group boycott agreement
6 involving a concerted refusal to deal with a competitor and it unreasonably restrained
7 trade making it a *per se* violation of the Arizona Revised Statutes § 44-1401, *et seq.*

8 **V. DECEPTIVE AND MISLEADING ACTS AND PRACTICES BY**
9 **BENCO RELATING TO THE SALE AND ADVERTISEMENT OF**
10 **CONSUMABLE DENTAL SUPPLIES**

11 92. In connection with its own advertisement and sale of consumable dental
12 supplies and the advertisement and sale of SourceOne's consumable dental supplies,
13 Benco misrepresented to manufacturers and dentists the nature and quality of the
14 consumable dental supplies sold by its competitor, SourceOne, in violation of the
15 Arizona Consumer Fraud Act.

16 93. Benco falsely stated to manufacturers and dentists that consumable dental
17 supplies sold by SourceOne were "gray market", "unauthorized" and "expired".

18 94. In the dental industry, the term gray market has extremely negative
19 connotations.

20 95. "Gray market" is a description used to refer to dental supply products,
21 including consumable dental supplies, that are sold from outside the brand owner's
22 approved distribution channels, and may lack the manufacturer's warranty and/or fail to
23 comply with U.S. regulations.

24 96. As described by Benco's Managing Director, "I would define gray market
25 as any time in the process—any time in the distribution logistics process where a
26 product ends up either bought or sold by an unauthorized distributor or source."

1 97. Dentists tend to avoid gray market products because of concerns about
2 product quality affecting a patient's treatment.

3 98. The term, "unauthorized" implies that the products may not come directly
4 from the manufacturer, implies that the supplier of the products may not be reliable, and
5 suggests that the product could be a lower quality product sourced from overseas
6 markets.

7 99. The term, "expired" means that the product has passed the expiration date
8 set by the manufacturer and therefore may not be of the same quality as an unexpired
9 product.

10 100. SourceOne's contract with the AZDA allowing SourceOne to offer
11 products to AZDA members through the AZDA Perks program contained a provision
12 ensuring SourceOne's products were not "gray market."

13 101. Because of the importance of ensuring the quality of the products, AZDA
14 provided in the contract with SourceOne that, "SOD [SourceOne] agrees that it will not
15 list any gray market products on its website and all products will come with a full
16 manufacturers original warrantee."

17 102. AZDA expected dentists would rely on its endorsement of SourceOne's
18 products, and by prohibiting the use of gray market products, intended to ensure the
19 quality of the products sold on SourceOne's AZDA Perks platform.

20 103. SourceOne did not sell gray market, unauthorized, or expired products
21 through the AZDA Perks program.

22 104. When Benco heard of SourceOne's endorsement from the AZDA in the
23 summer of 2014, Benco employees immediately began talking to one another in emails
24 about SourceOne's products and their belief that they had to be gray market products.
25
26

1 105. Upon information and belief, Benco began communicating with certain
2 manufacturers and misrepresented to them that SourceOne was selling gray market
3 products.

4 106. Upon information and belief, Benco made these misrepresentations to
5 influence manufacturers not to sell to SourceOne, since a reputable manufacturer may
6 be influenced not to work with a distributor selling gray market products because of the
7 effect it can have on its reputation.

8 107. In the August 3, 2014 email referenced in paragraph 86, Benco spoke
9 internally of its desire to pull manufacturers away from SourceOne and toward Benco
10 using illegitimate means. On information and belief, misrepresenting SourceOne's
11 products as gray market was part of Benco's strategy to pull manufacturers away from
12 SourceOne.

13 108. Furthermore, in a June 20, 2014 communication with a manufacturer
14 regarding products sold by SourceOne, Benco's Regional Manager in Arizona
15 attempted to color the manufacturer's view of SourceOne, implying that SourceOne's
16 products were unauthorized, and therefore gray market, and further explained his goal
17 to "share information on SourceOne business practices" and its "less than stellar
18 reputation" that would "give the AZDA pause before making them an endorsed
19 vendor."

20 109. The statements made by Benco employees and Benco's Regional Manager
21 in Arizona were not based on evidence that SourceOne's products were gray market.

22 110. In fact, when another Benco Regional Manager in Arizona was asked
23 about Benco emails and statements stating that SourceOne was selling gray market
24 product, he admitted that he had no indication SourceOne actually was selling gray
25 market products.
26

1 111. After the AZDA's Endorsed Company Agreement with SourceOne went
2 into effect in July 2014, Benco shifted its focus to ensuring that dentists did not transfer
3 their purchase of consumable dental supply products from Benco to SourceOne.

4 112. Benco, through its Arizona sales representatives, misrepresented
5 SourceOne's products as gray market to Arizona dentists because Benco knew dentists
6 would likely be reluctant to purchase gray market products, since any savings dentists
7 would realize would be offset by the risk from those products.

8 113. Having its sales representatives characterize SourceOne's products as gray
9 market would keep dentists purchasing from Benco, so Benco could retain their
10 business.

11 114. Dentists began calling the AZDA asking for clarification because a Benco
12 sales representative had informed them that SourceOne was selling gray market dental
13 products.

14 115. AZDA continuously assured dentists that under its contract with
15 SourceOne, SourceOne was prohibited from selling gray market products to Arizona
16 dentists through the AZDA Perks platform.

17 116. In fact, approximately one month after AZDA Perks launched, AZDA put
18 out a new advertisement flier stating "These are name brand, no gray market, direct
19 from the manufacturer supplies" to combat the gray market rumors generated by Benco.

20 117. At one point a Benco Sales Representative in Arizona called the Manager
21 of Business Development at the AZDA. During this recorded phone call on July 31,
22 2014, the Sales Representative informed AZDA that SourceOne had to be selling gray
23 market because the Sales Representative believed that the products being sold were not
24 available to the manufacturers supplying SourceOne. The AZDA assured Benco's
25 Sales Representative in Arizona that the products were not gray market. The Sales
26

1 Representative responded that Benco's customers would be informed that SourceOne's
2 products were gray market.

3 118. Benco's Regional Manager in Arizona also contacted the AZDA. In an
4 email exchange on August 1, 2014, Benco's Regional Manager in Arizona emailed the
5 AZDA expressing concern about SourceOne's products.

6 119. On August 5, 2014, the AZDA responded stating, "I would like to address
7 the comment made about non authorized distributors and the 'whispering campaign'
8 we've been privy to regarding gray market products. Please be advised that as an
9 AZDA Perks partner, SourceOne is prohibited by contract from offering products that
10 fall into these categories." Benco's Regional Manager in Arizona did not respond.

11 120. Benco knew SourceOne's AZDA Perks platform was not selling gray
12 market products because on multiple occasions Benco was assured the products were
13 not gray market and Benco had no evidence to the contrary.

14 121. Nonetheless, Benco continued telling dentists and manufacturers that the
15 products were gray market, though they knew or should have known that this was a
16 misrepresentation in connection with the sale of merchandise.

17 122. Benco's Regional Manager in Arizona contacted manufacturers on at least
18 two occasions to ask for a "gray market letter." A gray market letter is a letter from the
19 manufacturer stating that products from a certain distributor were not sold through
20 authorized channels. This letter was intended for Benco's sales representatives to
21 distribute to dentists.

22 123. The AZDA was told ten to fifteen times by dentists that distributor sales
23 representatives, especially representatives from Benco, told them that SourceOne was
24 selling gray market products.

25 124. Benco willfully made these misrepresentations to induce dentists to
26 continue to purchase products from Benco.

1 125. These acts and practices were deceptive in violation of the Arizona
2 Consumer Fraud Act.

3 **COUNT I VIOLATIONS OF THE ARIZONA STATE UNIFORM**
4 **ANTITRUST ACT (§§ 44-1401- 44-1416)**

5 126. Plaintiff re-alleges the prior allegations of this Complaint as though fully
6 set forth herein.

7 127. The Arizona State Uniform Antitrust Act provides that: “[a] contract,
8 combination, or conspiracy between two or more persons in restraint of, or to
9 monopolize, trade or commerce, any part of which is within this state, is unlawful.”
10 A.R.S. § 44-1402.

11 128. Defendant as well as Company 2 and Company 3 are “persons” within the
12 meaning of A.R.S. § 44-1401.

13 129. Defendant, Benco, entered into a contract, combination, and conspiracy
14 with competitors in restraint of, and to monopolize trade or commerce in Arizona.

15 130. Some of Defendant’s unlawful conduct occurred within the state of
16 Arizona.

17 131. Defendant’s unlawful conduct had intended effects within the state of
18 Arizona.

19 132. The agreements to restrain trade in Arizona described herein are *per se*
20 violations of the Arizona State Uniform Antitrust Act.

21 **COUNT II VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT**
22 **(§§ 44-1521- 44-1534)**

23 133. Plaintiff re-alleges the prior allegations of this Complaint as though fully
24 set forth herein.

25 134. The Arizona Consumer Fraud Act provides that “[t]he act, use or
26 employment by any person of any deception, deceptive or unfair act or practice, fraud,

1 false pretense, false promise, misrepresentation, or concealment, suppression or
2 omission of any material fact with intent that others rely upon such concealment,
3 suppression or omission, in connection with the sale or advertisement of any
4 merchandise whether or not any person has in fact been misled, deceived, or damaged
5 thereby, is declared to be an unlawful practice.” A.R.S. § 44-1522(A).

6 135. Defendant is a “person” within the meaning of A.R.S. § 44-1521(6).

7 136. Consumable dental supplies are “merchandise” within the meaning of
8 A.R.S. § 44-1521(5).

9 137. Benco’s depictions and representations of its own products and of
10 SourceOne’s products are “in connection with the sale or advertisement of
11 merchandise” within the meaning of A.R.S. § 44-1522, in that the misrepresentations
12 were designed to influence manufacturers not to sell their products to SourceOne, and
13 to influence dentists not to purchase products from SourceOne.

14 138. Defendant Benco’s acts, practices, and conduct described in the preceding
15 paragraphs were deceptive, unfair, or constituted fraud, false pretenses, false promises,
16 misrepresentations, or concealments, suppressions, or omissions of material facts to
17 consumers under A.R.S. § 44-1522(A), in violation of the Arizona Consumer Fraud
18 Act.

19 139. At all relevant times, Defendant Benco knew or should have known that
20 the deceptive acts and practices described in the preceding paragraphs—specifically its
21 coordinated effort to repeatedly misrepresent to manufacturers and dentists that
22 SourceOne was selling gray market products—were of the nature prohibited by the
23 Consumer Fraud Act, and, therefore, Defendant Benco acted willfully, as defined by
24 A.R.S. § 44-1531(B), while engaging in the acts, practices, and conduct described in
25 this Complaint.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Benco as follows:

- 3 a. Adjudging and decreeing that Benco engaged in conduct in violation of
4 the Arizona State Uniform Antitrust Act, Arizona Revised Statutes §
5 44-1401, *et seq.*
- 6 b. Adjudging and decreeing that Benco engaged in conduct in violation of
7 the Arizona Consumer Fraud Act, Arizona Revised Statutes § 44-1521,
8 *et seq.*
- 9 c. Pursuant to A.R.S. § 44-1407 order Defendant to pay the State a civil
10 penalty of not more than \$150,000 for each violation of the Arizona
11 State Uniform Antitrust Act.
- 12 d. Pursuant to A.R.S. § 44-1531, order Defendant to pay the State a civil
13 penalty of not more than \$10,000 for each willful violation of the
14 Arizona Consumer Fraud Act.
- 15 e. Pursuant to A.R.S. §§ 44-1407, 44-1408, 44-1528(A)(1) and (4)
16 permanently enjoin, restrain, and prohibit the Defendant, its agents,
17 servants, employees, attorneys, and any entity established by the
18 Defendant, whether a partnership corporation or limited liability
19 company, and those persons in active concert or participation with the
20 Defendant directly or indirectly, who receive this court's order, from:
- 21 i. Engaging in any anticompetitive or collusive behavior in
22 restraint of trade in violation of the Arizona State Uniform
23 Antitrust Act as currently written or as amended in the future;
- 24 ii. Engaging in any and all deceptive acts or practices, fraud, false
25 pretense, false promises, misrepresentations, and/or
26 concealment, suppression or omission of material fact in

1 violation of the Consumer Fraud Act as currently written or as
2 amended in the future;

3 iii. Representing that consumable dental supply products are gray
4 market, unauthorized, or expired when they are not.

5 f. Pursuant to A.R.S. §§ 44-1407, 44-1408, and 44-1528(A)(2) order
6 Defendant to pay restitution of monies that were acquired by any
7 practice alleged in this Complaint that violated the Arizona State
8 Uniform Antitrust Act or the Arizona Consumer Fraud Act.

9 g. Pursuant to A.R.S. §§ 44-1407 and 44-1408 order Defendant to
10 disgorge any profits, gain, gross receipts, or other benefit obtained by
11 means of any unlawful act or practice as alleged in this Complaint in
12 violation of the Arizona State Uniform Antitrust Act to be paid to the
13 State for deposit in the antitrust revolving fund.

14 h. Pursuant to A.R.S. § 44-1528(A)(3), order Defendant to disgorge any
15 profits, gain, gross receipts, or other benefit obtained by means of any
16 unlawful act or practice as alleged in this Complaint in violation of the
17 Consumer Fraud Act to be paid to the State for deposit in the consumer
18 remediation subaccount of the consumer restitution and remediation
19 revolving fund.

20 i. Pursuant to A.R.S. §§ 44-1407, 44-1408, and 44-1534 order Defendant
21 to reimburse the Attorney General for the costs of investigation and
22 reasonable attorneys' fees.

23 j. Order such other relief as the Court deems just and proper.
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1 RESPECTFULLY SUBMITTED this 12 day of October, 2018.

2 MARK BRNOVICH
3 Attorney General

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6 Dana R. Vogel
7 Assistant Attorney General
8 Attorney for Plaintiff
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