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U.S. COURTS  
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 CLERK, IDAHO

*Counsel for Pocatello Dental Group, P.C.*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C., )  
 an Idaho professional corporation, )  
 )  
 Plaintiff, )

vs. )

INTERDENT SERVICE CORPORATION, )  
 a Washington corporation, )  
 )  
 Defendant. )

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION, )  
 a Washington corporation, )  
 )  
 Counterclaimant, )

**PLAINTIFF'S MOTION TO  
 STRIKE DEFENDANT'S  
 AMENDED AND SUPPLEMENTAL  
 COUNTERCLAIMS DATED  
 JUNE 2, 2004**

vs. )

POCATELLO DENTAL GROUP, P.C., an )  
 Idaho professional corporation; DWIGHT G. )  
 ROMRIELL, individually; LARRY R. )  
 MISNER, JR., individually; PORTER )  
 SUTTON, individually; ERNEST SUTTON, )  
 individually; GREGORY ROMRIELL, )  
 individually; ERROL ORMOND, individually; )  
 and ARNOLD GOODLIFFE, individually; )

Counterdefendants. )

COMES NOW the Plaintiff, by and through its attorneys of record, and pursuant to F.R.C.P. Rule 12(f) moves the Court to strike Defendant's Amended (second) and Supplemental Counterclaims and Third Party Complaint dated June 2, 2004 and filed with the Court on June 2, 2004 as Docket No. 118 (hereinafter "June 2<sup>nd</sup> Amendment"). The June 2<sup>nd</sup> Amendment was filed without leave of the Court, in violation of F.R.C.P. Rule 15, the parties' Stipulated Litigation Plan, and the Court's Scheduling Order. The June 2<sup>nd</sup> Amendment should be stricken from the Court's record.

In support of this Motion, Plaintiff represents as follows:

1. The June 2<sup>nd</sup> Amendment contains factual allegations and substantive claims for relief which were not contained within the Defendant's Amended and Supplemental Counterclaims and Third Party Complaint filed on April 7, 2004 (hereinafter "April 7<sup>th</sup> Amendment", Docket No. 100). The April 7<sup>th</sup> Amendment was filed pursuant to the Court's April 7, 2004 Order granting Defendant leave to file the same (Docket 99).<sup>1</sup>
2. On April 19, 2004 Plaintiff answered the April 7<sup>th</sup> Amendment. (Docket No. 106).
3. Pursuant to F.R.C.P. 15 the June 2<sup>nd</sup> Amendment could only be filed with leave of the Court or by Plaintiff's written consent. Neither leave of Court nor Plaintiff's written consent were obtained by Defendant before it filed the June 2<sup>nd</sup> Amendment.
4. On April 7, 2004 the parties to this litigation, including the Plaintiff and the Defendant, entered into a Stipulated Litigation Plan (hereinafter "Plan," Docket No. 97). The Plan established May 15, 2004 as the "Joinder of Parties and Amendment of Pleadings Cut-off Date".

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<sup>1</sup>A summary of the changes is attached to this Motion as Exhibit "A."

Date". The June 2<sup>nd</sup> Amendment was filed beyond the agreed upon "Cut-off Date" and is in violation of the Plan.

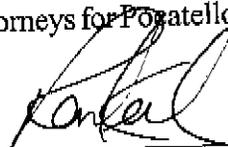
5. On April 7, 2004, the Court entered its Scheduling Order (hereinafter "Scheduling Order", Docket No. 101). The Scheduling Order, in paragraph 3., states that "Motions to join additional parties and/or amend the pleadings shall be filed by May 15, 2004." The June 2<sup>nd</sup> Amendment was filed in violation of the Scheduling Order.

WHEREFORE having timely filed its motion pursuant to F.R.C.P. 12(f), the Plaintiff respectfully requests the Court to strike from the June 2<sup>nd</sup> Amendment those allegations and claims of the Defendant and which commence at the bottom of page 11 thereof, beginning with the caption "COUNTERCLAIM BY DEFENDANT/THIRD PARTY PLAINTIFF."

The effect of such an order is to allow the Defendant to pursue prosecution of the April 7<sup>th</sup> Amendment.

Dated this 11 day of June, 2004.

COOPER & LARSEN, CHTD.  
Attorneys for Pozatello Dental Group, P.C.

  
\_\_\_\_\_  
Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 11 day of June, 2004, I served a true and correct copy of the foregoing document as follows:

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By:   
Ron Kerl

## EXHIBIT "A"

### SUMMARY OF FACTUAL ALLEGATIONS AND SUBSTANTIVE CLAIMS CONTAINED IN THE JUNE 2<sup>nd</sup> AMENDMENT WHICH ARE NOT CONTAINED IN THE APRIL 7<sup>th</sup> AMENDMENT

- Paragraph 15, in its entirety
- Paragraph 16, in its entirety
- Paragraph 57, in its entirety
- That portion of Paragraph 58 stating "at the same time plaintiff obtained an ex parte TRO allowing Romriell to stay at the Pocatello practice."
- Paragraph 63, in its entirety
- Paragraph 64, in its entirety
- Paragraph 65, in its entirety
- Paragraph 73, in its entirety
- The Third Claim for Relief, Abuse of Process, now adds Pocatello Dental Group as a target Counter-Defendant, a status it did not have in the April 7<sup>th</sup> Amendment.
- Fifth Claim for Relief adds Drs. Misner, G. Romriell, and Errol Ormond as target Defendants, a status they did not hold in the April 7<sup>th</sup> Amendment.
- Sixth Claim for Relief, in its entirety (Paragraphs 102-106)
- Seventh Claim for Relief, in its entirety (Paragraphs 107-111)
- Eighth Affirmative Defense, in its entirety (Paragraphs 112-116)
- Paragraph 120, in its entirety
- That portion of Paragraph 125 which alleges: "In the alternative, ISC requests and is entitled to rescind the Management Agreement on the basis of such fraud and to restitution of the \$2.8 million if paid counterclaim defendants plus pre-judgment interest."

- The Tenth Claim for Relief, in its entirety (Paragraphs 126-128)
- The Eleventh Claim for Relief, in its entirety (Paragraphs 129-132)
- Paragraphs 6,7,8,9,10, and 8 (*sic*) of the Prayer for Relief.