

ORIGINAL

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Attorneys for Defendant/Third-Party Plaintiff  
InterDent Service Corporation

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

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

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a  
Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a  
Washington corporation,

Third-Party Plaintiff,

v.

POCATELLO DENTAL GROUP, P.C., an

Case No. CV-03-450-E-LMB

AFFIDAVIT OF SCOTT J. KAPLAN IN  
SUPPORT OF DEFENDANT/THIRD-  
PARTY PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
(Misner Noncompete)

AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY  
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER  
NONCOMPETE)- 1

11/6

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,

Third-Party Defendants.

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

1. I am one of the attorneys representing defendant, third-party plaintiff and counterclaimant InterDent Service Corporation ("ISC") in this matter. I am admitted to practice in Idaho pro hac vice. The facts in this affidavit are based on my personal knowledge.

2. I performed an Internet search through Yahoo! maps to determine the distance between ISC's office at 4155 Yellowstone Avenue in Pocatello and 719 Yellowstone Avenue in Pocatello, the address for Larry Misner, Jr.'s new office. Exhibit 1 shows that 719 Yellowstone Avenue is a mere 2.1 miles and 3 minutes away from 4155 Yellowstone Avenue.

3. Exhibit 2 is a copy of an April 9, 2004 letter from Richard A. Hearn, Misner's counsel, to me in which Mr. Hearn states that "In response to your letter dated April 9, 2004 regarding Drs. Misner's and Bybee's current practice location, Dr. Misner is currently practicing in Burley Idaho . . . ." However, on June 1, 2004, Mr. Hearn told me that Misner was practicing in Pocatello and would continue to do so absent a court order.

/////

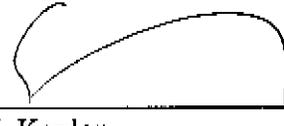
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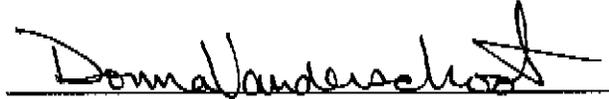
AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY  
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER  
NONCOMPETE)- 2

4. Attached as Exhibit 3 is a copy of a letter I sent by facsimile to counsel providing notice of ISC's motion for a temporary restraining order.



\_\_\_\_\_  
Scott J. Kaplan

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of June, 2004.



\_\_\_\_\_  
Notary Public for Oregon



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2 day of June, 2004, I caused to be served a true copy of the foregoing **AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER NONCOMPETE)** upon the following:

Ron Kerl  
James P. Price  
COOPER & LARSEN  
151 N. 3rd Avenue, Ste. 210  
PO Box 4229  
Pocatello, ID 83205-4229  
Phone: (208) 235-1145  
Fax: (208) 235-1182  
*Attorneys for Pocatello Dental Group*

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

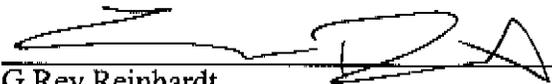
Lowell N. Hawkes  
Law Office of Lowell N. Hawkes, Chtd.  
1322 East Center  
Pocatello, ID 83201  
Phone: (208) 235-1600  
Fax: (208) 235-4200  
*Attorney for Dwight Romriell, Greg Romriell, Errol Ormond and Arnold Goodliffe*

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

Richard A. Hearn  
Racine Olson Nye Budge & Bailey,  
Chtd.  
201 E. Center  
P.O. Box 1391  
Pocatello, ID 83704-1391  
Phone (208) 232-6101  
Fax (208) 232-6109  
*Attorney for Larry Misner, Porter Sutton and Ernest Sutton*

- Via U.S. Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery

DATED: this 2 day of June, 2004.

  
\_\_\_\_\_  
G.Rey Reinhardt  
Attorneys for Defendant

Yahoo! My Yahoo! Mail



Welcome, **brettfavre**  
[Sign Out, My Account]

Search the web

Me

Starting from: **A** 4155 Yellowstone Ave, Pocatello, ID 83202-2345

Arriving at: **B** 719 Yellowstone Ave, Pocatello, ID 83201-4406

Distance: 2.1 miles Approximate Travel Time: 3 mins

**Your Directions**

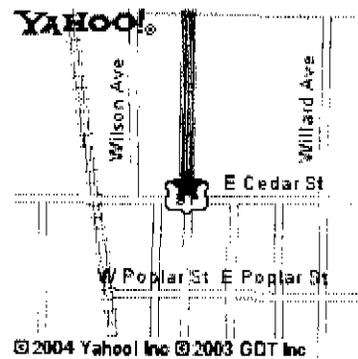
1.	Start at 4155 YELLOWSTONE AVE, POCATELLO going towards LOU AVE, YELLOWSTONE AVE - go 0.3 mi
2.	Continue on W QUINN RD - go 0.3 mi
3.	W QUINN RD becomes QUINN RD/W QUINN RD - go 0.3 mi
4.	QUINN RD/W QUINN RD becomes YELLOWSTONE AVE - go 1.2 mi
5.	Arrive at 719 YELLOWSTONE AVE, POCATELLO

When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

**Your Full Route**



**Your Destination**



Address:  
719 Yellowstone Ave  
Pocatello, ID 83201-4406

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EXHIBIT 1  
Page 1 of 1

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY  
CHARTERED**CENTER PLAZA-CORNER FIRST & CENTER  
POST OFFICE BOX 1391  
POCATELLO, IDAHO 83204-1391TELEPHONE (208) 232-6101  
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rsn@racinelaw.net

LOUIS F. RACINE, JR.  
WILLIAM D. OLSON  
W. MARCUS W. NYE  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. COOBELL  
JOHN B. INCELSTROM  
DANIEL C. GREEN  
BRENT O. ROCHE  
KIRK B. HADLEY  
FRED J. LEWIS  
MITCHELL W. BROWN  
ERIC L. OLSEN  
DAVID E. ALEXANDER  
LISA M. CHRISTON  
RICHARD A. HEARN, M.D.  
LANE V. ERICKSON  
PATRICK N. GEORGE  
SCOTT J. SMITH  
LISA A. WOOD, CPA  
STEPHEN J. MUHONEN  
BRENT L. WHITINGBOISE OFFICECONRAD J. AIKEN  
THEODORE C. PETERS  
DEBORAH L. LEMBIT  
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TELEPHONE: (208) 305-0011  
FACSIMILE: (208) 433-0187IDAHO FALLS OFFICE477 HROUP AVENUE  
SUITE 205A  
IDAHO FALLS, ID 83402  
TELEPHONE: (208) 528-4101  
FACSIMILE: (208) 528-6109

April 9, 2004

Scott J. Kaplan  
STOEL RIVES LLP  
900 SW Fifth Ave., Suite 2600  
Portland OR 97204-1268

Re: Drs Misner and Bybee

Delivery by fax: 1-503-220-2480

Dear Scott:

In response to your letter dated April 9, 2004 regarding Drs Misner's and Bybee's current practice location, Dr. Misner is currently practicing in Burley Idaho and Dr. Bybee is currently practicing in Pocatello Idaho. Neither practice is in violation of any noncompete agreement. If you are aware of any noncompete agreement with your client that you believe either Dr Misner or Dr. Bybee is currently violating, please so inform me. Issues regarding possible violations of noncompete agreements with Pocatello Dental Group, Inc. ("Group") have been addressed with legal counsel for the Group.

Next, I appreciate your assistance in helping to ensure that Drs Misner's and Bybee's patients get appropriate referrals for ongoing dental care. Based upon your letter, I also understand that the Group currently has no pedodontists on staff and is referring out pediatric dental patients to local GPs accepting pediatric patients. Because the Group is not now providing pediatric dental care, I am asking you to consider whether InterDent Services Corp. ("IDS") would consider agreeing to allow Dr. Misner to immediately return to the Pocatello area to practice solely in the area of pediatric dentistry for the benefit of those children needing his services. Let me know what you and your client's position in regard to waiving any noncompete agreement between IDS and Dr. Misner.

EXHIBIT 2Page 1 of 2cc: Chantia DAS  
MLL

April 9, 2004  
Page 2

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Call me with any questions or to discuss.

Sincerely,



RICHARD A. HEARN