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U.S. DISTRICT COURT
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**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. CV 03-450-E-LMB

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

**POCATELLO DENTAL
 GROUP'S REPLY IN
 SUPPORT OF ITS MOTION
 FOR TRO**

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 ("Group"), by and through its attorneys of record, and offers this Reply in Support of its Motion for Temporary Restraining Order.

The Group seeks this Court's Order restraining the Defendant InterDent Service Corporation ("ISC") from (1) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all current patients of the Plaintiff and its dentists, (2) refusing to immediately surrender to the Plaintiff the names, addresses and telephone numbers of all patients of the Plaintiff and its dentists who were scheduled to receive dental care on and after October 2, 2004, and (3) refusing to immediately surrender to the Plaintiff and its dentists their personal property, which personal property ISC removed from the Pocatello Dental Group office without the owners' consent.

ISC offers no good substantive reason why the Group should not be given the information it has requested. The Group, on the other hand, has shown that ISC unilaterally closed the Group's office on October 1, 2004 leaving the Group's patients essentially abandoned. The current patient list and list of scheduled patients are needed by the Group so that the Group and its dentists can meet their ethical obligations to their patients. To do that they must identify, contact and assure those patients that they have not been abandoned and that they can and will receive all necessary dental care. ISC has this information.

For the days and weeks prior to its closure of the Group's office, ISC employees scheduled hundreds of patients to receive dental care after October 1, 2004. ISC has taken no steps to assure these patients that their dental needs will be protected. If any patients were called by ISC, they were simply told that their appointment had been cancelled. ISC wants to withhold the patient list and list of scheduled patients so that the Group and its dentists cannot identify, contact and give assurances to these patients that they have not been abandoned.

When ISC closed the Group's office it had the direct telephone numbers maintained for the Group's dentists "disconnected." Callers were diverted to the Group's main telephone number where they were simply told, by a recording, that "Pocatello Dental Office is permanently closed and no longer seeing patients." See, Supplemental Affidavit of Greg Romriell, ¶4.

On Monday, October 4, 2004, following ISC's closure of the office, Dr. Greg Romriell asked ISC agent Bruce Call for the information sought by the Group's TRO motion. He was refused that information by Mr. Call. See, Romriell Affidavit in Support of TRO, ¶5 and ¶7 to the Supplemental Affidavit of Greg Romriell dated October 15, 2004. Attached to Romriell's Supplemental Affidavit is a letter from the Group's counsel to ISC's counsel dated October 4, 2004, requesting the same information (as Exhibit "A"). ISC's counsel's written refusal to change Mr. Call's mind and have these records delivered to the Group is attached to that Supplemental Affidavit as Exhibit "B". Counsel for ISC's statement that the parties should "resolve a business dispute through rational, adult discussion" before resorting to the Court for relief is a material misrepresentation of the facts and a violation of Rule 11, F.R.C.P. Group has documented ISC's steadfast refusal to honor the Group's requests. ISC declined to turn over the requested information to the Group and refused to even re-consider its decision to not turn over this vital patient care information to the Group.

Rather than taking a position which would reassure the Group's patients that they will receive necessary dental care following the closure of the Group's office, ISC opposes the Group's TRO request. Why? Because the relief requested by the Group would be "(a) at ISC's sole expense; (b) without any contractual basis; [and] (c) without any underlying claim for relief."¹

¹ISC's opposing brief, page 2, Docket No. 183.

Contrary to ISC's claim, however, the relief requested by the Group is clearly provided for by the parties' Management Agreement.² ISC allegedly terminated the Management Agreement pursuant to its Article 6.2(b)(1) and (2). *See*, Exhibit 1 ("Notice of Termination") to the Affidavit of Bruce Call, dated October 11, 2004 (Docket No. 187). The Notice of Termination even referred the Group to Article 6.2.(c) of the Management Agreement. By doing so ISC acknowledged that Article 6.2(c) is the applicable contract provision which defines the Group's rights and responsibilities. *That portion of the parties' agreement requires ISC to provide the Group with the requested information, at ISC's expense.*

Article 6.2(c) of the Management Agreement provides that the following shall occur upon termination:

(c) Effect of Termination. Upon termination of this Agreement:

(1) Group shall surrender to Manager all of Manager's property...

(2) Manager shall deliver to Group all records related to the business of and provision of dental care through the Practice, including, without limitation, patient records and any corporate, personnel and financial records maintained for the Practice and Providers, provided, that except as limited by law, including, but not limited to laws governing the confidentiality of patient records, Manager shall have the option to copy (or otherwise duplicate) at its sole cost and expense such records of Group and to retain and utilize such records for its own use.

(3) Manager shall deliver to Group any other property of Group in Manager's possession;

(4) Both parties shall cooperate to insure the provision of appropriate dental care to Group Patients and Beneficiaries;

²A copy of the Management Agreement is attached to the Affidavit of Ivar Chhina, Docket No. 15. Article 6.2(c) of that agreement is attached to this Reply for the Court's easy reference.

(5) Group shall promptly deliver to Manager any Revenues that it may receive in payment for dental services rendered by Group prior to termination; and

(6) Both parties shall cooperate to ensure the appropriate billing and collections for dental services rendered by Group prior to the effective date of termination, and any such cash collected shall be retained by Group and/or paid to Manager pursuant to Article 7.

Contrary to ISC's mis-reading of the parties' contract, ISC's Chief Executive Officer admitted in ISC's Notice of Termination that ISC is contractually obligated, having elected to terminate the Management Agreement, to turn over *all* patient, corporate, personnel and financial records of the Group, including, but not limited to those records which are the subject matter of the Group's TRO Motion. He did this by stating in the notice that the Group should "refer to Article 6.2(c) of the Agreement regarding PDG's rights and responsibilities." *See*, Exhibit 1 to Call Affidavit dated October 11, 2004 (Docket No. 187).

In conclusion, the Group has shown good cause for the issuance of the TRO, thus mandating ISC to deliver the requested records. Time is of the essence. The Group and its dentists owe ethical and professional duties to their patients. They must immediately take steps to insure the continued dental care of those patients who have been left in the breach by ISC's closure of the Group's office on October 1, 2004. Patient care issues override any procedural objection ISC has to the Group's Motion. ISC is obligated by Article 6.2(c) to cooperate with the Group to insure the provision of appropriate dental care to the Group's patients.

Further, ISC has no contractual basis to refuse to provide the Group with all of the records required by Article 6.2(c) of the Management Agreement and should be compelled by this Court to do so. ISC chose to terminate the Management Agreement. ISC's Notice of Termination acknowledged that Group's rights and responsibilities are controlled by Article 6.2(c) of the Management Agreement. ISC should be compelled to perform all of its obligations under Article

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6.2(c) of the Management Agreement.

ISC should be ordered by the Court to immediately deliver the required records to the Group.

Respectfully submitted this 15 day of October, 2004.

COOPER & LARSEN, CHTD

Attorneys for Plaintiff

By: _____

Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 15 day of October, 2004, I served a true and correct copy of the foregoing document as follows:

Erik F. Stidham
G. Rey Reinhardt
STOEL RIVES LLP
101 S. Capitol Blvd., Ste.1900
Boise, ID 83702-5958

U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

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

U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

Lowell N. Hawkes
1322 East Center
Pocatello, ID 83201

U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

Richard A. Hearn
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204

U.S. Mail, postage prepaid

Hand Delivery

Overnight Mail

Facsimile

By: _____

Ron Kerl

~~order, judgment or decree continues unstayed and in effect for ninety (90) days after its entry.~~

(4) Nonperformance. Manager may terminate this Agreement in the event that in any two consecutive fiscal quarters the Manager has not been paid the Management Fee and, in the sole discretion of the Manager, it is not reasonably likely that the Management Fee will be paid in the next fiscal quarter. Any such termination shall be effective as of the last day of such third fiscal quarter provided at least 60 days notice shall have been given; otherwise, such termination shall be effective on the sixtieth day after notice is given.

(5) Change in Law. In the event of any material change in federal or state law that has a significant adverse impact on either party hereto in connection with their performance under this Agreement, or if performance by a party of any duties under this Agreement be deemed illegal by any administrative agency or in a formal opinion rendered to Manager by legal counsel knowledgeable in health law matter retained by the Manager, the affected party shall have the right to require that the other party renegotiate the terms of this Agreement. Unless the parties otherwise mutually agree in writing, such renegotiated terms shall be effective not later than twenty (20) days after receipt of written notice of such request for renegotiation. Solely in the event of illegality, if the parties fail to reach an agreement within thirty (30) days of the request for renegotiation, either party may (subject to the severability provision of this Agreement) terminate this Agreement upon thirty (30) days prior written notice to the other party.

Art 6.2 →
(c) Effect of Termination. Upon termination of this Agreement:

(1) Group shall surrender to Manager all of Manager's property used primarily in the operation of the Practice in the same condition as received, reasonable wear and tear excepted.

(2) Manager shall deliver to Group all records related to the business of and provision of dental care through the Practice including, without limitation, patient records and any corporate, personnel and financial records maintained for the Practice and Providers, provided, that except as limited by law, including, but not limited to laws governing the confidentiality of patient records, Manager shall have the option to copy (or otherwise duplicate) at its sole cost and expense such records of Group and to retain and utilize such records for its own use;

(3) Manager shall deliver to Group any other property of Group in Manager's possession;

(4) Both parties shall cooperate to ensure the provision of appropriate dental care to Group Patients and Beneficiaries;

(5) Group shall promptly deliver to Manager any Revenues that it may receive in payment for dental services rendered by Group prior to termination; and

(6) Both parties shall cooperate to ensure the appropriate billing and collections for dental services rendered by Group prior to the effective date of termination, and any such cash collected shall be retained by Group and/or paid to Manager pursuant to Article 7.

ARTICLE 7

MANAGEMENT FEE

For its services hereunder, which shall include the providing of all facilities and furniture, fixtures and equipment at the Practice, all non-dentist employees of Manager who perform services at or for the Practice and all management services provided hereunder, Manager shall retain as a Management Fee (the "Management Fee") all Revenues after payment of Group Expenses.

ARTICLE 8

INDEMNITY AND INSURANCE

8.1 Indemnity.

(a) Indemnification. Each party shall indemnify, defend and hold harmless the other party from any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs) arising out of, incident to or in any manner occasioned by the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying party, or any of their employees, agents, contractors or subcontractors; provided, however, that neither party shall be liable to the other party hereunder for any claim covered by insurance, except to the extent that the liability of such party exceeds the amount of such insurance coverage. Specifically, and without limiting the generality of the foregoing, Group agrees to indemnify, defend and hold harmless Manager for all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs) arising out of the professional negligence of Group, its employees, agents, contractors or subcontractors, including any amounts in excess of the professional liability insurance coverage of Group or its employees, agents, contractors or subcontractors.

(b) Mutual Indemnity. Subject to Manager's responsibilities under Section 2.6(b), each party to this Agreement shall be indemnified by the other party for any claim under this Agreement or otherwise against the indemnified party for vacation pay, sick