Erik F. Stidham, ISB #5483
efstidham@stoel.com
G. Rey Reinhardt, ISB #6209
grreinhardt@stoel.com
STOEL RIVES LLP
101 South Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Scott J. Kaplan, Pro Hac Vice
sjkaplan@stoel.com
Darian A. Stanford, Pro Hac Vice
dastanford@stoel.com
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Telephone: (503) 224-3380
Facsimile: (503) 220-2480

Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation

U.S. COURTS
04 JUL 14 AM 10:05
FILED
CLERK
BOISE, IDAHO

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.	Case No. CV-03-450-E-LMB SUPPLEMENTAL AFFIDAVIT OF KEVIN WEBB IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (Misner Noncompete)
INTERDENT SERVICE CORPORATION, a Washington corporation, Third-Party Plaintiff, v. POCATELLO DENTAL GROUP, P.C., an	

141

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 WASHINGTON)
) ss.
County of Clark)

I, Kevin Webb, being first duly sworn, state as follows;

1. I am a Vice President, Operations, for defendant and third-party plaintiff InterDent Service Corporation ("ISC") with responsibilities for ISC offices in the state of Idaho, including the office it leases and manages for plaintiff Pocatello Dental Group ("PDG") located at 4155 Yellowstone Avenue, Pocatello, Idaho 83202 (the "Pocatello Office"). Based upon these responsibilities, I have personal knowledge of the matters stated herein.

2. Dr. Larry Misner, Jr. ("Misner") worked in an office managed by ISC and its predecessors for approximately eight years. During this time necessarily obtained knowledge about ISC's accounting, personnel, promotional policies and procedures and the standards developed by the dentist on the InterDent Clinical Leadership Board. Dr. Misner also attended InterDent yearly National Meetings. Nonetheless, I understand that Misner left the Pocatello Office to go to an office managed by another dental practice management company, Orthodontic Centers of America ("OCA"), also on Yellowstone Avenue in Pocatello and only minutes from the Pocatello Office. Misner did not provide notice to ISC that he was going to work for a competitor. Injunctive relief is necessary to prevent Misner from using his knowledge of ISC's trade-secret and propriety methods of doing business to benefit OCA.

3. ISC has asked PDG shareholder dentists Gregory Romriell and Errol Ormond for assurances that they will comply with their Noncompete Agreements with ISC. These agreements are identical in all material respects to that signed by Misner and attached as Exhibit 1 to my original TRO affidavit. Romriell's and Ormond's Noncompete Agreements are attached hereto as Exhibits 1 and 2. Both Romriell and Ormond, like Misner, received hundreds of thousands of dollars from ISC's predecessor in exchange for the Noncompete Agreements. However, neither Romriell nor Ormond has provided assurances they will comply with their noncompete agreements. Indeed, ISC has received information that they are in the process of obtaining office space in Pocatello in which to open a competing dental practice. My expectation is that they are waiting to see whether the Court will enforce Misner's Noncompete Agreement. If Misner can breach his noncompete without consequences, these dentists will probably follow suit, and ISC would be forced to close its Pocatello Office and lay off some or all of the 89 employees in that office.

4. ISC did not invite or request Misner to leave the Pocatello Office. Misner's practice generated well in excess of $1 million per year in revenue for the Pocatello Office, revenue that was critical for the viability of the practice. ISC would have preferred that Misner stay at the Pocatello Office and still would like him to return. ISC understands that Misner made certain complaints about staffing, equipment and the like. ISC always tried to work with him to solve these problems. However, as shown by Dr. Porter Sutton's letter to Misner dated February 18, 2003, attached to my original affidavit and hereto as Exhibit 3 for the convenience

/////

/////

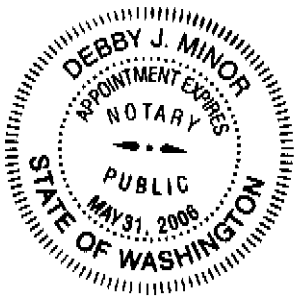
/////

of the Court, it appears that Misner's complaints were in reality part of a strategy of "trying to prove a breach so that [he] can practice in Pocatello independent of Pocatello Dental Group."

DATED: July 12, 2004.

Kevin Webb

SUBSCRIBED AND SWORN to before me this 12 day of July, 2004.



Notary Public for Washington

EXHIBIT 1

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (this "Agreement") is made as of October 11, 1996 by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Company Sub"), and GREGORY E. ROMRIELL, DMD ("Member").

RECITALS:

A. Member is currently a member of Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company ("Acquired Co").

B. Company Sub is a wholly owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company").

C. Member, together with his spouse, owns 14.285 percent of the issued and outstanding membership interests of Acquired Co.

D. The Company has entered into an Agreement and Plan of Reorganization dated as of October 11, 1996 with Acquired Co, all of the members of Acquired Co and Idaho Dental Group, PA, an Idaho professional corporation ("Group") pursuant to which Acquired Co shall be merged (the "Merger") with and into Company (the "Merger Agreement"). A condition to the Company's obligation to effect the Merger is the execution by the Member of a non-compete agreement with Company Sub effective as of the consummation of the Merger (the "Effective Time").

E. Member and Group have entered into an employment agreement ("Employment Agreement") effective as of the Effective Time.

F. The parties desire to provide for the terms of the non-competition by Member with Company Sub (including all of its affiliates) after the Effective Time pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. Subject to and in consideration of the consummation of the Merger Agreement and the transactions contemplated thereby, Company Sub and Member hereby enter into this Agreement commencing at the Effective Time. The term of this Agreement shall be the greater of (a) three (3) years from the Effective Time, and (b) two (2) years from the date of termination of Member's employment with Group for cause or by Provider; provided, that this Agreement shall expire at the expiration of the term of the Employment Agreement; and provided, further, that if Group, with the consent of the Joint Operations Committee of Group, terminates the Member's employment with Group without cause (as described in the Employment Agreement), then this Agreement shall expire at the date of termination of Member's employment. Notwithstanding the foregoing, in the event that prior to the

third anniversary of the Effective Time the Company Sub terminates that certain Dental Group Management Agreement of even date herewith between Company Sub and Idaho Dental Group, P.A., and neither of the Company, any of its affiliates nor any entity managed by the Company or an affiliate thereof has a Dental Business in the Non-Compete Area, this Agreement shall terminate.

2. Agreement Not to Compete. The parties agree that Member has acquired during the course of Member's significant ownership interest of Acquired Co and shall acquire during the course of Member's continued employment with Group valuable trade secrets possessed by Acquired Co and Group. It is acknowledged and agreed that such trade secrets have been developed at great expense to Acquired Co, and the Company would not enter into the Merger Agreement unless the Company is assured that all such information will be used for the exclusive benefit of the Company, Company Sub and Acquired Co. In recognition thereof, the parties agree that during the course of Member's employment with Group and following termination of his employment with Group and for the term of this Agreement, Member shall not serve as an employee, independent contractor, consultant or otherwise, directly or indirectly, perform services for a person or entity or own or operate any entity engaged in the business of providing the professional services of dentistry, providing dental benefits or dental care or providing management services to businesses providing dental benefits or dental care (a "Dental Business"), within a twenty mile radius of the location of the facilities set forth on Schedule A hereto (the "Non-Compete Area"). For purposes of this Agreement, (a) passive ownership of less than 2% of the outstanding securities of a Dental Business and (b) teaching at a dental hygiene school shall not constitute a violation of this Agreement. It is agreed by the parties hereto that the restrictions set forth in this Section 2 are reasonable and necessary to protect the confidentiality of the trade secrets, and other confidential information concerning the Company, Company Sub and/or Acquired Co.

Member further agrees that during the term of this Agreement he shall not, directly or indirectly, (a) solicit in any way on behalf of himself or in conjunction with others any patient, client, provider or customer being or having been solicited by Company Sub, Acquired Co, Group or any subsidiary, affiliate or successor in interest to Company Sub, Acquired Co or Group for the purpose of providing dental benefits or dental care either directly or indirectly, (b) solicit in any way or make offers of employment to, on behalf of himself or in conjunction with others, any person employed by Company Sub, Acquired Co, Group or any subsidiary or affiliate of Company Sub, Acquired Co or Group.

In the event the provisions of this Section 2 should ever be adjudicated by a court of competent jurisdiction to exceed the time or geographic or other limitations permitted by applicable law, then such provisions shall be deemed reformed to the maximum time or geographic or other limitations permitted by applicable law, as determined by such court in such action.

Member agrees that the remedy at law for any breach of such covenant or of the related covenants set forth herein would be inadequate, and that therefor the Company, Company Sub or any other person entitled to enforce such covenants shall be entitled to injunctive relief thereon in addition to its rights to monetary damages.

3. Proprietary Information.

(a) Member acknowledges that Company Sub retains the exclusive ownership of any proprietary information that was or will be obtained by Member from Company Sub, Acquired Co or Group during his employment with Group or other prior relationship with Company Sub, Acquired Co or Group. "Proprietary Information" includes all information and any idea which a reasonable person would believe is confidential, in whatever form, tangible or intangible, pertaining in any manner to the business of Company Sub, Acquired Co or any subsidiary or affiliate of Company Sub, Acquired Co or Group, unless (i) the information is or becomes publicly known through lawful means, (ii) the information was rightfully in Member's possession or part of his general knowledge prior to his tenure with Acquired Co or Group or (iii) the information is subsequently disclosed to Member by a third party without breach of this Agreement and without restriction on its use. Member agrees to hold all Proprietary Information in confidence and not to directly or indirectly disclose, use, copy, publish, summarize or remove from Group's premises any Proprietary Information, except (i) during the term of his employment with Group, to the extent necessary to carry out his responsibilities under the Employment Agreement or (ii) as specifically authorized in writing by Company Sub.

(b) All writing or works, including but not limited to training materials, practice guides, practice development aids, methodologies, books, marketing proposals and brochures, pamphlets, systems, computer programs, operation instructions, and all other documentation, techniques, or methods created or conceived by the Member during the term of the Employment Agreement and related to the specific performance of Member's duties to Group, Company Sub or any affiliate or subsidiary of either Group or Company Sub, and any and all intellectual property right therein, shall at all times become and remain the exclusive property of Company Sub, provided, however, that this Agreement does not require assignment of an invention which qualifies fully for protection under applicable state law in the state in which Member has his permanent residence. Member shall, upon request by Company Sub, execute any documents necessary to give effect to the terms of this Section 3.

(c) In the event of termination of Member's employment with Group for any reason, Member shall return, or cause to be returned, to Company Sub any and all of Company Sub's property, including but not limited to the above-listed property and property which is in Member's control or possession at such time.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns.

5. Entire Agreement. This Agreement and the Employment Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may be amended only by an agreement in writing signed by the party against whom enforcement of any amendment is sought.

6. Notices. All notices and demands provided for by this Agreement shall be in writing and (unless otherwise specifically provided herein) shall be deemed to have been given when mailed by first class mail enclosed in a registered or certified post-paid envelope addressed to the address of the parties written below or to such changed address as such party may have fixed by notice; provided, however, that any notice of change of address shall be effective only upon receipt.

7. Governing Law. This Agreement and its validity, construction and performance shall be governed in all respects by the internal laws of the State of Idaho without giving effect to principles of conflict of laws.

8. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

GMS DENTAL GROUP MANAGEMENT, INC.

By: _____
Grant M. Sadler, President

Address: GMS Dental Group Management, Inc.
180 North Riverview Drive, Suite 255
Anaheim, Hills, CA 92808
Attn: Grant M. Sadler
Telephone: 714-998-0587

MEMBER

_____
Gregory E. Romriell, DMD

Address: 114 S. 17th Street
Pocatello, ID. 83201
Telephone: (208) 232-0147

12342617

EXHIBIT 1
Page 5 of 6

I-PO 000984

SCHEDULE A

GROUP DENTAL FACILITIES
(IDAHO)

POCATELLO - _____
Pocatello, Idaho _____

LAVA - _____
_____

McCAMMON - _____
_____

KETCHUM - _____
_____

EXHIBIT 2

NON-COMPETE AGREEMENT

THIS NON-COMPETE AGREEMENT (this "Agreement") is made as of October 11, 1996 by and between GMS DENTAL GROUP MANAGEMENT, INC., a Delaware corporation ("Company Sub"), and ERROL K. ORMOND, DMD ("Member").

RECITALS:

A. Member is currently a member of Pocatello Dental Group P.L.L.C., an Idaho professional limited liability company ("Acquired Co").

B. Company Sub is a wholly owned subsidiary of GMS Dental Group, Inc., a Delaware corporation (the "Company").

C. Member, together with his spouse, owns 14.285 percent of the issued and outstanding membership interests of Acquired Co.

D. The Company has entered into an Agreement and Plan of Reorganization dated as of October 11, 1996 with Acquired Co, all of the members of Acquired Co and Idaho Dental Group, PA, an Idaho professional corporation ("Group") pursuant to which Acquired Co shall be merged (the "Merger") with and into Company (the "Merger Agreement"). A condition to the Company's obligation to effect the Merger is the execution by the Member of a non-compete agreement with Company Sub effective as of the consummation of the Merger (the "Effective Time").

E. Member and Group have entered into an employment agreement ("Employment Agreement") effective as of the Effective Time.

F. The parties desire to provide for the terms of the non-competition by Member with Company Sub (including all of its affiliates) after the Effective Time pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. Subject to and in consideration of the consummation of the Merger Agreement and the transactions contemplated thereby, Company Sub and Member hereby enter into this Agreement commencing at the Effective Time. The term of this Agreement shall be the greater of (a) three (3) years from the Effective Time, and (b) two (2) years from the date of termination of Member's employment with Group for cause or by Provider; provided, that this Agreement shall expire at the expiration of the term of the Employment Agreement; and provided, further, that if Group, with the consent of the Joint Operations Committee of Group, terminates the Member's employment with Group without cause (as described in the Employment Agreement), then this Agreement shall expire at the date of termination of Member's employment. Notwithstanding the foregoing, in the event that prior to the

third anniversary of the Effective Time the Company Sub terminates that certain Dental Group Management Agreement of even date herewith between Company Sub and Idaho Dental Group, P.A., and neither of the Company, any of its affiliates nor any entity managed by the Company or an affiliate thereof has a Dental Business in the Non-Compete Area, this Agreement shall terminate.

2. Agreement Not to Compete. The parties agree that Member has acquired during the course of Member's significant ownership interest of Acquired Co and shall acquire during the course of Member's continued employment with Group valuable trade secrets possessed by Acquired Co and Group. It is acknowledged and agreed that such trade secrets have been developed at great expense to Acquired Co, and the Company would not enter into the Merger Agreement unless the Company is assured that all such information will be used for the exclusive benefit of the Company, Company Sub and Acquired Co. In recognition thereof, the parties agree that during the course of Member's employment with Group and following termination of his employment with Group and for the term of this Agreement, Member shall not serve as an employee, independent contractor, consultant or otherwise, directly or indirectly, perform services for a person or entity or own or operate any entity engaged in the business of providing the professional services of dentistry, providing dental benefits or dental care or providing management services to businesses providing dental benefits or dental care (a "Dental Business"), within a twenty mile radius of the location of the facilities set forth on Schedule A hereto (the "Non-Compete Area"). For purposes of this Agreement, (a) passive ownership of less than 2% of the outstanding securities of a Dental Business and (b) teaching at a dental hygiene school shall not constitute a violation of this Agreement. It is agreed by the parties hereto that the restrictions set forth in this Section 2 are reasonable and necessary to protect the confidentiality of the trade secrets, and other confidential information concerning the Company, Company Sub and/or Acquired Co.

Member further agrees that during the term of this Agreement he shall not, directly or indirectly, (a) solicit in any way on behalf of himself or in conjunction with others any patient, client, provider or customer being or having been solicited by Company Sub, Acquired Co, Group or any subsidiary, affiliate or successor in interest to Company Sub, Acquired Co or Group for the purpose of providing dental benefits or dental care either directly or indirectly, (b) solicit in any way or make offers of employment to, on behalf of himself or in conjunction with others, any person employed by Company Sub, Acquired Co, Group or any subsidiary or affiliate of Company Sub, Acquired Co or Group.

In the event the provisions of this Section 2 should ever be adjudicated by a court of competent jurisdiction to exceed the time or geographic or other limitations permitted by applicable law, then such provisions shall be deemed reformed to the maximum time or geographic or other limitations permitted by applicable law, as determined by such court in such action.

Member agrees that the remedy at law for any breach of such covenant or of the related covenants set forth herein would be inadequate, and that therefor the Company, Company Sub or any other person entitled to enforce such covenants shall be entitled to injunctive relief thereon in addition to its rights to monetary damages.

3. Proprietary Information.

(a) Member acknowledges that Company Sub retains the exclusive ownership of any proprietary information that was or will be obtained by Member from Company Sub, Acquired Co or Group during his employment with Group or other prior relationship with Company Sub, Acquired Co or Group. "Proprietary Information" includes all information and any idea which a reasonable person would believe is confidential, in whatever form, tangible or intangible, pertaining in any manner to the business of Company Sub, Acquired Co or any subsidiary or affiliate of Company Sub, Acquired Co or Group, unless (i) the information is or becomes publicly known through lawful means, (ii) the information was rightfully in Member's possession or part of his general knowledge prior to his tenure with Acquired Co or Group or (iii) the information is subsequently disclosed to Member by a third party without breach of this Agreement and without restriction on its use. Member agrees to hold all Proprietary Information in confidence and not to directly or indirectly disclose, use, copy, publish, summarize or remove from Group's premises any Proprietary Information, except (i) during the term of his employment with Group, to the extent necessary to carry out his responsibilities under the Employment Agreement or (ii) as specifically authorized in writing by Company Sub.

(b) All writing or works, including but not limited to training materials, practice guides, practice development aids, methodologies, books, marketing proposals and brochures, pamphlets, systems, computer programs, operation instructions, and all other documentation, techniques, or methods created or conceived by the Member during the term of the Employment Agreement and related to the specific performance of Member's duties to Group, Company Sub or any affiliate or subsidiary of either Group or Company Sub, and any and all intellectual property right therein, shall at all times become and remain the exclusive property of Company Sub, provided, however, that this Agreement does not require assignment of an invention which qualifies fully for protection under applicable state law in the state in which Member has his permanent residence. Member shall, upon request by Company Sub, execute any documents necessary to give effect to the terms of this Section 3.

(c) In the event of termination of Member's employment with Group for any reason, Member shall return, or cause to be returned, to Company Sub any and all of Company Sub's property, including but not limited to the above-listed property and property which is in Member's control or possession at such time.

4. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns.

5. Entire Agreement. This Agreement and the Employment Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may be amended only by an agreement in writing signed by the party against whom enforcement of any amendment is sought.

6. Notices. All notices and demands provided for by this Agreement shall be in writing and (unless otherwise specifically provided herein) shall be deemed to have been given when mailed by first class mail enclosed in a registered or certified post-paid envelope addressed to the address of the parties written below or to such changed address as such party may have fixed by notice; provided, however, that any notice of change of address shall be effective only upon receipt.

7. Governing Law. This Agreement and its validity, construction and performance shall be governed in all respects by the internal laws of the State of Idaho without giving effect to principles of conflict of laws.

8. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

GMS DENTAL GROUP MANAGEMENT, INC.

By: _____
Grant M. Sadler, President

Address: GMS Dental Group Management, Inc.
180 North Riverview Drive, Suite 255
Anaheim, Hills, CA 92808
Attn: Grant M. Sadler
Telephone: 714-998-0587

MEMBER

_____ DDS
Errol K. Ormond, ~~DMD~~ DDS

Address: 1530 Juniper Dr.
Pocatello Idaho 83201

Telephone: 232-0576

12342619

EXHIBIT 2 I-PO 000972
Page 5 of 6

SCHEDULE A

GROUP DENTAL FACILITIES
(IDAHO)

POCATELLO - Pocatello, Idaho

LAVA -

McCAMMON -

KETCHUM -

EXHIBIT 3

18 February, 2003

Russ, - Michael

I am writing to clarify my position in relation to the agenda item for the 24 Feb PC meeting, #1 "Legal questions addressed over the last year."

I do not believe that Interdent has been guilty of "materially breaching" our employment agreements nor the management agreement between Interdent and the PC. I have advised some of the other dentists in the group, to seek individual counsel and act on that counsel if they think there has been a "material breach" between Interdent and themselves.

I do not think there is any benefit to be gained by pursuing it as a group and especially as a PC.

I have expressed this opinion everytime it has been introduced in any meeting. I don't agree with the interpretation Dwight and others have expressed in relation to the responsibility of the PC to "manage" and control the affairs of Pocatello Dental Group.

Interdent has not engaged in the practice of dentistry I know that some think Interdent has not ordered supplies and equipment in a timely manner, but that is a matter of inconvenience and not engaging in the practice of dentistry. The PC has had and does have the sole responsibility to provide dentistry.

I think the only argument anyone may have with Interdent is that if they have breached their management agreement, the "covenants not to compete" may not be enforceable. I do not think they have breached their agreement with the PC. I am not willing to spend money or time trying to prove a breach so that I can practice in Pocatello, independent of the Pocatello Dental Group. If anyone does, it should be on an individual basis and not the PC.

I have been unhappy enough with the way things are going here, that I have investigated the possibility of moving to a place outside the 20 mile limit for two years and then return to Pocatello. I will continue to work as a dentist at Pocatello Dental Group until my contract is complete and then practice with one of my sons in Pocatello.

I think Dwight has a wonderful opportunity to practice in Pocatello away from the Pocatello Dental Group. He has expressed his unhappiness with Interdent on a number of occasions and even written letters to the company expressing his discontent. Why would he argue with their stance that he not work here anymore?

I do not want to come to a meeting of the PC and discuss these issues in an emotional and unproductive way. So I will let this letter be my notice that I will not attend the PC meeting on Monday.

I have read in great detail, the letter from Mr. Cooper and I think he verifies my position, that the only thing we can hope to gain by pursuing this course is to break our covenants not to compete. We are not going to change the way Interdent, Kevin and Dan manage the Pocatello Dental Group. So I am not willing to pursue it further.

Please don't obligate me financially or in any other way. I am not willing to express my opinion nor my discontent to any other attorney or person. I have consulted my own legal counsel and feel comfortable in my position, even though it may not be popular with most of the doctors.

I do not agree with the direction you are pursuing. There are other issues and problems that could be addressed that would be more productive and help us accomplish our mission as dentists.

As president of the PC, you have signed, without input from anyone else in the PC, contracts, Interdent has negotiated with individual dentists. I think you should sign the termination letter for Dwight and give him the opportunity to practice in Pocatello away from Pocatello Dental Group. I can't think of any valid reason why you would not sign this letter. You are the president of the PC. Why put him in the position of having to spend time and money trying to invalidate contracts or whatever you are trying to accomplish?

One more item, Russ, is that as a specialist, Mr. Cooper thinks you could get out of your covenant not to compete, but the rest of us, probably cannot. Dwight has the opportunity to escape the covenant not to compete, what else are we going to accomplish by arguing or pursuing this any further?

Porter

Cc: Ernie, Errol, Dwight, Greg, Jay, Dan

Porter

Exhibit 3
Page 1 of 1

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Supplemental Affidavit of Kevin Webb in Support of Defendant/Third-Party Plaintiff's Motion for Temporary Restraining Order (Misner Noncompete)** on the following named persons on the date indicated below by

- ☐ mailing with postage prepaid
- ☐ hand delivery
- ☒ facsimile transmission
- ☐ overnight delivery

to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

Gary L. Cooper
Ron Kerl
COOPER & LARSEN
151 North Third Avenue, Suite 210
PO Box 4229
Pocatello, ID 83205-4229
Telephone: (208) 235-1145
Fax: (208) 235-1182
gary@cooper-larsen.com
ron@cooper-larsen.com
jim@cooper-larsen.com

Attorneys for Plaintiff/Third-Party Defendant Pocatello Dental Group, P.C.

Lowell N. Hawkes
LOWELL N. HAWKES, CHARTERED
1322 East Center
Pocatello, ID 83201
Telephone: (208) 235-1600
Fax: (208) 235-4200
hox@nicoh.com

Attorney for Third-Party Defendants Dwight G. Romriell, Gregory Romriell, Errol Ormond and Arnold Goodliffe

Richard A. Hearn
Stephen J. Muhonen
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
PO Box 1391/Center Plaza
Pocatello, ID 83204-1391
Telephone: (208) 232-6101
Fax: (208) 232-6109
rah@racinelaw.net
sjm@racinelaw.net

Attorneys for Third-Party Defendant Dr. Larry R. Misner, Jr., Dr. Ernest Sutton and Dr. Porter Sutton

Honorable Larry M. Boyle
U.S. District Court Judge
District of Idaho
801 East Sherman Street, Room 119
Pocatello, ID 83201
Fax: (208) 334-9033
Telephone: (208) 334-1361

DATED: July 13, 2004.

Scott J. Kaplan, Pro Hac Vice
Attorneys for Defendant/Third-Party Plaintiff InterDent Service Corporation