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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
Idaho professional corporation; DWIGHT G.
ROMRIELL, individually; LARRY R.

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

DEFENDANT/THIRD-PARTY
PLAINTIFF'S AMENDED AND
SUPPLEMENTAL ANSWER,
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

FILED
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CLERK U.S. DISTRICT COURT
IDAHO

U.S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at _____ M

APR 07 2004

CLERK, U.S. DISTRICT COURT
By _____ Deputy

DEFENDANT/THIRD-PARTY PLAINTIFF'S AMENDED AND SUPPLEMENTAL
ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT - 1

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MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Third-Party Defendants.

Defendant InterDent Service Corporation ("ISC"), by and through its counsel of record, Stoel Rives LLP, hereby answers plaintiff Pocatello Dental Group's ("Group") Complaint. ISC admits, denies and affirmatively alleges as follows:

1. ISC admits the allegations in paragraph 1.
2. ISC admits that it is a Washington corporation registered as a foreign corporation in the state of Idaho, that ISC provides services to Group at the Pineridge Mall in Chubbuck, Idaho and that ISC is the successor to GMS Dental Group Management, Inc. ("GMS"), which subsequently changed its name to Gentle Dental Management, Inc. ("GDMI"), which was later merged with and into Gentle Dental Service Corporation ("GDSC"). GDSC then changed its name to InterDent Service Corporation ("ISC"), which succeeded to all of GMS's right, title and interest in and to all of GMS's assets. Whether ISC is an "independent contractor" is a legal conclusion to which no response is required. To the extent not expressly admitted herein, ISC denies each and every remaining allegation contained in paragraph 2.
3. ISC admits that GMS Dental Group Management, Inc. and Idaho Dental Group, P.A., entered into the Dental Group Management Agreement (the "Management Agreement") on October 11, 1996. ISC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Complaint and on that basis denies each and every remaining allegation within said paragraph.

4. ISC admits the allegations in paragraph 4.

5. ISC admits the allegations in paragraph 5.

6. ISC denies that Group took the actions alleged in paragraph 6 in the best interests of patients. ISC admits that Group purported to enter into a document entitled Dentist's Employment Agreement (the "2003 Employment Agreement") with Dr. Dwight Romriell ("Romriell") on August 26, 2003 but denies that said document has any legal force or effect. ISC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within paragraph 6 of the Complaint and on that basis denies each and every remaining allegation within said paragraph.

7. In answer to paragraph 7, ISC admits that after purportedly entering into the 2003 Employment Agreement with Romriell, Group provided a copy of the document to ISC. ISC admits it informed Group that, pursuant to Article 5.2 of the Management Agreement, the individual shareholders did not have authority to enter into employment agreements unilaterally on behalf of Group. ISC admits there are five members of the Joint Operations Committee ("JOC"). Of those members ISC is informed and believes that Drs. Romriell and Ormond are licensed dentists in the state of Idaho.

8. ISC admits only that a facsimile from Romriell requesting that a JOC meeting be held was sent to the wrong address and, consequently, was not responded to by ISC. ISC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within paragraph 8 of the Complaint and on that basis denies each and every allegation within said paragraph.

9. ISC admits that it wrote to Group on September 8, 2003. The letter speaks for itself. To the extent not expressly admitted herein, the allegations in paragraph 6 of the Complaint are denied.

10. ISC admits that it received a letter on September 19, 2003 from James P. Price, which letter speaks for itself. ISC further admits that ISC did not respond to the letter because the matter was pending in U.S. Bankruptcy Court and advised Group's shareholders' current counsel of this.

11. ISC admits that ISC advised five of its employees that their services would no longer be required as of October 11, 2003. ISC denies that these five employees were Romriell's staff. They are employed by ISC. ISC denies that TMJ is a recognized specialty for dentists, dental assistants and hygienists. ISC denies that Romriell needs five specially assigned staff personnel to "adequately and timely treat his [few] patients with care." ISC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 11 of the Complaint and on that basis denies each and every allegation within said paragraph.

12. ISC denies that there was any danger of patient abandonment occurring in violation of any "professional, ethical and legal obligations." ISC states that as of October 2003, Romriell had had six months to notify patients and to make arrangements for their treatment. ISC lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and on that basis denies each and every allegation within said paragraph.

13. ISC lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and on that basis denies each and every allegation within said paragraph.

14. As to paragraph 14 of the Complaint, ISC admits that it has responsibility under the Management Agreement for scheduling patients. ISC denies that it is refusing to schedule Romriell's patients for appointments after October 11, 2003 and denies that it is canceling appointments already made. To the extent not expressly admitted herein, the allegations in paragraph 14 of the Complaint are denied.

15. ISC denies the allegations in paragraph 15.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

16. With regard to paragraph 16 of the Complaint, ISC reasserts the answers contained within the foregoing paragraphs as if set forth fully herein.

17. ISC admits that Group has an interest in the Management Agreement. ISC denies the remaining allegations contained in paragraph 17 of the Complaint.

18. ISC denies the allegations contained in paragraph 18 of the Complaint.

19. ISC denies the allegations contained in paragraph 19 of the Complaint.

20. ISC denies the allegations contained in paragraph 20 of the Complaint.

21. ISC denies the allegations contained in paragraph 21 of the Complaint.

SECOND CAUSE OF ACTION

(Breach of Contract)

22. With regard to paragraph 22 of the Complaint, ISC reasserts the answers contained within the foregoing paragraphs as if set forth fully herein.

23. ISC denies the allegations contained in paragraph 23 of the Complaint.

24. ISC admits that it has obligations under the Management Agreement, which speaks for itself. ISC denies the remaining allegations contained in paragraph 24 of the Complaint.

25. ISC denies the allegations contained in paragraph 25 of the Complaint.

26. ISC denies the allegations contained in paragraph 26 of the Complaint.

27. ISC denies the allegations contained in paragraph 27 of the Complaint.

THIRD CAUSE OF ACTION

(Injunctive Relief)

28. With regard to paragraph 28 of the Complaint, ISC reasserts the answers contained within the foregoing paragraphs as if set forth fully herein.

29. ISC denies the allegations contained in paragraph 29 of the Complaint.

30. ISC denies the allegations contained in paragraph 30 of the Complaint.

31. ISC denies the allegations contained in paragraph 31 of the Complaint.

FOURTH CAUSE OF ACTION

(Additional Breaches of Contract)

32. ISC admits the allegations contained in paragraph 32 of the Complaint.

33. ISC admits the allegations contained in paragraph 33 of the Complaint.

34. ISC denies the allegations contained in paragraph 34 of the Complaint.

35. ISC denies the allegations contained in paragraph 35 of the Complaint.

RESPONSE TO "REQUEST FOR ATTORNEYS FEES"

36. With regard to paragraph 36 of the Complaint, ISC reasserts the answers contained within the foregoing paragraphs as if set forth fully herein.

37. ISC admits certain Group shareholders have retained the services of Cooper & Larsen, Chartered, to prosecute this action on their behalf. ISC denies the allegation that Group is entitled to recover attorneys' fees.

RESPONSE TO "DEMAND FOR JURY TRIAL"

38. ISC expressly reserves the right to object to Group's demand for a jury trial because plaintiff may not be entitled to a trial by jury on all claims or issues in this action.

AFFIRMATIVE DEFENSES

Unless otherwise specified, ISC asserts the following affirmative defenses to the entire Complaint and each and every action purportedly stated therein.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state causes of action upon which relief may be granted on any of plaintiff's alleged claims for relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to adequately mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has waived, or is estopped from asserting, all claims set forth in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to satisfy certain contractual prerequisites.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by its prior material breaches of the Management Agreement.

NINTH AFFIRMATIVE DEFENSE

Plaintiff breached the covenant of good faith and fair dealing and interfered with and frustrated ISC's ability to perform duties and obligations under the Management Agreement.

TENTH AFFIRMATIVE DEFENSE

Damages sustained by plaintiff are the result of independent, intervening and/or superseding causes, including but not limited to acts and omissions of plaintiff, third-party defendants or third parties.

ELEVENTH AFFIRMATIVE DEFENSE

Any breaches of the Management Agreement by ISC were not breaches of material terms of the Management Agreement.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of *res judicata*, collateral estoppel and issue preclusion.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the orders issued in *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California, Case No. 03-13494.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by 11 U.S.C.A. § 1141.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of ratification.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of mutual mistake.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unilateral mistake.

EIGHTEENTH AFFIRMATIVE DEFENSE

Some or all of plaintiff's claims are barred by the doctrine of impossibility of performance and/or frustration of purpose.

JURY DEMAND

ISC demands trial by jury on each and every issue so triable.

PRAYER FOR RELIEF

WHEREFORE, ISC requests judgment against plaintiff and that

1. Plaintiff take nothing;
2. The Court dismiss the Complaint in its entirety;
3. Defendant be awarded its costs, disbursements, expenses and expert witness fees

incurred in defending this lawsuit, including appropriate and reasonable attorneys' fees, as allowed by applicable law, including but not limited to Article 10.5 of the Management Agreement, Idaho Code § 12-120 and Idaho Code § 12-121; and

4. The Court shall award such other and further relief as it deems just and proper.

COUNTERCLAIM BY DEFENDANT/THIRD-PARTY PLAINTIFF

1.

Comes now third-party plaintiff ISC and, pursuant to Fed. R. Civ. P. 13(a), states its third-party claims against third-party defendants as follows:

DEFENDANT/THIRD-PARTY PLAINTIFF'S AMENDED AND SUPPLEMENTAL
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PARTIES, JURISDICTION AND VENUE

2.

ISC is, and was at all times relevant herein, a Washington corporation registered as a foreign corporation in the state of Idaho.

3.

Group is an Idaho professional corporation, which, at all times relevant to this action, had its principal place of business in Chubbuck, Idaho. Group transacts business, in among other places, the state of Idaho.

4.

Dwight G. Romriell ("Romriell") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

5.

Larry R. Misner, Jr. ("Misner") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

6.

Upon information and belief, Porter Sutton ("Sutton") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

7.

Upon information and belief, Ernest Sutton ("E. Sutton") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

8.

Upon information and belief, Gregory Romriell ("G. Romriell") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

9.

Upon information and belief, Errol Ormond ("Ormond") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho.

10.

Upon information and belief, Arnold Goodliffe ("Goodliffe") is an individual who is a resident of, and at all relevant times to this action resided in, the state of Idaho. **[check]**

11.

Subject-matter Jurisdiction for this third-party claim is proper under 28 U.S.C. § 1332. The amount in controversy between the parties is in excess of \$75,000.

12.

Venue for this third-party claim is appropriate under 28 U.S.C. § 1391 and D. Idaho L. Civ. R. 31.

GENERAL ALLEGATIONS

The Acquisition

13.

ISC is in the business of providing or arranging for management services, facilities, equipment and certain personnel necessary for the operation of dental practices.

14.

In October 1996, GMS Dental Group Management, Inc. ("GMS") acquired (the "Acquisition") all of the nonprofessional assets of the dental practice presently conducted by plaintiff and third-party defendant Pocatello Dental Group, P.C., formerly known as Idaho Dental Group, P.C. ("Group"), in exchange for payment of \$2.8 million in cash and stock to the

shareholders of Group, including Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe.

The Management Agreement

15.

In connection with and as a material part of the consideration for the Acquisition, Group entered into a Management Agreement with GMS dated October 11, 1996 (the "Management Agreement"), attached hereto as Exhibit 1.

16.

The term of the Management Agreement is 40 years from the effective date of the Management Agreement.

17.

GMS subsequently changed its name to Gentle Dental Management, Inc. ("GDMI"). GDMI was later merged with and into Gentle Dental Service Corporation ("GDSC"). GDSC then changed its name to InterDent Service Corporation ("ISC"), which succeeded to all of GMS's right, title and interest in and to all of GMS's assets, including GMS's right, title and interest in and to the Management Agreement.

18.

ISC provides management services, facilities and equipment to the Group pursuant to the terms of the Management Agreement. ISC has satisfied its obligations under the Management Agreement.

19.

Under the Management Agreement, the Group is responsible for all aspects of the practice of dentistry and delivery of dental services. In return for their services, the Group

shareholder dentists receive 38 or 39 percent of their net collections regardless of the amount of overhead or liabilities incurred by the Group.

20.

Unlike the Group dentists, who enjoy a fixed percentage of collections, ISC profits under the Management Agreement only if the remaining 61 or 62 percent of net collections exceeds the overheads and liabilities of the Group.

21.

Under the Management Agreement, Group provides dental services to Beneficiaries and to Group Patients through arrangements with licensed individuals ("Providers"). Such arrangements may include contracts ("Employment Agreements") with dentist employees (collectively "Employee Providers") and agreements ("Provider Subcontracts") with independent contractor dentists and non-dentist providers of various dental care services (collectively "Subcontract Providers").

22.

Under 5.2(b) of the Management Agreement, Group is prohibited from negotiating or executing any Provider Subcontract, Employment Agreement, or any amendment thereto, or terminating any Provider Subcontract or Employment Agreement without the approval of the Joint Operations Committee ("JOC").

23.

ISC, Group and the members of the JOC are required to diligently pursue any preliminary activities that are necessary to allow the JOC to take an action.

24.

In violation of duties owed to ISC, Group has made hiring decisions that are unnecessary for the efficient and effective operation of the Practice. As a result, ISC has been damaged.

25.

The Management Agreement governs, including, without limitation, all professional, administrative and technical services, marketing, contracting, case management, ancillary dental services, outpatient services and dental care facilities, equipment, supplies and items, except as otherwise specifically provided in the Agreement. Group's Employment Agreements are required to encompass substantially all such activities of Employee Providers and are required to provide that all revenues derived from such activities (and not excluded below) are "Revenues," (as that term is defined in the Management Agreement).

26.

Group contractually agreed in Article 2.6(a) of the Management Agreement, as part of the Acquisition, to assign, sell, convey, transfer and deliver to ISC all of the nonprofessional assets and properties of Group of every kind, character and description, whether tangible, intangible, real, personal, or mixed, and wherever located, including, but not limited to, all Revenues, cash accounts receivable, advances, prepaid expenses, deposits, equipment and improvements.

27.

As part of its responsibilities under the Management Agreement, ISC is required to employ and pay the salaries of all non-Provider personnel necessary for the operation of the Practice.

28.

Group is required to operate the Practice in accordance with terms of the Annual Budget, as defined in Article 3.6 of the Management Agreement.

29.

Group is prohibited from using any goods or services provided by ISC under the Management Agreement for any purpose other than the provision of management of dental services as contemplated by the Management Agreement and purposes incidental thereto.

Relationship Between Group And ISC

30.

The Group dentists have refused to respect the financial policy and procedure that has been established by ISC and, in so doing, have undermined the financial stability of the contractual relationship created by the Management Agreement.

31.

For example, in the first quarter of 2003 alone, the Group wrote off over \$76,000 in dentistry as "professional" or "courtesy" discount, thereby diverting revenue from ISC.

32.

In a report issued October 14, 2003, the Group's own consultant noted the disruptive conduct by the Group, stating that "it appears the Drs have not let go of ownership and handed things to management. There is a power struggle going on."

Romriell Resigns from Group

33.

In April 2003, Romriell gave notice he was leaving the Practice, effective October 11, 2003.

ISC Files for Bankruptcy

34.

On May 9, 2003, ISC filed for bankruptcy reorganization under Chapter 11, *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California Case No. 03-13494, and obtained an order authorizing it to “operate its business and to perform its obligations, in the ordinary course of business pursuant to the Management Agreements with the Professional Corporations. . . .”

35.

In the bankruptcy, the Group dentists made many of the same claims as they have asserted in this litigation, both in an adversary proceeding and in objecting to ISC’s assumption of the Management Agreement.

36.

In August 2003, during the bankruptcy proceedings, the Group unilaterally tried to rehire Romriell without consulting with or obtaining the approval of the JOC as it is required to do under the Management Agreement.

37.

On October 3, 2003, only six days before it filed this action, the Group stipulated to the withdrawal of its claims and objections in the Bankruptcy Court. As such, the Group agreed that there were no breaches to the Management Agreement and that they would seek no corresponding cure payments. The Group kept secret its plan to refile its withdrawn claims just days later in state court. The Bankruptcy Court approved ISC’s plan of reorganization on October 9, 2003, including the Group’s stipulated dismissal.

Employment Agreement Between Group and Romriell

38.

In furtherance of its unilateral decision to rehire Romriell, counterclaim defendant Misner, purportedly acting on behalf of Group, executed the "2003 Employment Agreement".

39.

Upon information and belief, the Group's purpose for entering into the 2003 Employment Agreement was to impose costs on ISC and to provide Romriell additional time to establish a competing practice that is and/or will divert revenue away from ISC.

40.

Under the 2003 Employment Agreement, Group has the duty to prevent Romriell from competing with, diverting revenue from, and/or damaging ISC.

41.

Under the 2003 Employment Agreement, Group has the ability to prevent Romriell from competing with, diverting revenue from, and/or damaging ISC.

42.

In violation of Group's fiduciary duty and/or its duty of good faith and fair dealing to ISC, Group failed to prevent Romriell from competing with, diverting revenue from and/or otherwise damaging ISC.

43.

Romriell has competed with, diverted revenue from and/or otherwise damaged ISC.

Group Files Its Complaint and Obtains a TRO Ex Parte

44.

In September 2003, shortly after Group unilaterally attempted to rehire Romriell, the Practice expenses for supplies and other items used by the Group dentists (but paid for in whole by ISC) inexplicably and dramatically increased— so much so as to cause the Practice to be unprofitable on an accrual basis.

45.

In early October 2003, ISC's president, Ivar Chhina, and the Group's former president, Misner, engaged in extensive discussions over Romriell's request for additional time to establish his own office.

46.

During these negotiations, and contrary to the spirit of the talks, the Group obtained a TRO ex parte on October 10, 2003.

47.

On the same day, October 10, 2003, Misner wrote to Mr. Chhina and reneged on the Group's previous offer to resolve this dispute. The letter did not mention the TRO.

48.

In response to Misner's October 10, 2003 letter, Mr. Chhina called Misner and reinitiated discussions aimed at resolving the dispute regarding Romriell. Again, at no time during these discussions did Misner inform Mr. Chhina that the Group had already obtained a TRO.

49.

The Group did not disclose the TRO to ISC until the papers were delivered to ISC's office manager in Chubbuck on Monday, October 13, 2003, two days after the TRO was supposedly needed.

50.

By obtaining the ex parte TRO, Group has materially impaired the ability of ISC to exercise its rights and fulfill its obligations under the Management Agreement. By way of example only, ISC is precluded from hiring and terminating staff under Article 4.4(b) and from exercising its right of approval as a member of the JOC under Article 5.2(b).

Group Dentists Prepare to Establish Independent Practice

51.

On information and belief, Group has opened a bank account in the name of the Group without informing ISC.

52.

On information and belief, Group has opened a post office box in the name of Group without informing ISC.

53.

On information and belief, Group has opened a bank account and post office box in furtherance of its plan to establish an independent dental practice.

54.

Upon information and belief, Group is generating Revenues through the rendition of Professional Services that are not being made available to ISC.

**Romriell Plans for, and Provides Services at,
Independent Dental Practice**

55.

Upon information and belief, Romriell is, and has been for some time, preparing to organize a dental practice independent of the Management Agreement.

56.

Romriell is providing dental services at an independent dental office in the Pocatello area called "The TMJ Center," which is less than 20 miles away from the Practice.

57.

Upon information and belief, employees of ISC, including employees ISC is required to keep on staff pursuant to the TRO, are currently working at the TMJ Center.

58.

Group did not inform ISC or the Idaho state court prior to the issuance of the ex parte TRO about the opening of the TMJ Center and the other improper acts and omissions of Romriell despite their knowledge thereof. Romriell and Misner submitted misleading affidavits to the Idaho state court concealing Romriell's wrongdoing.

59.

Since Romriell has started seeing patients at the TMJ Center, there have been large blocks of time during which Romriell has had no appointments at the Group. Nonetheless, ISC is required by the TRO obtained by the Group through Romriell's and Misner's misleading testimony to keep five persons on staff for Romriell.

Group Receives Consultant's Report

60.

On October 14, 2003, Group received a report from the consulting firm of Wintersteen & Associates ("Consulting Report"). Upon information and belief, Wintersteen & Associates was retained solely by Group and asked by Group to provide observations and recommendations in connection with the Practice.

61.

Among other things, the Consulting Report states that "it appears that the Drs. Have not let go of ownership and handed things to management. There is a power struggle going on. It is sort of like you have sold a car to a person and yet you want to keep the care to drive. The person you sold will usually not drive the way you do . . . but, they have paid for the car. Give it to them."

62.

The Consulting Report also reminded the Group dentists that if they want "more involvement with management and leadership, then they could approach Interdent about buying back the group. Again – remember, you sold your rights."

63.

Similarly, the Consulting Report concluded that Group was "having Scller's remorse" and that Group needed to "respect the financial policy and procedure that has been established by the management company."

Group's and Romriell's Scheme to Divert the Mail

64.

In late January 2004, the U.S. Postal Service stopped delivering the mail to PDG's office. Since 1996, when the Management Agreement took effect, ISC has received and handled the mail, including but not limited to for the purpose of fulfilling its responsibilities under section 4.6 of the Management Agreement. Section 4.6 provides:

4.6 Billing and Collection Payment of Expenses. In addition to the responsibilities of Manager under Section 2.6(b), Manager shall be responsible for all billing and collecting activities required by Group. Manager shall also be responsible for reviewing and paying accounts payable of Group. *Group hereby appoints the Manager its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of Group:*

- (a) Bill and collect in Group's name or the name of the individual practicing dentist, all charges and reimbursements for Group. Group shall give Managers all necessary access to Patient records to accomplish all billing and collection. In so doing, Manager will use its best efforts but does not guarantee any specific level of collections, and Manager will comply with Group's reasonable and lawful policies regarding courtesy discounts;
- (b) Take possession of and endorse in the name of Group any and all instruments received as payment of accounts receivable;
- (c) Deposit all such collections directly into Accounts and make withdrawals from such Accounts in accordance with this Agreement; and
- (d) Place accounts for collection, settle and compromise claims, and institute legal action for the recovery of accounts.

(Emphasis added.)

65.

On February 1, 2004, the postal service notified ISC's, counsel that on the direction of third-party defendant Gregory Romriell, the mail in the Pocatello office would be sent to a Post Office box established by PDG.

66.

If ISC does not resume receiving the mail at the Pocatello office, it will be unable to pay Group creditors or to collect the approximately 62 percent of the revenues to which it is entitled under the Management Agreement. Patient healthcare information will also be diverted and PDG's patient care will be compromised.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

(Group)

67.

The allegations included in paragraphs 1 through 63 of ISC's third-party claims are incorporated by reference and made a part hereof.

68.

Group materially breached the Management Agreement in various respects, including, but not limited to:

- a. Group's failure to enforce its right to prevent members and/or employees of Group from competing with, diverting revenue away from, and/or otherwise damaging ISC;
- b. Group's failure to pay, or make available, certain Revenues owed to ISC;

c. Group's failure to comply with the requirement in Article 3.5(a) that Group and its respective Committee Members diligently pursue any preliminary activities that are necessary to allow the JOC to take an action;

d. Group's material impairment of ISC's right to hire and terminate non-professionals under Article 3.8(b);

e. Group's material impairment of ISC's right to hire and terminate non-professionals under Article 4.4(b);

f. Group's purported execution of the 2003 Employment Agreement with Romriell in violation of Article 5.2(a);

g. Group's purported execution of the 2003 Employment Agreement with Romriell in violation of Article 5.2(b);

h. Group's use of goods and services provided by ISC under the Management Agreement for purposes other than the provision of and management of dental services as contemplated by the Management Agreement and the purposes incidental thereto, in violation of Article 5.6; and

i. Group's commission and allowance of acts that have materially impaired the ability of Group to carry on the business of the Practice or to fulfill its obligations under the Management Agreement.

j. PDG's diversion of the mail to Group's office and ISC's office in violation of Article 4 of the Management Agreement.

69.

As a direct and proximate result of Group's material breaches of the Contract, ISC has sustained injury and damage in an amount to be established at trial well in excess of the jurisdictional minimum of this Court plus prejudgment interest.

70.

ISC is also entitled to temporary and permanent injunctive relief to require Group to take all steps necessary for mail to resume at the office address of 4155 Yellowstone Avenue, Pocatello, Idaho.

SECOND CLAIM FOR RELIEF

(Breach of Covenant of Good Faith and Fair Dealing)

(Group)

71.

The allegations included in paragraphs 1 through 66 of ISC's third-party claims are incorporated by reference and made a part hereof.

72.

There is implied in the Management Agreement between ISC and Group a covenant of good faith and fair dealing on the part of Group to cooperate with ISC so that ISC may obtain all benefits available to it under the Management Agreement.

73.

Through the actions alleged above, Group has materially breached the covenant of good faith and fair dealing.

74.

As a direct and proximate result of Group's breach of the covenant of good faith and fair dealing, ISC has sustained injury and damage in an amount to be established at trial that is well in excess of the jurisdictional minimum of this Court plus prejudgment interest.

THIRD CLAIM FOR RELIEF

(Abuse of Process)

(Romriell)

75.

The allegations included in paragraphs 1 through 70 of ISC's third-party claims are incorporated by reference and made a part hercof.

76.

ISC is informed and believed that in the first half of 2003, Romriell willfully and improperly with ulterior motives, including, but not limited to, gencrally harassing ISC, disrupting the business of ISC, and/or gaining leverage in his ongoing dispute/negotiations with ISC made a false allegation to the Idaho Board of Dentistry ("Board") that ISC was engaging in the unlawful practice of dentistry. Because Romriell did not substantiate his complaint, the Board took no action against ISC.

77.

As a direct and proximate result of the abuse of process by Romriell, ISC has sustained injury and damage in an amount to be established at trial that is well in excess of the jurisdictional limit, plus prejudgment interest.

78.

The Group dentists, through counsel, have willfully and improperly with ulterior motives, including, but not limited to, generally harassing ISC, disrupting the business of ISC, and/or gaining leverage in his ongoing dispute/negotiations with ISC made another false allegation to the Board that ISC is engaging in the unlawful practice of dentistry. ISC reserves the right to add additional defendants and/or damages to this counterclaim upon the Board's rejection of this unsubstantiated allegation.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

(Group)

79.

The allegations included in paragraphs 1 through 74 of ISC's third-party claims are incorporated by reference and made a part hereof.

80.

As a professional corporation, and because of Group's relationship with ISC, ISC placed its trust and confidence in Group's judgment, recommendations, representations and promises. Thus, Group was in a superior position to ISC, and through such position was able to exercise influence over ISC, who had reposed special trust and confidence in Group.

81.

Group knew or had reason to know that ISC was placing its trust and confidence in Group's judgment, direction, recommendations, representations and services in connection with the Management Agreement.

82.

As a result of its expertise and obligations undertaken in the Management Agreement, Group owed a fiduciary duty to ISC.

83.

As a result of this fiduciary duty, Group was obligated to use the utmost care in disclosing to ISC material information important to the management company of a dental practice such as the one involved here.

84.

Group breached its fiduciary obligations to ISC by taking actions contrary to, or refusing to take actions in, the best interests of Practice. Upon information and belief, Group has diverted revenue away from the Group's practice, failed to make certain Revenues available to ISC, precluded ISC from exercising its right to staff non-professionals, made hiring decisions inconsistent with the efficient and economical running of the Practice, concealed or failed to fully, fairly and timely disclose material information to ISC, and consented to and assisted in the establishment of the TMJ Center.

85.

Because ISC was not properly informed of and/or consulted about these matters, ISC was unable to take actions to protect ISC's interests and investment in the Group's practice.

86.

As a result of Group's breach of its fiduciary obligations, ISC has been damaged in an amount to be proven at trial well in excess of the jurisdictional minimum of the Court, plus prejudgment interest.

FIFTH CLAIM FOR RELIEF
(Intentional Interference With Contract)

(Romriell)

87.

ISC adopts and realleges paragraphs 1 through 82 as set forth above.

88.

A contract (the Management Agreement) existed between ISC and Group.

89.

Romriell knew of the existence of the Management Agreement referred to above.

90.

Through the 2003 Employment Agreement and the establishment and operation of the TMJ Center, Romriell induced Group to violate its contract with ISC, including but not limited to Group's contractual obligations to:

- a. Prevent members and/or employees of Group from competing with, diverting revenue away from, and/or otherwise damaging ISC;
- b. Diligently pursue any preliminary activities that are necessary to allow the JOC to take an action;
- c. Refrain from materially impairing ISC's right to hire and terminate non-professionals under Articles 3.8(b) and 4.4(b);

- d. Seek approval from the JOC before executing an Employment Agreement with Romriell;
- e. Pay, or otherwise make available to ISC, Revenues owed to ISC;
- f. Refrain from committing or allowing acts that materially impair the ability of Group to carry on the business of the Group and to fulfill its obligations under the Management Agreement; and
- g. Perform in accordance with the covenant of good faith and fair dealing.

91.

Romriell further induced Group to divert the mail as alleged in paragraphs 64 through 66.

92.

Romriell acted with the intent to cause Group to breach its contract with ISC. Such action by Romriell, in fact, caused Group to breach its contract with ISC.

93.

In interfering with the contract between ISC and Group, Romriell acted for personal motives and did not act to advance the interests of Group.

94.

As a result of Romriell's interference with Group's performance of its contract with ISC, ISC has suffered actual damages in an amount to be proven at trial, plus prejudgment interest.

SIXTH CLAIM FOR RELIEF

(Fraud in the Inducement)

(Group, L.R. Misner, Porter Sutton, Ernest Sutton,
Gregory Romriell, Dwight Romriell,
Errol Ormond, Arnold Goodliffe)

95.

The allegations included in paragraphs 1 through 89 are incorporated by reference and made a part hereof.

96.

ISC was fraudulently induced by Group, Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe to enter the Management Agreement. The Management Agreement was a material part of the consideration for which ISC paid counter-claim defendants \$2.8 million.

97.

When entering the Management Agreement, ISC relied upon representations by Group, including representations by Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe regarding their willingness and ability to abide by the terms in the Management Agreement, including Article 5.2, and relied upon Group's concealment of its intent not to abide by Article 5.2.

98.

Article 5.2 is a material term of the Management Agreement. The absence of the agreement encompassed by Article 5.2 would materially and adversely frustrate the parties' essential objectives as expressed in the Management Agreement.

99.

Based upon information and belief, Group, Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe never intended to honor their agreement in, or abide by the terms of, Article 5.2.

100.

ISC suffered detriment as a proximate result of its reliance on the representations and concealment of facts by Group, Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe.

101.

ISC would not have entered into the Management Agreement but for the misrepresentations and concealment of material facts by Group, Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe.

102.

As a direct and proximate result of counterclaim defendants' fraud, ISC has been damaged in an amount in excess of \$2.8 million plus pre-judgment interest.

SEVENTH CLAIM FOR RELIEF

(Alternative Claim for Rescission and Restitution)

**(Group, L.R. Misner, Porter Sutton, Ernest Sutton,
Gregory Romriell, Dwight Romriell,
Errol Ormond, Arnold Goodliffe)**

103.

The allegations included in paragraphs 1 through 97 are incorporated by reference and made a part hercof.

104.

The terms of Management Agreement was a material part of the consideration for which ISC paid counterclaim defendants \$2.8 million.

105.

ISC expressly denies that any term of the Management Agreement is illegal or unenforceable. However, should the Court determine that section 5.2 or any other material term of the Management Agreement is illegal or unenforceable, ISC is entitled to rescind the Management Agreement and to restitution of the \$2.8 million it paid counterclaim defendants, including Group, Misner, Sutton, E. Sutton, G. Romriell, Romriell, Ormond and Goodliffe plus prejudgment interest.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment)

106.

The allegations included in paragraphs 1 through 100 are incorporated by reference and made a part hereof.

107.

This action for declaratory relief is brought pursuant to 28 U.S.C. § 2201 and the Uniform Declaratory Judgment Act, Idaho Code §§ 10-1201, 10-1208.

108.

Upon information and belief, Group maintains that any successful claim against it by ISC will be satisfied from the Practice's accounts receivable, which Group in turn claims will reduce ISC's management fee. Thus, Group claims that any amount recovered by ISC against Group will be satisfied with ISC's assets.

109.

Group has not agreed, and ISC does not anticipate that it will agree, that any amounts found owing to ISC by Group cannot be satisfied from accounts receivable or under the Management Contract. Accordingly, an actual conflict exists between the parties.

110.

ISC is entitled to a declaration that neither damages awarded against counterclaim defendants, nor any counterclaim defendant's attorneys fees and costs herein nor any disbursements in this litigation, including but not limited to the security for the TRO, are recoverable from accounts receivable or otherwise under the Management Agreement.

ATTORNEYS' FEES

ISC has been required to retain the undersigned counsel to bring this Counterclaim. Accordingly, ISC is entitled to its attorneys' fees and expenses incurred in bringing this Counterclaim pursuant to Idaho Code §§ 12-120 and 12-121, and pursuant to Article 10.5 of the Management Agreement.

DEMAND FOR JURY TRIAL

ISC demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, ISC requests judgment against counterclaim defendants as follows:

1. On its First Counterclaim, for damages in excess of the jurisdictional minimum of the Court plus prejudgment interest;
2. On its Second Counterclaim, for damages in excess of the jurisdictional minimum of the Court plus prejudgment interest;

3. On its Third Counterclaims, for damages in excess of the jurisdictional minimum of the Court plus prejudgment interest;

4. On its Fourth Counterclaims, for damages in excess of the jurisdictional minimum of the Court plus prejudgment interest;

5. On its Fifth Counterclaim, for damages in excess of the jurisdictional minimum of the Court plus prejudgment interest;

6. On its Sixth Counterclaim, for damages in the amount of \$2.8 million plus prejudgment interest;

7. On its Seventh Counterclaim, in the alternative, for restitution in the amount of \$2.8 million plus prejudgment interest;

8. On its Eighth Counterclaim, for a declaratory judgment that that neither damages awarded against counterclaim defendants, nor any counterclaim defendants' attorney fees and costs herein nor any disbursements in this litigation, including but not limited to the security for the TRO, are recoverable from accounts receivable or otherwise under the Management Agreement;

9. For ISC's costs, disbursements, expenses, and expert witness fees incurred in defending this lawsuit, including appropriate and reasonable attorney's fees, as allowed by applicable law; and

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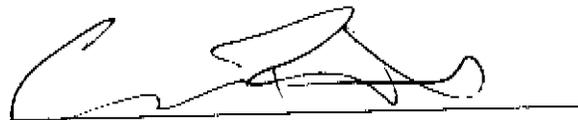
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10. For such other and further relief as the Court deems just and proper.

DATED: February 5, 2004.

STOEL RIVES LLP

A handwritten signature in black ink, appearing to read "G. Rey Reinhardt", is written over a horizontal line.

G. Rey Reinhardt
Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation