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Attorneys for Defendant/Third-Party Plaintiff  
InterDent Service Corporation

U.S. COURTS

04 MAY 12 AM 11:17

REC'D \_\_\_\_\_  
CAMERON S. BURKE  
CLERK 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.

INTERDENT SERVICE CORPORATION, a  
Washington corporation,

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

SUPPLEMENTAL AFFIDAVIT OF  
SCOTT J. KAPLAN IN OPPOSITION  
TO PLAINTIFF'S MOTION TO  
COMPEL PAYMENT OF ATTORNEYS'  
FEES AND COSTS

SUPPLEMENTAL AFFIDAVIT OF SCOTT J. KAPLAN IN OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL PAYMENT OF ATTORNEYS' FEES AND COSTS - 1

111

Third-Party Plaintiff,

v.

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,

Third-Party Defendants.

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

I, Scott J. Kaplan, being first duly sworn, state:

1. I am a member of Stoel Rives LLP, pro hac vice counsel for defendant/third-party plaintiff InterDent Service Corporation ("ISC").

2. I file this affidavit to bring to the attention of the Court a document received from plaintiff on May 11, 2004, after defendant had already filed its opposition to plaintiff's motion to "compel production of attorney fees and costs." Defendant served a request for production on plaintiff on March 24, 2004, making the response due April 26, 2004. However, plaintiff received a two-week extension, until May 3, 2004, to respond.

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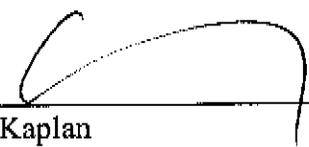
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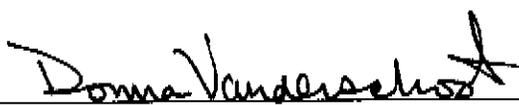
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SUPPLEMENTAL AFFIDAVIT OF SCOTT J. KAPLAN IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF ATTORNEYS' FEES AND COSTS - 2

3. Attached as Exhibit 1 is a copy of a February 18, 2003 letter apparently from third-party defendant Porter Sutton to third-party defendant Larry R. Misner, Jr., then president of plaintiff. I have underlined the portions pertinent to ISC's response to plaintiff's motion and that will be used in argument.

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

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of May, 2004.

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



SUPPLEMENTAL AFFIDAVIT OF SCOTT J. KAPLAN IN OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL PAYMENT OF ATTORNEYS' FEES AND COSTS - 3

18 February, 2003

Russ,

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: Emie, Enrol, Dwight, Greg, Jay, Dan

*Porter*

EXHIBIT 1  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Supplemental Affidavit of Scott J. Kaplan in Opposition to Plaintiff's Motion to Compel Payment of Attorneys' Fees and Costs** 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.

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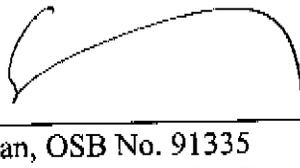
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DATED: May 11, 2004.

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\_\_\_\_\_  
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InterDent Service Corporation