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ROBERT L. CAPLON, JR. CLERK
JANICE 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,

Third-Party Plaintiff,

v.

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation; DWIGHT G.
ROMRIEL, individually; LARRY R.

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

DEFENDANT/THIRD-PARTY
PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR LEAVE
TO FILE AMENDED AND
SUPPLEMENTAL ANSWER,
COUNTERCLAIMS AND
THIRD-PARTY COMPLAINT

DEFENDANT/THIRD-PARTY PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE 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.

I. INTRODUCTION

For the reasons stated in defendant and third-party plaintiff InterDent Service Corporation's ("ISC") temporary restraining order papers, ISC moves to amend and supplement its counterclaims and third-party claims to allege the scheme to divert the U.S. mail that is the subject of the proposed temporary restraining order. The supplemental allegations are to be found in paragraphs 64-66, 68(j), 70 and 91 of ISC's proposed Amended and Supplemental Answer, Counterclaims and Third Party Complaint.

II. ARGUMENT

Pursuant to Rule 15(a), leave to amend and supplement, "lie[s] within the sound discretion of the trial court." *United States v. Webb*, 656 F.2d 977, 979 (9th Cir. 1981). In exercising this discretion, "a court must be guided by the underlying purpose of Rule 15—to facilitate decisions on the merits rather than on the pleadings or technicalities." *Id.* The Ninth Circuit has acknowledged its charge as handed down by the Supreme Court to "heed carefully the command of Rule 15(a) . . . by freely granting leave to amend when justice so requires." *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 1187, 1190 (9th Cir. 1986). Hence Rule 15's policy of favoring amendments to the pleadings should be applied with "extreme liberality." *Webb*, 655 F.2d at 979.

This liberality to be exercised in favor of amendment is constrained only by a particular amendment's tendency to cause opposing parties undue prejudice, if it is sought in bad faith, or if

DEFENDANT/THIRD-PARTY PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION
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it would represent an exercise of futility. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 184 (9th Cir. 1987). ISC's proposed Amended and Supplemental Answer, Counterclaims and Third-Party Complaint ("Amended and Supplemental Answer") exhibits no such tendency. The scheme to divert the mail, as shown in ISC's accompanying TRO papers is clearly unlawful and in violation of the parties' Management Agreement. No trial date has been set and no prejudice or delay will ensue.

III. CONCLUSION

ISC respectfully asks the Court to exercise its sound discretion in granting this motion.

DATED: February 5, 2004.

STOEL RIVES LLP



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of February, 2004, I caused to be served a true copy of the foregoing **DEFENDANT/THIRD-PARTY PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL ANSWER, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT** upon the following:

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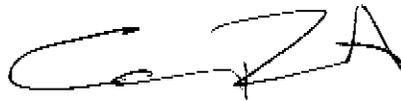
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DATED: this 5 day of February, 2004.



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