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U.S. COURT  
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Attorneys for Third-Party Defendants  
 Porter Sutton and Ernest Sutton

IN THE 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. )

INTERDENT SERVICE )  
 CORPORATION, a Washington )  
 corporation, )

Third-Party Plaintiff, )

vs. )

POCATELLO DENTAL GROUP, P.C., )

Case No. CV 03-450-E-LMB

ANSWER TO THIRD-PARTY  
 COMPLAINT BY PORTER SUTTON  
 AND ERNEST SUTTON, AND  
 DEMAND FOR JURY TRIAL

ANSWER TO THIRD-PARTY COMPLAINT BY PORTER SUTTON AND ERNEST SUTTON,  
 AND DEMAND FOR JURY TRIAL - Page 1

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an Idaho professional corporation; )  
 DWIGHT G. ROMRIELLI, 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. )  
 \_\_\_\_\_ )

COMES NOW, the Third-Party Defendants, Porter Sutton and Ernest Sutton (hereinafter referred to as "Defendants" or the "Suttons"), in the above entitled matter and makes answer to the Third-Party Plaintiff's, Interdent Service Corporation's (hereinafter referred to as "ISC"), Third-Party Complaint as follows:

**A. ANSWER**

In answer to the allegations set forth in the Third-Party Complaint, the Suttons deny each and every allegation of each and every paragraph and in so doing further state, allege, or deny as follows:

1. In answer to the allegations set forth in Paragraph 1 of the Third-Party Complaint, the Suttons deny that a Third-Party Complaint can be filed pursuant to Rule 13(a) of the *Federal Rules of Civil Procedure*.

2. In answer to the allegations set forth in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10, the Suttons admit said allegations of said paragraphs.

3. In answer to the allegations set forth in Paragraph 11, the Suttons are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

4. In answer to the allegations set forth in Paragraphs 12, 13, 14, 15, 16, 17 and 18, the Suttons admit said allegations of said paragraphs.

5. In answer to the allegations set forth in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

6. In answer to the allegations set forth in Paragraph 67, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 66 of the Third-Party Complaint as if set forth fully herein.

7. In answer to the allegations set forth in Paragraphs 68 , 69 and 70, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

8. In answer to the allegations set forth in Paragraph 71, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 70 of the Third-Party Complaint as if set forth fully herein.

9. In answer to the allegations set forth in Paragraphs 72, 73 and 74, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

10. In answer to the allegations set forth in Paragraph 75, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 74 of the Third-Party Complaint as if set forth fully herein.

11. In answer to the allegations set forth in Paragraphs 76, 77 and 78, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

12. In answer to the allegations set forth in Paragraph 79, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 78 of the Third-Party Complaint as if set forth fully herein.

13. In answer to the allegations set forth in Paragraphs 80, 81, 82, 83, 84, 85 and 86, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

14. In answer to the allegations set forth in Paragraph 87, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 86 of the Third-Party Complaint as if set forth fully herein.

15. In answer to the allegations set forth in Paragraphs 88, 89, 90, 91, 92, 93 and 94, the Suttons assert they were no longer subject to the alleged contract nor were they involved in the alleged acts, therefore, they are without sufficient knowledge or information to form a belief as to the veracity of said allegations and therefore deny the same.

16. In answer to the allegations set forth in Paragraph 95, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 94 of the Third-Party Complaint as if set forth fully herein.

17. In answer to the allegations set forth in Paragraphs 96, 97, 98, 99, 100, 101 and 102, the Suttons deny the allegations of said paragraphs.

18. In answer to the allegations set forth in Paragraph 103, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 102 of the Third-Party Complaint as if set forth fully herein.

19. In answer to the allegations set forth in Paragraphs 104 and 105, the Suttons deny the allegations of said paragraphs.

20. In answer to the allegations set forth in Paragraph 106, the Suttons incorporate their answers to the allegations contained in Paragraphs 1 through 105 of the Third-Party Complaint as if set forth fully herein.

21. In answer to the allegations set forth in Paragraphs 107, 108, 109 and 110, the Suttons deny the allegations of said paragraphs.

22. In answer to ISC's request for attorneys' fees, the Suttons deny that ISC is entitled to an award of attorneys' fees and expenses.

23. The remainder of ISC's Third-Party Complaint contains its prayer for relief to which no response is required. To the extent a response may be deemed necessary, the Suttons deny ISC is entitled to the relief requested or to any relief whatsoever.

#### **B. FIRST DEFENSE**

That the Third-Party Complaint fails to state a claim against the Suttons upon which relief can be granted.

**C. SECOND DEFENSE**

That this action against the Suttons is barred by the doctrine of waiver.

**D. FOURTH DEFENSE**

ISC, by failing to act reasonably, has failed to mitigate the damages to which it may otherwise allegedly be entitled.

**E. FIFTH DEFENSE**

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

**G. SIXTH DEFENSE**

ISC's claims are barred by the doctrine of laches.

**H. SEVENTH DEFENSE**

That the harms alleged by ISC are speculative and conjectural and may not in fact occur. Hence, they are not ripe for judicial review.

**I. EIGHTH DEFENSE**

The allegations in ISC's Third-Party Complaint pertaining to fraud are not plead with sufficient particularity and specificity and the claim is therefore barred.

**J. NINTH DEFENSE**

That ISC by improper attentiveness to its own welfare and other conduct in this matter is estopped to assert its claims.

**K. TENTH DEFENSE**

That this action against the Suttons is barred by the applicable statute of limitations.

**L. ELEVENTH DEFENSE**

That as of the date of this Answer, the Suttons have not been able to engage in full discovery, and specifically requests that this Court allow these answering defendants to amend

this Answer to assert further affirmative defenses once the same are determined as discovery progresses.

#### **M. TWELFTH DEFENSE**

That the filing of this Third-Party Complaint against the Suttons by ISC in view of all the facts and circumstances, is frivolous and unwarranted and the Suttons should therefore be awarded their attorneys fees and costs incurred in the defense of this action.

#### **N. THIRTEENTH DEFENSE**

The Suttons have considered and believe that there may be additional issues giving rise to counterclaims and/or cross-claims, but they cannot at this time, consistent with Rule 11 of the *Federal Rules of Civil Procedure*, state with specificity those counterclaims and/or cross-claims. Accordingly, the Suttons reserve the right to supplement their Answer and add additional counterclaims and/or cross-claims as discovery in this case progresses.

#### **O. DEMAND FOR JURY TRIAL**

The Suttons demand a jury trial on all issues so triable.

**WHEREFORE**, the Third-Party Defendants pray that:

1. The Court grant one, some or all of the Third-Party Defendants' defenses, and the litigation and this action be dismissed;
2. The Third-Party Plaintiff take no judgment against the Third-Party Defendants in this action;
3. The Third-Party Defendants be awarded costs and expenses, including attorney fees, necessarily and reasonably incurred in the defense of this action, including all costs and fees allowed by Idaho and Federal law;

4. For such other relief for Third-Party Defendants as this Court may deem just and proper.

DATED the 13<sup>th</sup> day of February, 2004.

**JONES, CHARTERED**  
Attorneys for Third-Party Defendants  
Porter Sutton and Ernest Sutton

By:   
Matthew O. Pappas

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of February, 2004, I mailed, or caused to be mailed, a true and correct copy of the foregoing document addressed and delivered as indicated below:

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James P. Price  
Ron Kerl  
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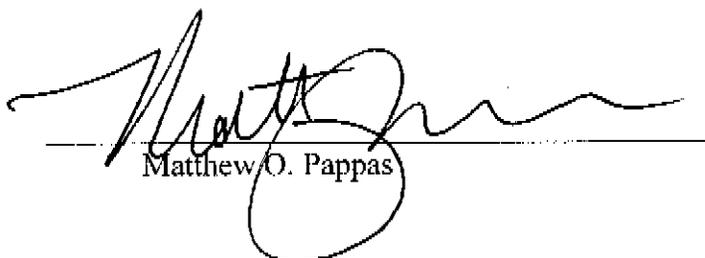
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