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**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.)

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Counterclaimant,)

**MOTION TO COMPEL
PAYMENT OF ATTORNEY
FEES AND COSTS**

vs.)

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;)

Counterdefendants.)

COMES NOW Pocatello Dental Group, P.C., by and through its attorneys of record ("Group"), and respectfully moves the Court to enter its order directing the Defendant Interdent Service Corporation ("ISC") to comply with its contractual obligation to pay the expenses of the Group, including its attorney fees and costs incurred in responding to ISC's chapter 11 bankruptcy proceeding, in prosecuting the Group's complaint, and defending ISC and Dr. Misner's counterclaims on file in this proceeding.

In support of its motion, the Group represents as follows:

1. On October 11, 1996, the Group entered into a Dental Group Management Agreement ("Management Agreement") with GMS Dental Group Management, Inc. ISC claims to be the successor in interest to GMS Dental Group Management, Inc.¹ Without accepting that claim, for purposes of this motion the Group will treat ISC as the successor in interest to GMS.

2. The Management Agreement, at paragraph 2.5 thereof, requires ISC to bill and collect, in the Group's name, all charges and reimbursement for the Group's dental related activities and to deposit such collections in an account or accounts in the name of the Group at a banking institution selected by the Group and approved by ISC. Therefore, ISC has control of *all* of the Group's revenues.

3. The Management Agreement, at paragraph 2.6(b) thereof, requires ISC to use the Group's revenues to pay "...all claims and obligations associated with the operation of the Group..." ISC can discharge its responsibility to the Group by its timely payment on the Group's behalf of, or delivery to the Group of an amount sufficient to discharge, ***"all of Groups and obligations and***

¹The Dental Group Management Agreement in question is attached to the Ivar Chhina as Exhibit "A", and by this reference is made a part of this Motion. (Docket No. 15)

liabilities now existing or arising in the future, including those under Provider Subcontracts, Employment Agreements, Group's professional liability insurance and any other operational expense for which Group retains responsibility...."

4. On May 9, 2003, ISC filed for relief under chapter 11 of the Bankruptcy Code.² The Group was required to protect its interests by participating as a creditor in that bankruptcy proceeding. The Group incurred attorney fees and costs it would not have otherwise incurred had ISC not brought the subject matter of the Management Agreement to the jurisdiction of the United States Bankruptcy Court for the Central District of California. The Group has made demand upon ISC to pay its bankruptcy related attorney fees and costs from the Group's revenues, but ISC has ignored that request and has not made "*timely payment on Group's behalf of, or delivery to Group of an amount sufficient to discharge*" the Group's obligation to pay its attorney fees and litigation costs.³

5. This action was commenced by the Group because of ISC's failure to perform its obligations under the Management Agreement after it had assumed the Management Agreement in its chapter 11 bankruptcy proceeding. The Group has incurred, and will continue to incur attorney fees and costs it would not have otherwise incurred had ISC actually perform its obligations under the Management Agreement and not forced the commencement of this action. The Group has made demand upon ISC to pay its attorney fees and costs associated with this litigation, from the Group's revenues, however ISC has ignored that request and has not made "*timely payment on Group's*

²Affidavit of Ivar Chhina, paragraph 9. (Docket No. 15)

³Affidavit of Dr. Gregory Romriell in Opposition to Defendant's Motion for Summary Judgment, paragraph 5.

behalf of, or delivery to Group of an amount sufficient to discharge” Group’s obligation to pay its attorney fees and litigation costs.

6. On November 6, 2003, ISC filed a counterclaim against the Group seeking relief on six separate claims.⁴ ISC later moved to amend its counterclaims against the Group.⁵ The Group has incurred, and will continue to incur attorney fees and costs it would not have otherwise incurred had ISC not brought its counterclaims against the Group. The Group has made demand upon ISC to pay its attorney fees and costs associated with this litigation, from the Group’s revenues, but ISC has ignored that request and has not made *“timely payment on Group’s behalf of, or delivery to Group of an amount sufficient to discharge”* the Group’s obligation to pay its attorney fees and litigation costs.⁶

7. On February 10, 2004, L.R. Misner, one of the counter-defendants sued by ISC in this proceeding, filed a counterclaim against the Group⁷ alleging that the Group, by allowing ISC to breach its obligations under the Management Agreement, has, in turn, breached its obligations to Misner under the employment agreement existing between Misner and the Group. Misner’s claims arise directly out of ISC’s conduct and breach of the Management Agreement, and the Group will now be forced to defend Misner’s claims and seek indemnity for those claims from ISC.

8. The revenues generated by the Group belong to Group and not ISC. The Group is not asking ISC to pay the Group’s attorney fees and litigation costs from ISC’s income and revenues, but from the Group’s revenues derived from the Group’s operations.

⁴Interdent Service Corporation’s Answer to Complaint and Counterclaims, Docket No. 21.

⁵Motion by Interdent Service Corporation to file amended and supplemental answer and counterclaims and third party complaint.

⁶Affidavit of Gregory Romriell, *supra*, paragraph 5.

⁷Docket No. 53.

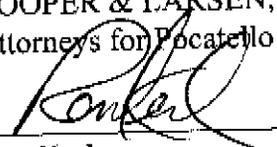
9. ISC is contractually obligated to either pay the Group's obligations, or deliver to the Group a sufficient amount of the Group's revenues to it so that the Group can discharge its liabilities and obligations. The Management Agreement makes no distinction between the payment of the Group's liabilities and obligations, generally, and the payment of the Group's attorneys fees and litigation costs, specifically. The Group's attorney fees and costs were not specifically excluded from the obligations and liabilities ISC is required to discharge in performance of its obligations under the Management Agreement.

10. It is inherently unfair for ISC to force the Group into the United States Bankruptcy Court for the Central District of California, and to force the Group to enforce the Management Agreement and defend its counterclaims and the counterclaim of Misner in this Court, while at the same time withholding from the Group its own revenues so that it cannot pay its lawyers to protect its rights under the Management Contract. ISC's conduct breaches the fiduciary duty it owes to the Group.

WHEREFORE, having stated good and sufficient grounds for relief, the Group respectfully requests the Court to enter its order directing and compelling Interdent Service Corporation to pay, from the Group's accounts receivable and revenues, the Group's attorney fees and litigation costs associated with Interdent's bankruptcy proceeding, those fees and costs associated with the Group's prosecution of its complaint, and the fees and expenses associated with the Group's defense of ISC's and Misner's counterclaims.

Respectfully submitted this 17 day of March, 2004.

COOPER & LARSEN, CHTD.
Attorneys for Pocatello Dental Group, P.C.



Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 17 day of March, 2004, I served a true and correct copy of the foregoing document as follows:

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