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Porter Sutton and Ernest Sutton

U.S. COURTS  
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REC'D \_\_\_\_\_ N  
CANDACE S. BURR  
CLERK, IDAHO \_\_\_\_\_

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, )

Counterclaimant, )

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 )

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

**MOTION TO QUASH SUBPOENAS**  
**(Dr. Larry Bybee)**

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GOODLIFFE, individually,	)
	)
Counterdefendants.	)
	)
_____	)
	)
LARRY R. MISNER, JR, individually,	)
	)
Counterclaimant,	)
	)
vs.	)
	)
INTERDENT SERVICE CORPORATION,	)
a Washington corporation,	)
	)
Counterdefendant.	)
	)
_____	)
	)
LARRY R. MISNER, JR., individually,	)
	)
Crossclaimant,	)
	)
vs.	)
	)
POCATELLO DENTAL GROUP, P.C., an	)
Idaho professional corporation,	)
	)
Crossdefendant.	)
_____	)

COMES NOW, Larry Bybee, by and through counsel, and, pursuant to Federal Rules of Civil Procedure 45(c)(3)(A), moves this Court to quash the subpoena issued by Interdent Service Corporation (“ISC”) to Dr. Larry Bybee. The grounds for this motion are as follows:

1. On July 8, 2004, ISC caused a subpoena for production of documents to be served on Dr. Bybee requiring production of documents. A true and correct copy of this subpoena issued by ISC to Dr. Bybee is attached hereto as **Exhibit A** and incorporated as if set forth fully.

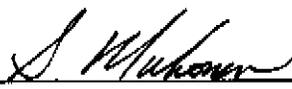
2. The subpoena issued upon Dr. Bybee commands him to produce the documents listed in Exhibit A at the office of Stoel Rives LLP, 101 South Capitol Boulevard, Suite 1900, Boise, Idaho, on July 21, 2004, at 9:00 a.m.

3. As demonstrated by the pleadings in this matter, Dr. Bybee is not a party in this action, nor is he an officer of a party in this action. His place of residence and where he is employed or regularly transacts business in person is Pocatello, Idaho. Through this motion, Dr. Bybee respectfully requests this Court to take judicial notice that Pocatello, Idaho, is more than 100 miles from Boise, Idaho.

4. Further, the production of the documents listed in Exhibit A to the subpoena directed to Dr. Bybee will not likely lead to any relevant information since, as previously stated, Dr. Bybee is not a party to this action nor is he an officer of a party to this action nor does he have a non-compete agreement with ISC. Such deposition will only contribute to judicial inefficiency in this matter and will not further the means of justice.

DATED this 16 day of July, 2004.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By:   
STEPHEN J. MUHONEN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16 day of July, 2004, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Gary L. Cooper  
James P. Price  
Ron Kerl  
Cooper & Larsen, Chartered  
P.O. Box 4229  
Pocatello, Idaho 83205-4229

U.S. Mail, postage prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile

Erik F. Stidham  
G. Rey Reinhardt  
Stoel Rives, LLP  
101 South Capitol Blvd., Suite 1900  
Boise, Idaho 83702

U.S. Mail, postage prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile

Thomas J. Holmes  
Jones, Chartered  
203 South Garfield  
P.O. Box 967  
Pocatello, Idaho 83204

U.S. Mail, postage prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile

Lowell N. Hawkes  
LOWELL N. HAWKES, CHARTERED  
1322 East Center  
Pocatello, Idaho 83201

U.S. Mail, postage prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile

  
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# UNITED STATES DISTRICT COURT

District of Idaho

**POCATELLO DENTAL GROUP, P.C.,**  
Plaintiff,

v.

**INTERDENT SERVICE CORPORATION,**  
Defendants.

## SUBPOENA DUCES TECUM IN A CIVIL CASE

**INTERDENT SERVICE CORPORATION,**  
Third-Party Plaintiff,

CASE NUMBER: CV-03-450-E-LMB

v.

**POCATELLO DENTAL GROUP, P.C., et al.,**  
Third-Party Defendants.

TO: Dr. Larry Bybee, c/o Richard A. Hearn, M.D., Racine Olson Nye Budge & Bailey Chartered, 201 East Center, PO Box 1391, Pocatello, ID 83204-1391

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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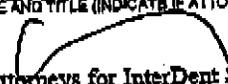
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See attached Exhibit 1.

PLACE Stoel Rives LLP 101 South Capitol Boulevard, Suite 1900 Boise, ID 83702-7705	DATE AND TIME July 21, 2004 9 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6)

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Scott J. Kaplan, Of Attorneys for InterDent Service Corporation	DATE July 8, 2004
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Scott J. Kaplan Stoel Rives LLP 900 SW Fifth Avenue, Suite 2600 Portland, OR 97204-1268 (503) 224-3380
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# EXHIBIT A

## EXHIBIT 1

### Definitions and Instructions

1. "You," "your" or "yours" shall mean Larry Bybee, his employees, contractors, attorneys and any other agents and representatives involved in any way with the matters that are the subject of the pending action.
2. "Document" or "documents" means a writing, as defined in FRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols or combinations of them.
3. "Relating to" or "related to" means concerning, referring to, alluding to, responding to, in connection with, commenting on, in response to, about, regarding, announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing or constituting.
4. If you object to any request for production or part thereof on the basis of the attorney-client, work-product or other privilege, identify the privilege claimed as well as each document for which such privilege is claimed, together with the following information with respect to each such document: (a) the date of the document, (b) the names of persons receiving copies of the document, (c) subject matter, (d) location and/or custodian of each copy, (e) the basis on which the privilege is claimed and (f) the paragraph(s) of these requests to which the document is responsive.
5. The past tense shall be construed to include the present tense and vice versa to make the request inclusive rather than exclusive.
6. Regardless of whether any of these document requests, instructions and definitions uses a term in the plural or singular form, the term shall be construed in both the singular and plural forms, as is necessary to require the most inclusive response.
7. Regardless of the gender used, each document request, instruction and definition shall be construed to seek the requested information for persons of both genders, as is necessary to require the most inclusive response.
8. Each request contained herein extends to any documents in the care, custody or control of the deponent. A document is deemed to be in deponent's care, custody or control if it is in deponent's physical custody or if it is in the physical custody of any other person and deponent (a) owns such document in whole or in part; (b) has a right by contract, statute or otherwise to use, inspect, examine or copy such document on any terms; (c) has an understanding, express or implied, that deponent may use, inspect, examine or copy such document on any terms; or (d) has, as a practical matter, been able to use, inspect, examine or copy such document when the deponent has sought to do so. Such documents shall include, without limitation, documents that are in the custody of deponent's attorney(s), representative or other agents.

9. In the event that a document called for by these requests has been destroyed, the response hereto shall identify (to the extent it is known) (a) the preparer of the document, (b) the addressor (if different), (c) its addressee, (d) each recipient thereof, (e) each person to whom distributed or shown, (f) the date it was prepared, (g) the date it was transmitted (if different), (h) the date it was received, (i) a description of its contents and subject matter, (j) the date, time, place and method of disposal, (k) the name and address of the person who disposed of the document and (l) the reason(s) for its destruction.

#### **Documents To Be Produced**

1. The management agreement and all other contracts between you and/or Valley Dental, P.A. and Orthodontic Centers of Idaho, Inc. and any of its affiliates, including but not limited to Orthodontic Centers of America.
2. All employment and noncompete agreements entered into by Valley Dental, P.A. or any of its dentists.
3. The business plan you submitted to Wells Fargo to obtain financing.
4. The October 6, 2003 letter from you (or your counsel) to Jim Price testified to in your deposition.
5. Documents identifying all current or former Pocatello Dental Group patients treated by you since leaving Pocatello Dental Group.
6. Documents identifying all revenues received by you for or from all current or former Pocatello Dental Group patients treated by you since leaving Pocatello Dental Group.