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Attorneys for Dr. Larry R. Misner, Jr.

UNITED STATES DISTRICT COURT  
 DISTRICT OF IDAHO

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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. )

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

LARRY R. MISNER JR.'S MOTION TO  
 STRIKE INTERDENT SERVICE  
 CORPORATION'S AMENDED AND  
 SUPPLEMENTAL COUNTERCLAIMS  
 DATED JUNE 2, 2004

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MISNER, JR., individually; PORTER )  
SUTTON, individually; ERNEST )  
SUTTON, individually; GREGORY )  
ROMRIELL, individually; ERROL )  
ORMOND, individually; and ARNOLD )  
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. )  
\_\_\_\_\_ )

Pursuant to Federal Rules of Civil Procedure 12(f), Counterdefendant L.R. Misner Jr. ("Misner") through his counsel of record joins Plaintiff Pocatello Dental Group, P. C.'s ("Group") motion to strike Counterclaimant Interdent Service Corporation's ("ISC") Amended (second) and Supplemental Counterclaims and Third-Party Complaint, dated June 2, 2004 and filed with this Court on June 2, 2004 as Docket No. 118 (hereinafter "June 2nd Amendment"). By Misner's joining the Group's motion, Misner adopts in full the arguments as presented in said motion and represents the following additional information in support of the same:

1. On November 6, 2003 (Docket No. 21) ISC filed its answer to Group's complaint and also filed its counterclaim against Misner.
2. On February 5, 2004 (Docket Nos. 45 and 46) ISC filed its motion and supporting memorandum for leave to file an amended supplemental answer, counterclaims and third-party complaint.
3. On February 10, 2004 (Docket No. 53) Misner filed his answer to ISC's counterclaim and filed in addition, his counterclaim against ISC and his crossclaim against the Group.
4. On February 19, 2004 (Docket Nos. 58 and 59) Misner filed with this Court his Rule 12(b)(6) motion, with its accompanying memorandum, to dismiss ISC's Counterclaims against him. Misner's Rule 12(b)(6) motion has yet to be heard.
5. On March 11, 2004 (Docket Nos. 73 and 74) ISC filed its memorandum in opposition to Misner's motion to dismiss.
6. On March 26, 2004 (Docket No. 88) Misner filed his reply brief in support of his motion to dismiss.
7. On March 31, 2004 (Docket No. 89) ISC filed its reply to Misner's counterclaim

against ISC.

8. On April 7, 2004 (Docket No. 97) ISC and Misner entered into a stipulated litigation plan which established May 15, 2004 as the "Joinder of Parties and Amendment of Pleadings Cut-off Date."

9. On April 7, 2004 (Docket No. 101) this Court entered its Scheduling Order which established that any motions to amend pleadings must be filed by May 15, 2004.

10. On April 19, 2004 (Docket No. 104) Group filed its motion for leave to file an amended complaint.

11. On May 15, 2004 (Docket No. 112) this Court granted Group's motion for leave to file an amended complaint.

12. On May 17, 2004 (Docket No. 113) Group filed its amended complaint.

13. On June 2, 2004 (Docket No. 118) ISC filed its answer to Group's amended complaint. In this same answer and evidently in response to Group's amended complaint, ISC also amended and supplemented its counterclaims and third-party complaint.

14. Misner, since filing his counterclaim against ISC, has at no time filed an amended counterclaim so as to necessitate ISC to amend its answer or counterclaims pertaining to him.

15. ISC, since filing its counterclaim against Misner and its amended and supplemental answer, counterclaim and third party complaint, dated April 7, 2004, has not filed a motion for leave to amend its counterclaim against Misner.

16. ISC's June 2, 2004 answer to Group's amended complaint contains new allegations and claims for relief against Misner. Due to Misner having not filed any motions to amend his counterclaim against ISC and ISC having failed to seek leave from this Court to amend its claims

against Misner and the date for filing any and all motions for leave to amend the pleadings (as stipulated to between ISC and Misner) having come and gone on May 15, 2004 and pursuant to this Court's Order establishing May 15, 2004 as the cut off date for filing motions to amend the pleadings, ISC's June 2, 2004 amendment is in direct violation of their own agreement with Misner and this Court's Order.

WHEREFORE, pursuant to F.R.C.P. 12(f), Misner respectfully requests this Court to Strike from the June 2, 2004 pleadings filed by ISC, all of those allegations and claims for relief against Misner which were not contained in ISC's April 7, 2004 amended and supplemental answer, counterclaim and third party complaint.

DATED this 18 day of June, 2004.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By   
STEPHEN J. MUHONEN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18 day of June, 2004, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

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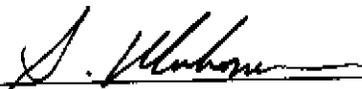
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