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InterDent Service Corporation

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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.

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

DEFENDANT INTERDENT SERVICE
CORPORATION'S REPLY TO THIRD-
PARTY DEFENDANT MISNER'S
COUNTERCLAIMS

89

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,

Third-Party Defendants.

For its reply to defendant Larry R. Misner, Jr.'s counterclaims, defendant/third-party plaintiff InterDent Service Corporation ("ISC") hereby admits, denies and alleges as follows:

1. ISC admits the allegations in paragraph 1.
2. ISC admits the allegations in paragraph 2.
3. ISC admits the allegations of paragraph 3.
4. In reply to paragraphs 4 and 5, ISC admits that it is the successor to GMS Dental Group Management, Inc. ("GMS"), which subsequently changed its name to Gentle Dental Management, Inc. ("GDMP"), which was later merged with and into Gentle Dental Service Corporation ("GDSC"). GDSC then changed its name to InterDent Service Corporation, which succeeded to all of GMS's right, title and interest in and to all of GMS's assets. ISC further admits that it has taken actions pursuant to the Management Agreement.
5. In reply to paragraph 6, ISC admits that at relevant times, Misner was a shareholder of Pocatello Dental Group, P.C. (the "Group"). ISC lacks sufficient knowledge to form a belief as to whether Misner is still a shareholder of the Group.
6. In reply to paragraph 7, ISC denies that Misner is currently an employee of the Group. ISC admits the remaining allegations of paragraph 7.
7. ISC admits the allegations in paragraph 8.

8. In reply to paragraph 9, ISC realleges its reply to paragraphs 1 through 8.

9. In reply to paragraph 10, ISC states that in October 1996, Misner, in partial consideration for the payment of \$400,000 by ISC's predecessor, signed a Noncompete Agreement. ISC denies the remaining allegations of paragraph 10.

10. ISC denies the allegations in paragraph 11.

11. Paragraph 12 states a legal conclusion to which no reply is required. To the extent a reply is required, ISC denies the allegations in paragraph 12.

12. In reply to paragraph 13, ISC realleges its reply to paragraphs 1 through 13.

13. ISC denies the allegations in paragraphs 14 through 22.

14. In reply to paragraph 23, ISC realleges its reply to paragraphs 1 through 22.

15. ISC denies the allegations of paragraphs 24 through 26.

16. ISC denies that all of the matters alleged by Misner are triable to a jury.

17. ISC denies that Misner is entitled to the relief requested in his prayer for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Misner's counterclaims fail to state causes of action upon which relief may be granted on any of Misner's alleged claims for relief.

SECOND AFFIRMATIVE DEFENSE

Misner lacks standing.

THIRD AFFIRMATIVE DEFENSE

Misner's counterclaims are barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

Misner's counterclaims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Misner has failed to adequately mitigate his damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Misner and/or third parties acting for or binding Misner, including but not limited to plaintiff, has waived, or is estopped from asserting, all claims set forth in Misner's counterclaims.

SEVENTH AFFIRMATIVE DEFENSE

Misner and/or third parties acting for or binding Misner, including but not limited to plaintiff, has failed to satisfy certain contractual prerequisites.

EIGHTH AFFIRMATIVE DEFENSE

Misner's claims are barred by his prior material breaches of the Management Agreement.

NINTH AFFIRMATIVE DEFENSE

Plaintiff and/or third parties acting for or binding Misner, including but not limited to plaintiff, has breached the covenant of good faith and fair dealing and interfered with and frustrated ISC's ability to perform duties and obligations under the Management Agreement.

TENTH AFFIRMATIVE DEFENSE

Damages sustained by Misner, if any, are the result of independent, intervening and/or superseding causes, including but not limited to acts and omissions of plaintiff, third-party defendants or third parties.

ELEVENTH AFFIRMATIVE DEFENSE

Any breaches of the Management Agreement by ISC were not breaches of material terms of the Management Agreement.

TWELFTH AFFIRMATIVE DEFENSE

Misner's claims are barred by the doctrine of *res judicata*, collateral estoppel and issue preclusion.

THIRTEENTH AFFIRMATIVE DEFENSE

Misner's claims are barred by the orders issued in *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California, Case No. 03-13494.

FOURTEENTH AFFIRMATIVE DEFENSE

Misner's claims are barred by 11 U.S.C.A. § 1141.

FIFTEENTH AFFIRMATIVE DEFENSE

Misner's claims are barred by the doctrine of ratification.

SIXTEENTH AFFIRMATIVE DEFENSE

Misner's claims are barred by the doctrine of mutual mistake.

SEVENTEENTH AFFIRMATIVE DEFENSE

Misner's claims are barred by the doctrine of unilateral mistake.

EIGHTEENTH AFFIRMATIVE DEFENSE

Some or all of Misner's claims are barred by the doctrine of impossibility of performance and/or frustration of purpose.

JURY DEMAND

ISC demands trial by jury on each and every issue so triable.

PRAYER FOR RELIEF

WHEREFORE, ISC requests judgment against Misner and that

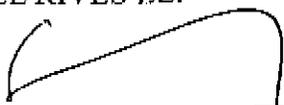
- A. Misner take nothing;
- B. The Court dismiss Misner's counterclaims in their entirety;
- C. ISC be awarded its costs, disbursements, expenses and expert witness fees

incurred in defending this lawsuit, including appropriate and reasonable attorneys' fees, as allowed by applicable law, including but not limited to Article 10.5 of the Management Agreement, Idaho Code § 12-120 and Idaho Code § 12-121;

- D. For the relief requested in ISC's third-party/counterclaims against Misner; and
- E. The Court shall award such other and further relief as it deems just and proper.

DATED: March 19, 2004.

STOEL RIVES LLP



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Scott J. Kaplan, pro hac vice

Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Defendant InterDent Service Corporation's Reply to Third-Party Defendant Misner's Counterclaims** on the following named person(s) on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

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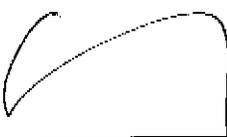
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DATED: March 19, 2004.

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