

Gary L. Cooper (ISB No. 1814)
 Ron Kerl (ISB No. 1768)
 COOPER & LARSEN, CHTD.
 151 North 3rd Avenue, Suite 210
 P.O. Box 4229
 Pocatello, Idaho 83205-4229
 Telephone (208) 235-1145
 Facsimile (208) 235-1182

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 CHRISTOPHER S. DUNFE
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Counsel for Pocatello Dental Group, P.C.

**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

AMENDED COMPLAINT

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 GOODLIFFE, individually;)
)
 Counterdefendants.)

COMES NOW Plaintiff, Pocatello Dental Group, P.C. ("the Group") and for its cause of action against the above-named Defendant states and alleges:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. The Group is a professional services corporation existing under the laws of the State of Idaho and doing business at the Pine Ridge Mall in Chubbuck, Idaho. The Group has formerly done business as Pocatello Dental Group, a partnership; Pocatello Dental Group, PLLC, a professional limited liability company; and Idaho Dental Group, P.A., a professional association.

2. InterDent Service Corporation ("InterDent") is a Washington corporation which is registered as a foreign corporation in the State of Idaho. InterDent provides management services to the Group as an independent contractor at the Pine Ridge Mall in Chubbuck, Idaho. InterDent is believed to be the successor-by-merger of GMS Dental Group Management, Inc. and Gentle Dental.

3. On October 11, 1996, Idaho Dental Group, P.A., entered into a Dental Group Management Agreement ("Management Agreement") with GMS Dental Group Management, Inc., a wholly owned subsidiary of GMS Dental. Idaho Dental then filed Articles of Amendment with the Idaho Secretary of State's office on October 18, 1996, changing its name to Pocatello Dental Group, P.C.

4. In October 1996, each of the shareholders-dentists of the Group, including Dr. Dwight Romriell, signed employment agreements with the Group. Article III of Dr. Romriell's agreement provided that:

The term of this Agreement (the "Term") shall commence on the effective date of the merger [October 11, 1996] between Pocatello Dental Group and Company and shall continue in effect until the seventh anniversary of such date, unless renewed as set forth below or terminated earlier pursuant to the provisions of this Agreement.

After the seventh anniversary, this Agreement shall renew each year for a one year period unless either party gives the other party at least six (6) month's notice of its intent not to renew this Agreement.

5. On April 11, 2003, Dr. Romriell provided written notice to the Group that he did not intend to renew the agreement.

6. In early August 2003, when it became apparent that Dr. Romriell may not have a physical location to treat patients by October 11, 2003, the Group became concerned about ensuring that its patients would be properly cared for after October 11th. Dr. Romriell is certified in and focuses his practice on the treatment of craniomandibular disorders, often referred to as "TMJ." No other dentist in the Group nor in the geographical area of Pocatello has the expertise of Dr. Romriell in the treatment of TMJ. The Group took action, in the best interests of the patients, to ensure that its patients could continue to receive treatment from Dr. Romriell after October 11, 2003 and until he was able to treat them elsewhere. It entered into a Dentist's Employment Agreement ("2003 Employment Agreement") with Dr. Romriell on August 26, 2003, to take effect on October 12, 2003.

7. The Group provided a copy of the 2003 Employment Agreement to InterDent. InterDent responded by claiming that the 2003 Employment Agreement must be authorized by the Joint Operations Committee ("JOC"). There are five members of the JOC. Of those members, only Drs. Romriell and Ormond are licensed dentists in the state of Idaho.

8. In the past, employment agreements between dentists and the Group have been signed by the president of the Group without any authorization or approval of the JOC. In fact, paragraph 3.8 of the Management Agreement specifically states that InterDent may not employ or contract with

any dentist. Nonetheless, Dr. Romriell, as a member of the JOC, sent a fax to InterDent requesting that a JOC meeting be held. InterDent never responded to the fax.

9. InterDent also responded to the 2003 Employment Agreement by threatening to physically exclude Dr. Romriell from the premises after October 11, 2003.

10. The Group responded to InterDent's positions and threats in a letter dated September 19, 2003. InterDent never replied to the letter.

11. On October 1, 2003, InterDent advised all of Dr. Romriell's staff that they were being terminated from employment effective October 11, 2003. InterDent did this without warning and without consulting with the Group or Dr. Romriell. Dr. Romriell's staff include highly trained and specialized TMJ assistants and a hygienist. No other staff employed by the Group is trained to perform the unique functions associated with Dr. Romriell's practice. Without his staff, Dr. Romriell would be unable to adequately and timely treat his patients.

12. Most of Dr. Romriell's patients were in the course of treatment. The treatment of TMJ involves phases, known as Phase I and Phase II TMJ treatment. Successful treatment is contingent upon completion of both phases. Interruption of the treatment process can have deleterious effects upon a patient. It is also in the best interest of patients that they be treated by someone who is familiar with their condition. If they are unable to see Dr. Romriell and be treated as scheduled or planned, they run the risk of physical harm which, in turn, subjects the Group to substantial professional liability. Abandoning patients in the course of treatment violates the professional, ethical, and legal obligations of the dentists individually and the Group as a professional corporation and employer of Dr. Romriell.

13. L.R. Misner and Larry D. Bybee were dentists under contract with the Group. They have terminated their relationship with the Group. Said dentists provided necessary pediatric dentistry for Group's patients. Since their departure, InterDent has refused to schedule pediatric patients with the Group and/or refused to refer patients to Larry D. Bybee at his current dental practice.

14. Patient scheduling is controlled by InterDent. InterDent refused to schedule patients for appointments with Drs. Romriell, Misner, and Bybee and cancelled appointments already made.

15. Because Drs. Romriell, Misner, and Bybee were unable to treat patients, the Group's patients had to forego treatment or otherwise seek treatment from unfamiliar dentists. It was in the best interests of the Group, the patients of the Group, Drs. Romriell, Misner, and Bybee, and the community at large that the Group, through these providers, be allowed to continue to provide dental care to these patients. InterDent, however, has refused any effort on the Group's part to continue these dentist/patient relationships, notwithstanding the fact that the Management Agreement specifically and repeatedly denies InterDent any authority to interfere with the Group's decisions related to the practice of dentistry.

FIRST CAUSE OF ACTION
Declaratory Judgment

16. The Group realleges the allegations contained in paragraphs 1 to 15 above and incorporates the same herein by reference as if fully set forth.

17. The Group has an interest in the Management Agreement and is therefore entitled to have determined any question of construction or validity arising under the Management Agreement and obtain a declaration of its rights, status or other legal relations thereunder.

18. Paragraph 5.2(b) of the Management Agreement purports to give the JOC authority to control the negotiation and execution of employment agreements between the Group and dentists.

19. Paragraph 5.2(b) of the Management Agreement is in conflict with other terms thereof which vest authority in the Group to enter into contracts with dentists and to control the practice of dentistry.

20. Paragraph 5.2(b) of the Management Agreement violates public policy because it allows individuals who are not licensed to practice dentistry in Idaho to practice dentistry by setting the terms of employment of a licensed dentist.

21. By reason of the foregoing, a dispute regarding the applicability and enforcement of paragraph 5.2(h) of the Management Agreement exists. The Group is entitled to a judicial declaration that (1) paragraph 5.2(b) is invalid and unenforceable, (2) that the Group was authorized to enter into the 2003 Employment Agreement with Dr. Romriell, (3) that the Group can hire, part time, Drs. Misner and/or Bybee to perform dental care for the Group's patients, and (4) that InterDent's failure to recognize the 2003 Employment Agreement and its refusal to allow the Group to hire the dentists it believes better serve its patients, constitutes a material breach of the Management Agreement on the part of InterDent.

SECOND CAUSE OF ACTION
Breach of Contract

22. The Group realleges the allegations contained in paragraphs 1 through 21, above, and incorporates the same herein by reference as if fully set forth.

23. InterDent's failure to recognize the 2003 Employment Agreement, its threats and attempts to exclude Dr. Romriell from the Group's premises, and its refusal to allow the Group to

hire Dr. Bybee to perform part-time dental care for its patients constitute a material breach of the Management Agreement on the part of InterDent.

24. InterDent is obligated under the terms of the Management Agreement to provide the Group and its dentists with a facility, equipment, supplies and support personnel. By terminating Dr. Romriell's staff without the consent of the Group, InterDent materially breached the Management Agreement.

25. InterDent has materially breached the Management Agreement by opposing the Group's decision to hire Dr. Bybee part-time to serve the Group's pediatric patients.

26. InterDent materially breached the Management Agreement by failing to schedule and/or cancelling appointments between Drs. Romriell, Misner, and Bybec and their patients.

27. As a direct and proximate result of InterDent's material and fundamental breach of the Management Agreement, the Group is entitled to be relieved from its obligation to perform under the Management Agreement and the same should be forthwith cancelled and held for naught.

28. As a direct and proximate result of InterDent's material and fundamental breach of the Management Agreement, the Group has been damaged, and will continue to be damaged in an amount according to proof.

THIRD CAUSE OF ACTION
Additional Breaches of Contract

29. The Group realleges the allegations contained in paragraphs 1 through 31, above, and incorporates the same herein by this reference as if fully set forth.

30. InterDent filed for filed for bankruptcy relief on May 9, 2003 in the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court").

31. On October 3, 2003 the Bankruptcy Court entered its Order confirming InterDent's Chapter 11 Plan.

32. On October 4, 2003, in addition to the breaches set forth above, InterDent has breached and continues to breach the Management Agreement by its:

- a. failure to include in dentists' compensation the dentists' share of interest charged on the Group's patients' accounts;
- b. failure to deposit the Group's accounts receivable in an account approved by the Group;
- c. failure to pay the claims and obligations of the Group, including the Group's attorney fees and costs incurred as a result of InterDent's chapter 11 bankruptcy proceeding, InterDent's breach of the Management Agreement; and InterDent's counterclaim filed against the Group in this proceeding;
- d. interference with the Group's practice of dentistry, including the Group's actions to contract with licensed dentists;
- e. failure to hire and train all non-dentist personnel necessary for the operation of the Group's practice of dentistry;
- f. charging paid time off, a benefit, to the Group's dentists as direct wages;
- g. failure to maintain the Group's practice as the preeminent group practice in the Pocatello and surrounding area;
- h. failure to provide and maintain equipment and supplies necessary for the efficient and effective operation of the Group's practice;
- i. failure to provide an experienced manager for the Group;
- j. failure to provide financial statements and accounting records related to the operation of the Group;
- k. denial of access to the Group of its patients' records;
- l. violation of laws and public policy related to the practice of dentistry; and
- m. misuse of the Joint Operations Committee procedure to breach Management Agreement.

33. The foregoing breaches of the Management Agreement are material, and so substantial and fundamental that they have defeated the object of the Group in entering into the Management Agreement.

34. As a direct and proximate result of InterDent's material and fundamental breach of the Management Agreement, the Group is entitled to be relieved from its obligation to perform under the Management Agreement and the same should be forthwith cancelled and held for naught.

35. As a direct and proximate result of InterDent's material and fundamental breach of the Management Agreement, the Group has been damaged, and will continue to be damaged in an amount according to proof.

FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty

36. The Group re-pleads all prior paragraphs of this Amended Complaint as if they were re-stated herein, and by this reference makes the same a part of this Fourth Cause of Action.

37. The Group, through the Management Agreement, has granted and placed a special confidence in InterDent, thereby imposing upon InterDent a duty to act primarily for the benefit of the Group. Through the Management Agreement InterDent has been placed in a position to have and to exercise, and does have and exercise influence over the Group. Under the Management Agreement InterDent has been granted superiority over the Group by allowing InterDent, in part, to:

- a. Select, hire, train, supervise, monitor and terminate all non-licensed personnel necessary for the operation of the Group's practice [Paragraph 4.4(b) of the Management Agreement];
- b. Bill and collect all revenues, charges and reimbursements for the Group's dental related activities, and deposit the same into an account selected by the Group [Paragraph 2.5 of the Management Agreement];

- c. Pay all claims and obligations associated with the operation of the Group, or deliver to the Group an amount of its revenues sufficient to discharge the Group's obligations and liabilities [Paragraph 2.6(b) of the Management Agreement];
- d. Provide office space, facility maintenance, and acquire equipment and supplies for the Group to use in providing dental care to its patients [Paragraph 4.5 of the Management Agreement];

38. By reason of the foregoing, the property, interest and authority of the Group has been and is now placed in the charge of InterDent, thereby obligating InterDent to exercise its authority over, and its obligations to the Group as a fiduciary, for the benefit and protection of the Group.

39. InterDent has taken unfair advantage of the Group in its performance of its obligations under the Management Agreement for its own benefit, and has, therefore, exceeded its authority under the Management Agreement, thereby breaching the fiduciary duty InterDent owes to the Group.

40. As a direct and proximate result of InterDent's material and fundamental breach of the fiduciary duty it owes the Group, the Group is entitled to be relieved from its obligation to perform under the Management Agreement and the same should be forthwith cancelled and held for naught.

41. As a direct and proximate result of InterDent's material and fundamental breach of the fiduciary duty it owes to the Group, the Group has been damaged, and will continue to be damaged in an amount according to proof.

FIFTH CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing

42. Group re-pleads all prior paragraphs of this Amended Complaint as if they were re-stated herein, and by this reference makes the same a part of this Fifth Cause of Action.

43. Inherent in the Management Agreement is InterDent's obligation to perform the express terms of that agreement in good faith and to deal fairly with the Group.

44. The covenant of good faith and fair dealing owed by InterDent to the Group has been and is being violated by InterDent's conduct, which conduct violates, nullifies and significantly impairs any benefit to the Group arising from the Management Agreement.

45. The implied covenant of good faith and fair dealing requires InterDent to perform the obligations imposed upon it by the Management Agreement in good faith. Those obligations, as stated above, are to be compatible with the following affirmative obligations imposed upon InterDent by the Management Agreement, including in part, the following:

- a. InterDent will not perform any activity which, pursuant to applicable laws and requirements governing the practice of dentistry, are the ultimate responsibility of the Group and within the scope of a dentist's licensure [Paragraph 3.1 of the Management Agreement];
- b. InterDent may not exercise any control or direction over the methods by which the Group shall practice dentistry [Paragraph 3.2 of the Management Agreement];
- c. InterDent may not employ or contract with any licensed dentist [Paragraph 3.8(a) of the Management Agreement];
- d. InterDent may not alter or in any way affect the legal, ethical and professional relationship between and among the Group and its patients [Paragraph 2.1 of the Management Agreement]; and

e. InterDent must obtain the consent of the Group before InterDent may select, hire or terminate any licensed clinical staff assisting the Group in the practice of dentistry [Paragraph 4.4(b) of the Management Agreement].

46. InterDent's conduct has breached the covenant of good faith and fair dealing.

47. As a direct and proximate result of InterDent's material and fundamental breach of the covenant of good faith and fair dealing it owes the Group, the Group is entitled to be relieved from its obligation to perform under the Management Agreement and the same should be forthwith cancelled and held for naught.

48. As a direct and proximate result of InterDent's material and fundamental breach of the covenant of good faith and fair dealing it owes to the Group, the Group has been damaged, and will continue to be damaged in an amount according to proof.

SIXTH CAUSE OF ACTION **Indemnity**

49. The Group re-pleads all prior paragraphs of this Amended Complaint as if they were re-stated herein, and by this reference make the same a part of this Sixth Cause of Action.

50. As a result of InterDent's conduct, its breach of the Management Agreement, its breach of the fiduciary duty it owes to the Group, and its breach of the covenant of good faith and fair dealing InterDent owes to the Group, third party claims, including but not limited to claims on file in this litigation, have been made and brought against the Group by its dentist providers, alleging *inter alia*, (1) that the Group has breached its employment agreements by allowing InterDent to withhold payment of their compensation; (2) that the Group has breached its employment agreements by allowing InterDent to interfere with the dentist's patient relationships; (3) that the Group has breached its employment agreements by allowing InterDent to infringe upon the dentist's

ethical obligations to its patients; (4) that the Group has breached its employment agreements by allowing InterDent to reduce staff support, equipment, supplies and facilities to the point where patient care has suffered; (5) and that the Group has breached its employment agreements by allowing InterDent to improperly bill and overcharge Medicaid under the individual dentist's identities, resulting in claims for reimbursement being made directly against the Group's dentists.

51. The genesis of these claims is centered on InterDent's conduct, its breach of the Management Agreement, its breach of the fiduciary duty it owes to the Group, and its breach of the covenant of good faith and fair dealing InterDent owes to the Group pursuant to the Management Agreement.

52. InterDent is obligated to properly select, hire, train, supervise, monitor all non-licensed personnel necessary for the proper and legal operation of the Group's practice; correctly bill and collect all charges and reimbursements for the Group's dental related activities, and deposit the same into an account selected by the Group; pay all claims and obligations associated with the operation of the Group, or deliver to the Group an amount of its revenues sufficient to discharge the Group's obligations and liabilities, including the obligations owed to the Group's dentist providers, and not otherwise interfere with the Group's practice of dentistry.

53. InterDent owes the Group an obligation to indemnify and hold the Group harmless from the claims of its dentist providers. InterDent has refused and failed and continues refuse and fail to discharge such obligations, to the damage of the Group.

54. As a direct and proximate result of InterDent's material and fundamental breach of the duties it owes the Group, including its duty to indemnify and hold the Group harmless from any liabilities, the Group has been damaged, and will continue to be damaged in an amount according to proof.

REQUEST FOR ATTORNEYS FEES AND COSTS

55. The Group re-pleads all prior paragraphs of this Amended Complaint as if they were re-stated herein, and by this reference make the same a part of this request for attorney fees and costs.

56. The Group has been required to retain the services of Cooper & Larsen, Chartered, to prosecute this action on its behalf. The Group has obligated itself to pay the fees charged, and the costs incurred and advanced by Cooper & Larsen on its behalf.

57. The Management Agreement, at paragraph 2.6 thereof, requires InterDent to pay "...all claims and obligations associated with the operation of the Group..." The Management Agreement does not exclude from the obligations to be paid by InterDent the attorney fees or litigation expenses incurred by the Group.

58. The Management Agreement, at paragraph 10.5 thereof, entitles the prevailing party, whether it be InterDent or the Group, to recover from the losing party its reasonable attorneys' fees, costs and expenses incurred by the prevailing party in any legal action or arbitration.

59. In the alternative, the Group claims its attorney fees pursuant to applicable law, including without limitation, Idaho Code §§ 12-120(3), 12-121 and 10-1210, in such sums as the Court deems reasonable, together with actual costs incurred herein.

WHEREFORE, the Group prays for judgment against InterDent as follows:

A. For a declaration that paragraph 5.2(b) of the Management Agreement is invalid and unenforceable;

B. For a declaration that the Group had authority to enter into the 2003 Employment Agreement;

C. For a declaration that InterDent materially breached the Management Agreement by refusing to recognize the 2003 Employment Agreement;

D. For an order relieving the Group from any further obligation to perform under the Management Agreement due to InterDent's material breach of the Management Agreement;

E. For damages in an amount to be determined at trial;

F. For an order directing InterDent to indemnify and hold the Group harmless from any and all claims of the State of Idaho and its dentist providers, including but not limited to those set out in counterclaims on file herein;

G. For attorneys fees and costs; and

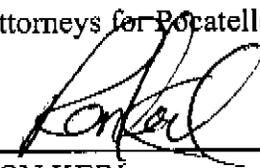
H. For such other and further relief as the Court deems just and equitable in the premises.

DEMAND FOR JURY TRIAL

The Group hereby demands a trial by jury on all issues so triable.

DATED this 17 day of May, 2004.

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



RON KERL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 17 day of May, 2004, I served a true and correct copy of the

foregoing document as follows:

Erik F. Stidham
G. Rey Reinhardt
STOEL RIVES LLP
101 S. Capitol Blvd., Ste.1900
Boise, ID 83702-5958

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

Scott J. Kaplan
STOEL RIVES LLP
900 SW Fifth Ave. Ste. 2600
Portland, OR 97204-1268

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

Lowell N. Hawkes
1322 East Center
Pocatello, ID 83201

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

Richard A. Hearn
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204

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



By: _____
Ron Kerl