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U.S. DISTRICT COURT  
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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. CV-03-450-E-LMB

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

**MOTION TO EXTEND TIME  
 TO DISCLOSE EXPERT  
 WITNESSES AND REPORTS  
 AND TO EXTEND  
 PLAINTIFF'S DEADLINE  
 FOR CONCLUDING  
 DISCOVERY AND FILING  
 DISPOSITIVE MOTIONS**

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 the Plaintiff, by and through its attorneys of record, and moves the Court for its Order relieving Plaintiff from its obligations to disclose expert witnesses pursuant to Fed.R.Civ.P. 26, Local Rule 26.2, and Fed.R.Civ.P. 16 because of the Defendant InterDent Service Corporation's refusal to timely and fully respond to Plaintiff's discovery requests. <sup>1</sup> In addition, the Plaintiff requests the Court to extend the timeline within which Plaintiff is to complete its factual discovery in this case, as well as extending the date for the Plaintiff to file pretrial motions, including dispositive motions.

In support of its motion, the Plaintiff represents the following:

- 1) Plaintiff timely commenced written discovery in March of 2004 only to be faced with ISC's comprehensive evasion of the requests and its intractable refusal to respond in good faith to Plaintiff's discovery requests. Reference is made to Plaintiff's Rule 37 Motion and Supporting Brief (Docket No. 137 & 138), this Court's Order granting in substantial part, Plaintiff's Motion to Compel (Docket No.167), and Plaintiff's Motion for Sanctions (Docket No.177).
- 2) The only financial records provided by the Defendant InterDent Service Corporation are profit and loss statements beginning in the year 1999 and continuing through August 2004. This information only represents a small portion of the financial records requested by the Plaintiff in its March of 2004 discovery requests. All of the financial information related to the operation of Pocatello Dental Group is within the sole control and custody of InterDent Service Corporation. By withholding the financial information InterDent Service Corporation has substantially impaired the

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<sup>1</sup> The Court's August 16, 2004 Order (Docket No. 167) extended Plaintiff's deadline to disclose its accounting expert for sixty (60) days, or until October 15, 2004. The Defendant InterDent Service Corporation's failure to timely respond to Plaintiff's discovery requests requires another extension of time.

Plaintiff's ability to utilize a forensic accountant to support its claims in this case and to oppose the counterclaim of InterDent Service Corporation.

3) The Plaintiff commenced discovery in March of 2004, prior to the Court's scheduling Order entered on April 7, 2004. Notwithstanding its diligent and prompt effort to discover evidence in this case, Pocatello Dental Group has been denied discovery notwithstanding (A) good faith effort to resolve discovery disputes before filing its Motion to Compel; (B) notwithstanding the filing of Pocatello Dental Group's Motion to Compel; (C) notwithstanding the Court's entry of its Order compelling the Defendant InterDent Service Corporation to respond; and (D) notwithstanding the Pocatello Dental Group's filing of a Motion for Rule 37 Sanctions. The Defendant InterDent Service Corporation has steadfastly refused or failed to provide the requested evidence and documents.<sup>2</sup> As a result thereof, the Plaintiff has been severely prejudiced in the prosecution of its complaint and in the defense of the InterDent Service Corporation counterclaim.

4) In order to adequately address InterDent Service Corporation's systematic and intractable refusal to respond to discovery, this Court should further extend the Plaintiff's deadline for disclosing the expert witness report of its forensic accountant until such time as the Defendant InterDent Service Corporation has fully, completely, and in good faith responded to Plaintiff's discovery requests.

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<sup>2</sup> ISC, through counsel, has stated to the Plaintiff's counsel that the "back-up" documents for the produced profit and loss statements are in California, are available for inspection but are not in any particular order and have not been categorized in any way which would allow Plaintiff to efficiently compare the back-up documents to the dollar amounts reported in the profit and loss statements.

5) In addition, the deadline for completing all discovery and filing dispositive motions by the Plaintiff should be extended until thirty (30) days prior to trial so that the Defendant's systematic, intractable and bad faith delay in responding to discovery requests does not unfairly prejudice the Plaintiff in the prosecution of its complaint and in the defense of InterDent Service Corporation's counterclaim.

WHEREFORE, having shown good cause therefore, the Plaintiff respectfully requests the Court to enter its Order modifying the scheduling Order so that the Plaintiff's deadline for disclosing its forensic accounting expert witness and his associated report can be extended until such time that the Defendant has fully, completely and in good faith responded to the Plaintiff's discovery requests.

IT IS FURTHER REQUESTED that the Court modify the scheduling Order with respect to the Plaintiff's discovery deadline, as well as its deadline for filing dispositive motions, and set that cut-off date at thirty (30) days prior to the date of trial.

DATED this 7 day of October, 2004.

**COOPER & LARSEN, CHTD**

Attorneys for Plaintiff

By: 

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Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 7 day of October, 2004, I served a true and correct copy of the foregoing document as follows:

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