

**CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

MARY A. TUJETSCH,

Plaintiff,

v.

TODD C. PUSATERI, FIRST DENTAL,
P.C. and FIRST DENTAL OF ORLAND
PARK, P.C.,

Defendants.

) 2011 JAN 10 PM 1:11
)
) DOROTHY BROWN
) CLERK OF CIRCUIT COURT
) 06 CH 11607
) LAW DIVISION
) (Transferred to Law Division)
) Hon. Charles R. Winkler
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)
)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to 735 ILCS 5/2-1005, Defendants move this Court for entry of summary judgment on each Count of the three-count Amended Complaint ("Complaint") In support of their motion, Defendants state as follows:

INTRODUCTION

This is not the first time that the Plaintiff has cast herself in the role of the victim and accused a fellow dentist of attempting to cheat and deceive her. After years of prevarication, Tujetsch recently admitted, for the first time, that she has been a litigant in 18 lawsuits, at least six of which involve Tujetsch accusing another dentist of fraud, breach of contract,¹ or even criminal misconduct.² Tujetsch has repeatedly proven herself incapable of owning and managing her own dental practice. Since 1989, Tujetsch has purchased five dental practices.³ Not one of those practices was ever re-sold, and not one of them is in existence today. Tujetsch's employment by others has almost invariably ended with her being fired. *See, e.g.,* Exh. B. Given her long record of incompetence and vexatious litigation, Tujetsch is now

¹ The recently disclosed litigation fails to include at least five lawsuits, many of which were filed in Indiana. *See* Lake County report and summary of litigation against other dentists in Group Exh. A, at pp. 12-16

² *See* accusations of criminal misconduct directed at Bradley Dental and response in Group Exh. B.

³ *See* Exh. C, response to Interrogatory no 3

unemployable. At the culmination of her professional career, Tujetsch has no dental office, and no patients, leaving her plenty of time to flog meritless claims against other dentists who have had the misfortune to cross her path.

In this action, Tujetsch's target is First Dental, P.C., the seller ("Seller") of a dental practice in Orland Park, Illinois ("Dental Practice"). After buying the Dental Practice and running it into the ground (and admitting that the "recipe for disaster" was her own), Tujetsch now accuses Defendants of breaching an asset sale agreement executed June 27, 2004 ("Agreement") by failing to deliver "patient lists," and by making false representations in the Agreement regarding "active patients" and "equipment." See Exh. D (Complaint). Tujetsch contends that the false representations were made in order fraudulently to induce Tujetsch to enter into the Agreement and a five-year lease ("Lease") on office premises occupied by the Dental Practice, and owned by Dr. Pusateri ("Premises"). Id.

Section 9.07 of the Agreement states that "any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing [and] shall be delivered personally . . ." to Dr. Pusateri and his lawyer, Steven Jesser. See Id. (Complaint) at its Exh. A, §9.07. Tujetsch has never delivered to Pusateri and Jesser a written notice in conformity with Section 9.07 about "patient lists," "active patients," or "equipment." On October 24, 2005, over 16 months after she took possession of the Dental Practice, Tujetsch sent a letter to Pusateri accusing him of overstating "active patients" in the Agreement. See Exh. E (Affidavit of Pusateri), ¶82, 88. The letter said nothing about missing "patient lists" or faulty "equipment." Tujetsch's first written expression of concern about "equipment" is in the complaint that she filed in this action on June 12, 2006 -- almost two years after she took possession of the Dental Practice. Tujetsch first complains of "missing patient" lists in the

amended complaint that she filed in August 2007.

Not surprisingly, there is no evidence to support any of Tujetsch's claims -- and none can or will be adduced in response to this motion -- because the claims are based on a willful perversion of the facts and the Agreement. As demonstrated below, there is no evidence of any default or misrepresentation in respect of "patient lists," "active patients," or "equipment."

NATURE OF THE CLAIMS

Patient Lists. In Count I, Tujetsch alleges that Seller "[failed] to provide [her] with a list of Active Patients or any other patient lists," thereby breaching a "[performance] obligation to place Tujetsch in 'possession and operating control of' '[a]ll patient lists . . . relating to the Dental Practice . . .'" Exh. D, ¶18. "[A]fter the closing," Tujetsch "requested a patient list identifying 1,200 active patients of the Dental Practice" that she "needed the patient list to contact the Dental Practice's customers . . ." (Id., ¶20; emphasis supplied). Tujetsch "notified defendants of the breach of the Agreement [with respect to "patient lists"] on or about October 24, 2005" (Id., ¶28). Pusateri "directed [Tujetsch] to contact First Pacific [(Corporation)]⁴ for a patient list" (Id., ¶22). "Neither Pusateri nor First Pacific provided Tujetsch with access to the records or data that purportedly establish the basis for the number of Active Patients." Id., ¶23.

⁴ In March 2001, Dr. Pusateri outsourced the issuance and collection of patient bills of the Dental Practice to First Pacific Corporation, a specialized third-party service provider headquartered in Salem, Oregon ("FPC"). Pursuant to a written Sales and Service Agreement, the Dental Practice agreed to use a computer system and software package furnished to the Dental Practice by FPC (hereinafter the "FPC Terminal" and "FPC Software"), "[i]n order to facilitate client's sale of accounts receivable to FPC, and as a part of FPC's service and exchange of data." Exh E, ¶¶14-16

In addition to acting as a conduit to supply billing information to FPC, the FPC Terminal contained database software that aggregated and stored patient and billing information locally, as entered, and had the capacity to generate reports and patients lists using the stored information. Such reports and patient lists could be generated according to "canned" formats, or user-designated formats customized to provide specifically selected information. The FPC Software could be used mechanically to list all patients in the database, or to cull from the database subsets of patients on the basis of defined criteria. *See* Id. ¶19.

The FPC Terminal and Software remained property of FPC at all times after being placed in the Dental Practice, and therefore was not an asset of Seller that could be sold to Tujetsch. Id., ¶¶18, 50. However, on June 30, 2004, Tujetsch contracted with FPC for continued access to the FPC Terminal and FPC services for the Dental Practice Id., ¶¶74-75, 77-78.

Active Patients Count II claims that Defendants breached the Agreement by overstating, in the Agreement, the number of “active patients” treated in the Dental Practice in the 24 months prior to its sale (Id., ¶¶30, 31), and misrepresenting, on June 27, 2004, that unspecified “equipment” of the Dental Practice was in working order (Id., ¶¶32, 33) ⁵

Fraud in the Inducement. Count III alleges, “on information and belief,” that, in order to induce Tujetsch to enter into the Agreement and Lease, Dr. Pusateri, at the time he executed the Agreement on June 27, 2004, knowingly inflated the number of “active patients” of the Dental Practice in the Agreement, and knowingly misrepresented that “equipment” of the Dental Practice was then “working and in good order.” Id., ¶40.

STANDARD OF REVIEW

Summary judgment under 735 ILCS 5/2-1005 is a means of resolving litigation where no material fact is at issue. *See Chubb Ins. Co. v. DeChambre*, 349 Ill. App. 3d 56, 59 (1st Dist. 2004). In ruling on a motion to dismiss the Court considers the pleadings and proffered evidence to determine if any material factual dispute exists. If there is no dispute of material fact, the Court considers the facts and the law and determines whether, on the undisputed facts, the moving party is entitled to judgment. *See Id.*, 349 Ill. App. 3d at 59.

There are two types of summary judgment motions: 1) a motion affirmatively showing that some element of the case must be resolved in the defendant’s favor, requiring the defendant to prove something that it would not be required to prove at a trial, and 2) a motion of the kind recognized by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), in which a defendant points out the absence of evidence supporting plaintiff’s position *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 368 (1st Dist. 2006).

⁵ Section 1 01-2 of the Agreement states that “Seller represents that all equipment is working and in good order . . . [and that] Seller assumes risk of loss of tangible assets prior to, but not subsequent to, closing.”

STATEMENT OF UNDISPUTED FACTS

In April 2004, Tujetsch advised Dr. Pusateri that she was interested in purchasing the Dental Practice, and requested access to the Dental Practice to perform due diligence. On April 18, 2004, Tujetsch executed an agreement in which she agreed to preserve the confidentiality of “[a]ny financial data . . . which may include . . . [p]atient or client lists . . . ” Exh. E, ¶46.

As of April 2004, information about all patients treated in the Dental Practice after it first opened its doors in March 1998 was recorded in Patient Charts stored on shelves in the Dental Practice, as required by Section 50 of the Illinois Dental Practice Act, 225 ILCS 25/50 (hereinafter Section 50).⁶ See *Id.* at ¶¶20-24. Detailed information about patients of the Dental Practice was also accessible from a redundant, electronic source: the FPC Terminal.⁷ See *Id.* at ¶¶24-27. However, the FPC Terminal and the FPC Software were never owned by any Defendant, and were expressly excluded from the assets being conveyed to Tujetsch pursuant to the Agreement. Exh. D, at its Exh. A, §1 02-3; Exh. E, ¶77; Exh. I (Aff. of Ketsdever), ¶¶11, 27

After signing the April 2004 confidentiality agreement, Tujetsch was entitled to access to books and records of the Dental Practice, including patient and client lists of the Dental Practice, as well as the FPC Terminal. Exh. E at ¶¶46-49. On April 29, 2004, the FPC Terminal was used by Dr. Pusateri to print out two separate “Practice Overview” reports, one as of December 30, 2003, the other as of April 29, 2004. *Id.* at ¶¶27-34.⁸ According to the Practice Overview as of

⁶ Section 50 of the Illinois Dental Practice Act, 225 ILCS 25/50, provides that “[e]very dentist shall make a record of all dental work performed for each patient. The record shall be made in a manner and in sufficient detail that it may be used for identification purposes. Dental records required by this Section shall be maintained for 10 years.” 225 ILCS 25/50

⁷ In addition to storing patient information in Patient Charts maintained pursuant to Section 50 (Exh. E, ¶¶20-24, 47), the Dental Practice had, since April 1, 2001, also redundantly stored patient information in the FPC Terminal. *Id.*, ¶48. Tujetsch performed due diligence on the FPC Terminal and contracted for continued access to the FPC Terminal and FPC services on June 30, 2004. Exh. E., ¶¶75-76.

⁸ One of the “canned” reports that the FPC Software could generate upon request was a summary report called “Practice Overview.” As explained in written documentation of the FPC Software, the Practice Overview

December 30, 2003, the Dental Practice had 1,223 “active patients.” Id. According to the Practice Overview dated as of April 29, 2004, the Dental Practice had 1,227 “active patients.” Id. Documentation of the First Pacific software defines the number of “active patients” reported in the Practice Overview as the number of patients treated in the practice during the previous 24 months. Id., ¶28; Exh. I, ¶21. This is consistent with the definition of “active patient” promulgated by the American Dental Association. Exh. E, ¶30; Exh. I, ¶22.

On May 1, 2004, Tujetsch send a letter to Dr Pusateri thanking him for “all of [his] efforts and expertise [and for his] time and cooperation,” and stating that she had spent “a considerable amount of time with [her] financial advisors and dental expert,” that her “experts [had] evaluated [the Dental Practice] and . . . informed [Tujetsch] that the practice ha[d] leveled off, with no indication of future growth;” and that “[t]his indicates the potential for financial problems ahead.” Tujetsch stated that “[d]espite [the potential for financial problems ahead], [she] believe[d] that the practice could be turned around through hard work,” and concluded, “[i]f I am going to invest my time and talent in this venture, it is important that I look at this project in terms of a long term projection.” Notwithstanding “the potential for financial problems ahead,” Tujetsch stated “[m]y experts have evaluated the practice to be worth an estimated \$144,500.00. I am prepared to offer you \$150,000.00 I believe this offer to be fair and mutually beneficial.” Exh. E, ¶¶51-55.

On Monday, May 10, 2004, Tujetsch increased her offer for the Dental Practice from \$150,000, to \$165,000:

I received your fax on Saturday [(May 8, 2004)] and I was able to fax it on to my advisors the same day. I thought I would send my new offer to you as soon as

provides a month-to-date and year-to-date overview of important information for monitoring a practice, including “the number of active patients,” defined as “[t]he number of patients seen within the last two years.” Exh. E, ¶¶27-34.

possible. In this way, we could still talk on Wednesday [(May 12, 2004)], as agreed upon, and be one step closer to an agreement.

I have had experience with many dental brokers over the past fifteen years as I have purchased four dental practices to date. I am well aware that for each different broker there will be a different criteria formula, or method of evaluating a practice. Obviously, your broker has your best interest in hand and my broker has my best interest at hand. The truth probably exists somewhere in the middle.

In the interest of moving the process along, I am willing to meet you more than half way. I would like to offer you \$165,000.00 with \$50,000 of it being cash upfront. The remaining balance would be paid at the current interest rate of 5%. It is my intention to pay the practice off sooner rather than later as I do not like paying interest payments. This deal allows you to make a considerable amount of additional cash in terms of rent and interest payments.

I believe this offer to be fair. I hope that we can agree and move forward with the process.

Exh. E, ¶¶56-58 On May 13, 2004, Tujetsch sent a letter to Dr. Pusateri stating, "We have agreed at a purchase price of \$165,000.00 and this \$5,000.00 deposit will be subtracted from the \$165,000.00 purchase price at closing." Id. at ¶61

Thereafter, the terms of the Agreement and the Lease were negotiated. By Friday, June 25, 2004, those negotiations were complete, and the parties planned to meet at the Premises and execute the Agreement and the Lease on Sunday, June 27, 2004. The execution copy of the fully-integrated⁹ Agreement uses the phrase "active patient" only once, in its first paragraph, wherein it states:

Seller is the owner of the dental practice located at 7714 159th Street, Orland Park, IL 60462 (hereinafter, the Dental Practice) Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has _____ active patients, who have been treated within the previous twelve months

The underscored space in the foregoing recital remained blank until Sunday, June 27, 2004,

⁹ Section 9.02 of the Agreement provides that "[t]his Agreement and the Schedules and Exhibits referred to herein embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for herein." Exh. D, at its Exh. A, §9.02

when Tujetsch and Dr. Pusateri met at the Premises to execute the Lease and the Agreement. The blank was first filled in by Dr. Pusateri as he and Tujetsch were executing the Agreement. At that time, Dr. Pusateri consulted the FPC Terminal in the Premises to confirm that the number of active patients previously reported by FPC Software (in the two Practice Overviews downloaded by Dr. Pusateri on April 29, 2004) remained at approximately 1,200. After confirming that, Pusateri modified the recital, in Tujetsch's presence, to read as follows: "Seller has represented that the Dental Practice has *approx. 1200* active patients, who have been treated within the previous ~~twelve months~~ *twenty four months according to First Pacific Corporation Software*." Dr. Pusateri changed "twelve months" to "twenty four months" to conform the recital to the definition of "active patient" used by the FPC Software, and inserted 1,200 as the number of "active patients" reported by that Software. See Exh. E, ¶64-68.

The modified recital was then initialed by both Tujetsch and Dr. Pusateri. It appears in the fully executed Agreement, as follows:

Seller is the owner of the dental practice located at 7714 159th Street, Orland Park, IL 60462 (hereinafter, the Dental Practice). Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has ¹²⁰⁰ ~~twelve months~~ *twenty four months according to FIRST PACIFIC CORPORATION Software* active patients, who have been treated within the previous ~~twelve months~~ *twenty four months according to FIRST PACIFIC CORPORATION Software*.

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

Tujetsch has averred in discovery that this was the first representation to her that, according to FPC software, the Dental Practice had treated approximately 1,200 "active patients" in the previous 24 months. See Exh. F (Plaintiff's Answer to Defendants' Second Interrogatories), answer to interrogatory no. 1.

The Agreement executed on June 27, 2004 states that "all equipment is working and in good order" (emphasis supplied); but does not warrant that equipment will remain in working

order thereafter. Section 1.06 of the Agreement provides that “[t]he consummation of the transactions contemplated by [the] Agreement . . . shall take place on July 1, 2004 . . . but Purchaser shall take possession of the Dental Practice on June 30, 2004.” In fact, after Tujetsch and Dr. Pusateri executed the Agreement at the Premises on Sunday, June 27, 2004, Tujetsch gave Pusateri a check for the balance of the \$165,000 purchase price and received keys (and unrestricted access) to the Dental Practice. Exh. E, ¶72.

Section 1.01 of the Agreement contemplates the delivery to Tujetsch of all of the assets of the Dental Practice at the closing, subject to exceptions specified in the Agreement. Among the assets to be placed in Tujetsch’s possession are “patient lists, . . . and patient records.” The phrase “patient files” appears once in the Agreement, in Section 1.04, wherein it states that “[a]t time of closing, . . . inactive patient files are to be moved at Seller’s expense.” The Agreement does not contain any other reference to “patient lists,” “patient records,” “patient files,” or “active patients.” It is undisputed that the Dental Practice redundantly maintained patient information in the FPC Terminal before the sale. However, Section 1.02-3 of the Agreement expressly excludes from the assets being transferred to Tujetsch “any property of First Pacific Corporation, including its computers, monitors, keyboards, battery backup, computer speakers, laser printer, color printer, computer software, and computer connections ”

In order to retain access to the FPC Terminal and Software, Tujetsch entered into a Sales and Service Agreement with FPC on June 30, 2004. Exh. I, ¶31. Pursuant to that Sales and Service Agreement, Tujetsch contracted, on terms and conditions that she negotiated bilaterally with FPC, for continued access to FPC billing services and an FPC Terminal after the sale. Exh. E, ¶78; Exh. I, ¶¶33-35.

By June 30, 2004 Tujetsch had contracted for continued FPC services and taken

possession of all of the assets of the Dental Practice owned and conveyed by Seller without incident, pursuant to the Agreement and the Lease.¹⁰ Not surprisingly, there is no evidence that any of the professionals employed in the Dental Practice noticed any lack of patient lists (or an inability to contact patients) on or after June 30, 2004. See Affidavits of Messrs Purdue, Galban, Buben-Dowling, and Johnson in Group Exhibit G.

Over nine months later, in April 2005, Pusateri received a letter from Tujetsch stating that her “absentee ownership” of the Dental Practice had been a “recipe for disaster,” and that she had been thinking of selling the Dental Practice. Tujetsch opined that the Dental Practice would fetch a higher price if it were bundled with the building that housed the Premises. Tujetsch explained that she had advertised the Premises for “Space Sharing” with other dentists, and in response had received “numerous calls regarding dentists wanting to purchase the office.”

These interested dentists forced me to contemplate the option of selling the practice if the money was right. I then went ahead and advertised the office for sale and decided that if the price was right, I would be willing to sell. If the price is not right will keep the office and nothing will change. I have received a lot of interest in the practice and I find myself needing to devote more time to my Chicago practice. When I originally purchased the office, I have anticipated that the office could run itself efficiently with little or no input/time from me. I have come to learn that an absentee owner and is a recipe for disaster.

My question to you is, would you be interested in selling the building at 7714 W. 159th Street? I believe that my chances of selling the practice would be greatly enhanced if I could offer the sale of the building, in addition to my practice. I know that at the time of the purchase, in July 2004, you were open to the idea of selling the building. Have you given it any additional consideration? From your perspective, it would be easier to sell the building with the sale of the dental practice. I understand that the chiropractors’ lease is coming to an end so the time could not be more ideal for both of us. The feedback I am getting is that a potential buyer, who is a dentist, would desire the entire office space . . .

* * *

I ask that you keep all of this letter confidential as I may ultimately option [sic] to

¹⁰ Section 6.03 of the Agreement provides that “[a]t or before closing, Purchaser shall execute a five-year lease for the offices of the Dental Practice at 7714 159th Street, Orland Park, IL 60462 [(the “Premises”)] . . .” On June 28, 2004, Tujetsch entered into a five-year lease on the Premises, where were owned by Pusateri (hereinafter the “Lease”).

keep the practice in the end. I do not want to alarm Dr. Purdue or the staff and patients.

Exh. E, ¶84. The foregoing letter said nothing about a lack of “patient lists,” a perceived shortfall in “active patients,” or faulty “equipment.” It admitted that the “disaster,” if there was one, was of Tujetsch’ own making, and closed with the salutation, “The best to you always.”

On April 6, 2005, Tujetsch sent a second letter to Dr. Pusateri “offering [him] one million (\$1,000,000.00) for the purchase of [his] building located at 7714 W. 159th Street, Orland Park, Illinois.” Exh. E, ¶86.

Over six months later, in October 2005, Pusateri received another letter from Tujetsch. In the letter, dated October 24, 2005, Tujetsch accused, for the first time,¹¹ that the Agreement executed by the parties on June 27, 2004 had overstated the number of “active patients” of the Dental Practice:

Today, 10/24/05, I have been informed that the actual number of active patients, at the time of the sale, was 50% less than what you represented in our signed, legal contract. Please refer to the contract where you note that 1200 active patients of record are involved in the sale of the practice. A detailed report by First Pacific Corporation, your former and current billing agency, indicates that the actual number of active patients, at the sale, was 668. This misrepresentation has created an enormous burden for this office as you are also profiting from a monthly rent of nearly \$3,000.00.

Id., ¶88. The foregoing letter said nothing about an inability to contact patients caused by a lack of “patient lists” or faulty “equipment.” In response, Pusateri steadfastly denied that he overstated, on June 27, 2004, the number of “active patients” treated in the Dental Practice, as reported by FPC Software, and produced copies of the two FPC Practice Overviews on which he relied.

There is no FPC report that supports the accusation made by the May 24 letter. An FPC

¹¹ See Amended Complaint at ¶28 (“Tujetsch notified defendants of the breach of the Agreement on or about October 24, 2005”).

account manager advised Tujetsch that a list of patients produced by FPC at Tujetsch's request in October 2005 was not complete, and could not be relied to prove that the FPC Practice Overviews issued on April 29, 2004 were inaccurate as to the number of "active patients." Exh. I, ¶¶60-108; Exh. E, ¶¶91-92. On July 6, 2006, by means of a letter "To Whom It May Concern," an officer of FPC confirmed that FPC had never provided any report to Tujetsch that could be relied upon to conclude that the number of active patients of the Dental Practice, as of June 27, 2004, was fewer than 1,200. Exh. E, ¶¶91-92; Exh. I ¶¶75-81. This was later confirmed in responses of FPC to a subpoena from Tujetsch.

On October 31, 2007, Tujetsch gave written notice that she was "terminating the Lease . . . and moving out of the [P]remises immediately due to the Landlord's failure to correct the breaches outlined in [an earlier] letter¹²"

ARGUMENT

A. There is no Evidence that Tujetsch Failed to Receive "Patient Lists."

There is no evidence that before June 30, 2004 Tujetsch failed to receive access to and the right to copy "patient lists" of the Dental Practice, as contemplated by the April 18, 2004 confidentiality agreement and Section 4.01 of the Agreement,¹³ or that on June 27, 2004 or June 30, 2004, Tujetsch failed to receive "patient lists" of the Dental Practice owned by Seller, as contemplated by the Agreement. There is no evidence that the Agreement purported to convey to Tujetsch ownership of the FPC Terminal or any software or data contained therein, inasmuch

¹² In an earlier letter (dated October 12, 2007), Tujetsch complained that Landlord breached the Lease by failing to document the amount of "Additional Rent," and by violating Tujetsch's right of quiet enjoyment by, among other things, scheduling landscaping maintenance during hours. See letters from Tujetsch to Landlord attached hereto as Group Exhibit H.

¹³ Section 4.01 of the Agreement provides that "[p]rior to the Closing Date, Seller shall, at Purchaser's request, afford or cause to be afforded to the agents, attorneys, accountants and other authorized representatives of Purchaser reasonable access during normal business hours to all employees, properties, books and records of the Dental Practice and shall permit such persons, at Purchaser's expense, to make copies of such books and records."

as the FPC Terminal and Software were expressly excluded from the sale. There is no evidence that any “patient list” was ever hidden or otherwise withheld from Tujetsch. There is no evidence that before June 30, 2004, the Dental Practice at any time failed to comply with Section 50 of the Dental Practice Act, meaning that all patient information had been updated for each patient, as required by law, at the time of each office visit, and maintained in Patient Charts owned by Seller and located in the Dental Practice. There is no evidence that any of the professionals working in the Dental Practice as of June 30, 2004 noticed any lack of patient lists or inability to contact patients on or after June 27, 2004, or that any equipment was not in working order on that date. *See* Group Exhibit G

Tujetsch never gave written notice to Dr. Pusateri and Steven Jesser about “patient lists” in conformity with Section 9.07 of the Agreement. The first writing that expressed any concern about the Dental Practice was received by Dr. Pusateri in late May 2005, over 16 months after the sale, and concerned the number of active patients, not patient lists. The undisputed facts (and simple common sense) disprove the absurd notion that Tujetsch somehow ran the Dental Practice for over 16 months before first noticing that she was unable to contact its patients, and the equally absurd notion that Seller had both the right¹⁴ and the duty to deliver to Tujetsch -- or retain, for over 16 months after the sale -- a list of “active patients” on an FPC Terminal that Seller never owned, and expressly did not convey to Tujetsch

B. There is No Evidence of Any Misstatement Regarding “Active Patients” or “Equipment.”

In Count II, Tujetsch seeks “indemnification” for unspecified losses she suffered in reliance on the June 27, 2004 recital that the Dental Practice had treated approximately 1,200

¹⁴ If Defendants had retained a list of “active patients” no doubt Tujetsch would call that a breach of the Agreement, and evidence of an intent to steal patients.

patients within the previous twenty-four months according to First Pacific Corporation Software. Tujetsch mischaracterizes this citation to FPC Software as a “representation and warranty”¹⁵ of Pusateri, and asserts that it was false when made by Pusateri, because in October 2005 FPC reported fewer than 1,200 “active patients.” However, since July 2006 Tujetsch has been on notice that she cannot rely on any report issued by FPC to prove her overstatement theory, and an unspecified review of unspecified “patient files” -- conducted over 16 months after the sale -- is not evidence of what the FPC Software reported as of June 27, 2004 -- let alone that Dr. Pusateri misstated that Exh. I, *passim*. Even if it were, by her own admission, Tujetsch cannot have relied on a representation first made on June 27, 2004 when she made offers of \$150,000 and \$165,000 for the Dental Practice over a month earlier, on May 1 and May 10, 2004, respectively. There is no evidence to support Tujetsch’s overstatement theory, and none can be adduced in response to this motion, inasmuch as the theory is based on obvious distortions of what the Agreement actually says about “active patients.”

The June 27, 2004 recital as to “active patients” is as reported by the FPC Software. The undisputed evidence shows that FPC Pacific software reported, in April 2004, that the Dental Practice had treated 1,223 patients in the 24 months before December 2003, and 1,227 patients in the 24 months before April 2003. See Exh. I, ¶¶94-107. There is no evidence that Dr. Pusateri failed accurately to repeat the tally of “active patients” reported by FPC Software in the Practice Overviews-- after reconfirming it, on June 27, 2004 -- at the time he executed the Agreement. The recital does not claim to be based on a physical list of “active patients” owned by Seller and compiled during a manual review of Patient Charts. No manual “review” of unspecified patient

¹⁵ The Representations and Warranties of Seller are set forth in Article III of the Agreement, beginning on page 4 of the Agreement. They do not mention, let alone make any representation and warranty about, “active patients.”

files, purportedly first undertaken by Tujetsch over 16 months after the sale, can change this simple, irreducible fact. If Tujetsch wished to contract with FPC to preserve all pre-closing data regarding “active patients” that was entirely up to her. However, her apparent failure to do so does not give rise to any cause of action against Defendants.

C. There Is No Fraud In The Inducement, and No Right to Rescind.

Fraud in the inducement of a contract is a defect that renders the contract voidable at the election of the innocent party. Tower Investors, LLC v. 111 East Chestnut Consultants, Inc., 371 Ill. App. 3d 1019, 1030 (2007). Fraud in the inducement must be proven by clear and convincing evidence. Fox v. Heimann, 375 Ill. App. 3d 35, 47 (1st Dist. 2007). There are only two, mutually exclusive remedies available to a plaintiff with a claim of fraudulent inducement: a) rescission; or b) damages calculated as the difference between the value of the property received and the property promised. Estate of Neprozatis, 62 Ill.App.3d 563, 570 (1st Dist. 1978) (citation omitted).

There is no evidence that any “equipment” of the Dental Practice was not in working order on June 27 2004, the date Tujetsch took possession of the Dental Practice. Likewise, as demonstrated above, there is no evidence of any overstatement of “active patients” as reported by FPC Software. Even if there were, Tujetsch is not entitled to rescission of the Agreement and the Lease, because a plaintiff who elects rescission “must place the other party in status quo . . .” Neprozatis, 62 Ill App.3d at 570-571. Restoration of the status quo ante requires that the party seeking rescission promptly restore to the other party the consideration received under the contract. Fogel v. Enter. Leasing Co., 353 Ill. App. 3d 165, 173 (1st Dist. 2004). For over two years after October 2005, the time she purportedly first discovered the “fraud,” and over 16 months after filing her June 2006 complaint for “rescission” of the Agreement and the Lease, Tujetsch continued to maintain exclusive possession of the Dental Practice in the Premises

demised by the Lease.

There is no evidence that Tujetsch ever attempted to return Defendants to the status quo ante -- let alone that she attempted to do so promptly after discovering the "fraud." Tujetsch cannot now turn back the clock to return the Dental Practice as of October 2005, when it still existed. Tujetsch' only possible remedy is an affirmation of the Agreement and damages equal to the difference between the value of the dental practice received, and the dental practice promised. Estate of Neprozatis, 62 Ill App.3d at 570. However, there is no evidence that Tujetsch failed to receive the dental practice that she was promised, or that she overpaid for the Dental Practice that she received -- let alone that that she was induced to overpay by means of a purported misrepresentation first made over a month after agreement on price.

CONCLUSION

For the foregoing reasons, Defendants move this Court to enter summary judgment in their favor as to Counts I, II, and III, and providing such other and further relief as the Court deems just and appropriate.

Dated: January 10, 2010

Respectful submitted,

TODD C. PUSATERI, FIRST DENTAL, P.C. and FIRST
DENTAL OF ORLAND PARK, P.C.,



By: _____
One of Their Attorneys

Kent Maynard, Jr.
KENT MAYNARD & ASSOCIATES LLC
17 North State Street, Suite 1700
Chicago, IL 60602
TEL: 312/423-6586
Firm Id. No. 41822

EXHIBIT A

Your search returned 7 case(s) SCROLL DOWN AND CLICK ON CASE NUMBER

Search Criteria

Word verification

pasffed

Before clicking Search button, type the word that you see on this picture in the box provided to the right

Search by Last Name
Search by First Name
Search by Date of Birth (mm-dd-yyyy)
Search by Social Security Number

Search by Company Name

Search for Case Number

Search by Traffic ticket number

Additional criteria for all search types
Start Filing Date (mm-dd-yyyy)
End Filing Date (mm-dd-yyyy)

tujetsch
mary
Need help paying your traffic ticket?

Search

Search Results - 7 case(s) returned

Case Number	Party	Case Type	Party Type	D O.B.	S S.N.	Status
45D01-0412-CC-00354	MARY A TUJETSCH	Civil Collections D01	Civil Defendant			Redocketed
45D10-0702-MF-00117	MARY TUJETSCH	Mortgage Foreclosure - D10	Civil Defendant			Closed
45D02-0212-PL-00250	MARY TUJETSCH	Plenary E	Civil Defendant			Closed
45D11-0808-MF-00320	Mary Tujetsch	Mortgage Foreclosure - D11	Civil Defendant			Closed
45D12-0511-PL-00037	MARY TUJETSCH	Plenary D12	Plaintiff			Open
45D09-0212-SC-05299	MARY A TUJETSCH	Sm Claims - D9	Civil Defendant			Closed
45D08-0205-PL-02999	MARY A TUJETSCH	Plenary D8	Civil Defendant			Closed

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY A. TUJETSCH,)	
	)	No. 06 CH 11607
Plaintiff,	)	(transferred to Law Division,
	)	Commercial Calendar "W")
vs)	
	)	Hon. Charles R. Winkler
TODD C. PUSATERI, FIRST DENTAL,	)	Room 2304
P C and FIRST DENTAL OF ORLAND)	
PARK, P C ,)	
)	
Defendants.)	

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO
DEFENDANTS' INTERROGATORIES NOS. 5, 7, AND 22

EXHIBIT A

Mary A. Tujetsch was involved and/or remains involved, either as a plaintiff or defendant, in the civil litigation proceedings identified below.

No.	Case Name	Case Number	Forum	Plaintiff(s)	Def(s)	Date Filed
1	<i>Tujetsch v. Bradley Dental, LLC</i>	09-CV-05568	N.D. Ill.	Dr. Mary Tujetsch	Bradley Dental, LLC	09/08/2009
2	<i>Johnson Bell Ltd v. Tujetsch</i>	2009-M1-500977	Cook County - Civil	Johnson Bell Ltd.	Dr. Mary Tujetsch	07/06/2009
3	<i>Tujetsch v. Chang</i>	2008-L-006526	Cook County - Law	Dr. Mary Tujetsch	Dr. Christine Chang	06/16/2008
4	<i>Tujetsch v. Wood</i>	2008-M1-147028	Cook County - Civil	Dr. Mary Tujetsch	Susan Wood	06/11/2008
5	<i>Tujetsch v. Mischer</i>	2007-L-005640	Cook County - Law	Dr. Mary Tujetsch	Dr. Kenneth Mischer	05/31/2007
6	<i>Tujetsch v. Fedin</i>	2007-M1-110745	Cook County - Civil	Dr. Mary Tujetsch	Vlad Fedin	02/13/2007 12/08/2008
7	<i>Tujetsch v. Pusateri</i>	2006-CH-11607	Cook County - Law (from Chancery)	Dr. Mary Tujetsch	Dr. Todd Pusateri et al	06/12/2006
8	<i>Johnson Bell Ltd v. Tujetsch</i>	2005-L-50714	Cook County - Law	Johnson Bell Ltd.	Dr. Mary Tujetsch	07/29/2005
9	<i>Johnson Bell Ltd v. Tujetsch</i>	2004-M1-164667	Cook County - Civil	Johnson Bell Ltd.	Dr. Mary Tujetsch	09/30/2004
10	<i>Special Assets Inc v. Tujetsch</i>	2003-M1-700621	Cook County - Civil	Special Assets Inc., Pittsfield Development LLC	Dr. Mary Tujetsch	01/08/2003 01/02/2009
11	<i>Partnership Concepts Realty v. Tujetsch</i>	45-D08-0205-SC-2999	Lake County (IN) - Sup. Ct.	Partnership Concepts Realty	Dr. Mary Tujetsch	05/30/2002 06/20/2002
12	<i>Tujetsch v.</i>	1998-M1-	Cook	Dr. Mary	John	08/27/1998

No.	Case Name	Case Number	Forum	Plaintiff(s)	Def(s)	Date Filed
	<i>Block</i>	041131	County - Civil	Tujetsch	Block	
13	<i>Massel v Tujetsch</i>	1999-M1-161173	Cook County - Civil	Maria Massel	Dr. Mary Tujetsch	12/13/1999
14	<i>Robert A Green Ltd v. Tujetsch</i>	1998-M1-168856	Cook County - Civil	Robert A. Green Ltd.	Dr. Mary Tujetsch	12/30/1998
15	<i>Dental Preferred v. Mary Tujetsch</i>	1998-M1-134133	Cook County - Civil	Dental Preferred	Dr. Mary Tujetsch	06/25/1998
16	<i>Tujetsch v. Johns</i>	1995-M1-40308	Cook County - Civil	Dr. Mary Tujetsch	Alice D. Johns	05/10/1995
17	<i>Tujetsch v. Esselin</i>	1995-M1-040309	Cook County - Civil	Dr. Mary Tujetsch	Joe Esselin	02/14/1995
18	<i>Tujetsch v. Jankowski</i>	1995-M1-040310	Cook County - Civil	Dr. Mary Tujetsch	Leontine Jankowski	02/14/1995

Document #:921269

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

MARY A. TUJETSCH,)
)
Plaintiff,)
)
v)
) 06 CH 11607
) (Transferred to Law Division,
TODD C PUSATERI, FIRSI DENTAL,) Commercial Calendar "W")
P C and FIRST DENTAL OF ORLAND) Hon Charles R Winkler
PARK, P C,) Room 2304
)
Defendants)
)
_____)

DEFENDANTS' MOTION FOR SANCTIONS FOR DISCOVERY ABUSE

Defendants, Dr. TODD C PUSATERI, FIRSI DENTAL, P C, and FIRST DENTAL OF ORLAND PARK, P C by and through their attorneys, KENT MAYNARD & ASSOCIATES LLC, hereby move this Court for entry of an Order providing an appropriate sanction for continuing and egregious discovery abuse. In support of this motion, Defendants state as follows:

INTRODUCTION

Plaintiff is the purchaser of a dental practice in Orland Park, Illinois ("Dental Practice"), pursuant to an asset sale agreement between Tujetsch and First Dental, PC ("Seller"), executed on June 27, 2004 ("Agreement"). She is also a serial and vexatious litigant who has been involved in so much litigation over the past twenty years -- including multiple disputes with other dentists roughly analogous to the instant case -- that it is difficult to list it all in one place. That is the inescapable conclusion to be drawn from a supplemental discovery response served by her recently, in response to an interrogatory first served on her over four years ago. As a result of Tujetsch's years of stonewalling and discovery abuse, intervention of this Court is now

needed to avoid extreme prejudice to Defendants

FACTUAL BACKGROUND

On June 30, 2004, Plaintiff took possession of the Dental Practice and also entered into a five-year lease on the Dental Practice's office, which was owned by Dr Pusateri Plaintiff abandoned the Dental Practice's leasehold in October 2007, ostensibly because of breaches of the lease agreement involving documentation of "Additional Rent" and interference with her right of quiet enjoyment by, among other things, scheduling landscaping maintenance during business hours¹

In this action, Plaintiff accuses Defendants of breaching the Agreement by not delivering to her all "patient lists" of the Dental Practice at the closing, and by overstating the number of "active patients" of the Dental Practice in the Agreement² Plaintiff first requested a list of the 1,200 "active patients" treated in the Dental Practice in the 24 months before June 2004 after being possession of the practice for about 15 months, in October 2005, and claims to have first given notice of a patient list-related default under the Agreement as of October 24, 2005 See Amended Complnt, at ¶38 ("Tujetsch notified defendants of the breach of the Agreement on or about October 24, 2005 ")

In response, Defendants have asserted that this action constitutes, at bottom, an attempt to blame Defendants for Plaintiff's incompetent management of the Dental Practice in the three years during which she ran it into the ground (before she abandoned it), and an attempt to blame

¹ See letters from Plaintiff to Landlord attached hereto as Group Exhibit A

² As Plaintiff conceded in her deposition, "active patient" is a term of art with a long-accepted definition among dentists, as confirmed by learned publications promulgated by such authorities as the American Dental Association See Group Exhibit B However, notwithstanding the fact that Plaintiff has been a licensed dentist since 1989, and had purchased four dental practices before the Dental Practice, she now claims that she is not bound by the definition of "active patient" that she concedes is employed by dental professionals, but may instead substitute her own, subjective understanding of "active patient" for that which is universally accepted in the dental community

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Defendants for patients' abandonment of the Dental Practice after Tujetsch acquired it. However, the Agreement does not contain a guarantee that patients of the Dental Practice will like Tujetsch and continue to patronize the Dental Practice after Plaintiff acquired it, nor does it guarantee that the Dental Practice will continue to thrive after the change in management. Defendants have asserted that if the Dental Practice failed after Plaintiff took it over, that was because Plaintiff failed to manage the Dental Practice competently, and failed to retain and attract patients. It is Defendants' view that over a year after she took possession of the Dental Practice, after she had alienated the vast majority of its patients, Tujetsch attempted to obscure her own professional inadequacies by bringing the demonstrably baseless accusations of fraud and wrongdoing in this case.

Shortly after this case commenced, Defendants suspected that Plaintiff had a lengthy record of failure as a dentist, both professionally and financially, and that discovery would corroborate the theory that the Dental Practice failed as a result of Plaintiff's own incompetence and mistreatment of patients, as distinct from any wrongdoing of Defendants. Defendants further believed that after each of her financial and professional failures, Tujetsch had, in an attempt to avoid the consequences of her own mistakes, accused other dental professionals of egregious acts of fraud and wrongdoing. By contrast, Plaintiff contends that the failure of the Dental Practice is the only blemish in an otherwise lengthy, successful, and profitable career.

Defendants have, in this litigation, repeatedly sought to discover previous instances in which Plaintiff was the subject of patient complaints or suffered financial losses or professional setbacks (such as being hired and fired from dental positions in a matter of a few months). Accordingly, over four years ago, on October 23, 2006, Defendants propounded their interrogatory number 5 to Plaintiff asking Plaintiff to disclose whether Tujetsch had ever been a

litigant in any civil matter

With full knowledge of the foregoing, Plaintiff and her counsel have knowingly sought to obstruct -- and have in fact wrongfully obstructed for years -- Defendants' access to evidence demonstrating that Plaintiff has a lengthy record of failure as a dentist,³ and that, as a cover up after each such failure, made wild accusations of fraud and wrongdoing against other dental professionals -- all as a means of avoiding responsibility for her own mistakes. On December 8, 2010, Plaintiff suddenly admitted to involvement in 18 litigation matters, many of which involve serial accusations of fraud and even criminal wrongdoing against other dentists. Even after this recent admission, Tujetsch still has not produced a single piece of paper related to any of the prior cases.

ARGUMENT

I. Tujetsch Lied In Response To Interrogatory 5, and Then Reaffirmed Her Lie, in Response to Interrogatory 22

On January 16, 2007, Tujetsch provided the following response to interrogatory 5:

5. Has Mary Tujetsch ever been a litigant in any civil matter before this lawsuit? If yes, please state the name of the parties to said lawsuit(s), the case number(s), the county in which it was filed, the date it was filed and the disposition, if any.

RESPONSE: Plaintiff objects to this interrogatory on the basis of relevance, overbreadth and harassment. Without waiver of this objection, Plaintiff responds that she was a plaintiff in a suit in the early 1990's related to a car accident, and has as a plaintiff filed a number of small claims suits related to non payment of dental services provided to patients.

Hereafter, Plaintiff never seasonably supplemented the foregoing response to interrogatory 5

³ After over twenty years of practice, and numerous short stints ending with her termination for cause in various dental practices, Plaintiff has now hit "rock bottom" in the dental profession. Because she is unemployable in any established dental practice, she now works sporadically as an itinerant dental consultant traveling to senior assisted living and convalescent facilities.

and never produced any documents relating to her disputes with the other dentists and dental professional she has associated with, notwithstanding repeated requests from Defendants Defendants pressed for fuller information about prior litigation by propounding their interrogatory 22, which made it clear that Defendants sought disclosure of any proceeding, legal or administrative, in which Tujetsch had been involved. On February 1, 2010, Tujetsch and her lawyers reaffirmed Tujetsch' false and incomplete response to interrogatory 5 when they provided the following false and incomplete response to interrogatory 22:

22. Have you ever been a plaintiff or a defendant in, or the subject of any civil, criminal, administrative, or arbitration proceedings, including, without limitation, any formal or information proceeding or hearing before any licensing body? If so, please provide the following as to each such proceeding:

Case Name	Case Number	Forum	Plaintiff(s)	Defendant(s)

ANSWER: See Answer to Interrogatory No. 5 of Defendants' First Interrogatories to Plaintiff. Plaintiff does not recall specifics with respect to lawsuits filed prior to this lawsuit.

Recently, after this case had been pending for over three years -- and only about one month before the impending discovery cutoff in this case -- Plaintiff had a sudden 11th-hour epiphany about 17 previously undisclosed litigation matters. On December 12, 2010, through her counsel, Tujetsch provided the following "supplemental response" to interrogatory number 5:

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Mary A. Tujetsch was involved and/or remains involved, either as a plaintiff or defendant, in the civil litigation proceedings identified below.

No.	Case Name	Case Number	Forum	Plaintiff(s)	Def(s)	Date Filed
1	<i>Tujetsch v. Bradley Dental, LLC</i>	09-CV-05568	N.D. Ill.	Dr. Mary Tujetsch	Bradley Dental, LLC	09/08/2009
2	<i>Johnson Bell Ltd v. Tujetsch</i>	2009-MI-500977	Cook County - Civil	Johnson Bell Ltd.	Dr. Mary Tujetsch	07/06/2009
3	<i>Tujetsch v. Chang</i>	2008-L-006526	Cook County - Law	Dr. Mary Tujetsch	Dr. Christina Chang	06/16/2008
4	<i>Tujetsch v. Wood</i>	2008-MI-147028	Cook County - Civil	Dr. Mary Tujetsch	Susan Wood	06/11/2008
5	<i>Tujetsch v. Mischer</i>	2007-L-005640	Cook County - Law	Dr. Mary Tujetsch	Dr. Kenneth Mischer	05/31/2007
6	<i>Tujetsch v. Fedin</i>	2007-MI-110745	Cook County - Civil	Dr. Mary Tujetsch	Vlad Fedin	02/13/2007 12/08/2008
7	<i>Tujetsch v. Fusateri</i>	2006-CH-11607	Cook County - Law (from Chancery)	Dr. Mary Tujetsch	Dr. Todd Fusateri et al.	06/12/2006
8	<i>Johnson Bell Ltd v. Tujetsch</i>	2005-L-51714	Cook County - Law	Johnson Bell Ltd.	Dr. Mary Tujetsch	07/29/2005
9	<i>Johnson Bell Ltd v. Tujetsch</i>	2004-MI-164667	Cook County - Civil	Johnson Bell Ltd	Dr. Mary Tujetsch	09/30/2004
10	<i>Special Assets Inc v. Tujetsch</i>	2003-MI-700621	Cook County - Civil	Special Assets Inc., Pittsfield Development LLC	Dr. Mary Tujetsch	01/08/2003 01/02/2009
11	<i>Partnership Concepts Realty v. Tujetsch</i>	45 D08-0205 SC-2999	Lake County (IN) Sup. Ct.	Partnership Concepts Realty	Dr. Mary Tujetsch	05/30/2002 06/20/2002
12	<i>Tujetsch v.</i>	1998-ME-	Cook	Dr. Mary	John	08/27/1998

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No.	Case Name	Case Number	Forum	Plaintiff(s)	Def(s)	Date Filed
	<i>Block</i>	041131	County Civil	Tujetsch	Block	
13	<i>Massel v. Tujetsch</i>	1999-MI-161173	Cook County Civil	Maria Massel	Dr. Mary Tujetsch	12/13/1999
14	<i>Robert A. Green Ltd. v. Tujetsch</i>	1998-MI-168856	Cook County - Civil	Robert A. Green Ltd.	Dr. Mary Tujetsch	12/30/1998
15	<i>Dental Preferred v. Mary Tujetsch</i>	1998-MI-134133	Cook County Civil	Dental Preferred	Dr. Mary Tujetsch	06/25/1998
16	<i>Tujetsch v. Johns</i>	1995-MI-40308	Cook County - Civil	Dr. Mary Tujetsch	Alice D Johns	05/10/1995
17	<i>Tujetsch v. Esselin</i>	1995-MI-040309	Cook County - Civil	Dr. Mary Tujetsch	Joe Esselin	02/14/1995
18	<i>Tujetsch v. Jankowski</i>	1995-MI-040310	Cook County - Civil	Dr. Mary Tujetsch	Leonine Jankowski	02/14/1995

The foregoing avalanche of late disclosed litigation is no trivial matter. Misher, Fedin, Chang, and Bradley Dental, listed above as defendants in cases filed by Tujetsch, all appear to be dentists or dental practices sued by Tujetsch and variously accused of fraud, breach of contract, sex and age discrimination and/or conversion. The suit against Dr. Misher accuses Dr. Misher of converting dental equipment owned by Tujetsch. Massel, who brought an action against Tujetsch is a former patient of Tujetsch who sought to recover fees paid to Tujetsch for services that were never provided. Tujetsch concealed all of the foregoing actions in her response to interrogatory 5, and to date has never produced a single piece of paper relating to any of those cases.

A cursory examination of public records available on websites easily accessible to Plaintiff (and her counsel) would have demonstrated that the response to interrogatory 5 was obviously false and incomplete. A cursory search of the internet using simple, widely available search tools also demonstrates that the supplemental disclosure provided recently by Tujetsch is

still incomplete, in that it omits an action filed against Tujetsch in the Circuit Court of Cook County by John A. Clark (Case No. 2009-CH-21858), see Exhibit C, and because it omits at least 6 actions filed against Tujetsch in state courts in Indiana, as follows:

Search Results - 7 case(s) returned					
Case Number	Party	Case Type	Party Type	D.O.B. / S.S.N.	Status
45001-0412-CC-00354	MARY A TUJETSCH	Civil Collections D01	Civil Defendant		Redocketed
45010-0702-MF-00117	MARY TUJETSCH	Mortgage Foreclosure - D10	Civil Defendant		Closed
45002-0212-PL-00290	MARY TUJETSCH	Plenary E	Civil Defendant		Closed
45011-0606-WF-00320	Mary Tujetsch	Mortgage Foreclosure - D11	Civil Defendant		Closed
45012-0511-PL-00037	MARY TUJETSCH	Plenary D12	Plaintiff		Open
45009-0212-SC-03299	MARY A TUJETSCH	Sm. Claims - D9	Civil Defendant		Closed
45008-0205-PL-02000	MARY A TUJETSCH	Plenary D8	Civil Defendant		Closed

It could have perhaps been attributed to inadvertence if one or two of the forgoing 25 cases involving Tujetsch as a party had been omitted, inasmuch as Plaintiff has been involved in so much litigation with so many parties over such an extended period to time that it is difficult to keep track of it all. But to omit disclosure of all of the 25 cases for over three years is simply inexcusable -- and sanctionable.

The first of the Indiana actions listed above appears to be a collection action filed by Johnson & Bell, one of the countless law firms that have at one time or another represented Tujetsch in litigation; the second is a foreclosure action filed by Wells Fargo Bank. Both of these matters are certainly discoverable, inasmuch as they are pertinent to the notion that Plaintiff has always -- when not the victim of fraud -- been successful both financially and professionally.

Significantly, Defendants' preliminary investigation of some of the litigation matters now belatedly disclosed suggests that Plaintiff has either sued or been sued by virtually every dentist or dental practice that she has been associated with over the course of her entire career -- even

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when her association lasted as little as a month:

Robert A. Green, Ltd., et al. v. Mary A. Tujetsch, DDS; Case No 98 M1 16885 Plaintiff produced in discovery an asset purchase agreement showing that in August 1996 Plaintiff contracted to purchase a dental practice from Robert A Green, D D S for \$52,500, payable pursuant to an initial down payment of \$12,625, with the balance of \$39,375 documented by three Promissory Notes, executed by Tujetsch, in the respective sums of \$12,000, \$8,000, and \$19,375 However, Plaintiff failed to disclose that Dr Green's estate sued Tujetsch after she defaulted in payment of almost half of the purchase price, ostensibly because Dr Green had died before he could personally transition patients of the practice.

On information and belief, the sale occurred at a time when the parties knew that Dr Green was terminally ill The purchase agreement nonetheless contemplated that Dr Green would endeavor to spend time transitioning patients of the practice to Tujetsch, and would be paid for that However, when Green died, Tujetsch characterized his death as a breach of the agreement, and refused to tender any further payment, forcing Green's estate to bring a collection action for payment of the balance of the purchase price The litigation was not resolved until September 2001

Special Assets Inc. v. Tujetsch; Case No 2003-M1-700621 On information and belief, this is a forcible action filed by the Pittsfield Building against Tujetsch when she ceased to pay rent on her office there in 2003 The action culminated in a default judgment, an order of possession, and Tujetsch being locked out of her office In the course of those proceedings, Tujetsch circulated a letter to "Neighbors and Friends" in the Pittsfield Building in which she accused building management and its legal counsel of egregious and malicious acts of deceit

Later, the parties entered into an agreed order providing that Tujetsch would pay

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landlord's attorney fees, bring past-due rent current, and negotiate in good faith for a one-year lease. The Special Assets dispute is pertinent to the instant case because it seems to show that by 2003 Tujetsch's dental practice in Chicago was faltering and financially troubled, inasmuch as it was apparently not paying its rent. Defendants are entitled to conduct discovery into the Special Assets case against Plaintiff, but have received nothing thus far, except the 11th-hour admission that the case once existed.

Tujetsch v. Fedin; Case No. 2007-L-005640. In October or November of 2004, Tujetsch moved her Chicago practice out of the Pittsfield Building, where she was no longer well received, to the offices of Dr. Vlad Fedin at 625 N. Michigan Avenue, which she shared with Fedin pursuant to a written agreement. The Fedin case concerns another dispute of Plaintiff with another dentist in which the other dentist is accused of attempting to cheat Tujetsch. On information and belief (no documents regarding the Fedin case have been produced) the dispute arises out of the office-sharing arrangement of Fedin and Tujetsch in which Tujetsch agreed to defray a pro rata share of office expenses. After Fedin declined to renew the arrangement, Tujetsch claimed that Fedin had overcharged her for common expenses, and thereby attempted to cheat her out of \$15,000.

Tujetsch v. Misher; Case No. 2007-L-005640. As with all of the other late-disclosed litigation matters, no documents have ever been produced by Tujetsch with respect to the Misher case. However, on information and belief, in Misher Tujetsch accuses Dr. Misher, a dentist, of converting chattels that Tujetsch abandoned in a suit of the Pittsfield Building after moving her practice out of that building to 625 N. Michigan Avenue. Misher and Pittsfield ownership responded that the chattels had been abandoned by Plaintiff, who sought damages in excess of \$80,000. In any event, the Misher case is another dispute of Plaintiff involving another dentist.

who is accused of trying to cheat her Misher demonstrates that whenever Tujetsch suffers a setback, the cause is invariably a fraud or wrongful act perpetrated by another person -- usually a dentist who has had the misfortune of entering into a business transaction with her

Tujetsch v. Chang; Case No 2008-L-006526 On information and belief, in Chang Tujetsch accuses a dentist of reneging on an oral agreement to permit Tujetsch to practice out of Chang's offices on North Halsted Street in Chicago, and thereafter to purchase Chang's dental practice, thereby causing over \$500,000 in damages. Within a month of beginning to share office space with Dr Chang, in May 2006, Dr Chang told Tujetsch that she had to leave, and when Tujetsch refused, locked her out of the office. Tujetsch accuses Dr Chang of wrongfully converting all of Tujetsch's patient records, and destroying her Chicago-based dental practice, by leaving Tujetsch with no place to see patients. Chang is highly pertinent to the instant litigation in that it demonstrates Tujetsch's *modus operandi* of accusing another dentist of fraud and breach in connection with the purported purchase of a dental practice.

Tujetsch v. Bradley Dental, LLC This matter involves an EEOC proceeding that Tujetsch filed against Dr Koushan Azad, the owner of Bradley Dental L L C /Dental Dreams Company (EEOC Charge No 440-2008-08288), and an action that she filed in the Northern District of Illinois, Tujetsch v. Bradley Dental, L.L.C.; Case No 1:09-cv-05568. Tujetsch has never disclosed the EEOC proceeding, and only recently disclosed Case No 1:09-cv-05568 in her recent supplemental response, over a year after it was filed. Both the EEOC proceeding and the action filed against Bradley Dental concern a dispute of Tujetsch with fellow dentists and dental professionals after Tujetsch was fired for incompetence. After she was fired by Bradley Dental, Tujetsch followed her usual pattern of striking back with wild accusations of fraud and other egregious wrongdoing by the dental professionals.

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After the EEOC dismissed Tujetsch' wild charges for lack of probable cause, Tujetsch filed an action in the Northern District Bradley Dental denied the allegations of the complaint, propounded discovery, and sought to depose Tujetsch. As in this case, Tujetsch refused to cooperate. After multiple motions to compel responses to discovery and produce Tujetsch for a deposition, Tujetsch settled the case for what appears to have been a token amount. However, in the course of settling the Bradley Dental matter, Tujetsch expressed concern, in open court, that she had another civil action for damages pending, and did not wish the litigants in this matter to receive any documents pertinent to the Bradley Dental case. After Tujetsch's supplemental disclosure to interrogatory, a subpoena was issued to Bradley Dental. Similar subpoenas have been issued to Dr. Chang, Dr. Fedin, and Dr. Azad.

II Tujetsch Has Never Provided a Complete Work History In Response To Interrogatory 18

On December 15, 2009 Defendants served Tujetsch with their interrogatory no 18, as follows:

18 Please list all of the dental clinics or offices in any state in which Plaintiff has practiced dentistry since she first received a license to practice dentistry in any state. For each listed dental practice please provide the following:

City/State	Address	Name of Practice	Phone Number	Name of the Dentist (if any) who practices at the office
		e.g. independent dental practice		e.g. associated by name, business or other title of office of dentist

On February 1, 2010, Plaintiff served Defendants with the following response to interrogatory 18, which was never thereafter supplemented:

Name/Address <i>Name and address of dental clinic or office</i>	Owner <i>Name and Address of owner(s) of practice</i>	Terms of Tenure <i>e.g., independent contractor/lessee/employee</i>	Dates of Tenure <i>From To</i>	Reason for Departure <i>(where applicable) e.g., terminated by practice/voluntary departure/expiration of contract</i>
Dr. Mary Tujetsch	25 E. Washington Suite 1903 Chicago, IL; Moved to 55 E Washington in 1996	Self-employed	1991 - 1996	Bought second office at 55 E Washington
Dr. Mary Tujetsch	55 E. Washington Suite 1123 Chicago, IL; Moved to 625 N Michigan	Self-employed	1996 - 2003(?)	Building converted to condo

Dr. Mary Tujetsch		Self-employed	1999	
Dr. Mary Tujetsch	18025 Wentworth Lansing, IL Moved to 1469 Ring Road, Calumet City (2003), then moved to Orland Park (2008?)		2002 - 2008	Business at residence (2002 - 2003)
First Dental (2004 - 2005); Dr. Mary Tujetsch, DDS	7714 W. 159 th St Orland Pk, IL	Self-employed	7/04 - 11/08	Closed Office
Transition Dental	8080 Utah St Merrillville, IN	Contract Employee	6/7/09 - 10/29/09	Refused to take cut in pay

The foregoing response to interrogatory 18 selectively omits the multiple dental practices that hired and then fired Tujetsch just weeks later -- and that resulted litigation in which Tujetsch accused other dental professionals of fraud

The omitted dental practices include, on information and belief, the following: (i) the

dental offices of Vlad Fedin at 625 N. Michigan Avenue, Chicago, which Tujetsch shared with Fedin from November 2004 though approximately May 2006, when she moved her Chicago dental practice to the offices of Christine Chang at 2500 N Halsted, Chicago; (ii) the dental offices of Christine Chang at 2500 N. Halsted, Chicago, which Tujetsch shared with Chang from late May 2006 until June 28, 2006, when Chang told her to get out and changed the locks; (iii) the offices of Michigan Avenue Dental Associates, at 122 South Michigan Avenue, Chicago, where Tujetsch worked from September 2008 until November 2008; and (iv) the Kankakee office of Bradley Dental, where Tujetsch worked from April 2008 until she was fired in July 2008. Tujetsch omitted to mention any of the foregoing because each ended with her suing a fellow dentist, and accusing him or her of fraud.

III. This Court Should Impose a Sanction To Prevent Prejudice

Under Rule 201(k), parties must make reasonable efforts to facilitate the discovery process and to resolve differences without the assistance of the Court. Defendants tried for over a year to cajole Tujetsch to produce the litigation history omitted until recently; a complete work history has never been received. In this case, no further consultation with opposing counsel can undo the continuing and egregious discovery abuse outlined above. Illinois Supreme Court Rule 219 provides for the imposition of sanctions for discovery misconduct.

If any party fails to comply with discovery rules, the court may, in addition to taking other appropriate action, impose on (1) the offending party, (2) that party's attorney, or (3) both, appropriate sanctions, which may include an order to pay the opposing party reasonable expenses and attorneys fees arising out of the misconduct. If the misconduct was willful, a monetary penalty may also be imposed. IL Supreme Court R 219(c). In addition to other remedies, the court may order:

- (i) that further proceedings be stayed until the order or rule is complied with;
- (ii) that the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;
- (iii) that the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
- (iv) that a witness be barred from testifying concerning that issue;
- (v) that, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed without prejudice;
- (vi) that any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or
- (vii) that in cases where a money judgment is entered against a party subject to sanctions under this paragraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct

IL Supreme Court R 219(c) At a minimum, Plaintiff should be ordered to produce documents pertinent to her disputes with other dentists and dental practices, and Defendants should be afforded time to depose Dr Fedin, Dr Chang, and Dr Azad

CONCLUSION

Defendants respectfully request that this Court enter an Order imposing appropriate sanctions for Plaintiff's failure timely to disclose her litigation and work history. Counsel had over three years to ensure that Plaintiff's responses to written discovery were reasonably complete, *before* discovery was scheduled to be closed. This Court should not permit counsel's unexplained failure to exercise reasonable diligence and affirmative misstatement of facts to create extreme prejudice on the eve of trial.

Dated: December 20, 2010

Respectfully submitted,

TODD C PUSATERI, FIRST DENIAL, P C and FIRST
DENIAL OF ORLAND PARK, P C ,



By: _____
One of Their Attorneys

Kent Maynard, Jr
Eleazar E Calero
KENT MAYNARD & ASSOCIATES LLC
17 North State Street, Suite 1700
Chicago, IL 60602
TEL: 312/423-6586
FAX: 312/264-4568
Firm Id. No. 41822

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EXHIBIT B

U.S. Equal Employment Opportunity Commission

<div style="border: 1px solid black; padding: 5px;"> <p>Dr. Koushan Azad Owner Bradley Dental L.L.C./ Dental Dreams Company 430 W. Erie Suite 200 Chicago, IL 60610</p> </div>	<p>PERSON FILING CHARGE</p> <p style="text-align: center;">Mary Tujetsch</p> <p>THIS PERSON (check one or both)</p> <p><input checked="" type="checkbox"/> Claims To Be Aggrieved</p> <p><input type="checkbox"/> Is Filing on Behalf of Other(s)</p> <hr/> <p>EEOC CHARGE NO. Amended 440-2008-08288</p>
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NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Title VII of the Civil Rights Act | <input type="checkbox"/> The Americans with Disabilities Act |
| <input checked="" type="checkbox"/> The Age Discrimination in Employment Act | <input checked="" type="checkbox"/> The Equal Pay Act |

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by **26-JAN-09** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **30-DEC-08** to **Mary B. Manzo, ADR Coordinator, at (312) 353-6180**
 If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Katarzyna Cychowska,
 Investigator

EEOC Representative

Telephone **(312) 353-7500**

Chicago District Office
500 West Madison St
Suite 2000
Chicago, IL 60661

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- RACE
 COLOR
 SEX
 RELIGION
 NATIONAL ORIGIN
 AGE
 DISABILITY
 RETALIATION
 OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
December 15, 2008	John P. Rowe, District Director	

5. Please refer to signed, attached contract.

I was one of three doctors hired to treat the patients of Bradley Dental on a full time basis. I am a forty eight (48) year old female dentist with nearly twenty years of experience treating patients in all phases of dentistry. I am a general dentist. The other two full time doctors were young, male, recent graduates with no experience in treating patients. From the start, I was discriminated against, like the two female dentists that were abruptly terminated shortly after I started working. I was subjected to age, gender, and retaliatory discrimination. I was not given the same resources, equipment, support staff, number of operatories, and patient allocation. This treatment directly resulted in lower compensation as I was compensated based on the number of patients I treated and the professional fees generated from the treatments. I was verbally abused, harassed, slandered, defamed, and retaliated against by one of my male colleagues, Dr. Patrick D. In addition, Debbie, the office manager, slandered, defamed, and lied about my performance to my supervisor, Dr. Koushan Azad. From the start, I spoke up about the unfair treatment to both Debbie, Dr. Azad, and my two male colleagues. Dr. Azad both acknowledged the problems and assured me that corrective measures would be taken. This did not happen.

With owner's knowledge and consent, the two male dentists were alleged to have been bribing the office personnel and business staff for patient referrals and insurance and fee-for-service patients. Debbie, the office manager, confirmed that the bribing had been taking place as she, herself, had been given money on the side. Debbie indicated that Dr. Azad was well aware of the bribing in the office. In addition, Cheyanne, Dr. Azad's dental assistant, informed me that she had been a witness to this exchange of money. Many of the dental assistants were aware of this bribing. This caused friction in the office as the two male doctors were giving money to some of the employees and I was not. The result of the bribing was that these male dentists were having patients "funneled" to them. I was being "passed over" for patient referrals and this negatively impacted my ability to make a living in this work environment. I was terminated due to my complaints regarding the misallocation of patients to two male doctors with no experience as well as my complaints about OSHA violations in the office.

Debbie, the office manager, constantly placed me in a bad situation by taking my confidential conversations and "leaking" information to the younger male dentists. This created animosity between Dr. Patrick D. and myself. The result of Debbie's actions caused harassment issues that were directed from Dr. Patrick D. to myself. This abuse severely affected my ability to do my job. Dr. Oancea, the second of the two male dentists acknowledged that injustices were taking place. Dr. Oancea informed me that Dr. Azad was well aware of what was taking place and he concluded our conversation by stating "He's not going to do anything about it."

I was forced to work with untrained and unqualified dental assistants who did not comply with OSHA requirements. These

violations ranged from appropriate attire to sterilization technique and procedures. When the younger, male dentists refused to work with several of these untrained dental assistants, the office manager would reduce the hours of my assistant, Nancy, and force me to work with the dental assistants that were rejected by the male doctors. These unqualified dental assistants were hired for minimum wage and had no knowledge of OSHA requirements or sterile technique. OSHA standards were violated on a constant basis. This unskilled and inexperienced support staff prevented me from doing my job and earning the same living as my male colleagues. One dental assistant, Tanisha, performed oral surgery on my pediatric patient after I left the operatory. When I was treating my next patient, Tanish informed me, "I got the tooth out for you, doctor." When I told Tanisha that what she had done was illegal and malpractice and I would have to report the incident, she recanted her story and said "the tooth fell out." This created a potential malpractice case for all concerned.

Two dental assistants, Kim and Tanisha, placed extracted teeth that had fallen on the floor, back onto the surgical tray, thus contaminating all of the surgical instruments intended for surgery. These untrained dental assistants did not comprehend when I would inform them that sterilization measures needed to be repeated, surgical set ups needed to be replaced with new set ups, and hand pieces needed to be sterilized after each patient. The fact that my requirements differed than that of my male colleagues created problems with dental assistants. Joleen, a dental assistant, contaminated oral surgery instruments by placing them in a dirty sink prior to setting them up on a surgical tray. When I was forced to reject the instruments for the safety of my patient, the office manager created problems for me and reported me to Dr. Azad. I was never given the opportunity to explain what had occurred. Later, Joleen informed me that Debbie had lied about the situation in order to defame me to Dr. Azad.

Debbie, the office manager, and Sandy, Dr. Azad's assistant, both formulated financial proposals for my patients. These proposals were presented by the doctor to the patients. These financial statements were fraught with errors that cost patients additional monies. These plans were found to be in error as I would be presenting them to the patients. These plans would have to be sent back to the business office four to five times per patient before I would eventually have to hand calculate the fees owed. I had to do the job of the business office in order to avoid financial misrepresentations that were charged out under my name and my reputation. These miscalculations took time away from my job and created animosity with Debbie and Sandy. In addition, my patients expressed concern^r outrage at all of the overcharges and miscalculations. This affected my ability to earn a living at Bradley Dental. A few days prior to my termination, I wrote Sandy a brief note indicating that she had incorrectly charged one of my patients regarding work that had already been completed and paid for. These errors are deducted from my paycheck. Sandy never responded to my note and never corrected a bill she knew to be

in error. Sandy also pressured me to write illegal prescriptions for her personal use. When I refused to jeopardize my license by breaking the law, I was retaliated against. Sandy also informed me that she wanted me to complete full mouth reconstruction on her mouth as she had several missing teeth. She stated she wanted me to come into work hours before my first patient and stay hours after my work was completed in order to complete her dental treatment. She stated that she wanted my skill, expertise, and experience as she did not think the other two male dentists were as qualified or experienced. I did not do as Sandy instructed as I was already working fifty hours per week and then commuting three hours per day for work. Incidentally, I was to complete Sandy's full mouth reconstruction for zero compensation as Sandy did not intend to pay me. Following these instances, Sandy began to speak negatively about me in the office.

Dental assistants were hired with an expectation and promise of full time employment and then reduced to part time employment. In addition, these assistants were not given a scheduled lunch and required breaks. When my main assistant, Nancy, was told she did not get her promised hours, it affected by job. I asked the office manager that Nancy be returned to work, as promised. I was harassed when I spoke out or defended my assistant. Most of the dental assistants were ~~single~~, uneducated, single mothers on welfare. These assistants would come to me with their grievances regarding Bradley Dental. They felt helpless in terms of going to Debbie as they knew they would lose their jobs. Dr. Azad often threatened the staff by saying "I can replace all of you." I was often caught in the middle of grievances that existed between management and the support staff. These unprofessional dental assistants would disparage the management and Dr. Azad right in front of my patients. They would also complain about the working conditions that they were being subjected to. This created an environment of unprofessionalism and negativity. Several patients asked me "What kind of a place is this?" Many patients did not return for future appointments after hearing the talk in the office. This affected my ability to make a living.

My patients were ignored and given a low priority. It was not unusual for my patients to be left in the waiting room for up to two hours. Many of these patients had to leave after being seated in the operatory as they had other appointments and children to pick up. When the patient would be seated in the operatory, often they were upset with me before treatment even began. This affected my ability to make a living.

I was harassed and defamed when I spoke out about OSHA violations in the office. I was treated differently than my younger, less experienced male colleagues. In the end, I was terminated on a Sunday night via a telephone call from Dr. Azad. Dr. Azad stated that I was being terminated because I was not happy with the way he ran his business. He stated it had nothing to do with my dentistry as my dentistry had been excellent. I was defending myself on the telephone when Dr. Azad interrupted me stating that he had to go as he was getting another call. Dr. Azad indicated that he would call me back. This did not happen. I left several

messages for Dr. Azad as he would not take my call. The following Monday morning, Dr. Azad left a voice-mail on my telephone. I have saved the voice-mail for your review.

I was replaced by a new male graduate from dental school who had no experience. He was in his twenties. This dentist was hired a few weeks prior to my termination. This dentist relied on my experience and expertise to aid him in reading and diagnosing x-rays and formulating treatment plans. After this new doctor had been helped and transitioned into my job, I was terminated and replaced by this individual. Jalynn, a dental assistant, can verify that this doctor was aided by me in the office.



McGuireWoods LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601-1818
Phone: 312.849.8100
Fax: 312.849.3690
www.mcguirewoods.com

John C. Gardner
Direct: 312 849 8253

McGUIREWOODS

jgardner@mcguirewoods.com
Direct Fax: 312 920 7243

October 23, 2008

VIA FACSIMILE (312-886-1168) AND U.S. MAIL

Katarzyna Cychowska, Investigator
Equal Employment Opportunity Commission
Chicago District Office
500 West Madison St.
Suite 2000
Chicago, IL 60661

Re: Tujetsch v. Bradley Dental LLC, EEOC Charge No. 440-2008-8288

Dear Ms Cychowska:

This letter shall constitute the position statement of Bradley Dental LLC (hereinafter, "Bradley Dental" or the "Company"), regarding the charge of discrimination filed by Mary Tujetsch on September 11, 2008.

Bradley Dental entered into an independent contractor relationship with Dr. Tujetsch based on her representations that she knew and could perform all necessary dental treatments and procedures. After just a few months at Bradley Dental, it became clear that Dr. Tujetsch not only could not perform all required treatments, but was in fact repeatedly placing her patients at risk of suffering severe health complications. Because of this substandard care and her unprofessional workplace manner, Bradley terminated Dr. Tujetsch's contract. Now, Dr. Tujetsch attempts to obscure her professional inadequacies by filing the instant charge. For the reasons noted below, Dr. Tujetsch's charge is entirely baseless and should be dismissed with a finding of no probable cause.

A. Overview of Bradley Dental, LLC

Bradley Dental is part of a group of dental practices that operate throughout northeastern Illinois. Within each separate location, the group employs dental assistants and administrative staff to support the practice of dentists who are generally retained on an independent contractor basis. Dr. Koushan Azad is formerly a co-owner and manager of Bradley Dental.

Bradley Dental is an equal opportunity employer. It is committed to recruiting, hiring, training, paying, disciplining, and taking all employment actions without regard to an

employee's race, color, age, sex, national origin, disability, religion or other protected characteristics.

B. Dr. Tujetsch's Work at Bradley Dental

On April 22, 2008, Dr. Tujetsch entered into an Independent Contractor Agreement (the "Agreement") to work as a dentist at Bradley Dental at the Company's Kankakee, Illinois-area location.¹ Pursuant to the Agreement, Dr. Tujetsch agreed to provide dental services to Bradley Dental's patients in exchange for a certain percentage of the revenue created by her treatment of those patients. (Agreement at ¶ 3.) The Agreement provided that Dr. Tujetsch was ineligible for employment benefits and would be personally responsible for all applicable payroll taxes. (*Id.* at ¶ 5.) In addition, Dr. Tujetsch was required to procure her own malpractice insurance, but would be eligible for a partial reimbursement of her monthly premiums. (*Id.* at ¶¶ 3-4.) Dr. Tujetsch was expected to exercise her own discretion in performing her duties and was not subject to day-to-day control over the details of her work.

The Agreement was for an initial term of one year, but provided for automatic renewal thereafter unless one of a handful of specifically enumerated termination events occurred. (*Id.* at ¶ 9.) For example, the Agreement provided that either party could terminate the relationship for any reason upon providing sixty days prior written notice. (*Id.* at ¶¶ 9-10.) In addition, Bradley Dental reserved the right to immediately terminate the Agreement in either of the following circumstances:

"d) In the event [Dr. Tujetsch] shall fail or refuse [to] faithfully or diligently perform the provisions of this Agreement or the usual customary duties of a dentist.

* * *

f) In the event [Dr. Tujetsch] conducts... herself, either personally or professionally, in a manner that [Bradley Dental] deems inconsistent with or detrimental to achieving the business and professional goals of [the Company]."

(*Id.* at ¶ 9.)

At the time the parties entered into the Agreement, Dr. Azad, who negotiated the Agreement on behalf of Bradley Dental, informed Dr. Tujetsch that she would be expected to be familiar with and to perform a wide variety of dental treatments and techniques, including root canal therapy ("RCT"). Dr. Tujetsch represented that she was familiar with and could perform RCT and all other required treatments. Shortly thereafter, Dr. Tujetsch began seeing Bradley Dental's patients.

¹ A true and correct copy of the Agreement is attached hereto as Exhibit A.

It soon became clear that Dr. Tujetsch had misrepresented her ability to perform RCT. In early May, 2008, one of Bradley Dental's other dentists informed Dr. Azad that he had needed to perform RCT on one of Dr. Tujetsch's patients. When Dr. Azad approached Dr. Tujetsch about the matter, she informed him that at her previous dental practice she had an endodontist perform RCT when necessary and, despite her previous representations, had not performed the procedure herself. Nevertheless, after Dr. Azad reiterated that she was required to perform the procedure on appropriate patients at Bradley Dental, Dr. Tujetsch agreed to perform RCT going forward.

Over the next few months, Dr. Azad received numerous complaints from patients who were dissatisfied with the treatment they had received from Dr. Tujetsch. As a result, Dr. Azad began reviewing Dr. Tujetsch's patient charts and discovered numerous instances in which the treatment she had provided fell far below the standard of care required by Bradley Dental. In particular, Dr. Azad found at least ten instances in which Dr. Tujetsch had placed sedative fillings on patients' teeth when the appropriate treatment would have been RCT. In the majority of those cases, Dr. Tujetsch failed to even inform her patients about RCT, despite the fact that it would have addressed the cause of their problem while her use of sedative fillings was, at best, a stopgap measure. Despite treating more than four hundred patients on behalf of Bradley Dental, Dr. Tujetsch had not performed RCT on a single occasion.

Dr. Azad's review also revealed several instances in which Dr. Tujetsch risked significant harm to patients by failing to monitor their blood pressure during treatment. On one such occasion, a patient who had reported a history of high blood pressure needed to be admitted to the emergency room following her dental treatment after experiencing dangerously elevated blood pressure. Bradley Dental has since learned that Dr. Tujetsch administered a local anesthetic on this patient that, because of an underlying medical condition, clearly should not have been used.

In addition to these problems, several Bradley Dental staff members complained to management that Dr. Tujetsch frequently acted in an unprofessional manner in the workplace and treated them with outright disrespect. When confronted with the complaints, Dr. Tujetsch denied engaging in any inappropriate behavior. Instead, she surmised, incoherently, that the staff members were complaining about her because they were unhappy with their wages.

Both because Dr. Tujetsch's performance fell far below the standard of care required by Bradley Dental and because her workplace behavior was severely disrupting the work environment, Dr. Azad terminated her contract on July 25, 2008. This termination was authorized under either Paragraph 10(d) or 10(f) of the Agreement. Dr. Tujetsch did not complain to Bradley Dental at any point before or after the termination regarding any alleged discriminatory actions or activities.

C. Dr. Tujetsch Was Not Employed By Bradley Dental

Dr. Tujetsch was an independent contractor, not an employee, of Bradley Dental. Consequently, she cannot maintain claims against Bradley Dental for age discrimination, sex discrimination or retaliation.

The Agreement clearly provided that Dr. Tujetsch was an independent contractor of Bradley Dental. As such, she was ineligible to receive employment benefits from Bradley Dental, liable to pay her own payroll taxes and required to obtain her own malpractice insurance. (*Id.* at ¶¶ 4-5.) Importantly, Bradley Dental had no right to control the details of Dr. Tujetsch's work. Instead, Dr. Tujetsch was able to exercise discretion with regard to the manner of her performance.

In general, an entity that has no right to control the details of an individual's work performance, pays no taxes on her behalf and provides her with no employment benefits, is not her employer for purposes of discrimination law. See *Vakharia v. Swedish Covenant Hospital*, 190 F. 3d 799, 805-06 (7th Cir. 1999) (holding that doctor who was self-employed for tax purposes, received no employment benefits, controlled the details of his work and was referred to as an "independent contractor" was not an employee for purposes of Title VII and the ADEA); *Aberman v. J. Abouchar & Sons, Inc.*, 160 F. 3d 1148, 1150-52 (7th Cir. 1998) (holding that entity that had no right to control the details of plaintiff's work, did not withhold taxes from his monthly salary draw and provided no employment benefits was not plaintiff's employer under the ADA). As a result, for the reasons noted above, Dr. Tujetsch was not an employee of Bradley Dental. Consequently, Dr. Tujetsch cannot demonstrate that Bradley Dental discriminated against her in violation of federal law. See, e.g., *Drebing v. Provo Group, Inc.*, 519 F. Supp. 2d 811, 827-28 (N.D. Ill. 2007) (providing that non-employee cannot maintain an action for Title VII discrimination).

D. Bradley Dental Did Not Illegally Terminate Dr. Tujetsch

Moreover, the decision to terminate the Agreement was based on Dr. Tujetsch's substandard care of Bradley Dental's patients and the unprofessional manner in which she treated its staff members. The decision was made without regard to either her sex or age, or in retaliation for any protected activity. Consequently, without regard to the character of her relationship with Bradley Dental, Dr. Tujetsch simply cannot demonstrate any claims for discrimination or retaliation.²

² In addition, because Dr. Azad made the decisions to hire and fire her, Dr. Tujetsch cannot demonstrate discrimination without overcoming a presumption of nondiscrimination. See *Chiaromonte v. Fashion Bed Group, Inc.*, 129 F.3d 391, 399 (7th Cir. 1997) (providing that "when an employee is hired and fired by the same decision-maker in a relatively short time span, a presumption, or inference, of nondiscrimination arises"). For the reasons noted herein, Dr. Tujetsch cannot overcome that presumption.

1. Bradley Dental did not terminate Dr. Tujetsch on account of either her sex or age.

As explained above, Dr. Tujetsch's performance fell below the standard of care Bradley Dental expected of its dentists. After representing that she knew and was comfortable with RCT, Dr. Tujetsch repeatedly failed to perform it in appropriate circumstances or to educate her patients about its benefits. To the contrary, she treated patients with palliative measures that did not address the cause of their problems. Even more significantly, she placed her patients' health at risk by failing to monitor their blood pressure during treatment. On one occasion, this failure led to an emergency room visit for a patient suffering from dangerously elevated blood pressure.

An employee who cannot prove that she satisfied her employer's minimum performance expectations cannot satisfy a prima facie case of discrimination. See *Lim v. The Trustees of Indiana University*, 297 F.3d 575, 581 (7th Cir. 2002) (holding that individual could not demonstrate prima facie case of sex discrimination where she failed to meet the performance standards set by her employer). As a result, because of her litany of performance problems, Dr. Tujetsch cannot satisfy a prima facie case.

Moreover, Dr. Tujetsch also cannot demonstrate discriminatory termination because she has neither alleged nor proffered any evidence that Bradley Dental treated her less favorably than a similarly situated individual outside of her protected class.³ See *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 690 (7th Cir. 2008) (providing that an employee cannot satisfy a prima facie case of sex discrimination unless she demonstrates that one or more similarly situated employees "outside the protected class were more favorably treated"); *Scaife v. Cook County*, 446 F.3d 735, 741 (7th Cir. 2006) (holding that employee could not demonstrate illegal discrimination where he failed to produce evidence sufficient to demonstrate that his employer treated similarly situated employees outside of his protected class more favorably than him).

Finally, Dr. Tujetsch cannot demonstrate that Bradley Dental's nondiscriminatory reasons for terminating the Agreement – her significantly substandard performance and her unprofessional workplace behavior – were pretextual. See *Jones v. Union Pacific Railroad Co.*, 302 F.3d 735, 742-43 (7th Cir. 2002) (holding that a former employee did not establish pretext where he failed to show that the employer's stated reason for taking adverse employment action was false, or that he was actually terminated in violation of the law). For this additional reason, her claims will fail.

Consequently, Dr. Tujetsch cannot satisfy a prima facie case of age or sex discrimination or establish that Bradley Dental's reason for terminating the Agreement was pretextual. As a result, she cannot succeed on her claims under federal law.

³ In fact, Bradley Dental ultimately replaced Dr. Tujetsch with another female dentist, Dr. Nadia Mirza

2. Bradley Dental did not terminate the Agreement in retaliation for any complaint made by Dr. Tujetsch.

Despite her vague contention that she "complained to management" throughout her relationship with Bradley Dental, Dr. Tujetsch never complained about any alleged mistreatment on account of her age, sex or any other protected classification. Rather, as noted above, the complaints that Bradley Dental received were from its staff members *about Dr. Tujetsch*. Dr. Tujetsch has neither alleged nor proffered any evidence that she engaged in any other type of protected activity while working at Bradley Dental.

An individual who cannot demonstrate that she engaged in protected activity in opposition to her employer's alleged discriminatory practices cannot prove that her employer illegally retaliated against her. See *Hernandez v. HCH Miller Park Joint Venture*, 418 F.3d 732, 737 (7th Cir. 2005) (providing that an employee could not prove that her former employer illegally retaliated against her where she could not demonstrate that she "complained about conduct that is prohibited by Title VII"); *Gleason v. Mesirow Financial, Inc.*, 118 F.3d 1134, 1147 (7th Cir. 1997) (holding that a former employee failed to prove retaliation where she could not demonstrate that she "opposed conduct prohibited by Title VII, or at a minimum that she had a 'reasonable belief' she was challenging such conduct" while still employed). Accordingly, Dr. Tujetsch cannot demonstrate her claim for retaliation.

Additionally, for the reasons noted in the previous subsection, Dr. Tujetsch also cannot demonstrate that Bradley Dental's proffered reason for terminating the Agreement was pretextual. Consequently, she cannot succeed on a claim for retaliatory discharge. See *Luebbehusen v. Wal-Mart Stores, Inc.*, 2006 WL 3590638, at * 3 (7th Cir. Dec. 11, 2006) (holding that plaintiff who could not demonstrate that employer's proffered reason for her termination was pretextual could not prove retaliatory discharge); *Franzoni v. Hartmarx Corp.*, 300 F.3d 767, 772-73 (7th Cir. 2002) (holding that plaintiff who failed to satisfy a prima facie case of retaliation could not demonstrate retaliatory discharge).

E. Dr. Tujetsch Was Not Subject To Different Terms And Conditions In Her Relationship With Bradley Dental

Furthermore, Bradley Dental paid Dr. Tujetsch *at the same rate* that it paid its other independent contractors. All contractors earned 30% of the revenues generated by Bradley Dental as a direct result of the services they rendered to its patients minus 30% of the laboratory fees attributed to that treatment.⁴ Dr. Tujetsch received pay at this rate for every day that she worked at Bradley Dental.

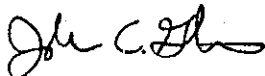
⁴ Pursuant to the Agreement, Dr. Tujetsch was also entitled to receive a minimum of \$480 for every day she worked, the same minimum guarantee offered to dentists working at Bradley locations in the Chicago area. Although, Bradley Dental offered other dentists working at the Kankakee location a higher minimum guarantee in order to entice them to move their practice there from the Chicago area, Dr. Tujetsch was

An individual who cannot demonstrate that she was making less money than a similarly situated employee cannot prove a prima facie case of discriminatory unequal pay. See *Patt v. Family Health Systems, Inc.*, 280 F.3d 749, (7th Cir. 2002) (holding that employee who could not demonstrate that she was paid less than a similarly situated employee outside of her protected class could not satisfy a prima facie case of discrimination). Because there are no similarly situated contractors who were paid at a higher rate, Dr. Tujetsch cannot demonstrate a prima facie case of unequal pay discrimination.

F. Conclusion

For all the foregoing reasons, Bradley Dental LLC respectfully requests that Dr. Tujetsch's charge be dismissed with a finding of no probable cause. If you need additional information prior to dismissing this charge, please do not hesitate to contact me at (312) 849-8100.

Sincerely,



John C. Gardner

cc: Dr. Koushan Azad
David Wolle
Michael R. Phillips, Esq

originally slated to work in Chicago and ended up at the Kankakee location only after she specifically requested to work there because she felt that her commute would be better. Regardless, Dr. Tujetsch earned more than her daily minimum every day that she worked at Bradley Dental

EXHIBIT C

1/16/07

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY A. TUJETSCH,)
)
 Plaintiff,)
)
 v.)
)
 TODD C. PUSATERI, FIRST DENTAL,)
 P.C. and FIRST DENTAL OF ORLAND)
 PARK, P.C.,)
)
 Defendants.)

Case No. 06 CH 11607

**RESPONSE TO DEFENDANTS' FIRST
INTERROGATORIES TO PLAINTIFF**

Plaintiff, Mary A. Tujetsch, by and through her attorneys, Varga Berger Ledsky Hayes & Casey, respond to Defendants' First Interrogatories as follows:

GENERAL OBJECTIONS

1. Plaintiff objects to defendants' interrogatories to the extent they request information protected from the disclosure by the attorney-client privilege or attorney work product doctrine.
2. Plaintiff objects to defendants' interrogatories to the extent they impose obligations beyond those required by the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules.
3. Plaintiff's General Objections are incorporated into and made a part of each specific response to defendants' interrogatories.

RESPONSES TO INTERROGATORIES

1. State the full name, current residential address, date of birth, driver's license number and social security numbers of Mary A. Tujetsch.

RESPONSE: Mary Ann Tujetsch; 2311 Teakwood Circle, Condo C, Highland, Indiana, 46322; date of birth 10/16/60; driver's license # DLN0630-61-0815; Social Security No. 485-74-6721.

2. State the date Mary A. Tujetsch was licensed to practice dentistry in Illinois.

RESPONSE: 1989 (see attached license certificates).

3. Not including the Dental Practice involved in the current lawsuit, state the name(s), address(es), date(s) and amounts of all other Illinois dental practices which Mary A. Tujetsch has purchased at any time after she was first licensed to practice medicine in Illinois.

RESPONSE: Plaintiff objects to this interrogatory on the basis of relevance, overbreadth and harassment. Further, Plaintiff has not been licensed to "practice medicine," but rather has been licensed to practice dentistry in Illinois. Without waiver of the foregoing objections, Plaintiff responds that she has purchased interests in four other dental practices, as follows: 1991 – Dr. Francis Schwartz, 25 E. Washington, Suite 1903, Chicago, IL; 1996 – Dr. Robert Green, 55 E. Washington, Suite 2121, Chicago, IL; 1999 – Dr. Joanna Baranovskis, 55 E. Washington, Suite 1620, Chicago, IL; 2002 – Dr. Roy Carlson, 18025 Wentworth Avenue, Lansing, IL.

4. Not including the Dental Practice involved in the current lawsuit, state the name(s), address(es), date(s) and amounts of all other Illinois dental practices which Mary A. Tujetsch has sold at any time after she was first licensed to practice medicine in Illinois.

RESPONSE: None.

5. Has Mary Tujetsch ever been a litigant in any civil matter before this lawsuit? If yes, please state the name of the parties to said lawsuit(s), the case number(s), the county in which it was filed, the date it was filed and the disposition, if any.

RESPONSE: Plaintiff objects to this interrogatory on the basis of relevance, overbreadth and harassment. Without waiver of this objection, Plaintiff responds that she was a plaintiff in a suit in the early 1990's related to a car accident, and has as a plaintiff filed a number of small claims suits related to non-payment of dental services provided to patients.

6. State the date(s) and amounts which Plaintiff paid to Defendants for monthly rent payments for June of 2004 – June 2006.

RESPONSE: See attached sheet.

7. Other than the case at present, has Mary A. Tujetsch been named as a defendant in a civil lawsuit other than this lawsuit. If so, state the nature of the lawsuit that was filed, the name of

the adverse party, the county, caption(s) and docket number(s) in which the case(s) was filed, and the disposition(s) of that case.

RESPONSE: No.

8. Pursuant to Illinois Supreme Court Rule 213(f)(1), provide the name and address of each opinion witness who will testify at trial and state the subject of each witness' testimony.

RESPONSE: Plaintiff has not yet determined which, if any, Rule 213(f)(1) witness(es) she may call as a trial witness, but reserves the right to supplement her response to this interrogatory and disclose such witness(es) as permitted by the applicable court rules and scheduling orders entered in this case.

9. Pursuant to Illinois Supreme Court Rule 213(f)(2), please provide the name and address of each independent expert witness who may offer any testimony and state:

- (a) The subject matter on which the opinion witness(es) will testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of the witness, if any.

RESPONSE: Plaintiff has not yet determined which, if any, Rule 213(f)(2) witness(es) she may call as a trial witness, but reserves the right to supplement her response to this interrogatory and disclose such witness(es) as permitted by the applicable court rules and scheduling orders entered in this case.

10. Pursuant to Illinois Supreme Court Rule 213(f)(3), provide the name and address of each controlled expert witness who will offer any testimony and state:

- (a) The subject matter on which the opinion witness(es) will testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of the witness, if any;
- (c) The qualifications of each opinion witness, including a curriculum vitae and/or of the resume, if any; and
- (d) The identity of any written reports of the opinion witnesses regarding this occurrence.

RESPONSE: Plaintiff has not yet determined which, if any, Rule 213(f)(3) witness(es) she may call as a trial witness, but reserves the right to supplement her response to this interrogatory and disclose such witness(es) as permitted by the applicable court rules and scheduling orders entered in this case.

11. Please state the specific equipment of Defendants that was allegedly defective as of June 27, 2004 alleged in Paragraph 25. For each such statement please state the item involved, the condition of each item and the cost to repair any such item.

RESPONSE: Dental Chair, Cuspidor; Light-nonfunctional - \$7,600.00

X Ray Developer; non functional - \$3,200.00

Autoclave; nonfunctional - \$6,300.00

Ultrasonic Cleaner; nonfunctional - \$260.00

Stereo System/Speakers; nonfunctional - \$1,600.00

Copier/Fax; nonfunctional - \$680.00

Phone System; nonfunctional - \$250.00

Stained Carpet; yet to be replaced - estimated at \$6,400.

12. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the occurrence and/or the damages claimed to have resulted therefrom.

RESPONSE: Other than Plaintiff and Defendant Pusateri, the following have knowledge of facts at issue in this suit:

First Pacific Corporation
P.O. Box 3000
Salem, Oregon

Sue Miller
5653 S. Kimbrough Ave.
Springfield, MO 65810

Eliza Cano
7714 W. 159th Street
Orland Park, IL 60462

13. Identify any statements, information, and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

RESPONSE: Other than communications between Plaintiff and her retained counsel in this action (which are protected by the attorney-client and work product privileges), none.

DATED: January 16, 2007

MARY A. TUJETSCH

By: Michael D. Hayes

One of Her Attorneys

Michael D. Hayes
Julie F. Grosch
VARGA BERGER LEDSKY HAYES & CASEY
A Professional Corporation
224 South Michigan Avenue, Suite 350
Chicago, Illinois 60604
(312) 341-9400
(312) 341-2900 (fax)

State of Illinois

7185051

Department of Professional Regulation

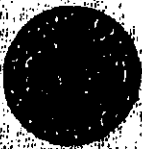
The person, firm or corporation whose name appears on this certificate has complied with the provisions of the Illinois Statutes and/or rules and regulations and is hereby authorized to engage in the activity as indicated below.

LICENSE NO.
019-021789

EXPIRES
09/30/90

LICENSED DENTIST

MARY ANN TUJETSCH DDS
9416 ROANOAK DR
ROCKFORD, IL 61107



Steph G. Selek

DIRECTOR

Issued under the authority of The State of Illinois
Department of Professional Regulation.

State of Illinois

7181253

Department of Professional Regulation

The person, firm or corporation whose name appears on this certificate has complied with the provisions of the Illinois Statutes and/or rules and regulations and is hereby authorized to engage in the activity as indicated below.

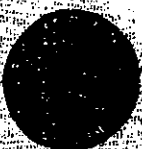
LICENSE NO.
003-019-021789-1

EXPIRES
09/30/90

LICENSED DENTIST
CONTROLLED SUBSTANCE

C II LIN III ILLIN IV V

MARY ANN TUJETSCH DDS
ROCKFORD DENTAL CARE
1301 N ALPINE RD
ROCKFORD IL 61107



Steph G. Selek

DIRECTOR

Issued under the authority of The State of Illinois
Department of Professional Regulation.

6.) Rent Payments:

5/13/04.....	\$5000.00
6/27/04.....	\$2775.00
6/27/04.....	\$2400.00
8/01/04.....	\$2775.00
8/25/04.....	\$2775.00
10/01/04.....	\$2775.00
11/01/04.....	\$2775.00
11/25/04.....	\$2775.00
1/03/05.....	\$2775.00
1/28/05.....	\$2775.00
2/22/05.....	\$2775.00
3/22/05.....	\$2398.50
4/16/05.....	\$376.50
4/26/05.....	\$2775.00
6/01/05.....	\$338.43
6/01/05.....	\$2775.00
6/28/05.....	\$2775.00
7/26/05.....	\$3015.00
8/25/05.....	\$2895.00
9/25/05.....	\$2895.00
10/31/05.....	\$2895.00
12/01/05.....	\$2895.00
12/28/05.....	\$2895.00
2/01/06.....	\$2895.00
3/14/06.....	\$2895.00
4/01/06.....	\$2895.00
5/01/06.....	\$2895.00
6/01/06.....	\$2895.00
6/27/06.....	\$2895.00

EXHIBIT D

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MARY A. TUJETSCH,)	
)	
Plaintiff,)	
)	
vs.	)	NO. 06CH11607
)	
TODD C. PUSATERI,	)	JURY TRIAL DEMANDED
FIRST DENTAL, P.C.)	
and FIRST DENTAL)	
OF ORLAND PARK, P.C.)	
)	
Defendants.)	

AMENDED COMPLAINT

Mary A. Tujetsch, by her attorneys, Williams Montgomery & John Ltd., states her Complaint against Defendants, Todd C. Pusateri, First Dental, P C., and First Dental of Orland Park, P.C., follows:

NATURE OF THE ACTION

1. The Defendants in this case made false representations, breached their contract and warranties to Plaintiff in the sale of their dental practice, and fraudulently induced Plaintiff to lease an office suite in Orland Park, Illinois owned by Defendants. This suit seeks 1) damages and equitable relief for breach of contract, breach of the representations and warranties in the contract, fraud; and 2) cancellation of the lease entered into pursuant to the agreement.

THE PARTIES

2. Plaintiff, Mary A. Tujetsch ("Tujetsch"), is a dentist licensed to practice in Illinois.

3. Defendant, Todd C. Pusateri ("Pusateri"), is a dentist licensed to practice in Illinois.

4. Defendant, First Dental, P.C. ("First Dental"), is a corporation incorporated in Illinois. Pusateri is the President and Secretary of First Dental, and upon information and belief, the sole shareholder of First Dental.

5. Defendant, First Dental of Orland Park, P.C. ("FDOP"), was incorporated in Illinois in 1998 and involuntarily dissolved by the Illinois Secretary of State in May, 2000. Upon information and belief, Pusateri was an officer, director, and sole shareholder of FDOP.

ALLEGATIONS COMMON TO ALL COUNTS

6. On or about June 27, 2004, Tujetsch (as Purchaser) and First Dental (as Seller) entered into an Asset Purchase Agreement ("Agreement") pursuant to which First Dental sold to Tujetsch substantially all of the assets of a dental practice ("Dental Practice") located in Cook County, Illinois at 7714 159th Street, Orland Park, Illinois ("Orland Park Office") Pusateri signed the Agreement on behalf of First Dental. A copy of the Agreement is attached hereto as Exhibit A.

7. On or about June 28, 2004, and as required in §6.03 of the Agreement, Tujetsch (as Tenant) and FDOP (purportedly as Landlord) entered into a certain lease ("the Lease") concerning the Orland Park Office. Entry into this Lease agreement was a necessary, substantial, and material aspect of performance of the Agreement. Pusateri signed the Lease on behalf of FDOP. A copy of the Lease is attached hereto as Exhibit B.

8. Prior to the execution of the Agreement, Pusateri represented to Tujetsch that the Dental Practice had approximately 1,200 active patients ("Active Patients") that had been treated

within the 24 months prior to the sale. Tujetsch relied on Pusateri's representation in entering into the Agreement and Lease.

9. The Agreement identifies the "Seller" as First Dental (Exhibit A, p. 1.) The Agreement further identifies the Seller as the Lessor of the Orland Park Office and sets forth the rent and other terms of the Lease. (Exhibit A, §6.03.) The Lease identifies FDOP as the Landlord. (Exhibit B, Lease Cover Sheet.) Pusateri signed the Lease as FDOP's President, knowing FDOP had been dissolved in 2000.

10. At the time the Agreement and Lease were signed, Pusateri knew that neither First Dental nor FDOP were the Owner or Lessor of the Orland Park Office. Instead, Pusateri, individually was and is the owner of the Orland Park Office leased to Tujetsch pursuant to the Agreement.

11. Pusateri, as the sole owner of both FDOP and First Dental, disregarded each entities' corporate form and structure while conducting their business affairs. Tujetsch relied on Pusateri's personal representations in entering into the Agreement and Lease.

12. In §3.11 of the Agreement, defendants guaranteed the accuracy of all representations and warranties as follows:

Accuracy of Representations and Warranties. None of the representations or warranties of Seller contains or will contain any untrue statement of any material fact or omits or misstates a material fact necessary to make the statements contained in this Agreement not misleading. Seller does not know of any fact that has resulted or that, in the reasonable judgment of Seller will result, in any material adverse change in Seller's business, results of operation, financial condition or prospects that has not been set forth in this Agreement.

(Exhibit A, §3.11.)

13. Defendants acknowledged and understood that Tujetsch reasonably relied on all of Seller's representations and warranties set forth in the Agreement: §3.10 "Reliance. Seller recognizes and agrees that, notwithstanding any investigation by [Tujetsch], [Tujetsch] is relying upon the representations and warranties made by Seller in this Agreement." (Exhibit A, §3.10.)

14. One of Seller's representations included: "Seller has represented that the Dental Practice has approximately 1200 active patients, who have been treated within the previous twenty-four months according to First Pacific Corporation " (Exhibit A, p. 1.)

15. The Seller agreed to indemnify and hold Tujetsch harmless for "any and all loss, liability, deficiency, or damage suffered or incurred by [Tujetsch] by reason of any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Seller contained in this Agreement." (Exhibit A, Section 4.05(c).) The Seller further agreed to indemnify and hold [Tujetsch] harmless for all "costs, and expenses, including, without limitation, legal fees and expenses ... incurred in [Tujetsch's] successful enforcement of [the] indemnity." (Exhibit A, §4.05(e).)

COUNT I – BREACH OF CONTRACT (PERFORMANCE)

16. Tujetsch repeats and re-alleges paragraphs 1 through 15 as and for paragraph 16 of this Count I.

17. Under the Agreement, Seller agreed to, "without further consideration, take all steps reasonably necessary to place Purchaser in possession and operating control of the Assets..." (Exhibit A, §1.05.) The Agreement expressly defines Assets to include "[a]ll patient lists, equipment, files and patient records, and all operating data and records relating to the Dental Practice ..." (Exhibit A, §1.01-1.)

18. Seller never provided Tujetsch with any patient lists. Seller's failure to provide Tujetsch with a list of Active Patients or any other patient lists, constitutes a breach of the obligation to place Tujetsch in "possession and operating control of" "[a]ll patient lists ... relating to the Dental Practice...." (Exhibit A, §§1 01-1 and 1 05.)

19. Pursuant to the Agreement, Seller represented that "[n]o consent, approval or authorization of ... any other entity or person not a party to this Agreement is required for the consummation of the transactions described in this Agreement...." (Exhibit A, §3 08.)

20. Shortly after the closing of the Agreement and repeatedly thereafter, Tujetsch began contacting Pusateri and requested the patient list identifying the 1200 patients of the Dental Practice. Tujetsch needed the patient list to contact the Dental Practice's customers. Without the patient list the Dental Practice has little value.

21. Pusateri never provided Tujetsch with a patient list for 1200 Active Patients in breach of the Agreement.

22. Instead of providing Tujetsch with the patient list, Pusateri directed Tujetsch to contact the Dental Practice's billing agency, First Pacific Corporation ("First Pacific").

23. Tujetsch repeatedly contacted First Pacific and Pusateri and requested information (and the dental records) regarding the alleged 1200 Active Patients of the Dental Practice represented in the Agreement. Neither Pusateri nor First Pacific provided Tujetsch with access to the records or data that purportedly establish the basis for the number of Active Patients. Upon information and belief, Pusateri permitted First Pacific Corporation to delete a substantial portion of First Dental's patient records relating to the Dental Practice and the number of Active Patients.

24. Pusateri's failure to preserve the data files relating to the Dental Practice's purported 1200 Active Patients, and his failure to provide Tujetsch with access to these files and data, relating to the Dental Practice, constitutes a breach of the obligation to place Tujetsch in "possession and operating control of" "[a]ll ... patient records, and all other operating data and records relating to the Dental Practice..." (Exhibit A, §§1.01-1 and 1.05.)

25. Had Tujetsch been aware that the foregoing breaches would occur, she would not have entered into the Agreement or the Lease.

26. Defendants' breaches of the Agreement have caused Tujetsch substantial damages pursuant to her entry into the Agreement and Lease

27. Under §4.05, Indemnification by Seller, Seller agreed to indemnify and hold Tujetsch harmless for: "(c) any and all loss, liability, deficiency, or damage suffered or incurred by [Tujetsch] by reason of any ... non-fulfillment of any covenant or agreement by Seller contained in this Agreement ..." (Exhibit A, §4.05(c)).

28. Seller's breaches of its performance obligations under the Agreement resulted in Tujetsch bringing this action. Pursuant to §4.05(e), Purchaser is entitled to all "costs, and expenses, including without limitation, legal fees and expenses" for damages resulting from Seller's "non-fulfillment" of obligations under the agreement. Pursuant to §7.01 and §7.02 of the Agreement, Seller's breaches entitle Purchaser to terminate the agreement, recover damages, and secure a release from all "obligations arising under this Agreement." Tujetsch notified defendants of the breach of the Agreement on or about October 24, 2005.

PRAYER FOR RELIEF (Count I)

WHEREFORE, the Plaintiff, Mary A. Tujetsch, respectfully requests that this Court grant the following relief:

- (a) Judgment and order that Defendants (First Dental and Todd Pusateri) breached the Agreement between Mary A. Tujetsch and Defendant First Dental;
- (b) Cancellation of the Lease between Mary A. Tujetsch and Defendants (FDOP and Todd Pusateri);
- (c) Judgment and order that requires Defendants (First Dental and Todd Pusateri) pay Mary A. Tujetsch all damages arising out of defendant's breaches of the Agreement in an amount to be determined at trial but over \$75,000;
- (d) Judgment and order that requires Defendants (First Dental and Todd Pusateri) to pay Mary A. Tujetsch all damages relating to the Lease in an amount to be determined at trial but over \$75,000;
- (e) An award of all litigation expenses, including attorneys fees, in accordance with Section 4.05(c) and 4.05(e) of the Agreement;
- (f) An award of prejudgment interest for damages arising out of Defendants breaches dating from October 24, 2005;
- (g) Such other and further relief as the Court deems just and equitable.

COUNT II – BREACH OF CONTRACT
(ACCURACY OF REPRESENTATIONS AND WARRANTIES)

29 Tujetsch repeats and re-alleges paragraphs 1 through 15 as and for paragraph 29 of this Count II.

30. After acquiring the Dental Practice, Tujetsch sought to determine the actual number of Active Patients. In this regard, Tujetsch reviewed patient files and communicated with First Pacific Corporation, a third party provider who administered the patient billing for First Dental. This review indicates that there were less than 700 active patients that had been treated at the Dental Practice in the two years prior to the sale, compared to the approximately 1200 Active Patients that Pusateri represented and warranted to Tujetsch.

31. The inaccuracy of the representations relating to the number of Active Patients constitutes a breach of the Agreement's guarantee with regard to the accuracy of all

representations and warranties and the guarantee that no representations contained in the Agreement, were misleading. (Exhibit A, §3.11.)

32. Additionally, the Agreement expressly states that “Seller represents that all equipment is working and in good order.” (Exhibit A, §1.01-2.)

33. The dental equipment was not in good order, as represented by Pusateri and in the Agreement. Tujetsch incurred substantial expenses repairing and replacing equipment transferred to Tujetsch as part of the Agreement.

34. The inaccuracy of the representations relating to the condition of the equipment constitutes a breach of the Agreement’s guarantee with regard to the accuracy of all representations and warranties. (Exhibit A, §3.11.)

35. Had Tujetsch been aware that the foregoing breaches would occur, she would not have entered into the Agreement or the Lease.

36. Defendants’ breaches of the Agreement have caused Tujetsch substantial damages pursuant to her entry into the Agreement and Lease.

37. Under §4.05, Indemnification by Seller, Seller agreed to indemnify and hold Tujetsch harmless for: “(c) any and all loss, liability, deficiency, or damage suffered or incurred by [Tujetsch] by reason of any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Seller contained in this Agreement . . .” (Exhibit A, §4.05(c)).

38. Seller’s breaches of its representations and warranties to Tujetsch as described above, resulted in Tujetsch bringing this action. Pursuant to §4.05(e), Purchaser is entitled to all “costs, and expenses, including without limitation, legal fees and expenses” for damages resulting from “any untrue representation [or] breach of warranty.” Pursuant to §7.01 and §7.02 of the Agreement, Seller’s breaches entitle Purchaser to terminate the agreement, recover

damages, and secure a release from all "obligations arising under this Agreement." Tujetsch notified defendants of the breach of the Agreement on or about October 24, 2005.

PRAYER FOR RELIEF (Count II)

WHEREFORE, the Plaintiff, Mary A. Tujetsch, respectfully requests that this Court grant the following relief:

- (a) Judgment and order that Defendants (First Dental and Todd Pusateri) breached the Agreement between Mary A. Tujetsch and Defendant First Dental;
- (b) Cancellation of the Lease between Mary A. Tujetsch and Defendants (FDOP and Todd Pusateri);
- (c) Judgment and order that requires Defendants (First Dental and Todd Pusateri) pay Mary A. Tujetsch all damages arising out of defendant's breaches of the Agreement in an amount to be determined at trial but over \$75,000;
- (d) Judgment and order that requires Defendants (First Dental and Todd Pusateri) to pay Mary A. Tujetsch all damages relating to the Lease in an amount to be determined at trial but over \$75,000;
- (e) An award of all litigation expenses, including attorneys fees, in accordance with Section 4.05(c) and 4.05(e) of the Agreement;
- (f) An award of prejudgment interest for damages arising out of Defendants breaches dating from October 24, 2005;
- (g) Such other and further relief as the Court deems just and equitable.

COUNT III – FRAUD IN THE INDUCEMENT

39. Tujetsch repeats and re-alleges paragraphs 1 through 15 as and for paragraph 39 of this Count III.

40. Upon information and belief, at the time Pusateri made representations to Tujetsch regarding the number of Active Patients, Pusateri knew or should have known that such representation was false. Pusateri knew the Dental Practice did not contain 1200 patient files

and, therefore, could not have had 1200 Active Patients as told to Tujetsch and represented in the Agreement.

41. Pusateri made the representations regarding the number of active patients, as President of First Dental, to fraudulently induce Tujetsch to enter into the Agreement and the Lease.

42. Tujetsch relied upon Defendant's representations regarding the number of active patients in electing to enter into the Agreement and the Lease. Pusateri was aware of Tujetsch's reliance on these specific representations.

43. Following the sale of the Dental Practice, Pusateri prevented Tujetsch from obtaining a true and correct number of active patients by failing to provide Tujetsch with a patient list.

44. Under the Agreement, the Seller guaranteed the accuracy of all representations, including the number of Active Patients, and further guaranteed that no representations contained in the Agreement, were misleading. The Agreement further provides that the Seller recognizes and agrees to Buyer's reliance on all representations made in the Agreement.

45. After acquiring the Dental Practice, Tujetsch sought to determine the actual number of Active Patients. In this regard, Tujetsch has reviewed patient files and communicated with First Pacific Corporation, a third party provider who administered the patient billing for First Dental. This review indicates there were less than 700 active patients that had been treated at the Dental Practice in the two years prior to the sale, compared to the approximately 1200 Active Patients that Pusateri reported to Tujetsch.

46. Prior to the execution of the Agreement, Pusateri represented to Tujetsch that all of the dental equipment, which would be transferred to Tujetsch as part of the Agreement, was in

good working condition. The Agreement expressly states that "Seller represents that all equipment is working and in good order." (Exhibit A, §1.01-2.)

47. Defendant, Pusateri's representations regarding the condition of the medical equipment further induced Tujetsch to enter into the Agreement

48. The dental equipment was not in good condition, as represented by Pusateri and in the Agreement. Tujetsch incurred substantial expenses repairing and replacing equipment transferred to Tujetsch as part of the Agreement.

49. Tujetsch would not have entered into the Agreement, if she had knowledge of the true number of Active Patients and/or the true condition of the dental equipment. The Agreement as proposed was not economically feasible under the true facts. Tujetsch reasonably relied upon Defendants representations in electing to proceed with the Agreement and the Lease.

50. Because Tujetsch would not have entered into the Agreement, had she known the true number Active Patients, she also would not have entered into the Lease, as required by Section 6.03 of the Agreement.

51. Defendants' fraudulent acts and omissions have caused Tujetsch substantial damages arising out of the Agreement and the Lease.

52. Plaintiff notified Defendants of her estimate of the number of active patients and the substantial discrepancy with the representations in the Agreement on or about October 24, 2005.

PRAYER FOR RELIEF (Count III)

WHEREFORE, the Plaintiff, Mary A. Tujetsch, respectfully requests that this Court grant the following relief:

- (a) Judgment and order that Defendants fraudulently induced Mary A. Tujetsch to enter into the Agreement and the Lease;

- (b) Cancellation of the Lease between Mary A. Tujetsch and Defendants (FDOP and Todd Pusateri);
- (c) Judgment and order that requires Defendants (First Dental and Todd Pusateri) pay Mary A. Tujetsch all damages, including restitution, arising out of Defendant's fraudulent representations of the Agreement;
- (d) Judgment and order that requires Defendants (First Dental and Todd Pusateri) to pay Mary A. Tujetsch all damages relating to the Lease;
- (e) An award of Attorneys Fees;
- (f) An award of prejudgment interest;
- (g) Such other and further relief as the Court deems just and equitable

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable

MARY A. TUJETSCH

By: 

One of her Attorneys

David E. Stevenson (#6181112)
Williams, Montgomery & John, Ltd.
20 North Wacker Drive – Suite 2100
Chicago, IL 60606
312.443.3200 (Phone)
312.630-8500 (Fax)
Firm I.D. #04933

Document #: 748750

EXHIBIT A

ASSET PURCHASE AGREEMENT

between

**MARY A. TUJETSCH, DDS
"PURCHASER"**

and

**FIRST DENTAL, PC
"SELLER"**

Dated June 27, 2004

[Handwritten signature]

MP
ASSET PURCHASE AGREEMENT

DATED: June 21, 2004

BETWEEN: Mary A. Tujetsch, DDS, "Purchaser"
55 East Washington Street, Suite 2121
Chicago, IL 60602

AND: First Dental, PC, an Illinois professional corporation, "Seller"
8 West Gartner, Suite 124
Naperville, IL 60540

Seller is the owner of the dental practice located at 7714 159th Street, Orland Park, IL 60462 (hereinafter, the Dental Practice). Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has ~~twelve months~~ ^{twenty four months} active patients, who have been treated within the previous ~~twelve months~~ ^{twenty four months} according to First Pacific Corporation *MP* *TP* *Software*

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

ARTICLE I
Purchase and Sale of Assets

1.01 Purchase and Sale. Subject to all the terms and conditions of this Agreement and for the consideration herein stated, on the Closing Date, as that term is defined in Section 1.06, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, free and clear of all encumbrances, and Purchaser agrees to purchase and accept from Seller, all of the assets, properties and rights of Seller (other than the assets specified in Section 1.02), tangible and intangible, wherever located, that are used or useful to maintain and operate the Dental Practice, which assets (the Assets) shall include without limitation:

1.01-1 All patient lists, equipment, files and patient records, and all other operating data and records relating to the Dental Practice, including without limitation financial, accounting and credit records, correspondence, budgets, engineering and facility records and other similar documents and records. Inactive records are to be returned to Seller two years after closing.

1.01-2 All other items of tangible personal property of Seller used in connection with or associated with the Dental Practice, including furniture, fixtures, equipment, supplies, inventory and spare and replacement items therefor, and all such items acquired by Seller after the date hereof and on or before the Closing Date, other than to the extent such items are disposed of by Seller prior to the Closing Date in the ordinary course of practice. Seller represents that all equipment is working and in good order. Seller asserts that all equipment is in compliance with municipal, county, state, and federal laws. Seller assumes risk of loss of tangible assets prior to, but not subsequent to, closing.

1.01-3 All rights, benefits and interests of the Dental Practice under the contracts and agreements specifically assumed by Purchaser for provision of dentistry services including without

limitation contracts with third payers, dentists or other professionals, and under any contracts, agreements, commitments, understandings, purchase orders, documents or instruments entered into between the date hereof and the Closing Date and expressly assumed by Purchaser in writing on the Closing Date, other than to the extent such items have terminated, expired or been disposed of by Seller prior to the Closing Date without breach of this Agreement (collectively, the Contracts);

1.01-4 All assignable rights to all telephone lines and numbers used in the conduct of the Dental Practice; and

1.01-5 For one year subsequent to closing, Purchaser may use the name "First Dental of Orland Park," but only for the purpose of marketing the Dental Practice within a 20-mile radius of it. Purchaser shall not use any other name which includes the words "First Dental". No later than eighteen months subsequent to closing, Purchaser shall cease and desist using the name "First Dental of Orland Park".

1.01-6 The assets include the following equipment: eight waiting room chairs, Canon copier, Telecheck-credit card terminal, calculator, stapler, tape dispenser, file cabinet under copier, patient chart cabinet, corner desk in business front area, two office chairs, three business 4-line phones, one business 2-line phones, network hub, two waste cans, shredder, vacuum, microwave, card table and two chairs, three folding chairs in operatories, TV/VCR in operatory #4. The assets do not include the following equipment: any property of Innovative Chiropractic, fax machine, end table in waiting room, decorative pictures, refrigerator, large garbage can in furnace room, stereo, any property of Seller-Landlord, ladder, broom, mop, light bulb changing stick.

1.02 Excluded Assets. The Assets shall not include the following:

1.02-1 All cash assets of the Dental Practice, notes and accounts receivable, automobiles, real estate, and personal items of Seller. Re-do's of work originally performed before closing and completed subsequent to closing may be charged and collected by Purchaser, and do not constitute accounts receivable. Completion of work subsequent to closing which was originally begun prior to closing may be charged and collected by Purchaser, and do not constitute accounts receivable.

1.02-2 No liabilities of Seller whatsoever, whether in tort or contract or otherwise, are being transferred to or acquired by Purchaser hereunder, unless specifically assumed and scheduled hereunder. Buyer does not assume and will not be responsible for any known, unknown, or contingent liabilities of Seller incurred by any means including, but not limited to, professional malpractice or personal injury of any nature, including liabilities related to Seller's employees prior to closing. Seller is responsible for all payroll, tax liability, sales tax liability, if any, prior to closing.

1.02-3 The assets do not include the following: any property of Innovative Chiropractic, file cabinet next to copier machine, shelves containing vitamins, cabinet under fax machine, cabinetry in operatory, cabinetry in sterilization area, cabinetry at front desk, carpets, light fixtures, countertops, window treatments, ceiling speakers, TV and computer monitor mounts, bathroom fixtures, and magazine rack. The assets do not include any property of First Pacific Corporation, including its computers, monitors, keyboards, battery backup, computer speakers, laser printer, color printer, computer software, and computer connections.

1.02-4 Plants, trees, decorations, and pictures may be changed by Purchaser in cooperation with Innovative Chiropractic or other current tenant.

1.03 Purchase Price. The purchase price for the Assets (the Purchase Price) shall be the following:

1.03-1 One Hundred Sixty Five Thousand and 00/100ths (\$165,000.00) Dollars is the full purchase price. The sum of Five Thousand (\$5,000.00) Dollars has been deposited, and represents Purchaser's earnest money deposit ("Earnest Money"). The full purchase price minus the Earnest Money shall be paid by Purchaser to Seller at closing, by certified or official check.

1.04 Instruments of Conveyance and Transfer. The sale of the Assets, and the conveyance, assignment, transfer and delivery of all of the Assets shall be affected by Seller's execution and delivery to Purchaser, on the Closing Date, of a bill of sale in substantially the form of the Assignment and Bill of Sale attached hereto as Exhibit A. At time of closing, personal property, bio-hazardous property, and inactive patient files are to be moved at Seller's expense.

1.05 Further Assurances. Seller agrees that, at any time and from time to time on and after the Closing Date, they will, upon the request of Purchaser and without further consideration, take all steps reasonably necessary to place Purchaser in possession and operating control of the Assets and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all further acts, deeds, assignments, conveyances, transfers, or assurances as reasonably required to sell, assign, convey, transfer, grant, assure and confirm to Purchaser, or to aid and assist in the collection of or reducing to possession by Purchaser of, all of the Assets, or to vest in Purchaser good, valid and marketable title to the Assets.

1.06 Closing. The consummation of the transactions contemplated by this Agreement (the Closing) shall take place on July 1, 2004, or at another date, time and place agreed upon in writing by the parties (the Closing Date), but Purchaser shall take possession of the Dental Practice on June 30, 2004.

1.07 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets as follows, and Purchaser and Seller shall be bound by that allocation in reporting the transactions contemplated by this Agreement to any governmental authority (including without limitation the Internal Revenue Service):

- (a) Twenty-Five Thousand (\$25,000.00) Dollars for dental equipment;
- (b) Four Thousand (\$4,000.00) Dollars for hand instruments and dental supplies;
- (c) Five Thousand (\$5,000.00) Dollars for furniture and office equipment;
- (d) One Hundred Thirty One (\$131,000.00) Dollars for goodwill;

ARTICLE II Representations and Warranties of Purchaser

Purchaser, represents and warrants to Seller as follows:

2.01 Authorization. This Agreement has been duly executed and delivered by Purchaser and is binding upon and enforceable against her in accordance with its terms;

2.02 Compliance. The execution, delivery and performance of this Agreement by Purchaser, the compliance by Purchaser with the provisions of this Agreement and the consummation of the transactions described in this Agreement will not conflict with or result in the breach of any of the terms or provisions of or constitute a default under:

2.02-1 any note, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which Purchaser is a party or by which Purchaser is bound; or

2.02-2 any statute or any order, rule, regulation or decision of any court or regulatory authority of governmental body applicable to Purchaser.

2.03 Consents. Except for the consent of Purchaser's principal bank, no consent, approval, authorization, order, designation or declaration of any court or regulatory authority or governmental body, federal or other, or third person is required to be obtained by Purchaser for the consummation of the transactions described in this Agreement.

2.04 Accuracy of Representations & Warranties. None of the representations or warranties of Purchaser contains or will contain any untrue statement of any material fact or omits or misstates a material fact necessary to make the statements contained in this Agreement not misleading.

ARTICLE III

Representations and Warranties of Seller

3.01 Corporate Existence; Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and has all necessary corporate power and authority to own, lease and operate the property and assets and to carry on the business as now conducted and as proposed to be conducted. Seller owns all of the assets of the Dental Practice. Seller has full power and authority to enter into this Agreement and to carry out its terms. This Agreement has been duly and validly executed and delivered by Seller and is binding upon and enforceable against Seller in accordance with its terms.

3.02 No Adverse Consequences. Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated by this Agreement will

3.02-1 result in the creation or imposition of any lien, charge or encumbrance on the Seller's assets or property,

3.02-2 violate or conflict with any provision of Seller's articles of incorporation or bylaws,

3.02-3 violate any law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority applicable to Seller, or

3.02-4 either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination or acceleration of, result in the breach of the terms, conditions

or provisions of, result in the loss of any benefit to Seller under or constitute a default under any agreement, instrument, license or permit to which Seller is a party or is bound.

3.03 Brokers and Finders. Purchaser acknowledges and understands that no brokers or finders have been used in this transaction or are otherwise entitled to any fee.

3.04 Litigation. There is no claim, litigation, proceeding or investigation of any kind pending or threatened by or against the Dental Practice, and, to the best knowledge of Seller, there is no basis for any such claim, litigation, proceeding or investigation.

3.05 Compliance with Laws. Seller has at all relevant times conducted the Dental Practice in compliance with their respective articles of incorporation and bylaws and all applicable laws and regulations. The Dental Practice is not subject to any outstanding order, writ, injunction or decree, and have not been charged with, or threatened with a charge of, a violation of any provision of federal, state or local law or regulation.

3.06 Employment Matters.

3.06-1 Employment Agreements. Each of the employees of the Dental Practice is an at-will employee. There are no written employment, commission or compensation agreements of any kind between Seller and any of its employees at the Dental Practice.

3.07 Permits and Licenses. Seller and the shareholders of Seller hold and at all times have held, all licenses, permits, franchises, easements and authorizations (collectively, Permits) necessary for the lawful conduct of the Dental Practice pursuant to all applicable statutes, laws, ordinances, rules and regulations of all governmental bodies, agencies and other authorities having jurisdiction over it or any part of its operations, and there are no claims of violation by any such party of any Permit.

3.08 Consents and Approvals. No consent, approval or authorization of any court, regulatory authority, governmental body, or any other entity or person not a party to this Agreement is required for the consummation of the transactions described in this Agreement by Seller. Seller has obtained, or shall have obtained prior to the Closing, all consents, authorizations or approvals of any third parties required in connection with the execution, delivery or performance of this Agreement by Seller or the consummation of the transaction contemplated by this Agreement. Seller has made all registrations or filings with any governmental authority required for the execution or delivery of this Agreement or the consummation of the transaction contemplated hereby.

3.09 Records. The books of account of Seller and the Professional Corporation is complete and accurate in all material respects, and there have been no transactions involving the business of Seller and the Professional Corporation which properly should have been set forth therein and which have not been accurately so set forth. Complete and accurate copies of such books have been made available to Purchaser.

3.10 Reliance. Seller recognizes and agrees that, notwithstanding any investigation by Purchaser, Purchaser is relying upon the representations and warranties made by Seller in this Agreement.

3.11 Accuracy of Representations and Warranties. None of the representations or warranties of Seller contains or will contain any untrue statement of any material fact or omits or

misstates a material fact necessary to make the statements contained in this Agreement not misleading. Seller does not know of any fact that has resulted or that, in the reasonable judgment of Seller will result, in any material adverse change in Seller's business, results of operation, financial condition or prospects that has not been set forth in this Agreement.

ARTICLE IV Covenants

4.01 Access to Properties, Books and Records. Prior to the Closing Date, Seller shall, at Purchaser's request, afford or cause to be afforded to the agents, attorneys, accountants and other authorized representatives of Purchaser reasonable access during normal business hours to all employees, properties, books and records of the Dental Practice and shall permit such persons, at Purchaser's expense, to make copies of such books and records. Purchaser shall treat, and shall cause all of their agents, attorneys, accountants and other authorized representatives to treat, all information obtained pursuant to this Section 4.01 as confidential. No investigation by Purchaser or any of her authorized representatives pursuant to this Section 4.01 shall affect any representation, warranty or closing condition of any party hereto or Purchaser's rights to indemnification.

4.02 Negative Covenants. Except as otherwise permitted by this Agreement or with the prior written consent of Purchaser, prior to the Closing Date, Seller shall not, in connection with the Dental Practice:

4.02-1 Mortgage, pledge, otherwise encumber or subject to lien any of its assets or properties, tangible or intangible, or commit itself to do any of the foregoing;

4.02-2 Except in the ordinary and usual course of its business and in each case for fair consideration, dispose of, or agree to dispose of, any of its assets or lease or license to others, or agree so to lease or license, any of its assets;

4.02-3 Acquire any assets which would be material to the Dental Practice other than assets acquired in the ordinary and usual course of business and consistent with past practices;

4.02-4 Enter into any transaction or contract or make any commitment to do the same;

4.02-5 Increase the wages, salaries, compensation, pension or other benefits payable, or to become payable by it, to any of its employees or agents, including without limitation any bonus payments or severance or termination pay, other than increases in wages and salaries required by employment arrangements existing on the date hereof or otherwise in the ordinary and usual course of its business;

4.02-6 Agree or commit to do any of the foregoing.

4.03 Affirmative Covenants. Except as otherwise permitted by this Agreement or with the prior written consent of Purchaser, prior to the Closing Date, Seller shall:

4.03-1 Operate the Dental Practice, including collecting receivables and paying payables, as presently operated and only in the ordinary course and consistent with past practices;

4.03-2 Advise Purchaser in writing of any litigation or administrative proceeding that challenges or otherwise materially affects the transactions contemplated hereby;

4.03-3 Use its best efforts to maintain all of the Tangible Personal Property in good operating condition, reasonable wear and tear excepted, consistent with past practices, and take all steps reasonably necessary to maintain their intangible assets;

4.03-4 Not cancel or change any policy of insurance (including self-insurance) or fidelity bond or any policy or bond providing substantially the same coverage;

4.03-5 Maintain, consistent with past practices, all inventories, spare parts, office supplies and other expendable items;

4.03-6 Use its best efforts to retain all employees;

4.03-7 Maintain its books and records in accordance with past practices;

4.03-8 Pay and discharge all taxes, assessments, governmental charges and levies imposed upon it, its income or profits or upon any property belonging to it, in all cases prior to the date on which penalties attach thereto; and

4.03-9 Comply with all laws, rules and regulations applicable to the Dental Practice.

4.04 **Employees.** Seller shall be responsible for and shall pay and discharge all obligations to such employees arising out of or in connection with their employment prior to Closing.

4.05 **Indemnification by Seller**

Seller indemnifies and agrees to defend, indemnify, and hold Purchaser harmless from, against, and in respect of the following:

(a) any and all debts, liens, liabilities, or obligations of Seller, direct or indirect, fixed, contingent, or otherwise existing before the Closing Date, including, but not limited to, any liabilities arising out of any act, transaction, circumstance, state of facts, actions or inactions of employees, or violation of law that occurred or existed before the Closing Date, whether or not then known, due, or payable, and irrespective of whether the existence thereof is disclosed to Purchaser in this Agreement or any schedule hereto;

(b) any and all loss, liability, deficiency, or damage suffered or incurred by Purchaser as a result of any default by Seller existing on the Closing Date, or any event of default occurring prior to the Closing Date that with the passage of time would constitute a default, under any material contract or other agreement assumed by Purchaser under this Agreement;

(c) any and all loss, liability, deficiency, or damage suffered or incurred by Purchaser by reason of any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Seller contained in this Agreement or in any certificate, document, or instrument delivered to Purchaser hereunder or in connection herewith;

(d) any claim for a finder's fee or brokerage or other commission by any person or entity for services alleged to have been rendered at the instance of Seller with respect to this

Agreement or any of the transactions contemplated hereby; and

(e) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in purchaser's successful enforcement of this indemnity.

(f) any violations of municipal, state, or federal law committed prior to closing.

4.06 Indemnification by Purchaser

Purchaser hereby agrees to indemnify and hold Seller harmless from, against, and in respect of:

(a) any and all debts, liabilities, or obligations of Purchaser, direct or indirect, fixed, contingent, or otherwise accruing after the Closing Date;

(b) any and all loss, liability, deficiency, or damage suffered or incurred by Seller resulting from any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Purchaser contained in this Agreement or in any certificate, document, or instrument delivered to Seller pursuant hereto or in connection herewith;

(c) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in Seller's successful enforcement of this indemnity, except those resulting from Seller's duties and obligations as landlord of Purchaser's leased premises.

4.07. Third-Party Claims

(a) In order for Purchaser or Seller, as the case may be, to be entitled to any indemnification provided for hereunder, in respect of, arising out of, or involving a claim made by any person, firm, governmental authority, or corporation other than the Purchaser or Seller, or their respective successors, assigns, or affiliates, against the indemnified party, the indemnified party must notify the indemnifying party in writing of such third-party claim promptly after receipt by the indemnified party of written notice of the third-party claim, and the indemnified party shall deliver to the indemnifying party, within 20 days after receipt by the indemnified party, copies of all notices relating to the third-party claim.

(b) If a third-party claim as set forth in subsection (a) hereof is made against an indemnified party, the indemnifying party will be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the indemnifying party, provided such counsel is not reasonably objected to by the indemnified party. Should the indemnifying party elect to assume the defense of such a third-party claim, the indemnifying party will not be liable to the indemnified party for any legal expenses subsequently incurred by the indemnified party in connection with the defense thereof. If the indemnifying party elects to assume the defense of such a third-party claim, the indemnified party will cooperate fully with the indemnifying party in connection with such defense.

(c) If the indemnifying party assumes the defense of a third-party claim, then in no event will the indemnified party admit any liability with respect to, or settle, compromise, or discharge, any third-party claim without the indemnifying party's prior written consent, and the indemnified party will agree to any settlement, compromise, or discharge of a third-party claim that the indemnifying party may recommend that releases the indemnified party completely in connection with the third-party claim.

(d) In the event the indemnifying party shall assume the defense of any third-party claim, the indemnified party shall be entitled to participate in, but not control, the defense with its own counsel at its own expense. If the indemnifying party does not assume the defense of any such third-party claim, the indemnified party may defend the claim in a manner as it may deem appropriate, and the indemnifying party will reimburse the indemnified party promptly;

ARTICLE V Joint Covenants

Purchaser and Seller covenant and agree that they will act in accordance with the following:

5.01 Governmental Consents. Promptly following the execution of this Agreement, the parties will proceed to prepare and file with the appropriate governmental authorities any requests for approval or waiver, if any, that are required from governmental authorities in connection with the transactions contemplated hereby, and the parties shall diligently and expeditiously prosecute and cooperate fully in the prosecution of such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers. Purchaser is not responsible for obtaining governmental consents regarding the physical structure of the building owned by Seller.

5.02 Best Efforts; No Inconsistent Action. Each party will use its best efforts to effect the transactions contemplated by this Agreement and to fulfill the conditions to the obligations of the other parties set forth in Article 6 or 7 of this Agreement. No party will take any action inconsistent with its obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement, except that nothing in this Section 5.02 shall limit the rights of the parties under Articles 6, 7 and 8.

ARTICLE VI Conditions to Obligations of Seller

The obligations of Seller under Article I are, at their option, subject to satisfaction, at or prior to the Closing, of each of the following conditions:

6.01 Representations, Warranties and Covenants.

6.01-1 All representations and warranties of Purchaser made in this Agreement shall in all material respects be true and complete on and as of the Closing Date with the same force and effect as if made on and as of that date.

6.01-2 All of the terms, covenants and conditions to be complied with and performed by Purchaser on or prior to the Closing shall in all material respects have been complied with or performed by Purchaser.

6.02 Adverse Proceedings.

No suit, action, claim or governmental proceeding shall have been instituted or threatened

against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against Purchaser or Seller to restrain or prohibit this Agreement or the transactions contemplated by this Agreement.

6.03 Lease

At or before closing, Purchaser shall execute a five-year lease for the offices of the Dental Practice at 7714 159th Street, Orland Park, IL 60462, at which Seller is Lessor. Initial monthly rent shall be Two Thousand Four Hundred (\$2,400.00) Dollars, and monthly rent will increase each year by a Five Per Cent (5%) increment over the previous year's monthly rent. The said required lease will also provide that Purchaser-Lessee shall pay monthly supplemental rent of Three Hundred Seventy-Five (\$375.00) Dollars for reimbursement to Lessor of common area maintenance expenses, including but not limited to, lessee's pro-rata share of utility and other expenses for the entire building. Seller-Lessor shall account to Purchaser-Lessee at least semi-annually for such common area expenses, and shall either reimburse Purchaser for any over-payments made by Purchaser toward pro-rata common area maintenance expenses, or shall bill Purchaser for any such under-payments made by Purchaser, which billing Purchaser shall pay by its due date.

ARTICLE VII Termination

7.01 Right of Parties to Terminate. This Agreement may be terminated:

7.01-1 by Purchaser, if any of the authorizations, consents, approvals, filings or registrations described above shall have been denied, not permitted to go into effect or obtained on terms not reasonably satisfactory to Purchaser and all reasonable final appeals shall have been exhausted;

7.01-2 by Purchaser, if Seller shall have breached any of their obligations hereunder in any material respect;

7.01-3 by Seller, if Purchaser shall have breached any of its obligations hereunder in any material respect; or

7.02 Effect of Termination. If either Purchaser or Seller decides to terminate this Agreement, such party shall promptly give written notice to the other party to this Agreement of such decision. In the event of a termination, the parties hereto shall be released from all liabilities and obligations arising under this Agreement, with respect to the matters contemplated by this Agreement, other than for damages arising from a breach of this Agreement.

ARTICLE VII Confidentiality; Press Releases

8.01 Confidentiality.

8.01-1 No information concerning Seller not previously disclosed to the public or in the public domain that has been furnished to or obtained by Purchaser under this Agreement or in connection

with the transactions contemplated hereby shall be disclosed to any person other than in confidence to employees, legal counsel, financial advisers or independent public accountants of Purchaser or used for any purpose other than as contemplated herein. If the transactions contemplated by this Agreement are not consummated, Purchaser shall hold such information in confidence for a period of four years from the date of any termination of this Agreement, and all such information that is in writing or embodied on a diskette, tape or other tangible medium shall be promptly returned to Seller.

8.01-2 No information concerning Purchaser not previously disclosed to the public or in the public domain that has been furnished to or obtained by Seller under this Agreement or in connection with the transactions contemplated hereby shall be disclosed to any person other than in confidence to the employees, legal counsel, financial advisers or independent public accountants of Seller or used for any purpose other than as contemplated herein. If the transactions contemplated by this Agreement are not consummated, Seller shall hold such information in confidence for a period of four years from the date of any termination of this Agreement, and all such information that is in writing or embodied on a diskette, tape or other tangible medium shall be promptly returned to Purchaser.

8.01-3 Notwithstanding the foregoing, such obligations of Purchaser and of Seller shall not apply to information

- (a) that is, or becomes, publicly available from a source other than Purchaser or Seller, as the case may be;
- (b) that was known and can be shown to have been known by Purchaser at the time of its receipt from Seller, or by Seller at the time of its receipt from Purchaser, as the case may be;
- (c) that is received by Purchaser from a third party without breach of this Agreement by Purchaser, or is received by Seller from a third party without breach of this Agreement by Seller, as the case may be;
- (d) that is required by law to be disclosed; or
- (e) that is disclosed in accordance with the written consent of Purchaser or of Seller, as the case may be.

ARTICLE IX Other Provisions

9.01 **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns forever. No party hereto may voluntarily or involuntarily assign such party's interest under this Agreement without the prior written consent of the other parties.

9.02 **Entire Agreement.** This Agreement and the Schedules and Exhibits referred to herein embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for herein.

9.03 **Fees and Expenses.** Purchaser shall be solely responsible for all costs and expenses incurred by her, and Seller shall be solely responsible for all costs and expenses incurred by Seller, in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

9.04 **Amendment, Waiver, etc.** The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought. Any waiver of any term or condition of this Agreement or any breach hereof shall not operate as a waiver of any other such term, condition or breach, and no failure to enforce any provision hereof shall operate as a waiver of such provision or of any other provision hereof.

9.05 **Headings.** The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

9.06 **Governing Law.** The construction and performance of this Agreement will be governed by the laws of the State of Illinois.

9.07 **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing; shall be delivered personally, including by means of telecopy, or mailed by registered or certified mail, postage prepaid and return receipt requested; shall be deemed given on the date of personal delivery or on the date set forth on the return receipt; and shall be delivered or mailed to the addresses or telecopy numbers set forth on the first page of this Agreement or to such other address as any party may from time to time direct, with copies to:

In the case of Seller:

(847) 212-5620 cell
(847) 424 0200 office

Steven H. Jesser
790 Frontage Road
Suite 110
Northfield, Illinois 60093
Facsimile: (800) 330-9710

Todd C. Pusateri, DDS
8 West Gartner
Naperville, IL 60540

In the case of Purchaser:

Mary A. Tujetsch, DDS
55 E. Washington Suite 2121
Chicago IL 60602
312-7802-1396

MCT
7/9

9.08 **Breach; Equitable Relief.** The parties acknowledge that the Dental Practice and rights of the parties described in this Agreement are unique and that money damages alone for breach of this Agreement may be inadequate. Any party aggrieved by a breach of the provisions hereof may bring an action at law or suit in equity to obtain redress, including specific performance, injunctive relief or any other available equitable remedy. Time and strict performance are of the essence in this Agreement.

9.09 **Attorneys' Fees.** If suit or action is filed by any party to enforce the provisions of this Agreement or otherwise with respect to the subject matter of this Agreement, each party shall bear its own legal fees, costs, and expenses.

9.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

9.11 **Covenant Not to Compete.**

9.11-1. For a period of five (5) years after date of this Covenant, Seller shall not, in any capacity, own, manage, operate, control, participate in, be employed by, or be connected in any manner with the ownership, management, operation, control, or practice of any dental practice within a five (5) mile radius of 7714 159th Street, Orland Park, IL 60462.

9.11-2 During and after the closing as set forth in the Asset Purchase Agreement, Seller shall not disclose to any person or entity the names and addresses of any patients or suppliers or confidential or proprietary information of Purchaser, shall not disparage Purchaser, or solicit patients previously treated at the address set forth above, including those patients whose names were provided to Purchaser upon closing. Seller will cooperate in attempting to refer active and inactive patients of the Dental Practice to Purchaser, and will not refer such patients to other dentists.

9.11-3. Seller acknowledges that the restrictions imposed by this Covenant are fully

understood and will not preclude it from the general practice of dentistry.

9.11-4. Seller agrees that this Covenant is intended to protect and preserve legitimate business interests of Purchaser. It is further agreed that any breach of this Covenant may render irreparable harm to Purchaser. In the event of a breach by Seller, Purchaser shall have available to it all remedies provided by law or equity, including, but not limited to, temporary or permanent injunctive relief to restrain Seller and its past or former dentists from violating this Agreement. If Seller is found to be in breach of any part of the Covenant Not to Compete, Seller must immediately cease practicing at the site wherein the breach is occurring, and Purchaser may seek all injunctive, equitable, and/or legal remedies available to it under law, including damages.

9.11-7. This Covenant Not to Compete constitutes the entire agreement between the parties hereto with respect to the restrictive covenant herein. No change, modification, or amendment shall be valid unless the same is in writing, signed by the parties hereto, and specifically provides for amendment, change, or modification of this Agreement. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party to be charged.

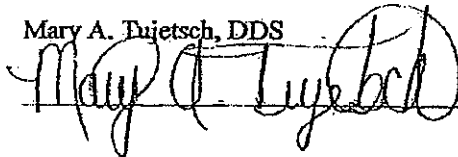
9.11-8. If any portion of this Covenant shall be, for any reason, declared invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable, and carried into effect to the fullest extent permitted, and the invalid or unenforceable portion shall be reformed, if possible, so as to be valid and enforceable.

9.11-9 This Covenant shall be subject to and governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

PURCHASER:

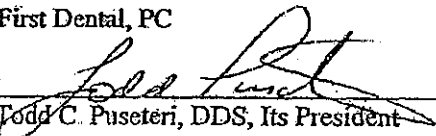
Mary A. Tujetsch, DDS



SELLER:

First Dental, PC

By:



Todd C. Puseteri, DDS, Its President

EXHIBIT A
ASSIGNMENT AND BILL OF SALE

Pursuant to the Asset Purchase Agreement dated June 21, 2004, (the Agreement) between Mary A. Tujetsch, DDS (Purchaser), and First Dental, PC (Seller), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby sell to Purchaser, all of Seller's right, title and interest in and to the Assets (as defined in the Agreement) and do hereby transfer, convey, grant and assign to Purchaser, all of Seller's right, title and interest in and to all of the Purchased Assets.

Seller hereby transfers the foregoing Assets free and clear of all liens, claims and encumbrances of every type whatsoever. This instrument will vest in Purchaser good and marketable title to the foregoing Assets, free and clear of all liens, claims and encumbrances.

IN WITNESS WHEREOF, Seller has caused this Assignment and Bill of Sale to be executed and delivered effective as of the close of business on June 22, 2004.

First Dental, PC

By: _____

Todd C. Pusateri, DDS, Its President

EXHIBIT B

LEASE

Dated as of June 28, 2004

by and between

First Dental of Orland Park, PC

LANDLORD

and

Marv A. Tuietsch, DDS

TENANT

7714 159TH STREET, ROOMS __ AND __
ORLAND PARK, ILLINOIS 60462

LEASE COVER SHEET

For purposes of the Lease of which this Lease Cover Sheet is a part, the terms used therein shall have the following meanings:

Landlord: First Dental of Orland Park, PC

Landlord's Address: 8 West Gartner
Naperville, IL 60540

Tenant: Mary A. Tujetsch, DDS

Tenant's Address: 55 East Washington Street, Suite 2121
Chicago, IL 60602

Leased Premises: As delineated and described in Exhibit A hereto.

Common Address of Premises: 7714 159th Street, Rooms __ and __ ~~and~~ TP
Orland Park, IL 60462

Commencement Date: July 1, 2004

Termination Date: June 30, 2009 with reference to market rate ~~with~~

Renewal Options: Provided that Tenant is not in default in the performance of this lease, Tenant shall have the option to renew the lease for an additional term of one (1) or three (3) years commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the base monthly rent shall be determined by landlord. The option shall be exercised by written notice given to Landlord specifying a one (1) or three (3) year term not less than one hundred eighty (180) days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified; this option shall expire.

Additional Rental Option: Provided that Tenant is not in default in the performance of this lease and the co-tenant chiropractic practice does not renew their lease, Tenant shall have the option to lease the entire private space and common space leased by the co-tenant chiropractic practice at the expiration of their lease on mutual terms and conditions, including, but not limited to, landlords base rent for the space.

Purchase Options: If and when Landlord should decide to sell the building, co-tenant chiropractic practice will be offered the first opportunity to purchase the building, upon mutual terms and conditions including, but not limited to, Landlord's price for the

building, which price is within his sole judgment and determination. If the co-tenant chiropractic practice does not purchase the building, Tenant shall have the next opportunity to purchase the building, upon mutual terms and conditions including, but not limited to, Landlord's price for the building, which price is within his sole judgement and determination. The option shall be exercised by written notice given to Landlord not greater than fourteen (14) days after option to purchase building is given to Tenant. If notice is not given in the manner provided herein within the time specified, this option shall expire.

Base Monthly Rent:

Lease Year	Monthly Rent
7/1/04-6/30/05	\$2,400.00
7/1/05-6/30/06	2,520.00
7/1/06-6/30/07	2,646.00
7/1/07-6/30/08	2,778.00
7/1/08-6/30/09	2,917.00

Security Deposit: \$2,400.00 plus \$2,400.00 deposit of first month's rent plus \$375.00 deposit of first month's additional rent.

Exhibit/Schedules: Exhibit A – Description of Premises

License of Illinois Dental Institute: Tenant shall allow access to the leased office space and operatories twelve times yearly to the Illinois Dental Institute (IDI), which is licensed to utilize said leased premises to present educational seminars. IDI will accommodate Tenant's scheduling, and will not schedule seminars for the times which Tenant schedules patients. IDI will provide Tenant at least sixty days notice of the dates and times at which it will use the premises, during which times no patients of Tenant are to be treated.

IDI will provide, on dates to be mutually agreed, coronal polishing or pit & fissure sealant certification training for up to twelve staff members of Tenant yearly, at no charge to tenant.

Vacation of Leased Premises: At the end of Tenant's lease term, Tenant will remove all of its dental equipment, and repair all holes in walls, floors, or ceilings; professionally cap and close all plumbing, repair any exposed wiring, electrical outlets, or plumbing.

LEASE

This lease, including by this reference its Lease Cover Sheet ("Lease"), is made this 28th day of June, 2004, by and between Landlord and Tenant, who hereby mutually covenant and agree as follows:

I. GRANT AND TERM

1.0 Grant. Landlord, for and in consideration of the rents herein reserved and the covenants and agreements herein contained on the part of the Tenant to be performed, hereby leases to Tenant, and Tenant hereby lets from Landlord, ~~Rooms~~ and ~~at~~ 7714 159th Street, Orland Park, IL 60462, delineated on Exhibit A attached hereto (the "Leased Premises").

1.1 Term. The term of the Lease (the "Term") shall commence on the Commencement Date and shall end on the Termination Date (the "Initial Term"), unless sooner terminated as herein set forth.

II. POSSESSION

2.0 Possession. Landlord shall deliver possession of the Leased Premises to Tenant on or before the Commencement Date in its condition as of the execution and delivery hereof, reasonable wear and tear excepted. Tenant has examined and inspected the Leased Premises and knows and understands its condition. No representations as to the condition and repair thereof, and no agreements to make any alterations, repairs or improvements in or about the Leased Premises have been made by Landlord, who makes no representations or warranties of any kind or nature whatsoever, whether written or oral, concerning the suitability of the Leased Premises for Tenant's intended use thereof as permitted by the terms of this Lease. Tenant has solely and exclusively relied on its independent investigation and evaluation of all such matters in entering into this Lease.

2.1 Signage. Tenant may place sign of similar material and matching lettering to the top half of existing outside free standing sign. If outside freestanding sign is replaced, Tenant will have first option for sign placement if multiple positions are available.

III. PURPOSE

3.0 Purpose. The Leased Premises shall be used and occupied only for the operation of a dental practice and incidental office uses and for no other purpose whatsoever.

3.1 Uses Prohibited. Tenant shall not use or occupy the Leased Premises, or permit the Leased Premises to be used or occupied, contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, in any manner which would violate any certificate of occupancy affecting the same, cause structural injury to the improvements, cause the value or usefulness of the Leased Premises, or any part thereof, to diminish, or constitute a public or private nuisance or waste.

IV. RENT

4.0 Rent. Beginning with the Commencement Date, and continuing on the first day of each Month during the Initial Term and during any Renewal Term, as the case may be, hereof, Tenant shall pay the Monthly Rent to Landlord, at such place or places as Landlord may designate in writing from time to time, and in default of such designation then at the Landlord's Address. Any Monthly Rent which is not paid by the fifth day of each month shall bear interest at a rate equal to eighteen percent (18%) per annum from the due date until paid and a late fee of 5% of the Monthly Rent shall become payable as Additional Rent. Landlord's right to receive the interest and late fee described in this Section 4.0 shall not in any way limit any of Landlord's other remedies available under this Lease, at law or in equity.

4.1 Additional Rent. For Tenant's proportionate share of common expenses of the building, including but not limited to office cleaning and supplies, all utilities including water, janitorial services, gas and electric, waste removal, snow removal and lawn and landscape maintenance, Tenant shall pay to landlord estimated additional rent of \$375.00 per month with the regular monthly rent and shall be subject to the same late payment terms as set forth above. Additional rent shall be analyzed every six months and any overpayment or underpayment shall be determined and paid between the parties. Copies of all bills used in calculating additional rent will be provided to tenant upon written request. The Tenant shall provide her own phone system and all other usual and customary office equipment.

4.2 Shared Expenses: Tenant will share in the expense of the following building expenses, by reimbursing Sharing Tenant 50% of their total expenditure: light bulbs, paper towels, toilet paper, facial tissue, garbage bags, hand soap.

V.

SECURITY DEPOSIT

5.0 Security Deposit. Tenant shall deposit with Landlord, upon the execution of this Lease, the Security Deposit as security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease including, but not limited to, payment of the Monthly Rent and Additional Rent, Landlord may use, apply, or retain the whole or any part of the Security Deposit for the payment of any such Monthly Rent or Additional Rent which is not paid when due, or for any other sum which the Landlord may expend or be required to expend by reason of Tenant's default including, without limitation, any damages or deficiency in the reletting of the Leased Premises, whether such damages or deficiency shall have accrued before or after any re-entry by Landlord. If any of the Security Deposit shall be so used, applied or retained by Landlord at any time or from time to time, Tenant shall promptly, in each such instance, on written demand therefor by Landlord, pay to Landlord such additional sum as may be necessary to restore the Security Deposit to the original amount set forth in the first sentence of this paragraph. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after all of the following has occurred:

- (a) the time fixed as the expiration of the Initial Term or the last Renewal Term, whichever the case may be; and
- (b) the removal of Tenant and its property from the Leased Premises; and
- (c) the surrender of the Leased Premises by Tenant to Landlord in accordance with this Lease; and
- (d) All Additional Rent due hereunder has been computed by Landlord and paid by

INSURANCE

6.0 TENANT'S INSURANCE COVERAGE.

(a) Tenant shall maintain general commercial liability insurance covering loss, cost or expense by reason of injury to or death of persons or damage to or destruction of property by reason of the use and occupancy of the Leased Premises by Tenant or Tenant's contractors, suppliers, employees, agents, customers, business invitees, subtenants, licensees and concessionaires ("Tenant's Invitees"). Such insurance shall have limits of at least \$1,000,000 for each occurrence of bodily injury and for each occurrence of property damage.

6.1 Policy Requirements. All insurance required to be maintained by Tenant shall be issued by insurance companies authorized to do insurance business in the State of Illinois and reasonably acceptable to Landlord. A certificate of insurance evidencing the insurance required under this Article VI shall be delivered to Landlord prior to Tenant taking possession of the Leased Premises. No such policy shall be subject to cancellation or modification without thirty (30) days prior written notice (or such shorter period as is required by law in the event of cancellation for nonpayment of premiums) to all Interest Holders (as defined in Section 6.2). Tenant shall furnish Landlord with a replacement certificate with respect to any insurance not less than thirty (30) days prior to the expiration of the then current policy.

6.2 Additional Insured/Loss Payee. Landlord and any mortgagee or other interest holder designated in writing by Landlord ("Interest Holders") shall be named as a named insured party under Tenant's policies of general commercial liability insurance for the Leased Premises. Landlord shall be named the loss payee under Tenant's property insurance covering the improvements on the Leased Premises.

6.3 Increases in Insurance Coverage. Landlord may, from time to time during the term, upon not less than thirty (30) days prior written notice to Tenant, require Tenant to provide increased amounts of insurance coverage under the types of insurance policies described in this Article VI, only if such additional amounts of insurance are required by any lender holding a mortgage or similar security interest in the Leased Premises.

6.4 Mutual Waiver of Subrogation. Landlord and Tenant and their successors in interest hereby waive any legal rights each may later acquire against the other party for the loss of or damage to their respective property or to property in which they may have an interest, which loss or damage is caused by an insured hazard arising out of or in connection with the Building during the term.

6.5 Indemnification of Interest Holders. Tenant shall defend and save the Interest Holders (as defined in Section 6.2) harmless from any and all losses which may occur with respect to any person, entity, property or chattels on or about the Building, or to any other property, resulting from Tenant's acts or omissions, except (i) when such loss results from the

willful conduct, misconduct or gross negligence of Landlord, its agents, employees or contractors, or (ii) to the extent of any insurance proceeds received by Landlord or payable under Landlord's insurance.

VII. DAMAGE OR DESTRUCTION

7.0 Restoration of the Leased Premises. If the improvements on the Leased Premises are partially damaged or destroyed during the Term, except during the last year of the Term, then, except as otherwise provided in Section 7.1 herein below, (i) Landlord, at its expense, shall repair, restore or rebuild the Building, excluding Tenant's Improvements and the improvements of the Building's other tenants, to substantially the condition it was in immediately prior to such damage or destruction; and (ii) Tenant, at its expense, shall repair, restore or rebuild the Tenant Improvements to substantially the condition they were in immediately prior to such damage or destruction, if such repairs are required due to her acts or omissions, and not that of Landlord or third parties. Tenant's rent and other charges due under this Lease shall abate on a proportionate basis to the extent that the Leased Premises are rendered unusable during any such period of damage, destruction, repair or restoration, until such time as Landlord has completed its repair, restoration or rebuilding. All such repair, restoration or rebuilding shall be performed with due diligence in a good and workmanlike manner and in accordance with applicable law and plans and specifications for such work reasonably approved by Landlord. Notwithstanding the foregoing, if the Building is damaged in an amount equal to fifty percent (50%) or more of the replacement cost of the Building, Landlord may terminate this Lease by giving Tenant written notice of termination within ninety (90) days of the occurrence of such damage or destruction. If the Leased Premises are partially damaged or destroyed during the last year of the Term, Landlord may terminate this Lease as of the date of the damage or destruction by giving Tenant at least thirty (30) days written notice of such termination of the Lease.

7.1 Option Not to Restore. Notwithstanding Section 7.0 hereinabove, if during the last year of the Term, or during the last year of any new term, the Leased Premises are damaged in an amount equal to fifty percent (50%) or more of the replacement cost of the Tenant Improvements, Tenant may terminate this Lease by giving Landlord written notice of termination within thirty (30) days after the occurrence of such damage or destruction. Upon termination of this Lease by Tenant, Landlord shall be entitled to receive any insurance proceeds paid with respect to the leasehold improvements on the Leased Premises under the property insurance policy required under Section 6.0(b) hereinabove.

VIII. CONDEMNATION

8.0 Condemnation. If the whole of the Leased Premises shall be taken or condemned for a public or quasi-public use or purpose by any competent authority or if a portion of the Leased Premises shall be so taken and, as a result thereof, the balance cannot be used for the purpose as provided for in Article III, then in either of such events, the Lease term shall terminate upon delivery of possession to the condemning authority, and any award, compensation or damage

(hereinafter sometimes called the "Award"), shall be paid to and be the sole property of Landlord whether such award shall be made as compensation for diminution of the value of the leasehold or the fee of the Leased Premises or otherwise and Tenant hereby assigns to Landlord all of Tenant's right, title, and interest in and to any and all such award.

IX.

MAINTENANCE AND REPAIRS

9.0 Maintenance. Landlord, at its expense, shall maintain the Building in good repair and condition during the term. Any maintenance or repair work by Landlord shall be performed in such manner as will minimize undue interference with Tenant's normal operations. Tenant shall provide Landlord with prompt notice of any damage to, or defective condition in, any part or appurtenance of the Building. Tenant will be responsible to change extinguished light bulbs in private area.

9.1 Alterations. Tenant shall not create any openings in the roof or exterior walls, nor shall Tenant make any material alterations or additions to the Leased Premises without the prior written consent of Landlord. Upon completion of any work by or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord reasonably may require (including, without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.

X.

ASSIGNMENT AND SUBLETTING

10.0 Consent Required. Tenant may not, without Landlord's prior written consent, which consent will not be unreasonably withheld (a) assign, convey, or mortgage this Lease or any interest under this Lease; (b) allow any transfer thereof or any lien upon Tenant's interest voluntarily, involuntarily, or by operation of law; (c) sublet the Leased Premises or any part thereof; or (d) permit the use or occupancy of the Leased Premises or any part thereof by anyone other than Tenant and its employees. No permitted assignment or subletting shall relieve Tenant of Tenant's covenants and agreements hereunder and Tenant shall continue to be liable as principal, and not as a guarantor or surety, to the same extent as though no assignment or subletting had been made. Landlord's consent to any assignment, subletting or transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future assignment, subletting or transfer.

XI.

LIENS AND ENCUMBRANCES

11.0 Encumbering Title. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Leased Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights

of Landlord in and to the Leased Premises.

11.1 Liens and Right to Contest. Tenant shall not permit the Leased Premises to become subject to any mechanics', laborers', or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work or any character performed or claimed to have been performed on the Leased Premises by, or at the direction or sufferance of, Tenant; provided, however, that Tenant shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien; provided, however, that on final determination of the lien or claim for lien, Tenant shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

XII. INDEMNITY AND WAIVER

13.0 Indemnity. Tenant will protect, indemnify, and hold harmless Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses imposed upon or incurred by or asserted against Landlord by reason of any accident, injury to, or death of persons or loss of or damage to property occurring on or about the Leased Premises or any part thereof or the adjoining properties, sidewalks, curbs, streets or ways, or resulting from any act or omission of Tenant or anyone claiming by, through, or under Tenant.

Indemnity. Landlord will protect, indemnify, and hold harmless Tenant from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses imposed upon or incurred by or asserted against Tenant by reason of any accident, injury to, or death of persons or loss of or damage to property occurring on or about the Leased Premises or any part thereof or the adjoining properties, sidewalks, curbs, streets or ways, or resulting from any act or omission of Landlord or anyone claiming by, through, or under Landlord.

13.1 Waiver of Certain Claims. Tenant waives all claims it may have against Landlord for damage or injury to person or property sustained by Tenant or any persons claiming through Tenant or by any occupant of the Leased Premises, or by any other person, resulting from any part of the Leased Premises or any of its improvements, equipment, or appurtenances becoming out of repair, or resulting from any accident on or about its improvements, equipment, or appurtenances becoming out of repair or resulting from any accident on or about the Leased Premises or resulting directly or indirectly from any act or neglect of any person, other than Landlord. All personal property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the Leased Premises shall be there at the risk of Tenant or of such other person only and Landlord shall not be liable for any damage thereto or for the theft or misappropriation thereof.

VIII
RIGHTS RESERVED TO LANDLORD

14.0 RIGHTS RESERVED TO LANDLORD. Without limiting any other rights reserved or available to Landlord under this Lease, at law or in equity, Landlord, on behalf of itself and its agents, reserves the following rights, to be exercised at Landlord's election:

- (a) To conduct reasonable inspections of the Leased Premises during normal business hours of Tenant;
- (b) To show the Leased Premises to prospective purchasers, mortgagees, or other persons having a legitimate interest in viewing the same, and, at any time within one (1) year prior to the expiration of the Term, to persons wishing to rent the Leased Premises; and
- (c) During the last thirty (30) days of the Term, if during or prior to that time Tenant vacates the Leased Premises, to decorate, remodel, repair, alter, or otherwise prepare the Leased Premises for new occupancy.

Landlord may enter upon the Leased Premises for any and all of the said purposes and may exercise any and all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession of the Leased Premises and without being liable in any manner to Tenant.

XIV. QUIET ENJOYMENT

15.0 Quiet Enjoyment. So long as no event of default shall have occurred and be continuing under this Lease, except as specifically permitted thereunder, Tenant's quiet and peaceable enjoyment of the Leased Premises shall not be disturbed or interfered with by Landlord or by any person claiming by, through, or under Landlord.

XV. SUBORDINATION OR SUPERIORITY

16.0 Subordination or Superiority. The rights and interest of Tenant under this Lease shall be subject and subordinate to any mortgage or trust deed creating a mortgage that may be placed upon the Leased Premises by Landlord and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof, if the mortgagee or trustee named in any such mortgage or trust deed shall elect to subject or subordinate the rights and interest of Tenant under this Lease to the lien of its mortgage or trust deed and shall agree to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default (which agreement may, at such mortgagee's option, require attornment by Tenant). Any such mortgagee or trustee may elect to give the rights and interest of Tenant under this Lease priority over the lien of its mortgage or deed of trust. In the event of either such election and, upon notification by such mortgagee or trustee to Tenant to that effect, the rights and interest of Tenant under this Lease shall be deemed to be subordinate to, or to have priority over, as the case

may be, the lien of said mortgage or trust deed, whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute, and irrevocably appoint Landlord as its attorney in fact and in its name, place, and stead so to do.

XVI. SURRENDER

17.0 Surrender. Tenant shall quit and surrender the Leased Premises at the end of the Term in as good condition as the reasonable use thereof will permit, with all keys thereto, and shall not make any alterations in the Leased Premises without the written consent of Landlord; and all alterations which may be made by either party hereto upon the Leased Premises, except movable furniture and fixtures put in at the expense of Tenant, shall be the property of Landlord, and shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Lease.

17.1 Removal of Tenant's Property. Upon the termination of this Lease by lapse of time, Tenant may remove Tenant's trade fixtures; provided, however, that Tenant shall repair any injury or damage to the Leased Premises which may result from such removals. If Tenant does not remove Tenant's trade fixtures from the Leased Premises prior to the termination of this Lease, however ended, Landlord may, at its option, remove the same and deliver the same to any other place of business of Tenant or warehouse the same, and Tenant shall pay the cost of such removal (including the repair of any injury or damage to the Leased Premises resulting from such removal), delivery, and warehousing to Landlord on demand, or Landlord may treat such trade fixtures as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant.

17.2 Holding Over. If Tenant retains possession of the Leased Premises or any part of the Leased Premises after the termination of this Lease by lapse of time or otherwise, Tenant shall pay Landlord, in order to compensate Landlord for Tenant's wrongful withholding of possession for the time Tenant remains in possession, for and during such time as Tenant remains in possession, an amount calculated at double the rate of Monthly Rent in effect immediately prior to such termination, plus any Additional Rent determined to be due pursuant hereto plus all damages, whether direct or consequential, sustained by Landlord by reason of Tenant's wrongful retention of possession unless Landlord makes the election provided for in the following sentence. If Tenant retains possession of the Leased Premises or any part of the premises after termination of this Lease, Landlord may elect, in a written notice to Tenant and not otherwise, that retention of possession constitutes a renewal of this Lease for one year at the same terms that were in effect on the last month of the Lease Term, in which event this Lease shall be deemed renewed. The provisions of this paragraph shall not constitute a waiver of Landlord's rights or reentry or of any other right or remedy provided in this lease or at law. Nothing contained in this Section 17.2 shall be construed to give Tenant the right to hold over at any time and Landlord may exercise any and all remedies at law or in equity to recover possession of the Leased Premises.

ARTICLE
REMEDIES

18.0 DEFAULTS. Tenant further agrees that any one or more of the following events shall be considered events of default, as such term is used herein, that is to say, if:

- (a) Tenant shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Tenant asking reorganization of Tenant under the Federal bankruptcy law as now or hereafter amended, or under the laws of any State, shall be entered and any such decree or judgment or order shall not have been vacated or set aside within sixty (60) days from the date of the entry or granting thereof; or
- (b) Tenant shall file or admit the jurisdiction of the court, and the material allegations contained in, any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal bankruptcy laws as now or hereafter amended or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, or readjustment of indebtedness; or
- (c) Tenant shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant or any of the property of Tenant; or
- (d) A decree or order appointing a receiver of the property of Tenant shall be made and such decree or order shall not have been vacated or set aside within sixty (60) days from the date of entry or granting thereof; or
- (e) Tenant shall default in any payments of Monthly Rent or Additional Rent or in any other payment required to be made by Tenant hereunder when due as herein provided and such default shall continue for five (5) days after notice thereof in writing to Tenant; or
- (f) Tenant shall fail to contest the validity of any lien or claimed lien or, having commenced to contest the same, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon and such default shall continue for thirty (30) days after notice thereof in writing to Tenant; or
- (g) Tenant shall default in any of the other covenants and agreements herein contained to be kept, observed, and performed by Tenant and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

18.1 Remedies. Upon the occurrence of any one or more of such events of default,

Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease. Upon termination of this Lease or of Tenant's right to possession, Landlord may re-enter the Leased Premises with or without process of law using such force as may be necessary and remove all persons, fixtures, and chattels therefrom and Landlord shall not be liable for any damages resulting therefrom. Upon termination of the Lease, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Leased Premises immediately and deliver possession thereof to the Landlord and Tenant hereby grants to Landlord the full and free right, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for), to enter into and upon the Leased Premises in such event with or without process of law and to repossess the Leased Premises as Landlord's former estate and to expel or remove Tenant and any others who may be occupying or within the Leased Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer and without incurring any liability for any damage resulting therefrom and without relinquishing Landlord's rights to rent or any other right given to Landlord hereunder or by operation of law. Upon termination of this Lease, Landlord shall be entitled to recover as damages all rent and other sums due and payable by Tenant on the date of termination, plus (1) an amount equal to the value of the rent and other sums provided herein to be paid by Tenant for the residue of the Term hereof, less the fair rental value of the Leased Premises for the residue of the Term (taking into account the time and expenses necessary to obtain a replacement tenant or tenants, including expenses hereinafter described relating to recovery of the Leased Premises, preparation for reletting, and for reletting itself), and (2) the cost of performing any other covenants to be performed by Tenant. If Landlord elects to terminate Tenant's right to possession only, without terminating this Lease, Landlord may, at Landlord's option, enter into the Leased Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as hereinabove provided, without such entry and possession terminating this Lease or releasing Tenant, in whole or in part, from Tenant's obligations to pay the rent hereunder for the full term or from any other of its obligations under this Lease. Landlord shall use its reasonable efforts to relet all or any part of the Leased Premises for such rent and upon terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Term, and the right to relet the Leased Premises as a part of a larger area and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate or make any repairs, changes, alterations, or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, after having undertaken its reasonable efforts to do so, Tenant shall pay to Landlord on demand damages equal to the amount of the rent and other sums provided herein to be paid by Tenant for the remainder of the Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom (including, but not by way of limitation, attorneys' fees and brokers' commissions), to satisfy the rent herein provided to be paid for the remainder of the Term, Tenant shall pay to Landlord on demand any deficiency and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this Section from time to time.

18.2 Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved

to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

18.3 No Waiver. No delay or omission of Landlord to exercise any right or power arising from any default shall impair any such right or power or be construed to be a waiver of any such default or any acquiescence therein. No waiver or any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of any other breach or waiver, acquiescence in, or consent to any further or succeeding breach of the same covenant. The acceptance by Landlord of any payment of rent or other charges hereunder after the termination by Landlord of this Lease or of Tenant's right to possession hereunder shall not, in the absence of agreement in writing to the contrary by Landlord, be deemed to restore this Lease or Tenant's right to possession hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction, of damages due from Tenant to Landlord.

18.4 Costs Relating to Default. The Tenant shall pay, upon demand, all of Landlord's costs, charges, and expenses, including, but not limited to attorney's fees, agents and others retained by Landlord in connection to performance or enforcement of any of Tenant's obligations under this Lease relating to any litigation, negotiation, or transaction in which Tenant causes the Landlord to become involved or concerned.

XVIII. **TENANT'S OBLIGATIONS**

19.0 Compliance with Laws. Tenant shall, at its sole expense, comply with and conform to all of the requirements of all governmental authorities having jurisdiction over the Building which relate in any way to the condition, use and occupancy of the Leased Premises throughout the entire Term of this Lease, including but not limited to obtaining any license or permit which may be required. Without limitation of the foregoing, Tenant covenants and agrees not to bring into the Leased Premises or to use, store, treat or dispose, or permit the use, storage, treatment or disposal, in the Leased Premises of (i) any hazardous substance or regulated materials as defined under any present or future federal, state or local law, rule or regulation or (ii) any explosives or any flammable substances, including, but not limited to, gasoline; liquefied petroleum gas, turpentine, kerosene and naphtha (the substances and materials referred to in clauses (i) and (ii) hereof are collectively referred to herein as "Hazardous Materials").

XIX. **MISCELLANEOUS**

20.0 Estoppel Certificates. Tenant shall, at any time and from time to time upon not less than five (5) days prior written request from Landlord, execute, acknowledge, and deliver to Landlord, in form reasonably satisfactory to Landlord and/or Landlord's mortgagee, a written statement certifying, if true, that Tenant has accepted the Leased Premises, that this Lease is

~~unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that Landlord and Tenant are not in default hereunder, the date to which the rental and other charges have been paid in advance, if any, or such other accurate certification as may reasonably be required by Landlord or Landlord's mortgagee; and agreeing to give copies to any mortgagee of Landlord of all notices by Tenant to Landlord. It is intended that any such statement delivered pursuant to this subsection may be relied upon by any prospective purchaser or mortgagee of the Building and their respective successors and assigns.~~

20.1 Landlord's Right to Cure. Landlord may, but shall not be obligated to, cure any default by Tenant (specifically including, but not by way of limitation, Tenant's failure to obtain insurance, make repairs, or satisfy lien claims); and whenever Landlord so elects, all costs and expenses paid by Landlord in curing such default, including without limitation reasonable attorneys' fees, shall be so much Additional Rent due on the next rent date after such payment.

20.2 Amendments Must Be In Writing. None of the covenants, terms, or conditions of this Lease, to be kept and performed by either party shall in any manner be altered, waived, modified, amended, changed, or abandoned except by a written instrument, duly signed, acknowledged, and delivered by the other party.

20.3 Notices. All notices to or demands upon Landlord or Tenant, desired or required to be given under any of the provisions hereof, shall be in writing. Any notices or demands from Landlord to Tenant shall be deemed to have been duly and sufficiently given if: (i) personally delivered, to Tenant at Tenant's Address; or (ii) transmitted by confirmed facsimile transmission to Tenant's Fax Number, and/or mailed by United States registered or certified mail in an envelope properly stamped and addressed to Tenant's Address, or at such address or fax number as Tenant may theretofore have furnished by written notice to Landlord, and any notices or demands from Tenant to Landlord shall be deemed to have been duly and sufficiently given if: (i) personally delivered to Landlord at Landlord's Address, or (ii) transmitted by confirmed facsimile transmission to Landlord's Fax Number and/or mailed by United States registered or certified mail in an envelope properly stamped and addressed to Landlord at Landlord's Address or at such other address or fax number as Landlord may theretofore have furnished by written notice to Tenant. The effective date of such notice, if mailed in the manner aforesaid, shall be three (3) days after delivery of the same to the United States Postal Service.

20.4 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.

20.5 Captions. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

20.6 Severability. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20.7 Law Applicable. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois.

20.8 Covenants Binding on Successors. All of the covenants, agreements, conditions, and undertakings contained in this Lease shall extend and inure to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto the same as if they were in every case specifically named and wherever in this Lease reference is made to either of the parties hereto, it shall be held to include, and apply to, wherever applicable, the heirs, executors, administrators, successors and assigns of such party. Nothing herein contained shall be construed to grant or confer upon any person or persons, firm, corporation or governmental authority other than the parties hereto, their heirs, executors, administrators, successors and assigns, any right, claim or privilege by virtue of any covenant, agreement, condition or undertaking in this Lease contained.

20.9 Landlord Means Owner. The term "Landlord", as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Building, and in the event of any transfer or transfers of the title to such fee, Landlord herein named (and in case of any subsequent transfer or conveyances, the then grantor) shall be automatically freed and relieved, from and after the date of such transfer or conveyance, of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided that any funds in the hands of such Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be turned over to the grantee, and any amount then due and payable to Tenant by Landlord or the then grantor under any provisions of this Lease, shall be paid to Tenant.

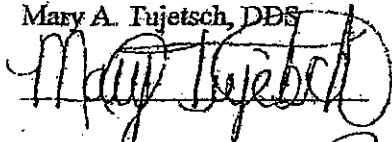
20.10 Attorneys' Fees: In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees.

20.11 Common Space: This Lease contemplates the use of private offices by the Lessee of approximately 750 square feet, and the shared use of common area, including reception, hallways, and bathrooms, which common area total approximately 1,050 square feet. Tenant agrees to assist in maintaining the common areas in a neat and clean condition. Lessee will lock doors and windows, reset the thermostat, turn off lights and equipment after her work day if she completes her appointments after other tenants have vacated the Premises for the day.

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS Lease the day and year first above written.

Signature
LANDLORD:

Mary A. Fujetsch, DDS



LANDLORD:



First Dental of Orland Park, PC by Todd C. Pusateri, DDS, President

EXHIBIT E

the "Dental Practice").

8. In early 2000, I opened and established a dental practice at 129 S. Roselle Road in Schaumburg (the "Schaumburg Practice")

9 In October 2006, I opened and established a dental practice at 2500 East Commercial Boulevard in Fort Lauderdale, Florida (the "Fort Lauderdale Practice").

10. I sold the Schaumburg Practice to Dr. Richard Purdue in the summer of 2005

11. The Schaumburg Practice remains owned by Dr. Purdue and continues to operate as a viable, going concern.

12. The Fort Lauderdale Practice and Naperville Practice are still owned by me, and still exist as profitable, going concerns.

13 All of the four dental practices that I founded continue to exist as profitable, going concerns except the Dental Practice, which I sold to the Plaintiff in June 2004, and which appears to have been abandoned, in or around October 2007.

14. On March 31, 2001, I contracted to outsource the issuance and collection of patient bills for the Naperville, Orland Park, and Schaumburg Practices to First Pacific Corporation, a specialized third-party service provider headquartered in Salem, Oregon ("FPC")

15. A true and correct copy of the contract with FPC is attached hereto as Exhibit 1

16 Pursuant to the Sales and Service Agreement, "[i]n order to facilitate [the Practice's] sale of accounts receivable to FPC, and as a part of FPC's service and exchange of data," the three Chicago-area Practices agreed to use a computer system and software package furnished by FPC. See Id.

17. Pursuant to the Sales and Service Agreement, FPC placed a computer terminal in each of the three Chicago-area Practices into which information about patients and patient

treatment -- such as contact and billing information for patients, and date and type of treatments rendered, was entered, and stored.

18. At all times, the FPC computer terminals ("FPC Terminals") and FPC Software running thereon remained the exclusive property of FPC.

19. In addition to acting as a conduit for third party billing, contained database software that aggregated and stored patient information locally, and had the capacity to generate virtually unlimited patient lists and reports based on that information.

20. Information about patients and treatment of patients in the three Chicago-area Practices, including the Dental Practice, was also maintained in files that were stored on the Premises, as required by the Illinois Dental Practice Act (the "Act").

21. As required by the Act, information about any treatment rendered in the Dental Practice was entered, in sufficient detail for identification purposes, into non-electronic, paper files ("Patient Charts").

22. Each Patient Chart also contained a Patient Information Sheet providing the patient's name, address, telephone number, insurance information, and pertinent medical and dental history.

23. At all times before Tujetsch paid the balance of the purchase price and received keys to the Dental Practice on June 27, 2004, and officially took possession of the Dental Practice, on June 30, 2004, a Patient Chart for each patient who had received dental care in the Dental Practice was stored on shelves in the Dental Practice.

24. After FPC services began, on April 1, 2001, Patient Charts in the Dental Practice were updated and maintained, as required by Section 50, but were not manually reviewed in

order to compile patient lists, generate fee statements, or generate reports about such things as aggregate patient traffic, production, or fees billed.

25. The FPC Terminal in the Dental Practice provided ready, electronic access to patient lists, fee statements, and reports about such things as aggregate patient traffic, production, and fees billed, all based on the patient data and patient treatment data that had been entered therein.

26. The FPC Terminal in the Dental Practice could be queried to generate lists of all patients treated in the Dental Practice or subsets of patients, based on selective criteria.

27. The FPC Terminal in the Dental Practice could also be queried to generate various reports, including a report called "Practice Overview," that included a count of "active patients "

28. Documentation of the First Pacific software states that the number of "active patients" in the Practice Overview as of a given date is the number of patients treated in the practice during the previous 24 months.

29. A true and correct copy of the documentation defining "active patient" as used by the FPC Software is attached hereto as Exhibit 2.

30. The definition of active patient used by the FPC Software is consistent with the definition of "active patient" accepted and promulgated by the American Dental Association
Exh 3.

31. On April 29, 2004, I used the FPC computer terminal in the Orland Park Office to generate two "Practice Overviews" as of two dates, December 31, 2003 and April 29, 2004.

32. A true and correct copy of those Practice Overviews is attached hereto as Exhibit
4.

33. According to the Practice Overview as of December 30, 2003, the Dental Practice had 1,223 "active patients," meaning that the Dental Practice had treated 1,223 patients in the 24 months before December 2003.

34. According to the Practice Overview as of April 29, 2004, the Dental Practice had 1,227 "active patients," meaning that the Dental Practice had treated 1,227 patients in the 24 months before April 2004.

35. As of June 2004, the Dental Practice employed a dental hygienist (Jackie Galban), one dentist (Dr. Richard Purdue), a receptionist (Janice Johnson), a dental assistant (Tina Buben-Dowling), and an office bookkeeper (Marge Kelly).

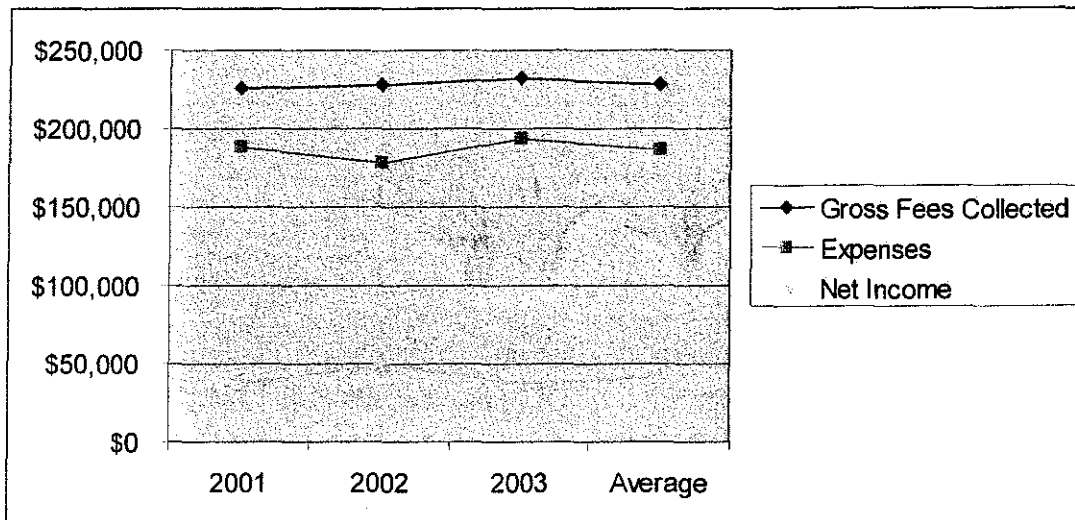
36. By 2004, the Dental Practice was consistently collecting stabilized patient fees of approximately a quarter of a million dollars a year, as it had done in the three preceding years.

37. After expenses (averaging \$186,117 in those three years), the Dental Practice yielded average annual net income, after payments to Dr. Purdue, of approximately \$40,000:

	2001	2002	2003	Average
Total Income (Patient Fees Collected)	\$225,037	\$227,497	\$231,508	\$228,014
Total Expenses	\$187,521	\$177,557	\$193,273	\$186,117
Net Income	<u>\$37,516</u>	<u>\$49,940</u>	<u>\$38,235</u>	<u>\$41,897</u>

38. The average monthly total income for 2001 through 2003 was \$19,001.17.

39. The consistency of the year-to-year performance of the Dental Practice in the three years leading up to its sale to Tujetsch can be represented graphically, as follows:



40. By the year 2000, I had established, and was managing the Naperville Practice, the Dental Practice, and the Schaumburg Practice.

41. By 2004, I was considering moving my family residence to Florida, and establishing a new dental practice there.

42. By 2004, I wished to reduce the number of my Chicago-area dental practices because I did not want to manage three dental practices in Chicago, and a fourth practice in Florida.

43. I therefore decided, in early 2004, to sell at least one of the three Chicago-area Practices.

44. In early 2004, I listed the Dental Practice for sale.

45. In April 2004, Tujetsch saw an advertisement for the sale of the Dental Practice and expressed an interest in purchasing it.

46. On April 18, 2004, Tujetsch executed a confidentiality agreement in which she agreed to preserve the confidentiality of books and records of the Dental Practice, including “[a]ny financial data . . . which may include such items as value of practice under consideration . . . [or] [p]atient or client lists made known to me during negotiations.” See Exh. 5.

47. As of April 18, 2004, information about all patients treated in the Dental Practice since it first opened its doors in March 1998 was recorded in Patient Charts stored on shelves in the Dental Practice, as required by law.

48. Information about all patients of the Dental Practice and detailed information about all patient treatments rendered after March 30, 2001, was also accessible from the FPC Terminal.

49. After signing the April 18, 2004 confidentiality agreement, Tujetsch was given access to books and records of the Dental Practice, including the FPC Terminal and all Patient Charts.

50. Because the FPC Terminal and FPC Software remained at all times property of FPC, it was expressly excluded from the assets being conveyed by Seller to Tujetsch pursuant to the Agreement.

51. By means of a letter dated Saturday, May 1, 2004, Tujetsch advised me that she was willing to offer \$150,000 for the Dental Practice, based on her evaluation of the Dental Practice, and her consultation with financial and dental experts.

52. Tujetsch's letter stated that Tujetsch's goal in buying the Dental Practice was to "grow" the practice and expand it.

53. Tujetsch's letter expressed concern that the practice had "leveled off, with no indication of future growth," and that this suggested potential "financial problems" for the Practice in the future.

54. However, Tujetsch indicated that she believed that the Dental Practice could be "turned around" through her hard work.

55. Notwithstanding her professed concerns about the Practice's lack of growth and potential for "financial problems ahead," Tujetsch offered to pay \$150,000 for the Practice:

Thank you for coordinating with your father in order to allow my father to view First Dental. I have spent a considerable amount of time with my financial advisors and dental experts. At this point in time, I am prepared to make an offer to purchase your dental practice.

My experts have evaluated First Dental and I have been informed that the practice has leveled off, with no indication of future growth. This indicates the potential for financial problems ahead. Despite this fact, I believe that the practice could be turned around through hard work. If I am going to invest my time and talent in this venture, it is important that I look at this project in terms of a long term projection. My experts have evaluated the practice to be worth an estimated \$144,500.00. I am prepared to offer you \$150,000.00. I believe this offer to be fair and mutually beneficial.

I am concerned about a number of issues in the practice. They are the configuration of the operatories, lack of sinks in the operatories, carpet in the operatories, percentage of wasted rental space in the office floor plan, lack of personal office, lack of prosthetic services being rendered; and inability for growth in existing floor plan.

If I am to purchase the office and proceed with my long term goal, I would like to rent 50% or 1200 feet of the new office addition. This would allow for a more efficient floor plan and office design. It is very confusing and inefficient with the chiropractors occupying the perimeter of the office area. In addition, the chiropractors occupy the prime space in the office, despite the fact that they are paying identical rent. By renting the space in the new addition currently under construction, I could foresee myself as a long term tenant in your building. Given the current situation, I would have to seriously consider relocating the dental office after a few years. I am a loyal person and I would prefer to be honest with you from the beginning and try to establish a long lasting business relationship. Obviously, I would prefer giving the rent to you.

My long term goal is to grow the practice and expand, eventually adding specialists to the practice. The current set up would not allow for a good flow of traffic as we would be very congested in this space.

If you are interested in proceeding further, we can negotiate payment terms and interest. I am requesting a timely response as I need to finalize my decision. Please contact me at (219) 924-8018. I look forward to hearing from you soon. I appreciate all of your efforts and expertise. Thank you for your time and cooperation.

Exh. 6.

56. On Monday, May 10, 2004, Tujetsch sent me letter in which she increased her offer for the Dental Practice from \$150,000, to \$165,000.

57. A true and correct copy of the May 10, 2004 letter is attached hereto as Exhibit 7.

58. The May 10 letter states, in pertinent part, as follows:

I hope your weekend was enjoyable. I received your fax on Saturday [(May 8, 2004)] and I was able to fax it on to my advisors the same day. I thought I would send my new offer to you as soon as possible. In this way, we could still talk on Wednesday [(May 12, 2004)], as agreed upon, and be one step closer to an agreement.

I have had experience with many dental brokers over the past fifteen years as I have purchased four dental practices to date. I am well aware that for each different broker there will be a different criteria formula, or method of evaluating a practice. Obviously, your broker has your best interest in hand and my broker has my best interest at hand. The truth probably exists somewhere in the middle.

In the interest of moving the process along, I am willing to meet you more than half way. I would like to offer you \$165,000.00 with \$50,000 of it being cash upfront. The remaining balance would be paid at the current interest rate of 5%. It is my intention to pay the practice off sooner rather than later as I do not like paying interest payments. This deal allows you to make a considerable amount of additional cash in terms of rent and interest payments.

I believe this offer to be fair. I hope that we can agree and move forward with the process. Please contact me at (219) 924-8018 at your earliest convenience. I need to come to a final decision this week. Have a great week. I know you have "a lot of irons in the fire." Talk to you soon. Thank you for your time and consideration.

59. On May 12, 2004, Tujetsch and I spoke by telephone, as previously agreed, and Tujetsch offered to pay \$165,000 in cash for the Dental Practice.

60. I accepted that offer.

61. On May 13, 2004, Tujetsch sent me a letter stating "[w]e have agreed at a purchase price of \$165,000.00 and this \$5,000.00 deposit will be subtracted from the \$165,000.00 purchase price at closing."

62. Thereafter, the terms of the Agreement, and the Lease were negotiated.

63. By Friday, June 25, 2004, negotiations were complete, and Tujetsch and I planned to meet at the Premises and execute the Agreement and the Lease on Sunday June 27, 2004

64. The Agreement employs the phrase "active patient" only once, in its first paragraph, wherein it states:

Seller is the owner of the dental practice located at 7714 159th Street, Oakland Park, FL, 60462 (hereinafter, the Dental Practice). Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has _____ active patients, who have been treated within the previous twelve months.

65. The underscored space in the foregoing recital remained blank until Sunday, June 27, 2004, when Tujetsch and I met at the Premises in order to execute the Lease and the Agreement.

66. At that time, I consulted the FPC Terminal in the Premises to confirm that the number of active patients previously reported by FPC Software (in the two Practice Overviews that I downloaded on April 29, 2004) remained at approximately 1,200

67. After confirming that, in Tujetsch's presence, I modified the recital to read as follows:

Seller has represented that the Dental Practice has *approx. 1200* active patients, who have been treated within the previous ~~twelve months~~ *twenty four months according to First Pacific Corporation Software*.

68. I struck "twelve months" and inserted "twenty four months" to conform the recital to the definition of "active patient" used by the FPC Software, and inserted 1,200 as the number of "active patients" reported by that Software in the April 29, 2004 Practice Overviews, as confirmed on June 27, 2004 by consulting the FPC Terminal

69. The modified recital was then initialed by both Tujetsch and myself; it appears in the fully executed Agreement, as follows:

Seller is the owner of the dental practice located at 7714 159th Street, Orland Park, IL 60462 (hereinafter, the Dental Practice). Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has ~~1200~~ ²⁰⁰⁰ active patients, who have been treated within the previous ~~twelve months~~ ^{twenty four months according to First Pacific Corporation Software.}

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

70 A true and correct copy of the Agreement as executed by me and Tujetsch is attached hereto as Exhibit 8.

71 It was my understanding that pursuant to the Agreement, Tujetsch was entitled to take possession of the Dental Practice on June 30, 2004, and that she was then entitled to receive all of the assets of the Dental Practice, including "patient lists and patient records"

72 In fact, after Tujetsch and I executed the Agreement at the Premises on Sunday, June 27, 2004, Tujetsch gave me a check for the balance of the \$165,000 purchase price and I gave her keys to the Dental Practice

73. The FPC Terminal and Software were specifically excluded from the assets being sold and delivered to Tujetsch.

74 Section 1 02-3 of the Agreement therefore expressly excludes from the assets being transferred to Tujetsch "any property of First Pacific Corporation, including its computers, monitors, keyboards, battery backup, computer speakers, laser printer, color printer, computer software, and computer connections."

75. However, the FPC Terminal and Software remained in the Dental Practice until June 30, 2004, the date that Tujetsch contracted for continuing access to an FPC Terminal and Software.

76. On June 27, 2004, and again on June 30, 2004, when Tujetsch officially took possession of the Dental Practice, Tujetsch received all patient lists of the Dental Practice that were then in existence.

77. Seller could not convey ownership of the FPC Terminal or Software to Tujetsch because that was owned by FPC.

78. However, it is my understanding that on or around June 30, 2004 Tujetsch separately contracted with FPC to receive continued access to an FPC Terminal on terms and conditions that she negotiated with FPC.

79. Tujetsch received access to all of the Patient Charts stored in the Dental Practice after she signed the confidentiality agreement on April 18, 2004.

80. Thereafter, no Patient Chart was removed from the Dental Practice at any time before the sale.

81. No incident or objection under the Agreement was raised by Tujetsch on June 27, 2004 or June 30, 2004, the date she officially received exclusive possession of the Dental Practice pursuant to the Agreement.

82. Thereafter, for over 16 months I received no complaint about any deficiency in respect of any asset delivered by Seller into Tujetsch's possession on June 27, 2004 or June 30, 2004.

83. Nine months after the sale, in April 2005, I received a letter from Tujetsch dated April 5, 2005 in which Tujetsch stated that her "absentee ownership" of the Dental Practice had

been a "recipe for disaster," and that she was thinking of selling the Dental Practice.¹

84. Tujetsch felt the Dental Practice would fetch a higher price if it were bundled with the building that housed the Premises. Tujetsch explained that she had advertised the Premises for "Space Sharing" with other dentists, and in response

Dear Todd:

Hi! I trust that all is well with you. Congratulations on the new baby on the way!

I called your office in order to talk to you directly, but you were seeing patients today. When Lindsey stated that you would be out of the office for the rest of the week, I thought it best to write to you.

Some time ago, I advertised for "Space Sharing" at the Orland Park location. When I ran the ad, I began getting numerous calls regarding dentists wanting to purchase the office. These interested dentists forced me to contemplate the option of selling the practice if the money was right. I then went ahead and advertised the office for sale and decided that if the price was right, I would be willing to sell. If the price is not right will keep the office and nothing will change. I have received a lot of interest in the practice and I find myself needing to devote more time to my Chicago practice. When I originally purchased the office, I have anticipated that the office could run itself efficiently with little or no input/time from me. **I have come to learn that an absentee owner is a recipe for disaster.**

My question to you is, would you be interested in selling the building at 7714 W. 159th Street? I believe that my chances of selling the practice would be greatly enhanced if I could offer the sale of the building, in addition to my practice. I know that at the time of the purchase, in July 2004, you were open to the idea of selling the building. Have you given it any additional consideration? From your perspective, it would be easier to sell the building with the sale of the dental practice. I understand that the chiropractors' lease is coming to an end so the time could not be more ideal for both of us. The feedback I am getting is that a potential buyer, who is a dentist, would desire the entire office space so you would not want to renew the chiropractors' lease. The chiropractors could relocate to the new addition as they do not have plumbing issues and this would take care of their needs.

* * *

I ask that you keep all of this letter confidential as I may ultimately option

¹ 1. It now appears that, beginning in January 2005, Tujetsch had begun to advertise the Practice for sale in the Chicago Dental Society *Review*. An advertisement that Tujetsch she placed for publication on January 9, 2005, stated:

ORLAND PARK: 100% Fee-for-Service, great location in lucrative area. Four modern, fully equipped operatories and panorex. Ample parking, free-standing building on ground level. Call (219) 924-8018

[sic] to keep the practice in the end. I do not want to alarm Dr. Purdue or the staff and patients.

See Exh. 9 (emphasis supplied).

85. The foregoing letter closed with the salutation, "The best to you always," which was consistent with the lack of any complaint about the Dental Practice voiced by Tujetsch up until that time.

86. On April 6, 2005, Tujetsch sent me a second letter stating as follows:

I am offering you one million (\$1,000,000.00) for the purchase of your building located at 7714 W 159th Street, Orland Park, Illinois. This offer includes a down payment of \$50,000.00 and then subsequent monthly payments in the amount of \$7500.00 at a finance rate of 5% to you. Acceptance of this offer would guarantee an immediate \$50,000.00 down payment in the form of a cashier's check or money order.

I have done a fair amount of inquiry regarding real estate in Orland Park. My advisors have informed me that my offer of one million dollars is very fair as the dental building across the street had an asking price of 1.2 million and less was accepted in the end. The building, across the street, contained more square footage, more land, more parking, and a full basement. The store front also added more value to the building.

Acceptance of this offer would also guarantee a swift closing as opposed to months of delay. This offer will expire at 5:00 p.m. central standard time, today, as I am interested in another business opportunity. This offer is subject to a full inspection and attorney approval. Please contact me at (708) 429-9200. Thanks, Todd. Have a nice break from dentistry!

Exh. 10.

87. I did not accept the foregoing offer.

88. Six months later, in October 2005, I received another letter from Tujetsch, dated October 24, 2005, in which Tujetsch claimed, for the first time, that the Agreement executed on June 27, 2004 had overstated the number of "active patients" of the Dental Practice, as reported by the FPC Software:

Today, 10/24/05, I have been informed that the actual number of active patients, at the time of the sale, was 50% less than what you represented in our signed,

legal contract. Please refer to the contract where you note that 1200 active patients of record are involved in the sale of the practice. A detailed report by First Pacific Corporation, your former and current billing agency, indicates that the actual number of active patients, at the sale, was 668. This misrepresentation has created an enormous burden for this office as you are also profiting from a monthly rent of nearly \$3,000 00.

Exh. 11.

89 In response, I denied that I had misstated, on June 27, 2004, the number of "active patients" treated in the Dental Practice, as reported by FPC Software, and produced copies of the two Practice Overviews that I downloaded from the FPC Terminal on April 29, 2004

90 I also contacted FPC and asked whether FPC had provided a report to Tujetsch contradicting the number of active patient counts set forth in the Patient Overviews that I had generated with the FPC Terminal on April 29, 2004, and confirmed on June 27, 2004

91 FPC advised that Tujetsch's claim was based on a misunderstanding, as later confirmed by means of a letter "to whom it may concern," in which FPC denied that it provided a report to Tujetsch that could be relied upon to conclude that the actual number of active patients of the Dental Practice, as of June 27, 2004, was 668, instead of approximately 1,200, as reported in Practice Overviews downloaded in April and viewed in June 2004

92 A true and correct copy of FPC's letter and a related email produced by FPC is attached hereto as Exh 12.

93 Section 9 07 of the Agreement states that "any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing; shall be delivered personally, including by means of telecopy, or mailed by registered or certified mail, postage prepaid and return receipt requested; shall be deemed to given on that date of personal delivery or on the date set forth on the return receipt; and shall be delivered or mailed to the

addresses or telecopy numbers set forth on the first page of this Agreement or to such other address as any party may from time to time direct.”

94. No notice sent by Tujetsch said anything about equipment being out of order on June 27, 2004 or June 30, 2004 -- or about missing “patient lists.”

95. On June 12, 2006, while she continued to own and operate the Dental Practice in the Premises, Tujetsch filed her initial complaint in this action.

96. In the complaint, Tujetsch complained, for the first time, that equipment delivered into her possession on June 27, 2004 and June 30, 2004 was not in working order.

97. On October 31, 2007, Tujetsch gave written notice that she was “terminating the Lease . . . and moving out of the [P]remises immediately due to the Landlord’s failure to correct the breaches outlined in [an earlier] letter”

98. Documents produced by Tujetsch in discovery suggest that during the first six months after the sale, collections of fees for patient treatment and cash flow of the Dental Practice continued at a pace roughly consistent with results of the Dental Practice under my ownership.

99. During the nine months before the sale, from October 2003 through June 2004, the Dental Practice had generated gross patient fees averaging \$20,075 per month.

100. As noted above, monthly gross patient fees for 2001 through 2003 averaged \$19,001.

101. In the first six months after Tujetsch acquired the Practice, the Practice reportedly generated gross patient fees averaging \$20,176 per month.

FURTHER AFFIANT SAYETH NAUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct



Dr. Todd C. Pusateri

EXHIBIT 1

- (b) "Patient" shall refer to a person(s) who has elected to purchase services of client regardless of who shall be the actual recipient of such services
- (c) "Transaction" shall mean that event whereby client sells services and patient elects to purchase such services.
- (d) "Accounts Receivable" shall mean all accounts, contract rights, including insurance / trust benefit claims, arising out of or in connection with transactions and all subsequent transactions entered into between the client and his patients.
- (e) "Patient Balance Owning" shall refer to the total of all purchased accounts receivable with a patient balance owing which excludes accounts with credit balances.
- (f) "Contingency Account" is a non-liquid bookkeeping entry that provides FPC and the client limited protection against future uncollected accounts.
- (g) "In-Office Accounts" shall refer to only those accounts that do not qualify for purchase by FPC. FPC will not provide certain services, including but not limited to funding, billing and collection services.

2 **SALE AND PURCHASE OF ACCOUNTS RECEIVABLE:** Client agrees to sell and FPC agrees to buy all client's current and future accounts receivable. FPC will purchase the accounts receivable, excluding in-office accounts, in accordance with the terms set forth herein. Client shall not sell, assign, or otherwise encumber his accounts receivable

3 **PAYMENT FOR ACCOUNTS RECEIVABLE:** The following terms and conditions are applicable to any and all sales and purchases of accounts receivable, excluding in-office accounts, by and between client and FPC:

- (a) Upon the initial purchase of the client's accounts receivable: FPC will pay to client an amount not to exceed 40%, less a conversion fee of \$5,000, of the balance of the accounts receivable, and less a \$500 software licensing fee (non-refundable) per office. The actual amount paid to the client will be determined by FPC during the conversion process based upon the quality of the client's accounts receivable.
- (b) Payment for all future accounts receivable: FPC will pay the client weekly for accounts receivable created during that week less an amount described in section 3(c) below. FPC reserves the right to adjust the amount it is willing to pay for an account it deems either an unacceptable account or uncollectible.
- (c) Reductions in weekly payments to client: FPC will decrease the amounts paid to the client for the following reasons:
 - (i) A weekly service fee charge on total patient balances owing will be deducted weekly in accordance with service fees described in paragraph 4
 - (ii) FPC may redirect to the contingency account a part or all of FPC's weekly payment to the client in order to maintain the contingency account at its required level. (See paragraphs 5 and 6 below).
 - (iii) Any patient payments received on FPC accounts receivable and kept by client may be subtracted from FPC's weekly payment to client. FPC may choose to temporarily waive its rights and/or remedies, see section 7(d).
 - (iv) FPC may deduct an account to be reassigned from FPC's weekly payment to client
 - (v) The client will be provided a summary of all additions and deductions with each weekly check

4 **FEEES:**

(a) **Service fees:**

- (i) A weekly service fee will be assessed on all patient balances owing. This service fee covers the cost of providing a computer, maintenance, staff training, patient and insurance billings, postage, patient and insurance forms and statements, a service team for support of the client's office, including a 1-800 phone number, a personal account representative and limited collection follow-up
- (ii) The weekly service fee will be assessed in accordance with the fee schedule established by FPC. FPC's current service fees are as follows:

Patient Balances Owning	Weekly Fee
\$0 - \$49,999	01209 (minimum monthly service fee of \$750)
\$50,000 - \$99,999	.00997
\$100,000 - \$249,999	.00808
\$250,000 - above	.00612

* The above fees will be assessed at one half the designated amount for the first month, as long as the client continues with our service for at least one year from the date of this agreement. If the client leaves the system in less than one year, the client will then be responsible to pay the previously waived amount of service fees.

- (b) Additions or reductions to the service fee:
- (i) FPC agrees to rebate monthly to client all interest charges assessed by the client on accounts receivable, less uncollected interest.
 - (ii) If the client maintains the contingency account at a level higher than required, FPC will issue a credit, against the service fee on the amount over the required level.
- (c) Other fees:
- (i) FPC is authorized to assess late payment charges monthly on patient accounts when payments are not received at FPC by the due dates published in the patients billing statement. All late payment charges will be retained by FPC and the client is responsible for uncollected late payment charges.
 - (ii) FPC may charge the client monthly, an additional fee (.0029 weekly) on the amount the clients' contingency account is below the required levels to cover FPC's additional administration costs.
- (d) FPC reserves right to either increase or decrease any fees upon 30 days written notice to the client

5 REASSIGNMENT: In the event FPC in its sole discretion considers an account to be uncollectible under FPC's normal collection procedure, or if the account fails to meet the client's warranties (see paragraph 7), then the client agrees to repurchase the outstanding balance on that account. When accounts are to be repurchased, FPC may, in lieu of requiring direct repayment, charge the uncollected account against the contingency account or deduct the amount from FPC's weekly payment to the client. If the client breaches any term or warranty of this agreement, the client agrees to repurchase all accounts receivable and pay all amounts owed to FPC

6 CONTINGENCY ACCOUNT: The contingency account is a non-liquid bookkeeping entry that provides FPC and the client limited protection against future uncollected patient accounts. The contingency account is a percentage of the patient balance owing. The percentage will be established by FPC at its sole discretion at the time of converting to FPC system and may be changed by FPC during the life of this agreement based upon the quality of the accounts receivable. In the event that the contingency account falls below the required percentage, FPC will maintain the required level by reducing the weekly amount paid to client

7 CLIENT'S REPRESENTATIONS AND WARRANTIES: As to accounts receivable purchased by FPC hereunder and while this agreement is in effect, client represents and warrants as follows:

- (a) All accounts receivable arose from a bonafide sale of services by client in the ordinary course of client's business and that all services have been performed by the client
- (b) That as to the accounts receivable client has free and clear title unencumbered by any sale, assignment or security interest of any nature (unless FPC is notified in writing) and will notify FPC in writing immediately of any actions in the future that would jeopardize FPC's clear title to the accounts receivable purchased from client. (e.g. a tax lien, bankruptcy)
- (c) That the patient has authority and capacity to contract at the time of purchasing services represented by accounts receivable.
- (d) Client acknowledges that all amounts paid on patient balance owing, including all payments from insurers, are owned by FPC. The client agrees to promptly forward any and all payments to FPC. Client also agrees to immediately forward a check to FPC covering any cash and credit card payments received on accounts receivable owned by FPC.
- (e) That all applicable laws and regulations of any local, state or federal government entity, including those pertaining to consumer credit protection have been observed and adhered to by client in each applicable transaction; client agrees to provide all appropriate disclosures and obtain necessary patient signatures, and agrees to take all action necessary to conform with all laws with respect to accounts receivable
- (f) That client will continue to maintain all necessary business licenses and business association, partnership or corporation qualifications as may be required by law. The client will immediately notify FPC if there are changes to the business structure, ownership, dental license, change in association, or dental licenses used for insurance billing
- (g) If the client breaches any term or warranty of this agreement, the client agrees to repurchase all accounts receivable and pay all amounts owed to FPC.

8 SALE OF ACCOUNT BY COMPUTER:

- (a) Use of FPC's computer: In order to facilitate client's sale of accounts receivable to FPC, and as a part of FPC's service and exchange of data hereunder, client will use a computer system and software package that are furnished to client by FPC. FPC shall at all times be the owner of the

lost profits.

- (c) **Termination:** FPC may terminate the client's use of computer hardware and software supplied by FPC on thirty days (30) notice either orally or in writing. However, if client breaches any term of this agreement, then FPC may immediately terminate client's use of the said hardware and software. Client shall be liable for any damages to the computer, ordinary wear and tear excepted until the computer is returned to FPC
- (d) **Use of off-the-shelf software packages:** The client may operate off-the-shelf software packages purchased elsewhere under the following conditions:
 - (i) The software package must be compatible and function properly with the FPC hardware configuration and FPC will be notified before such software is used
 - (ii) The client will not make modifications to FPC hardware and/or software.
 - (iii) FPC will not provide program support or be responsible for problems arising from the use of the off-the-shelf software packages, and client agrees to hold FPC harmless from any such claim.

9. **REMEDIES:** In the event client shall breach any of the terms of this agreement or client or any guarantor thereof becomes insolvent, becomes subject to or commences any proceeding under Federal Bankruptcy Act or any insolvency or debtor's relief law or dies, or if any property of any of them in the possession of FPC or obligation of FPC to any of them is attempted to be levied upon by any writ or otherwise, or any notice of such levy or notice of sale is given or any sale is made of any property of any of them, except in ordinary course of business, or default is made in the payment of any other indebtedness of any item to FPC, then FPC shall have the following rights and remedies and shall be cumulative

- (a) To declare all amounts due FPC at once due and payable or FPC may elect at its sole discretion to implement corrective action to eliminate the breach(s) of this contract, without waiving any of its rights and/or remedies.
- (b) To foreclose on any security provided to FPC.
- (c) To exercise any and all remedies available under law to FPC, including the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the state where the debtor's office is located.
- (d) In the event of default, client agrees to cooperate in connection with FPC's foreclosure on its security, including, but not limited to, permitting FPC to review the client's patient records and notifying insurance companies and patients to make payments on accounts receivable directly to FPC

10. **TERMINATION:** Client, or FPC, may decide to terminate this agreement for any reason by providing 30 days written notice to the other. In the event of such notice, the client shall repurchase the accounts receivable previously sold to FPC on the following basis:

- (a) By paying FPC a sum equal to the patient balance owing on such accounts receivable, plus any unpaid fees under paragraph 4, less the amount of the contingency account and patient credit balances; or
- (b) By electing that FPC continue to collect the accounts receivable for a period not to exceed three months for a weekly fee as described in paragraph 4. After termination, all finance charges collected by FPC on accounts receivable will be credited to the amount owed FPC. At such time as the total patient balance owing is equal to the balance in the contingency account plus patient credit balances, the remaining accounts receivable will be assigned to the client.
- (c) Upon termination, FPC may charge interest on all monies due and owing FPC using the Wells Fargo Bank, N.A. published prime rate, plus 2 percent.
- (d) Notwithstanding termination of this agreement, until FPC is paid in full for its purchased accounts and for any other obligation to FPC under this agreement, the provisions of this agreement shall remain in full force and effect, including but not limited to the rights of FPC to require the repurchase of accounts under paragraph 5 above.

11. **SECURITY INTEREST:** To secure all of client's obligations hereunder, client grants to FPC a security interest in all inventory, existing and future accounts, accounts receivable, contract rights, chattel paper, intangibles, all of debtor's rights as a seller of goods under Article 2 of the UCC, all goods returned to or repossessed in connection therewith, all equipment, together with all accessories, substitutions, additions, replacements, parts, accessions affixed or used in connection therewith, whether now owned or hereafter acquired or arising, and the proceeds and products thereof, and wherever located. Client hereby agrees to execute any financing statements and other documents reasonably required to perfect FPC's security interest

12. **ADJUSTMENT OF PATIENT DISPUTES:** If any patient disputes any transaction involving an account receivable sold by client to FPC and before FPC has requested repurchase of said account receivable by the client in the manner described in paragraph 5, client will attempt to resolve any such dispute directly with the patient. Client shall promptly notify FPC of any such adjustments or disputes.
13. **POWER OF ATTORNEY:** Client shall execute assignments with respect to all accounts receivable so as to vest in FPC full title to all accounts receivable. FPC shall have the right to collect from the patient all amounts due or to become due on said accounts receivable unless and until the accounts receivable is repurchased by client in the manner provided in paragraph 10 above. Client hereby grants to FPC client's power of attorney for the purpose of endorsing client's name to any remittance received by FPC in payment of any accounts receivable held by FPC after purchase from client. FPC shall have the right to pledge the accounts receivable at any bank or financial institution subject to the rights of the client pursuant to this agreement.
14. **GUARANTY:** In the event client is a corporation, then it is agreed all stockholders of said corporation, by signing below, hereby agrees to be jointly and severally, personally and unconditionally, bound by the terms of this agreement and guarantee its performance. In the event client is a member of a partnership, but signing in his or her individual capacity, then the partnership, by signing below, agrees to be unconditionally bound by the terms of this agreement and hereby guarantees its performance. Each guarantor is jointly and severally liable for attorneys' fees incurred by FPC in enforcing the guaranty, whether or not a suit is filed, including any attorneys' fees incurred in any bankruptcy proceeding.
15. **INDEMNIFICATION:** Client hereby agrees to indemnify, defend and hold FPC harmless from any and all liabilities, judgments, obligations, losses, claims, actions, damages, penalties, interest, cost or expenses, including attorneys' fees, arising out of any claims filed by any patient of client arising out of or in connection with the performance of any services performed by client represented by the accounts receivable purchased by FPC from the client in accordance with the terms of this Agreement.
16. **GENERAL PROVISIONS:**
 - (a) Client will execute and deliver to FPC any instruments or documents and do all things necessary and/or convenient to carry into effect the provisions of this agreement and facilitate the collection of accounts receivable herein assigned.
 - (b) This agreement may not be altered or amended except in writing and signed by authorized representatives of both parties.
 - (c) Any provision of this agreement found to be invalid shall not invalidate the remainder thereof.
 - (d) Waiver by FPC of any default by client shall not constitute a waiver of any subsequent default.
 - (e) Notwithstanding the above, the client shall not assign any of his or her rights or obligations under this Agreement without the prior written consent of FPC.
 - (f) Client is responsible for all collection agency fees incurred by FPC in attempting to collect damages or amounts due from patient.
 - (g) In the event of any dispute arising out of this Agreement between FPC and Client, including arbitration or bankruptcy proceeding, FPC shall be entitled to recover from Client reasonable attorneys' fees and costs, including any costs and fees incurred in any appeal.

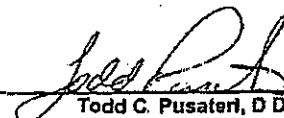
IN WITNESS WHEREOF, the parties have signed this agreement the day and year above written

FIRST PACIFIC CORPORATION

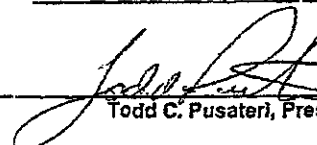
By: 

Title: CLIENT ACCOUNTS MANAGER

CLIENT: Todd C. Pusateri, D.D.S.

By: 
Todd C. Pusateri, D D S

CLIENT: First Dental, P.C.

By:  President
Todd C. Pusateri, President

111089

ADDENDUM TO First Pacific Corporation's SALES AND SERVICE AGREEMENT

This ADDENDUM ("Addendum") is effective 4/14/2003, and amends and is made part of the SALES AND SERVICE AGREEMENT dated 3/30/2001. ("Agreement") by and between FIRST PACIFIC CORPORATION ("Business Associate") and First Dental ("Dental Practice").

Dental Practice and Business Associate mutually agree to modify Agreement to incorporate the terms of this Addendum into the Agreement, to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64)

DEFINITIONS

"Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.502 (g)

"Law" shall mean all applicable Federal and State statutes and all relevant regulations hereunder

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E

"Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Health Care Practice

"Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or by Law.
- B. Business Associate agrees to use reasonable safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- C. Business Associate agrees to report to Health Care Practice any use or disclosure of Protected Health Information not provided for by this Agreement after Business Associate has actual knowledge of such use or disclosure.
- D. Business Associate agrees to include in any written agreement with any agent, including a subcontractor, to whom it provides Protected Health Information, a requirement that such agent agrees to restrictions and conditions with such information that are at least as restrictive as those that apply through this Addendum to Business Associate.
- E. Upon reasonable notice, Business Associate agrees to make Protected Health Information and books and records relating to the use and disclosure of Protected Health Information available to the Secretary at the

Health Care Practice's expense in a reasonable time and manner, for purposes of the Secretary determining Health Care Practice's compliance with the Privacy Rule

- F. Business Associate agrees to comply with each applicable requirement of 45 Code of Federal Regulations Part 162 regarding Standard Transactions
-

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- A. Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information (i) as is reasonably necessary to perform functions, activities, or services for, or on behalf of Health Care Practice as specified in the Agreement; (ii) for the proper management and administration of the Business Associate; (iii) as may otherwise be required by Law; and (iv) except as provided otherwise in this Addendum, as may be permitted by Law, provided that Business Associate obtains reasonable assurances from any person to whom the information is disclosed that (A) such information will remain confidential and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person, and (B) that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached
 - B. Beginning April 14, 2003, or the date of this Addendum, whichever is later, Business Associate shall refer to Health Care Practice all requests by individuals for information about or accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
 - C. Beginning April 14, 2003, or the date of this Addendum, whichever is later, Business Associate agrees to document disclosures of Protected Health Information, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, to the extent required for Dental Practice to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Such documentation shall include (i) the disclosure date; (ii) the name and (if known) the address of the person or entity to whom Business Associate made the disclosure; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of the disclosure
 - D. Beginning April 14, 2003, or the date of the Addendum, whichever is later, Business Associate shall provide Health Care Practice information collected in accordance with section C above to the extent required to permit Health Care Practice to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. The parties agree to work together in good faith to resolve any disagreement over the requirements of 45 C.F.R. § 164.528.
 - E. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502 (j)(1)
-

OBLIGATIONS OF HEALTH CARE PRACTICE

- A. Health Care Practice agrees not to use or disclose Protected Health Information other than as permitted or required by this Addendum or applicable Law
- B. Health Care Practice agrees to use reasonable safeguards to prevent use or disclosure of Protected Health Information other than as provided by this Addendum
- C. Health Care Practice shall notify Business Associate of any changes in Health Care Practice's notice of privacy practices that may affect Business Associate's use or disclosure of Protected Health Information. Business Associate shall have a reasonable period of time to act on such notices
- D. Health Care Practice shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosure thereof. Business Associate shall have a reasonable period of time to act on such notice

- E. Health Care Practice shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information prior to acceptance of such restriction by Dental Practice in accordance with 45 C.F.R. §164.522 so that Business Associate can determine whether it is infeasible to comply with such restriction. Once agreed to, Business Associate shall have a reasonable period of time to act on such notice.
- F. Health Care Practice represents and warrants to Business Associate that Health Care Practice will not disclose any Protected Health Information to Business Associate unless Health Care Practice has obtained any consents and authorizations that may be required by Law or otherwise necessary for such disclosure.
- G. Health Care Practice shall have access to Business Associate's information pursuant to the terms and conditions of the Agreement and this Addendum. The information shall remain confidential and proprietary information. The information shall not be disclosed to any third person, business or corporation, including any person who serves as Health Care Practice's agent, except as otherwise agreed to in writing by Business Associate. Nothing in this Addendum shall be construed as granting Health Care Practice any rights by license or any other intellectual property rights to the information.

PERMISSIBLE REQUESTS BY DENTAL PRACTICE

Health Care Practice warrants that it shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Law if done by Health Care Practice.

RATIFICATION OF SALES AND SERVICE AGREEMENT

Except as modified by this Addendum, the Agreement is hereby ratified, confirmed and declared to be in full force and effect.

IN WITNESS WHEREOF, Business Associate and Dental Practice have caused this Addendum to be executed in their respective names the day and year first herein above written.

BUSINESS ASSOCIATE:

First Pacific Corporation

by:

Diane Reeves

Name:

Diane Reeves

Its:

EVP, Customer Service

Date:

April 8, 2003

DENTAL PRACTICE:

First Dental

by:

[Signature]

Its:

President

Date:

4-15-03

EXHIBIT 2

FPC Introduction and Computer Practice Overview Explanation

This report is a month-to-date (MTD) and year-to-date (YTD) overview of the practice information for monitoring a practice.

Active Pts
defines

- **Production:** MTD and YTD totals for each associate and for the total practice.
- **Days Worked:** The number of days worked, MTD and YTD, for each associate. This completed if the appointment scheduler is utilized.
- **Production Per Hour:** Hourly production, MTD and YTD, for each associate and if columns are only completed if the appointment scheduler is utilized.
- **A/R Collection:** Accounts receivable collections, MTD and YTD, categorized by FPC patient payments, FPC insurance payments and office payments.
- **Reassignment:** MTD and YTD dollar amounts reassigned.
- **Number of New Patients:** The MTD and YTD number of new patients that have been seen or have future scheduled appointments.
- **Number of Patients Referred by Referral Source:** The number of new patients, MTD and YTD, referred by the categories of patient, doctor and other.
- • **Number of Active Patients:** The number of patients seen within the last two years.
- • **Number of Patients with Recall:** This number will always be different than the Number of Active Patients because this number represents all the patients listed in the computer. The patients will be categorized by:
 - **Current:** Includes those patients who have a future recall date.
 - **Overdue:** Includes the patients who have a past recall date.
 - **Without:** Includes those patients who have never had a recall appointment.
- **Number of Patients with Diagnosed Treatment:** The number of patients who have diagnosed treatment and are categorized as:
 - **Scheduled:** Those patients who have scheduled appointments for completion of their diagnosed treatment. Recall appointments are included in this number.
 - **Unscheduled:** Those patients who have not scheduled an appointment to complete their diagnosed treatment.

EXHIBIT 3

Dental Records



ADA

American Dental Association
www.ada.org

*Council on Dental Practice
Division of Legal Affairs*

Seven out of ten dentists are members of the ADA

2007

Dental Records

Acknowledgments

This publication was developed by the Council on Dental Practice and the Division of Legal Affairs

The Mission of the Council on Dental Practice is to recommend policies and provide resources to empower our members to continue development of the dental practice, and to enhance their personal and professional lives for the betterment of the dental team and the patients they serve

Disclaimer

This ADA publication is designed especially for dentists and the dental team to provide helpful information about the dental record. This publication is not intended or offered as legal or other professional advice. Laws vary from state to state and thus, readers should consult with their personal legal counsel and malpractice insurer to access the applicable laws in their state. *Dental Records* is based in part on questions frequently asked by our members. It is our hope that dentists and their team members will find this publication, helpful but in no way a substitute for actual legal advice given by an attorney in your state.

Color Coding

Many dental offices use a color-coded filing system for patient record files. Color-coded labels—usually the first two letters of the patient's last name and active date of treatment—are placed on the patient's file. This can help make record retrieval fast and easy.

Active and Inactive

Most offices have two categories of patient records files: 1) Active and 2) Inactive.

Active files hold the records of patients currently having their dental care provided by the practice. Inactive patients are considered to be those who have not returned for 24 months. Keep files of active patients on-site. These records should be conveniently located in the office.

Inactive files hold the records of patients who have been treated in the office in the past but are not currently under care in the office. These files are generally located in the office, but in a remote area.

As defined by policy of the American Dental Association, (Trans 1991:621), an active dental patient of record is any individual in either of the following two categories: Category I - patients of record who have had dental service(s) provided by the dentist in the past twelve (12) months; Category II - patients of record who have had dental service(s) provided by the dentist in the past twenty four (24) months, but not within the past twelve (12) months. An inactive patient is any individual who has become a patient of record and has not received any dental services(s) by the dentists in the past twenty four (24) months.

The above definition is typically used in practice appraisals and may not be the same definition of an active patient used in a dental office in records maintenance.

A system should be established in your office to identify a change from active to inactive status on a timely basis. All records, active and inactive, should be maintained carefully to be certain that they are not destroyed or lost.

Content of the Dental Record

The information in the dental record should primarily be clinical in nature. The record includes a patient's registration form with all the basic personal information.

The dental team should be very meticulous and thorough in the dental office recordkeeping tasks. All information in the dental record should be clearly written, and the person responsible for entering new information should sign and date the entry. The information should not be ambiguous or contain many abbreviations. In practices with more than one dental practitioner, the identity of the practitioner rendering the treatment should be clearly noted in the record.

All entries in the patient record should be dated, initialed and handwritten in ink and/or computer printed. While no specific color of ink is required, any copy of the record should be easy to read. Handwritten entries should be legible. If a mistake is made, do not correct it with "white-out." A single line should be drawn through the incorrect info, the new corrected info added, and again, the entry should be signed and dated.

The following are examples of what is typically included in the dental record:

- database information, such as name, birth date, address, and contact information
- place of employment and telephone numbers (home, work, mobile)
- medical and dental histories, notes and updates
- progress and treatment notes
- conversations about the nature of any proposed treatment, the potential benefits and risks associated with that treatment, any alternatives to the treatment proposed, and the potential risks and benefits of alternative treatment, including no treatment,
- diagnostic records, including charts and study models
- medication prescriptions, including types, dose, amount, directions for use and number of refills
- radiographs
- treatment plan notes
- patient complaints and resolutions

EXHIBIT 4

Date: 12/30/2003
Time: 10:20 PM

PRACTICE OVERVIEW
111089 - FIRST DENTAL
O.P.

Production			
AA - PUSATERI DDS, TODD G.	\$	6,289.00	\$ 26,599.82
CC - COLLECTIONS	\$	0.00	\$ 419.12
D2 - BABBITT, MONICA S.	\$	0.00	\$ 38.00
D3 - PURDUE, RICHARD D.	\$	12,715.00	\$ 142,647.10
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$ 70.00
H2 - GALBAN, JACKIE	\$	8,513.88	\$ 78,848.28
PR - PRODUCTS	\$	70.00	\$ 1,112.00
XX - X, X	\$	0.00	\$ 1,433.29
ZZ - DOUBLE BOOK	\$	0.00	\$ 2,836.00
Total Production	\$	28,667.60	\$ 284,022.58

Days Worked			
AA - PUSATERI DDS, TODD G.		2	38
CC - COLLECTIONS		0	0
D2 - BABBITT, MONICA S.		0	28
D3 - PURDUE, RICHARD D.		10	142
D4 - BRITESMILE, BRITESMILE		0	0
H2 - GALBAN, JACKIE		10	121
PR - PRODUCTS		0	0
XX - X, X		0	0
ZZ - DOUBLE BOOK		0	87

Production Per Hour			
AA - PUSATERI DDS, TODD G.	\$	447.79	\$ 127.88
CC - COLLECTIONS	\$	0.00	\$ 0.00
D2 - BABBITT, MONICA S.	\$	0.00	\$ 0.21
D3 - PURDUE, RICHARD D.	\$	192.65	\$ 161.64
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$ 0.00
H2 - GALBAN, JACKIE	\$	98.69	\$ 101.97
PR - PRODUCTS	\$	0.00	\$ 0.00
XX - X, X	\$	0.00	\$ 0.00
ZZ - DOUBLE BOOK	\$	0.00	\$ 5.29
Total Production Per Hour	\$	739.13	\$ 366.95

ARR Collection			
Patient Payments FPC	\$	447.20	\$ 5,738.93
Insurance Payments FPC	\$	7,090.47	\$ 83,789.65
Office Payments	\$	14,908.10	\$ 135,380.86
Reassignment	\$	0.00	\$ 1,840.39

Number of New Patients: 40 338

Number of Patients Referred by Referral Sources			
Patients		0	0
Doctors		0	0
Other		0	0

Number of Active Patients: 1,223

Date: 12/30/2003
Time: 10:20 PM

PRACTICE OVERVIEW
111089 - FIRST DENTAL

Page: 2

Recall Status of All Patients		
Number with Current Recall	358	
Number with Overdue Recall	749	
Number Without Recall	948	
Number of Patients with Diagnosed Treatment (other than Prophylaxis)		
Scheduled	364	
Unscheduled	427	
Total	791	

Date: 4/29/2004
Time: 10:17 PM

PRACTICE OVERVIEW
111089 FIRST DENTAL

Page: 1

O.P.

	Month-to-Date	Year-to-Date
Production		
A - PUSATERI, TODD C.	\$ 278.00	\$ 13,278.04
CC - COLLECTIONS	\$ 40.00	\$ 179.55
D2 - BABBITT, MONICA S.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 11,082.20	\$ 43,021.30
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 35.00
H2 - GALBAN, JACKIE	\$ 6,478.00	\$ 26,555.80
PR - PRODUCTS	\$ 0.00	\$ 94.00
XX - X, X	\$ 181.80	\$ 794.80
ZZ - DOUBLE BOOK	\$ 870.00	\$ 1,810.00
Total Production	\$ 18,877.80	\$ 89,188.39

Days Worked

AA - PUSATERI, TODD C.	6	17
CC - COLLECTIONS	0	0
D2 - BABBITT, MONICA S.	0	0
D3 - PURDUE, RICHARD D.	11	43
D4 - BRITESMILE, BRITESMILE	0	0
H2 - GALBAN, JACKIE	11	43
PR - PRODUCTS	0	0
XX - X, X	0	0
ZZ - DOUBLE BOOK	0	0

Production Per Hour

AA - PUSATERI, TODD C.	\$ 7.89	\$ 119.47
C - COLLECTIONS	\$ 0.00	\$ 0.00
D2 - BABBITT, MONICA S.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 151.40	\$ 152.02
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 0.00
H2 - GALBAN, JACKIE	\$ 83.74	\$ 94.99
PR - PRODUCTS	\$ 0.00	\$ 0.00
XX - X, X	\$ 0.00	\$ 0.00
ZZ - DOUBLE BOOK	\$ 0.00	\$ 0.00
Total Production Per Hour	\$ 248.03	\$ 361.42

A/R Collection

Patient Payments FPD	\$ 857.60	\$ 3,099.41
Insurance Payments FPD	\$ 6,781.90	\$ 37,689.43
Office Payments	\$ 11,785.39	\$ 44,554.53

Reassignment

	\$ 85.00	\$ 85.00
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Number of New Patients

	23	89
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Number of Patients Referred by Referral Sources

Patients	0	0
Doctors	0	5
Other	0	0

Number of Active Patients

1227

Date: 4/29/2004
Time: 10:17 PM

PRACTICE OVERVIEW
111089 - FIRST DENTAL

Page: 2

Recall Status of All Patients		
Number with Current Recall		392
Number with Overdue Recall		798
Number Without Recall		872
Number of Patients with Diagnosed Treatment (other than Propriety Codes)		
Scheduled		397
Unscheduled		194
Total		591

EXHIBIT 5

First Dental

Naperville - Orland Park - Schaumburg

Client recognizes that any confidential information provided to them by First Dental or its representatives regarding professional practices could, if disclosed, cause damage to the individual(s) disclosing the information and to First Dental. Therefore, client agrees that they will not divulge, communicate, or otherwise disclose any confidential material provided by First Dental, its representatives, or clients of First Dental to anyone, including employees, customers, clients, or prospective clients, with the exception of their bonafide counsel. Client further agrees that their bonafide council will maintain the confidentiality of the material as well. All confidential material given to client for accountant and counsel review must be returned within two weeks if offer on said practice is not placed.

Confidential information shall include, but is not limited to, the following:

- 1 A professional's intent to buy, sell, or associate
- 2 Any financial data provided Client by First Dental, its representatives, or clients, which may include such items as value of practice under consideration, income statements or balance sheets, Internal Revenue Service returns, and any other personal financial data
- 3 Any personal information provided client by First Dental, its representatives, or clients, which may include such items as data regarding lawsuits, pending lawsuits, malpractice actions, or other items personally pertaining to the principals in these transactions
- 4 Patient or client lists made known to me during negotiations

IN WITNESS HEROF, THE PARTIES HERE TO HAVE HEREUNTO SET THEIR HANDS AND SEALS THE DAY AND YEAR FIRST ABOVE WRITTEN

Mary Tujetsch 4-18-04
Client Signature Date
Mary Tujetsch
Print Name
35 E. Washington #212
Street Address City Zip
Chicago, IL 60602
Telephone
(312) 782-1396
First Dental Representative

PUSRRP001739

EXHIBIT 6

DR. MARY A. TUJETSCH

COSMETIC AND GENERAL DENTISTRY

55 E WASHINGTON, SUITE 2121
CHICAGO, IL 60602
(312) 782-1396
(312) 236-2543

May 1, 2004

Dr. Todd Pusateri
First Dental
7714 159th Street
Orland Park, IL

FPL 1-800-574-2412
PRACT TRANS 888 789-1085
Sue
by Corp Eastern

Dear Todd:

I trust that all is well with you. Thank you for coordinating with your father in order to allow my father to view First Dental. I have spent a considerable amount of time with my financial advisors and dental expert. At this point in time, I am prepared to make an offer to purchase your dental practice.

My experts have evaluated First Dental and I have been informed that the practice has leveled off, with no indication of future growth. This indicates the potential for financial problems ahead. Despite this fact, I believe that the practice could be turned around through hard work. If I am going to invest my time and talent in this venture, it is important that I look at this project in terms of a long term projection. My experts have evaluated the practice to be worth an estimated \$144,500.00. I am prepared to offer you \$150,000.00. I believe this offer to be fair and mutually beneficial.

I am concerned about a number of issues in the practice. They are the configuration of the operatories, lack of sinks in the operatories, carpet in the operatories, percentage of wasted rental space in the office floor plan, lack of personal office, lack of prosthetic services being rendered, and inability for growth in existing floor plan.

If I am to purchase the office and proceed with my long term goal, I would like to rent 50% or 1200 feet of the new office addition. This would allow for a more efficient floor plan and office design. It is very confusing and inefficient with the chiropractors occupying the perimeter of the office area. In addition, the chiropractors occupy the prime space in the office, despite the fact that they are paying identical rent. By renting the space in the new addition currently under construction, I could foresee myself as a long term tenant in your building. Given the current situation, I would have to seriously consider relocating the dental office after a few years. I am a loyal person and I would prefer to be honest with you from the beginning and try to establish a long lasting business relationship. Obviously, I would prefer giving the rent to you.

My long term goal is to grow the practice and expand, eventually adding specialists to the practice. The current set up would not allow for a good flow of traffic as we would be very congested in this space.

PUSRRP001734

FROM : DR MARY A TUJETSCH

PHONE NO. : 3127821396

May 04 2004 12:10AM P2

DR. MARY A. TUJETSCH

COSMETIC AND GENERAL DENTISTRY

55 E WASHINGTON, SUITE 2121


CHICAGO, IL 60602

(312) 782-1396

(312) 236-2543

If you are interested in proceeding further, we can negotiate payment terms and interest. I am requesting a timely response as I need to finalize my decision. Please contact me at (219)924-8018. I look forward to hearing from you soon. I appreciate all of your efforts and expertise. Thank you for your time and cooperation.

Yours truly,



Dr. Mary A. Tujetsch

PUSRRP001735

PAGE: 2

EXHIBIT 7

DR. MARY A. TUJETSCH

COSMETIC AND GENERAL DENTISTRY

55 E. WASHINGTON, SUITE 2121

CHICAGO, IL 60602

(312) 782-1396

(312) 236-2543

May 10, 2004

Dr. Todd Pusateri
First Dental
7714 159th Street
Orland Park, IL

165 100% DN
170 50% DN

2 yr / 3 yr
6% 7%

Dear Todd:

I hope your weekend was enjoyable. I received your fax on Saturday and I was able to fax it on to my advisors the same day. I thought I would send my new offer to you as soon as possible. In this way, we could still talk on Wednesday, as agreed upon, and be one step closer to an agreement.

I have had experience with many dental brokers over the past fifteen years as I have purchased four dental practices to date. I am well aware that for each different broker there will be a different criteria formula, or method of evaluating a practice. Obviously, your broker has your best interest at hand and my broker has my best interest at hand. The truth probably exists somewhere in the middle.

In the interest of moving the process along, I am willing to meet you more than half way. I would like to offer you \$165,000.00 with \$50,000.00 of it being cash upfront. The remaining balance would be paid at the current interest rate of 5%. It is my intention to pay the practice off sooner rather than later as I do not like paying interest payments. This deal allows you to make a considerable amount of additional cash in terms of rent and interest payments.

I believe this offer to be fair. I hope that we can agree and move forward with the process. Please contact me at (219)924-8018 at your earliest convenience. I need to come to a final decision this week. Have a great week. I know you have "a lot of irons in the fire." Talk to you soon. Thank you for your time and consideration.

Yours truly,



Dr. Mary A. Tujetsch

EXHIBIT 8

ASSET PURCHASE AGREEMENT

between

**MARY A. TUJETSCH, DDS
"PURCHASER"**

and

**FIRST DENTAL, PC
"SELLER"**

Dated June 27, 2004

TS
TKT

MET
ASSET PURCHASE AGREEMENT

DATED: June 21, 2004

BETWEEN: Mary A. Tujetsch, DDS, "Purchaser"
55 East Washington Street, Suite 2121
Chicago, IL 60602

AND: First Dental, PC, an Illinois professional corporation, "Seller"
8 West Gartner, Suite 124
Naperville, IL 60540

Seller is the owner of the dental practice located at 7714 159th Street, Orland Park, IL 60462 (hereinafter, the Dental Practice). Seller desires to sell, and Purchaser desires to purchase, substantially all of the assets associated with the Dental Practice on the terms and conditions set forth in this Agreement, but none of its liabilities unless specifically assumed, and none of its shares of stock. Seller has represented that the Dental Practice has ^{approximately 700 active patients} ~~twenty four months~~ *twenty four months according to First Pacific Corporation* active patients, who have been treated within the previous ~~twelve months~~ *twelve months* ^{Software}

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

ARTICLE I
Purchase and Sale of Assets

1.01 Purchase and Sale. Subject to all the terms and conditions of this Agreement and for the consideration herein stated, on the Closing Date, as that term is defined in Section 1.06, Seller agrees to sell, convey, assign, transfer and deliver to Purchaser, free and clear of all encumbrances, and Purchaser agrees to purchase and accept from Seller, all of the assets, properties and rights of Seller (other than the assets specified in Section 1.02), tangible and intangible, wherever located, that are used or useful to maintain and operate the Dental Practice, which assets (the Assets) shall include without limitation:

1.01-1 All patient lists, equipment, files and patient records, and all other operating data and records relating to the Dental Practice, including without limitation financial, accounting and credit records, correspondence, budgets, engineering and facility records and other similar documents and records. Inactive records are to be returned to Seller two years after closing.

1.01-2 All other items of tangible personal property of Seller used in connection with or associated with the Dental Practice, including furniture, fixtures, equipment, supplies, inventory and spare and replacement items therefor, and all such items acquired by Seller after the date hereof and on or before the Closing Date, other than to the extent such items are disposed of by Seller prior to the Closing Date in the ordinary course of practice. Seller represents that all equipment is working and in good order. Seller asserts that all equipment is in compliance with municipal, county, state, and federal laws. Seller assumes risk of loss of tangible assets prior to, but not subsequent to, closing.

1.01-3 All rights, benefits and interests of the Dental Practice under the contracts and agreements specifically assumed by Purchaser for provision of dentistry services including without

limitation contracts with third payers, dentists or other professionals, and under any contracts, agreements, commitments, understandings, purchase orders, documents or instruments entered into between the date hereof and the Closing Date and expressly assumed by Purchaser in writing on the Closing Date, other than to the extent such items have terminated, expired or been disposed of by Seller prior to the Closing Date without breach of this Agreement (collectively, the Contracts);

1.01-4 All assignable rights to all telephone lines and numbers used in the conduct of the Dental Practice; and

1.01-5 For one year subsequent to closing, Purchaser may use the name "First Dental of Orland Park," but only for the purpose of marketing the Dental Practice within a 20-mile radius of it. Purchaser shall not use any other name which includes the words "First Dental". No later than eighteen months subsequent to closing, Purchaser shall cease and desist using the name "First Dental of Orland Park".

1.01-6 The assets include the following equipment: eight waiting room chairs, Canon copier, Telecheck-credit card terminal, calculator, stapler, tape dispenser, file cabinet under copier, patient chart cabinet, corner desk in business front area, two office chairs, three business 4-line phones, one business 2-line phones, network hub, two waste cans, shredder, vacuum, microwave, card table and two chairs, three folding chairs in operatories, TV/VCR in operatory #4. The assets do not include the following equipment: any property of Innovative Chiropractic, fax machine, end table in waiting room, decorative pictures, refrigerator, large garbage can in furnace room, stereo, any property of Seller-Landlord, ladder, broom, mop, light bulb changing stick.

1.02 Excluded Assets. The Assets shall not include the following:

1.02-1 All cash assets of the Dental Practice, notes and accounts receivable, automobiles, real estate, and personal items of Seller. Re-do's of work originally performed before closing and completed subsequent to closing may be charged and collected by Purchaser, and do not constitute accounts receivable. Completion of work subsequent to closing which was originally begun prior to closing may be charged and collected by Purchaser, and do not constitute accounts receivable.

1.02-2 No liabilities of Seller whatsoever, whether in tort or contract or otherwise, are being transferred to or acquired by Purchaser hereunder, unless specifically assumed and scheduled hereunder. Buyer does not assume and will not be responsible for any known, unknown, or contingent liabilities of Seller incurred by any means including, but not limited to, professional malpractice or personal injury of any nature, including liabilities related to Seller's employees prior to closing. Seller is responsible for all payroll, tax liability, sales tax liability, if any, prior to closing.

1.02-3 The assets do not include the following: any property of Innovative Chiropractic, file cabinet next to copier machine, shelves containing vitamins, cabinet under fax machine, cabinetry in operatory, cabinetry in sterilization area, cabinetry at front desk, carpets, light fixtures, countertops, window treatments, ceiling speakers, TV and computer monitor mounts, bathroom fixtures, and magazine rack. The assets do not include any property of First Pacific Corporation, including its computers, monitors, keyboards, battery backup, computer speakers, laser printer, color printer, computer software, and computer connections.

1.02-4 Plants, trees, decorations, and pictures may be changed by Purchaser in cooperation with Innovative Chiropractic or other current tenant.

1.03 Purchase Price The purchase price for the Assets (the Purchase Price) shall be the following:

1.03-1 One Hundred Sixty Five Thousand and 00/100ths (\$165,000.00) Dollars is the full purchase price. The sum of Five Thousand (\$5,000.00) Dollars has been deposited, and represents Purchaser's earnest money deposit ("Earnest Money"). The full purchase price minus the Earnest Money shall be paid by Purchaser to Seller at closing, by certified or official check.

1.04 Instruments of Conveyance and Transfer: The sale of the Assets, and the conveyance, assignment, transfer and delivery of all of the Assets shall be affected by Seller's execution and delivery to Purchaser, on the Closing Date, of a bill of sale in substantially the form of the Assignment and Bill of Sale attached hereto as Exhibit A. At time of closing, personal property, bio-hazardous property, and inactive patient files are to be moved at Seller's expense

1.05 Further Assurances. Seller agrees that, at any time and from time to time on and after the Closing Date, they will, upon the request of Purchaser and without further consideration, take all steps reasonably necessary to place Purchaser in possession and operating control of the Assets and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all further acts, deeds, assignments, conveyances, transfers, or assurances as reasonably required to sell, assign, convey, transfer, grant, assure and confirm to Purchaser, or to aid and assist in the collection of or reducing to possession by Purchaser of, all of the Assets, or to vest in Purchaser good, valid and marketable title to the Assets.

1.06 Closing The consummation of the transactions contemplated by this Agreement (the Closing) shall take place on July 1, 2004, or at another date, time and place agreed upon in writing by the parties (the Closing Date), but Purchaser shall take possession of the Dental Practice on June 30, 2004.

1.07 Allocation of Purchase Price The Purchase Price shall be allocated among the Assets as follows, and Purchaser and Seller shall be bound by that allocation in reporting the transactions contemplated by this Agreement to any governmental authority (including without limitation the Internal Revenue Service):

- (a) Twenty-Five Thousand (\$25,000.00) Dollars for dental equipment;
- (b) Four Thousand (\$4,000.00) Dollars for hand instruments and dental supplies;
- (c) Five Thousand (\$5,000.00) Dollars for furniture and office equipment;
- (d) One Hundred Thirty One (\$131,000.00) Dollars for goodwill;

ARTICLE II Representations and Warranties of Purchaser

Purchaser, represents and warrants to Seller as follows:

2.01 Authorization. This Agreement has been duly executed and delivered by Purchaser and is binding upon and enforceable against her in accordance with its terms;

2.02 Compliance. The execution, delivery and performance of this Agreement by Purchaser, the compliance by Purchaser with the provisions of this Agreement and the consummation of the transactions described in this Agreement will not conflict with or result in the breach of any of the terms or provisions of or constitute a default under:

2.02-1 any note, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which Purchaser is a party or by which Purchaser is bound; or

2.02-2 any statute or any order, rule, regulation or decision of any court or regulatory authority of governmental body applicable to Purchaser.

2.03 Consents. Except for the consent of Purchaser's principal bank, no consent, approval, authorization, order, designation or declaration of any court or regulatory authority or governmental body, federal or other, or third person is required to be obtained by Purchaser for the consummation of the transactions described in this Agreement

2.04 Accuracy of Representations & Warranties. None of the representations or warranties of Purchaser contains or will contain any untrue statement of any material fact or omits or misstates a material fact necessary to make the statements contained in this Agreement not misleading.

ARTICLE III

Representations and Warranties of Seller

3.01 Corporate Existence; Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and has all necessary corporate power and authority to own, lease and operate the property and assets and to carry on the business as now conducted and as proposed to be conducted. Seller owns all of the assets of the Dental Practice. Seller has full power and authority to enter into this Agreement and to carry out its terms. This Agreement has been duly and validly executed and delivered by Seller and is binding upon and enforceable against Seller in accordance with its terms.

3.02 No Adverse Consequences. Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated by this Agreement will

3.02-1 result in the creation or imposition of any lien, charge or encumbrance on the Seller's assets or property,

3.02-2 violate or conflict with any provision of Seller's articles of incorporation or bylaws,

3.02-3 violate any law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority applicable to Seller, or

3.02-4 either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination or acceleration of, result in the breach of the terms, conditions

or provisions of, result in the loss of any benefit to Seller under or constitute a default under any agreement, instrument, license or permit to which Seller is a party or is bound.

3.03 Brokers and Finders. Purchaser acknowledges and understands that no brokers or finders have been used in this transaction or are otherwise entitled to any fee.

3.04 Litigation. There is no claim, litigation, proceeding or investigation of any kind pending or threatened by or against the Dental Practice, and, to the best knowledge of Seller, there is no basis for any such claim, litigation, proceeding or investigation.

3.05 Compliance with Laws. Seller has at all relevant times conducted the Dental Practice in compliance with their respective articles of incorporation and bylaws and all applicable laws and regulations. The Dental Practice is not subject to any outstanding order, writ, injunction or decree, and have not been charged with, or threatened with a charge of, a violation of any provision of federal, state or local law or regulation.

3.06 Employment Matters

3.06-1 Employment Agreements. Each of the employees of the Dental Practice is an at-will employee. There are no written employment, commission or compensation agreements of any kind between Seller and any of its employees at the Dental Practice.

3.07 Permits and Licenses. Seller and the shareholders of Seller hold and at all times have held, all licenses, permits, franchises, easements and authorizations (collectively, Permits) necessary for the lawful conduct of the Dental Practice pursuant to all applicable statutes, laws, ordinances, rules and regulations of all governmental bodies, agencies and other authorities having jurisdiction over it or any part of its operations, and there are no claims of violation by any such party of any Permit.

3.08 Consents and Approvals. No consent, approval or authorization of any court, regulatory authority, governmental body, or any other entity or person not a party to this Agreement is required for the consummation of the transactions described in this Agreement by Seller. Seller has obtained, or shall have obtained prior to the Closing, all consents, authorizations or approvals of any third parties required in connection with the execution, delivery or performance of this Agreement by Seller or the consummation of the transaction contemplated by this Agreement. Seller has made all registrations or filings with any governmental authority required for the execution or delivery of this Agreement or the consummation of the transaction contemplated hereby.

3.09 Records. The books of account of Seller and the Professional Corporation is complete and accurate in all material respects, and there have been no transactions involving the business of Seller and the Professional Corporation which properly should have been set forth therein and which have not been accurately so set forth. Complete and accurate copies of such books have been made available to Purchaser.

3.10 Reliance. Seller recognizes and agrees that, notwithstanding any investigation by Purchaser, Purchaser is relying upon the representations and warranties made by Seller in this Agreement.

3.11 Accuracy of Representations and Warranties. None of the representations or warranties of Seller contains or will contain any untrue statement of any material fact or omits or

misstates a material fact necessary to make the statements contained in this Agreement not misleading. Seller does not know of any fact that has resulted or that, in the reasonable judgment of Seller will result, in any material adverse change in Seller's business, results of operation, financial condition or prospects that has not been set forth in this Agreement.

ARTICLE IV Covenants

4.01 Access to Properties, Books and Records. Prior to the Closing Date, Seller shall, at Purchaser's request, afford or cause to be afforded to the agents, attorneys, accountants and other authorized representatives of Purchaser reasonable access during normal business hours to all employees, properties, books and records of the Dental Practice and shall permit such persons, at Purchaser's expense, to make copies of such books and records. Purchaser shall treat, and shall cause all of their agents, attorneys, accountants and other authorized representatives to treat, all information obtained pursuant to this Section 4.01 as confidential. No investigation by Purchaser or any of her authorized representatives pursuant to this Section 4.01 shall affect any representation, warranty or closing condition of any party hereto or Purchaser's rights to indemnification.

4.02 Negative Covenants. Except as otherwise permitted by this Agreement or with the prior written consent of Purchaser, prior to the Closing Date, Seller shall not, in connection with the Dental Practice:

4.02-1 Mortgage, pledge, otherwise encumber or subject to lien any of its assets or properties, tangible or intangible, or commit itself to do any of the foregoing;

4.02-2 Except in the ordinary and usual course of its business and in each case for fair consideration, dispose of, or agree to dispose of, any of its assets or lease or license to others, or agree so to lease or license, any of its assets;

4.02-3 Acquire any assets which would be material to the Dental Practice other than assets acquired in the ordinary and usual course of business and consistent with past practices;

4.02-4 Enter into any transaction or contract or make any commitment to do the same;

4.02-5 Increase the wages, salaries, compensation, pension or other benefits payable, or to become payable by it, to any of its employees or agents, including without limitation any bonus payments or severance or termination pay, other than increases in wages and salaries required by employment arrangements existing on the date hereof or otherwise in the ordinary and usual course of its business;

4.02-6 Agree or commit to do any of the foregoing.

4.03 Affirmative Covenants. Except as otherwise permitted by this Agreement or with the prior written consent of Purchaser, prior to the Closing Date, Seller shall:

4.03-1 Operate the Dental Practice, including collecting receivables and paying payables, as presently operated and only in the ordinary course and consistent with past practices;

4.03-2 Advise Purchaser in writing of any litigation or administrative proceeding that challenges or otherwise materially affects the transactions contemplated hereby;

4.03-3 Use its best efforts to maintain all of the Tangible Personal Property in good operating condition, reasonable wear and tear excepted, consistent with past practices, and take all steps reasonably necessary to maintain their intangible assets;

4.03-4 Not cancel or change any policy of insurance (including self-insurance) or fidelity bond or any policy or bond providing substantially the same coverage;

4.03-5 Maintain, consistent with past practices, all inventories, spare parts, office supplies and other expendable items;

4.03-6 Use its best efforts to retain all employees;

4.03-7 Maintain its books and records in accordance with past practices;

4.03-8 Pay and discharge all taxes, assessments, governmental charges and levies imposed upon it, its income or profits or upon any property belonging to it, in all cases prior to the date on which penalties attach thereto; and

4.03-9 Comply with all laws, rules and regulations applicable to the Dental Practice.

4.04 Employees. Seller shall be responsible for and shall pay and discharge all obligations to such employees arising out of or in connection with their employment prior to Closing.

4.05 Indemnification by Seller

Seller indemnifies and agrees to defend, indemnify, and hold Purchaser harmless from, against, and in respect of the following:

(a) any and all debts, liens, liabilities, or obligations of Seller, direct or indirect, fixed, contingent, or otherwise existing before the Closing Date, including, but not limited to, any liabilities arising out of any act, transaction, circumstance, state of facts, actions or inactions of employees, or violation of law that occurred or existed before the Closing Date, whether or not then known, due, or payable, and irrespective of whether the existence thereof is disclosed to Purchaser in this Agreement or any schedule hereto;

(b) any and all loss, liability, deficiency, or damage suffered or incurred by Purchaser as a result of any default by Seller existing on the Closing Date, or any event of default occurring prior to the Closing Date that with the passage of time would constitute a default, under any material contract or other agreement assumed by Purchaser under this Agreement;

(c) any and all loss, liability, deficiency, or damage suffered or incurred by Purchaser by reason of any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Seller contained in this Agreement or in any certificate, document, or instrument delivered to Purchaser hereunder or in connection herewith;

(d) any claim for a finder's fee or brokerage or other commission by any person or entity for services alleged to have been rendered at the instance of Seller with respect to this

Agreement or any of the transactions contemplated hereby; and

(e) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in purchaser's successful enforcement of this indemnity.

(f) any violations of municipal, state, or federal law committed prior to closing

4.06 Indemnification by Purchaser

Purchaser hereby agrees to indemnify and hold Seller harmless from, against, and in respect of:

(a) any and all debts, liabilities, or obligations of Purchaser, direct or indirect, fixed, contingent, or otherwise accruing after the Closing Date;

(b) any and all loss, liability, deficiency, or damage suffered or incurred by Seller resulting from any untrue representation, breach of warranty, or non-fulfillment of any covenant or agreement by Purchaser contained in this Agreement or in any certificate, document, or instrument delivered to Seller pursuant hereto or in connection herewith;

(c) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including, without limitation, legal fees and expenses, incident to any of the foregoing or incurred in Seller's successful enforcement of this indemnity, except those resulting from Seller's duties and obligations as landlord of Purchaser's leased premises

4.07. Third-Party Claims

(a) In order for Purchaser or Seller, as the case may be, to be entitled to any indemnification provided for hereunder, in respect of, arising out of, or involving a claim made by any person, firm, governmental authority, or corporation other than the Purchaser or Seller, or their respective successors, assigns, or affiliates, against the indemnified party, the indemnified party must notify the indemnifying party in writing of such third-party claim promptly after receipt by the indemnified party of written notice of the third-party claim, and the indemnified party shall deliver to the indemnifying party, within 20 days after receipt by the indemnified party, copies of all notices relating to the third-party claim.

(b) If a third-party claim as set forth in subsection (a) hereof is made against an indemnified party, the indemnifying party will be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the indemnifying party, provided such counsel is not reasonably objected to by the indemnified party. Should the indemnifying party elect to assume the defense of such a third-party claim, the indemnifying party will not be liable to the indemnified party for any legal expenses subsequently incurred by the indemnified party in connection with the defense thereof. If the indemnifying party elects to assume the defense of such a third-party claim, the indemnified party will cooperate fully with the indemnifying party in connection with such defense.

(c) If the indemnifying party assumes the defense of a third-party claim, then in no event will the indemnified party admit any liability with respect to, or settle, compromise, or discharge, any third-party claim without the indemnifying party's prior written consent, and the indemnified party will agree to any settlement, compromise, or discharge of a third-party claim that the indemnifying party may recommend that releases the indemnified party completely in connection with the third-party claim.

(d) In the event the indemnifying party shall assume the defense of any third-party claim, the indemnified party shall be entitled to participate in, but not control, the defense with its own counsel at its own expense. If the indemnifying party does not assume the defense of any such third-party claim, the indemnified party may defend the claim in a manner as it may deem appropriate, and the indemnifying party will reimburse the indemnified party promptly;

ARTICLE V Joint Covenants

Purchaser and Seller covenant and agree that they will act in accordance with the following:

5.01 Governmental Consents. Promptly following the execution of this Agreement, the parties will proceed to prepare and file with the appropriate governmental authorities any requests for approval or waiver, if any, that are required from governmental authorities in connection with the transactions contemplated hereby, and the parties shall diligently and expeditiously prosecute and cooperate fully in the prosecution of such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers. Purchaser is not responsible for obtaining governmental consents regarding the physical structure of the building owned by Seller.

5.02 Best Efforts; No Inconsistent Action. Each party will use its best efforts to effect the transactions contemplated by this Agreement and to fulfill the conditions to the obligations of the other parties set forth in Article 6 or 7 of this Agreement. No party will take any action inconsistent with its obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement, except that nothing in this Section 5.02 shall limit the rights of the parties under Articles 6, 7 and 8.

ARTICLE VI Conditions to Obligations of Seller

The obligations of Seller under Article I are, at their option, subject to satisfaction, at or prior to the Closing, of each of the following conditions:

6.01 Representations, Warranties and Covenants.

6.01-1 All representations and warranties of Purchaser made in this Agreement shall in all material respects be true and complete on and as of the Closing Date with the same force and effect as if made on and as of that date.

6.01-2 All of the terms, covenants and conditions to be complied with and performed by Purchaser on or prior to the Closing shall in all material respects have been complied with or performed by Purchaser.

6.02 Adverse Proceedings.

No suit, action, claim or governmental proceeding shall have been instituted or threatened

against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Purchaser or Seller to restrain or prohibit this Agreement or the transactions contemplated by this Agreement

6.03 Lease

At or before closing, Purchaser shall execute a five-year lease for the offices of the Dental Practice at 7714 159th Street, Orland Park, IL 60462, at which Seller is Lessor. Initial monthly rent shall be Two Thousand Four Hundred (\$2,400.00) Dollars, and monthly rent will increase each year by a Five Per Cent (5%) increment over the previous year's monthly rent. The said required lease will also provide that Purchaser-Lessee shall pay monthly supplemental rent of Three Hundred Seventy-Five (\$375.00) Dollars for reimbursement to Lessor of common area maintenance expenses, including but not limited to, lessee's pro-rata share of utility and other expenses for the entire building. Seller-Lessor shall account to Purchaser-Lessee at least semi-annually for such common area expenses, and shall either reimburse Purchaser for any over-payments made by Purchaser toward pro-rata common area maintenance expenses, or shall bill Purchaser for any such under-payments made by Purchaser, which billing Purchaser shall pay by its due date.

ARTICLE VII Termination

7.01 Right of Parties to Terminate This Agreement may be terminated:

7.01-1 by Purchaser, if any of the authorizations, consents, approvals, filings or registrations described above shall have been denied, not permitted to go into effect or obtained on terms not reasonably satisfactory to Purchaser and all reasonable final appeals shall have been exhausted;

7.01-2 by Purchaser, if Seller shall have breached any of their obligations hereunder in any material respect;

7.01-3 by Seller, if Purchaser shall have breached any of its obligations hereunder in any material respect; or

7.02 Effect of Termination. If either Purchaser or Seller decides to terminate this Agreement, such party shall promptly give written notice to the other party to this Agreement of such decision. In the event of a termination, the parties hereto shall be released from all liabilities and obligations arising under this Agreement, with respect to the matters contemplated by this Agreement, other than for damages arising from a breach of this Agreement.

ARTICLE VIII Confidentiality; Press Releases

8.01 Confidentiality

8.01-1 No information concerning Seller not previously disclosed to the public or in the public domain that has been furnished to or obtained by Purchaser under this Agreement or in connection

with the transactions contemplated hereby shall be disclosed to any person other than in confidence to employees, legal counsel, financial advisers or independent public accountants of Purchaser or used for any purpose other than as contemplated herein. If the transactions contemplated by this Agreement are not consummated, Purchaser shall hold such information in confidence for a period of four years from the date of any termination of this Agreement, and all such information that is in writing or embodied on a diskette, tape or other tangible medium shall be promptly returned to Seller.

8.01-2 No information concerning Purchaser not previously disclosed to the public or in the public domain that has been furnished to or obtained by Seller under this Agreement or in connection with the transactions contemplated hereby shall be disclosed to any person other than in confidence to the employees, legal counsel, financial advisers or independent public accountants of Seller or used for any purpose other than as contemplated herein. If the transactions contemplated by this Agreement are not consummated, Seller shall hold such information in confidence for a period of four years from the date of any termination of this Agreement, and all such information that is in writing or embodied on a diskette, tape or other tangible medium shall be promptly returned to Purchaser.

8.01-3 Notwithstanding the foregoing, such obligations of Purchaser and of Seller shall not apply to information

(a) that is, or becomes, publicly available from a source other than Purchaser or Seller, as the case may be;

(b) that was known and can be shown to have been known by Purchaser at the time of its receipt from Seller, or by Seller at the time of its receipt from Purchaser, as the case may be;

(c) that is received by Purchaser from a third party without breach of this Agreement by Purchaser, or is received by Seller from a third party without breach of this Agreement by Seller, as the case may be;

(d) that is required by law to be disclosed; or

(e) that is disclosed in accordance with the written consent of Purchaser or of Seller, as the case may be.

ARTICLE IX **Other Provisions**

9.01 Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns forever. No party hereto may voluntarily or involuntarily assign such party's interest under this Agreement without the prior written consent of the other parties.

9.02 Entire Agreement. This Agreement and the Schedules and Exhibits referred to herein embody the entire agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for herein.

9.03 ~~Fees and Expenses.~~ Purchaser shall be solely responsible for all costs and expenses incurred by her, and Seller shall be solely responsible for all costs and expenses incurred by Seller, in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

9.04 ~~Amendment, Waiver, etc.~~ The provisions of this Agreement may be amended or waived only by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought. Any waiver of any term or condition of this Agreement or any breach hereof shall not operate as a waiver of any other such term, condition or breach, and no failure to enforce any provision hereof shall operate as a waiver of such provision or of any other provision hereof.

9.05 ~~Headings.~~ The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

9.06 ~~Governing Law.~~ The construction and performance of this Agreement will be governed by the laws of the State of Illinois.

9.07 **Notices** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing; shall be delivered personally, including by means of telecopy, or mailed by registered or certified mail, postage prepaid and return receipt requested; shall be deemed given on the date of personal delivery or on the date set forth on the return receipt; and shall be delivered or mailed to the addresses or telecopy numbers set forth on the first page of this Agreement or to such other address as any party may from time to time direct, with copies to:

In the case of Seller:

(847) 212-5620 cell
(847) 424 0200 office

Steven H. Jesser
790 Frontage Road
Suite 110
Northfield, Illinois 60093
Facsimile: (800) 330-9710

Todd C. Pusateri, DDS
8 West Gartner
Naperville, IL 60540

In the case of Purchaser:

Mary A. Tujetsch, DDS
55 E. Washington Suite 2121
Chicago IL 60602
312-7862-1396

11/17/07

9.08 **Breach; Equitable Relief.** The parties acknowledge that the Dental Practice and rights of the parties described in this Agreement are unique and that money damages alone for breach of this Agreement may be inadequate. Any party aggrieved by a breach of the provisions hereof may bring an action at law or suit in equity to obtain redress, including specific performance, injunctive relief or any other available equitable remedy. Time and strict performance are of the essence in this Agreement.

9.09 **Attorneys' Fees.** If suit or action is filed by any party to enforce the provisions of this Agreement or otherwise with respect to the subject matter of this Agreement, each party shall bear its own legal fees, costs, and expenses.

9.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

9.11 **Covenant Not to Compete.**

9.11-1. For a period of five (5) years after date of this Covenant, Seller shall not, in any capacity, own, manage, operate, control, participate in, be employed by, or be connected in any manner with the ownership, management, operation, control, or practice of any dental practice within a five (5) mile radius of 7714 159th Street, Orland Park, IL 60462.

9.11-2 During and after the closing as set forth in the Asset Purchase Agreement, Seller shall not disclose to any person or entity the names and addresses of any patients or suppliers or confidential or proprietary information of Purchaser, shall not disparage Purchaser, or solicit patients previously treated at the address set forth above, including those patients whose names were provided to Purchaser upon closing. Seller will cooperate in attempting to refer active and inactive patients of the Dental Practice to Purchaser, and will not refer such patients to other dentists.

9.11-3. Seller acknowledges that the restrictions imposed by this Covenant are fully

understood and will not preclude it from the general practice of dentistry

9.11-4. Seller agrees that this Covenant is intended to protect and preserve legitimate business interests of Purchaser. It is further agreed that any breach of this Covenant may render irreparable harm to Purchaser. In the event of a breach by Seller, Purchaser shall have available to it all remedies provided by law or equity, including, but not limited to, temporary or permanent injunctive relief to restrain Seller and its past or former dentists from violating this Agreement. If Seller is found to be in breach of any part of the Covenant Not to Compete, Seller must immediately cease practicing at the site wherein the breach is occurring, and Purchaser may seek all injunctive, equitable, and/or legal remedies available to it under law, including damages.

9.11-7. This Covenant Not to Compete constitutes the entire agreement between the parties hereto with respect to the restrictive covenant herein. No change, modification, or amendment shall be valid unless the same is in writing, signed by the parties hereto; and specifically provides for amendment, change, or modification of this Agreement. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party to be charged.

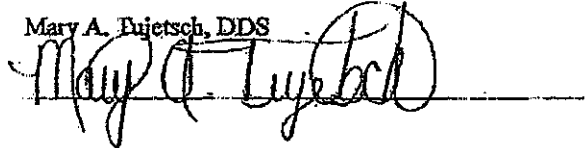
9.11-8. If any portion of this Covenant shall be, for any reason, declared invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable, and carried into effect to the fullest extent permitted, and the invalid or unenforceable portion shall be reformed, if possible, so as to be valid and enforceable.

9.11-9 This Covenant shall be subject to and governed by the laws of the State of Illinois

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

PURCHASER:

Mary A. Dujetsch, DDS



SELLER:

First Dental, PC

By:

Todd C. Puseteri, DDS, Its President

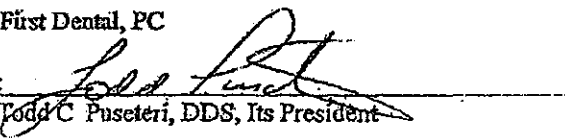


EXHIBIT A
ASSIGNMENT AND BILL OF SALE

Pursuant to the Asset Purchase Agreement dated June 27, 2004, (the Agreement) between Mary A. Tujetsch, DDS (Purchaser), and First Dental, PC (Seller), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby sell to Purchaser, all of Seller's right, title and interest in and to the Assets (as defined in the Agreement) and do hereby transfer, convey, grant and assign to Purchaser, all of Seller's right, title and interest in and to all of the Purchased Assets.

Seller hereby transfers the foregoing Assets free and clear of all liens, claims and encumbrances of every type whatsoever. This instrument will vest in Purchaser good and marketable title to the foregoing Assets, free and clear of all liens, claims and encumbrances.

IN WITNESS WHEREOF, Seller has caused this Assignment and Bill of Sale to be executed and delivered effective as of the close of business on June 27, 2004.

First Dental, PC

By: _____

Todd C. Pusateri, DDS, Its President

EXHIBIT 9

DR. MARY A. TUJET

COSMETIC AND GENERAL DENT

55 E WASHINGTON, SUITE 21

CHICAGO, IL 60602

(312) 782-1396

(312) 236-2543

2

April 5, 2005

First Dental

Attention: Dr. Todd Pusateri
8 W. Gartner, Suite 124
Naperville, IL 60540

Dear Todd:

Hi! I trust that all is well with you. Congratulations on the new baby on the way!

I called your office in order to talk to you directly, but you were seeing patients today. When Lindsey stated that you would be out of the office for the rest of the week, I thought it best to write to you.

Some time ago, I advertised for "Space Sharing" at the Orland Park location. When I ran the ad, I began getting numerous calls regarding dentists wanting to purchase the office. I thought that this was odd as I had not advertised the office for sale. These interested dentists forced me to contemplate the option of selling the practice if the money was right. I then went ahead and advertised the office for sale and decided that if the price was right, I would be willing to sell. If the price is not right, I will keep the office and nothing will change. I have received a lot of interest in the practice and I find myself needing to devote more time to my Chicago practice. When I originally purchased the office, I had anticipated that the office could run itself efficiently with little or no input/time from me. I have come to learn that an absentee owner is a recipe for disaster.

My question to you is, would you be interested in selling the building at 7714 W. 159th Street? I believe that my chances of selling the practice would be greatly enhanced if I could offer the sale of the building, in addition to my practice. I know that at the time of the purchase, in July 2004, you were open to the idea of selling the building. Have you given it any additional consideration? From your perspective, it would be easier to sell the building with the sale of the dental practice. I understand that the chiropractors' lease is coming to an end so the time could not be more ideal for both of us. The feedback I am getting is that a potential buyer, who is a dentist, would desire the entire office space so you would not want to renew the chiropractors' lease. The chiropractors could relocate to the new addition as they do not have plumbing issues and this would take care of their needs.

PUSRRP001575

DR. MARY A. TUJETSCH

COSMETIC AND GENERAL DENTISTRY

55 E WASHINGTON, SUITE 2121

CHICAGO, IL 60602

(312) 782-1396

(312) 236-2543

I would be willing to market and show your building, along with my practice, for a 6% commission which is standard in the business. This would allow me to cover my time and expenses which are considerable.

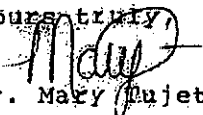
Please contact me as soon as possible regarding this proposal. Only the most serious buyer would be forwarded to you after being screened by me.

I ask that you keep all of this letter confidential as I may ultimately option to keep the practice in the end. I do not want to alarm Dr. Purdue or the staff and patients.

Thank you for your time and consideration. I think this would be a terrific opportunity for both of us if you are interested.

The best to you always.

Yours truly,



Dr. Mary Tujetsch

PUSRRP001576

EXHIBIT 10

DR. MARY A. TUJETSCH

COSMETIC AND GENERAL DENTISTRY

55 E WASHINGTON, SUITE 2121
CHICAGO, IL 60602
(312) 782-1396
(312) 236-2543

April 6, 2005

First Dental
Attention: Dr. Todd Pusateri
8 W. Gärtner, Suite 124
Naperville, IL 60540

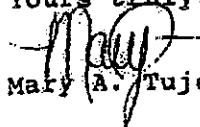
Dear Todd:

I am offering you one million (\$1,000,000.00) for the purchase of your building located at 7714 W. 159th Street, Orland Park, Illinois. This offer includes a down payment of \$50,000.00 and then subsequent monthly payments in the amount of \$7500.00 at a finance rate of 5% to you. Acceptance of this offer would guarantee an immediate \$50,000.00 down payment in the form of a cashier's check or money order.

I have done a fair amount of inquiry regarding real estate in Orland Park. My advisors have informed me that my offer of one million dollars is very fair as the dental building across the street had an asking price of 1.2 million and less was accepted in the end. The building, across the street, contained more square footage, more land, more parking, and a full basement. The stone front also added more value to the building.

Acceptance of this offer would also guarantee a swift closing as opposed to months of delay. This offer will expire at 5:00 p.m. central standard time, today, as I am interested in another business opportunity. This offer is subject to a full inspection and attorney approval. Please contact me at (708)429-9200. Thanks, Todd. Have a nice break from dentistry!

Yours truly.


Mary A. Tujetsch, D.D.S.

PUSRRP001577

001 10 21 0007/00/00

EXHIBIT 11

FIRST DENTAL

7714 W 159TH STREET
ORLAND PARK, IL 60462
(708) 429-9200

October 24, 2005

First Dental
Dr. Todd Pusateri
8 W. Gartner, Suite 124
Naperville, IL 60540

Dear Dr. Todd Pusateri:

As you know, approximately one year ago, I purchased your former dental office at 7714 W. 159th Street, Orland Park, Illinois. Due to ongoing financial discrepancies, I was advised to complete an audit of your former office. A thorough audit of this practice has brought a number of disturbing facts to light. Today, 10/24/05, I have been informed that the actual number of active patients, at the time of the sale, was 50% less than what you represented in our signed, legal contract. Please refer to the contract where you note that 1200 active patients of record are involved in the sale of the practice. A detailed report by First Pacific Corporation, your former and current billing agency, indicates that the actual number of active patients, at the sale, was 668. This misrepresentation has created an enormous burden for this office as you are also profiting from a monthly rent of nearly \$3000.00. In addition, you have failed to compensate me for your failed dental work which required remakes. These remakes have been at my expense. While you have acknowledged that you are the responsible party, no compensation has been forthcoming, per our agreement. I have mentioned other problems associated with your misrepresentation of the office and you have been unconcerned.

Needless to say, I am stunned and upset by what I am learning. I ask that you consult your attorney and ask that he contact me at the telephone number listed above. This problem represents a

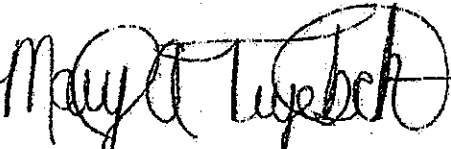
PUSRRP001578

FIRST DENTAL

7714 W 159TH STREET
ORLAND PARK, IL 60462
(708) 429-9200

serious breach in our contract. I will provide your legal counsel with the 668 names and addresses associated with the actual number of active patients, at the time of the sale. I will also authorize First Pacific Corporation to cooperate with your attorney regarding this matter. Thank you for your cooperation in this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Mary A. Tujetsch". The signature is written in dark ink and is positioned above the typed name.

Mary A. Tujetsch, D.D.S.

PUSRRP001779

EXHIBIT 12



FIRST PACIFIC
CORPORATION

Together we do more

July 6, 2006

RE: Dr. Mary Tujetsch 110140, Dr. Todd Pusateri 111089

To Whom It May Concern:

On or about July 1, 2004, Dr. Mary Tujetsch purchased the dental practice of Dr. Todd Pusateri, located at 7714 W 159th St, Orland Park, IL 60462-5036. Dr. Pusateri was already a client of First Pacific Corporation (FPC) at the time of the sale, and Dr. Tujetsch became an FPC client at the time of the sale.

As part of that sale, FPC generated a copy of the database created during Dr. Pusateri's tenure with FPC, and set it up for Dr. Tujetsch's use. This database included account information (names, addresses, phone numbers, etc...), but did not include any financial data or account history for the patient accounts. Lacking financial data, Dr. Tujetsch's database also lacked the ability to report Active Patients prior to her posting of new financial transactions.

In the fall of 2005, at Dr. Tujetsch's request, FPC generated a report of Active Patients from Dr. Tujetsch's database. However, the report parameters requested by Dr. Tujetsch pre-dated her tenure as an FPC client. Upon presenting the report to her and learning of her intended use, our Account Executive cautioned her that the report would be inaccurate for her stated purpose of comparing the number of Active Patients on the report to the number of Active Patients stated in her sales agreement with Dr. Pusateri.

As part of the sale, Dr. Pusateri agreed to allow Dr. Tujetsch access to his database, which encompassed financial transactions on patient accounts, for 90 days after the sale of the practice. Although she had access to Dr. Pusateri's database for three months following her purchase of the practice, we have no records that indicate she requested or generated a report of Active Patients from Dr. Pusateri's database. Once we deleted Dr. Pusateri's database from the computer in the office, Dr. Tujetsch had no access to Active Patient information prior to July 1, 2004.

At this time, FPC has deleted both Dr. Pusateri's database and Dr. Tujetsch's database from our system, and we have no record of Active Patients for either database.

If you have any questions, please call me at 503-588-1411, extension 2208.

Best regards,

Bret Ketsdever
Client Accounts Manager

P O BOX 3000 • SALEM, OREGON 97302-8001 • 503 588 1411 • 800 544 2345

PUSRRP0475

Matthew,

Please review and give me a call when you get a chance to discuss

Thanks,

Michael Wood
Regional Service Manager
First Pacific Corporation
1-800-544-2345

From: Katie Lucitt
Sent: Sunday, June 18, 2006 8:00 PM
To: Mike Wood
Subject: Dr. Pusateri / Dr. Tujetsch

Mike,

When Dr Tujetsch was still a client with FPC she asked me to pull up a report showing active patients for a certain time period. I called client services and they walked me through pulling up a custom report showing the active number of patients. I provided this report to Dr. Tujetsch. She later explained she wanted this report to compare it to the number of "Active Patients" that was listed in her contract when she purchased the practice from Dr. Pusateri. I informed her the report I gave her was inaccurate since she provided me with dates when she wasn't with FPC. The report I pulled up was for dates prior to her being an FPC client. I explained to Dr. Tujetsch that the report she had was inaccurate and we couldn't pull "Active" patients from her system for dates prior to her becoming a client. She explained to me she understood, but she stated she still felt that she was misrepresented in the sale by Dr. Pusateri.

Dr. Pusateri is requesting something in writing for his attorney stating FPC provided Dr. Tujetsch this report based on her doctor number, not his old doctor number. He is looking for FPC to state that none of his information from his old doctor number would have showed up under her doctor number.

Please let me know if you need any additional information

Katie Lucitt
Account Executive
First Pacific Corporation
(800) 544-2345 x 4137

9/7/2007

FPC-P-0046

Date: 12/30/2003
 Time: 10:20 PM

PRACTICE OVERVIEW
 111088 - FIRST DENTAL

Page: 1

O.P.

Production

AA - PUSATERI DDS, TODD C.	\$	6,289.00	\$	28,589.82
CC - COLLECTIONS	\$	0.00	\$	418.12
D2 - BABBITT, MONICA S.	\$	0.00	\$	38.00
D3 - PURDUE, RICHARD D.	\$	12,715.00	\$	142,847.10
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$	70.00
H2 - GALBAN, JACKIE	\$	8,513.80	\$	78,848.26
PR - PRODUCTS	\$	70.00	\$	1,112.00
XX - X, X	\$	0.00	\$	1,483.29
ZZ - DOUBLE BOOK	\$	0.00	\$	2,835.00
Total Production	\$	28,597.80	\$	254,022.59

Days Worked

AA - PUSATERI DDS, TODD C.		2		38
CC - COLLECTIONS		0		0
D2 - BABBITT, MONICA S.		0		28
D3 - PURDUE, RICHARD D.		10		142
D4 - BRITESMILE, BRITESMILE		0		0
H2 - GALBAN, JACKIE		10		121
PR - PRODUCTS		0		0
XX - X, X		0		0
ZZ - DOUBLE BOOK		0		87

Production Per Hour

AA - PUSATERI DDS, TODD C.	\$	447.79	\$	127.88
CC - COLLECTIONS	\$	0.00	\$	0.00
D2 - BABBITT, MONICA S.	\$	0.00	\$	0.21
D3 - PURDUE, RICHARD D.	\$	192.68	\$	161.64
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$	0.00
H2 - GALBAN, JACKIE	\$	88.69	\$	101.97
PR - PRODUCTS	\$	0.00	\$	0.00
XX - X, X	\$	0.00	\$	0.00
ZZ - DOUBLE BOOK	\$	0.00	\$	5.25
Total Production Per Hour	\$	730.13	\$	306.95

A/R Collection

Patient Payments FPC	\$	447.20	\$	5,738.33
Insurance Payments FPC	\$	7,090.47	\$	83,789.85
Office Payments	\$	14,908.10	\$	135,380.86

Reassignment

	\$	0.00	\$	1,840.38
--	----	------	----	----------

Number of New Patients

		40		338
--	--	----	--	-----

Number of Patients Referred by Referral Sources

Patients		0		0
Doctors		0		0
Other		0		0

Number of Active Patients

		1,223		
--	--	-------	--	--

Date: 12/30/2003
Time: 10:20 PM

PRACTICE OVERVIEW

111089 - FIRST DENTAL

Recall Status of All Patients		
Number with Current Recall	358	
Number with Overdue Recall	749	
Number Without Recall	945	
Number of Patients with Diagnosed Treatment (other than Prophylaxis Codes)		
Scheduled	384	
Unscheduled	427	
Total	791	

Date: 4/29/2004

Time: 10:17 PM

PRACTICE OVERVIEW

Page: 1

O.P.

111089 - FIRST DENTAL

	Month-to-Date	Year-to-Date
Production		
AA - PUSATERI DDS, TODD C.	\$ 278.00	\$ 13,278.94
CC - COLLECTIONS	\$ 40.00	\$ 179.68
D2 - BABBITT, MONICA B.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 11,082.20	\$ 43,021.30
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 35.00
H2 - GALBAN, JACKIE	\$ 6,478.00	\$ 25,865.80
PR - PRODUCTS	\$ 0.00	\$ 84.00
XX - X, X	\$ 181.80	\$ 784.60
ZZ - DOUBLE BOOK	\$ 870.00	\$ 1,810.00
Total Production	\$ 18,877.80	\$ 68,086.29

Days Worked

AA - PUSATERI DDS, TODD C.	5	17
CC - COLLECTIONS	0	0
D2 - BABBITT, MONICA B.	0	0
D3 - PURDUE, RICHARD D.	11	43
D4 - BRITESMILE, BRITESMILE	0	0
H2 - GALBAN, JACKIE	11	43
PR - PRODUCTS	0	0
XX - X, X	0	0
ZZ - DOUBLE BOOK	0	0

Production Per Hour

AA - PUSATERI DDS, TODD C.	\$ 7.89	\$ 118.47
C - COLLECTIONS	\$ 0.00	\$ 0.00
D2 - BABBITT, MONICA B.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 181.40	\$ 152.02
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 0.00
H2 - GALBAN, JACKIE	\$ 68.74	\$ 64.93
PR - PRODUCTS	\$ 0.00	\$ 0.00
XX - X, X	\$ 0.00	\$ 0.00
ZZ - DOUBLE BOOK	\$ 0.00	\$ 0.00
Total Production Per Hour	\$ 248.03	\$ 361.42

A/R Collection

Patient Payments FPC	\$ 557.50	\$ 3,039.41
Insurance Payments FPD	\$ 6,791.00	\$ 37,889.43
Office Payments	\$ 11,185.38	\$ 44,544.33

Reassignment

	\$ 85.00	\$ 85.00
--	----------	----------

Number of New Patients

	23	89
--	----	----

Number of Patients Referred by Referral Sources

Patients	0	0
Doctors	0	0
Other	0	0

Number of Active Patients

	1,227	
--	-------	--

Date: 4/29/2004
Time: 10:17 PM

PRACTICE OVERVIEW
111059 - FIRST DENTAL

Page: 2

Recall Status of All Patients	
Number with Current Recall	392
Number with Overdue Recall	798
Number Without Recall	872
Number of Patients with Diagnosed Treatment (other than Prophyl Codes)	
Scheduled	387
Unscheduled	194
Total	591

EXHIBIT F

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARY A. TUJETSCH,)	
)	
Plaintiff,)	
)	
vs.	)	No. 06 CH 11607
)	
TODD C. PUSATERI, FIRST DENTAL,	)	Judge Henry
P.C. and FIRST DENTAL OF ORLAND)	
PARK, P.C.,)	
)	
Defendants.)	

**PLAINTIFF'S ANSWERS TO DEFENDANTS'
SECOND INTERROGATORIES**

NOW COMES the plaintiff, MARY A. TUJETSCH, by and through her attorneys, WILLIAMS MONTGOMERY & JOHN LTD., and in answer to Defendants' Second Interrogatories, states:

1. State the date Pusateri represented to Tujetsch that there were approximately 1,200 active patients that had been treated at Dental Practice within the two years prior to the sale as alleged in paragraph 8 of the Complaint.

ANSWER: June 27, 2004

2. State whether the enclosed documents attached as Exhibits "A" and "B" were provided by Pusateri to Tujetsch prior to executing the Asset Purchase Agreement dated June 27, 2004. If so, please state the date the documents were provided and whether Pusateri provided Tujetsch with any other documents to substantiate the patient count before the Asset Purchase Agreement was executed.

ANSWER: Dr. Tujetsch did not receive the documents attached as Exhibits "A" and "B" prior to the sale. Dr. Tujetsch will produce all documents, in her possession and not previously produced, that she received from the defendant before and after the sale of the business.

3. State whether Tujetsch contacted any representative of First Pacific Corporation before July 1, 2004. If so, please state the date of the contact, how the contact was made (whether by phone, electronically, fax, writing or in person), who Tujetsch contacted and what, if any, information was provided to Tujetsch.

ANSWER: No.


4. If Tujetsch did not contact First Pacific Corporation until after July 1, 2004, please state the date of the first contact, how the contact was made (whether by phone, electronically, fax, writing or in person), who Tujetsch contacted and what, if any, information was provided to Tujetsch.

ANSWER: Tujetsch objects to this interrogatory as overly broad, unduly burdensome and requiring a narrative response which is better suited for a deposition. Without waiving the foregoing, Tujetsch states that she spoke to the following First Pacific Corporation employees after July 1, 2004 via phone:

1. Ann Watt;
2. Kevin Brady;
3. Connie Hayes;
4. Scott (last name unknown);
5. Brett (last name unknown); and
6. Katie Lucitt.

Dr. Tujetsch has also produced a list of her contacts at First Pacific Corporation (T01186-T01187) via letter dated November 9, 2007.

MARY A. TUJETSCH, Plaintiff

By: 
One of her attorneys

David E. Stevenson
Eric R. Lifvendahl
WILLIAMS MONTGOMERY & JOHN LTD.
Attorneys for Plaintiff
20 North Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 443-3200
Firm I D. 04933
#755600

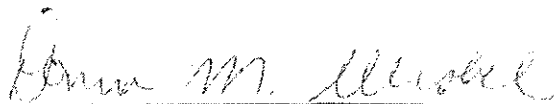
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF SERVICE

I, Lorraine M. Casiello, being first duly sworn on oath, state that I caused a copy of the **Plaintiff's Answers to Defendants' Second Interrogatories**, to be served upon the person(s) to whom the Notice is addressed via U.S. Mail by depositing same in the U.S. Mail chute located at Twenty North Wacker Drive, Chicago, Illinois, 60606, with proper postage prepaid, by 5:00 p.m. on November 13, 2007.


Lorraine M. Casiello

Subscribed and Sworn to
before me this 13th day
of November, 2007.


Notary Public

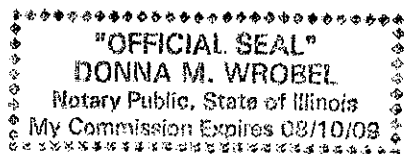


EXHIBIT G

**AFFIDAVIT OF DR.
RICHARD PURDUE**

**CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

MARY A. TUJETSCH,)	
Plaintiff,)	
)	
v.	)	06 CH 11607
TODD C. PUSATERI, FIRST DENTAL, P.C.	)	(Transferred to Law Division)
and FIRST DENTAL OF ORLAND PARK,	)	Hon. Charles R. Winkler
P.C.,)	
Defendants.		

AFFIDAVIT OF DR. RICHARD PURDUE

I, Richard Purdue, being of the age of majority, and first being placed under oath, depose and state as follows:

1. I am authorized to furnish this Affidavit and competent to testify to the matters set forth in this Affidavit.
2. The facts set forth in this Affidavit are within my personal knowledge.
3. If called upon as a witness, I could competently testify to the facts stated in this Affidavit.
4. I am a dentist, and have been licensed to practice dentistry in the State of Illinois since 1978.
5. Previously, I was an associate dentist in a dental practice established by Dr. Todd Pusateri ("Pusateri") at 7714 W. 159th Street in Orland Park, Illinois (the "Dental Practice").
6. I was a dentist associate in the Dental Practice from 2001 until approximately June 2005, when I left the practice.

7. In 2006 I purchased from Dr. Pusateri a dental practice located in Schaumburg, Illinois.
8. The dental practice in Schaumburg that I purchased from Dr. Pusateri continues to exist as a profitable practice.
9. It is my understanding that Dr. Tujetsch purchased the Dental Practice from Todd Pusateri around the end of June 2004.
10. In June 2004, the Dental Practice employed me, a dental hygienist (Jackie Galban), a dental assistant (Tina Buben-Dowling), a receptionist (Janice Johnson), and a bookkeeper (Marge Kelly).
11. It is my recollection and belief that around the end of June 2004 ownership of the Dental Practice transferred from Dr. Pusateri to Dr. Tujetsch.
12. It is also my recollection that the dental work I did in June 2004 was paid to me by Dr. Pusateri and the work I did in July 2004 was paid by Dr. Tujetsch. I don't remember talk of myself or the other employees still working for Dr. Pusateri or not yet working for Dr. Tujetsch after the practice sale. It was my recollection and belief that we were working for Dr. Tujetsch after the sale.
13. During my tenure at the Dental Practice, I had access to Patient Charts and the information included in them and was familiar with the condition of its equipment.
14. During my tenure at the Dental Practice, my duties as a dentist required me to use equipment in the Dental Practice in order to provide patient care.

15. To the best of my recollection and belief, the equipment in the Dental Practice was in the same or very similar working order when I last left the office before Sunday, June 27, 2004 as it was on or around June 30, 2004.

16. To the best of my recollection and belief, during my tenure as a dental associate of the Dental Practice the Dental Practice consistently created and maintained Patient Charts for patients treated in the Dental Practice.

17. The various Patient Charts contained detailed contact information, pertinent medical and dental histories, and treatment notes for patients treated in the Dental Practice.

18. To the best of my recollection and belief, Patient Charts could be accessed in the Dental Practice before the sale of the Dental Practice to Dr. Tujetsch and after the sale.

19. I don't recall missing Patient Charts being an issue before or after the sale.

20. However, Patient Charts were not the only source of patient information in the Dental Practice.

21. Although I did not personally use the computer, to the best of my recollection, the girls looked up patient information on the computer from time to time per my request before and after the sale of the Dental Practice.

22. I assume a patient list could have been downloaded from the computer software.

23. It seems like the software would have been pretty useless if it could not be used to generate a patient list.

24. I would be surprised if Dr. Pusateri or Dr. Tujetsch would have used software that could not generate a patient list.

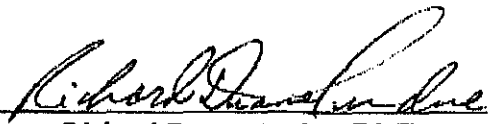
25. It is my recollection that Dr. Pusateri used FPC Software and Dr. Tujetsch also used it after she purchased the Dental Practice.
26. It is my recollection that the same computer and the same computer software remained in the Dental Practice after it was purchased by Dr. Tujetsch.
27. I am advised that in this law suit against Dr. Pusateri, Dr. Tujetsch claims that she did not receive patient lists when she bought the Dental Practice; that Dr. Pusateri overstated the number of "active patients" reported by FPC Software around the time of the sale, and that some equipment of the Dental Practice was not working on the day the sale agreement was signed, which I am told was June 27, 2004.
28. Although I don't recall patient lists lying around nor do I recall asking for a patient list before or after the sale of the Dental Practice, I also don't recall talk of hiding or withholding patient lists from Dr. Tujetsch.
29. I do not recall during my tenure as a dentist of the Dental Practice that I experienced the inability to contact patients of the Dental Practice.
30. During my tenure as a dentist in the Dental Practice I do not recall those associated with the Dental Practice -- including Dr. Tujetsch -- complaining of a lack of patient lists or an inability to contact patients of the Dental Practice for lack of patient lists, or complaining of a lack of patient information.
31. It is my recollection that, after the sale, by the time I left in 2005, there was a noticeable slow down of patients.
32. When Dr. Tujetsch purchased the Dental Practice she purchased used equipment.

33. It's been my experience through life that even new purchases sometimes need repairs.

34. I don't recall dental equipment repairs that were a major expense to the Dental Practice, after it was purchased by Dr. Tujetsch.

FURTHER AFFIANT SAYETH NAUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct.


Richard Duane Purdue, DMD

March 8, 2009

To Dr. Todd Pusateri:

Recently you requested that I write a letter explaining some of the changes that took place at the Orland Park dental office after you sold the practice to Dr. Mary Tujetsch. In the outline you gave me, you specifically asked me to discuss the changes in the style of the practice once Dr. Tujetsch took over. Some examples of possible changes you wondered about and asked about were Dr. Tujetsch doing treatment plans instead of me, charging for broken appointments, verbal arguments with patients, and patient reactions to the changes. You also asked if I observed problems with the dental equipment.

I worked for Dr. Tujetsch as a dentist associate for about one year, (approximately June 04 to June 05) in the Orland Park practice. The following were some of my observations, the best I can remember, during that time.

- 1) The practice was noticeably slower by the end of the first year.
- 2) You had charged a more than reasonable fee for an exam and cleaning. I can understand why Dr. Tujetsch wanted to raise that fee, but I think it was hard for non-insurance patients to get used to.
- 3) I believe many patients would be naturally uncomfortable with a new dentist, a new practice owner and new policies.
- 4) Dr. Tujetsch elected to do many of the exams and quite a bit of the of the treatment planning. Since I had been there longer, the patients knew me better and because of that, in some cases, I believe weren't as comfortable with her treatment planning.
- 5) There did seem to be more disagreements that came up with patients.
- 6) Dr. Tujetsch sometimes charged for missed appointments. I do not think she charged for all missed appointments, but when she did, it was something, some of the O.P. patients did not accept well.
- 7) I do remember a few equipment repairs, but don't remember repairs of major costs to the practice.

Hopefully these thoughts help explain the changes you asked about.

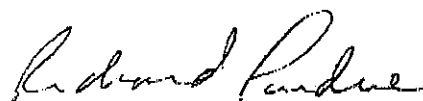
I would also like to share some observations about your exceptionally good character and how well you have treated me in our business dealings since we first met in 2000. Our first business agreement was to share office space and major equipment, my practice and yours, for about 6 and a half years in Schaumburg before you sold me your Schaumburg practice in 2006. I didn't

PUSRRP1526

know you at all before sharing space with you, so in some ways, I took a chance because we usually were not there at the same time and you had access to my supplies, (they were not locked up), and you could have tried to persuade my patients to your practice. I have not regretted sharing space with you and your staff. You and they treated me very well and with high integrity. Also, while working for you as an associate in O.P. from 2001 until June 04, I appreciated how you treated me more like a partner than an employee. You were fair to me and the patients. We trusted and respected each other. Since buying your practice in Schaumburg, I feel like the price was quite fair and reasonable. The purchase has been a great blessing to me and I have not regretted buying it.

I look forward to continuing what I consider to be an excellent business relationship.

Thank you,

A handwritten signature in cursive script that reads "Richard Purdue".

Richard Purdue, D.M.D.

PUSRRP1527

**AFFIDAVIT OF JACKIE
GALBAN, RDH, LDH**

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

MARY A. TUJETSCH, Plaintiff
v. TODD C. PUSATERI, FIRST DENTAL, P.C. and FIRST DENTAL OF ORLAND PARK, P.C., Defendants
06 CH 11607
(Transferred to Law Division)
Hon. Charles R. Winkler

AFFIDAVIT OF JACKIE GALBAN, RDH, LDH

I, Jackie Galban, being of the age of majority, and first being placed under oath, depose and state as follows:

- 1. The facts set forth in this affidavit are within my personal knowledge.
2. If called upon as a witness, I would and could competently testify to all facts stated in this Affidavit.
3. I am licensed as a dental hygienist in various states, including Illinois.
4. I now reside in Arkansas, where I continue to work as a dental hygienist.
5. Previously, I was employed as a dental hygienist in a dental practice established by Dr. Todd Pusateri at 7714 W. 159th Street in Orland Park, Illinois (the "Dental Practice").
6. I was employed by the Dental Practice from February 26 of 2004 until September 2004, when I resigned.
7. I resigned because after the Dental Practice was sold in June 2004, the new owner, Dr. Mary Tujetsch ("Tujetsch"), started to provide dental hygiene care to the patients that I would have otherwise seen, and told me that I no longer worked fixed hours in the Dental Practice, but would be called on an "as-needed" basis.

8. I suspected that Tujetsch had put me on an "as-needed" basis because she was providing dental hygiene care to my patients.

9. Accordingly, in or around September 2004, I went unannounced to the Dental Practice to determine whether that was in fact the case.

10. When I arrived at the Dental Practice, I saw that in fact Tujetsch was providing dental hygiene care to one of my patients, and I promptly quit.

11. It is my understanding that Tujetsch signed a purchase agreement, paid the purchase price for the Dental Practice, and received keys to the Dental Practice on or around Sunday, June 27, 2004.

12. As of June 2004, the Dental Practice employed me, a dentist (Dr. Richard Purdue), a dental assistant (Tina Buben-Dowling), a receptionist (Janice Johnson), and an office bookkeeper (Marge Kelly).

13. While I was working at the Dental Practice before the sale, it had a steady stream of patients, and seemed to be both profitable and consistent financially.

14. It is my recollection and belief that by June 30, 2004, everyone employed in the Dental Practice understood that Tujetsch had on that date officially taken exclusive possession and ownership of the Dental Practice.

15. During my tenure at the Dental Practice, I was familiar with the sources of patient information stored in the Dental Practice, and the condition of its equipment.

16. During my tenure at the Dental Practice, my duties as a dental hygienist required me to use equipment in the Dental Practice in order to provide patient care.

17. To the best of my recollection and belief, all of the equipment in the Dental Practice was in working order when I last left the office before Sunday, June 27, 2004, and remained in working order thereafter, on or around June 30, 2004

18. To the best of my recollection and belief, during my tenure as an employee of the Dental Practice the Dental Practice consistently created and maintained Patient Charts for all patients treated in the Dental Practice.

19. The various Patient Charts contained detailed contact information, pertinent medical and dental histories, and treatment notes for all patients treated in the Dental Practice.

20. To the best of my recollection and belief, Patient Charts created in the Dental Practice had been stored on shelves in the Dental Practice before June 30, 2004, the sale of the Dental Practice to Tujetsch, where they remained, undisturbed, on the date that Tujetsch received exclusive possession of the Dental Practice.

21. However, Patient Charts were not the only source of patient information in the Dental Practice.

22. A few years before the sale, Dr. Pusateri contracted to outsource the issuance and collection of patient bills for the Dental Practice to First Pacific Corporation ("FPC").

23. After contracting with FPC, the Dental Practice had, in addition to Patient Charts, a second source of information about patients: a computer terminal in the Dental Practice (the "FPC Terminal") that was owned and provided by First Pacific Corporation ("FPC").

24. After outsourcing its billing to FPC, the Dental Practice used the FPC Terminal to input information that was needed by FPC in order to issue patient bills.

25. As a result of its relationship with FPC, in addition to storing patient information in Patient Charts, the Dental Practice also had, beginning in 2001, patient information stored in the FPC Terminal.

26. That information included, among other things, patient names, addresses, and telephone numbers.

27. It is my recollection that Tujetsch arranged for continued access to an FPC Terminal and FPC billing services on or around the time she bought the Dental Practice, because we still had access to that Terminal and those services after the sale.

28. It is my recollection that an FPC Terminal remained in the Dental Practice after it was purchased by Tujetsch.

29. Before and after June 30, 2004, the FPC Terminal could be used to review or print out lists of patients of the Dental Practice, on demand, including contact information of patients such name, address, and telephone number.

30. To the best of my recollection and belief, after June 27, 2004 until I resigned in September 2004, anyone in the Dental Practice needing contact information about a patient of the Dental Practice could obtain that information from a Patient Chart, or, alternatively, from the patient's electronic record in the FPC Terminal.

31. It is my general recollection that after the sale of the Dental Practice the flow of returning patients continued at roughly the same pace as before, but that flow seemed gradually to diminish after patients met Dr. Tujetsch for the first time.

32. By the time I quit, in September 2004, it appeared to me that the Dental Practice was in decline as a result of patient abandonment that began after Tujetsch became involved in the day to day management of the Dental Practice.

33. I am advised that in this law suit against Dr. Pusateri, Tujetsch claims that she did not receive patient lists when she bought the Dental Practice; that Dr Pusateri overstated the number of "active patients" reported by FPC Software around the time of the sale, and that some equipment of the Dental Practice was not working on the day the sale agreement was signed, which I understand was June 27, 2004.

34. I was not involved in tracking the number of active patients of the Dental Practice, although I recall that the FPC Terminal could be queried to generate that number in a summary report.

35. As for patient lists, I am not aware of any patient list owned by the Dental Practice that was not delivered to Tujetsch.

36. To the best of my knowledge, all patient lists in existence in the Dental Practice before June 27, 2004, remained in place after June 27, 2004, and also remained in place on June 30, 2004, the date that Tujetsch officially took possession and control of the Dental Practice

37. At no time during my tenure as a dental hygienist of the Dental Practice did I personally experience any lack of patient lists or inability to contact patients of the Dental Practice.

38. At no time during my tenure as a dental hygienist in the Dental Practice do I recall anyone in the Dental Practice -- including Tujetsch -- complain of a lack of patient lists or an inability to contact patients of the Dental Practice for lack of patient lists, or complain of a lack of patient information

39. To the best of my recollection and belief, no patient list owned by the Dental Practice and in existence on or before the sale was withheld from Tujetsch, or otherwise not provided to her

40. To best of my recollection and belief, no equipment owned by the Dental Practice was out of order on or around June 27, 2004 or June 30, 2004, the date Tujetsch officially assumed exclusive possession and control of the Dental Practice.

FURTHER AFFYANT SAYETH NAUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct.


Jackie Galban, RDH, LDH

510 No. 5th St. (P.O. Box) JEFFERSONVILLE, IN 47630-0000

**AFFIDAVIT OF TINA
BUBEN-DOWLING**

**CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

MARY A. TUJETSCH,)	
Plaintiff,)	
)	
v.	)	06 CH 11607
TODD C. PUSATERI, FIRST DENTAL,	)	(Transferred to Law Division)
P.C. and FIRST DENTAL OF ORLAND	)	Hon Charles R. Winkler
PARK, P.C.,)	
Defendants.)	

AFFIDAVIT OF TINA BUBEN-DOWLING

I, Tina Buben-Dowling, being of the age of majority, and first being placed under oath, depose and state as follows:

1. The facts set forth in this affidavit are within my personal knowledge.
2. If called upon as a witness, I would and could competently testify to all facts stated in this Affidavit.
3. I was employed as a dental assistant in a dental practice established by Dr Todd Pusateri at 7714 W 159th Street in Orland Park, Illinois (the "Dental Practice").
4. I first became an employee of the Dental Practice in or around January 1999.
5. Thereafter, I continued to work in the Dental Practice until March 2005, when I resigned.
6. My tenure as a dental assistant in the Dental Practice continued for about 8 months after the Dental Practice was sold to Dr. Mary Tujetsch ("Tujetsch"), in June 2004.
7. It is my understanding that Tujetsch signed a purchase agreement, paid the purchase price for the Dental Practice, and received keys to the Dental Practice on or around Sunday, June 27, 2004.

8. As of June 2004, the Dental Practice employed me, a dentist (Dr. Richard Purdue), a dental hygienist (Jackie Galban), a receptionist (Janice Johnson), and an office bookkeeper (Marge Kelly).

9. It is my recollection and belief that by the end of June 2004, everyone employed in the Dental Practice understood that Tujetsch had on that date officially taken exclusive possession and ownership of the Dental Practice

10. During my tenure at the Dental Practice, I was familiar with the sources of patient information stored in the Dental Practice, and the condition of its equipment.

11. During my tenure at the Dental Practice, my duties as a dental assistant required me regularly to monitor and use equipment in the Dental Practice in order to take and develop x-rays, seat patients, sterilize instruments, and turn the dental compressor and vacuum on and off, among other things.

12. Generally, if any equipment in the Dental Practice malfunctioned, it was my responsibility to investigate the problem, and, subject to approval, arrange for a replacement or repair.

13. To the best of my recollection and belief, all of the equipment in the Dental Practice was in working order when I last left the office before Sunday, June 27, 2004, and remained in working order thereafter, on June 30, 2004.

14. I have no recollection of any equipment failure at the time the Dental Practice was sold.

15. To the best of my recollection and belief, from January 1999 through the date of the sale to Tujetsch, the Dental Practice created and maintained Patient Charts for all patients treated in the Dental Practice.

16. The various Patient Charts contained detailed contact information (including name, address, and telephone number), pertinent medial and dental histories, and treatment notes for all patients treated in the Dental Practice.

17. To the best of my recollection and belief, all Patient Charts ever created in the Dental Practice were stored on shelves in the Dental Practice before the sale of the Dental Practice to Tujetsch, where they remained when Tujetsch received exclusive possession of the Dental Practice.

18. After the sale, and before I resigned, in March 2005, Tujetsch opined, from time to time, that some of the Patient Charts in the Dental Practice pertained to patients who were unlikely to return to the Dental Practice for treatment.

19. When Tujetsch identified such a Patient Chart, she asked me to send it to Dr Pusateri to be stored.

20. Patient Charts were not the only source of patient information in the Dental Practice

21. In 2001, Dr. Pusateri contracted to outsource the issuance and collection of patient bills for the Dental Practice to First Pacific Corporation ("FPC").

22. After FPC services began, the Dental Practice had, in addition to Patient Charts, a second source of information about patients: a computer terminal (the "FPC Terminal") provided by First Pacific Corporation ("FPC").

23. The Dental Practice used the FPC Terminal to input information that was needed by FPC in order to issue patient bills.

24. Information about each patient was entered into the FPC Terminal including name, address, and telephone number

25. As a result of its relationship with FPC, in addition to storing patient information in Patient Charts, the Dental Practice had, after March 2001, also stored patient information electronically, in the FPC Terminal.

26. It is my recollection that an FPC Terminal remained in the Dental Practice after the sale to Dr. Tujetsch because Dr. Tujetsch contracted with FPC for continued access to an FPC Terminal and FPC billing services after the sale.

27. Before and after the sale to Tujetsch, the FPC Terminal could be used to review or print out lists of patients of the Dental Practice, including names, addresses, and telephone numbers, on demand.

28. To the best of my recollection and belief, after FPC services began, in 2001, until I resigned in March 2005, anyone in the Dental Practice needing contact information about a patient of the Dental Practice could obtain that information from the Patient Chart, or, alternatively, from the patient's electronic record on the FPC Terminal.

29. It is my recollection that for about six months after the sale of the Dental Practice, the flow of returning patients continued at roughly the same pace as before, but that flow seemed gradually to diminish as patients met Dr. Tujetsch for the first time.

30. I believe that patient abandonment occurred after the sale to Tujetsch for the reasons set forth in the statement that I provided in this case previously, which is attached hereto as Exhibit 1.

31. I am advised that in this law suit against Dr. Pusateri, Tujetsch claims that she did not receive patient lists when she bought the Dental Practice; that Dr. Pusateri overstated the number of "active patients" reported by FPC Software around the time of the sale, and that some

equipment of the Dental Practice was not working on the day the sale agreement was signed, which I understand was June 27, 2004.

32. I was not involved in tracking the number of active patients of the Dental Practice, although I recall that the FPC Terminal could be queried to generate that number in a summary report.

33. I am not aware of any patient list owned by the Dental Practice that was not delivered to Tujetsch.

34. To the best of my knowledge, all patient lists in existence in the Dental Practice before June 27, 2004, remained in place thereafter, and were in place after Tujetsch officially took possession of the Dental Practice.

35. At no time during my tenure as a dental assistant of the Dental Practice did I personally experience any lack of patient lists or inability to contact patients of the Dental Practice.

36. At no time during my tenure as a dental assistant in the Dental Practice do I recall hearing anyone working in the Dental Practice -- including Dr. Tujetsch -- complain of a lack of patient lists or an inability to contact patients of the Dental Practice for lack of patient lists, or complaining of a lack of patient information.

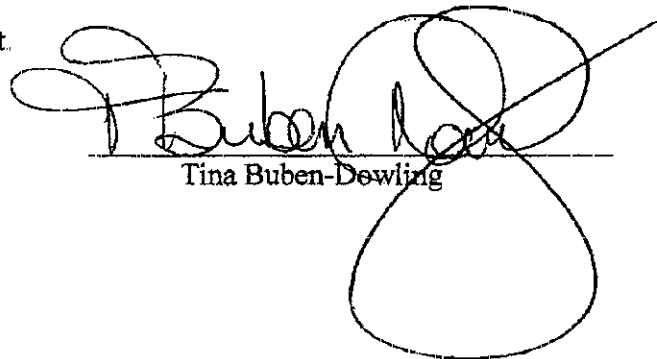
37. To the best of my recollection and belief, no patient list owned by the Dental Practice and in existence on or before the sale was withheld was withheld from Tujetsch, or otherwise not provided to her.

38. To best of my recollection and belief, no equipment of the Dental Practice was out of order on or around the time that Tujetsch officially assumed exclusive possession and control of the Dental Practice.

39. To best of my recollection and belief, Dr. Tujetsch never advised me of any equipment failure in the Dental Practice as of the date Tujetsch officially assumed exclusive possession and control of the Dental.

FURTHER AFFIANT SAYETH NAUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct.



Tina Buben-Dewling

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EXHIBIT 1

To whom it may concern,

My name is Tina Dowling and I worked for both Dr. Pusateri and Dr. Tujetsch. I worked for Dr. Pusateri for approximately 6 years. I worked for Dr. Tujetsch from approximately June 2004 to about February or March of 2005. I didn't work for Dr. Tujetsch for very long for various reasons.

When I worked for Dr. Pusateri I felt like the patient's came first. He would work with anyone who couldn't pay up front for their treatment all at once. We came up with an affordable payment plan. The fees in my opinion were reasonable. The patient's liked our hygienist, staff and Doctors. The equipment worked just fine and we had a steady flow of patients.

Soon after Dr. Tujetsch took over she made drastic changes. This resulted in the patients were leaving. Our hygienist was fired. The fees were raised. We no longer included the exam or the fluoride treatment in the fee for the cleanings. If a patient was 5-10 minutes late she would make them reschedule. Then she would charge them for a broken/missed appointment. I believe the fee for that was \$35.00 for every 30 minutes. Patients would call requesting a copy of their records and would not release them until they paid to have them copied. She would argue with patients on the phone or in person in the reception area, when other patients were present, or in the treatment area. I recall at least 2 occasions that the Orland Park Police were called. The patients were very unhappy. A lot of the patients could not afford the treatment or the payment plan, she recommended. Patients would say they were not back because they were unhappy with her services. I had to call the IRS to get her to send me my W2 form for taxes. I received a letter from Dr. Tujetsch in regards to Dr. Pusateri's office keys, threatening to pursue legal actions against me if I did not return the keys to her. I returned the keys to Dr. Pusateri who owned the building, where the practice was. I have enclosed this letter. In my opinion Dr. Tujetsch's attitude and some of her actions were very unprofessional and it was a hostile and uncomfortable place to work. Any other questions or concerns please contact me, by the information on the following page.

Sincerely,
Tina Dowling

Tina Dowling
14435 Lamon Ct
Midlothian, IL 60445
Home #708/597/1192
Cell#708/983/8584

FIRST DENTAL

7714 W 159TH STREET
ORLAND PARK, IL 60467
(708) 429-9200

June 7, 2005

Ms. Tina Dowling
15623 Millard
Markham, IL 60426

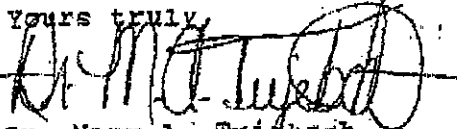
Dear Ms. Tina Dowling:

Please be advised that this letter will serve as my final attempt and notification to you regarding my office keys. Please be advised that unless my office keys are returned immediately, I will seek all legal remedies in order to secure my business and confidential records.

As you are well aware, both Dr. Richard Purdue and I have made countless telephone calls to both your residence and your cell phone. You have acknowledged receiving these calls and acknowledged your own failure to return these calls. This type of behavior is shocking, disturbing, and unprofessional. In order to avoid legal problems and a court appearance, I am requesting the return of my office keys immediately.

Please be advised that you are officially forbidden to enter my office with the use of these keys. Any person/persons using the keys in your possession will be legally charged, as well. We ask that you hand deliver my keys to the office and you will be provided with a receipt for the return of my keys. Do not leave the keys in a mail slot or tin box as they will be lost. My employees are able to issue you this receipt. Thank you for your cooperation in this matter.

Yours truly,


Dr. Mary A. Tujetsch
First Dental, Owner

**AFFIDAVIT OF JANICE
JOHNSON**

**CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

MARY A TUJETSCH,)	
Plaintiff,)	
)	
v.	)	06 CH 11607
I ODD C PUSATERI, FIRST DENTAL,	)	(Transferred to Law Division)
P C. and FIRST DENTAL OF ORLAND	)	Hon. Charles R. Winkler
PARK, P C.,)	
Defendants)	

AFFIDAVIT OF JANICE JOHNSON.

I, Janice Johnson, being of the age of majority, and first being placed under oath, depose and state as follows:

1. The facts set forth in this affidavit are within my personal knowledge.
2. If called upon as a witness, I would and could competently testify to all facts stated in this Affidavit.
3. I was employed as a receptionist in a dental practice established by Dr. Todd Pusateri at 7714 W 159th Street in Orland Park, Illinois (the "Dental Practice")
4. To the best of my recollection, I was first employed by the Dental Practice in the year 2000 and continued to work there until some time before March 2005, when I felt that there was no reason for me to be there, because by then there were no patients.
5. At that time, Dr. Tujetsch did not fire me, but I chose not to return, because I felt it would be wrong to collect a salary as a receptionist if there were no patients for me to call or receive
6. At the time I left the Practice, the only personnel who remained working in the Dental Practice were Dr. Purdue, Tina Buben-Dowling, me, and Dr. Tujetsch, but Dr. Tujetsch was generally not seeing any patients.

7 After the Dental Practice was sold to Dr. Tujetsch, an increasing number of patients seemed unwilling to return for treatment when I called them to schedule appointments.

8 Many patients told me that they would not return for treatment in the Dental Practice because they were uncomfortable with Dr. Tujetsch, and did not like her.

9 Others complained that Dr. Tujetsch would not treat them unless they paid for root planing and scaling, an expensive teeth-cleaning procedure that they could not afford.

10 Still others were offended because Dr. Tujetsch had refused to see them if they were a few minutes late, and then sent them a bill for a missed appointment.

11 My tenure as a receptionist in the Dental Practice continued for at least six months after the Dental Practice was sold to Dr. Tujetsch, in June 2004.

12 During that time I saw the flow of returning patients decrease gradually to virtually none, with the exception of some of Dr. Purdue's patients, who continued to return to see him.

13 During my tenure at the Dental Practice, I was familiar with the patient information stored in the Dental Practice, and familiar with the condition of its office equipment including its telephones.

14 I was familiar with the patient information stored in the Dental Practice because it was my job to manage routine communications with patients and do such things as call patients to remind them of upcoming appointments, and schedule or reschedule appointments as necessary.

15 During my tenure at the Dental Practice, my duties as receptionist required me regularly to use office equipment in the Dental Practice in order to make telephone calls and photocopies, among other things.

16. In carrying out the duties of my job, I had two sources of patient information

17. The Dental Practice created and maintained Patient Charts for all patients treated in the Dental Practice.

18. The various Patient Charts contained detailed contact information (including name, address, and telephone number), pertinent medical and dental histories, and treatment notes for all patients treated in the Dental Practice

19. To the best of my recollection and belief, all Patient Charts ever created in the Dental Practice were stored on shelves in the Dental Practice before the sale of the Dental Practice to Tujetsch, where they remained when Tujetsch bought the Dental Practice.

20. However, Patient Charts were not the only source of patient information in the Dental Practice.

21. There also a computer that had patient information.

22. It came from First Pacific Corporation ("FPC").

23. Every time a patient was treated, the information was put in the computer.

24. However, handwritten dentist notes about patient treatments were in the Patient Charts, not the computer.

25. I could pull up a patient's records from the computer, and it would show all of the procedures, and the contact information

26. But I preferred to use the Patient Charts when I called patients, because I could write notes in the Charts as to how the patient responded

27. It is my recollection that after Dr. Tujetsch bought the Dental Practice we continued to have access to the same patient information, including patient contact information, as we had before.

28. I do not recall noticing any change in the ability to contact patients, only that patients did not seem to want to return if and when they were contacted.

29. Before and after the sale to Dr. Tujetsch, the computer could be used to review or print out lists of all patients of the Dental Practice, on demand, including names, addresses, and telephone numbers

30. To the best of my recollection and belief, from the time I joined the Dental Practice until I resigned, in early 2005, whenever I needed to contact a patient of the Dental Practice I could obtain the necessary information electronically from the computer

31. I believe that patient abandonment of the Dental Practice occurred for the reasons set forth in the statement that I provided in this case previously, which is attached hereto as Exhibit 1.

32. I am advised that in this law suit against Dr. Pusateri, Tujetsch claims that she did not receive patient lists when she bought the Dental Practice; that Dr. Pusateri overstated the number of patients of the Dental Practice at the time of the sale, and that some equipment of the Dental Practice was not working.

33. I am not aware of any patient list that was not delivered to Dr. Tujetsch.

34. Dr. Pusateri left everything in the Dental Practice up to the date of the sale.

35. At no time during my tenure as the receptionist of the Dental Practice did I personally experience any lack of patient lists or inability to contact patients of the Dental Practice.

36. At no time during my tenure as the receptionist of the Dental Practice do I recall anyone in the Dental Practice -- including Dr. Tujetsch -- complain of a lack of patient lists or an

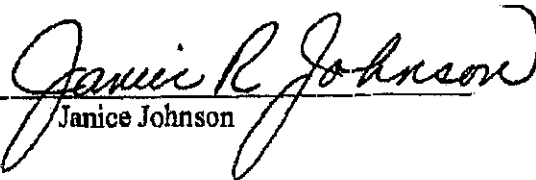
inability to contact patients of the Dental Practice for lack of patient lists, or complain of a lack of patient information.

37 To the best of my recollection and belief, no patient list was withheld from Dr. Tujetsch, or otherwise not provided to her

38 To best of my recollection and belief, no equipment of the Dental Practice was out of order on or around the time the Dental Practice was sold.

FURTHER AFFIANT SAYETH NAUGHT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct.



Janice Johnson

EXHIBIT 1

March 10, 2009

To whom it may concern, I (Jan Johnson) held the position of receptionist for Dr. Todd Pusateri at First Dental in Orland Park, Illinois, from 2000 until 2004. My Position as receptionist was to greet patients, make appointments, and handle patient billing. During that period of time, First Dental had a diverse patient base. Dr. Pusateris patients were very good at keeping appointments and scheduling regular cleaning and operative appointments.

While working for Dr. Pusateri, I always, as well as the rest of the staff, treated patients with respect and caring. Dr. Pusateri always greeting his patients with a smile and provided them with excellent care, regardless of their financial status. He always provided the patient with payment options and never refused to treat them. While I worked for Dr. Pusateri, I never one experienced what I thought was a dissatisfied patient.

Dr. Pusateri always worked with the patient to determine what the best treatment plan would be. If the patient did not have insurance or the proper finances to pay for treatment, he would arrange for the most urgent care to be done first, followed by a workable plan for successive treatments. Also Dr. Pusateri rarely charged a patient for a missed appointment and never charged a patient for being late.

In July of 2004, Dr. Pusateri sold the practice to Dr. Mary Tujetsch. From that moment on office procedures changed. I felt that Dr. Tujetsch was not accommodating to the patients. For Instance she would refuse to see patients who arrived late for their appointments. I also felt that she showed unprofessional demeanor when dealing with some of the patients as well as the office staff. For instance, she would refuse to treat a patient unless they paid to have a deep cleaning done first. On occasion she also would become argumentative with patients in the office and on the phone, usually over late fees.

It is my opinion that First Dental lost patients after Dr. Mary Tujetsch took over the practice. I believe it was her office practices and personality that drove patients to leave and find new dental practices.

Sincerely

Janice Johnson



EXHIBIT H

Williams Montgomery & John Ltd.
A Firm of Trial Lawyers

October 31, 2007

Eric R. Lifvendahl
312-443-3230
Fax: 312-630-8330
erl@willmost.com

VIA FACSIMILE

Mr. David G. Wentz
101 North Washington Street
Naperville, Illinois 60540-4511

Re: Lease for 774 159th Street
Orland Park, IL

Dear David:

Please be advised that Dr. Mary Tujetsch is terminating the Lease dated June 28, 2004 and moving out of the premises immediately due to the Landlord's failure to correct the breaches outlined in my letter to you dated October 11, 2007.

Further, your client has an obligation to mitigate any possible damages by taking all reasonable and necessary steps to relet the premises.

Contact me if you have any questions.

Regards,


Eric R. Lifvendahl

ERL:dcm

cc: Mary Tujetsch

Williams Montgomery & John Ltd.
A Firm of Trial Lawyers

Eric R. Lifvendahl
312-443-3230
Fax: 312-630-8530
erl@willmont.com

October 12, 2007

VIA FACSIMILE

Mr. David G. Wentz
101 North Washington Street
Naperville, Illinois 60540-4511

Dear Mr. Wentz:

As a follow-up to our recent conversation, this letter sets forth (a) my clients request for an accounting; and (b) your clients breaches of the lease dated June 28, 2004 ("Lease") between First Dental of Orland Park, P.C. ("Landlord") and Mary A. Tujetsch, DDS ("Tenant").

1. **Request for Bills**

Pursuant to Section 4.1 of the Lease, Tenant hereby requests the Landlord's analysis of "Additional Rent" for each six month period, for which such an analysis has been performed. In addition, Tenant requests copies of all bills, including but not limited to, office cleaning and supplies, all utilities, janitorial services, gas and electric, waste removal, snow removal, and lawn and landscape maintenance, since July 1, 2004.

As you are aware, Landlord is required to make a calculation every six months based on the above requested documents and provide Tenant with an over or under payment statement. "Additionally rent shall be analyzed ever six months and any overpayment or underpayment shall be determined and paid between the parties." (Lease ¶ 4.1) Landlord's refusal to provide this information will constitute a breach of the Lease.

2. **Violation of Tenant's Quiet Enjoyment**

Section 15 of the Lease provides that "Tenant's quiet and peaceable enjoyment of the Leased Premises shall not be disturbed or interfered with by Landlord or by any person claiming by, through, or under Landlord." Although the Lease specifically recognizes that Tenant's "co-tenant" shall be a chiropractic practice, Landlord has allowed a law firm and Magna Wealth Management, Ltd to occupy the building (the law firm and Magna Wealth Management collectively referred to as "Co-Tenants"). The Landlord through the Co-Tenants has violated

Mr. David G. Wentz
October 12, 2007
Page 2

Tenant's "quiet and peaceable enjoyment" of the premises.¹ Co-Tenants have and continue to breach Tenant's quiet enjoyment by:

Permitting former chiropractic tenants continuing access to the office;

Permitting other parties with access to the office without Tenant's knowledge or consent;

Permitting other parties to use Tenant's equipment without Tenant's knowledge or consent;

Permitting other parties to use the office utilities;

Permitting other parties to use the office and leave the bathrooms, carpets, counters, and space in complete disarray;

Constructing an additional wing to the office while using Tenant's office space for utilities, creating noise, dirt, and other nuisances that interfered with the use of the office for professional dental services;

Landscape maintenance during office hours;

Using the office parking lot to sell a car;

Using the office by the Illinois Dental Institute, without the requisite notice under the Lease and in excess of the permitted 12 times per year;

Destroying the signage for Tenant's business and placing leasing and for sale signs that undermine the use of the office as an ongoing business;

Leasing the former chiropractic office space to Co-Tenants that have encroached on Tenant's office space heedlessly.

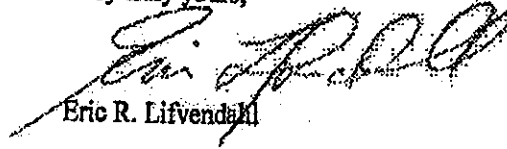
Landlord and Co-Tenants' actions have interfered with Tenant's use of the space and attempts to sublet the premises. If Landlord and Co-Tenants do not immediately cease these actions, Tenant shall be forced to vacate the premises.

This Notice is being served on you a Landlord's attorney. If Landlord objects to this form of Notice, please notify me immediately and I will serve a copy on Landlord.

¹ Under Illinois law when a lease expressly grants plaintiff the right of quiet and peaceful possession and enjoyment, the clause is clear and unambiguous. (See *Blue Cross Assoc. v. 666 N. Lake Shore Dr. Assoc.*, 100 Ill. App. 3d 647 (1st Dist. 1981). A Quiet Enjoyment clause "promises that the tenant shall enjoy the possession of the premises in peace and without disturbance." *Checkers, Simon & Rosner v. Lurie Co.*, 1987 WL 18930 (N.D. Ill.).

Mr. David G. Wentz
October 12, 2007
Page 3

Very truly yours,



Eric R. Livendahl

ERL:dem

cc: Dr. Mary Tujetsch
David E. Stevenson

Document #: 756313

EXHIBIT I

**CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

MARY A. TUJETSCH,)	
Plaintiff,)	
)	
v	)	06 CH 11607
TODD C. PUSATERI, FIRST DENTAL,	)	(Transferred to Law Division)
P.C. and FIRST DENTAL OF ORLAND	)	Hon Charles R. Winkler
PARK, P.C. ,)	
)	
Defendants.)	
)	
)	

AFFIDAVIT OF BRET KETSDEVER

I, Bret Ketsdever, being of the age of majority, and first being placed under oath, depose and state as follows:

1. I am authorized to furnish this Affidavit and competent to testify to the matters set forth in this Affidavit.
2. The facts set forth in this affidavit are within my personal knowledge
3. If called upon as a witness, I would and could competently testify to all facts stated in this Affidavit.
4. I am a Client Accounts Manager with First Pacific Corporation, an Oregon corporation with its principal place of business located at 5121 Skyline Village Loop S, Salem, Oregon 97306 ("FPC").
5. For over forty years, FPC has been engaged in providing various specialized practice-management services to dentists and dental practices throughout the United States
6. One of the practice-management services provided by FPC permits a dental practice to use computer technology to outsource the issuance of its fee statements and the collection of its dental fees.

7. On or about March 31, 2001, FPC entered into a contract to issue and collect patient bills for three dental practices, located in Naperville, Orland Park, and Schaumburg, Illinois, respectively, operated by an entity called First Dental P.C. ("First Dental").

8. The principal of First Dental is Dr. Todd C. Pusateri.

9. A copy of FPC's contract with First Dental is attached hereto as Exh. 1.

10. Pursuant to the Sales and Service Agreement, "[i]n order to facilitate [the] sale of accounts receivable to FPC, and as a part of FPC's service and exchange of data," the three Chicago-area Practices of First Dental P.C. agreed to use a computer system and software package furnished by FPC.

11. The computer system and software package furnished by FPC is a computer terminal (hereinafter the "FPC Terminal") that is placed in dental practices by FPC, but remains at all times the property of FPC.

12. Pursuant to the Sales and Service Agreement, FPC placed FPC Terminals in each of the three Chicago-area Practices of First Dental, including the practice in Orland Park (hereinafter the "Dental Practice"), which I understand is the subject of the above-captioned litigation.

13. It was agreed that information about patients would be entered into and stored in the FPC Terminals by First Dental.

14. In addition to acting as a conduit for third party billing, the FPC Terminal has the capacity to generate patient lists and reports based on that information.

15. The FPC software running on the FPC Terminal includes a database designed to store what FPC refers to as "static data" -- *i.e.*, patient names, addresses, telephone numbers, other contact information, and information about insurance/usual source of payment.

16. As patients are treated in a dental practice that has contracted for accounts receivable management services from FPC, "financial data" -- *i.e.*, data about the date and type of treatment afforded to a particular patient, and the charges assessed therefor -- are entered into the FPC Terminal.

17. The FPC Terminal is designed to permit dental practice managers to easily generate various practice-management reports and patient lists.

18. For example, a practice manager can query the database to generate a list of all patients treated in the practice since the practice became an FPC customer, or a subset of those patients.

19. The FPC software running on the FPC Terminal is also capable of generating summary reports.

20. One summary report, entitled "Practice Overview," provides a practice's number of "active patients."

21. Documentation of the FPC Software defines the term "active patient," as used in the Practice Overview, as the number of patients treated in the practice during the previous 24 months. Exh. 2.

22. This definition of "active patients" is employed by the Practice Overview because a headcount of the patients treated in a practice during the previous 24 months is often used as a rough indication of the size of a dental practice.

23. The Practice Overview is the most accurate way of generating a count of "active patients" using the FPC Software, because it reviews actual, "hard-wired" "financial data" to cull out patients who were charged for treatment during the defined, 24-month period.

24. By "hard-wired" "financial data," I mean that the Practice Overview generates the number of active patients objectively, based on an actual review of historical charge-related data, without reference to any database field that can be changed by a database user to reflect a subjective judgment of that user.

25. However, if financial data are not in the database for the 24-month period in question, the Practice Overview cannot generate a count of active patients.

26. In June 2004, FPC was advised that Dr. Pusateri was selling the "Dental Practice" to Mary Tujetsch.

27. Because the FPC Terminal and Software remains at all times the property of FPC, Dr. Pusateri was not at liberty to sell the FPC Terminal to Dr. Tujetsch, the buyer.

28. However, before her purchase of the Dental Practice was consummated, Tujetsch advised FPC that she wished to contract with FPC for outsourced patient billing services on a going-forward basis, commencing on the date of her purchase of the Orland Park Practice.

29. To my knowledge, no financial data for any period before July 1, 2004 was transferred to the database in the FPC Terminal located in Dr. Tujetsch's offices.

30. That is because Dr. Tujetsch did not purchase the accounts receivable of the Dental Practice that were in existence before July 1, 2004.

31. On June 30, 2004, Dr. Tujetsch entered into a Sales and Service Agreement with FPC.

32. A true and correct copy of that Agreement is attached hereto as Exh. 3.

33. Pursuant to that Agreement, Tujetsch agreed to use the computer system and software package furnished to Tujetsch by FPC (the FPC Terminal) to issue patient bills.

34. In order to fulfill its going-forward obligations to Tujetsch under the Sales and Service Agreement, FPC installed in the Dental Practice a new computer terminal with a new and unique client number (110140) (hereinafter "Terminal 110140").

35. Because FPC was advised that Tujetsch had purchased the Dental Practice, but not its then-existing accounts receivable, on or around June 30, 2004, FPC copied data from Terminal 111089 (the pre-sale FPC Terminal in the Dental Practice) onto Terminal 110140 in a process FPC refers to as "static transfer."

36. When all of the assets of a dental practice -- including existing accounts receivable -- are purchased, and the new owner wishes to continue an existing FPC billing relationship, FPC transfers both static data and financial data to a new FPC Terminal set up for the new owner.

37. When the buyer of an existing dental practice does not purchase the accounts receivable of the practice, but wishes to continue an existing FPC outsourcing relationship as to new receivables, FPC transfers only "static data" -- or patient contact and payment information -- to the new FPC Terminal set up for the new owner.

38. That is because a transfer of "financial data" to a non-owner of the corresponding accounts receivable would create duplicative accounts receivable on FPC's systems, leading to double-counting (and double billing) of those accounts.

39. FPC was advised that, in the sale of the Orland Park Practice from Pusateri to Tujetsch, no accounts receivable were being conveyed to Tujetsch.

40. In order to carry out its collection and reporting obligations to Pusateri in respect of accounts receivable of the Orland Park Practice existing as of June 30, 2004, FPC removed

Terminal 111089 from the Dental Practice and took it to the offices of another dental practice owned by Dr Pusateri at 8 W. Gartner Road in Naperville, Illinois.

41. However, before removing FPC Terminal 111089 from the Dental Practice, FPC technicians installed FPC Terminal 110140, a new FPC Terminal, in the Premises and transferred to FPC Terminal 110140 all "static data" contained on Terminal 111089

42. A "static transfer" is analogous to photocopying and setting up patient files for a newly purchased practice, without copying the treatment and billing-related contents of the files.

43. When FPC performs a static transfer and creates a new patient database for a new user, the detailed financial history of discrete patient accounts (posted transactions) is not transferred

44. However, a field entitled "Last visit date" is included among "static data" fields, and is therefore transferred to the new database in a "static transfer."

45. Dr. Tujetsch's database, as it was initially set up on Terminal 110140 in the Dental Practice, contained all "static data" of the Dental Practice in existence as of June 30, 2004 -- including the name, address, telephone number, insurance information, and "Last visit date" of each patient.

46. The "Last visit date" field included in "static data" is automatically populated with a new date every time a patient charge for treatment is posted.

47. The new date that automatically populates the "Last visit date" field is the date the charge for treatment is posted

48. The number of "active patients," as generated by the Practice Overview, is generated based on detailed patient charge history included in "financial data," and is generated based on each patient's posted charge history.

49. The data used by the Practice Overview to generate a count of active patients is not subject to manual modification of the database.

50. By contrast, the "Last visit date" can be modified manually by anyone in the dental practice with access to the database, at any time.

51. As a result, the Practice Overview is regarded as the gold standard for generation of "active patient" counts, because it is not dependent on a manually modifiable field, and is based on an electronic review of detailed patient charges history

52. When a Practice Overview cannot be used to generate "active patients, the database can be prompted to generate a list of patients with a "Last visit date" within a defined, 24-month range.

53. However, this method is not reliable as a means of quantifying the number of active patients in remote periods, for multiple reasons

54. First, the "Last visit date" is not "hard wired" and can be changed at will by anyone with access to the database, by contrast to the "financial data" used by the Practice Overview for a count of "active patients."

55. Second, and more importantly, the "Last visit date" is a field that is automatically populated with a new date whenever a charge for treatment is posted to an individual patient

56. This means that a list of patients with a "Last visit date" in a range that is remote in time is likely to be underinclusive, to the extent that patients treated within the range return for treatment thereafter.

57. During 2005, a fee dispute arose between FPC and Tujetsch, in which Tujetsch claimed that FPC had agreed to waive its fees for a substantial period of time.

58. When the fee dispute could not be resolved, on or about October 6, 2005 FPC sent to Tujetsch by certified mail a letter giving Tujetsch 30 days' notice of termination of her account

59. A true and correct copy of that letter is attached hereto as Exh. 4.

60. On about October 24, 2005, shortly before the termination of her FPC account was to become effective, Tujetsch asked Katie Lucitt, an FPC Account Executive, to generate a report listing "active patients" for the 24-month period from July 2002 through July 2004.

61. June 30, 2004 is the date that Tujetsch first became a customer of FPC

62. Tujetsch had not received, on the FPC Terminal in her office, a transfer of "financial data" for any period before June 30, 2004.

63. As a result, the "gold standard" of accuracy for active patient counts -- the Practice Overview -- could not be utilized to generate a count of active patients for any period before June 30, 2004.

64. However, Lucitt generated a custom report that would foreseeably list some, but not necessarily all of the patients who had been charged for treatment in the Dental Practice from July 2002 through 2004.

65. Based on my review of the List, it appears that Lucitt did that by prompting the FPC Terminal to list all patients who satisfied two criteria: i) a "Last visit date" falling in the period from July 2002 through July 2004, and ii) an "active" field that had not been manually altered to indicate that a patient was inactive

66. Both the "Last visit date" and "active" fields included among the "static data" fields are accessible to database users in the field, and can be changed at any time, for any reason -- or no reason at all.

67. For example, anyone with access to the database in the Dental Practice after June 30, 2004 could have changed the "active" field in the record of a patient who had been treated in the 24 months through June 2004 to indicate, based on a subjective belief, that a patient had become "inactive."

68. Similarly, anyone with access to the database in the Dental Practice after June 30, 2004 could have changed the "Last visit date" field in the record of any patient to a date outside the defined range.

69. Such patients would have been excluded from the List, even if he or she had in fact been treated in the Dental Practice in the 24 months through June 2004

70. In any event, Lucitt printed out the List of patients with a) a "Last visit date" falling in the period from July 2002 through July 2004 and b) an "active" field that had not been manually designated as inactive and provided the List to Tujetsch

71. Later, Lucitt learned that Tujetsch wanted the List in order to compare the number of patients in the List to the number of "Active Patients" that was recited in the contract as reported by FPC Software when Tujetsch purchased the Dental Practice from Dr. Pusateri.

72. Upon learning the foregoing, Lucitt informed Tujetsch that the List could not be relied upon for the stated purpose, and could not be meaningfully compared to the number of active patients generated by a Practice Overview.

73. The count of active patients generated by the Practice Overview is based solely on objective and historical patient-charge histories, and is not subject to any user-controlled field such as "active" or "Last visit date"

74. By contrast, the List was based solely on two user-controlled fields -- "active" and "Last visit date" -- and did not include or account for any objective and historical patient-charge histories.

75. Lucitt explained that FPC could not accurately quantify or list all "active patients" from Tujetsch's database for dates prior to June 30, 2004, the date Tujetsch became an FPC client.

76. I personally investigated and confirmed the foregoing in a letter "to whom it may concern" that I issued as of July 6, 2006.

77. A true and correct copy of that letter is attached hereto as Exh. 5

78. In my letter of July 6, 2006, I reported that after her purchase of the Dental Practice, "[l]acking financial data, Dr. Tujetsch's database also lacked the ability to report Active Patients prior to her posting of new financial transactions."

79. The number of active patients as of June 2004 could not be generated in October 2005 by using the Practice Overview, because the FPC Terminal in Dr. Tujetsch's office had never received "financial data" for any period before July 1, 2004.

80. The List was therefore necessarily generated in reference to two user-controlled database fields, as a list of patients a) not manually designated as inactive and b) with a "Last visit date" falling within the 24 months through July 2004.

81. As such, the List is not an accurate substitute for a count of active patients by the Practice Overview because of the nature of the "Last visit date" field, and the subjective nature of the "active" field.

82. Any patient who was treated both in the 24 months through July 2004 and after August 1, 2004 would not appear in the List (unless the "Last visit date" was manually modified).

83. Any patient who was manually and subjectively designated as inactive after June 30, 2004 would not appear in the List.

84. Patients treated after August 1, 2004 would be excluded from the List because their "Last visit date" would have been automatically populated with the date of their most recent treatment, thereby pulling patients treated after August 1, 2004 out of the List

85. I am in receipt of a list of 668 patients (the "List") that Dr. Tujetsch has interpreted as contradicting the count of active patients set forth in the Practice Overviews submitted by Dr. Pusateri

86. A true and correct copy of the List is attached hereto as Exh 6.

87. It is my understanding that Dr. Tujetsch has interpreted the List as indicating that the Dental Practice had only 668 active patients as of June or July 2004.

88. To the extent that my understanding of Dr. Tujetsch's interpretation of the List is correct, her interpretation is not correct.

89. Dr. Tujetsch's interpretation of the List is incorrect because any patient of the Dental Practice identified by a Practice Overview as an "active patient" as of June 2004 would not appear on the List if that patient had been manually designated as inactive or was charged for treatment after June 30, 2004.

90. As a result of the automatic nature of the "Last visit date" field, a larger number of patients returning for treatment after June 30, 2004 would actually cause the List to include a smaller number of "active patients" for the 24-month period through that date

91. Correctly interpreted, the List does not indicate that the Dental Practice had only 668 "active patients" as of June 2004.

92. Comparing the List to the Practice Overview is like comparing apples to oranges

93. The List and Practice Overview use different data and different methods to arrive at different results.

94. Dr. Pusateri has represented that on April 29, 2004 he generated with the FPC Terminal in the Dental Practice two Practice Overviews, one as of December 30, 2003, the other as of April 29, 2004

95. Dr. Pusateri has submitted hard copies of two Practice Overviews.

96. A true and correct copy of the Practice Overviews submitted is attached hereto as Exh 7.

97. The two Practice Overviews submitted by Dr Pusateri are in the format of Practice Overviews generated by FPC Software, and bear all the earmarks of Practice Overviews generated by an FPC Terminal

98. According to the Practice Overview as of December 30, 2003, the Dental Practice had 1,223 "active patients," meaning that, according to the FPC Software, the Dental Practice had treated 1,223 patients in the 24 months through December 2003

99. According to the Practice Overview as of April 29, 2004, the Dental Practice had 1,227 "active patients," meaning that, according to the FPC Software, the Dental Practice had treated 1,227 patients in the 24 months through April 2004.

100. That number of active patients appears consistent with the gross billings generated by the Dental Practice and processed by FPC.

101. That number of active patients in the Practice Overview is based solely on a review of objective, historical patient charge data -- not user-controlled fields accessible to manipulation and subjectivity.

102. If Dr. Pusateri represented to a third party that FPC Software reported that the Dental Practice had treated 1,227 patients in the 24 months through April 2004, this would be a true and accurate characterization of the April 29, 2004 Practice Overview.

103. If Dr. Pusateri represented to a third party that FPC Software reported that the Dental Practice had treated 1,223 patients in the 24 months through December 2004, this would be a true and accurate characterization of the Practice Overview as of December 31, 2004.

104. FPC deletes data associated with inactive client files (including patient files) as a matter of policy and procedure.

105. FPC deleted data associated with FPC Terminal 111089 from FPC systems on October 5, 2004.

106. However, based on my expertise and familiarity with the FPC Software, and my review of the foregoing facts, it is my conclusion that Dr. Pusateri did not overstate the number of active patients as reported by FPC Software, if he indicated in or around April 2004 that the Dental Practice had treated approximately 1,200 patients in the previous 24 months.

107. Further, it is my conclusion that the List, generated in October 2005, is not comparable to the Practice Overview, and cannot be relied upon to contradict the Practice Overviews upon which Dr. Pusateri relied.

108. That is because the List is based on two user-controlled fields (one of which is highly subjective), instead of objective bookkeeping entries arising out of actual patient charges, and because the "Last visit date" would exclude patients from the List if they received treatment after the end of the defined range.

FURTHER AFFIANT SAYETH NAUGHT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/109), the undersigned certifies that the statements set forth in this instrument are true and correct.

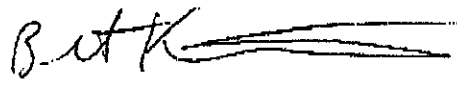
 1-6-11
Bret Ketsdever

EXHIBIT 1

- (b) "Patient" shall refer to a person(s) who has elected to purchase services of client regardless of who shall be the actual recipient of such services.
- (c) "Transaction" shall mean that event whereby client sells services and patient elects to purchase such services.
- (d) "Accounts Receivable" shall mean all accounts, contract rights, including insurance / trust benefit claims, arising out of or in connection with transactions and all subsequent transactions entered into between the client and his patients.
- (e) "Patient Balance Owning" shall refer to the total of all purchased accounts receivable with a patient balance owing which excludes accounts with credit balances.
- (f) "Contingency Account" is a non-liquid bookkeeping entry that provides FPC and the client limited protection against future uncollected accounts.
- (g) "In-Office Accounts" shall refer to only those accounts that do not qualify for purchase by FPC. FPC will not provide certain services, including but not limited to funding, billing and collection services.

2. **SALE AND PURCHASE OF ACCOUNTS RECEIVABLE:** Client agrees to sell and FPC agrees to buy all client's current and future accounts receivable. FPC will purchase the accounts receivable, excluding in-office accounts, in accordance with the terms set forth herein. Client shall not sell, assign, or otherwise encumber his accounts receivable.

3. **PAYMENT FOR ACCOUNTS RECEIVABLE:** The following terms and conditions are applicable to any and all sales and purchases of accounts receivable, excluding in-office accounts, by and between client and FPC:

- (a) Upon the initial purchase of the client's accounts receivable: FPC will pay to client an amount not to exceed 40%, less a conversion fee of \$5,000, of the balance of the accounts receivable, and less a \$500 software licensing fee (non-refundable) per office. The actual amount paid to the client will be determined by FPC during the conversion process based upon the quality of the client's accounts receivable.
- (b) Payment for all future accounts receivable: FPC will pay the client weekly for accounts receivable created during that week less an amount described in section 3(c) below. FPC reserves the right to adjust the amount it is willing to pay for an account it deems either an unacceptable account or uncollectible.
- (c) Reductions in weekly payments to client: FPC will decrease the amounts paid to the client for the following reasons:
 - (i) A weekly service fee charge on total patient balances owing will be deducted weekly in accordance with service fees described in paragraph 4.
 - (ii) FPC may redirect to the contingency account a part or all of FPC's weekly payment to the client in order to maintain the contingency account at its required level. (See paragraphs 5 and 6 below).
 - (iii) Any patient payments received on FPC accounts receivable and kept by client may be subtracted from FPC's weekly payment to client. FPC may choose to temporarily waive its rights and/or remedies, see section 7(d).
 - (iv) FPC may deduct an account to be reassigned from FPC's weekly payment to client.
 - (v) The client will be provided a summary of all additions and deductions with each weekly check.

4. **FEES:**

(a) **Service fees:**

- (i) A weekly service fee will be assessed on all patient balances owing. This service fee covers the cost of providing a computer, maintenance, staff training, patient and insurance billings, postage, patient and insurance forms and statements, a service team for support of the client's office, including a 1-800 phone number, a personal account representative and limited collection follow-up.
- (ii) The weekly service fee will be assessed in accordance with the fee schedule established by FPC. FPC's current service fees are as follows:

<u>Patient Balances Owning</u>	<u>Weekly Fee</u>
\$0 - \$49,999	.01209 (minimum monthly service fee of \$750)
\$50,000 - \$99,999	.00997
\$100,000 - \$249,999	.00808
\$250,000 - above	.00612

* The above fees will be assessed at one half the designated amount for the first month, as long as the client continues with our service for at least one year from the date of this agreement. If the client leaves the system in less than one year, the client will then be responsible to pay the previously waived amount of service fees.

- (b) Additions or reductions to the service fee:
- (i) FPC agrees to rebate monthly to client all interest charges assessed by the client on accounts receivable, less uncollected interest.
 - (ii) If the client maintains the contingency account at a level higher than required, FPC will issue a credit, against the service fee on the amount over the required level.
- (c) Other fees:
- (i) FPC is authorized to assess late payment charges monthly on patient accounts when payments are not received at FPC by the due dates published in the patient's billing statement. All late payment charges will be retained by FPC and the client is responsible for uncollected late payment charges.
 - (ii) FPC may charge the client monthly, an additional fee (.0029 weekly) on the amount the clients' contingency account is below the required levels to cover FPC's additional administration costs.
- (d) FPC reserves right to either increase or decrease any fees upon 30 days written notice to the client.

5. **REASSIGNMENT:** In the event FPC in its sole discretion considers an account to be uncollectible under FPC's normal collection procedure, or if the account fails to meet the client's warranties (see paragraph 7), then the client agrees to repurchase the outstanding balance on that account. When accounts are to be repurchased, FPC may, in lieu of requiring direct repayment, charge the uncollected account against the contingency account or deduct the amount from FPC's weekly payment to the client. If the client breaches any term or warranty of this agreement, the client agrees to repurchase all accounts receivable and pay all amounts owed to FPC.

6. **CONTINGENCY ACCOUNT:** The contingency account is a non-liquid bookkeeping entry that provides FPC and the client limited protection against future uncollected patient accounts. The contingency account is a percentage of the patient balance owing. The percentage will be established by FPC at its sole discretion at the time of converting to FPC system and may be changed by FPC during the life of this agreement based upon the quality of the accounts receivable. In the event that the contingency account falls below the required percentage, FPC will maintain the required level by reducing the weekly amount paid to client.

7. **CLIENT'S REPRESENTATIONS AND WARRANTIES:** As to accounts receivable purchased by FPC hereunder and while this agreement is in effect, client represents and warrants as follows:

- (a) All accounts receivable arose from a bonafide sale of services by client in the ordinary course of client's business and that all services have been performed by the client.
- (b) That as to the accounts receivable client has free and clear title unencumbered by any sale, assignment or security interest of any nature (unless FPC is notified in writing) and will notify FPC in writing immediately of any actions in the future that would jeopardize FPC's clear title to the accounts receivable purchased from client. (e.g. a tax lien, bankruptcy)
- (c) That the patient has authority and capacity to contract at the time of purchasing services represented by accounts receivable.
- (d) Client acknowledges that all amounts paid on patient balance owing, including all payments from insurers, are owned by FPC. The client agrees to promptly forward any and all payments to FPC. Client also agrees to immediately forward a check to FPC covering any cash and credit card payments received on accounts receivable owned by FPC.
- (e) That all applicable laws and regulations of any local, state or federal government entity, including those pertaining to consumer credit protection have been observed and adhered to by client in each applicable transaction; client agrees to provide all appropriate disclosures and obtain necessary patient signatures, and agrees to take all action necessary to conform with all laws with respect to accounts receivable.
- (f) That client will continue to maintain all necessary business licenses and business association, partnership or corporation qualifications as may be required by law. The client will immediately notify FPC if there are changes to the business structure, ownership, dental license, change in association, or dental licenses used for insurance billing.
- (g) If the client breaches any term or warranty of this agreement, the client agrees to repurchase all accounts receivable and pay all amounts owed to FPC.


(Initials)


(Initials)

8. **SALE OF ACCOUNT BY COMPUTER:**

- (a) **Use of FPC's computer:** In order to facilitate client's sale of accounts receivable to FPC, and as a part of FPC's service and exchange of data hereunder, client will use a computer system and software package that are furnished to client by FPC. FPC shall at all times be the owner of the

lost profits.

- (c) **Termination:** FPC may terminate the client's use of computer hardware and software supplied by FPC on thirty days (30) notice either orally or in writing. However, if client breaches any term of this agreement, then FPC may immediately terminate client's use of the said hardware and software. Client shall be liable for any damages to the computer, ordinary wear and tear excepted until the computer is returned to FPC.
- (d) **Use of off-the-shelf software packages:** The client may operate off-the-shelf software packages purchased elsewhere under the following conditions:
- (i) The software package must be compatible and function properly with the FPC hardware configuration and FPC will be notified before such software is used.
 - (ii) The client will not make modifications to FPC hardware and/or software.
 - (iii) FPC will not provide program support or be responsible for problems arising from the use of the off-the-shelf software packages, and client agrees to hold FPC harmless from any such claim.

9. **REMEDIES:** In the event client shall breach any of the terms of this agreement or client or any guarantor thereof becomes insolvent, becomes subject to or commences any proceeding under Federal Bankruptcy Act or any insolvency or debtor's relief law or dies, or if any property of any of them in the possession of FPC or obligation of FPC to any of them is attempted to be levied upon by any writ or otherwise, or any notice of such levy or notice of sale is given or any sale is made of any property of any of them, except in ordinary course of business, or default is made in the payment of any other indebtedness of any item to FPC, then FPC shall have the following rights and remedies and shall be cumulative.

- (a) To declare all amounts due FPC at once due and payable or FPC may elect at its sole discretion to implement corrective action to eliminate the breach(s) of this contract, without waiving any of its rights and/or remedies.
- (b) To foreclose on any security provided to FPC.
- (c) To exercise any and all remedies available under law to FPC, including the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the state where the debtor's office is located.
- (d) In the event of default, client agrees to cooperate in connection with FPC's foreclosure on its security, including, but not limited to, permitting FPC to review the client's patient records and notifying insurance companies and patients to make payments on accounts receivable directly to FPC.

10. **TERMINATION:** Client, or FPC, may decide to terminate this agreement for any reason by providing 30 days written notice to the other. In the event of such notice, the client shall repurchase the accounts receivable previously sold to FPC on the following basis:

- (a) By paying FPC a sum equal to the patient balance owing on such accounts receivable, plus any unpaid fees under paragraph 4, less the amount of the contingency account and patient credit balances; or
- (b) By electing that FPC continue to collect the accounts receivable for a period not to exceed three months for a weekly fee as described in paragraph 4. After termination, all finance charges collected by FPC on accounts receivable will be credited to the amount owed FPC. At such time as the total patient balance owing is equal to the balance in the contingency account plus patient credit balances, the remaining accounts receivable will be assigned to the client.
- (c) Upon termination, FPC may charge interest on all monies due and owing FPC using the Wells Fargo Bank, N.A. published prime rate, plus 2 percent.
- (d) Notwithstanding termination of this agreement, until FPC is paid in full for its purchased accounts and for any other obligation to FPC under this agreement, the provisions of this agreement shall remain in full force and effect, including but not limited to the rights of FPC to require the repurchase of accounts under paragraph 5 above.

11. **SECURITY INTEREST:** To secure all of client's obligations hereunder, client grants to FPC a security interest in all inventory, existing and future accounts, accounts receivable, contract rights, chattel paper, intangibles, all of debtor's rights as a seller of goods under Article 2 of the UCC, all goods returned to or repossessed in connection therewith, all equipment, together with all accessories, substitutions, additions, replacements, parts, accessions affixed or used in connection therewith, whether now owned or hereafter acquired or arising, and the proceeds and products thereof, and wherever located. Client hereby agrees to execute any financing statements and other documents reasonably required to perfect FPC's security interest.

12. **ADJUSTMENT OF PATIENT DISPUTES:** If any patient disputes any transaction involving an account receivable sold by client to FPC and before FPC has requested repurchase of said account receivable by the client in the manner described in paragraph 8, client will attempt to resolve any such dispute directly with the patient. Client shall promptly notify FPC of any such adjustments or disputes.
13. **POWER OF ATTORNEY:** Client shall execute assignments with respect to all accounts receivable so as to vest in FPC full title to all accounts receivable. FPC shall have the right to collect from the patient all amounts due or to become due on said accounts receivable unless and until the accounts receivable is repurchased by client in the manner provided in paragraph 10 above. Client hereby grants to FPC client's power of attorney for the purpose of endorsing client's name to any remittance received by FPC in payment of any accounts receivable held by FPC after purchase from client. FPC shall have the right to pledge the accounts receivable at any bank or financial institution subject to the rights of the client pursuant to this agreement.
14. **GUARANTY:** In the event client is a corporation, then it is agreed all stockholders of said corporation, by signing below, hereby agrees to be jointly and severally, personally and unconditionally, bound by the terms of this agreement and guarantee its performance. In the event client is a member of a partnership, but signing in his or her individual capacity, then the partnership, by signing below, agrees to be unconditionally bound by the terms of this agreement and hereby guarantees its performance. Each guarantor is jointly and severally liable for attorneys' fees incurred by FPC in enforcing the guaranty, whether or not a suit is filed, including any attorneys' fees incurred in any bankruptcy proceeding.
15. **INDEMNIFICATION:** Client hereby agrees to indemnify, defend and hold FPC harmless from any and all liabilities, judgments, obligations, losses, claims, actions, damages, penalties, interest, cost or expenses, including attorneys' fees, arising out of any claims filed by any patient of client arising out of or in connection with the performance of any services performed by client represented by the accounts receivable purchased by FPC from the client in accordance with the terms of this Agreement.
16. **GENERAL PROVISIONS:**
 - (a) Client will execute and deliver to FPC any instruments or documents and do all things necessary and/or convenient to carry into effect the provisions of this agreement and facilitate the collection of accounts receivable herein assigned.
 - (b) This agreement may not be altered or amended except in writing and signed by authorized representatives of both parties.
 - (c) Any provision of this agreement found to be invalid shall not invalidate the remainder thereof.
 - (d) Waiver by FPC of any default by client shall not constitute a waiver of any subsequent default.
 - (e) Notwithstanding the above, the client shall not assign any of his or her rights or obligations under this Agreement without the prior written consent of FPC.
 - (f) Client is responsible for all collection agency fees incurred by FPC in attempting to collect damages or amounts due from patient.
 - (g) In the event of any dispute arising out of this Agreement between FPC and Client, including arbitration or bankruptcy proceeding, FPC shall be entitled to recover from Client reasonable attorneys' fees and costs, including any costs and fees incurred in any appeal.

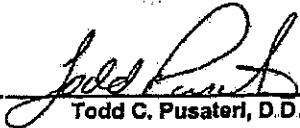
IN WITNESS WHEREOF, the parties have signed this agreement the day and year above written.

FIRST PACIFIC CORPORATION

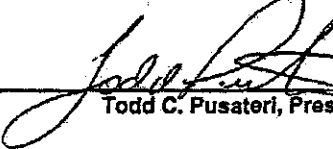
By: 

Title: CLIENT ACCOUNTS MANAGER

CLIENT: Todd C. Pusateri, D.D.S.

By: 
Todd C. Pusateri, D.D.S.

CLIENT: First Dental, P.C.

By:  President
Todd C. Pusateri, President

ADDENDUM TO

First Pacific Corporation's

SALES AND SERVICE AGREEMENT

This ADDENDUM ("Addendum") is effective 4/14/2003, and amends and is made part of the SALES AND SERVICE AGREEMENT dated 3/30/2001. ("Agreement") by and between FIRST PACIFIC CORPORATION ("Business Associate") and First Dental ("Dental Practice").

Dental Practice and Business Associate mutually agree to modify Agreement to incorporate the terms of this Addendum into the Agreement, to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64).

DEFINITIONS

"Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.502 (g).

"Law" shall mean all applicable Federal and State statutes and all relevant regulations hereunder.

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

"Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Health Care Practice.

"Secretary" shall mean the Secretary of the Department of Health and Human Services, or his designee.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or by Law.
- B. Business Associate agrees to use reasonable safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- C. Business Associate agrees to report to Health Care Practice any use or disclosure of Protected Health Information not provided for by this Agreement after Business Associate has actual knowledge of such use or disclosure.
- D. Business Associate agrees to include in any written agreement with any agent, including a subcontractor, to whom it provides Protected Health Information, a requirement that such agent agrees to restrictions and conditions with such information that are at least as restrictive as those that apply through this Addendum to Business Associate.
- E. Upon reasonable notice, Business Associate agrees to make Protected Health Information and books and records relating to the use and disclosure of Protected Health Information available to the Secretary at the

Health Care Practice's expense in a reasonable time and manner, for purposes of the Secretary determining Health Care Practice's compliance with the Privacy Rule

- F. Business Associate agrees to comply with each applicable requirement of 45 Code of Federal Regulations Part 162 regarding Standard Transactions.
-

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- A. Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information (i) as is reasonably necessary to perform functions, activities, or services for, or on behalf of Health Care Practice as specified in the Agreement; (ii) for the proper management and administration of the Business Associate; (iii) as may otherwise be required by Law; and (iv) except as provided otherwise in this Addendum, as may be permitted by Law, provided that Business Associate obtains reasonable assurances from any person to whom the information is disclosed that (A) such information will remain confidential and used or further disclosed only as required by Law or for the purpose for which it was disclosed to the person, and (B) that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- B. Beginning April 14, 2003, or the date of this Addendum, whichever is later, Business Associate shall refer to Health Care Practice all requests by Individuals for information about or accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- C. Beginning April 14, 2003, or the date of this Addendum, whichever is later, Business Associate agrees to document disclosures of Protected Health Information, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, to the extent required for Dental Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. Such documentation shall include (i) the disclosure date; (ii) the name and (if known) the address of the person or entity to whom Business Associate made the disclosure; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of the disclosure.
- D. Beginning April 14, 2003, or the date of the Addendum, whichever is later, Business Associate shall provide Health Care Practice information collected in accordance with section C above to the extent required to permit Health Care Practice to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. The parties agree to work together in good faith to resolve any disagreement over the requirements of 45 C.F.R. § 164.528.
- E. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502 (j)(1)
-

OBLIGATIONS OF HEALTH CARE PRACTICE

- A. Health Care Practice agrees not to use or disclose Protected Health Information other than as permitted or required by this Addendum or applicable Law.
- B. Health Care Practice agrees to use reasonable safeguards to prevent use or disclosure of Protected Health Information other than as provided by this Addendum.
- C. Health Care Practice shall notify Business Associate of any changes in Health Care Practice's notice of privacy practices that may affect Business Associate's use or disclosure of Protected Health Information. Business Associate shall have a reasonable period of time to act on such notices.
- D. Health Care Practice shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosure thereof. Business Associate shall have a reasonable period of time to act on such notice.

- E. Health Care Practice shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information prior to acceptance of such restriction by Dental Practice in accordance with 45 C.F.R. §164 522 so that Business Associate can determine whether it is infeasible to comply with such restriction. Once agreed to, Business Associate shall have a reasonable period of time to act on such notice.
- F. Health Care Practice represents and warrants to Business Associate that Health Care Practice will not disclose any Protected Health Information to Business Associate unless Health Care Practice has obtained any consents and authorizations that may be required by Law or otherwise necessary for such disclosure.
- G. Health Care Practice shall have access to Business Associate's information pursuant to the terms and conditions of the Agreement and this Addendum. The information shall remain confidential and proprietary information. The information shall not be disclosed to any third person, business or corporation, including any person who serves as Health Care Practice's agent, except as otherwise agreed to in writing by Business Associate. Nothing in this Addendum shall be construed as granting Health Care Practice any rights by license or any other intellectual property rights to the information.

PERMISSIBLE REQUESTS BY DENTAL PRACTICE

Health Care Practice warrants that it shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Law if done by Health Care Practice.

RATIFICATION OF SALES AND SERVICE AGREEMENT

Except as modified by this Addendum, the Agreement is hereby ratified, confirmed and declared to be in full force and effect.

IN WITNESS WHEREOF, Business Associate and Dental Practice have caused this Addendum to be executed in their respective names the day and year first herein above written.

BUSINESS ASSOCIATE:

First Pacific Corporation

by: *Diane Reeves*

Name: Diane Reeves

its: EVP, Customer Service

Date: April 8, 2003

DENTAL PRACTICE:

First Dental

by: *[Signature]*

its: President

Date: 4-15-03

EXHIBIT 2

FPC Introduction and Computer

Practice Overview Explanation

This report is a month-to-date (MTD) and year-to-date (YTD) overview of the practice that provides important information for monitoring a practice.

- **Production:** MTD and YTD totals for each associate and for the total practice.
- **Days Worked:** The number of days worked, MTD and YTD, for each associate. These columns are only completed if the appointment scheduler is utilized.
- **Production Per Hour:** Hourly production, MTD and YTD, for each associate and the total practice. These columns are only completed if the appointment scheduler is utilized.
- **A/R Collection:** Accounts receivable collections, MTD and YTD, categorized by FPC patient payments, FPC insurance payments and office payments.
- **Reassignment:** MTD and YTD dollar amounts reassigned.
- **Number of New Patients:** The MTD and YTD number of new patients that have been seen or have future scheduled appointments.
- **Number of Patients Referred by Referral Source:** The number of new patients, MTD and YTD, referred by the categories of patient, doctor and other.
- • **Number of Active Patients:** The number of patients seen within the last two years.
- • **Number of Patients with Recall:** This number will always be different than the Number of Active Patients because this number represents all the patients listed in the computer. The patients will be categorized by:
 - **Current:** Includes those patients who have a future recall date.
 - **Overdue:** Includes the patients who have a past recall date.
 - **Without:** Includes those patients who have never had a recall appointment.
- **Number of Patients with Diagnosed Treatment:** The number of patients who have diagnosed treatment and are categorized as:
 - **Scheduled:** Those patients who have scheduled appointments for completion of their diagnosed treatment. Recall appointments are included in this number.
 - **Unscheduled:** Those patients who have not scheduled an appointment to complete their diagnosed treatment.

EXHIBIT 3

**First Pacific Corporation
SALES AND SERVICE AGREEMENT**

THIS AGREEMENT is made this 30th day of June 2004, by and between **FIRST PACIFIC CORPORATION**, (hereinafter called "FPC"), and Mary A. Tuetsch, D.D.S., (hereinafter called the "Client"), whose office is located at 7714 W. 159th St., Orland Park, IL 60462, whose residence is located at 55 E. Washington, Chicago, IL 60602.

1. SALE AND PURCHASE OF ACCOUNTS RECEIVABLE:

- (a) Client agrees to sell and FPC agrees to buy all of Client's current and future accounts receivable, excluding in-office accounts in accordance with the terms set forth herein.
- (b) Client agrees to use FPC's insurance billing procedures for all transactions covered by some form of Patient insurance coverage; Client further agrees to keep on file an original signed Patient authorization, allowing the Client and/or FPC to provide information to the Patient's insurer relating to the Patient's insurance claim.
- (c) The sale of an individual Patient's accounts receivable to FPC is considered to have taken place at the point FPC receives the accounts receivable data at FPC's corporate office.
- (d) Client shall not sell or assign accounts receivable purchased by FPC to a third party.
- (e) Client will use the computer system and software package furnished to Client by FPC. Client agrees that use of FPC's software is for the Client's sole use. FPC maintains ownership of the computer hardware and software provided by FPC.
- (f) The Client shall provide insurance protection for hardware provided by FPC, from fire, theft or other casualty damage and is responsible for any personal property or use tax if applicable. Client agrees to install or provide suitable electrical and telephone sources, carriers, cabling and outlets required for computer system and network operation.

2. CLIENT'S REPRESENTATIONS AND WARRANTIES: Client represents and warrants:

- (a) That Client is fully licensed and authorized to provide the professional services reflected in the accounts receivable.
- (b) That the services represented by the accounts receivable have been provided to the patient and fully performed.
- (c) That each account receivable is valid and not subject to dispute by the patient or any other party.
- (d) That none of the accounts receivable has or will be pledged to any other party, unless FPC is immediately notified in writing.
- (e) That all amounts paid on accounts receivable purchased by FPC, including all payments from insurers, cash, and credit card payments received in office, are owned by FPC. Client agrees to promptly forward any and all such payments to FPC.
- (f) That Client abides by all applicable laws and regulations of the local, state or federal government entity.
- (g) That Client maintains all necessary business licenses as may be required by law.
- (h) That Client will immediately notify FPC of any changes to the business structure, ownership, business name, tax ID, and dental license used for insurance billing.

3. PAYMENT TO CLIENT FOR ACCOUNTS RECEIVABLE: The following terms and conditions are applicable to any and all sales and purchases of accounts receivable, excluding in-office accounts, by and between Client and FPC:

- (a) **Initial Funding to Client:** FPC will make available to Client an amount not to exceed 80% of the accounts receivable, or \$8,000 whichever is lower, less the set up fee described in paragraph 4(b) below.
- (b) **Weekly Funding (Production Check):** FPC will pay the Client, via a weekly production check, for the Net Purchased by FPC during that week, less an amount described in paragraph 3(c) below
- (c) **Reductions to Client's weekly production check:** FPC will decrease the amount paid to the Client for the following:
 - (i) The weekly service fee or other fees as described in paragraph 4 below.
 - (ii) Deferred funding of a part or all of the Client's weekly production check in order to maintain the contingency receivable at its required minimum percentage (see paragraph 5 below) and/or the amount owed to FPC by Client does not exceed \$8,000.
 - (iii) Any account receivable purchased that week which FPC deems unacceptable or any purchased account receivable that FPC deems uncollectible (see paragraph 7 below).

4. FEES:

- (a) **Conversion fee:** FPC will waive the standard conversion fee in exchange for Client's commitment to remain with FPC for at least 18 months from the date of conversion. FPC will assess a fee of 10% of all converted accounts receivable, excluding any credit balances (minimum \$2,500), if either FPC or Client receives notice of termination prior to fulfillment of Client's commitment to remain with FPC for at least 18 months from the date of conversion.
- (b) **Setup fee:** \$3000 setup fee (all software licensing and HIPAA transaction compliancy).
- (c) **Weekly service fees:** FPC will assess a weekly service fee on all purchased accounts receivable, in accordance with the fee schedule established below:

<u>Accounts Receivable</u>	<u>Weekly Fee Factor</u>
\$0 - \$49,999	.01063
\$50,000 - \$99,999	.00915
\$100,000 - \$249,999	.00772
\$250,000 - above	.00592
Minimum monthly service fee of \$825	

FPC will waive the Minimum Service Fee and Contingency Receivable Deficiency Fee for 10 months, as long as the Client continues with our service for at least 18 months from the date of conversion. If the Client leaves the system in less than 18 months, the client will then be responsible to pay the previously waived amount of Minimum Service and Deficiency Fees.

(d) **Other fees:**

- (i) Client authorizes FPC to assess late payment charges monthly on Patient accounts when payments are not received at FPC by the due dates published in the Patients' billing statement. FPC retains all late payment charges. The Client is responsible for uncollected late payment charges.
- (ii) FPC may charge Client an additional fee (.0125 monthly) based on contingency receivable deficiency (see paragraph 5) on the first production check each month.

**First Pacific Corporation
SALES AND SERVICE AGREEMENT**

THIS AGREEMENT is made this 30th day of June, 2004, by and between FIRST PACIFIC CORPORATION, (hereinafter called "FPC"), and Mary A. Tujetsch, D.D.S., (hereinafter called the "Client"), whose office is located at 7714 W. 159th St., Orland Park, IL 60462, whose residence is located at 55 E. Washington, Chicago, IL 60602.

1. SALE AND PURCHASE OF ACCOUNTS RECEIVABLE:

- (a) Client agrees to sell and FPC agrees to buy all of Client's current and future accounts receivable, excluding in-office accounts in accordance with the terms set forth herein.
- (b) Client agrees to use FPC's insurance billing procedures for all transactions covered by some form of Patient insurance coverage. Client further agrees to keep on file an original signed Patient authorization, allowing the Client and/or FPC to provide information to the Patient's insurer relating to the Patient's insurance claim.
- (c) The sale of an individual Patient's accounts receivable to FPC is considered to have taken place at the point FPC receives the accounts receivable data at FPC's corporate office.
- (d) Client shall not sell or assign accounts receivable purchased by FPC to a third party.
- (e) Client will use the computer system and software package furnished to Client by FPC. Client agrees that use of FPC's software is for the Client's sole use. FPC maintains ownership of the computer hardware and software provided by FPC.
- (f) The Client shall provide insurance protection for hardware provided by FPC, from fire, theft or other casualty damage and is responsible for any personal property or use tax if applicable. Client agrees to install or provide suitable electrical and telephone sources, carriers, cabling and outlets required for computer system and network operation.

2. CLIENT'S REPRESENTATIONS AND WARRANTIES: Client represents and warrants:

- (a) That Client is fully licensed and authorized to provide the professional services reflected in the accounts receivable.
- (b) That the services represented by the accounts receivable have been provided to the patient and fully performed.
- (c) That each account receivable is valid and not subject to dispute by the patient or any other party.
- (d) That none of the accounts receivable has or will be pledged to any other party, unless FPC is immediately notified in writing.
- (e) That all amounts paid on accounts receivable purchased by FPC, including all payments from insurers, cash, and credit card payments received in office, are owned by FPC. Client agrees to promptly forward any and all such payments to FPC.
- (f) That Client abides by all applicable laws and regulations of the local, state or federal government entity.
- (g) That Client maintains all necessary business licenses as may be required by law.
- (h) That Client will immediately notify FPC of any changes to the business structure, ownership, business name, tax ID, and dental license used for insurance billing.

3. PAYMENT TO CLIENT FOR ACCOUNTS RECEIVABLE: The following terms and conditions are applicable to any and all sales and purchases of accounts receivable, excluding in-office accounts, by and between Client and FPC:

- (a) **Initial Funding to Client:** FPC will make available to Client an amount not to exceed 80% of the accounts receivable, or \$8,000 whichever is lower, less the set up fee described in paragraph 4(b) below.
- (b) **Weekly Funding (Production Check):** FPC will pay the Client, via a weekly production check, for the Net Purchased by FPC during that week, less an amount described in paragraph 3(c) below.
- (c) **Reductions to Client's weekly production check:** FPC will decrease the amount paid to the Client for the following:
 - (i) The weekly service fee or other fees as described in paragraph 4 below.
 - (ii) Deferred funding of a part or all of the Client's weekly production check in order to maintain the contingency receivable at its required minimum percentage (see paragraph 5 below) and/or the amount owed to FPC by Client does not exceed \$8,000.
 - (iii) Any account receivable purchased that week which FPC deems unacceptable or any purchased account receivable that FPC deems uncollectible (see paragraph 7 below).

4. FEES:

- (a) **Conversion fee:** FPC will waive the standard conversion fee in exchange for Client's commitment to remain with FPC for at least 18 months from the date of conversion. FPC will assess a fee of 10% of all converted accounts receivable, excluding any credit balances (minimum \$2,500), if either FPC or Client receives notice of termination prior to fulfillment of Client's commitment to remain with FPC for at least 18 months from the date of conversion.
- (b) **Setup fee:** \$3000 setup fee (all software licensing and HIPAA transaction compliance).
- (c) **Weekly service fees:** FPC will assess a weekly service fee on all purchased accounts receivable, in accordance with the fee schedule established below:

<u>Accounts Receivable</u>	<u>Weekly Fee Factor</u>
\$0 - \$49,999	.01063
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\$100,000 - \$249,999	.00772
\$250,000 - above	.00592
Minimum monthly service fee of \$825	

FPC will waive the Minimum Service Fee and Contingency Receivable Deficiency Fee for 10 months, as long as the Client continues with our service for at least 18 months from the date of conversion. If the Client leaves the system in less than 18 months, the client will then be responsible to pay the previously waived amount of Minimum Service and Deficiency Fees.

(d) Other fees:

- (i) Client authorizes FPC to assess late payment charges monthly on Patient accounts when payments are not received at FPC by the due dates published in the Patient's billing statement. FPC retains all late payment charges. The Client is responsible for uncollected late payment charges.
- (ii) FPC may charge Client an additional fee (.0125 monthly) based on contingency receivable deficiency (see paragraph 5) on the first production check each month.

7. **REASSIGNMENT:** In the event FPC, in its sole discretion, considers an account to be uncollectible under FPC's normal collection procedure, or if the account fails to meet the Client's warranties (see paragraph 2), then the Client agrees to repurchase the uncollected balance on that account. When accounts are to be repurchased, FPC may, in lieu of requiring direct repayment, charge the uncollected account against the contingency receivable or deduct the amount from FPC's weekly production check to the Client.
8. **MAINTENANCE AGREEMENT AND LIMITATIONS OF LIABILITY:** FPC maintains the computer in good working order during Client's tenure with FPC, provided Client is not in default of this agreement. FPC's maintenance agreement does not include:
 (a) Service required due to improper use of the system.
 (b) Service required due to use of non-FPC provided hardware and software.
 (c) Service performed by personnel not hired or otherwise authorized by FPC.
EXCEPT FOR THE MAINTENANCE AGREEMENT DESCRIBED ABOVE, THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Client's sole and exclusive remedy for repair or replacement is the maintenance agreement described above. FPC shall not, under any circumstance, be liable for any special or consequential damage or lost revenues.
9. **NON-FPC SOFTWARE PACKAGES/REMOTE NETWORK SYSTEMS:** The Client may operate non-FPC software packages/Remote Network systems purchased elsewhere under the following conditions:
 (a) The software package/Remote Network system must be compatible and function properly with the FPC hardware configuration and FPC must be notified before such software/Remote Network system is used.
 (b) The Client or its representative(s) will not make modifications to FPC hardware and/or software.
 (c) FPC will not provide program support or be responsible for issues arising from the use of the non-FPC software packages/Remote Network systems. Client agrees to hold FPC harmless from any such claim.
10. **ELECTRONIC SABOTAGE AND VANDALISM:** Due to security risks associated with internet activity and personal use of computers, Client is responsible for all damage to FPC-supplied hardware, software, databases, etc. caused by any virus, worm, or other form of electronic sabotage or vandalism, whether introduced, knowingly or accidentally, via internet, e-mail, CD, floppy disk, tape, or other means. Client agrees to reimburse FPC immediately for expenses incurred to remedy such damage. FPC recommends that all Clients purchase and install comprehensive, recent-release virus protection software, regularly update that software, and take other reasonable precautions to reduce the possibility of electronic sabotage or vandalism. FPC warrants all software and databases supplied by FPC are virus-free.
- MCI* **DEFAULT:** Default shall occur if Client or guarantor:
 (a) Breaches any of the terms or warranties of this agreement.
 (b) Fails to notify FPC immediately in writing of any actions and/or events that would jeopardize FPC's clear title to the accounts receivable purchased from Client (e.g. tax lien, bankruptcy, etc.)
 (c) Becomes insolvent.
 (d) Becomes subject to or commences any proceeding under Federal Bankruptcy Act or any insolvency or debtor's relief law.
 (e) Dies.
 (f) If any property in the possession of FPC or obligation of FPC is attempted to be levied upon by any writ or any other such levy or notice of sale is given, or any sale is made of any property except in ordinary course of business or default is made in the payment of any other indebtedness of any item to FPC.
12. **REMEDIES:** FPC may implement corrective action to eliminate the breach(s) and/or default(s) of this agreement, without waiving any of its rights and/or remedies. FPC shall have the following rights and remedies and they shall be cumulative:
 (a) To accelerate FPC's collection efforts on accounts receivable sold to FPC.
 (b) To declare the Net Amount Owed to FPC due and payable at once.
 (c) To foreclose on any security provided to FPC. Client agrees to cooperate in connection with FPC's foreclosure on its security, including, but not limited to, permitting FPC to review the Client's Patient records and notifying insurance companies and Patients to make payments on accounts receivable directly to FPC.
 (d) To exercise any and all remedies available under law to FPC, including the rights and remedies of a secured party under the Uniform Commercial Code (UCC) as enacted in the state where the Client's office is located.
13. **TERMINATION:** Client, or FPC, may terminate this agreement for any reason by providing 30 days written notice to the other party. In the event of such notice, the Client shall reduce the net amount owed to FPC to zero on the following basis:
 (a) By electing to continue under all terms of this agreement and modifying the weekly funding provided in order to recover the amount owed to FPC by a target date established by Client.
 (b) By paying FPC the Net Amount Owed.
 (c) By discontinuing the sale of new accounts receivable to FPC. FPC will continue to collect the accounts receivable for a period not to exceed three months. Any remaining net amount owed is immediately due and payable.
MCI Regardless of any notice of termination of this agreement, until the Net Amount Owed to FPC is reduced to zero, and any other obligation to FPC under this agreement is fulfilled, the provisions of this agreement shall remain in full force and effect, with fees continuing as described in paragraph 4. When the Net Amount Owed to FPC is reduced to zero, Client may elect to have FPC continue collecting the accounts under the current terms and conditions of this agreement.
14. **SECURITY INTEREST:** To secure all of Client's obligations hereunder, Client grants to FPC a security interest in all inventory, existing and future accounts, accounts receivable, contract rights, chattel paper, intangibles, all of debtor's rights as a seller of goods under Article 2 of the UCC, all goods returned to or repossessed in connection therewith; all equipment, together with all accessories, substitutions, additions, replacements, parts, accessions affixed or used in connection therewith, whether now owned or hereafter acquired or arising, and the proceeds and products thereof, and wherever located.
15. **POWER OF ATTORNEY:** Client grants to FPC Client's power of attorney for the purpose of endorsing Client's name to any remittance received by FPC as payment for services provided by Client. Client shall execute assignments with respect to all purchased accounts receivable so as to vest in FPC full title to all purchased accounts receivable. FPC shall have the right to collect from the Patient all amounts due or to become due on said accounts receivable unless and until the accounts receivable are repurchased by Client in the manner provided in paragraph 13 above.

- (f) Notwithstanding the above, the Client shall not assign any of his or her rights or obligations under this Agreement without the prior written consent of FPC.
 - (g) Client is responsible for all collection agency fees incurred by FPC in attempting to collect damages or amounts due from Patient.
 - (h) In the event of any dispute arising out of this Agreement between FPC and Client, including arbitration or bankruptcy proceeding, prevailing party shall be entitled to recover reasonable attorney's fees and costs, including any costs and fees incurred in any appeal.
19. **DEFINITIONS:** Whenever used in FPC's Sales and Service Agreement, the following terms shall have the following meanings:
- (a) "Patient" refers to a person(s) who has elected to purchase services of Client regardless of who shall be the actual recipient of such services.
 - (b) "Accounts Receivable" shall refer to the total of all purchased accounts receivable with an unpaid patient balance owing, which excludes accounts with credit balances.
 - (c) "In-office accounts" refer to only those accounts receivable not purchased, or those accounts reassigned, by FPC. FPC will not provide certain services to in-office accounts, including but not limited to funding, billing and collection services.
 - (d) "Net Amount Owed" refers to the amount owed to FPC or Client, and shall be computed as the total of payment received by FPC, less all fees assessed by FPC, less all funding provided by FPC, over the tenura of the Client's business relationship with FPC.
 - (e) "Net Purchased by FPC" refers to the net increase/decrease of Accounts Receivable due to Accounts Receivable purchased by FPC, and shall be computed as Gross Production and In-Office Accounts transferred to FPC, less Adjustments, less Payments Retained by Client.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year above written.

FIRST PACIFIC CORPORATION

By: 

Title: Executive Vice President of Sales & Service

CLIENT: Mary A. Tujetsch, D.D.S.

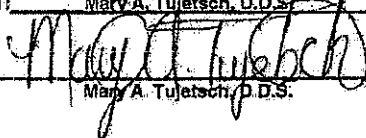
By: 
 Mary A. Tujetsch, D.D.S.

EXHIBIT 4

CERTIFIED MAIL

October 6, 2005

First Dental
Mary Tujetsch, D.D.S.
7714 W. 159th St.
Orland Park, IL 60462-5036

Dear Dr. Tujetsch:

I have discussed your account several times with Katie Lucitt and our home office; however, after a careful review of our business relationship over the past year, we have determined that it would be in our mutual interest to close out your account at this time. I am writing to provide you with 30 days notice of termination.

FPC currently owes you \$3,451.90. Please let us know the most convenient point in the next 30 days that we can return the existing accounts along with any amount that we owe to you. At that point, we will stop all FPC processing of any transactions on your accounts, and all fees will cease. If FPC receives any payments after that point, we will forward those to your office for posting and deposit.

As stated in my earlier correspondence, FPC agrees to waive all previously suppressed fees. To assist in your transition to your new computer system, FPC is prepared to leave our hardware and software in your office for up to two weeks after the point when we cease all processing and fees. We will arrange to recover our equipment at the end of that period or sooner if that suits your needs.

We appreciate the opportunity to be of service in meeting your practice goals, and want to wish you ongoing success in your practice. If you have any questions, please give me a call at 503-551-1230.

Best regards,

Kevin Brady
Vice President, FPC

cc: Katie Lucitt, Account Executive
David Wenger, Marketing Executive

EXHIBIT 5



July 6, 2006

RE: Dr. Mary Tujetsch 110140, Dr. Todd Pusateri 111089

To Whom It May Concern:

On or about July 1, 2004, Dr. Mary Tujetsch purchased the dental practice of Dr. Todd Pusateri, located at 7714 W 159th St, Orland Park, IL 60462-5036. Dr. Pusateri was already a client of First Pacific Corporation (FPC) at the time of the sale, and Dr. Tujetsch became an FPC client at the time of the sale.

As part of that sale, FPC generated a copy of the database created during Dr. Pusateri's tenure with FPC, and set it up for Dr. Tujetsch's use. This database included account information (names, addresses, phone numbers, etc...), but did not include any financial data or account history for the patient accounts. Lacking financial data, Dr. Tujetsch's database also lacked the ability to report Active Patients prior to her posting of new financial transactions.

In the fall of 2005, at Dr. Tujetsch's request, FPC generated a report of Active Patients from Dr. Tujetsch's database. However, the report parameters requested by Dr. Tujetsch pre-dated her tenure as an FPC client. Upon presenting the report to her and learning of her intended use, our Account Executive cautioned her that the report would be inaccurate for her stated purpose of comparing the number of Active Patients on the report to the number of Active Patients stated in her sales agreement with Dr. Pusateri.

As part of the sale, Dr. Pusateri agreed to allow Dr. Tujetsch access to his database, which encompassed financial transactions on patient accounts, for 90 days after the sale of the practice. Although she had access to Dr. Pusateri's database for three months following her purchase of the practice, we have no records that indicate she requested or generated a report of Active Patients from Dr. Pusateri's database. Once we deleted Dr. Pusateri's database from the computer in the office, Dr. Tujetsch had no access to Active Patient information prior to July 1, 2004.

At this time, FPC has deleted both Dr. Pusateri's database and Dr. Tujetsch's database from our system, and we have no record of Active Patients for either database.

If you have any questions, please call me at 503-588-1411, extension 2208.

Best regards,

Bret Ketsdever
Client Accounts Manager

EXHIBIT 6

Exhibit Omitted to Reduce Bulk

EXHIBIT 7

Date: 12/30/2003
 Time: 10:20 PM

PRACTICE OVERVIEW

O.P. 111089 - FIRST DENTAL

Production

AA - PUSATERI DDS, TODD G.	\$	6,289.00	\$	28,590.82
CC - COLLECTIONS	\$	0.00	\$	419.12
D2 - BABBITT, MONICA S.	\$	0.00	\$	38.00
D3 - PURDUE, RICHARD D.	\$	12,715.00	\$	142,847.10
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$	70.00
H2 - GALBAN, JACKIE	\$	8,513.00	\$	78,848.28
PR - PRODUCTS	\$	70.00	\$	1,112.00
XX - X, X	\$	0.00	\$	1,453.29
ZZ - DOUBLE BOOK	\$	0.00	\$	2,835.00
Total Production	\$	25,607.00	\$	254,022.58

Days Worked

AA - PUSATERI DDS, TODD G.		2		38
CC - COLLECTIONS		0		0
D2 - BABBITT, MONICA S.		0		26
D3 - PURDUE, RICHARD D.		10		142
D4 - BRITESMILE, BRITESMILE		0		0
H2 - GALBAN, JACKIE		10		121
PR - PRODUCTS		0		0
XX - X, X		0		0
ZZ - DOUBLE BOOK		0		87

Production Per Hour

AA - PUSATERI DDS, TODD G.	\$	447.79	\$	127.88
CC - COLLECTIONS	\$	0.00	\$	0.00
D2 - BABBITT, MONICA S.	\$	0.00	\$	0.21
D3 - PURDUE, RICHARD D.	\$	192.65	\$	161.64
D4 - BRITESMILE, BRITESMILE	\$	0.00	\$	0.00
H2 - GALBAN, JACKIE	\$	98.69	\$	101.97
PR - PRODUCTS	\$	0.00	\$	0.00
XX - X, X	\$	0.00	\$	0.00
ZZ - DOUBLE BOOK	\$	0.00	\$	3.26
Total Production Per Hour	\$	739.13	\$	306.95

A/R Collection

Patient Payments FPC	\$	447.20	\$	5,738.33
Insurance Payments FPC	\$	7,090.47	\$	83,789.85
Office Payments	\$	14,808.10	\$	135,380.98

Reassignment

	\$	0.00	\$	1,840.39
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Number of New Patients

		40		398
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Number of Patients Referred by Referral Sources

Patients		0		0
Doctors		0		0
Other		0		0

Number of Active Patients

		1,223		
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Date: 12/30/2003
Time: 10:20 PM

PRACTICE OVERVIEW

111059 - FIRST DENTAL

Page: 2

Recall Status of All Patients

Number with Current Recall	358	
Number with Overdue Recall	749	
Number Without Recall	948	

Number of Patients with Diagnosed Treatment (other than Prophyl Codes)

Scheduled	384	
Unscheduled	427	
Total	791	

Date: 4/29/2004

Time: 10:17 PM

PRACTICE OVERVIEW

Page: 1

O.P.

111089 - FIRST DENTAL

	Month-to-Date	Year-to-Date
Production		
A - PUSATERI DDS, TODD C.	\$ 278.00	\$ 13,278.04
CC - COLLECTIONS	\$ 40.00	\$ 179.65
D2 - BABBITT, MONICA B.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 11,082.20	\$ 43,021.30
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 35.00
H2 - GALBAN, JACKIE	\$ 6,478.00	\$ 28,865.80
PR - PRODUCTS	\$ 0.00	\$ 94.00
XX - X, X	\$ 181.00	\$ 784.60
ZZ - DOUBLE BOOK	\$ 870.00	\$ 1,610.00
Total Production	\$ 18,877.60	\$ 88,088.39
Days Worked		
AA - PUSATERI DDS, TODD C.	5	17
CC - COLLECTIONS	0	0
D2 - BABBITT, MONICA B.	0	0
D3 - PURDUE, RICHARD D.	11	43
D4 - BRITESMILE, BRITESMILE	0	0
H2 - GALBAN, JACKIE	11	43
PR - PRODUCTS	0	0
XX - X, X	0	0
ZZ - DOUBLE BOOK	0	0
Production Per Hour		
AA - PUSATERI DDS, TODD C.	\$ 7.89	\$ 114.47
C - COLLECTIONS	\$ 0.00	\$ 0.00
D2 - BABBITT, MONICA B.	\$ 0.00	\$ 0.00
D3 - PURDUE, RICHARD D.	\$ 181.40	\$ 152.02
D4 - BRITESMILE, BRITESMILE	\$ 0.00	\$ 0.00
H2 - GALBAN, JACKIE	\$ 88.74	\$ 94.83
PR - PRODUCTS	\$ 0.00	\$ 0.00
XX - X, X	\$ 0.00	\$ 0.00
ZZ - DOUBLE BOOK	\$ 0.00	\$ 0.00
Total Production Per Hour	\$ 248.03	\$ 361.42
A/R Collection		
Patient Payments FPO	\$ 657.60	\$ 3,039.41
Insurance Payments FPO	\$ 6,791.00	\$ 37,689.43
Office Payments	\$ 11,185.38	\$ 44,544.33
Reassignment	\$ 85.00	\$ 85.00
Number of New Patients	23	89
Number of Patients Referred by Referral Sources		
Patients	0	0
Doctors	0	0
Other	0	0
Number of Active Patients	1,227	

Date: 4/29/2004
Time: 10:17 PM

PRACTICE OVERVIEW
111059 - FIRST DENTAL

Page: 2

Recall Status of All Patients

Number with Current Recall	392
Number with Overdue Recall	798
Number Without Recall	872

Number of Patients with Diagnosed Treatment (other than Proprietary Codes)

Scheduled	397
Unscheduled	194
Total	591