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No. GN 403072

ORTHODONTIC CENTERS OF TEXAS, INC. Plaintiff	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
MICHAEL WETZEL, D.D.S. and WETZEL ORTHODONTICS, P.C. Defendants	§	200 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT,

COMES NOW Plaintiff, Orthodontic Centers of Texas, Inc. ("OCS"), and files its Original Petition complaining of Michael Wetzel, D.D.S. and Wetzel Orthodontics, P.C., and respectfully shows the Court the following:

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

The Parties

2. Plaintiff, OCS is a wholly-owned subsidiary of Orthodontic Centers of America, Inc. which is incorporated in the State of Delaware and maintains its principal place of business in the State of Louisiana.

3. Defendant, Michael Wetzel, D.D.S. ("Wetzel") is an individual residing in Austin, Texas. Wetzel may be served at his residence at 4212 Wyldwood Road, Austin, Texas 78739 or at his place of business at 102 Westlake Drive, #106, Austin, Texas 78746, or wherever he may be found. Service is hereby requested.

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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

EXHIBIT 1

4. Defendant, Wetzel Orthodontics, P.C. ("Wetzel P.C.") is a Texas professional dental corporation that maintains its principal place of business in Texas. Wetzel P.C. may be served by serving its sole shareholder, Wetzel at his residence at 4212 Wyldwood Road, Austin, Texas 78739 or at his place of business at 102 Westlake Drive, #106, Austin, Texas 78746, or wherever he may be found. Service is hereby requested.

Venue

5. Venue is proper in this Court because Defendants reside in Travis County and a substantial part of the events and omissions giving rise to the claim occurred in Travis County.

Factual Background

6. OCS provides non-clinical business services to affiliated orthodontic practices by providing them with office space, equipment, staff and administrative services, including, but not limited to, bookkeeping, payroll and other administrative non-clinical services and by helping them develop and expand their offices. OCS also provides other management services to affiliated practices, including, but not limited to, the following: (a) advertising and marketing; (b) purchasing; (c) human resources; (d) information technology; (e) financial accounting; (f) patient accounting; and (g) non-clinical training.

7. On or about July 13, 1999, Wetzel P.C. entered into a Business Service Agreement with OCS. Under the Business Service Agreement, OCS agreed to provide the business and consulting services outlined above and Wetzel P.C. agreed to pay monthly service fees to OCS according to a predetermined formula. The parties agreed that the Business Service Agreement would remain in effect for a term of twenty-five years.

8. Under the Business Service Agreement, Wetzel and Wetzel P.C. were required to deposit all collections in an account at a specified bank. OCS electronically "swept" this account and transferred the funds into a corporate account from which all expenses of the practice were paid, including staff salaries, rent, equipment, supplies and monthly advances.

9. On or about June 30, 2003, Wetzel unilaterally caused Wetzel P.C. without just cause to cease depositing collections in the specified bank account and to cease performing all other obligations imposed on Wetzel and Wetzel P.C. under the Business Service Agreement. Since that time, Wetzel and Wetzel P.C. have continued to occupy the orthodontic offices subleased by OCS and to use equipment and facilities belonging to OCS without consent.

10. Further, under the Business Service Agreement, OCS provided Wetzel and Wetzel P.C. with access to proprietary Internet-based software programs and systems.

11. Penney Lane, a centralized purchasing program, enables users to take advantage of OCS's contracted per-item pricing on supplies from dental floss to fax machines. The purchasing system contains nearly 20,000 products from over 200 suppliers, with 24-hour access. Purchases on the Penney Lane system were billed to and paid by OCS.

12. Abbey Road, an accounting software package, provides users with immediate access to the practice accounts from the inception as an OCS-affiliated practice.

13. Additionally, Wetzel and Wetzel P.C. had access to a proprietary system known as "WALRUS" and were trained on the uses and functionality of the WALRUS system. Walrus has numerous features useful to orthodontic practices, including, without limitation, patient management features, scheduling features, and financial accounting features.

14. The Business Service Agreement required Wetzel and Wetzel P.C. to maintain the confidentiality of the commercially valuable and proprietary information and materials provided by OCS. This information included the Penny Lane, Abbey Road, and Walrus Systems described above as well as financial and operational data regarding practice management, non-clinical forms, and advertising and marketing strategies.

15. The Business Service Agreement also prohibited Wetzel and Wetzel P.C. from engaging in certain competitive activities with OCS during the term of the Business Service Agreement and following the termination of the agreement including, but not limited to, restrictions relating to the solicitation of OCS professional and office staff, the management and restrictions relating to the ownership and operation of an orthodontic practice. Wetzel and Wetzel P.C. have violated their covenants not to compete by soliciting and hiring OCS staff and by managing, owning, and/or operating an orthodontic practice which has improperly ceased performing under the agreement.

Specific Performance

16. The terms and conditions of the Business Service Agreement are clear, unambiguous, and reflect the intent of the parties. Further, the consideration paid to Wetzel and Wetzel P.C. was adequate so that the agreement itself was fair, just, and reasonable. As a result of the business services provided by OCS to Wetzel and Wetzel P.C., their productivity and revenues have increased. They also have received the benefit of the substantial consideration paid by OCS and from the other resources provided by OCS. Despite receiving these many benefits, Wetzel and Wetzel P.C. have ceased performing under the Business Service Agreement

without just cause or excuse. Wetzel and Wetzel P.C. have undertaken this course of conduct knowingly and in bad faith for their own pecuniary gain and benefit without regard to their contractual obligations to OCS.

17. OCS performed all conditions, covenants, and promises required on their part to be performed under the terms and conditions of the Business Service Agreement and stand ready, willing, and able to continue to perform in accordance with said terms and conditions. By contrast, Wetzel and Wetzel P.C. have failed and refused to carry out their obligations under the terms of the agreement without legal or factual justification.

18. Unless Wetzel and Wetzel P.C. are required to perform under the Business Service Agreement, the full extent of the damage and injury to OCS will be difficult to measure. As a result, OCS may not be made whole by the legal remedy of damages. Accordingly, OCS seeks an order compelling Wetzel and Wetzel P.C. to perform their obligations under the Business Service Agreement.

Breach of Contract

19. Wetzel and Wetzel P.C. have breached their contractual obligations to OCS, among other things, by: (a) terminating the Business Service Agreement without just cause or excuse; (b) refusing to deposit payments made by patients into the proper account as required under the Business Service Agreement and/or to otherwise remit payments due to OCS; (c) failing to pay fees and expenses due to OCS; (d) engaging in acts of competition with OCS in violation of their covenants not to compete; (e) retaining, using, and/or disclosing confidential and proprietary information belonging to OCS; (f) retaining and using equipment and other

tangible property belonging to OCS; and (g) failing to provide the notices or opportunity to cure required prior to termination.

20. Additionally, Wetzel and Wetzel P.C. failed to perform in good faith as was required under the Business Service Agreement in several respects including, but not limited to, failing to timely provide OCS with notice of the occurrence of any event likely to have a material adverse effect on the operation or financial condition of Wetzel P.C.; failing to utilize the non-clinical practice management services offered by OCS; and ceasing to perform under the agreements for their own pecuniary benefit and gain.

21. The improper acts and omissions of Wetzel and Wetzel P.C., as described above, have prevented OCS from fairly realizing the benefits of the Business Service Agreement, thus violating the implied covenant of good faith and fair dealing.

22. As a direct and proximate result, OCS has incurred substantial damages and injury and will continue to sustain damages including, without limitation, lost revenue, the value of the consideration paid to Wetzel and Wetzel P.C., and the value of the services and proprietary information provided to Wetzel and Wetzel P.C., in an amount to be proven at trial.

Intentional Interference with Contract

23. At all times material hereto, Wetzel knew and understood that OCS had a valid contractual relationship with Wetzel P.C. as evidenced by the Business Service Agreement. Wetzel further knew and understood that OCS had performed all obligations required of them under that agreement and that Wetzel P.C. had no just cause or excuse for ceasing to perform under the Business Service Agreement.

24. Nevertheless, in his capacity as the sole and controlling shareholder of Wetzel P.C., Wetzel caused Wetzel P.C. to cease performing under the Business Service Agreement and to breach that agreement as described above. Wetzel undertook this course of conduct intentionally for his own pecuniary gain without regard for the resulting damage and injury to OCS.

25. As a direct and proximate result, OCS has incurred substantial damages and injury and will continue to sustain damages including, without limitation, lost revenue, the value of the consideration paid to Wetzel and Wetzel P.C., and the value of the services and proprietary information provided to Wetzel and Wetzel P.C., in an amount to be proven at trial.

Conversion

26. OCS obtained title to and currently owns certain assets utilized by Wetzel and Wetzel P.C. Pursuant to the Business Service Agreement, OCS leased those assets, consisting of fixtures, furniture, improvements, and equipment. In addition, OCS purchased, developed, and/or acquired other tangible and intangible assets during the course of the parties' business relationship and provided those assets to Wetzel and Wetzel P.C. for their use during the term of the Business Service Agreement. Since ceasing to perform under the Business Service Agreement, Wetzel and Wetzel P.C. wrongfully retained, and continue to wrongfully retain, possession of OCS' property without consent.

27. As a direct and proximate result, OCS has incurred substantial damages and injury and will continue to sustain damages including, without limitation, lost revenue, the value of the

consideration paid to Wetzel and Wetzel P.C., and the value of the services and proprietary information provided to Wetzel and Wetzel P.C., in an amount to be proven at trial.

Promissory Estoppel

28. The Business Service Agreement required OCS to make a large initial outlay of cash to Wetzel and Wetzel P.C. and all parties understood that OCS would derive meaningful benefits and return from this initial outlay of cash and stock only if the Business Service Agreement remained in effect over a long-term period and Wetzel and Wetzel P.C. appropriately used available OCS services.

29. To date, OCS has fully, timely, and properly provided all services and other deliverables under the agreements. As a result, Wetzel and Wetzel P.C. have derived substantial benefits from the services and other benefits provided by OCS.

30. When they executed the Business Service Agreement, Wetzel and Wetzel P.C. represented in writing and orally to OCS that they would fully perform their obligations for the duration of the agreement and that they were committed to a long-term relationship. Wetzel and Wetzel P.C. knew or should have known that OCS would rely on these representation and that OCS, in fact, did rely on their representations in deciding to enter into the Business Service Agreement.

31. Wetzel and Wetzel P.C. have failed to perform as represented by ceasing to perform their obligations under the Business Service Agreement and by otherwise breaching the terms of the agreement to the harm and detriment of OCS.

32. As a direct and proximate result, OCS has incurred substantial damages and injury and will continue to sustain damages including, without limitation, lost revenue, the value of the consideration paid to Wetzel and Wetzel P.C., and the value of the services and proprietary information provided to Wetzel and Wetzel P.C., in an amount to be proven at trial.

Unjust Enrichment and Quantum Meruit

33. As a result of the services provided and consideration paid by OCS, Wetzel and Wetzel P.C. greatly benefitted from their affiliation with OCS. These benefits included the tools to help increase the productivity of Wetzel and Wetzel P.C.

34. Wetzel and Wetzel P.C. knowingly accepted all of the benefits provided by OCS, all of which were provided to them pursuant to the agreement. In exchange for such benefits, OCS reasonably expected to have a reasonable long-term contractual relationship with Wetzel and Wetzel P.C. in order to recoup its investment.

35. OCS is entitled to full and fair compensation from Wetzel and Wetzel P.C. for the services and other value provided to them under the Business Service Agreement, but have been paid only a portion of the amount due.

36. By receiving the benefit of the services provided and consideration paid by OCS, and yet failing to compensate OCS fully and fairly, Wetzel and Wetzel P.C. have been unjustly enriched. In order to rectify the unjust enrichment, Wetzel and Wetzel P.C. must be ordered to compensate OCS in full for the damages and injury incurred, including without limitation the value of the consideration paid and services provided by OCS.

Attorneys' Fees

37. As a result of Defendants' actions, Plaintiff has retained the law firm of Cash Allen, L.L.P. Because Defendants have not tendered the just amount owed, Plaintiff seeks recovery of reasonable attorneys' fees as allowed by Texas Civil Practice and Remedies Code § 38.001, et seq., and the Business Service Agreement.

Conditions Precedent

38. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

Demand for Jury

39. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

Request for Disclosure

40. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

WHEREFORE PREMISES CONSIDERED, OCS hereby prays that the Court enter judgment against Wetzel and Wetzel P.C., awarding specific performance, compensatory damages, consequential damages, attorneys' fees, costs, and/or such other and further relief as the Court deems just and proper.

Respectfully submitted,

CASH & ALLEN, L.L.P.

By: Wade Howard by permission RJM

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Robert J. Montoya
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Houston, Texas 77002
Telephone: (713) 224-6767
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ATTORNEYS FOR PLAINTIFF,
ORTHODONTIC CENTERS OF
TEXAS, INC.

NO. GN 403542

ORTHODONTIC CENTERS OF TEXAS, INC.	*	IN THE DISTRICT COURT OF
V.	*	
MICHAEL WETZEL, D.D.S. and WETZEL ORTHODONTICS, P.C.	*	TRAVIS COUNTY, TEXAS
V.	*	
ORTHODONTIC CENTERS OF AMERICA, INC., BARTHOLOMEW F. PALMISANO, SR. AND RICHARD LESTER A/K/A DICK LESTER	*	200TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER, COUNTERCLAIM AND THIRD-PARTY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Michael Wetzel, D.D.S. and Wetzel Orthodontics, P.C., Defendants herein, who make and file this Original Answer to Plaintiff's Original Petition filed by Orthodontic Centers of Texas, Inc., Plaintiff, and would respectfully show the following:

I.

Defendants deny each and every, all and singular, the allegations contained in said Original Petition, and demand strict proof thereof by a preponderance of the evidence.

II.

Defendant states that all just and lawful offsets and credits have not been allowed.

III.

Defendants state that the consideration underlying the agreement and transactions forming the basis of the Plaintiff's action has failed in whole or in part.

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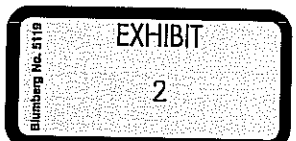

IV.

Defendants would show that the claims alleged by Plaintiff are unenforceable due to fraud and/or misrepresentation on the part of Plaintiff and that Plaintiff is estopped from any recovery herein.

V.

Defendants would show that Plaintiff has waived any alleged right of recovery herein.

VI.

Defendants would show that Plaintiff committed material breaches of the agreements forming the basis of Plaintiff's action, thereby excusing further performance by Defendants thereunder.

VII.

Defendants deny Plaintiff's claim for attorney's fees and deny that Plaintiff has complied with the procedures set forth in V.T.C.A., Civil Practice & Remedies Code §38.001, et seq.

VIII.

Defendants would show that the agreements forming the basis of Plaintiff's action are illegal and/or unenforceable in that the same violate the Dental Practice Act, V.T.C.A. Occupations Code § 251.001, et seq.

WHEREFORE, Defendants pray that Plaintiff take nothing by its suit, that Defendants recover their costs, and for such other and further relief to which Defendants may be justly entitled to receive.

COUNTERCLAIM AND THIRD-PARTY ACTION

NOW COMES Michael Wetzel, D.D.S. and Wetzel Orthodontics, P.C., acting herein as Counter-Plaintiffs and Third-Party Plaintiffs, complaining of Orthodontic Centers of Texas, Inc., Counter-Defendant, and Orthodontic Centers of America, Inc., Bartholomew F. Palmisano, Sr., and Richard Lester a/k/a Dick Lester, Third-Party Defendants, and for causes of action would respectfully show the following:

I.

Discovery herein is intended to be conducted under Level 3, Rule 190.4, T.R.C.P.

II.

Third-Party Defendant Orthodontic Centers of America, Inc. is a corporation which may be served with process by serving its officer/director Bartholomew F. Palmisano, Sr., at 3850 North Causeway Boulevard, Metairie, Louisiana 70002.

Third-Party Defendant Bartholemew F. Palmisano, Sr. may be served with process at 3850 North Causeway Boulevard, Metairie, Louisiana 70002.

Third-Party Defendant Richard Lester, a/k/a Dick Lester, may be served with process at 3850 North Causeway Boulevard, Metairie, Louisiana 70002.

III.

Counter-Petitioners/Third-Party Plaintiffs (hereinafter collectively referred to as "Wetzel") would show that this Court has subject matter jurisdiction of this Counterclaim and Third-Party Action in that Wetzel's claims for damages are within the jurisdictional limits of this Court. Wetzel would show further that this Court has personal jurisdiction over Third-Party Defendants based upon numerous factors, including, but not limited to the following:

A. Third-Party Defendants purposefully committed acts, including making false, misleading and deceptive and/or fraudulent representations to Wetzel, in Texas, from which the causes of action alleged herein arise, and the assumption of jurisdiction by this Court over Third-Party Defendants does not offend traditional notions of fair play and substantial justice.

B. Third-Party Defendants' contacts with the State of Texas are continuing and systematic.

C. Third-Party Defendants sought to sell services to Wetzel in Texas.

D. Actions of Third-Party Defendants' employees, agents and representatives occurred in Texas in relation to Wetzel's claims, which actions were authorized and/or ratified by Third-Party Defendants.

E. Counter-Defendant Orthodontic Centers of Texas, Inc. is the wholly owned subsidiary and alter ego of Third-Party Defendant Orthodontic Centers of America, Inc. in that Third-Party Defendants exercise such domination and control over the subsidiary as to render Counter-Defendant and Third-Party Defendants a single entity for jurisdictional and other purposes.

F. Counter-Defendant and Third-Party Defendants' actions with respect to Wetzel's claims and otherwise constitute a single business enterprise in which they integrate their resources to achieve a common business purpose.

IV.

Wetzel would show that in any and all actions of Counter-Defendant's and Third-Party Defendants' employees, agents and/or representatives herein were conducted within the course and scope of employment or agency and/or were ratified or approved by Counter-Defendant and/or Third-Party Defendants.

V.

For many years, Wetzel maintained a successful orthodontic practice at two locations in Austin, Texas. In 1998, Wetzel was interested in retiring in the near future and selling the assets of is orthodontic practice to another orthodontist. Counter-Defendant and Third-Party Defendants represented that they were experts in facilitating such a sale and that they would locate an acceptable buyer for the assets of Wetzel's practice when he was ready to retire in approximately four years. Based upon numerous representations made by Counter-Defendant and Third-Party Defendants, Wetzel was induced to enter into the agreements referenced in Plaintiff's Original Petition ("the OCA agreements"), which purported to affect a transfer of the assets of Wetzel's orthodontic practice to Counter-Defendant.

Under the arrangement conceived by Counter-Defendant and Third-Party Defendants and described in the OCA agreements, virtually all financial aspects of Wetzel's existing orthodontic practice came under the control of Counter-Defendant and Third-Party Defendants. All of Wetzel's office staff became employees of Counter-Defendant, Wetzel was to receive a salary and various sums paid over time, and all of the revenue from Wetzel's practice was required to be deposited into accounts controlled by Counter-Defendant and Third-Party Defendants. The OCA agreements and representations obligated Counter-Defendant to provide various high-quality management and other services to assist, expand and improve the efficiency of Wetzel's practice until he was ready to retire, including bookkeeping and accounting services, the installation of computer hardware and software, provision of staff training, consulting services, assistance with productivity, office leasing and location, office layout and staff salary matters. Wetzel relied upon all of these representations and others in reaching his decision to enter into the OCA agreements, with the expectation that in four

years Counter-Defendant and Third-Party Defendants would secure an orthodontist to purchase and assume Wetzel's position under the OCA agreements.

All of the foregoing representations proved to be false, misleading, fraudulent and deceptive. After implementing the various practices, procedures and computer programs and equipment required by the OCA agreements, Wetzel's two orthodontic offices experienced severe problems with billing, deletion of data, data retrieval and data utility. Counter-Defendant and Third-Party Defendants, under the guise of practice management, required Wetzel to terminate an existing and profitable dental maintenance organization provider contract. Counter-Defendant and Third-Party Defendants failed to locate and lease a new location for one of Wetzel's offices when the existing lease expired, despite specific representations and contractual obligations to do so, which forced the closure of that highly profitable orthodontic office. The foregoing problems all were caused by Counter-Defendant and/or Third-Party Defendants and resulted in a substantial loss of Wetzel's patient base. In the course of controlling the revenue from Wetzel's practice, Counter-Defendant and Third-Party Defendants made numerous unauthorized and inappropriate charges against Wetzel's profit center and engaged in questionable or fraudulent accounting practices which were not authorized by the OCA agreements. Counter-Defendant and Third-Party Defendants alleged that there were shortfalls and deficiencies in Wetzel's financial obligations under the OCA agreements and, in May 2002, Counter-Defendant and Third-Party Defendants terminated a substantial portion of Wetzel's remuneration but continued to exercise complete control over all of the revenue generated by Wetzel's remaining orthodontic office. Further, Counter-Defendant and Third-Party Defendants wholly failed to locate an orthodontist to assume Wetzel's position under the OCA agreements within four years as specifically promised and represented.

All of the foregoing resulted in an enormous financial loss to Wetzel and, despite repeated representations by Counter-Defendant and Third-Party Defendants that the various problems would be remedied, the situation only worsened. Finally, in July 2003, Wetzel notified Counter-Defendant and Third-Party Defendants that due to the numerous material breaches of the OCA agreements by Counter-Defendant and Third-Party Defendants and the extensive fraudulent and deceptive practices committed, Wetzel was terminating the OCA agreements effective July 1, 2003. Immediately thereafter Counter-Defendant and Third-Party Defendants discontinued all payments under the OCA agreements and discontinued paying any bills or expenses associated with Wetzel's remaining orthodontic office. Further, Counter-Defendant and Third-Party Defendants retained all of the prepaid sums received from Wetzel's patients for orthodontic services not yet performed, resulting in substantial further losses suffered by Wetzel. In October 2003, Wetzel closed what remained of his greatly diminished orthodontic practice and arranged for the transfer of those patients to other orthodontists at additional cost to Wetzel.

VI.

Wetzel would show that the conduct of Counter-Defendant and Third-Party Defendants constitutes a material breach of contract, fraud, violations of the Texas Deceptive Trade Practices Act, breach of fiduciary duty, and negligent misrepresentation on the part of Counter-Defendant and Third-Party Defendants, which conduct was and is a producing and/or proximate cause of substantial damages suffered by Wetzel, for which Wetzel hereby sues. All conditions precedent to Wetzel's right of recovery have been performed or have occurred.

VII.

Wetzel incorporates by reference all of the foregoing allegations as if set forth verbatim at this point. In the alternative and in addition to the foregoing, Wetzel would show that Counter-Defendant and Third-Party Defendants engaged in conduct constituting a civil conspiracy, utilizing fraudulent and deceptive practices to convert the majority of the income stream from Wetzel's thriving orthodontic practice to their own use and benefit, to the great financial detriment of Wetzel. Counter-Defendant and Third-Party Defendants acted singularly and in concert to achieve the unlawful and unauthorized conversion of Wetzel's income, causing substantial damages to Wetzel for which Counter-Defendant and Third-Party Defendants are jointly and severally liable.

VIII.

Counter-Defendant's and Third-Party Defendants' conduct was willful, wanton and the type for which the law allows the imposition of exemplary damages. Wetzel hereby seeks a substantial award of exemplary damages against Counter-Defendant and Third-Party Defendants in an amount not less than $3,500,000.00.

IX.

In addition to the foregoing, Wetzel requests that the Court order Counter-Defendant and Third-Party Defendants to account for all revenue received from Wetzel's orthodontic practice from and after the inception of the OCA agreements. Wetzel also requests that the Court order Counter-Defendant and Third-Party Defendants to account for all expenses and other charges applied against said revenue and to provide all documentation supporting or reflecting such expenses and charges.

X.

Pursuant to V.T.C.A., Civil Practice & Remedies Code §37.001, et seq., Wetzel hereby requests judgment from the Court declaring that the OCA agreements are violative of the Dental Practice Act, that Wetzel rightfully, justifiably and validly terminated the OCA agreements due to the breaches and fraudulent and deceptive conduct on the part of Counter-Defendant and Third-Party Defendants, and declaring that the purported obligations of Wetzel under the OCA agreements are null and void and of no force or effect.

XI.

Counter-Defendant's and Third-Party Defendants' conduct has required Wetzel to retain the undersigned attorney to pursue this counterclaim and third-party action. Wetzel hereby seeks an award against Counter-Defendant and Third-Party Defendants for all reasonable and necessary attorney's fees incurred through the trial of this cause and in the event of any and all appeals.

WHEREFORE, Wetzel prays that upon hearing hereof the Court order Counter-Defendant and Third-Party Defendants to prepare and produce the accounting requested hereinabove, and that upon final trial judgment be rendered against Counter-Defendant and Third-Party Defendants, jointly and severally, for all actual and exemplary damages, with pre-judgment and post-judgment interest thereon at the highest lawful rate, attorney's fees , court costs, for declaratory relief in conformity with the foregoing, and for such other and further relief, both special and general, legal or equitable, to which Wetzel be justly entitled to receive.

Respectfully submitted,

LAW OFFICE OF GARY A. CALABRESE
808 Nueces Street
Austin, Texas 78701-2216
Telephone: (512) 472-9394
Facsimile: (512) 472-9550

By: _____
Gary A. Calabrese
State Bar Number 03611100

ATTORNEY FOR DEFENDANTS/
COUNTER-PLAINTIFFS/THIRD-PARTY
PLAINTIFFS

VERIFICATION

STATE OF TEXAS *

*

COUNTY OF TRAVIS *

BEFORE ME, the undersigned authority, on this day personally appeared Michael Wetzel, D.D.S., who being by me duly sworn on his oath deposed and stated that he is an individual defendant and the President and duly authorized agent of Wetzel Orthodontics, P.C., a professional corporation, Defendants in the above-entitled and numbered cause, that he has read the foregoing Defendants' Original Answer, and that the statements contained in paragraph III thereof are within his personal knowledge and true and correct.

Michael Wetzel, D.D.S., Individually and as Duly Authorized Agent of Wetzel Orthodontics, P.C.

SUBSCRIBED AND SWORN TO BEFORE ME by Michael Wetzel, D.D.S. on this 3 day of December, 2004.

CORINA L. LUNA
Notary Public
State of Texas
My Comm. Exp. 01-12-2006

Corina Luna
Notary Public in and for the State of Texas

K:_GAC\Wetzel\Pleadings\.wpd

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Defendants' Original Answer, Counterclaim and Third-Party Action has been served upon counsel for Plaintiff herein on this 3 day of December, 2004, in accordance with Rules 21 and 21a, T.R.C.P.

Gary A. Calabrese

COPY

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Cash Allen stamped
Thanks

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No. GN 403542

ORTHODONTIC CENTERS OF TEXAS, INC.	§	IN THE DISTRICT COURT OF
v.	§	
MICHAEL WETZEL, D.D.S. and WETZEL ORTHODONTICS, P.C.	§	TRAVIS COUNTY, TEXAS
v.	§	
ORTHODONTIC CENTERS OF AMERICA, INC., BARTHOLOMEW F. PALMISANO, SR. AND RICHARD LESTER A/K/A DICK LESTER	§	200TH JUDICIAL DISTRICT

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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

THIRD-PARTY DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF THE COURT,

COME NOW Third-Party Defendants, Orthodontic Centers of America, Inc. ("OCA"), Bartholomew F. Palmisano, Sr. ("Palmisano"), and Richard Lester ("Lester"), and file this their Original Answer, and respectfully show the Court the following:

ANSWER

1.

Pursuant to and as provided by Rule 92 of the *Texas Rules of Civil Procedure*, Third-Party Defendants OCA, Palmisano, and Lester, deny each and every, all and singular the material allegations contained in Third-Party Plaintiffs' Petition and, upon trial of this cause, will demand strict proof thereof.

2.

Third-Party Defendants OCA, Palmisano and Lester reserve the right to amend their Answer as appropriate and in accordance with the *Texas Rules of Civil Procedure*.

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendants Orthodontic Centers of America, Inc., Bartholomew F. Palmisano, Sr., and Richard Lester pray that Third-Party Plaintiffs take nothing by this suit, that Third-Party Defendants recover their costs herein, and that they receive such other and further relief, general or special, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

CASH ⊛ ALLEN, L.L.P.

By: _____

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Robert J. Montoya
State Bar No. 00797107
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Houston, Texas 77002
Telephone: (713) 224-6767
Telecopier: (713) 227-6222
ATTORNEYS FOR PLAINTIFF, ORTHODONTIC CENTERS OF TEXAS, INC. AND THIRD-PARTY DEFENDANTS ORTHODONTIC CENTERS OF AMERICA, INC., BARTHOLOMEW F. PALMISANO, SR., AND RICHARD LESTER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing THIRD-PARTY DEFENDANTS' ORIGINAL ANSWER was served on all counsel of record in the manner indicated below on this the 17th day of January, 2005:

Via CM/RRR and Facsimile

Gary A. Calabrese
Law Office of Gary A. Calabrese
808 Nueces Street
Austin, Texas 78701-2216

Robert J. Montoya