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EASTERN DISTRICT OF LA
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

BARTHOLOMEW F. PALMISANO, JR.,

Defendant.

C.A. No. **08-905**
SECT. B MAG 1

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Securities and Exchange Commission ("Commission") files this Complaint for Injunctive and Other Relief and alleges as follows:

INTRODUCTION

1. This case involves fraudulent accounting practices by Defendant Bartholomew F. Palmisano, Jr. ("Palmisano") while he was Chief Financial Officer of OCA, Inc. ("OCA"), then a company with publicly traded securities. During twelve different quarters during the years 1998 through 2001, Defendant Palmisano made fraudulent journal entries that caused OCA to overstate its

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revenue and income.

2. Defendant Palmisano's fraudulent journal entries in OCA's books and records enabled OCA to meet or exceed Wall Street analysts' consensus earnings per share expectations ("Consensus EPS") in at least eleven of the twelve quarters and for each of the four years spanning his misconduct.

3. Defendant Palmisano has engaged in, and unless restrained and enjoined by this Court, will continue to engage in, acts and practices which constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2], and acts and practices that aid and abet violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 20(e) and 21(d) of the Exchange Act [15 U.S.C. §§ 78t(e) and 78u(d)].

5. This Court has jurisdiction of this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

6. Defendant Palmisano, directly and indirectly, has made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

7. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because OCA was based in this district, many of the acts constituting the scheme occurred within this district, and the offer and sale of OCA's securities during the relevant period occurred within this district.

THE DEFENDANT

8. Bartholomew F. Palmisano, Jr. is 37 and resides in Metairie, Louisiana. He was employed by OCA from 1992 until 2006, when he was terminated as a result of an investigation of his wrongdoing by a Special Committee of OCA's Board of Directors. Defendant Palmisano served as OCA's Chief Financial Officer ("CFO") from September 1998 until October 2001, and, at various other times, as the Company's Chief Information Officer and Chief

Operating Officer (“COO”). Defendant Palmisano has never been a certified public accountant, although he previously worked in public auditing for Arthur Andersen and Company.

ISSUER INVOLVED

9. OCA, now known as OrthoSynetics, is a Delaware corporation located in Metairie, Louisiana, that provides back-office business services to affiliated orthodontic and dental practices throughout the United States. OCA became a public company in 1994.

10. Between 1994 and January 12, 2007, OCA’s common stock was registered with the Commission pursuant Section 12(b) of the Exchange Act.

11. OCA’s shares were listed on the New York Stock Exchange under the symbol “OCA” but were delisted in February 2006 due to OCA’s failure to file any quarterly or annual financial statements since the quarter ended September 30, 2004.

12. On March 14, 2006, OCA and certain of its subsidiaries filed for voluntary Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Louisiana.

13. On January 12, 2007, the Commission issued an Order instituting public administrative proceedings pursuant to Section 12(j) of Exchange Act

against OCA and revoked the registration of OCA's securities for its failure to comply timely with the reporting requirements of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13, thereunder.

FICTITIOUS REVENUE BETWEEN 1998 AND 2001

14. During twelve different quarters during the years 1998 and 2001, Defendant Palmisano created and recorded a total of eighteen journal entries on OCA's general ledger that had the cumulative effect of creating approximately \$71 million of fictitious revenue.

15. Defendant Palmisano recorded journal entries that credited revenue and almost exclusively debited fixed or intangible assets. The revenue entries were fictitious and did not reflect revenue received by OCA.

16. The fictitious revenue created by these journal entries was always at least the amount OCA needed to meet that quarter's Consensus EPS.

17. The effect of the fictitious revenue created by Defendant Palmisano on OCA's financial results in eleven of the twelve quarters for which Consensus EPS was found is shown below:

Year	Qtr	Actual EPS (Adjusted)	Misstatement	Reported EPS (Adjusted)	Consensus EPS
1998	3 rd	\$ 0.15	\$ 0.03	\$ 0.18	\$ 0.18
	4 th	0.15	0.06	0.19	0.19
1999	1 st	0.19	0.02	0.21	0.21
	3 rd	0.18	0.10	0.28	0.26
	4 th	0.20	0.06	0.26	0.26
2000	2 nd	0.20	0.11	0.31	0.31
	3 rd	0.23	0.10	0.33	0.33
	4 th	0.31	0.04	0.35	0.34
2001	1 st	0.25	0.03	0.28	0.28
	2 nd	0.16	0.14	0.30	0.30
	3 rd	0.18	0.12	0.30	0.30

18. Defendant Palmisano's fictitious revenue added \$0.04 to OCA's fourth quarter 2000 actual EPS of \$0.31, allowing OCA to report in its earnings release an EPS of \$0.35, which at that time, exceeded Consensus EPS by one cent. However, after a subsequent revenue adjustment in March 2001, OCA reported in its Form 10-K/A, fourth quarter EPS of \$0.29.

19. For the single quarter in each year from 1998 through 2001 in which Defendant Palmisano did not create additional income, OCA met or exceeded Consensus EPS on the basis of its actual operating results.

20. As a result of Defendant Palmisano's fraudulent conduct, OCA overstated its net income by a cumulative total of \$40 million during the period

1998 through 2001, as follows (dollars in millions except per share amounts):

Year	Net Income as Adjusted	Discontinued Line to Palmisano's Fictitious Revenue	Reported Net Income	Percent Overstated
1998	\$ 28.7	\$ 5.1	\$ 33.8	18 %
1999	37.8	8.7	46.5	23
2000	35.4	12.3	47.7	35
2001	46.9	14.2	61.1	30
Total	\$148.8	\$40.3	\$189.1	

21. In addition to its overstated quarterly EPS, OCA also materially misstated its annual EPS, falsely meeting or exceeding annual Consensus EPS, as follows:

Year	Actual EPS (Adjusted)	Discontinued Line to Palmisano's Fictitious Revenue	Reported EPS (Adjusted)	Consensus EPS
1998	\$ 0.59	\$ 0.12	\$ 0.71	\$ 0.70
1999	0.78	0.18	0.96	0.96
2000	1.02	0.25	1.27	1.27
2001	0.92	0.29	1.21	1.21

22. Defendant Palmisano's fictitious revenue added \$0.25 to OCA's actual annual EPS for 2000 of \$1.02, allowing OCA to report in its January 25,

2001 earnings release annual EPS of \$1.27, which met Consensus EPS. However, after a subsequent revenue adjustment posted in March 2001, OCA reported in its Form 10-K/A annual EPS of \$0.96.

23. Although the Company's accounting policies at the time required that supporting documentation be created and maintained for all journal entries, the entries inputted by Defendant Palmisano had no written support other than the short memo description that was part of the journal entry itself.

24. The first journal entry recording the fictitious revenue was in March 1998, just prior to Defendant Palmisano becoming OCA's CFO. The entries continued throughout Defendant Palmisano's tenure as CFO, only ceasing in October 2001 when he was replaced as CFO and was named OCA's COO.

25. During Defendant Palmisano's tenure as OCA's CFO, the Company did not have in place reasonable control procedures regarding the creating and posting of journal entries. Specifically, there was a lack of adequate segregation of duties over the processes of creating, reviewing and approving, and posting of journal entries to the general ledger. Because of this, Defendant Palmisano was able to create and record the eighteen journal entries on OCA's general ledger.

**OCA'S FRAUDULENT FINANCIAL STATEMENTS WERE INCLUDED
IN ITS REPORTS FILED WITH THE COMMISSION**

26. OCA's false financial information, resulting from Defendant Palmisano's conduct, was included in at least twelve periodic reports on Form 10-Q and four annual reports on Form 10-K, filed with the Commission for each of the years ended December 31, 1998 through 2001.

27. Defendant Palmisano, as CFO, signed ten of the twelve Forms 10-Q and three of the four Forms 10-K filed with the Commission containing the material misstatements and omissions.

28. The false financial statements were also included in subsequent Commission filings, including OCA's 2003 Form 10-K filed on March 15, 2004.

29. OCA included overstated quarterly net revenue, net income, and earnings per share for certain quarters ended in 2000 in a Form 8-K filed on April 20, 2001. In a Form 8-K filed on January 18, 2001, OCA also stated that management was "comfortable" with consensus earnings estimates for the fourth quarter of 2000 and the year ended 2000. OCA did not disclose that without Defendant Palmisano's fictitious revenue, OCA would not have exceeded or met Consensus EPS for those periods.

30. OCA filed several registration statements containing the false

financial statements resulting from Defendant Palmisano's misconduct. OCA registered offerings of its common stock in its acquisition of its primary competitor in 2001 pursuant to Forms S-4 and S-4/A filed with the Commission in 2001. OCA also registered stock in 2001 related to an orthodontist stock purchase plan pursuant to Forms S-3 and S-3/A filed with the Commission in 2001. These registration statements incorporated one or more of OCA's misstated quarterly and annual financial statements. Defendant Palmisano knew the results were overstated but nevertheless signed the Forms S-4, S-4/A and S-3 which were filed with the Commission.

PALMISANO TRIES TO COVER-UP HIS FRAUD

31. The fictitious revenue that Defendant Palmisano created first came to light in May 2005 during OCA's 2004 audit when OCA's auditors questioned a fixed asset balance that Defendant Palmisano had recorded along with the fictitious revenue.

32. While following up on the auditor's question, a contract accountant hired by OCA to perform services related to OCA's assessment of its internal controls and to assist OCA's staff during its annual audit, discovered one of the fraudulent entries Defendant Palmisano had created in 2001. The contract accountant questioned the unusual nature of the entry given OCA's business, *i.e.*, the debiting of fixed assets with the crediting of revenue.

33. In response, on May 13, 2005, Defendant Palmisano, then OCA's COO, initially claimed the suspect entry, and others like it, had been inadvertently created during an electronic transfer of fixed and intangible asset information from a spreadsheet to OCA's general ledger system during 2001. Defendant Palmisano further claimed that the suspect entries from 2001 had been contemporaneously reversed in OCA's general ledger, and that the reversing entries were visually "suppressed" in the general ledger.

34. Defendant Palmisano attempted to create false documentation supporting his explanation. Specifically, sometime between May 9, 2005 and May 13, 2005, Defendant Palmisano created backdated reversing entries in OCA's general ledger by changing preexisting data in the system.

35. Defendant Palmisano also contemporaneously prepared two documents: (1) a communication, backdated to October 2001, and addressed to a former OCA employee who had died in 2003, falsely indicating that the deceased employee had made the purported reversing entries and suggested their suppression and (2) a memorandum that attempted to explain the purported electronic data transfer error and the purported reversing entries. Defendant Palmisano gave the memorandum to the Chief Executive Officer of OCA, who provided it to the contract accountant. The memorandum, among other things, indicated that the purported suppression would be removed so that the "auditors

[could] review” the purported reversing entries.

36. Defendant Palmisano also altered OCA's general ledger. A version saved after Defendant Palmisano offered an explanation of the entries, contained certain journal entries that were changed significantly from the version saved a few days prior to the time defendant Palmisano was questioned about his entries. In addition, the name of the person who purportedly entered certain of the reversing journal entries had changed from Defendant Palmisano to the deceased employee.

CLAIMS FOR RELIEF

COUNT I--FRAUD

Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

37. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

38. Defendant Palmisano, in connection with the offer or sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) obtained money or property by means of untrue statements of material facts and omissions of material facts necessary in order to

make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in transactions, practices, and courses of business which operated and would operate as a fraud or deceit upon the purchasers of securities, all as more particularly described in the paragraphs above.

39. Defendant Palmisano knowingly, intentionally or with severe recklessness, engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendant acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

40. By reason of the foregoing, Defendant Palmisano, violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT II--FRAUD

Violations of Section 10(b) of the Exchange Act [15. U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

41. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

42. Defendant Palmisano, in connection with the purchase and sale of

securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described in the paragraphs above.

43. Defendant Palmisano intentionally, or with severe recklessness engaged in the aforementioned conduct.

44. In engaging in such conduct, Defendant Palmisano acted with scienter, that is, with an intent to deceive, manipulate and defraud or with a severe reckless disregard for the truth.

45. By reason of the foregoing, Defendant Palmisano, violated and unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT III-REPORTING PROVISIONS

**Aiding and Abetting OCA's Violations of Section 13(a) of the Exchange Act
[15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder
[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]**

46. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

47. Defendant Palmisano aided and abetted OCA's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11, and 240.13a-13], which occurred when OCA filed annual, periodic, and current reports that contained financial statements that were not prepared in conformity with Generally Accepted Accounting Principles and contained material misstatements and omissions.

48. Through the conduct described in the above paragraphs, Defendant Palmisano knowingly or with severe recklessness substantially assisted OCA's violations of this section and rules.

49. By reason of the foregoing, Defendant Palmisano, aided and abetted and unless enjoined, will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12-20, 240.13a-1, 240.13a-11, and 240.13a-13].

COUNT IV- RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act [15

U.S.C. § 78m(b)(2)(A)], Violations of Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

50. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

51. Defendant Palmisano aided and abetted OCA's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which occurred when OCA failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of OCA's assets.

52. Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] prohibits any person from directly or indirectly falsifying or causing the falsification of any such books, records or accounts.

53. Through the conduct described in the above paragraphs, Defendant Palmisano violated Rule 13b2-1 and aided and abetted violations of Section 13(b)(2)(A) of the Exchange Act and unless enjoined will continue violated and aid and abet violations of that rule and sections.

COUNT V – BOOKS AND RECORDS AND INTERNAL CONTROLS

VIOLATIONS

Aiding and Abetting Violations of Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] of the Exchange Act, Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

54. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

55. Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] prohibits any person from knowingly circumventing and knowingly failing to implement a system of internal accounting controls and knowingly falsifying any book, record, or account required by Section 13(b)(2)(A) of the Exchange Act.

56. Exchange Act Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's authorization and that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

57. Through the conduct described above, Defendant Palmisano violated and, unless enjoined, will continue to violate Section 13(b)(5), and aided and abetted and, unless enjoined, will continue to aid and abet violations of Section

13(b)(2)(B) and of the Exchange Act.

COUNT VI – LYING TO ACCOUNTANTS

Violation of Rule 13b2-2 promulgated under the Exchange Act

[17 C.F.R. § 240.13b2-2]

58. Paragraphs 1 through 36 are hereby realleged and are incorporated herein by reference.

59. Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] prohibits officers and directors from, directly or indirectly, making and causing to be made materially false and misleading statements or omitting to state, or causing another to omit to state, any material fact in order to make statements made not misleading to an accountant in connection with any audit or examination of the financial statements required to be filed with the Commission or the preparation or filing of any document or report to be filed with the Commission.

60. Through the conduct described above, Defendant Palmisano violated and unless enjoined will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2] promulgated under the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendant Palmisano and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them:

- a. from violating Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];
- b. from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- c. from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)];
- d. from violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1];
- e. from violating Rule 13b2-2 promulgated under the Exchange Act [17 C.F.R. § 240.13b2-2];
- f. from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-

13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]; and

- g. from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

III.

Issue an Order requiring Defendant Palmisano pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] to pay civil monetary penalties and post-judgment interest pursuant to 28 U.S.C. § 1961 .

IV.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] prohibiting Defendant Palmisano from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

V.

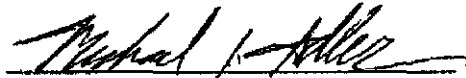
Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: February 21, 2008

RESPECTFULLY SUBMITTED,



WILLIAM P. HICKS
REGIONAL TRIAL COUNSEL
Georgia Bar No. 351649
Tel: (404) 842-7675



MICHAEL J. ADLER
SENIOR STAFF ATTORNEY
Georgia Bar No. 005215
Tel: (404) 842-7634

COUNSEL FOR PLAINTIFF
U. S. SECURITIES AND EXCHANGE COMMISSION
3475 Lenox Road, N.E., Suite 500
Atlanta, Georgia 30326-1234
(404) 842-7600
(404) 842-7679 fax
Email: hicksw@sec.gov (Hicks)