

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

**BILL OF INFORMATION FOR FALSE STATEMENTS TO ACCOUNTANTS AND
AUDITORS AND FALSIFYING BOOKS AND RECORDS**

UNITED STATES OF AMERICA	*	CRIMINAL DKT. NO.
v.	*	SECTION:
BARTHOLOMEW FRANK PALMISANO, JR.	*	VIOLATIONS:
a/k/a BART PALMISANO, JR.	*	15 U.S.C. § 78m(b)(2)(A)
	*	15 U.S.C. § 78m(b)(2)(B)
	*	15 U.S.C. § 78m(b)(5)
	*	15 U.S.C. § 78ff
	*	17 C.F.R. § 240.13b2-1
	*	17 C.F.R. § 240.13b2-2
	*	18 U.S.C. § 2
	*	*

The United States Attorney charges that:

COUNT 1

(False Statements to the Accountants and Auditors)

A. AT ALL TIMES MATERIAL HEREIN:

1. Orthodontic Centers of America, Inc. (“OCA” or the “Company”) was a Delaware corporation with its headquarters in Metairie, Louisiana, in the Eastern District of Louisiana. OCA was primarily engaged in the business of providing business services to “affiliated” (or partnered) orthodontic and pediatric dental practices, such as providing or lending capital to open new practices; proprietary business, management information, and clinical systems for medical, billing, operational,

and accounting needs; and advertising and marketing planning to generate new patients. Before it filed for bankruptcy protection in 2006 under Chapter 11 of the U.S. Bankruptcy Code, OCA provided business services to approximately 300 affiliated orthodontic and pediatric dental practices throughout the United States and parts of Japan, Mexico, Spain, and Puerto Rico.

2. Between 1994 and January 2007, OCA was a publicly traded company whose shares were registered pursuant to Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78l) and listed on the New York Stock Exchange under the symbol “OCA”. As a public company, OCA was required to comply with regulations of, among others, the United States Securities and Exchange Commission (“SEC”). The federal securities laws, regulations, and rules, including SEC regulations, were designed to ensure that the financial information of publicly traded companies was accurately recorded and disclosed to the investing public.

3. Among other things, under SEC regulations, OCA and its officers had a duty to make and keep books, records, and accounts that fairly and accurately reflected OCA’s business transactions; to devise and maintain a system of internal accounting controls that provided reasonable assurances that OCA’s financial transactions were recorded in a manner that would permit the preparation of financial statements in conformance with Generally Accepted Accounting Principles; and to file SEC annual financial statements audited by an independent accountant (Forms 10-K) and SEC quarterly updates of its financial statements that reliably and truthfully disclosed its financial condition and the results of its business operations (Forms 10-Q).

4. As a publicly-traded company, OCA was also required to retain independent auditors and accountants for several different functions, including to review, audit, and test its financial statements for compliance with appropriate accounting rules; to review, audit, and test its internal

controls to ensure compliance with appropriate accounting rules; and to assist OCA's officers in, among other things, certifying the correctness of its financial statements, pursuant to the relevant provisions of the Sarbanes-Oxley Act of 2002.

5. The defendant, **BARTHOLOMEW FRANK PALMISANO, JR., a/k/a BART PALMISANO, JR.** ("**PALMISANO, JR.**" or the "defendant"), a resident of Metairie, Louisiana, in the Eastern District of Louisiana, served as OCA's Chief Financial Officer ("CFO") from 1998 through approximately mid-2001. Prior to that time, from approximately 1994 through 1998, the defendant served as the OCA's Chief Information Officer. After his tenure as OCA's CFO, from approximately mid-2001 until June 2005, **PALMISANO, JR.** served as OCA's Chief Operating Officer. Beginning in June 2005, as a result of the conduct described below, the defendant, **PALMISANO, JR.**, was placed on administrative leave until his formal resignation in or about March 2006. At all times in his various roles, **PALMISANO, JR.** reported to Person A, OCA's President, CEO, and Chairman.

6. Person A, a resident of New Orleans, Louisiana, served as OCA's Chairman and Chief Executive Officer beginning in July 2000, and as President beginning in October 1999, through May 2006, when he resigned these positions. Person A was the co-founder of OCA and had previously served as Co-CEO from September 1998 through July 2000. Person A also served as an OCA Director from its inception until 2006. Person A is a lawyer and has been licensed as a certified public accountant.

7. Employee A was an OCA employee who was hired on or about July 15, 1993, and assisted in information technology-related functions, including the conversion of various types of software

utilized by OCA. Employee A also prepared and made OCA's estimated tax payments. Employee A's employment at OCA terminated on his death in mid-September 2003.

8. Accountant A is a member of a Louisiana-based accounting firm that was retained by OCA in approximately 2004 to assist the Company in making filings and certifications required under federal securities law. Accountant A was specifically assisting OCA in auditing, testing, and assessing its internal controls in connection its officer certifications required under the Sarbanes-Oxley Act of 2002. In connection with this engagement, Accountant A was also employed to investigate suspicious accounting entries uncovered OCA personnel, as set forth below.

9. In or about 1994, OCA became a publicly-traded company by completing an initial public offering.

10. By 2004, OCA had grown to provide business services to over 300 affiliated orthodontic practices in 43 states, Japan, Mexico, Puerto Rico, and Spain.

11. From 1998, at the beginning of his tenure as the OCA's CFO, through his resignation on or about March 3, 2006, **PALMISANO, JR.**'s salary increased from approximately \$86,000 annually to \$225,000 annually.

12. From 1998 through 2001, the defendant, **PALMISANO, JR.**, then the Chief Financial Officer of OCA, booked over a dozen journal entries into OCA's accounting system (named "Platinum") which credited (increased) revenue and debited (increased) assets. These entries increased OCA's revenue by tens of millions of dollars. For 2001 alone, the journal entries increased OCA's revenue by over \$20 million.

13. Four years after their entry, in or about April 2005, OCA's auditors, as well as Company management, began to uncover these journal entries and began making inquiries as to

the basis of the entries originally booked by **PALMISANO, JR.** in 2001. Beginning on or about May 13, 2005, as set forth below, the defendant, **PALMISANO, JR.**, concocted a false and fictitious story to explain these journal entries and manipulated OCA's accounting systems in an effort to mislead OCA's accountants, auditors, and management.

14. On or about May 13, 2005, after being informed that OCA's accountants (including Accountant A) had questions concerning these journal entries booked in OCA's accounting records in 2001, the defendant, **PALMISANO, JR.**, began the process of covering them up by concocting a story that OCA was aware of the entries when they were originally booked; that the entries in question were actually entered by Employee A; that OCA was aware that the original 2001 entries were wrong at the time of their booking; and that, as CFO, the defendant had instructed Employee A, who had died years earlier, to enter "reversing entries" to reverse out the revenue wrongly credited by these entries.

15. On or about May 13, 2005, **PALMISANO, JR.**, created a memorandum entitled "Fixed Assets Memo" which provided a false explanation for these underlying, suspicious journal entries. The memo falsely explained that the journal entries had "inadvertently credited revenue" and that once discovered, "a reversal was immediately made" to reverse these entries. The memo also falsely stated that the "reversing" entries had been "suppressed" in OCA's accounting system and that, so the accountants could verify this story and those facts, the suppression of these "reversing" entries would be lifted on May 13, 2005.

16. Additionally, on or about May 13, 2005, the defendant, **PALMISANO, JR.**, informed Person A, OCA's CEO, that he had a memo to Employee A, dated in October 2001, explaining the errors in the original 2001 journal entries and requesting that Employee A make reversing entries.

On May 13, 2005, **PALMISANO, JR.** provided this memorandum to Person A as support for his “reversing entries” story to be provided to Accountant A.

17. In reality, although the defendant’s memo to Employee A regarding these suspicious entries was dated in October 2001, it was actually created by the defendant on or about May 13, 2005.

18. On or about May 13, 2005, the defendant, **PALMISANO, JR.**, accessed OCA’s accounting system and changed seven journal entries booked in 2001 originally identified by Accountant A as suspicious. Specifically, **PALMISANO, JR.**, changed the user ID for each of these seven journal entries from “bpalmisano,” the user ID assigned to the defendant to the user ID assigned to Employee A.

19. In addition, on or about May 13, 2005, the defendant, **PALMISANO, JR.**, accessed OCA’s accounting system and changed five different journal entries, unrelated to the seven journal entries originally identified by Accountant A as suspicious. Defendant **PALMISANO, JR.** changed the amounts, the original user ID’s, and in some cases, the years in which these five journal entries were originally booked, to make them appear to be the “reversing entries” alleged to have been entered by Employee A, which purportedly “reversed” the revenue amounts contained in the original seven journal entries booked in 2001.

20. On May 16, 2005, the defendant, **PALMISANO, JR.**, sent an e-mail to Person A and another OCA accounting employee providing a false explanation for these entries and specifically referenced Accountant A, who was in the midst of attempting to verify the defendant’s phony “reversing entries” story. In the e-mail, **PALMISANO, JR.** falsely stated that, “I believe it is currently impossible to backdate entries, especially back to 2001. I

personally do not have access to enter any type of journal entry...” The e-mail also falsely stated, “[t]he entries in question were made by [Employee A].”

21. On or about the same date, May 16, 2005, Accountant A received the defendant’s e-mail, which was forwarded to him by Person A.

B. THE FALSE STATEMENTS TO ACCOUNTANTS AND AUDITORS CHARGE

22. On or about May 16, 2005, in the Eastern District of Louisiana and elsewhere, the defendant, **BARTHOLOMEW FRANK PALMISANO, JR.**, did unlawfully, knowingly, and willfully make, and cause to be made, a materially false and misleading statement, and omit to state and cause others to omit to state material facts, necessary to make the statements made not misleading, to OCA’s auditors and accountants, in connection with (1) an audit, review, and examination of the financial statements of the issuer required to be made under federal law, and (2) the preparation or filing of a document and report required to be filed with the SEC.

Specifically, in an e-mail dated May 16, 2005, regarding testing done by OCA’s auditors and accountants relating to these suspicious journal entries in connection with the work of the auditors and accountants in helping to prepare certifications of OCA officers required to be filed with the SEC under federal law, the defendant, **PALMISANO, JR.**, made and caused to be made materially false and misleading statements to Accountant A, including his statements that (a) it is impossible to backdate accounting entries into OCA’s accounting databases; (b) the defendant did not have access to enter any type of journal entry; and (c) the journal entries under investigation by the auditors and accountants were made by Employee A; all in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(2)(B), and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT 2
(False Books and Records)

A. The allegations contained in Paragraphs 1-22 of Count One are hereby re-alleged and incorporated herein by reference.

B. On or about May 13, 2005, in the Eastern District of Louisiana, the defendant, **BARTHOLOMEW FRANK PALMISANO, JR.**, did unlawfully, knowingly, and willfully, directly and indirectly, did falsify and cause to be falsified books, records, and accounts of OCA, an issuer with a class of securities registered pursuant to Section 78l, and required to file reports pursuant to Section 78o(d), of Title 15 of the United States Code. Specifically, **PALMISANO, JR.**, directly and indirectly, did falsify and caused to be falsified the internal books and records of OCA subject to federal securities laws, including but not limited to, records in OCA's Platinum accounting database (listing and reflecting accounting transactions, including the journal entry transactions noted above) and its general ledger, by, among other means, accessing OCA's Platinum accounting software, selecting particular journal entries booked in 2001 and other years and: (a) manipulating the user names reflected for the particular journal entries; (b) manipulating the years in which some of these journal entries were booked; and (c) manipulating the amounts of these journal entries to make it appear as if these entries reversed the journal entries originally identified as suspicious by Accountant A; all in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5), and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-1; and Title 18, United States Code, Section 2.

NOTICE OF FORFEITURE

1. The allegations of Counts 1 and 2 of this Bill of Information are re-alleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 15, United States Code, Section 78ff and Title 18, United States Code, Section 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c).

2. As a result of the offenses alleged in Counts 1 and 2, the defendant, **BARTHOLOMEW FRANK PALMISANO, JR.**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c), any and all property, real or personal, which constitutes or is derived from proceeds traceable to said violations of Title 15, United States Code, Section 78ff.

3. If any of the above described property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek

forfeiture of any other property of said defendant, up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Section 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c).

JIM LETTEN
United States Attorney
Louisiana Bar Roll No. 8517

JAN MASELLI MANN
First Assistant U.S. Attorney
Louisiana Bar Roll No. 9020

JAMES R. MANN
Assistant U.S. Attorney
Supervisor, Financial Crimes Unit
Louisiana Bar Roll No. 20513

EILEEN GLEASON
Assistant United States Attorney
District of Columbia Bar No. 980511

MATTHEW S. CHESTER
Assistant United States Attorney
Texas Bar No. 24045650

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