VCA CENVET, INC. d/b/a ANTECH DIAGNOSTICS

Plaintiff,

v.

WINCHESTER VETERINARY GROUP, INC., STEPHEN ZANOTTI, and JONATHAN DIEHL,

Defendants.

WINCHESTER VETERINARY GROUP, INC., STEPHEN ZANOTTI, and JONATHAN DIEHL,

Counterclaimants,

v.

VCA CENVET, INC. d/b/a ANTECH DIAGNOSTICS,

Counter-defendants.

VCA CENVET, INC. D/B/A ANTECH DIAGNOSTICS’ ANSWER TO COUNTERCLAIMS

Plaintiff VCA Cenvet, Inc. d/b/a Antech Diagnostics (“Antech”), by and through its undersigned attorneys, hereby answers the counterclaims of Defendants Winchester Veterinary Group, Inc., Stephen Zanotti, and Jonathan Diehl (“Defendants”).

PARTIES

1. Antech admits the allegations in Paragraph 1.

2. Antech admits the allegations in Paragraph 2.
3. Antech admits the allegations in Paragraph 3.


**JURISDICTION AND VENUE**

5. Antech denies that Defendants have suffered any damages. Antech admits the remaining allegations in Paragraph 5.

6. Antech denies that Defendants have any valid claim against Antech. Antech admits the remaining allegations in Paragraph 6.

**FACTUAL BACKGROUND**

7. Antech admits that in the Fall of 2009, it approached Defendants with a proposal regarding a business relationship with Defendants, and that Antech and Defendants entered into a written agreement containing the terms of their agreement (the “Services Agreement”). Further answering, Antech states that the Services Agreement speaks for itself and, therefore, Antech denies all remaining allegations in Paragraph 7.

8. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and, therefore, denies the same.

9. Antech admits that it discussed the terms of the Services Agreement with Defendants. Antech denies the remaining allegations in Paragraph 9.

10. Antech admits that Antech and Defendants entered into the Services Agreement on or about September 15, 2009. Antech denies the remaining allegations in Paragraph 10.

11. Antech denies the allegations in Paragraph 11.

12. Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the allegations in Paragraph 12.
13. Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the allegations in Paragraph 13.

14. Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the allegations in Paragraph 14.

15. Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the allegations in Paragraph 15.

16. Antech denies the supposed representations attributed to it in the first sentence of Paragraph 16. Further answering, Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the allegations in Paragraph 16.

17. Antech denies that it did not provide Defendant a 17” x 17” radiology plate pursuant to the Services Agreement. Further answering, Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the remaining allegations in the first sentence of Paragraph 17. Antech denies the remaining allegations in Paragraph 17.

18. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegation in first sentence of Paragraph 18 and, therefore, denies the same. Further answering, Antech states that after installation of the equipment provided under the Services Agreement, Defendants expressed concern regarding a gray edge line of approximately one inch that appeared on the images and that Antech addressed that issue. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 18 and, therefore, denies the same. Antech denies the allegation in the fourth sentence of Paragraph 18.

19. Antech denies that the issue identified in Paragraph 19 was caused by any defect in the “radiology system” or that there was any defect relating to this issue that Antech failed to
rectify. Further answering, Antech states that the issue identified in Paragraph 19 was caused by the failure by Defendants to properly use the equipment. Antech lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19 and, therefore, denies the same.

20. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, denies the same.

21. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 relating to communications between Defendants and Sound-Eklin and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 21.

22. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 relating to the “services provided by WVG’s previous veterinary laboratory” and, therefore, denies the same. Antech denies the remaining allegations in Paragraph 22.

23. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 23 and, therefore, denies the same.

24. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 24 regarding whether some unidentified “laboratory in the industry” provides several unidentified “key diagnostics tests” that Antech does not and, therefore, denies the same. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 24 regarding the price Defendant Winchester Veterinary Group paid for tests provided by another party and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 24.
25. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 25 regarding whether some unidentified laboratories provide certain services and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 25.

26. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 regarding “WVG’s previous laboratory” and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 26.

27. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 regarding “[WVG’s] previous laboratory” and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 27.

28. Antech lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 regarding “WVG’s previous laboratory” and, therefore, denies the same. Antech denies any remaining allegations in Paragraph 28.

29. Antech admits that Defendants attempted to unlawfully terminate the Services Agreement and are in breach of the Services Agreement. Antech denies the remaining allegations in Paragraph 29.

30. Antech admits that Sean Hayes discussed with Defendants their attempt to unlawfully terminate the Services Agreement. Antech denies the remaining allegations in Paragraph 30.

31. Antech admits that it refused to allow Defendants to unlawfully terminate the Services Agreement and that it warned Defendants that it would be forced to initiate litigation against Defendants if they followed through on their threat to unlawfully terminate the Services Agreement. Antech admits that it initiated this action after, and as a result of, Defendants’
unlawful termination of the Services Agreement. Antech denies the remaining allegations in Paragraph 31.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

32. Antech incorporates by reference the preceding Paragraphs 1 through 31.

33. Antech admits that it and Defendants entered into the Services Agreement. Further answering, Antech states that the Services Agreement speaks for itself and, therefore, Antech denies the remaining allegations in Paragraph 33.

34. Antech denies the allegations in Paragraph 34.

35. Antech admits that Defendants have paid for the limited Laboratory Services which Defendants requested that Antech perform before Defendants breached the Services Agreement, but Antech maintains that Defendants are in breach of the Services Agreement, by among other things, failing to maintain the minimum average annual and monthly fees under the Services Agreement for a period of five years. Antech denies the remaining allegations in Paragraph 35.

36. Antech denies the allegations in Paragraph 36.

**SECOND CAUSE OF ACTION**

**(Violation of Massachusetts Deceptive Trade Practices Act)**

37. Antech incorporates by reference the preceding Paragraphs 1 through 37.

38. Antech denies the allegations in Paragraph 38.


40. Antech denies the allegations in Paragraph 40.

41. Antech denies the allegations in Paragraph 41.
THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

42. Antech incorporates by reference the preceding Paragraphs 1 through 41.

43. The allegations contained in Paragraph 43 constitute legal conclusions to which no response is required. To the extent any response is required, Antech states that the Services Agreement speaks for itself and, therefore, denies the allegations in Paragraph 43.

44. Antech denies the allegations in Paragraph 44.

45. Antech denies the allegations in Paragraph 45.

FOURTH CAUSE OF ACTION
(Fraudulent Inducement)

46. Antech incorporates by reference the preceding Paragraphs 1 through 45.

47. Antech denies the allegations in Paragraph 47.

48. Antech denies the allegations in Paragraph 48.

49. Antech denies the allegations in Paragraph 49.

50. Antech denies the allegations in Paragraph 50.

51. Antech denies the allegations in Paragraph 51.

52. Antech denies the allegations in Paragraph 52.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Defendants’ claims are barred by waiver.

3. Defendants’ claims are barred by estoppel.

4. Defendants’ claims are barred by its unclean hands.
5. Defendants’ claims are barred to the extent they are based upon Massachusetts law, as the parties agreed that California law would govern their disputes.

6. Defendants’ claims are barred by their own material breaches of contract.

7. Defendants’ claims under M.G.L. c. 93A are barred because Defendants have alleged only ordinary breach of contract claims (which claims Antech denies).

8. Defendants’ claims under M.G.L. c. 93A are barred because Antech has not engaged in any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within Massachusetts.

9. If Antech violated M.G.L. c. 93A -- which Antech denies -- then any such violations were neither willful nor knowing.

10. Defendants have failed to mitigate their alleged damages.

11. If Defendants have suffered any damages (which Antech denies), such damages were caused by or contributed to, in whole or in part, by Defendants’ own actions and/or omissions.

12. If Defendants have suffered any damages (which Antech denies), such damages were caused by or contributed to, in whole or in part, by third parties.

13. Some or all of the damages claimed by Defendants are not recoverable as a matter of law.

14. If Defendants are entitled to damages (which Antech denies), then Defendants’ damages are subject to setoff to the extent of the damages that Defendants have caused to Antech by Defendants’ own breaches of contract.
15. Defendants’ failure to provide written notice and follow the arbitration provision set forth in the Services Agreement bars any claims by Defendants that Antech violated the Services Agreement.

16. Any allegation not specifically admitted herein is expressly denied.

17. Antech reserves the right during or after discovery to assert such additional defenses as may be appropriate.

WHEREFORE, Antech respectfully requests that the Court deny Defendants any relief, dismiss the counterclaims with prejudice and award Antech its costs relating to this action.

ANTECH DEMANDS A TRIAL BY JURY.

VCA CENVET, INC. d/b/a ANTECH DIAGNOSTICS,

By its attorneys,

/s/ Julie B. Brennan
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system on January 20, 2012, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). To the best of my knowledge, information and belief, there are no non-registered participants.

/s/ Julie B. Brennan

Julie B. Brennan (BBO No. 564101)