

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
VCA CENVET, INC. d/b/a)		
ANTECH DIAGNOSTICS,)		
)		
Plaintiff,)		
)		
v.)	C.A. No.	
)		
WINCHESTER VETERINARY GROUP, INC.,)		
STEPHEN ZANOTTI, and)		
JONATHAN DIEHL,)		
)		
Defendants.)		
_____)	

COMPLAINT AND DEMAND FOR JURY TRIAL

THE PARTIES

1. Plaintiff VCA Cenvet, Inc. is a California corporation, with a principal place of business in California. VCA Cenvet, Inc. does business under the name “Antech Diagnostics.” VCA Cenvet, Inc. has filed a foreign corporation certificate with the Massachusetts Secretary of State and, as such, is authorized to do business in Massachusetts. VCA Cenvet, Inc. is the successor in interest to the rights of VCA Professional Animal Laboratory, Inc. with respect to the Services Agreement which is the subject of this action.

2. Defendant Winchester Veterinary Group, Inc. (“Winchester Veterinary Group”) is a Massachusetts corporation, with a principal place of business in Massachusetts. Upon information and belief, Winchester Veterinary Group maintains one animal hospital located in Winchester, Massachusetts.

3. Defendant Stephen Zanotti (“Zanotti”) is a citizen of Massachusetts and, upon information and belief, resides in Winchester, Massachusetts. Zanotti is an owner and a director

and officer of Winchester Veterinary Group.

4. Defendant Jonathan Diehl (“Diehl”) is a citizen of Massachusetts and, upon information and belief, resides in Weston, Massachusetts. Diehl is an owner and a director and officer of Winchester Veterinary Group.

JURISDICTION AND VENUE

5. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332. Plaintiff Antech Diagnostics is a corporation incorporated under the laws of California with its principle place of business in California. Defendant Winchester Veterinary Group is a corporation incorporated under the laws of Massachusetts with its principal place of business in Massachusetts. Defendants Zanotti and Diehl are citizens of Massachusetts. The amount in controversy, without interest and costs, exceeds the sum or value of \$75,000.

6. Venue in Massachusetts is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions on which the claims are based occurred in the District of Massachusetts and the subject contract was executed here.

FACTS

7. On or about September 15, 2009, Antech Diagnostics entered into a written Services Agreement (the “Agreement”) with Defendant Winchester Veterinary Group and its owners, Defendants Zanotti and Diehl.

8. The terms of the Agreement included an exclusivity provision requiring Defendants to utilize Antech Diagnostics’ laboratory services for five years, or until September of 2014, with some limited exceptions. Under the terms of the Agreement, Defendants agreed to pay no less than \$360,000 for the laboratory services provided by Antech Diagnostics during the five-year term of the Agreement. In return, Antech Diagnostics agreed to: provide discounted

laboratory rates to Defendants; pay Defendants monthly rebates if Defendants exceeded certain usage of laboratory services each month; and provide certain digital radiography equipment, valued at \$72,000, for use by Defendants in their business.

9. With nearly three years remaining on the Agreement, Defendants notified Antech Diagnostics that they refused to continue to use the laboratory services of Antech Diagnostics, in direct violation of the Agreement. Although Defendants were required to purchase \$360,000 in laboratory services during the term of the Agreement, at the time of Defendants' unlawful breach of the Agreement, they had only purchased \$81,526 in laboratory services.

10. Upon information and belief, a direct competitor of Antech Diagnostics made a financially advantageous offer to do business with Defendants in order to induce Defendants to breach the Agreement with Antech Diagnostics and commence a business relationship with this Antech Diagnostics competitor. Defendants claim to have "terminated" the Agreement, even though they have absolutely no right to do so.

11. Upon information and belief, Defendants now utilize the laboratory services of this direct competitor of Antech Diagnostics, in direct violation of their contractual obligations to utilize the laboratory services of Antech Diagnostics, on an exclusive basis, through September of 2014.

12. The Agreement contains a choice of law provision which states that the Agreement shall be governed by and construed both as to validity and performance and enforced in accordance with the laws of the State of California.

COUNT I
(Breach of Contract)

13. Antech Diagnostics hereby incorporates the allegations set forth in paragraphs 1 through 12, above, as if set forth in full herein.

14. In or about September of 2009, Antech Diagnostics and Defendants entered into a written Agreement, whereby Defendants agreed to utilize Antech Diagnostics' laboratory services on an exclusive basis for a five-year period, and agreed to purchase laboratory services in a minimum amount of \$360,000 during that five-year term.

15. Antech Diagnostics performed all material conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the Agreement. Namely, Antech Diagnostics provided \$72,000 in digital radiography equipment for use by Defendants in their business; Antech Diagnostics provided certain discounted rates to Defendants for their laboratory services needs; and Antech Diagnostics paid Defendants certain rebates when they exceeded certain monthly billing amounts.

16. Defendants knowingly breached the Agreement when they refused to continue to use Antech Diagnostics' veterinary laboratory services. Defendants have informed Antech Diagnostics that they will no longer comply with the terms of the Agreement for the remainder of the Agreement's five-year term, and that they claim to have "terminated" the Agreement even though they have no right to do so.

17. As a direct result of Defendants' breaches of the Agreement, as alleged herein, Antech Diagnostics suffered monetary damages in an amount exceeding \$75,000, exclusive of interest and costs.

COUNT II
(Breach of Implied Covenant of Good Faith and Fair Dealing)

18. Antech Diagnostics hereby incorporates the allegations set forth in paragraphs 1 through 17, above, as if set forth in full herein.

19. Implied in every contract, including the Agreement, is a covenant or obligation that neither party shall do anything that will have the effect of destroying or injuring the right of

the other party to receive the fruits of the contract.

20. In or about September of 2009, Antech Diagnostics' and Defendants entered into a written Agreement, whereby Defendants agreed to utilize Antech Diagnostics laboratory services on an exclusive basis for a five-year period, and agreed to purchase laboratory services in a minimum amount of \$360,000 during that five-year term.

21. Antech Diagnostics performed all material conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the Agreement. Namely, Antech Diagnostics provided \$72,000 in digital radiography equipment for use by Defendants in their business; Antech Diagnostics provided certain discounted rates to Defendants for their laboratory services needs; and Antech Diagnostics paid Defendants certain rebates when they exceeded certain monthly billing amounts.

22. Defendants knowingly breached the Agreement when they refused to continue to use Antech Diagnostics' veterinary laboratory services. Defendants have informed Antech Diagnostics that they will no longer comply with the terms of the Agreement for the remainder of the Agreement's five-year term, and that they claim to have "terminated" the Agreement even though they have no right to do so.

23. As a direct result of Defendants' breaches of the implied covenant of good faith and fair dealing, as alleged herein, Antech Diagnostics has suffered monetary damages in an amount exceeding \$75,000, exclusive of interest and costs.

COUNT III
(Unjust Enrichment)

24. Antech Diagnostics hereby incorporates allegations set forth in paragraphs 1 through 23, above, as if set forth in full herein.

25. If this Court determines that a valid contract between the parties does not exist,

then Defendants have been unjustly enriched because they have received \$72,000 in digital radiography equipment; valuable discounts from Antech Diagnostics for their laboratory service needs; and rebates when they exceeded certain monthly billing targets. Antech Diagnostics has received nearly nothing in return. In fact, Antech Diagnostics anticipated, in accordance with the terms of the Agreement, that it would have had an ongoing business relationship with, and would earn significant profits from doing business with, Defendants for a period of no less than five years, from September of 2009 through September of 2014. Under the terms of the Agreement, Defendants were to pay no less than \$360,000 for laboratory services to Antech Diagnostics during the five year term of the Agreement. They paid only \$81,526.

26. As such, Antech Diagnostics has conferred valuable benefits upon Defendants; Defendants were aware of and negotiated to receive these valuable benefits; and Defendant accepted and retained these valuable benefits under circumstances that make it inequitable for them to retain the benefits without payment of their value.

WHEREFORE, Plaintiff VCA Cenvet, Inc. respectfully requests that this Court:

1. Enter judgment in its favor against the Defendants on all Counts and order Defendants to pay damages to Plaintiff, and to pay Plaintiff all costs, interests, and attorneys' fees allowed by contract and/or by law.

2. Grant Plaintiff such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,

VCA CENVET, INC.
d/b/a ANTECH DIAGNOSTICS,
By its attorneys,

/s/ Julie B. Brennan

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