

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FEB - 5 2009

BY DAVID J. MIALAND, CLERK
DEPUTY _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ROBERT PACKARD, D.M.D., M.S., et al., §

vs. §

OCA, INC., et al. §

Case No. 4:05CV273

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AS
CLARIFIED BY SUBSEQUENT ORDER**

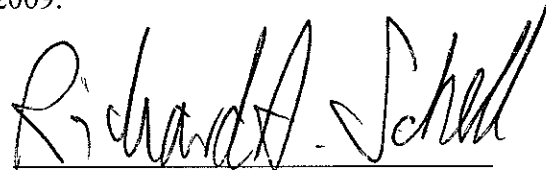
Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 26, 2007, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations regarding Defendants' Motion to Transfer to United States District Court for the Eastern District of Louisiana and Plaintiff's Motion for Summary Judgment (*see* Dkt. 75).

The court has made a *de novo* review of the objections raised by Defendants regarding the wording of a portion of the recommendation. Since the filing of those objections, the Magistrate Judge entered an order clarifying his recommendation (*see* Dkt. 88). Because the clarification directly resolves Defendants' concerns about the wording of the report, the court is of the opinion that the findings and conclusions of the Magistrate Judge, as fully set out in his February 26, 2007 report and as clarified in his January 26, 2009 order, are correct, and the objections of Defendants are now moot or otherwise without merit.

Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court, Defendants' Motion to Transfer to United States District Court for the Eastern District of Louisiana (Dkt. 50) is DENIED, and Plaintiff's Motion for Summary Judgment (Dkt. 33) is GRANTED in part as to the illegality of the agreement and DENIED as to the dismissal of Defendant's counterclaims.

IT IS SO ORDERED.

SIGNED this 5th day of February, 2009.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE