B 104
(Rev. 2/92)

ADVERSARY PROCEEDING COVER SHEET

Instructions on Reverse

ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS
OCA, INC., a Delaware Corporation, and OCA OUTSOURCE, INC., a Delaware Corporation

DEFENDANTS
BRIAN A. BEITEL, D.D.S

Attorneys (Firm Name, Address, and Telephone No.)
Drew R. Ballina 504/568-1888
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650 Poydras Street, Suite 2500
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Attorneys (if Known)

PARTY (Check one box only) ☐ 1. U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3. U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Complaint for Declaratory Relief, Specific Performance, Reformation of Contract, Breach of Contract, Quantum Meruit, Unjust Enrichment, Default on Promissory Notes, Account Stated, Fraudulent Conveyance, Attorneys Fees and Costs

NATURE OF SUIT
(Check the one most appropiate box only.)

- ☐ 454 To Recover Money or Property
- ☐ 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property
- ☐ 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in the property
- ☐ 424 To object or revoke a discharge 11 U.S.C. §727
- ☐ 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan
- ☐ 426 To determine the dischargeability of a debt 11 U.S.C. §523
- ☐ 434 To obtain an injunction or other equitable relief
- ☐ 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan
- ☒ 456 To obtain a declaratory judgment relating to any of foregoing causes of action
- ☐ 459 To determine a claim or cause of action removed to a bankruptcy court
- ☐ 498 Other (specify)

ORIGIN OF PROCEEDINGS (Check one box only.) ☒ 1 Original Proceeding ☐ 2 Removed Proceeding ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another Bankruptcy Court

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND NEAREST THOUSAND $ $632,000.00

OTHER RELIEF SOUGHT Specific Performance

☒ JURY DEMAND

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR: OCA, Inc.

BANKRUPTCY CASE NO.: 06-10179 (B)

DISTRICT IN WHICH CASE IS PENDING: Eastern District of Louisiana

DIVISIONAL OFFICE:

NAME OF JUDGE: Jerry A. Brown

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF:

DEFENDANT:

ADVERSARY PROCEEDING NO.:

DISTRICT: Eastern District of Louisian

DIVISIONAL OFFICE:

NAME OF JUDGE:

FILING FEE (Check one box only.) ☒ FEE ATTACHED ☐ FEE NOT REQUIRED ☐ FEE IS DEFERRED

DATE: 8/28/2006

PRINT NAME: Drew R. Ballina

SIGNATURE OF ATTORNEY (OR PLAINTIFF)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: OCA, INC., ET AL. Debtors **********	Chapter 11 Case No. 06-10179 (B)
OCA, INC., a Delaware Corporation, and OCA OUTSOURCE, INC., a Delaware Corporation Plaintiffs	(Jointly Administered)
v.	Adversary Proceeding No.
BRIAN A. BEITEL, D.D.S. Defendant	

COMPLAINT

OCA, Inc., (formerly Orthodontic Centers of America, Inc.) and OCA Outsource, Inc., ("Outsource"), its affiliated debtor and debtor-in-possession (hereinafter collectively, "Debtors", "OCA" or "Plaintiffs") in the above-captioned jointly administered Chapter 11 cases and the Plaintiffs in the above-captioned adversary proceeding, by and through their undersigned attorneys, allege for their complaint, upon knowledge as to their own acts and upon information and belief as to all other matters, as follows:

Jurisdiction

1. This Honorable Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(a) and 157(b)(1).

2. This adversary proceeding has been brought in accordance with Rule 9020, Rule 7001 and Rule 7065 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules").

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Venue

4. Venue of this adversary proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Parties

5. Plaintiff, OCA, Inc., is a Delaware corporation and the parent company of numerous wholly owned subsidiaries, including Plaintiff, Outsource, a Delaware corporation.

6. Defendant, Brian A. Beitel, D.D.S. ("Dr. Beitel"), is a resident and citizen of the State of Alabama and is a licensed dentist in the State of Alabama, where he is engaged in the practice of dentistry.

Bankruptcy Cases

7. On March 14, 2006 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Contemporaneously therewith, the Debtors filed a motion seeking to procedurally consolidate their Chapter 11 cases for administrative purposes only. Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

8. In 1989, OCA was formed and is the direct parent of each of the other debtors-in-possession. The Debtors maintain their corporate headquarters in Metairie, Louisiana.

9. OCA was formed to pursue a strategy of developing, consolidating and providing startup capital, furniture, fixtures, equipment, locations and business services to orthodontic practices on a national basis. While orthodontic practices have been the main focus of the Debtors, over the years the Debtors have expanded their client base to include other dental providers, including general practitioners and pediatric specialists.

10. In 2004, OCA created a subsidiary corporation, OCA Outsource, Inc., to provide business and consulting services to dental and medical practices utilizing a different business model than OCA had previously employed.

11. Through an Outsource Agreement (the "BSA" or "BSAs"), with affiliated orthodontic, dental and medical practices ("Affiliated Practices"), the Debtors provide business and consulting services to the Affiliated Practices as well as capital for the development and growth of the Affiliated Practices, thereby allowing practitioners to focus on delivering quality patient care. The BSAs generally provide that the Affiliated Practices will pay the Debtors a monthly service fee based either upon a percentage of the practices' revenue, or on a fixed monthly amount. The BSAs represent the primary asset of the Debtors and substantially all of the Debtors' revenue is generated through the BSAs. These revenues are critical to the Debtors' operations and are necessary to fund the expenses of the Affiliated Practices.

12. At issue in this adversary complaint are the BSA and lending agreements between Debtors and the Defendant entered into prior to the commencement of the Debtors' bankruptcy cases. The BSA and lending agreements are property of the Debtors' bankruptcy estate pursuant to Section 541 of the Bankruptcy Code. The BSA is an executory contract capable of being assumed pursuant to Section 365 of the Bankruptcy Code and the Amended and Supplemental Joint Chapter 11 Plan of Reorganization for OCA, Inc., and Filed Subsidiaries as of July 24, 2006 (the "Plan").

13. Debtors' Plan provides for assumption by Debtors pursuant to § 365 of the Bankruptcy Code of the BSA and specifically provides that there are no cure payments due (*i.e.*, there is a "zero" cure amount), no compensation due for any pecuniary losses pursuant to 11

U.S.C. § 365(b)(1)(A) and (B) or otherwise, and that there is adequate assurance of future performance.

14. Pursuant to § 105 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7016, the Debtors filed a (a) Motion For Entry of a BSA's Procedures Order For Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization For OCA, Inc. and Filed Subsidiaries and (b) Motion For Case Management and Scheduling Order In Connection With Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization of OCA, Inc. and Filed Subsidiaries ("Case Management Protocols"). On June 30, 2006, the Bankruptcy Court issued an Order on the Motion For Entry of a BSA's Procedures Order For Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization For OCA, Inc. and Filed Subsidiaries. On July 17, 2006, the Bankruptcy Court issued an Order Granting Motion For Case Management and Scheduling Order In Connection With Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization of OCA, Inc. and Filed Subsidiaries. On August 1, 2006, the Bankruptcy Court issued a Scheduling Order Pursuant to Case Management Order.

15. As set forth in the Plan and Case Management Protocols, all issues relating to assumption of the BSA are within the core jurisdiction of the Bankruptcy Court to determine without a jury, including, without limitation, whether:

(i) the BSA is an executory contract and capable of being assumed under 11 U.S.C. § 365;

(ii) there are any defaults by the Debtors and, if so, the nature, amount (including any claims by the Debtors up to the amount of any such monetary default or cure amounts which may be set off), and appropriate provision for the cure thereof;

(iii) there is any actual pecuniary loss as a result of any

default and, if so, the nature, amount (including any claims by the Debtors up to the amount of any such monetary default or cure amounts which may be set off), and appropriate provision for the cure thereof;

(iv) the Debtors can provide adequate assurance of future performance of the BSA and any requirements or provision related thereto; and,

(v) assumption is in the best interest of the Debtors and its estates.

16. This Complaint seeks pursuant to the core jurisdiction of the Bankruptcy Court (i) declaratory relief as to all issues relating to Debtors' assumption of the BSA pursuant to the terms and conditions of the Plan or Case Management Protocols; (ii) damages for breach of the BSA up to any cure amount determined by the Bankruptcy Court in connection with the Plan and confirmation process and for purposes of setoff, recoupment or reduction against any such cure amounts; and (iii) such other legal or equitable relief including, without limitation, specific performance, reformation of contract and other relief, as may be necessary to implement Debtors' assumption of the BSA under the Plan or Case Management Protocols.

17. In addition, this Complaint seeks damages for breach of the BSA over and above any cure amounts determined by the Bankruptcy Court in connection with the Plan and confirmation process, including, but not limited to, damages or relief for breach of contract, promissory estoppel, conversion, unjust enrichment, quantum meruit, accounted stated, default on promissory note and/or fraudulent conveyance.

Background of the Case

18. OCA provides non-clinical business and administrative support and services to affiliated orthodontic and dental practices ("Affiliated Practices") to assist with the practices' day-to-day operations. These services include, but are not limited to: employment, scheduling and training of non-licensed office staff; the provision and maintenance of office space,

telephones, and utilities; the provision and maintenance of office equipment, furniture and fixtures; the performance of certain bookkeeping, accounting, and related financial services; the performance of patient billings and collections; the administration of the practices' bank accounts; the installation of computer hardware and software and computer training; the ordering and management of supplies and inventory; the preparation of statistical data and analyses; the provision of certain legal services; the provision of requested consulting advice on practice efficiency and productivity, marketing, office location and layouts, and staff salaries, benefits, and performance and incentive plans; the provision of marketing and advertising services; and other non-clinical business and administrative services reasonably required by the practices' routine business operations.

19. During and before August 2004, Dr. Beitel was engaged in the solo, full time practice of dentistry in Alabama. On or about August 4, 2004, (the "Effective Date"), Dr. Beitel became affiliated with OCA when he entered into the BSA (a copy of which is attached hereto, marked Exhibit 1, and by reference made a part hereof) which has a term of seven (7) years.

20. Under the BSA, OCA agreed, among other things, to provide the non-clinical business and administrative services described, in a general way, in paragraph 18 of this Adversary Complaint and set forth with specificity in the BSA.

21. Since affiliating with OCA on the Effective Date, the dental practice operated by Defendant, with the assistance of the services provided by OCA, significantly benefited from its affiliation with OCA.

22. In exchange for OCA's provision of the specified non-clinical business and administrative services, Defendant agreed, among other things, to pay a Monthly Service Fee to

OCA according to either a predetermined formula or a set monthly amount as set forth in the BSA.

23. Since at least from on or about August 2005, Defendant has failed and refused to pay monthly service fees to OCA, which constitutes a material breach of the BSA.

24. Concurrent with the BSA's Effective Date, at the request of Defendant, OCA loaned Defendant the sum of $500,000 evidenced by two promissory notes, both dated as of August 4, 2004, one in the amount of $300,000 and the other in the amount of $200,000, and both executed by Defendant (copies of said promissory notes are attached hereto, marked Exhibits 2 and 3, respectively, and by reference made a part hereof). In addition, OCA advanced or loaned Defendant money for, among other things, office development and other operating expenses. Defendant has failed to make timely payment under the promissory note and, thus, materially breached the BSA. Despite demand by OCA for payment, Defendant has failed and refused to repay the outstanding balances owed on the promissory notes and advances totaling $631,614 as of December 31, 2005.

25. Following the BSA's Effective Date, OCA provided Defendant with access to certain proprietary information, materials, software, and systems, including, but not limited to:

(a) Penny Lane, a centralized internet-based program that enables users to take advantage of OCA's contracted per-item pricing on supplies (ranging from dental floss to fax machines). The purchasing system contains nearly 40,000 items from hundreds of suppliers and is accessible 24 hours a day, seven days a week. Purchases by OCA's affiliates on the Penny Lane system are billed directly to and paid by OCA for the benefit of those affiliates.

(b) Abbey Road, an internet-based accounting software package that provides users immediate access to the practice accounts from their inception as an Affiliated Practice.

(c) WALRUS, a software system with numerous features useful to OCA affiliated orthodontic practices, including, but not limited to, patient management features, scheduling features, and financial accounting features.

26. The BSA requires Defendant to maintain the confidentiality of the commercially valuable and proprietary information and materials provided by OCA, including, but not limited to, the Penny Lane, Abbey Road, and WALRUS systems, as well as financial and operational data regarding practice management, non-clinical forms, advertising, and marketing strategies.

27. In addition to that set forth herein, Plaintiffs are informed and believe and thereon allege that since on or about August 2005, if not before, Defendant has wrongfully retained confidential and proprietary intellectual property owned by OCA. Plaintiffs have suffered damage as a result of this conduct by Defendant as will be proven at trial.

COUNT I

Declaratory Relief, Specific Performance, Reformation of Contract and Related Relief

28. OCA reavers and realleges paragraphs 1 through 27 as if plead herein *in extenso*.

29. There is an actual controversy ripe for adjudication.

30. OCA is entitled to declaratory judgment in favor of OCA as to all issues relating to Debtors' assumption of the BSA pursuant to the terms and conditions of the Plan or Case Management Protocols; damages for breach of the BSA up to any cure amount determined by the Bankruptcy Court in connection with the Plan and confirmation process for purposes of setoff, recoupment, or reduction against any such cure amounts; and such other legal or equitable relief necessary to enforce the terms and conditions of the BSA including, without limitation, specific performance, reformation of contract and any other relief as may be necessary to

implement Debtors' assumption and the benefits to the Debtors and its estates of the BSA under the Plan or Case Management Protocols.

COUNT II

Breach of Contract

31. OCA reavers and realleges paragraphs 1 through 30 as if plead herein *in extenso*.

32. Defendant has breached his material contractual duties and obligations to OCA by, among other things: (a) failing to pay monthly service fees and other amounts due to OCA as required under the BSA; (b) retaining, using, and/or disclosing OCA's proprietary information without its consent or paying the agreed remuneration: and (c) refusing to repay the sum of at least $631,614, plus accrued interest, that Defendant borrowed from OCA, and which amount was due and owing by Defendant to OCA on or before March 14, 2006.

33. As a direct and proximate result of Defendant's breaches of his material duties and obligations under the BSA and lending agreement, OCA has suffered damages in an amount to be proven at trial, and will continue to suffer damages.

34. Under the express terms of the BSA and lending agreement, Plaintiffs are entitled to recover their attorneys' fees and costs incurred in enforcing their rights under the BSA and lending agreement.

COUNT III

Quantum Meruit

35. OCA reavers and realleges paragraphs 1 through 34 as if plead herein *in extenso*.

36. As a result of the services, substantial cash advances, and other goods, services and consideration provided by OCA, Defendant has greatly benefited from his affiliation with OCA.

37. Defendants knowingly accepted all of the benefits provided by OCA under the BSA.

38. Plaintiffs are entitled to, but have not received, full and fair value from Defendant for the cash advances, services, equipment, facilities, and other benefits provided them. By receiving and retaining the services and other benefits provided by OCA, and yet failing to compensate OCA fully and fairly for them, Defendant has been unjustly enriched. In order to rectify the unjust enrichment, Defendant must compensate OCA in full, and pay the fair value of the benefits of goods and services he received in an amount to be proven at trial, and must return all consideration and benefits received by them from OCA.

COUNT IV

Unjust Enrichment

39. OCA reavers and realleges paragraphs 1 through 38 as if plead herein *in extenso*.

40. As a result of the services, substantial cash advances, and other goods, services and consideration provided by OCA, Defendant has greatly benefited from his affiliation with OCA.

41. Defendant knowingly accepted all of the benefits provided by OCA under the BSA.

42. Plaintiffs are entitled to, but have not received, full and fair value from Defendant for the cash advances, services, equipment, facilities, and other benefits provided him. By receiving and retaining the services and other benefits provided by OCA, and yet failing to compensate OCA fully and fairly for them, Defendant has been unjustly enriched. In order to rectify the unjust enrichment, and balance the uneven position of the parties, Defendant must

compensate OCA in full, in an amount to be proven at trial, and must return all consideration and benefits received by him from OCA.

COUNT V

Default on Promissory Notes

43. OCA reavers and realleges paragraphs 1 through 42 as if plead herein *in extenso.*

44. Under the promissory notes identified in paragraph 24 of this Adversary Complaint, Defendant agreed to pay the principal and interest accrued on the promissory notes. Defendant is in default of his obligations to pay the principal and interest due under the promissory notes, and the amount of $500,000, plus accrued interest thereon from August 4, 2004, until paid, is all immediately due and payable.

45. Under the express terms of said promissory notes, OCA is entitled to recover its attorneys' fees and costs incurred in enforcing its rights under the promissory notes.

COUNT VI

Account Stated

46. OCA reavers and realleges paragraphs 1 through 45 as if plead herein *in extenso.*

47. Defendant is indebted to OCA in an amount exceeding $127,485.26, plus accrued interest, owing upon an account stated between them.

48. The BSA obligates Defendant to pay promptly upon the termination of the BSA all amounts due and owing but unpaid to OCA.

49. OCA demands that if Defendant is of the belief that the BSA has been duly and legally terminated, he immediately repay OCA not less than said $127,485.26, plus accrued interest, on the account stated between them.

50. Defendant has not paid the amount immediately due and owing to OCA, thereby causing OCA to suffer damages of at least $127,485.26, plus accrued interest.

COUNT VII

Fraudulent Conveyance Under 11 U.S.C. §§ 548 and 550

51. OCA reavers and realleges paragraphs 1 through 50 as if plead herein *in extenso.*

52. Defendant has wrongfully converted, used, and/or exercised dominion and control over property of OCA and/or OCA's interest in property. Such conversion, use, dominion, and/or control constitute a transfer of an interest of OCA in property for purposes of 11 U.S.C. § 548.

53. Within two years prior to the filing of Debtors' bankruptcy petitions, there was a transfer of value to the Defendant; OCA received less than a reasonably equivalent consideration or value in exchange for such transfer and OCA was insolvent on the date such transfer was made and/or was engaged in business for which any property remaining with OCA was an unreasonably small capital.

54. Pursuant to 11 U.S.C. § 550, OCA is entitled to recover the property transferred, or the value of such property, and all other damages and costs arising out of the fraudulent transfer and this proceeding.

COUNT VIII

Attorneys' Fees and Court Costs

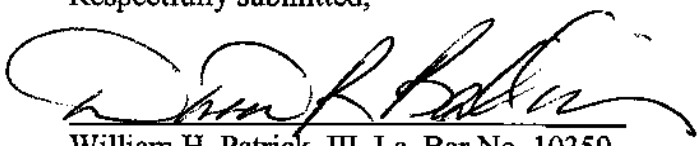
55. OCA reavers and realleges paragraphs 1 through 54 as if plead herein *in extenso.*

56 OCA is entitled to recover their attorneys' fees and court costs in connection with this matter under the terms the BSA and applicable law.

WHEREFORE, OCA prays that judgment be entered in its favor and against Defendants in the form of (i) declaratory relief as to all issues relating to Debtors' assumption of the BSA pursuant to the terms of the Plan or Case Management Protocols; (ii) damages for breach of the BSA; (iii) damages representing the amount of Defendants' indebtedness to OCA; (iv) such other legal or equitable relief, including, without limitation, specific performance, reformation of contract and other relief, as may be necessary to implement Debtors' assumption of the BSA under the Plan or Case Management Protocols entered by the Bankruptcy Court; and (v) reasonable attorneys' fees, costs and interest, and any further relief the Court deems just and proper.

New Orleans, Louisiana, this 28 day of August 2006.

Respectfully submitted,



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