

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

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	<b>06-10179 (B)</b>
<b>OCA, INC., et al.,</b>	:	
	:	<b>Jointly Administered</b>
<b>Debtors.</b>	:	

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**MOTION FOR ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY  
CODE AUTHORIZING DEBTORS TO REJECT CERTAIN AGREEMENTS**

**NOW INTO COURT**, through undersigned counsel, comes OCA, Inc., and certain of its subsidiaries<sup>1</sup>, as debtors and debtors-in-possession (collectively, the “Debtors”) who move this court for entry of an order pursuant to Section 365(a) of the Bankruptcy Code authorizing the Debtors to reject the certain agreements attached hereto as Exhibit “A” (the “Agreements”) to the

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<sup>1</sup> Orthodontic Centers of Alabama, Inc. (06-10180); Orthodontic Centers of Arizona, Inc. (06-10181); Orthodontic Centers of Arkansas, Inc. (06-10182); Orthodontic Centers of California, Inc. (06-10183); Orthodontic Centers of Colorado, Inc. (06-10184); Orthodontic Centers of Connecticut, Inc. (06-10185); Orthodontic Centers of Florida, Inc. (06-10186); Orthodontic Centers of Georgia, Inc. (06-10187); Orthodontic Centers of Illinois, Inc. (06-10188); Orthodontic Centers of Indiana, Inc. (06-10189); Orthodontic Centers of Kansas, Inc. (06-10190); Orthodontic Centers of Kentucky, Inc. (06-10191); Orthodontic Centers of Louisiana, Inc. (06-10192); Orthodontic Centers of Maine, Inc. (06-10193); Orthodontic Centers of Maryland, Inc. (06-10194); Orthodontic Centers of Massachusetts, Inc. (06-10195); Orthodontic Centers of Michigan, Inc. (06-10196); Orthodontic Centers of Minnesota, Inc. (06-10197); Orthodontic Centers of Mississippi, Inc. (06-10198); Orthodontic Centers of Missouri, Inc. (06-10199); Orthodontic Centers of Nebraska, Inc. (06-10200); Orthodontic Centers of Nevada, Inc. (06-10201); Orthodontic Centers of New Hampshire, Inc. (06-10202); Orthodontic Centers of New Jersey, Inc. (06-10203); Orthodontic Centers of New Mexico, Inc. (06-10204); Orthodontic Centers of New York (06-10205); Orthodontic Centers of North Carolina, Inc. (06-10206); Orthodontic Centers of North Dakota, Inc. (06-10207); Orthodontic Centers of Ohio, Inc. (06-10208); Orthodontic Centers of Oklahoma, Inc. (06-10209); Orthodontic Centers of Oregon, Inc. (06-10210); Orthodontic Centers of Pennsylvania, Inc. (06-10211); Orthodontic Centers of Puerto Rico, Inc. (06-10212); Orthodontic Centers of Rhode Island, Inc. (06-10213); Orthodontic Centers of South Carolina, Inc. (06-10214); Orthodontic Centers of Tennessee, Inc. (06-10215); Orthodontic Centers of Texas, Inc. (06-10216); Orthodontic Centers of Utah, Inc. (06-10217); Orthodontic Centers of Virginia, Inc. (06-10218); Orthodontic Centers of Washington, Inc. (06-10219); Orthodontic Centers of Washington, D.C., Inc. (06-10220); Orthodontic Centers of West Virginia, Inc. (06-10221); Orthodontic Centers of Wisconsin, Inc. (06-10222); Orthodontic Centers of Wyoming, Inc. (06-10223); OrthAlliance, Inc. (06-10229); OrthAlliance New Image, Inc. (06-10230); OCA Outsource, Inc. (06-10231); PedoAlliance, Inc. (06-10232); Orthodontic Centers of Hawaii (06-10503); Orthodontic Centers of Iowa (06-10504); and Orthodontic Centers of Idaho (06-10505).

extent the Agreements qualify as executory contracts under Section 365 and the United States Bankruptcy Code. In support thereof, the Debtors respectfully state as follows:

**Jurisdiction**

1. The Court has jurisdiction over this Motion under 28 U.S.C. §1334. This matter is a core proceeding within the meaning of 28 U.S.C. §147(b)(2)(A) and (O).
2. The statutory basis for relief requested herein is §365(a) of the Bankruptcy Code.

**Background**

3. On March 14, 2006, some of the Debtors (the March 14 Debtors) filed for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). On March 17, 2006 (referred collectively with March 14, 2006 as the “Petition Dates”), OrthoAlliances, Inc., OrthoAlliance New Image, Inc., OCA Outsource, Inc. and PedoAlliances, Inc. filed for relief under Chapter 11 of the Bankruptcy Code (the “March 17 Debtors”). On June 1, 2006, Orthodontic Center of Idaho, Inc., Orthodontic Center of Iowa, Inc. and Orthodontic Centers of Hawaii, Inc. filed for relief under Chapter 11 of the Bankruptcy Code. All of the Debtors’ Chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. Since their respective filings, the Debtors have continued to operate their business and manage their properties as debtors in possession, pursuant to §§1107 and 1108 of the United States Bankruptcy Code.

**Relief Requested**

4. By this Motion, out of an abundance of caution, the Debtors hereby request authority to reject the Agreements to the extent the Agreements are deemed executory contracts under Section 365 and the Bankruptcy Code.

### **Basis for Relief**

5. Section 365(a) of the Bankruptcy Code provides in relevant part that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. §365(a).

6. A determination whether to assume or reject an executory contract must be based on the debtor’s business judgment as to whether assumption or rejection of such contract will benefit the debtor’s estate. Richmond Leasing Co. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) (citing Group of Inst. Investors v. Chicago, Milwaukee, St. Paul and Pacific R. Co., 318 U.S. 523, 550 (1943)). Section 365(a) provides a debtor with the ability to evaluate each contract and to assume only those that provide a benefit to the estate. See In re Mirant Corp., 378 F.3d 511, 520 (5th Cir. 2004) (“[I]n effect, Section 365 allows debtors to pick and choose among their agreements and assume those that benefit their estates and reject those that do not”); In re Topco, 894 F.2d 727, 741 (5th Cir. 1990).

7. While the Debtors work towards a successful reorganization they have a duty to preserve their estates for the benefit of all parties in interest. The Debtors have reviewed the Agreement and have concluded that to the extent the Agreement qualifies as an executory contract under the United States Bankruptcy Code it provides no benefit to the Debtors’ estates. Accordingly, the Debtors believe that this Court’s approval for the rejection of the Agreement is in the best interests of the Debtors’ estates and creditors.

8. The Agreements, set forth on the attached Exhibit “A”, to the extent they could be construed as executory contracts, are burdensome to the Debtors and it would be in the best interests of the Debtors estates for the Agreements to be rejected with such rejection effective to the date of the filing of this motion.

**WHEREFORE**, Debtors respectfully pray that, after due notice and such hearing as this Court deems appropriate, they be given authority to reject the Agreements attached hereto as Exhibit "A" for the reasons set forth herein and for such other and further relief as is just and equitable.

**New Orleans, Louisiana**, this 1st day of September 2006.

Respectfully submitted,

/s/ Tristan Manthey

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