

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

IN RE:	*	CASE NO. 06-10179(B)
OCA, INC., ET AL	*	CHAPTER 11
DEBTORS	*	(Jointly Administered)

**MOTION TO QUASH CONSOLIDATED NOTICE OF TAKING
DEPOSITION OF OCA, INC. ON ISSUES GENERAL TO ALL
AFFILIATED PRACTICES OR, IN THE ALTERNATIVE, MOTION
FOR PROTECTIVE ORDER, AND INCORPORATED MEMORANDUM**

NOW INTO COURT, through undersigned counsel, come OCA, Inc. ("OCA") and certain of its subsidiaries¹, as debtors and debtors-in-possession (collectively, the "Debtors"), who, pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure and Rule 26(c) of

¹ 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 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); Orthodontics Centers of Hawaii, Inc. (06-10503); Orthodontics Centers of Iowa, Inc. (06-10504); and Orthodontics Centers of Idaho, Inc. (06-10505).

the Federal Rules of Civil Procedure, move this Honorable Court for an Order quashing the *Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to all Affiliated Practices* submitted by the Group I Doctors Debtors' contemporaneously filed *Ex Parte Motion for Case Management/Scheduling Conference and a Supplemental Scheduling Order* or, in the alternative, for an Order ordering that the deposition be had only on specified terms and conditions, including a time limitation on said deposition, and further move that any discovery related to the BSA Litigation² proceed in compliance with the *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* [Docket No. 1091], the *Scheduling Order Pursuant to Case Management Order* [Docket No. 1300], and any Supplemental Scheduling Order rendered in connection with Debtors' *Ex Parte Motion for Case Management/Scheduling Conference and a Supplemental Scheduling Order* filed contemporaneously herewith, on the following grounds, to wit:

JURISDICTION AND VENUE

1. This Honorable Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 105.
2. Venue of these adversaries proceedings in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On July 17, 2006, this Court entered an *Order Granting Motion for Case Management and Scheduling Order in Connection With Assumption Of Business Service Agreements Under Joint 11 Plan Or Reorganization Of OCA, Inc. and Filed Subsidiaries*

² Terms used in this document shall have the meanings assigned to them in the *Amended and Supplemental Joint Chapter 11 Plan of Reorganization for OCA, Inc. and Filed Subsidiaries as of September 14, 2006*.

[Docket No. 1091] (the "Case Management Order" or "CMO"). Pursuant to the Case Management Order, the Court entered a case management and scheduling order ". . . to consolidate for purposes of discovery, pre-trial motion practice and trial, the litigation related to the BSA's, including the adversaries by and against the Affiliated Practices, removed and/or transferred pre-petition cases and lawsuits, the proofs of claim filed by Affiliated Practices and the objections to said proofs of claim, and the objections to assumption and/or rejection of the BSA's . . .". (Emphasis added.)

4. On August 1, 2006, this Court entered a *Scheduling Order Pursuant to Case Management Order* [Docket No. 1300] (the "Scheduling Order" or "SO") pursuant to the Case Management Order and in connection with the *Stipulations and Order By and Between the Debtors and Other Stipulating Parties* [Docket No. 1316]. Among other things, the Scheduling Order ordered that ". . . with respect to Stipulating Parties, the trial and discovery of the BSA Litigation shall proceed in accordance with the following schedule:

January 15, 2007	End of fact discovery.
January 22, 2007	Pre-Trial Conference at 10:00 a.m.
January 31, 2007	Simultaneous exchange of expert reports.
February 20, 2007	Complete expert depositions.
March 1, 2007	Trial of BSA Litigation."

(Pursuant to the *Stipulations and Order By and Between the Debtors and Other Stipulating Parties*, the term "Stipulating Parties" means the "Current Stipulating Parties" and "Non-Current Stipulating Parties, collectively.")

5. Pursuant to the Case Management Order, the litigation related to the BSA's (the "BSA Litigation"), including the adversaries by and against the Affiliated Practices, has been consolidated for purposes of discovery, pre-trial motion practice and trial.

6. Pursuant to the Scheduling Order, trial with respect to the Stipulating Parties is scheduled for March 1, 2007, and cut-off dates relative to the consolidated discovery have been ordered.

7. In an attempt to ensure the reasonable and expeditious completion of discovery with respect to the litigation with the Stipulating Parties, and consistent with the Case Management Order and Scheduling Order, the Debtors have agreed, in several discussions with counsel for Group 1 Doctors and for Certain Dentists, to produce witnesses responsive to the corporate deposition of OCA on general corporate issues common to all Affiliated Practices over a one (1) week period and to produce witnesses responsive to the corporate deposition of OCA relative to individual Affiliated Practices over a two (2) week period. Specifically, Debtors agreed to produce witnesses on general corporate issues the week of October 30, 2006, and witnesses on corporate issues relating to individual Affiliated Practices, as well as fact witnesses pertaining to individual Affiliated Practices, the weeks of November 13, 2006, and November 27, 2006.

8. In contrast to the three weeks of depositions agreed to by the Debtors, counsel for the Group 1 Doctors initially proposed seven (7) weeks of OCA depositions. Thereafter, the Group 1 Doctors proposed that OCA simultaneously present all of its corporate representatives for deposition as to matters general to all Stipulating Parties the week of October 30 and to conduct OCA's corporate deposition on issues specific to individual Stipulating Parties over four (4) weeks.

9. On October 3, 2006, the Group 1 Doctors submitted a *Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to All Affiliated Practices* (the "Notice"), noticing the deposition of OCA, Inc., pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure and Rule 30(b)(6) of the Federal Rules of Civil Procedure ". . . commencing on **Monday, October 30, 2006**, . . . until said testimony shall be completed." (Emphasis in original.) (Said Notice is attached hereto as Exhibit No. 1.) That is, the Group 1 Doctors have noticed a corporate deposition of OCA of indefinite duration.

10. Testimony responsive to the Notice's thirty-one (31) areas of inquiry will require appearances by several OCA employees whose job duties are essential to the Debtors' day-to-day business operations. Similarly, the four weeks of depositions on individual doctor issues proposed by the Group 1 Doctors will require appearances by several, essential OCA employees.

11. A deposition of indefinite duration, and the proposed additional four (4) weeks of OCA depositions, will be oppressive, unduly burdensome, and expensive to Debtors and will adversely impact the ongoing business concerns of the debtors-in-possession.

12. The Group I Doctors' noticed deposition is contrary to the Court's Case Management Order and Scheduling Order and will result in piecemeal, duplicative, and costly discovery rather than the coordinated, consolidated, and cost effective discovery ordered and contemplated by the those Orders. Should OCA's deposition be allowed to proceed as noticed by the Group I Doctors, it is anticipated that most, if not all, Affiliated Practices will similarly notice OCA's deposition and Debtors will incur the substantial costs in participating in duplicative and unduly burdensome discovery on factual issues common to all Affiliated Practices.

13. Contemporaneously herewith, Debtors have filed an *Ex Parte Motion for Case Management/Scheduling Conference and a Supplemental Scheduling Order* moving for the entry of an order setting a Case Management/Scheduling Conference and of a Supplemental Scheduling Order to establish a coordinated discovery scheduling order relative to the BSA Litigation and procedural uniformity for the filing of pleadings in said litigation, and which is adopted and referenced herein as if copied *in extenso*.

14. Debtors pray that an Order issue herein quashing the *Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to All Affiliated Practices* pending a determination of Debtors' contemporaneously filed *Ex Parte Motion for Case Management/Scheduling Conference and a Supplemental Scheduling Order* or, in the alternative, ordering that the corporate deposition of OCA as to general corporate issues common to all Affiliated Practices be limited to five (5), seven (7) hour days the week of October 30, 2006, and ordering that said corporate deposition be noticed as to all parties in the BSA Litigation, and further pray that any discovery related to the BSA Litigation, including the adversaries by and against the Affiliated Practices, proceed in compliance with the *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* [Docket No. 1091], the *Scheduling Order Pursuant to Case Management Order* [Docket No. 1300], and any Supplemental Scheduling Order rendered in connection with Debtors' *Ex Parte Motion for Case Management/Scheduling Conference and a Supplemental Scheduling Order*.

New Orleans, Louisiana, this 12th day of October 2006.

Respectfully submitted,

/s/ Drew R. Ballina

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**Supplemental Litigation Counsel for
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon the following:

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by fax, electronic mail, and/or by placing a copy of same in the United States Mail, postage prepaid and properly addressed on this 12th day of October 2006.

/s/ Drew R. Ballina _____
DREW R. BALLINA

NOTICE ANNEX 1

Pursuant to 11 U.S.C. § 342, the address for each of the referenced Debtors is 3850 N.

Causeway Blvd., Suite 800, Metairie, LA 70002

<u>DEBTORS</u>	CASE NO.	TAX I.D. NO.
OCA, Inc.	06-10179	xx-xxx8948
Orthodontic Centers of Alabama, Inc.	06-10180	xx-xxx7093
Orthodontic Centers of Arizona, Inc.	06-10181	xx-xxx1232
Orthodontic Centers of Arkansas, Inc.	06-10182	xx-xxx8907
Orthodontic Centers of California, Inc.	06-10183	xx-xxx9079
Orthodontic Centers of Colorado, Inc.	06-10184	xx-xxx7095
Orthodontic Centers of Connecticut, Inc.	06-10185	xx-xxx0411
Orthodontic Centers of Florida, Inc.	06-10186	xx-xxx7097
Orthodontic Centers of Georgia, Inc.	06-10187	xx-xxx7098
Orthodontic Centers of Hawaii, Inc.	06-10503	xx-xxx5963
Orthodontic Centers of Idaho, Inc.	06-10505	xx-xxx4277
Orthodontic Centers of Illinois, Inc.	06-10188	xx-xxx1230
Orthodontic Centers of Indiana, Inc.	06-10189	xx-xxx0663
Orthodontic Centers of Iowa, Inc.	06-10504	xx-xxx0342
Orthodontic Centers of Kansas, Inc.	06-10190	xx-xxx8908
Orthodontic Centers of Kentucky, Inc.	06-10191	xx-xxx0666
Orthodontic Centers of Louisiana, Inc.	06-10192	xx-xxx7100
Orthodontic Centers of Maine, Inc.	06-10193	xx-xxx4186
Orthodontic Centers of Maryland, Inc.	06-10194	xx-xxx1229
Orthodontic Centers of Massachusetts, Inc.	06-10195	xx-xxx5666
Orthodontic Centers of Michigan, Inc.	06-10196	xx-xxx6962
Orthodontic Centers of Minnesota, Inc.	06-10197	xx-xxx6453
Orthodontic Centers of Mississippi, Inc.	06-10198	xx-xxx7101
Orthodontic Centers of Missouri, Inc.	06-10199	xx-xxx6961
Orthodontic Centers of Nebraska, Inc.	06-10200	xx-xxx0483
Orthodontic Centers of Nevada, Inc.	06-10201	xx-xxx5665
Orthodontic Centers of New Hampshire, Inc.	06-10202	xx-xxx5495
Orthodontic Centers of New Jersey, Inc.	06-10203	xx-xxx2916
Orthodontic Centers of New Mexico, Inc.	06-10204	xx-xxx8906
Orthodontic Centers of New York, Inc.	06-10205	xx-xxx6960
Orthodontic Centers of North Carolina, Inc.	06-10206	xx-xxx7102
Orthodontic Centers of North Dakota, Inc.	06-10207	xx-xxx6959
Orthodontic Centers of Ohio, Inc.	06-10208	xx-xxx0361
Orthodontic Centers of Oklahoma, Inc.	06-10209	xx-xxx6958
Orthodontic Centers of Oregon, Inc.	06-10210	xx-xxx6342
Orthodontic Centers of Pennsylvania, Inc.	06-10211	xx-xxx2918
Orthodontic Centers of Puerto Rico, Inc.	06-10212	xx-xxx1568
Orthodontic Centers of Rhode Island, Inc.	06-10213	xx-xxx5667
Orthodontic Centers of South Carolina, Inc.	06-10214	xx-xxx7104
Orthodontic Centers of Tennessee, Inc.	06-10215	xx-xxx7106
Orthodontic Centers of Texas, Inc.	06-10216	xx-xxx8024
Orthodontic Centers of Utah, Inc.	06-10217	xx-xxx6957
Orthodontic Centers of Virginia, Inc.	06-10218	xx-xxx7107

DEBTORS**CASE NO.****TAX I.D. NO.**

Orthodontic Centers of Washington, Inc.	06-10219	xx-xxx1231
Orthodontic Centers of Washington, D.C., Inc.	06-10220	xx-xxx2484
Orthodontic Centers of West Virginia, Inc.	06-10221	xx-xxx4091
Orthodontic Centers of Wisconsin, Inc.	06-10222	xx-xxx6956
Orthodontic Centers of Wyoming, Inc.	06-10223	xx-xxx5961
OrthAlliance, Inc.	06-10229	xx-xxx2134
OrthAlliance New Image, Inc.	06-10230	xx-xxx0308
OCA Outsource, Inc.	06-10231	xx-xxx9255
PedoAlliance, Inc.	06-10232	xx-xxx0432