

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

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In re : **Chapter 11 Case No.**
 : **06-10179 (B)**
OCA, INC., et al., :
 : **(Jointly Administered)**
 :
Debtors. :
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**EX PARTE MOTION FOR CASE MANAGEMENT/SCHEDULING
CONFERENCE AND A SUPPLEMENTAL SCHEDULING ORDER**

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 hereby move, pursuant to 11 U.S.C. § 105(d), Federal Rule of Bankruptcy Procedure 7016 and Federal Rule of Civil Procedure 16, for entry of an order setting a case management/scheduling conference and a supplemental scheduling order to address issues

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).

related to the BSA Litigation.² In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 105. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. 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 Chapter 11 Plan of Reorganization of OCA, Inc. and Filed Subsidiaries [Docket No. 1091]* ("Case Management Order") in this case. See attached Exhibit No. 1 attached. Pursuant to this 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."

3. On August 1, 2006, this Court entered a Scheduling Order Pursuant to Case Management Order ("Scheduling Order") *[Docket No. 1300]*. See attached Exhibit No. 2 attached. The Scheduling Order was entered in connection with the Stipulations and Order By and Between the Debtors and the Other Stipulating Parties. *[Docket No. 1316]*.

² All capitalized terms used in this document shall have the meanings assigned to them in the Joint Plan of Reorganization for OCA, Inc. and Filed Subsidiaries filed on May 12, 2006 as amended.

4. The Scheduling Order provides in pertinent part:

IT IS FURTHER 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

5. The Debtors' intention and aim in seeking the Case Management Order and Scheduling Order was to consolidate discovery for the BSA Litigation in a manner to efficiently and expeditiously bring these cases to trial and to prevent exactly the discovery "free-for-all" that is on the verge of happening.

6. The Debtors had proposed a Case Management Scheduling and Proposed Timetable for Scheduling Order [*Docket No. 1106*]. See attached Exhibit No. 3 attached. In the filing, Debtors suggested consolidated discovery consisting in part of master written discovery, written discovery relating to the individual Affiliated Practices, production of OCA corporate representatives for one (1) week, depositions of OCA corporate representatives limited to two (2) hours for each Affiliated Practice, and depositions of fact witnesses limited to two (2) hours for each Affiliated Practice. The Debtors and counsel for the Affiliated Practices were unable to agree on specifics, but instead, the parties agreed to the entry of a broad Scheduling Order, which now requires clarification.

7. Notwithstanding the Case Management Order and the Scheduling Order entered herein, certain doctors and/or groups of litigating doctors have begun propounding discovery, none of which is coordinated. For example, the Group I Doctors have filed a unilateral Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to All Affiliated Practices, with said deposition to begin on Monday, October 30, 2006, until said testimony shall be completed. See attached Exhibit No. 4 attached. In addition, counsel for the Group I Doctors has further requested double or triple tracking of deposition testimony of OCA employees, such that more than one OCA corporate representative would be deposed simultaneously. It is anticipated that this deposition will necessitate testimony from several of OCA's vital employees.³

8. Additionally, counsel for other litigating doctors have unilaterally propounded uncoordinated discovery to OCA. For example, recently, counsel for Bradley K. Hook, DDS, MS propounded Interrogatories and Requests for Production to the Debtor; counsel for John Burnheimer, D.M.D. propounded Interrogatories, Requests for Admission and First Request for Production of Documents; and counsel for Craig Kishiyama, D.D.S., M.S. propounded Requests for Admission, First Request for Production of Documents and Interrogatories. See attached Exhibit Nos. 5, 6, and 7.

9. In the weeks prior to receiving the unilateral corporate deposition notice, counsel for OCA entered discussions with counsel for a majority of the litigating doctors and agreed to allow one week of testimony on general corporate issues and two weeks of testimony on issues

³ Debtors are simultaneously filing a *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* seeking to quash the *Consolidated Notice of Taking Deposition of OCA, Inc. on Issues General to all Affiliated Practices* submitted by the Group I Doctors or, in the alternative, for a Protective Order as set forth therein. See attached Exhibit No. 8.

relating to the individual Affiliated Practices. Counsel for a majority of the litigating doctors would not agree to the Debtors' reasonable proposal, and thus, Debtors seek guidance from this Court in supplementing the Case Management Order and Scheduling Order. The time frames suggested by Debtors are more than reasonable for consolidated discovery herein, and will allow OCA to operate its business as debtor-in-possession in the meantime.

10. The issuance of discovery from all of the doctors without a coordinated effort will be inefficient, burdensome, costly, will interfere with OCA's business, and will eviscerate the intent and purpose of the Case Management Order and Scheduling Order. The relief requested therein will clarify the orders already entered by this court consolidating the BSA Litigation for purposes of discovery and trial.

11. Furthermore, procedurally, and in order to clarify appeal issues, OCA submits that all of these proceedings should be filed under a single caption.

Basis for Relief

12. For the reasons set forth in this motion and pursuant to § 105 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 7016 and Federal Rule of Civil Procedure 16, the Debtors seek a case management/scheduling conference and supplemental scheduling order to establish a streamlined approach to bring the BSA Litigation to trial in March of 2007 and establish procedural uniformity in filings in this case.

13. The Debtors propose the Court adopt a schedule in connection with the BSA Litigation specifying: (i) deadlines for the filing of and response to master written discovery by the Affiliated Practices to be served on OCA; (ii) deadlines for the filing of and response to written discovery by Debtors to be served on the Affiliated Practices; (iii) schedules for depositions on general corporate issues; and, (iv) schedules for depositions on individual

doctor/practice issues, all with the goal of the completion of discovery by the deadlines in the Scheduling Order with the trial to commence in March of 2007.

14. The disputes between the Debtors and the Affiliate Practices are generally similar and involve common issues of fact. As each of the Affiliated Practices will be seeking much of the same information from the Debtors, the discovery process should be streamlined. Then, only issues factually specific to each Affiliated Practice will need to be separately addressed. While each Affiliated Practice should be allowed to conduct discovery relevant to the Debtors' business, there is no reason for each Affiliated Practice to depose the Debtors' corporate representatives regarding the same information in numerous depositions. The discovery can, and should be, streamlined in an effort to promptly and efficiently resolve the disputes between the Debtors and the Affiliated Practices. This will benefit not only the Debtors, but will reduce the legal fees and expenses to each of the Affiliated Practices, while still ensuring that each Affiliated Practice has the relevant information necessary to proceed with its claims.

15. The requested order will also ensure that neither the Debtors nor the Affiliated Practices delay in discovery and are given ample opportunity to conduct all reasonable discovery in preparation for the trials scheduled to occur in March of 2007.

Notice

12. Notice of this Motion has been given to (i) counsel to the official committee of unsecured creditors; (ii) the United States Trustee; (iii) all Affiliated Practices; (iv) counsel to the Secured Lenders; and (v) all parties who request notices pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that this Court set a Case Management/Scheduling Conference and Order a Supplemental Scheduling Order, and for such other and further relief as may be just and equitable.

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

Respectfully submitted,

/s/ Drew R. Ballina

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Drew R. Ballina, La. Bar No. 01704
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**Supplemental Litigation Counsel for
the Debtors and Debtors-in-Possession**

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

DEBTORS	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
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

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

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