

**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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**MOTION FOR ENTRY OF ORDER APPROVING NOVEMBER 22, 2006
IMMATERIAL MODIFICATIONS TO THE AMENDED AND SUPPLEMENTAL
JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR OCA, INC.
AND FILED SUBSIDIARIES, AS OF JULY 24, 2006**

OCA, Inc. and its filed subsidiaries¹, as debtors and debtors-in-possession (collectively, the “Debtors”), by and through their respective undersigned counsel, hereby file this motion (the “Motion”) for entry of an order approving immaterial modifications as of November 22, 2006 to the Amended and Supplemental Joint Chapter 11 Plan of Reorganization for OCA, Inc. and Filed

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).

Subsidiaries as of July 24, 2006 (Docket No. 1247) (the “Plan”),² and in support of this Motion, respectfully represent as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue in this district is proper pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. The statutory predicates for the relief sought herein are Sections 105 and 1127(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.*, as amended (the “Bankruptcy Code”) and Rule 3019 of the Federal Rules of Bankruptcy Procedure.

Background

4. The Debtors filed for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) commencing on March 14, 2006 (the “Petition Date”). All of the Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.
5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6. On May 12, 2005, the Debtors filed a (a) Joint Chapter 11 Plan of Reorganization for OCA, Inc. and Filed Subsidiaries (Docket No. 492) and (b) Joint Disclosure Statement for Joint Chapter 11 Plan for OCA, Inc. and Filed Subsidiaries (Docket No. 493).
7. On June 7, 2006, the Debtors filed a Motion of Debtors for Entry of an Order Approving (I) the Confirmation Hearing Notice, the Manner of Mailing and Service of the

² Capitalized terms not defined herein shall have the meanings set forth in the Plan.

Solicitation Package and Confirmation Notice and Publication of the Confirmation Hearing Date, (II) the Voting Agent and Procedures for Voting and Tabulation of Ballots, (III) the Forms of Ballots, and (IV) the Procedures for Allowing Claims for Voting Purposes (Docket No. 624).

8. After multiple hearings on the proposed Disclosure Statement, the Court ruled that it would approve the Disclosure Statement subject to the Debtors making certain modifications. On July 24, 2006, the Debtors made the required modifications and filed an: (a) Amended and Restated Joint Disclosure Statement for Joint Chapter 11 Plan for OCA, Inc. and Filed Subsidiaries as of July 24, 2006 (the “Disclosure Statement”) (Docket No. 1248); and (b) the Plan.

9. On July 24, 2006, the Court entered an order approving the Disclosure Statement (Docket No. 1251), and scheduled a confirmation hearing on the Plan for September 5 and 6, 2006.

10. On July 24, 2006, the Court also entered an Order Approving (I) the Confirmation Hearing Notice, the Manner of Mailing and Service of the Solicitation Package and Confirmation Notice and Publication of the Confirmation Hearing Date, (II) the Voting Agent and Procedures for Voting and Tabulation of Ballots, (III) the Forms of Ballots, and (IV) the Procedures for Allowing Claims for Voting Purposes (Docket No. 1252) (the “Voting Procedures Order”). The Voting Procedures Order approved the Solicitation Package to be mailed to the Solicitation Package Recipients, as defined in the Voting Procedures Order, for purposes of voting to accept or reject the Plan. Pursuant to the Voting Procedures Order, the Debtors have mailed the Solicitation Packages to the Solicitation Package Recipients.

11. Pursuant to the terms of the Plan, “[t]his Plan may be altered, amended or modified by the Debtors before or after the Confirmation Date, as provided in Section 1127 of

the Bankruptcy Code, provided that all such alterations, amendments, or modifications must be in a form and acceptable to the Lenders and the UCC.” See Section 8.19 of the Plan.

Requested Relief

12. By this Motion, the Debtors seek entry of an order approving the November 22 Plan Modifications (as defined herein).

13. The November 22 Plan Modifications are proposed modifications to the Plan since the September 14 Plan Modifications [P-1844]. The September 14 Plan Modifications were cumulative of the August 18 Plan Modification [P-1535], the August 29 Plan Modifications [P-1684], the September 1 Modification [P-1766], and September 11 Plan Modifications [P-1819], and certain other non-material and technical modifications to the Plan. The Debtors urge this Court to approve the November 22 Plan Modifications to the Plan without requiring a resolicitation of any impaired classes under the Plan.

14. The November 22 Plan Modifications are modifications to vest the Chapter 11 Plan Trust Causes of Action against present and/or former officers and directors of the Debtors on the Effective Date in a Chapter 11 Plan Trust, rather than in the Reorganized Debtor. In addition, certain typographical and clerical errors are being corrected.

15. A redline version of the changed pages to the Plan (such proposed modifications, the “November 22 Plan Modifications”) compared to the present version of the Plan (containing all modifications through and including the September 14 Plan Modifications) is attached hereto as Exhibit 1.

16. The changes proposed herein are immaterial modifications. The Debtors believe it is in the best interests of the Debtors' estates and holders of Claims against those estates to make such modifications in order to provide that the Chapter 11 Plan Trust, and not the

Reorganized Debtor, has the right after the Effective Date to pursue certain claims against present and former officers and directors, as defined as the Chapter 11 Plan Trust Causes of Action. The November 22 Plan Modifications do not affect the treatment of any holder of any Claim or interest and, moreover, do not affect any party's contractual or legal rights against the Debtors.

Basis for Relief

17. Section 1127(a) of the Bankruptcy Code provides in pertinent part:

The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of Section 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.
11 U.S.C. § 1127(a).

18. The proposed November 22 Plan Modifications do not alter the classification of claims or interests of the Plan, and as such, do not implicate the classification rules of Section 1122 of the Bankruptcy Code.

19. The proposed November 22 Plan Modifications comply with all the provisions in Section 1123 of the Bankruptcy Code.

20. Rule 3019 of the Federal Rules of Bankruptcy Procedure provides in pertinent part:

In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after a hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not *adversely* change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. 3019 (emphasis added).

21. The proposed November 22 Plan Modifications do not alter in any respect the treatment accorded to Claims or Equity Interests. As such, the Debtors submit that the proposed November 22 Plan Modifications are non-material, and that no additional solicitation is required as a result of the requested modifications. See In re Cellular Info. Sys., Inc., 171 B.R. 926, 929 n.6 (Bankr. S.D.N.Y. 1994) (nonmaterial modifications to plan do not require resolicitation); In re American Solar King Corp., 90 B.R. 808 (Bankr. W.D. Tex. 1988) (if modification did not materially impact claimant's treatment, the change was not adverse to claimant and court can deem prior acceptance applied to amended plan); In re Dow Corning Corp., (E.D. Mich. 1999) 237 B.R. 374 (if modification does not adversely change treatment of the claim of creditors, no further solicitation is required).

WHEREFORE, Debtors respectfully request that this Court find that the proposed November 22 Plan Modifications set forth above and as outlined in the exhibit annexed hereto are non-material within the meaning of Federal Rule of Bankruptcy Procedure 3019, authorize the November 22 Plan Modifications to the Plan without requiring the Debtors to resolicit votes respecting the Plan, as modified, and find that the "Plan" as referenced in the Plan itself, any Confirmation Order, any Findings and Conclusions, and other documents executed in connection with the consummation or implementation of the Plan shall mean the Plan, as modified by the November 22 Plan Modifications.

New Orleans, Louisiana this 22nd day of November 2006.

[signature on next page]

Respectfully submitted:

**HELLER, DRAPER, HAYDEN,
PATRICK & HORN, L.L.C.**

By: /s/ William H. Patrick, III

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**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
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