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 ORTHODONTIC CENTERS OF MINNESOTA, INC., a Delaware Corporation

DEFENDANTS
PETER W. KUIPERS, D.D.S., and KUIPERS ORTHODONTICS, P.A., a Minnesota Professional Corporation

Attorneys (Firm Name, Address, and Telephone No.)
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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)
Declaratory Relief, Specific Performance, Reformation of Contract, Breach of Contract, and other relief.

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 $	OTHER RELIEF SOUGHT	☐ JURY DEMAND
		Specific Performance	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR	BANKRUPTCY CASE NO.
OCA, Inc.	06-10179 (B)

DISTRICT IN WHICH CASE IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
Eastern District of Louisiana		Jerry A. Brown

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.

DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE
Eastern District of Louisian		

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

DATE	PRINT NAME	SIGNATURE OF ATTORNEY (OR PLAINTIFF)
6·22·06	Drew R. Ballina	

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: OCA, INC., ET AL. Debtors ********** OCA, INC., a Delaware Corporation, and ORTHODONTIC CENTERS OF MINNESOTA, INC., a Delaware Corporation Plaintiffs v. PETER W. KUIPERS, D.D.S., and KUIPERS ORTHODONTICS, P.A., a Minnesota Professional Corporation Defendants	Chapter 11 Case No. 06-10179 (B) (Jointly Administered) Adversary Proceeding No.

COMPLAINT

OCA, Inc., (formerly Orthodontic Centers of America, Inc.), and Orthodontic Centers of Minnesota, Inc., ("OCS"), 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, OCS, a Delaware corporation.

6. Defendant, Peter W. Kuipers, D.D.S., ("Dr. Kuipers"), is a resident and citizen of the State of Minnesota and is a licensed dentist in the State of Minnesota, where he is engaged in the practice of orthodontics.

7. Defendant, Kuipers Orthodontics, P.A., ("Kuipers PA"), is a Minnesota professional corporation wholly owned and operated by Dr. Kuipers.

Bankruptcy Cases

8. 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.

9. 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.

10. 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.

11. Through long-term contracts, typically a Business Services Agreement, sometimes identified, or referred to, as a Business Management Agreement or Management Agreement, (the "BSA" or "BSAs"), with affiliated orthodontic or dental practices ("Affiliated Practices"), the Debtors provide capital for the development and growth and manage the business aspects 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 monthly service fees based upon a percentage of the practices' operating profit or practice revenue and reimbursement of practice-related expenses. 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 is the BSA between Debtors and the Defendants entered into prior to the commencement of the Debtors' bankruptcy cases. The BSA is property of the Debtors' bankruptcy estate pursuant to Section 541 of the Bankruptcy Code and an executory contract capable of being assumed pursuant to Section 365 of the Bankruptcy Code and the Joint Chapter 11 Plan of Reorganization for OCA, Inc., and Filed Subsidiaries dated May 12, 2006, as amended (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 also 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"). The Plan and Case Management Protocols are pending in the Bankruptcy Court.

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 October 1996, Dr. Kuipers was engaged in the solo, full time practice of orthodontics in the State of Minnesota. Effective as of October 1, 1996, (the "Effective Date"), Dr. Kuipers and Kuipers PA entered into a BSA with OCS. A copy of the BSA is attached hereto as Exhibit 1, and by reference made a part hereof. Concurrently, Dr. Kuipers transferred the nonprofessional assets of his practice to OCA in exchange for 64,167 shares of OCA common stock having a value of $770,000.

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 Section III of the BSA.

21. The BSA provides for OCA to perform, for example, certain patient billing and collection services for the practice should Defendants request such services, and to deposit all funds collected into a bank account administered by OCA. At their option, OCA has the authority to transfer such funds to a central bank account maintained by OCA. At Defendants' direction, OCA prepared and transmitted monthly bills for services Defendants provided to their patients. Defendants unilaterally elected to directly bill and collect payment directly from the

patients and instructed OCA not to engage in the billing and collection of payment process, which directive OCA followed. Defendants then regularly deposited those collections into the bank account administered by OCA. However, since on or about March 1, 2006, Defendants have failed and refused to deposit the payments received from and on behalf of their patients into the bank account created for that purpose between OCA and Defendants, thus preventing OCA from paying the expenses of Defendants' practice, collecting reimbursement for advances made on behalf of Defendants to vendors in the ordinary course of Defendants' business, and receiving their Monthly Service Fee (as set forth below), all of which constitute material breaches of Defendants' obligations under the BSA.

22. Pursuant to Section 9.1 of the BSA, and with the knowledge and consent of Defendants, OCS assigned its rights and obligations under the BSA to OCA, Inc. The BSA provides for a term of 40 years.

23. Since affiliating with OCA as of October 1, 1996, the orthodontic practice operated by Defendants, with the assistance of the services provided by OCA as set forth above, through December 2005, increased its annual gross receipts such that they would not have been able to attain without the benefits it received as a result of its affiliation with OCA.

24. In exchange for OCA's provision of the specified non-clinical business and administrative services, Defendants agreed, among other things, to pay a Monthly Service Fee to OCA according to a predetermined formula which is set forth in Section IV of the BSA.

25. Following the BSA's Effective Date, OCA provided Defendants 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 Defendants 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. The BSA provides for reformation and amendment and the Debtors are entitled to the same, if necessary, under the terms and provisions of the BSA and/or applicable law.

28. Section 6.2 of the BSA permits Defendants to terminate the BSA in the event OCA defaulted in the performance of any material duty or obligation imposed upon it by the BSA and so long as such default continues for a period of 30 days after written notice thereof has been given to OCA by Defendants.

29. By letter dated February 15, 2006, Defendants wrote to Mr. Bart F. Palmisano, Sr., Orthodontic Centers of Minnesota, Inc., and asserted that the BSA was illegal in the State of Minnesota. Among other things, the letter stated that the Defendants would cease making deposits of patient payment receipts, which they did even before the letter was sent. Defendants' actions were unilateral and without just cause. Withholding deposits constitutes a material

breach of the BSA, and it continues to the present and has resulted in OCA suffering damages in an amount to be proven at trial. A copy of said letter is attached hereto as Exhibit 2, and by reference made a part hereof.

30. By letter dated March 14, 2006, Defendants wrote to Mr. Bart F. Palmisano, Sr., Orthodontic Centers of Minnesota, Inc., purporting to terminate the BSA pursuant to Section 6.2 thereof. A copy of said letter is attached hereto as Exhibit 3, and by reference made a part hereof.

31. OCA, however, has never defaulted on any material duty or obligation imposed by the BSA and, therefore, Defendants have never had any basis or legal justification for invoking the BSA's termination provisions. At all times, OCA has been ready, willing, and able to perform all of its obligations under the BSA.

32. Plaintiffs are informed and believe and thereon allege that since on or about February 15, 2006, if not before, Defendants have wrongfully retained the use of furniture, fixtures and equipment in their practice that was purchased by OCA and leased to Defendants pursuant to the terms of the BSA. They have neither paid for said furniture, fixtures and equipment, nor tendered possession of it to OCA. Plaintiffs have suffered damage as a result of this conduct by Defendants in an amount to be proven at trial.

33. In addition to that set forth herein, Plaintiffs are informed and believe and thereon allege that since on or about February 15, 2006, if not before, Defendants have wrongfully retained confidential and proprietary intellectual property owned by OCA. Notwithstanding Defendants assertion that they possess no such property, they know full well that they do, as they made use of that property daily in their practice. Plaintiffs have suffered damage as a result of this conduct by Defendants in an amount to be proven at trial.

34. Section 7.2 of the BSA prohibits Defendants from engaging in certain competitive activities during and following the termination or expiration of the BSA, including, but not limited to, specific restrictions relating to the solicitation of professional and office staff and to the management, ownership, and operation of an orthodontic practice. Plaintiffs are informed and believe and thereon allege that Defendants have, since on or about February 15, 2006, if not before, been violating these covenants by, among other things, soliciting and hiring staff employed by OCA and by managing, owning, and operating an orthodontic practice that has improperly ceased performance under the BSA, and by soliciting referral sources and patients, and engaging in other wrongful and prohibited conduct in material breach of said Sections. Plaintiffs have been damaged as a result of this conduct by Defendants in an amount to be proven at trial.

35. Pursuant to the BSA, in the event of the termination of the BSA for any reason, Defendants have certain contractual obligations, including, but not limited to, the prompt return to OCA of all OCA's proprietary information, and the prompt payment of all amounts due and owing but unpaid to OCA as of the termination date. Although it has purported to terminate the BSA, Defendants have fulfilled neither of these obligations.

COUNT I

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

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

37. There is an actual controversy ripe for adjudication.

38. 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

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

40. Defendants have breached their material contractual duties and obligations to OCA by, among other things: (a) refusing to deposit collections into the account administered by OCA, as required under the BSA, and as they did from the inception of the BSA until on or about March 1, 2006, and otherwise failing to remit payments due to OCA; (b) failing to pay monthly service fees and other amounts due to OCA as required under the BSA; (c) engaging in acts violative of restrictive covenants in the BSA; (d) retaining and using equipment and other tangible property belonging to OCA without their consent or paying the agreed remuneration; (e) retaining, using, and/or disclosing OCA's proprietary information without its consent or paying the agreed remuneration; and (f) refusing to pay sums due and owing, and which amounts were due and owing by Defendants to OCA on or before March 14, 2006.

41. As a direct and proximate result of Defendants' breaches of their material duties and obligations under the BSA, OCA has suffered damages in an amount to be proven at trial, and will continue to suffer damages.

42. Under the express terms of the BSA, namely Section 9.10, Plaintiffs are entitled to recover their attorneys' fees and costs incurred in enforcing their rights under the BSA.

COUNT III

Promissory Estoppel

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

44. In performance of its obligations under the BSA, OCA made a substantial initial outlay of cash and other consideration, and dedicated other resources to Defendants. As all parties understood, Defendants could derive meaningful benefits and returns from their contractual relationship with OCA only if the BSA remained in effect for a long period of time and only if Defendants performed their obligations and utilized the services and other benefits for the duration of the BSA.

45. At all times, OCA has performed, or has been ready, willing, and able to perform, all of their obligations under the BSA. As a result, Defendants have derived substantial benefits from the numerous cash advances by OCA as well as the services, equipment, and facilities provided by OCA.

46. At the time Defendants executed the BSA, they represented to OCA that they would fully perform their obligations for the duration of the BSA and that they were committed to a long-term relationship with OCA. At that time, Defendants expected and could foresee that OCA would rely on these representations, and, in fact, OCA did reasonably and justifiably rely on these representations in deciding to enter into the business relationship with Defendants.

47. Defendants, however, have failed to perform as they represented they would by, among other things, ceasing to pay monthly service fees, ceasing to deposit collections into the

bank account administered by OCA, and frustrating OCA's performance of their obligations under the BSA.

48. As a direct and proximate result of Defendants' failures to live up to their promises to perform, upon which promises OCA reasonably relied to their detriment, OCA has incurred and will continue to incur significant damages in an amount to be proven at trial. It is necessary to enforce the promises made by Defendants in order to do substantial justice between the parties and to avoid injustice.

COUNT IV

Conversion

49. OCA reavers and realleges paragraphs 1 through 48 as if plead herein *in extenso*.

50. In accordance with the BSA, OCA purchased or otherwise acquired numerous pieces of equipment, furniture, and other items of personal property during the course of the parties' business relationship and, as owner of such property, made it available to Defendants for use in their orthodontic practice.

51. Defendants have, without authority or consent from OCA, wrongfully exercised control, dominion, or ownership over OCA's personal property by retaining possession of such personal property and using it in their practice.

52. OCA is the owner of such personal property, and has both a right to such property, and a right of immediate possession of such property.

53. Defendants have not returned or offered to purchase the personal property owned by OCA.

COUNT V

Unjust Enrichment

54. OCA reavers and realleges paragraphs 1 through 53 if plead herein *in extenso*.

55. As a result of the services, initial cash outlay, substantial cash advances, and other consideration provided by OCA, Defendants have greatly benefited from their affiliation with OCA. These benefits enabled Defendants to expand, and substantially increase the productivity of their orthodontic practice in excess of that when they entered into the business relationship with OCA effective October 1, 1996.

56. Defendants knowingly accepted all of the benefits provided by OCA under the BSA. In exchange for such benefits, OCA reasonably expected to have a long-term contractual relationship with Defendants in order to recoup their investment.

57. Plaintiffs are entitled to, but have not received, full and fair compensation from Defendants for the substantial initial cash outlay and subsequent cash advances, services, equipment, facilities, and other benefits provided to them. By receiving and retaining the services, equipment, facilities, and other benefits provided by OCA, and yet failing to compensate OCA fully and fairly for them, Defendants have been unjustly enriched. In order to rectify the unjust enrichment, and balance the uneven position of the parties, Defendants must compensate OCA in full, in an amount to be proven at trial, and must return all consideration and benefits received by them from OCA.

COUNT VI

Quantum Meruit

58. OCA reavers and realleges paragraphs 1 through 57 as if plead herein *in extenso*.

59. As a result of the services, initial cash outlay, substantial cash advances, and other goods, services and consideration provided by OCA, Defendants have greatly benefited from their affiliation with OCA. These benefits enabled Defendants to acquire, expand, and substantially increase the productivity of their orthodontic practice in excess of that when they entered into the business relationship with OCA effective October 1, 1996.

60. Defendants knowingly accepted all of the benefits provided by OCA under the BSA. In exchange for such benefits, OCA reasonably expected to have a long-term contractual relationship with Defendants in order to recoup their investment.

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

COUNT VII

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

62. OCA reavers and realleges paragraphs 1 through 61 as if plead herein *in extenso*.

63. Defendants have 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.

64. Within two years prior to the filing of Debtors' bankruptcy petitions, there was a transfer of value to the Defendants; 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.

65. 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

66. OCA reavers and realleges paragraphs 1 through 65 as if plead herein *in extenso.*

67. OCA is entitled to recover their attorneys' fees and court costs in connection with this matter under the terms of Section 8.10 of 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) 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 (iv) reasonable attorneys' fees and costs and interest, including interest on attorneys' fees and any further relief the Court deems proper.

New Orleans, Louisiana, this 22 day of June 2006.

Respectfully submitted,

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