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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE ALIGN TECHNOLOGY, INC.
DERIVATIVE LITIGATION

Lead Case No.: 5:19-cv-00202-LHK

**STIPULATION AND AGREEMENT OF
SETTLEMENT AND RELEASE**

This Document Relates to:

ALL ACTIONS.

1 (f) “**Effective Date**” means the date by which all of the events and conditions specified in
2 Section V.E.1. of this Stipulation have been met and have occurred or have been waived.

3 (g) “**Federal Derivative Action**” means *In re Align Technology, Inc. Derivative Litigation*,
4 Case No. 5:19-cv-00202-LHK (N.D. Cal.), which is composed of the following actions: *Tran v. Hogan*,
5 *et al.*, Case No. 5:19-cv-00202-LHK (N.D. Cal.); *Dooley v. Hogan, et al.*, Case No. 5:19-cv-00525-LHK
6 (N.D. Cal.); and *Nguyen v. Hogan, et al.*, Case No. 5:19-cv-00543-LHK (N.D. Cal.).

7 (h) “**Fee and Expense Award**” means any attorneys’ fee and litigation expense award issued
8 by the Court.

9 (i) “**Final**” means the time when a Judgment that has not been reversed, vacated, or modified
10 in any way is no longer subject to appellate review, either because of disposition on appeal and
11 conclusion of the appellate process (including potential writ proceedings) or because of passage, without
12 action, of time for seeking appellate or writ review. More specifically, it is that situation when (i) no
13 appeal or petition for review by writ has been filed and the time has passed for any notice of appeal or
14 writ petition to be timely filed from the Judgment; or (ii) if an appeal or writ proceeding has been filed,
15 the court of appeals has either affirmed the Judgment or dismissed that appeal or writ proceeding and
16 the time for any reconsideration or further appellate review has passed; or (iii) a higher court has granted
17 further appellate review and that court has either affirmed the underlying Judgment or affirmed the court
18 of appeals’ decision affirming the Judgment or dismissing the appeal or writ proceeding, and the time
19 for any reconsideration or further appellate review has passed. For purposes of this paragraph, an appeal
20 shall not include any appeal challenging any Fee and Expense Award. Any proceeding or order, or any
21 appeal or writ petition pertaining solely to any Fee and Expense Award, shall not in any way delay or
22 preclude the Judgment becoming Final. Any reference to the “Finality” of the Settlement shall
23 incorporate the definition of Final in this paragraph.

24 (j) “**Final Approval Hearing**” means the hearing to be held by the Court upon duly-given
25 notice to review this Stipulation and its exhibits, determine whether the Settlement should be finally
26 approved, the amount of any Fee and Expense Award, and whether the Judgment should be entered.

1 (k) **“Individual Defendants”** means Joseph M. Hogan, John F. Morici, Kevin J. Dallas,
2 Joseph Lacob, Charles Raymond Larkin, Jr., George J. Morrow, Thomas M. Prescott, Andrea L. Saia,
3 Greg J. Santora, Susan E. Siegel, Warren S. Thaler, Roger E. George, and Raphael S. Pascaud.

4 (l) **“Judgment”** means the final order and judgment approving the Settlement to be rendered
5 by the Court, substantially in the form attached hereto as [Exhibit D].

6 (m) **“Notice”** means the Notice of Pendency and Proposed Settlement of Derivative Actions
7 and Final Approval Hearing, substantially in the form of Exhibit C attached hereto.

8 (n) **“Person”** or **“Persons”** means an individual, corporation, limited liability corporation,
9 professional corporation, partnership, limited partnership, limited liability partnership, association, joint
10 stock company, estate, legal representative, trust, unincorporated association, government or any
11 political subdivision or agency thereof, or any business or legal entity, and each of their spouses, heirs,
12 predecessors, successors, representatives, or assignees.

13 (o) **“Plaintiffs”** means Michelle Tran, Jill Dooley, Christopher Nguyen, Jessica McCall, and
14 Muhammad Abbas.

15 (p) **“Plaintiffs’ Counsel”** means (i) Bragar Eigel & Squire, P.C. and The Brown Law Firm,
16 P.C. who are co-lead counsel in the Federal Derivative Action and represent plaintiffs Michelle Tran,
17 Jill Dooley, and Christopher Nguyen; (ii) Robbins LLP who represents Jessica McCall, and who will
18 file a notice of appearance as additional counsel for plaintiffs Michelle Tran, Jill Dooley, and Christopher
19 Nguyen in the Federal Derivative Action; and (iii) Levi & Korsinsky LLP who represents Muhammad
20 Abbas.

21 (q) **“Preliminary Approval Order”** means the [Proposed] Order Granting Plaintiffs’
22 Unopposed Motion for Preliminary Approval of Proposed Settlement to be entered by the Court,
23 substantially in the form of Exhibit B attached hereto, including, *inter alia*, preliminarily approving the
24 terms and conditions of the Settlement, directing that Notice be provided to Current Align Stockholders,
25 and scheduling a Final Approval Hearing to consider whether the Settlement and any Fee and Expense
26 Award should be finally approved and whether the Judgment should be entered.

27 (r) **“Related Persons”** means each Person’s immediate family members and current, former,
28 or future parents, subsidiaries, associates, affiliates, partners, joint venturers, officers, directors,

1 principals, members, agents, representatives, employees, attorneys, trustees, spouses, heirs, assigns,
2 executors, general or limited partners or partnerships, personal or legal representatives, estates,
3 administrators, predecessors, successors, insurers and reinsurers of any of the foregoing in their capacity
4 as such, and/or any other individual or entity in which a Person has or had a controlling interest or which
5 is or was related to or affiliated with a Person.

6 (s) **“Released Claims”** means collectively, all the Released Plaintiffs’ Claims and all the
7 Released Defendants’ Claims.

8 (t) **“Released Defendants’ Claims”** means all claims, rights, demands, obligations,
9 controversies, debts, disputes, damages, losses, issues, liabilities, charges, and causes of action of every
10 nature and description, in law or equity, including known claims and Unknown Claims, whether arising
11 under state, federal, local, common, statutory, administrative, or foreign law, or any other law, rule, or
12 regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether
13 accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether
14 direct, representative, class, or individual in nature that arise out of or relate in any way to the institution,
15 prosecution, or settlement of the claims against the Individual Defendants and Align in the Federal
16 Derivative Action or State Court Actions, except for claims relating to the enforcement of the Settlement.

17 (u) **“Released Defendant Persons”** means, collectively, each and all of the Individual
18 Defendants, Align, and each and all of the Related Persons of each of the Individual Defendants and
19 Align.

20 (v) **“Released Persons”** means, collectively, the Released Defendant Persons and the
21 Released Stockholder Persons. “Released Person” means, individually, any of the Released Persons.

22 (w) **“Released Plaintiffs’ Claims”** means all claims, rights, demands, obligations,
23 controversies, debts, disputes, damages, losses, issues, liabilities, charges, and causes of action of every
24 nature and description, in law or equity, including known claims and Unknown Claims, whether arising
25 under state, federal, local, common, statutory, administrative, or foreign law, or any other law, rule, or
26 regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether
27 accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether
28 direct, representative, class, or individual in nature, that (i) were or could have been asserted by Align,

1 Plaintiffs, or any Current Align Stockholders derivatively on behalf of Align, and (ii) arise out of or
2 relate in any way to the allegations, transactions, facts, matters, disclosures, or non-disclosures set forth
3 in the Federal Derivative Action or State Court Actions, including any communications or demands in
4 connection therewith, except for claims relating to the enforcement of the Settlement.

5 (x) **“Released Stockholder Persons”** means each and all of the Plaintiffs, Plaintiffs’
6 Counsel, and each of their Related Persons.

7 (y) **“Settlement”** means the settlement between Plaintiffs and Defendants on the terms and
8 conditions documented in this Stipulation and its Exhibits A-E.

9 (z) **“Settlement Consideration”** means the consideration provided to Align through the
10 Settlement as set forth in Exhibit A.

11 (aa) **“Settling Parties”** means collectively, Plaintiffs and Defendants.

12 (bb) **“State Court Actions”** means *Abbas v. Hogan, et al.*, Case No. 19-CV-346429 (Santa
13 Clara Cnty. Super. Ct.); and *McCall v. Align Technology, Inc.*, Case No. 19-CV-360501 (Santa Clara
14 Cnty. Super. Ct.).

15 (cc) **“Summary Notice”** means the Summary Notice of Pendency and Proposed Settlement
16 of Derivative Actions and Final Approval Hearing, substantially in the form of Exhibit D attached hereto,
17 to be published as set forth in the Preliminary Approval Order.

18 (dd) **“Unknown Claims”** means any and all of the Released Claims that any of the Settling
19 Parties or any Current Align Stockholder does not know or suspect to exist in his, her, or its favor at the
20 time of the release of such claims, including claims which, if known by him, her, or it, might have
21 affected his, her, or its decision to settle or the terms of his, her, or its settlement with and releases
22 provided to the Released Persons, or might have affected his, her, or its decision not to object to this
23 Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that,
24 upon the Effective Date, the Settling Parties and all Current Align Stockholders shall expressly waive,
25 and, with respect to Released Claims that could have been asserted derivatively on behalf of the
26 Company, all other Align stockholders by operation of the Judgment shall have expressly waived, the
27 provisions, rights, and benefits of California Civil Code § 1542 (**“Section 1542”**), or any other law of
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1 the United States or any state or territory of the United States, or principle of common law that is similar,
2 comparable, or equivalent to Section 1542, which provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
4 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
5 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
6 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
7 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8 The Settling Parties and each Current Align Stockholder may hereafter discover facts in addition
9 to or different from those which he, she, or it now knows or believes to be true with respect to the subject
10 matter of the Released Claims, known or unknown, suspected or unsuspected, contingent or non-
11 contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any
12 theory of law or equity now existing or coming into existence in the future, including, but not limited to,
13 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, but
14 the Settling Parties and each Current Align Stockholder shall expressly, fully, finally and forever settle
15 and release, and upon the Effective Date and by operation of the Judgment shall have settled and released,
16 fully, finally, and forever, any and all Released Claims as applicable without regard to the subsequent
17 discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the
18 Current Align Stockholders shall be deemed by operation of the Judgment to have acknowledged, that
19 the foregoing waiver was separately bargained for and is a key element of the Settlement of which this
20 release is a part.

21 **II. PROCEDURAL BACKGROUND**

22 **A. Federal Derivative Action**

23 On January 11, 2019, plaintiff Michelle Tran filed a stockholder derivative action, captioned
24 *Tran v. Hogan, et al.*, Case No. 5:19-cv-00202-LHK in the Northern District of California on behalf of
25 nominal defendant Align against the Individual Defendants. The complaint asserted claims against the
26 Individual Defendants for violations of (i) Section 10(b) of the Securities Exchange Act of 1934 (the
27 “Exchange Act”) and Rule 10b-5; (ii) Section 20(a) of the Exchange Act; (iii) breach of fiduciary duties;
28 (iv) unjust enrichment; and (v) corporate waste.

On January 29, 2019, plaintiff Jill Dooley filed a stockholder derivative action, captioned *Dooley*
v. Hogan, et al., Case No. 5:19-cv-00525 in the Northern District of California on behalf of nominal

1 defendant Align against the Individual Defendants. The complaint asserted claims against the Individual
2 Defendants for violations of (i) Section 10(b) of the Exchange Act and Rule 10b-5; (ii) Section 14(a) of
3 the Exchange Act and SEC Rule 14a-9; (iii) Section 20(a) of the Exchange Act; (iv) breach of fiduciary
4 duties; (v) insider trading and misappropriation of information; (vi) unjust enrichment; and (vii)
5 corporate waste.

6 On January 30, 2019, plaintiff Christopher Nguyen filed a stockholder derivative action, styled
7 *Nguyen v. Hogan, et al.*, Case No. 5:19-cv-00543 in the Northern District of California on behalf of
8 nominal defendant Align against the Individual Defendants. The complaint asserted claims against the
9 Individual Defendants for violations of (i) Section 10(b) of the Exchange Act and Rule 10b-5; (ii) Section
10 14(a) of the Exchange Act; (iii) Section 20(a) of the Exchange Act; (iv) breach of fiduciary duties; (v)
11 unjust enrichment; and (vi) corporate waste.

12 On February 26, 2019, because the three derivative actions all challenged the same alleged
13 conduct by the same Individual Defendants and involved the same questions of law and fact, Judge Lucy
14 H. Koh entered an order consolidating the *Tran, Dooley*, and *Nguyen* actions for all purposes, including
15 pre-trial and trial under the new caption *In re Align Technology, Inc. Derivative Litigation*, Lead Case
16 No. 5:19-cv-00202-LHK (N.D. Cal.).

17 On April 10, 2019, Judge Koh entered an order staying the consolidated derivative action pending
18 the outcome of the parallel securities litigation, *SEB Investment Management AB v. Align Technology,*
19 *Inc., et al.*, No. 3:18-cv-06720 (N.D. Cal.) proceeding before Judge Vince Chhabria (the “Securities
20 Litigation”) because of the significant overlap between the derivative action and the Securities Litigation.

21 Following the final resolution of the Securities Litigation (referenced below), the parties to the
22 Federal Derivative Action have periodically filed joint status reports before this Court, advising the Court
23 that the parties were in engaged in ongoing discussions regarding the possibility of resolution through a
24 settlement.

25 **B. State Court Actions**

26 On April 12, 2019, plaintiff Muhammad Abbas filed a derivative stockholder action, captioned
27 *Abbas v. Hogan, et al.*, Case No. 19CV346429 in Santa Clara County Superior Court on behalf of
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1 nominal defendant Align against the Individual Defendants. The complaint asserted claims against the
2 Individual Defendants for (i) breach of fiduciary duties; (ii) corporate waste; and (iii) unjust enrichment.

3 On May 16, 2019, the Santa Clara County Superior Court entered an order staying the *Abbas*
4 case in favor of the federal Securities Litigation. There has been no further action in the *Abbas* matter.

5 On December 19, 2019, plaintiff Jessica McCall filed a complaint, captioned *McCall v. Align*
6 *Technology, Inc.*, Case No. 19CV360501 in Santa Clara County Superior Court, seeking to compel
7 inspection of Align’s books and records. On February 28, 2022, the Santa Clara County Superior Court
8 entered a dismissal order in *McCall*.

9 **C. Securities Litigation**

10 On April 28, 2022, Judge Chhabria granted final approval of a settlement in the Securities
11 Litigation.

12 **D. Settlement Negotiations**

13 On February 16, 2022, stockholder Jessica McCall sent a settlement demand to Defendants.

14 On May 9, 2022, plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen sent a settlement
15 demand to Defendants.

16 On May 26, 2023, after months of hard-fought negotiations, the Settling Parties reached an
17 agreement in principle on the material substantive terms of a global resolution of the Federal Derivative
18 Action and the State Court Actions.

19 Thereafter, the Settling Parties, each represented by counsel, commenced good-faith, arm’s-
20 length negotiations regarding an appropriate award of attorneys’ fees and expenses to Plaintiffs’ Counsel.
21 These negotiations culminated in the Settling Parties’ agreement that Align would cause its insurers to
22 pay attorneys’ fees and expenses totaling \$575,000, subject to Court approval.

23 The Settling Parties then negotiated and finalized the formal operative terms of the Settlement as
24 set forth in this Stipulation (the “Settlement”).

25 **III. PLAINTIFFS’ CLAIMS AND THE BENEFITS OF SETTLEMENT**

26 Plaintiffs’ Counsel believe that the claims asserted in the Federal Derivative Action and the State
27 Court Actions have merit and that their investigation of the evidence supports the claims asserted.
28 Without conceding the merit of any of Defendants’ defenses, and in light of the benefits of the Settlement

1 as well as to avoid the potentially protracted time, expense, and uncertainty associated with continued
2 litigation, including potential trial(s) and appeal(s), Plaintiffs and Plaintiffs' Counsel have concluded
3 that it is desirable that the Federal Derivative Action and State Court Actions be fully and finally settled
4 in the manner and upon the terms and conditions set forth in this Stipulation. Plaintiffs and Plaintiffs'
5 Counsel recognize the significant risk, expense, and length of continued proceedings necessary to
6 prosecute the Federal Derivative Action and State Court Actions against Defendants through potential
7 trial(s) and appeals. Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk
8 of any litigation, especially complex litigation such as the Federal Derivative Action and the State Court
9 Actions, the difficulties and delays inherent in such litigation, the cost to Align—on behalf of which
10 Plaintiffs are prosecuting the Federal Derivative Action and State Court Actions—and distraction to
11 Align's management and employees that would result from extended litigation. Based on their
12 evaluation, and in light of what Plaintiffs' Counsel believe to be the significant benefits conferred upon
13 Align as a result of the Settlement, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement
14 is in the best interests of Align and have agreed to settle upon the terms and subject to the conditions set
15 forth herein.

16 **IV. DEFENDANTS' DENIALS OF WRONGDOING**

17 Each of the Individual Defendants deny and continue to deny that he or she has committed or
18 attempted to commit any violations of law, any breaches of fiduciary duty owed to Align, or any
19 wrongdoing whatsoever, and expressly maintain that, at all relevant times, he or she acted in good faith
20 and in a manner that he or she reasonably believed to be in the best interests of Align and its stockholders.

21 Defendants further deny that Plaintiffs, Align, or its stockholders suffered any damage or were
22 harmed as a result of any act, omission, or conduct by the Individual Defendants as alleged in the Federal
23 Derivative Action or the State Court Actions.

24 Align believes that the Settlement is fair, reasonable, and in the best interests of the Company,
25 its stockholders, and its employees. Defendants are, therefore, entering into this Settlement to eliminate
26 the uncertainty, distraction, disruption, burden, risk, and expense of further litigation. Pursuant to the
27 terms set forth below, this Stipulation (including the exhibits attached hereto) shall not be construed as,
28 or deemed to be evidence of, an admission or concession by the Individual Defendants with respect to

1 any claim of fault, liability, wrongdoing, or damage or any defect in the defenses that Individual
2 Defendants have, or could have, asserted.

3 Neither this Stipulation, including the exhibits attached hereto, the negotiations leading to the
4 execution of this Stipulation, nor any proceedings taken pursuant to or in connection with this
5 Stipulation, and/or approval of the Settlement (including any arguments proffered in connection
6 therewith):

7 (a) shall be offered against any of the Released Defendant Persons as evidence of, or
8 construed as, or deemed to be evidence of any presumption, concession, or admission of any of the
9 Released Defendant Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of
10 any claim that was or could have been asserted or the deficiency of any defense that has been or could
11 have been asserted in the Federal Derivative Action or the State Court Actions or in any other litigation,
12 or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendant
13 Persons or in any way referred to for any other reason as against any of the Released Defendant Persons,
14 in any civil, criminal, or administrative action or proceeding, other than such proceedings may be
15 necessary to effectuate the provisions of this Stipulation;

16 (b) shall be offered against any of the Released Stockholder Persons, as evidence of, or
17 construed as, or deemed to be evidence of any presumption, concession, or admission by any of the
18 Released Stockholder Persons that any of their claims is without merit, that any of the Released
19 Defendant Persons had meritorious defenses, or that with respect to any liability, negligence, fault, or
20 wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released
21 Stockholder Persons, in any civil, criminal, or administrative action or proceeding, other than such
22 proceedings as may be necessary to effectuate the provisions of this Stipulation; or

23 (c) shall be construed against any of the Released Stockholder Persons and Released
24 Defendant Persons as an admission, concession, or presumption that the consideration to be given
25 hereunder represents what could or would have been recovered at trial; *provided, however*, that if this
26 Stipulation is approved by the Court, the Released Stockholder Persons and Released Defendant Persons
27 and their respective counsel may refer to it: (i) to effectuate the protections from liability granted
28 hereunder; (ii) to support a defense or counterclaim in any action brought against them based on

1 principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction,
2 or any other theory or claim preclusion or issue preclusion or similar defense or counterclaim; or
3 (iii) otherwise to enforce the terms of the Settlement.

4 **V. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT**

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs
6 (for themselves and derivatively on behalf of Align), the Individual Defendants, and Align, each by and
7 through their respective attorneys of record, that in exchange for the consideration set forth below and
8 the benefits flowing to the Settling Parties from the Settlement, and subject to the approval of the Court,
9 the Released Claims shall be fully, finally, and forever compromised, settled, discharged, relinquished,
10 and released, and the Federal Derivative Action and the *Abbas* case shall be dismissed with prejudice as
11 to all Defendants and claims, with full preclusive effect as to Plaintiffs and all Current Align
12 Stockholders, upon and subject to the terms and conditions of the Stipulation, as set forth below.

13 **A. Settlement Consideration**

14 1. In consideration of the Settlement and the releases provided therein, and subject
15 to the terms and conditions of this Stipulation, the Settling Parties have agreed to the Settlement
16 Consideration for Align as set forth in Exhibit A. Align is committed to principles of good corporate
17 governance consistent with prudent management and enhancement of stockholder value, including the
18 corporate governance additions set forth below which reflect the Settling Parties' negotiations with
19 respect to the Settlement.

20 2. Exhibit A is part of and subject to all provisions in this Stipulation.

21 3. Plaintiffs and Plaintiffs' Counsel in the State Court Actions expressly consent to
22 the jurisdiction of this Court for purposes of this Settlement and agree that the terms of this Stipulation
23 apply equally to the State Court Actions and agree to take all necessary steps to effectuate this Settlement
24 in the State Court Actions.

25 **B. Procedure for Implementing the Settlement**

26 1. Following the last party's execution of this Stipulation, Plaintiffs' Counsel shall
27 submit the Stipulation together with its exhibits to the Court and file a motion for preliminary approval
28 of settlement, requesting, *inter alia*: (i) preliminary approval of the Settlement and entry of the

1 Preliminary Approval Order substantially in the form attached as Exhibit B hereto; (ii) approval of the
2 form, content, and method of providing notice of the proposed Settlement to Align stockholders and
3 approval of the forms of Notice and Summary Notice attached as Exhibits C and D hereto; and (iii) a
4 date for the Final Approval Hearing.

5 2. Notice of the proposed Settlement shall be provided to Current Align
6 Stockholders in the following manner: following entry of the Preliminary Approval Order substantially
7 in the form attached as Exhibit B, (a) Align will publish the Summary Notice via press release on a
8 national wire service such as *Investor Business Daily* or *PR Newswire*; (b) Align will (i) file with the
9 U.S. Securities and Exchange Commission the Notice and Stipulation and the exhibits thereto as exhibits
10 to a Form 8-K, or (ii) will include a link to item (c) in Align's next Form 10-Q or Form 10-K; and (c)
11 Align will publish the Notice and Stipulation and the exhibits thereto on Align's investor relations
12 website, which will be maintained there through the date of the Final Approval Hearing. The Notice and
13 Summary Notice will include a link to the webpage on Align's investor relations website where the
14 Notice and Stipulation and exhibits thereto are published. The Settling Parties believe that the content
15 and manner of the notice, as set forth in this paragraph, constitutes adequate and reasonable notice to
16 Align stockholders pursuant to applicable law and due process. Prior to the Final Approval Hearing,
17 Defendants' Counsel shall file with the Court an appropriate affidavit or declaration with respect to filing
18 and posting the Notice and Summary Notice.

19 3. Defendants shall be responsible for the costs of providing reasonable notice of the
20 Settlement as set forth in Section V.B.2. If additional notice is required by the Court, the Settling Parties
21 will meet and confer concerning the cost and administration of any such additional notice.

22 4. The Settling Parties agree to request that the Court hold the Final Approval
23 Hearing in the Federal Derivative Action sixty (60) days after notice is given, at which time the Court
24 will consider and determine whether the Judgment, substantially in the form of Exhibit E hereto, should
25 be entered, which includes determining: (i) whether the terms of the Settlement should be approved as
26 fair, reasonable, and adequate; (ii) whether all Released Claims against the Released Persons should be
27 fully and finally released, including dismissing with prejudice the Federal Derivative Action pursuant to
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1 the terms of this Stipulation against Defendants; and (iii) the amount of attorneys' fees and expenses to
2 be approved, and the amount of any service awards to the five Plaintiffs.

3 5. Pending the Effective Date, the Settling Parties agree that all proceedings and
4 discovery in the Federal Derivative Action and State Court Actions shall be stayed (except as otherwise
5 provided herein and the proceedings necessary to effectuate the consummation and final approval of the
6 Settlement) and not to initiate any other proceedings other than those related to the Settlement itself.
7 The Plaintiffs and Align stockholders shall not file, prosecute, instigate, or in any way participate in the
8 commencement or prosecution of any of the Released Claims.

9 **C. Fee and Expense Award**

10 1. Subject to Court approval, Align agrees to cause its insurers to pay Plaintiffs'
11 Counsel's attorneys' fees and expenses in the total amount of \$575,000. The Settlement is not contingent
12 on any attorneys' fees and expenses award.

13 2. The Fee and Expense Award shall constitute final and complete payment for
14 Plaintiffs' attorneys' fees and expenses that have been incurred or will be incurred in connection with
15 the Federal Derivative Action and the State Court Actions. The Fee and Expense Award shall be paid
16 or caused to be paid by Align to The Brown Law Firm P.C.'s escrow account within thirty (30) days
17 after the Court enters the Preliminary Approval Order, and The Brown Law Firm P.C.'s providing
18 complete payment information to Align, whichever comes later, notwithstanding any objections or
19 appeals of the Settlement or any Fee and Expense Award. The Fee and Expense Award, shall be
20 immediately releasable to Plaintiffs upon the date, and to the extent, it is approved by the Court.
21 Plaintiffs' Counsel shall be severally obligated to make appropriate refunds or repayments of such
22 applicable amount received within thirty (30) days to Align or its insurers, as the case may be, if, as a
23 result of the Court's ruling, a ruling on any appeal or further proceedings on remand, or ruling on any
24 successful collateral attack, the Fee and Expense Award is lowered or the Settlement is disapproved by
25 a final order not subject to further review.

26 3. Defendants shall have no responsibility for the allocation of the attorneys' fees
27 awarded among Plaintiffs' Counsel and/or to any other person who may assert some claim thereto. Any
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1 dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel shall have no effect on
2 the Settlement.

3 4. The Settling Parties further stipulate that Plaintiffs' Counsel may apply to the
4 Court for a service award of up to \$2,000 for each of the five Plaintiffs ("Service Award"), only to be
5 paid upon Court approval, and to be paid from Plaintiffs' Counsel's Fee and Expense Award in
6 recognition of Plaintiffs' participation and effort in the prosecution of the Federal Derivative Action and
7 State Court Actions, respectively. The failure of the Court to approve any requested service award, in
8 whole or in part, shall have no effect on the Settlement set forth in this Stipulation. Neither Align nor
9 any of the Individual Defendants shall be liable for any portion of any service award to the Plaintiffs.

10 **D. Releases**

11 1. Upon the Effective Date, the Plaintiffs and all Current Align Stockholders will
12 release the Released Defendant Persons from the Released Plaintiffs' Claims. Upon the Effective Date,
13 Align will further release the Individual Defendants and their Related Persons from the Released
14 Plaintiffs' Claims.

15 2. Upon the Effective Date, the Individual Defendants and Align will release the
16 Released Stockholder Persons from the Released Defendants' Claims.

17 3. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively
18 on behalf of Align) and any Current Align Stockholder shall be forever barred and enjoined from
19 commencing, instituting, or prosecuting any of the Released Plaintiffs' Claims against any of the
20 Released Defendant Persons or any action or other proceeding against any of the Released Defendant
21 Persons arising out of, relating to, or in connection with the Released Plaintiffs' Claims or the filing,
22 prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State Court
23 Actions. Upon the Effective Date, Align shall be forever barred and enjoined from commencing,
24 instituting, or prosecuting any of the Released Plaintiffs' Claims against any of the Individual Defendants
25 or their Related Persons or any action or other proceeding against any of the Individual Defendants or
26 their Related Persons arising out of, relating to, or in connection with the Released Plaintiffs' Claims or
27 the filing, prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State
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1 Court Actions. Nothing herein shall in any way impair or restrict the rights of any Settling Party to
2 enforce the terms of the Stipulation.

3 4. Upon the Effective Date, the Individual Defendants and Align shall be forever
4 barred and enjoined from commencing, instituting, or prosecuting any of the Released Defendants'
5 Claims against any of the Released Stockholder Persons or any action or other proceeding against any
6 of the Released Stockholder Persons arising out of, relating to, or in connection with the filing,
7 prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State Court
8 Actions. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the
9 terms of the Stipulation.

10 5. The parties to the *Abbas* case shall make an appropriate filing to voluntarily
11 dismiss it with prejudice within five (5) business days after the Court enters the Judgment.

12 **E. Conditions of Settlement**

13 1. The Effective Date of the Settlement shall be the date on which all of the following
14 events have occurred:

15 (a) approval of the Settlement at or after the Final Approval Hearing
16 following notice to Current Align Stockholders as set forth in Section V.B.2.;

17 (b) entry of the Judgment, in all material respects in the form set forth as
18 Exhibit E attached hereto, approving the Settlement without awarding costs to any party, except as
19 provided herein, dismissing with prejudice the Federal Derivative Action pursuant to the terms of this
20 Stipulation, and releasing the Released Persons from the Released Claims;

21 (c) dismissal with prejudice of the *Abbas* case; and

22 (d) the passing of the date upon which the Judgment becomes Final.

23 2. If any of the conditions specified above in Section V.E.1. are not met, then the
24 Stipulation shall be cancelled and terminated, unless all of the Settling Parties agree in writing to proceed
25 with the Stipulation. If for any reason the Effective Date of this Stipulation does not occur, or if this
26 Stipulation is in any way canceled, terminated, or fails to become Final in accordance with its terms:

27 (i) all Settling Parties and Released Persons shall be restored to their respective positions prior to
28 execution of this Stipulation; (ii) all releases delivered in connection with the Stipulation shall be null

1 and void, except as otherwise provided for in the Stipulation; (iii) any Fee and Expense Award shall not
2 be paid or, if already paid, shall be refunded in accordance with Section V.C.2.; and (iv) all negotiations,
3 proceedings, documents prepared, and statements made in connection herewith shall be without
4 prejudice to the Settling Parties, shall not be deemed or construed to be an admission by any of the
5 Settling Parties of any act, matter, or proposition, and shall not be used or referred to in any manner for
6 any purpose (other than to enforce the terms remaining in effect) in any subsequent proceeding in the
7 Federal Derivative Action and State Court Actions or in any other action or proceeding. In such event,
8 the terms and provisions of this Stipulation (other than those set forth in the Definitions, and Sections
9 V.E.2. and V.F.7.) shall have no further force and effect with respect to the Settling Parties and shall not
10 be used in the Federal Derivative Action or State Court Actions or in any other proceeding for any
11 purpose.

12 3. No court order (including by this Court), or modification or reversal on appeal of
13 any court order, concerning any Fee and Expense Award and interest awarded by a court shall constitute
14 grounds for cancellation or termination of the Stipulation, affect the enforceability of the Stipulation, or
15 delay the Judgment from becoming Final.

16 **F. Miscellaneous Provisions**

17 1. The Settling Parties (i) acknowledge that it is their intent to consummate the
18 Settlement; and (ii) agree to act in good faith and cooperate to take all reasonable and necessary steps to
19 expeditiously implement the terms and conditions of the Settlement set forth in this Stipulation.

20 2. The Settling Parties intend this Settlement to be a final and complete resolution
21 of all disputes between them arising out of, based upon, or related to the Federal Derivative Action, State
22 Court Actions, and the Released Claims. The Settlement compromises claims that are contested and
23 shall not be deemed an admission by any Settling Party as to the merits of any claim, allegation, or
24 defense. The Settling Parties agree that the Released Claims are being settled voluntarily after
25 consultation with competent legal counsel who were fully competent to assess the strengths and
26 weaknesses of their respective clients' claims or defenses.

27 3. The Settling Parties agree that the terms of the Settlement were negotiated at
28 arm's-length and in good faith by the Settling Parties. The Settling Parties and their respective counsel

1 agree that at all times during the course of the Federal Derivative Action and State Court Actions, the
2 Settling Parties complied with the applicable rules of the State of California, State of Delaware, and
3 Federal Rules of Civil Procedure (including, but not limited to, Federal Rule of Civil Procedure 11).
4 Neither of the Settling Parties shall assert or pursue any action, claim, or rights that Defendants,
5 Plaintiffs, or their respective counsel violated Rule 11 of the Federal Rules of Civil Procedure with
6 respect to the institution, prosecution, defense, or settlement of the Federal Derivative Actions and State
7 Court Actions. The Settling Parties reserve their right to rebut, in a manner that the parties determine to
8 be appropriate, any contention made in any public forum that the Federal Derivative Action or State
9 Court Actions were brought or defended in bad faith or without a reasonable basis.

10 4. While retaining their right to deny that the claims asserted in the Federal
11 Derivative Action and State Court Actions were meritorious, Defendants and their counsel, in any
12 statement made to any media representative (whether or not for attribution) will not assert that the
13 Federal Derivative Action and State Court Actions were commenced or prosecuted in bad faith, nor will
14 they deny that the Federal Derivative Action and State Court Actions were commenced and prosecuted
15 in good faith and are being settled voluntarily after consultation with competent legal counsel. In all
16 events, Plaintiffs and their counsel and Defendants and their counsel shall not make any accusations of
17 wrongful or actionable conduct by either Party concerning the prosecution, defense, and resolution of
18 the Federal Derivative Action and State Court Actions, and shall not otherwise suggest that the
19 Settlement constitutes an admission of any claim or defense alleged.

20 5. Each of the Individual Defendants expressly denies and continues to deny all
21 allegations of wrongdoing or liability against himself or herself arising out of or relating to any conduct,
22 statements, acts, or omissions alleged, or which could have been alleged, in the Federal Derivative
23 Action and State Court Actions. Each of the Individual Defendants reserves the right to rebut any and
24 all allegations of breach of fiduciary duty, wrongdoing, or liability, whatsoever, against himself or herself
25 or that any valid claim has been asserted against any of them.

26 6. With respect to any other action that is not listed above as part of the Federal
27 Derivative Action and State Court Actions and that is currently pending or is later filed in any state or
28 federal court asserting claims that are related to the subject matter of the Federal Derivative Action and

1 State Court Actions prior to final Court approval of the Settlement, Plaintiffs shall provide supporting
2 documentation as is reasonably requested by Defendants in order to obtain the dismissal, stay, or
3 withdrawal of such related litigation.

4 7. Neither the Stipulation (including any exhibits attached hereto), nor the
5 Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation
6 or the Settlement: (i) is or may be deemed to be or may be offered, attempted to be offered, or used or
7 referred to in any way by the Settling Parties as a presumption, a concession, an admission, or evidence
8 of any fault, wrongdoing, or liability of any of the Settling Parties or of the validity of any Released
9 Claims; or (ii) is or may be deemed to be or may be used as a presumption, concession, admission, or
10 evidence of any liability, fault, or omission of any of the Released Persons in any civil, criminal, or
11 administrative proceeding in any court, administrative agency, or other tribunal. Neither this Stipulation,
12 nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this
13 Stipulation, or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce
14 the terms of the Settlement, and except that the Released Persons may file the Stipulation and/or the
15 Judgment in any action or proceeding that may be brought against them to support a defense or
16 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,
17 standing, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or
18 issue preclusion or similar defense or counterclaim.

19 8. The Stipulation and the exhibits attached hereto constitute the entire agreement
20 among the Settling Parties with respect to the Settlement, and supersede any and all prior negotiations,
21 discussions, agreements, or undertakings, whether oral or written, with respect to such matters. The
22 Settling Parties expressly acknowledge that, in entering into this Stipulation, they are not relying upon
23 any statements, representations, or warranties by any Settling Party except as expressly set forth herein.
24 Plaintiffs agree that they intend to confer on all Released Defendant Persons the benefit of all releases
25 and other protections set forth above. Defendants agree that they intend to confer on all Released
26 Stockholder Persons the benefit of all releases and other protections set forth above. The Settling Parties
27 agree that each of the Released Persons who is not a Settling Party is an express third-party beneficiary
28 of those releases and other protections, and is entitled to enforce the terms of those releases and other

1 protections to the same extent that such Released Persons who are not Settling Parties could enforce such
2 terms if they were party to the Stipulation. All provisions in the Stipulation providing that nothing herein
3 shall in any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation
4 are agreed to mean additionally that nothing herein shall in any way impair or restrict the rights of any
5 Released Person who is not a Settling Party to enforce the terms of the Stipulation.

6 9. This Stipulation supersedes and replaces any prior or contemporaneous writing,
7 statement, or understanding pertaining to the Federal Derivative Action and State Court Actions, and no
8 parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of
9 the Settling Parties or their counsel, or the circumstances under which the Stipulation was made or
10 executed.

11 10. The exhibits to the Stipulation are material and integral parts hereof and are fully
12 incorporated herein by reference.

13 11. The headings herein are used for the purpose of convenience only and are not
14 meant to have legal effect.

15 12. The terms of the Settlement, as reflected in this Stipulation may not be amended
16 or modified, nor may any of its provisions be waived except by a written instrument signed by or on
17 behalf of all the Settling Parties or their respective successors-in-interest.

18 13. Pending approval of the Court of this Stipulation and its exhibits, all proceedings
19 other than proceedings to consummate the Settlement, in the Federal Derivative Action and the State
20 Court Actions shall be stayed.

21 14. This Stipulation shall be deemed drafted equally by all parties hereto. The
22 Stipulation and the Settlement shall be binding upon, and inure to the benefit of, the Settling Parties.

23 15. This Stipulation and its exhibits constitute the entire agreement between the
24 Settling Parties concerning the Settlement and this Stipulation and its exhibits. The Settling Parties
25 acknowledge that no other agreements, representations, warranties, or inducements have been made to
26 any of the Settling Parties concerning the Stipulation or its exhibits other than the representations,
27 warranties, and covenants contained and memorialized in such documents.

28

1 16. The Settling Parties represent and warrant that they have not assigned or
2 transferred or attempted to assign or transfer to any Person any of the Released Claims or any portion
3 thereof or interest therein.

4 17. Any failure by any party to this Stipulation to insist upon the strict performance
5 by any other party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the
6 provisions, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the
7 strict performance of any and all of the provisions of this Stipulation to be performed by such other party.

8 18. In the event that any portion of the Settlement is found to be unlawful, void,
9 unconscionable, or against public policy by a court of competent jurisdiction, the remaining terms and
10 conditions of the Settlement shall remain intact.

11 19. In the event that there exists a conflict or inconsistency between the terms of this
12 Stipulation and the terms of any exhibits hereto, the terms of this Stipulation shall prevail.

13 20. All counsel and any other person executing this Stipulation and any of the exhibits
14 hereto, or any related Settlement documents, warrant and represent that they have the full authority to
15 do so and that they have the authority to take appropriate action required or permitted to be taken
16 pursuant to the Stipulation to effectuate its terms. Plaintiffs' Counsel and Defendants' Counsel agree to
17 cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the
18 Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute
19 all such other documentation as may be reasonably required to obtain final approval by the Court of the
20 Settlement.

21 21. The Stipulation may be executed in one or more counterparts, each of which so
22 executed shall be deemed to be an original and such counterparts together constitute one and the same
23 Stipulation. The Settling Parties agree that signatures submitted through facsimile or by e-mailing .PDF
24 files or signed using DocuSign shall constitute original and valid signatures. A complete set of executed
25 counterparts shall be filed with the Court.

26 22. The administration and consummation of the Settlement as embodied in this
27 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction to implement
28 and enforce the terms of the Stipulation and the Court's Judgment and to consider any matters or disputes

EXHIBIT A

In re Align Technology, Inc. Derivative Litigation,
Lead Case No. 5:19-cv-00202-LHK (N.D. Cal.)

Agreed Settlement Commitments¹

I. Duration

Align agrees to adopt and maintain the following reforms, which shall remain in effect for at least three (3) years after the Court's final approval of the Settlement.

II. Disclosure Committee Charter Changes

1. The Company will formalize its management-level Disclosure Committee by adopting a management-level Disclosure Committee Charter. Under the Charter, the Disclosure Committee will have the following obligations:
 - a. evaluate, recommend and/or oversee procedures and protocols designed to ensure (i) the accuracy, integrity and completeness of disclosures made in the Company's earnings releases and periodic reports filed with the U.S. Securities and Exchange Commission; and (ii) disclosure policies and lines of communication are in effect that ensure relevant information requiring disclosure is timely reported to the Disclosure Committee; and
 - b. oversee or recommend the implementation of new, or modification of existing, procedures and protocols required for compliance with the above-referenced procedures and protocols.
2. The Disclosure Committee is now comprised of the Chief Financial Officer, Chief Legal Officer, the EVP Global Human Resources and the head of Investor Relations. The Company may appoint from time to time one or more members of the Disclosure Committee or subcommittees comprised of one or more members who are executive officers of the Company that may act for and on behalf of the Disclosure Committee.
3. The Disclosure Committee shall meet at least quarterly.

III. Board Independence and Education

1. The Company increased the number of directors on the Audit Committee by adding an independent director who has expertise in cybersecurity.
2. The Company will partner with a well-regarded university, such as Yale University or Harvard University, or outside counsel of its choosing for regular Board trainings conducted at least annually.

IV. Enhanced Disclosure Concerning Human Capital

1. The Company enhanced its disclosures in its Form 10-K filings concerning human capital.

¹ As of the date of this filing, Align Technology, Inc. ("Align" or the "Company") has already implemented some of the corporate governance reforms identified herein.

V. Amendments to Audit Committee Charter

1. The Company amended its Audit Committee Charter to include the following obligations:
 - a. review before release the fourth quarter and full year operating results in the Company's earnings release, with particular attention to financial information and any earnings guidance provided to analysts; and
 - b. review any public disclosures about the Company's cybersecurity controls and procedures, the Board's cybersecurity expertise, and its oversight of cybersecurity risk.

VI. Amendments to Compensation Committee Charter

1. The Company amended the Charter for the Compensation Committee as follows:
 - a. renamed the Compensation Committee to the Compensation and Human Capital Committee;
 - b. renamed the Charter for the Compensation Committee to Charter for the Compensation and Human Capital Committee;
 - c. revised the Purpose of the Committee to include making recommendations to the Board of Directors regarding employee hiring, retention, advancement, engagement, diversity, equity and inclusion, and workplace culture;
 - d. revised the Statement of Philosophy to include that the primary goal of the Committee will be to link the performance and contributions of the Company's Executives to the achievement of the Company's strategic goals and objectives and stockholder interests; and
 - i. to achieve this goal the Committee will attempt to promote programs and practices that enhance the growth and development of the Company's personnel.
2. The Committee has and will continue to review and make recommendations to the Board periodically regarding the stock ownership guidelines applicable to the Executives and the Board.
3. The Committee has and will continue to periodically review the human capital management strategies, programs and policies, including, but not limited to, those regarding recruitment, retention, career development, diversity, equity and inclusion, workplace culture, and employee engagement.
4. The Committee has and will continue to periodically review and report to the Board on non-CEO Executive development and succession planning and such other persons as the Committee deems appropriate.

VII. Amendments to Corporate Governance Guidelines

1. The Company amended its Corporate Governance Guidelines to include the following obligations:

- a. In the Nominating and Governance Committee’s annual review of the skills and characteristics required of members of the Board, the Committee shall also consider gender and ethnic diversity.
- b. The Compensation and Human Capital Committee will report to the Board on the succession planning for executive officers below the level of the CEO.

VIII. Enhanced Regulatory Compliance and Compliance Oversight Functions

1. After adoption of its Global Speak Up Policy, Align increased the frequency and circumstances under which conduct that may be inconsistent with Align’s Global Code of Conduct is brought to the attention of the Board. Persons making reports under the Global Speak Up Policy may make reports directly to the Audit Committee of the Board, and key personnel regularly provide reports on information received through the Global Speak Up Policy to the Audit Committee of the Board.
2. The Company made certain changes to its Executive Management Committee (“EMC”). Chris Puco, former Senior Vice President, Americas, and Raphael S. Pascaud, former Chief Marketing Officer, departed from the EMC. Moreover, Align placed its Executive Vice President, Chief Legal and Regulatory Officer, Julie Coletti, on the EMC. Ms. Coletti has an extensive background in corporate governance and compliance.
3. Align appointed (i) a Global Compliance & Ethics Officer—a legal counsel whose responsibilities are solely dedicated to compliance and ethics; (ii) a Vice President of Global Antitrust & Competition—a legal counsel with responsibility for antitrust compliance; and (iii) a Chief Legal and Regulatory Officer, who functions as a chief compliance officer. The Chief Legal and Regulatory Officer and Global Compliance and Ethics Officer report regularly to the Audit Committee of the Board.
4. Align launched a new Global Code of Conduct, including a revised Free and Fair Competition section. The revisions included, among other things, new language about restrictions on agreements with business partners that limit competition, offering unapproved discounts to or agreements with customers, or influencing prices charged by customers. The Company further adopted a stand-alone Global Fair Competition Policy, which expanded on the conduct expectations set out in the Global Code of Conduct. The Company also launched training on the Global Fair Competition Policy. Any violations of the Global Fair Competition Policy are reported to the Audit Committee of the Board of Directors.

IX. Enhanced Disclosure

1. The Company made certain changes to its annual proxy statement, including use of a board diversity matrix and improved look and feel to make it more accessible to shareholders.

X. Enhanced Insider Trading Controls

1. The Company expanded training regarding Regulation FD and insider trading.

2. The Company expanded the notifications it provides regarding the trading window.
3. The Company adopted additional controls to refine access to material nonpublic information.

XI. Board Independence and Education

1. The former President and Chief Executive Officer, Thomas M. Prescott, retired from the Board effective May 19, 2021, increasing the percentage of independent directors from 81% to 90%.

EXHIBIT B

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE ALIGN TECHNOLOGY, INC.
DERIVATIVE LITIGATION

Lead Case No.: 5:19-cv-00202-LHK

This Document Relates to:

ALL ACTIONS.

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT**

[PROPOSED] ORDER

1
2 WHEREAS, the following stockholder derivative actions brought on behalf of Align are pending
3 before this Court: *Tran v. Hogan, et al.*, Case No. 5:19-cv-00202-LHK (N.D. Cal.), *Dooley v. Hogan, et*
4 *al.*, Case No. 5:19-cv-00525-LHK (N.D. Cal.), *Nguyen v. Hogan, et al.*, Case No. 5:19-cv-00543-LHK
5 (N.D. Cal.), together consolidated as *In re Align Technology, Inc. Derivative Litigation*, Case No. 5:19-
6 cv-00202-LHK (N.D. Cal.) (the “Federal Derivative Action”).

7 WHEREAS, the following Settling Parties (as defined herein), each by and through their
8 respective counsel: (1) Michelle Tran, Jill Dooley, Christopher Nguyen, Jessica McCall, and Muhammad
9 Abbas (“Plaintiffs”); (2) Joseph M. Hogan, John F. Morici, Kevin J. Dallas, Joseph Lacob, Charles
10 Raymond Larkin, Jr., George J. Morrow, Thomas M. Prescott, Andrea L. Saia, Greg J. Santora, Susan
11 E. Siegel, Warren S. Thaler, Roger E. George, and Raphael S. Pascaud (the “Individual Defendants”);
12 and (3) Align Technology, Inc. (“Nominal Defendant,” “Align,” or the “Company” and, together with
13 the Individual Defendants, “Defendants”) (Plaintiffs and Defendants are collectively referred to as the
14 “Settling Parties”) have entered into the Stipulation and Agreement of Settlement and Release
15 (“Stipulation”) which sets forth the terms and conditions of the proposed settlement (the “Settlement”)
16 that provides for a complete dismissal with prejudice of the claims asserted in the Federal Derivative
17 Action and the release of the Released Claims (as defined in the Stipulation) on the terms and conditions
18 set forth therein, subject to approval of the United States District Court for the Northern District of
19 California (“Court”);

20 WHEREAS, Plaintiffs’ Counsel filed an unopposed motion for preliminary approval of the
21 Settlement and entry of this Preliminary Approval Order; approving the form, content, and method of
22 providing notice of the Settlement to Current Align Stockholders; and scheduling the date and time for
23 the Final Approval Hearing, as defined herein;

24 WHEREAS, in accordance with the terms of the Stipulation, the Settling Parties request that the
25 Court hold the Final Approval Hearing approximately sixty (60) calendar days after notice is given;

26 WHEREAS, the Court has read and considered the Stipulation and its exhibits, including (i) the
27 proposed Notice of Pendency and Proposed Settlement of Derivative Actions and Final Approval
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1 Hearing (“Notice”); (ii) the proposed Summary Notice of Pendency and Proposed Settlement of
2 Derivative Actions and Final Approval Hearing (“Summary Notice”); and (iii) the [Proposed] Order and
3 Final Judgment finally approving the Settlement (“Judgment”). Finding that substantial and sufficient
4 grounds exist for entering this Order, the Court hereby **ORDERS** as follows:

5 1. This Order incorporates by reference the definitions in the Stipulation and, unless
6 otherwise defined in this Order, all capitalized terms used in this Order shall have the same meaning as
7 set forth in the Stipulation.

8 2. The Court preliminarily approves the Settlement on the terms set forth in the
9 Stipulation, subject to further consideration at a hearing to be held before the Court on _____,
10 202_, at _____ .m., (the “Final Approval Hearing”) either in person at the United States District
11 Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South
12 1st Street, San Jose, California 95113, or by telephone or video conference, to consider whether the
13 Judgment, substantially in the form of Exhibit E to the Stipulation, should be entered: (i) approving the
14 terms of the Settlement as fair, reasonable, and adequate; (ii) releasing all Released Claims against the
15 Released Persons fully and finally, including dismissing with prejudice the Federal Derivative Action
16 pursuant to the terms of the Stipulation; and (iii) approving the amount of attorneys’ fees and expenses
17 and of any service awards to the five Plaintiffs.

18 3. The Court expressly reserves the right to adjourn the Final Approval Hearing, or
19 any adjournment thereof, without any further notice to Current Align Stockholders other than an
20 announcement at the Final Approval Hearing or at any adjournment of the Final Approval Hearing. The
21 Court expressly reserves the right to approve the proposed Settlement with such modifications as to
22 which the Settling Parties may agree, if appropriate, without further notice to Current Align
23 Stockholders. The Court reserves the right to enter its Judgment approving the Settlement and dismissing
24 the claims against the Defendants with prejudice regardless of whether the Court has awarded any Fee
25 and Expense Award. The Court also reserves the right to extend any of the deadlines set forth in this
26 Order without further notice to Current Align Stockholders. The Court further reserves the right to hold
27 the Final Approval Hearing by telephone or video conference without further notice to Current Align

1 Stockholders. If the Court orders that the Final Approval Hearing be conducted telephonically or by
2 video conference, that decision will be posted on the Court’s docket and on Align’s investor relations
3 website where the Notice and Stipulation and exhibits thereto are published at
4 <https://investor.aligntech.com/>.

5 4. The Court approves the form, content, and requirements of the Notice attached to
6 the Stipulation as Exhibit C and the Summary Notice attached to the Stipulation as Exhibit D, and finds
7 that the dissemination of the Notice and Summary Notice, substantially in the manner and form set forth
8 in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due
9 process, and constitutes due and sufficient notice of all matters relating to the Settlement.

10 5. Following the Court’s entry of this Order, (a) Align will publish within thirty (30)
11 calendar days the Summary Notice via press release on a national wire service such as *Investor Business*
12 *Daily* or *PR Newswire*; (b) Align will either (i) file with the U.S. Securities and Exchange Commission
13 the Notice and Stipulation and the exhibits thereto as exhibits to a Form 8-K or (ii) include a link to item
14 (c) in Align’s next Form 10-Q or Form 10-K; and (c) Align within thirty (30) calendar days will publish
15 the Notice and Stipulation and the exhibits thereto on Align’s investor relations website, which will be
16 maintained there through the date of the Final Approval Hearing. The Notice and Summary Notice will
17 include a link to the webpage on Align’s investor relations website where the Notice and Stipulation and
18 exhibits thereto are published. Align shall cause to be paid all costs of notice of the Settlement in this
19 Paragraph 5 regardless of whether the Settlement is finally approved by the Court or the Effective Date
20 otherwise fails to occur.

21 6. At least seven (7) calendar days prior to the Final Approval Hearing, Align’s
22 counsel shall file with the Court an appropriate affidavit or declaration with respect to the publication of
23 the Summary Notice, and posting of the Notice and Stipulation.

24 7. Any person who held Align stock as of January 12, 2024 (“Current Align
25 Stockholder”) and continues to hold the stock as of the date of the Final Approval Hearing may appear
26 at the Final Approval Hearing to show cause why the proposed Settlement should not be approved; why
27 the Judgment should not be entered thereon; or why any application for a fee and expense award should
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1 not be granted; *provided, however*, that no such Person shall be heard unless such person has filed with
2 the Clerk of the United States District Court for the Northern District of California, San Jose Courthouse,
3 Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, California 95113, as indicated above, a written
4 and signed notice of objection that includes: (i) the objector’s name, address, and telephone number (and,
5 if represented, that of his, her, or its counsel), (ii) a representation as to whether the objector intends to
6 appear at the Final Approval Hearing; (iii) proof that the objector owned shares of Align common stock
7 as of January 12, 2024, and continues to hold common stock in Align; (iv) a statement of the objections
8 to any matters before the Court, the grounds for the objections or the reasons for the objector’s desiring
9 to appear and be heard, as well as all documents or writings the objector desires the Court to consider,
10 including any legal and evidentiary support; and (v) if the objector has indicated that he, she or it intends
11 to appear at the Final Approval Hearing, the identities of any witnesses the objector may call to testify
12 and any exhibits the objector intends to introduce into evidence at the Final Approval Hearing. Such
13 persons may be heard orally at the discretion of the Court. Any such objection must be filed with the
14 Court and received by the below-noted counsel by no later than _____, 2024, which is twenty-
15 one (21) calendar days prior to the Final Approval Hearing.

16 8. Documentation establishing ownership of Align common stock must consist of
17 copies of monthly brokerage account statements, or an authorized statement from objector’s broker
18 containing the information found in the account statement.

19 9. Any Person who fails to object in the manner described above shall be deemed to
20 have waived the right to object to any aspect of the proposed Settlement and any Fee and Expense Award
21 (including any right of appeal or collateral attack); be forever barred and foreclosed from objecting to
22 the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the
23 Settlement, or any Fee and Expense Award; and be deemed to have waived and forever barred and
24 foreclosed from being heard, in this or any other proceeding with respect to any matters concerning the
25 Settlement or any Fee and Expense Award.

26 10. Plaintiffs shall file and serve papers in support of final approval of the proposed
27 Settlement, and any application for any Fee and Expense Award, by no later than thirty-five (35) calendar
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1 days prior to the Final Approval Hearing. If reply papers are necessary, they are to be filed and served
2 by no later than seven (7) calendar days prior to the Final Approval Hearing. The Settling Parties shall
3 be permitted to file reply papers regardless of whether they filed opening papers in support of the
4 proposed Settlement.

5 11. Until otherwise ordered by the Court, the Court stays all proceedings in the
6 Federal Derivative Action other than proceedings necessary to carry out or enforce the terms and
7 conditions of the Stipulation.

8 12. Pending final determination of whether the Settlement is approved, the Court bars
9 and enjoins all Plaintiffs and all other Current Align Stockholders from asserting, commencing,
10 instituting, or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant
11 Persons.

12 13. Neither the Stipulation (including any exhibits attached hereto), nor the
13 Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation
14 or the Settlement: (i) is or may be deemed to be or may be offered, attempted to be offered, or used or
15 referred to in any way by the Settling Parties as a presumption, a concession, an admission, or evidence
16 of any fault, wrongdoing, or liability of any of the Settling Parties or of the validity of any Released
17 Claims; or (ii) is or may be deemed to be or may be used as a presumption, concession, admission, or
18 evidence of any liability, fault, or omission of any of the Released Persons in any civil, criminal, or
19 administrative proceeding in any court, administrative agency, or other tribunal. Neither this Stipulation,
20 nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this
21 Stipulation, or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce
22 the terms of the Settlement, and except that the Released Persons may file the Stipulation and/or the
23 Judgment in any action or proceeding that may be brought against them to support a defense or
24 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,
25 standing, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or
26 issue preclusion or similar defense or counterclaim.

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14. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED this ____ day of _____, 2024.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

EXHIBIT C

Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Because the Settlement involves the resolution of derivative actions, which were brought on behalf of and for the benefit of the Company, and not individual or class actions on behalf of Align stockholders, the benefits from the Settlement will go to Align. Individual Align stockholders will not receive any direct payment from the Settlement. **ACCORDINGLY, THERE IS NO PROOF OF CLAIM FORM FOR STOCKHOLDERS TO SUBMIT IN CONNECTION WITH THIS SETTLEMENT. STOCKHOLDERS ARE NOT REQUIRED TO TAKE ANY ACTION IN RESPONSE TO THIS NOTICE.**

PURPOSE OF NOTICE

1. The purpose of this Notice is to explain the Federal Derivative Action and State Court Actions, the terms of the proposed Settlement, and how the proposed Settlement affects Current Align Stockholders' legal rights. This Notice is issued pursuant to an Order of the United States District for the Northern District of California (the "Court") dated ____ ("Preliminary Approval Order"), and further pursuant to the requirements of the Federal Rules of Civil Procedure, including Rule 23.1.

2. The Court will hold a hearing (the "Final Approval Hearing") on _____, 2024 at __:00 a.m., either in person at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, or by telephone or video conference (in the discretion of the Court), to consider whether the Judgment, substantially in the form of Exhibit E to the Stipulation, should be entered: (i) approving the terms of the Settlement as fair, reasonable, and adequate; (ii) dismissing with prejudice the Federal Derivative Action and State Court Actions pursuant to the terms of the Stipulation; and (iii) ruling upon any application for any Fee and Expense Award and Service Award. You have a right to participate in the Final Approval Hearing.

3. This Notice describes the rights you may have in the Federal Derivative Action and State Court Actions and pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement.

BACKGROUND OF THE SETTLING MATTERS

Factual Background

4. Align is a global medical device company engaged in the design, manufacture, and marketing of Invisalign® clear aligners and iTero® intraoral scanners and services for orthodontics, restorative, and aesthetic dentistry. The Settlement arises out of the Federal Derivative Action and State Court Actions alleging violations of the Securities Exchange Act of 1934 (the "Exchange Act") and breaches of fiduciary duty, among other claims, against certain current and former officers and directors of Align. Plaintiffs alleged that the Individual Defendants breached their fiduciary duties in connection with, among other things, (1) causing the Company to make false and/or misleading statements and omissions of material fact related to (a) changes in the Company's customer loyalty Advantage Program in North America, resulting in higher discounts for doctors; (b) the Company initiating an untested promotion related to Invisalign; (c) causing deterioration in Align's "Average selling price" ("ASP") and purportedly diminishing net income and profit margins as result of the foregoing promotions; (2) failing to correct these purportedly false and misleading statements and omissions; (3) failing to maintain internal controls; (4) causing the Company to repurchase its own stock at prices that were artificially inflated due to the foregoing misrepresentations; and (5) engaging in insider trading.

5. The Individual Defendants deny the allegations Plaintiffs make in the Federal Derivative Action and State Court Actions.

The Federal Derivative Action and State Court Actions

6. On January 11, 2019, plaintiff Michelle Tran filed a stockholder derivative action, captioned *Tran v. Hogan, et al.*, Case No. 5:19-cv-00202-LHK in the Northern District of California on behalf of nominal defendant Align against the Individual Defendants. The complaint asserted claims against the Individual Defendants for violations of (i) Section 10(b) of the Exchange Act and Rule 10b-5; (ii) Section 20(a) of the Exchange Act; (iii) breach of fiduciary duties; (iv) unjust enrichment; and (v) corporate waste.

7. On January 29, 2019, plaintiff Jill Dooley filed a stockholder derivative action, captioned *Dooley v. Hogan, et al.*, Case No. 5:19-cv-00525 in the Northern District of California on behalf of nominal defendant Align against the Individual Defendants. The complaint asserted claims against the Individual Defendants for violations of (i) Section 10(b) of the Exchange Act and Rule 10b-5; (ii) Section 14(a) of the Exchange Act and SEC Rule 14a-9; (iii) Section 20(a) of the Exchange Act; (iv) breach of fiduciary duties; (v) insider trading and misappropriation of information; (vi) unjust enrichment; and (vii) corporate waste.

8. On January 30, 2019, plaintiff Christopher Nguyen filed a stockholder derivative action, styled *Nguyen v. Hogan, et al.*, Case No. 5:19-cv-00543 in the Northern District of California on behalf of nominal defendant Align against the Individual Defendants. The complaint asserted claims against the Individual Defendants for violations of (i) Section 10(b) of the Exchange Act and Rule 10b-5; (ii) Section 14(a) of the Exchange Act; (iii) Section 20(a) of the Exchange Act; (iv) breach of fiduciary duties; (v) unjust enrichment; and (vi) corporate waste.

9. On February 26, 2019, because the three derivative actions all challenged the same alleged conduct by the same Individual Defendants and involved the same questions of law and fact, Judge Lucy H. Koh entered an order consolidating the *Tran*, *Dooley*, and *Nguyen* actions for all purposes, including pre-trial and trial under the new caption *In re Align Technology, Inc. Derivative Litigation*, Lead Case No. 5:19-cv-00202-LHK (N.D. Cal.).

10. On April 10, 2019, Judge Koh entered an order staying the consolidated derivative action pending the outcome of the parallel securities litigation, *SEB Investment Management AB v. Align Technology, Inc. et al.*, No. 18-cv-06720 (N.D. Cal.) proceeding before Judge Vince Chhabria (the “Securities Litigation”) because of the significant overlap between the derivative action and the Securities Litigation.

11. On April 12, 2019, Plaintiff Muhammad Abbas filed a derivative stockholder action, captioned *Abbas v. Hogan, et al.*, Case No. 19CV346429 in Santa Clara County Superior Court on behalf of nominal defendant Align against the Individual Defendants. The complaint asserted claims against the Individual Defendants for (i) breach of fiduciary duties, (ii) corporate waste, and (iii) unjust enrichment.

12. On May 16, 2019, the Santa Clara County Superior Court entered an order staying the *Abbas* case in favor of the federal Securities Litigation. There has been no further action in the *Abbas* matter.

13. On December 19, 2019, plaintiff Jessica McCall filed a complaint, styled *McCall v. Align Technology, Inc.*, Case No. 19CV360501 in Santa Clara County Superior Court, seeking to compel inspection of Align’s books and records.

14. On February 28, 2022, the Santa Clara County Superior Court entered a dismissal order in *McCall*.

15. On April 28, 2022, Judge Chhabria granted final approval of a settlement in the Securities Litigation.

The Settlement Negotiations

16. On February 16, 2022, stockholder Jessica McCall sent a settlement demand to Defendants. On May 9, 2022, plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen sent a settlement demand to Defendants. On May 26, 2023, after months of hard-fought negotiations, the Settling Parties reached an agreement in principle on the material substantive terms of a global resolution of the Federal Derivative Action and the State Court Actions.

17. Thereafter, the Settling Parties, each represented by counsel, commenced good-faith, arm's-length negotiations regarding an appropriate award of attorneys' fees and expenses to Plaintiffs' Counsel. These negotiations culminated in the Settling Parties' agreement that Align would cause its insurers to pay attorneys' fees and expenses totaling \$575,000, subject to Court approval.

18. The Settling Parties then negotiated and finalized the formal operative terms of the Settlement as set forth in the Stipulation (the "Settlement").

19. On _____, the Court entered the Preliminary Approval Order in connection with the Settlement that, among other things, preliminarily approved the Settlement, authorized this Notice to be provided to Current Align Stockholders, and scheduled the Final Approval Hearing to consider whether to grant final approval of the Settlement and any application for an award of attorney's fees and reimbursement of expenses to counsel for any Plaintiff.

TERMS OF THE SETTLEMENT

20. In consideration of the Settlement and the releases provided therein, and subject to the terms and conditions of the Stipulation, the Settling Parties have agreed to the following Settlement Consideration for Align.

21. The Company will adopt and maintain the following reforms, attached as Exhibit A to the Stipulation and Exhibit A to this Notice, which shall remain in effect for at least three (3) years after the Court's final approval of the Settlement, including but not limited to the following: (i) the Company will formalize its management-level Disclosure Committee by adopting a management-level Disclosure Committee Charter; (ii) the Disclosure Committee will now be comprised of the Chief Financial Officer, Chief Legal Officer, the EVP Global Human Resources and the head of Investor Relations; (iii) the Company increased the number of directors on the Audit Committee by adding an independent director who has expertise in cybersecurity; (iv) the Company will partner with a well-regarded university, such as Yale University or Harvard University, or outside counsel of its choosing for regular Board trainings conducted at least annually; (v) the Company enhanced its disclosures in its Form 10-K filings concerning human capital; (vi) the Company amended its Audit Committee Charter to include new obligations; (vii) the Compensation Committee will continue to review and make recommendations to the Board periodically regarding the stock ownership guidelines applicable to the Executives and the Board; (viii) the Compensation Committee will continue to periodically review the human capital management strategies, programs and policies; (ix) the Compensation Committee will continue to periodically review and report to the Board on non-CEO Executive development and succession planning; (x) the Company amended its Corporate Governance Guidelines to include that in the Nominating and Governance Committee's annual review of the skills and characteristics required

of members of the Board, the Committee shall also consider gender and ethnic diversity and the Compensation and Human Capital Committee will report to the Board on the succession planning for executive officers below the level of the CEO; (xi) After adoption of its Global Speak Up Policy, Align increased the frequency and circumstances under which conduct that may be inconsistent with Align's Global Code of Conduct is brought to the attention of the Board; (xii) the Company made certain membership changes to its Executive Management Committee; (xiii) the Company appointed a Global Compliance & Ethics Officer, a Vice President of Global Antitrust & Competition, and a Chief Legal Regulatory Officer; (xiv) the Company launched a new Global Code of Conduct, including a revised Free and Fair Competition section; (xv) the Company made certain changes to its annual proxy statement, including the use of a board diversity matrix; (xvi) the Company expanded training regarding Regulation FD and insider trading, expanded notifications it provides regarding the trading window, and adopted additional controls to refine access to material nonpublic information; and (xvii) the former President and Chief Executive Officer, Thomas M. Prescott, retired from the Board effective May 19, 2021, increasing the percentage of independent directors from 81% to 90%.

REASONS FOR THIS NOTICE

22. The Court directed that this Notice be issued to inform you of the terms of the proposed Settlement and about all of your options before the Court rules on the Settlement at or after the Final Approval Hearing.

23. This Notice explains the Federal Derivative Action and State Court Actions, the Settlement, and your legal rights.

24. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Federal Derivative Action and State Court Actions, and the Court still has to decide whether to finally approve the Settlement.

REASONS FOR THE SETTLEMENT

25. Plaintiffs' Counsel believe that the claims asserted in the Federal Derivative Action and the State Court Actions have merit and that their investigation of the evidence supports the claims asserted. Without conceding the merit of any of Defendants' defenses, and in light of the benefits of the Settlement as well as to avoid the potentially protracted time, expense, and uncertainty associated with continued litigation, including potential trial(s) and appeal(s), Plaintiffs and Plaintiffs' Counsel have concluded that it is desirable that the Federal Derivative Action and State Court Actions be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Plaintiffs and Plaintiffs' Counsel recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Federal Derivative Action and State Court Actions against Defendants through potential trial(s) and appeals. Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially complex litigation such as the Federal Derivative Action and the State Court Actions, the difficulties and delays inherent in such litigation, the cost to Align—on behalf of which Plaintiffs are prosecuting the Federal Derivative Action and State Court Action—and distraction to Align's management and employees that would result from extended litigation. Based on their evaluation, and in light of what Plaintiffs' Counsel believe to be the significant benefits conferred upon Align as a result of the Settlement, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement is in the best interests of Align and have agreed to settle the Federal Derivative Action and State Court Actions upon the terms and subject to the conditions set forth in the Stipulation.

26. Each of the Individual Defendants denies and continues to deny that he or she has committed or attempted to commit any violations of law, any breaches of fiduciary duty owed to

Align, or any wrongdoing whatsoever, and expressly maintains that, at all relevant times, he or she acted in good faith and in a manner that he or she reasonably believed to be in the best interests of Align and its stockholders. Defendants further deny that Plaintiffs, Align, or its stockholders suffered any damage or were harmed as a result of any act, omission, or conduct by the Individual Defendants as alleged in the Federal Derivative Action or the State Court Actions.

27. Align believes that the Settlement is fair, reasonable, and in the best interests of the Company, its stockholders, and its employees. Defendants are, therefore, entering into this Settlement to eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation. The Stipulation (including the exhibits) shall not be construed as, or deemed to be evidence of, an admission or concession by the Individual Defendants with respect to any claim of fault, liability, wrongdoing, or damage or any defect in the defenses that Individual Defendants have, or could have, asserted.

WHO IS AFFECTED BY THE SETTLEMENT

28. If you are a Current Align Stockholder, then you are subject to the Settlement, unless you timely object and that objection is accepted by the Court as detailed herein. “Current Align Stockholders” means any Person who owned Align common stock as of the date of the execution of the Stipulation (which shall be defined by the date of the last signature on the Stipulation), and continues to hold their Align common stock as of the date of the Final Approval Hearing, excluding the Individual Defendants, the current officers and directors of Align, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which the Individual Defendants have or had a controlling interest.

29. If you are a Current Align Stockholder and you wish to object to the Settlement or the request for a Fee and Expense Award, then you may present your objections by following the instructions in the section below entitled “Final Approval Hearing and Right to Appear and Object.”

30. If you are a Current Align Stockholder and you do not object, then you will be bound by any orders issued by the Court in the Federal Derivative Action and State Court Actions. If the Settlement is approved, the Court will enter a judgment (“Judgment”).

RELEASES

31. Upon the Effective Date, the Plaintiffs and all Current Align Stockholders will release the Released Defendant Persons from the Released Plaintiffs’ Claims. Upon the Effective Date, Align will further release the Individual Defendants and their Related Persons from the Released Plaintiffs’ Claims.

32. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on behalf of Align) and any Current Align Stockholder shall be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Plaintiffs’ Claims against any of the Released Defendant Persons or any action or other proceeding against any of the Released Defendant Persons arising out of, relating to, or in connection with the Released Plaintiffs’ Claims or the filing, prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State Court Actions. Upon the Effective Date, Align shall be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Plaintiffs’ Claims against any of the Individual Defendants or their Related Persons or any action or other proceeding against any of the Individual Defendants or their Related Persons arising out of, relating to, or in connection with the Released Plaintiffs’ Claims or the filing, prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State Court Actions. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

33. Upon the Effective Date, the Individual Defendants and Align shall be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Defendants' Claims against any of the Released Stockholder Persons or any action or other proceeding against any of the Released Stockholder Persons arising out of, relating to, or in connection with the filing, prosecution, defense, settlement, or resolution of the Federal Derivative Action or the State Court Actions. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

34. **"Effective Date"** means the date on which all of the following events have occurred: (a) approval of the Settlement at or after the Final Approval Hearing following notice to Current Align Stockholders; (b) entry of the Judgment, approving the Settlement without awarding costs to any party, except as provided in the Stipulation, dismissing with prejudice the Federal Derivative Action pursuant to the terms of the Stipulation, and releasing the Released Persons from the Released Claims; (c) dismissal with prejudice of the *Abbas* case; and (d) the passing of the date upon which the Judgment becomes Final.

35. **"Judgment"** means the final order and judgment approving the Settlement to be rendered by the Court.

36. **"Related Persons"** means each Person's immediate family members and current, former, or future parents, subsidiaries, associates, affiliates, partners, joint venturers, officers, directors, principals, members, agents, representatives, employees, attorneys, trustees, spouses, heirs, assigns, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors, insurers and reinsurers of any of the foregoing in their capacity as such, and/or any other individual or entity in which a Person has or had a controlling interest or which is or was related to or affiliated with a Person.

37. **"Released Claims"** means collectively, all the Released Plaintiffs' Claims and all the Released Defendants' Claims.

38. **"Released Defendants' Claims"** means all claims, rights, demands, obligations, controversies, debts, disputes, damages, losses, issues, liabilities, charges, and causes of action of every nature and description, in law or equity, including known claims and Unknown Claims, whether arising under state, federal, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Individual Defendants and Align in the Federal Derivative Action or State Court Actions, except for claims relating to the enforcement of the Settlement.

39. **"Released Defendant Persons"** means, collectively, each and all of the Individual Defendants, Align, and each and all of the Related Persons of each of the Individual Defendants and Align.

40. **"Released Persons"** means, collectively, the Released Defendant Persons and the Released Stockholder Persons. "Released Person" means, individually, any of the Released Persons.

41. **"Released Plaintiffs' Claims"** means all claims, rights, demands, obligations, controversies, debts, disputes, damages, losses, issues, liabilities, charges, and causes of action of every nature and description, in law or equity, including known claims and Unknown Claims, whether arising under state, federal, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or contingent, whether foreseen

or unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature, that (i) were or could have been asserted by Align, Plaintiffs, or any Current Align Stockholders derivatively on behalf of Align, and (ii) arise out of or relate to the allegations, transactions, facts, matters, disclosures, or non-disclosures set forth in the Federal Derivative Action or State Court Actions, including any communications or demands in connection therewith, except for claims relating to the enforcement of the Settlement.

42. **“Released Stockholder Persons”** means each and all of the Plaintiffs, Plaintiffs’ Counsel, and each of their Related Persons.

43. **“Unknown Claims”** means any and all of the Released Claims that any of the Settling Parties or any Current Align Stockholder does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, including claims which, if known by him, her, or it, might have affected his, her, or its decision to settle or the terms of his, her, or its settlement with and releases provided to the Released Persons, or might have affected his, her, or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties and all Current Align Stockholders shall expressly waive, and, with respect to Released Claims that could have been asserted derivatively on behalf of the Company, all other Align stockholders by operation of the Judgment shall have expressly waived, the provisions, rights, and benefits of California Civil Code § 1542 (**“Section 1542”**), or any other law of the United States or any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settling Parties and each Current Align Stockholder may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, but the Settling Parties and each Current Align Stockholder shall expressly, fully, finally and forever settle and release, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims as applicable without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Current Align Stockholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

44. **THE ABOVE DESCRIPTION OF THE PROPOSED SETTLEMENT AND RELEASES IS A SUMMARY.** The complete terms, including definitions are set forth in the Stipulation, which, together with the exhibits thereto and this Notice, is available on Align’s investor relations website at <https://investor.aligntech.com/>.

APPLICATION FOR A FEE AND EXPENSE AWARD

45. Subject to approval of the Court, Plaintiffs' Counsel will seek a Fee and Expense Award not to exceed \$575,000.

46. Defendants shall cause their insurers to pay the full amount of any Fee and Expense Award awarded by the Court. Align stockholders are not personally liable for any such fees or expenses. The failure of the Court to approve any Fee and Expense Award, in whole or in part, shall have no effect on the Settlement set forth in this Stipulation.

47. The Settling Parties further stipulate that Plaintiffs' Counsel may apply to the Court for a service award of up to \$2,000 for each of the five Plaintiffs, only to be paid upon Court approval, and to be paid from Plaintiffs' Counsel's Fee and Expense Award in recognition of Plaintiffs' participation and effort in the prosecution of the Federal Derivative Action and State Court Actions, respectively. The failure of the Court to approve any requested service award, in whole or in part, shall have no effect on the Settlement set forth in this Stipulation. Neither Align nor any of the Individual Defendants shall be liable for any portion of any service award to the Plaintiffs.

48. Any Fee and Expense Award is subject to approval by the Court at the Final Approval Hearing and will not affect the Finality of the Settlement. The Court's decision granting, in whole or in part, any application for a Fee and Expense Award is not a condition of the Stipulation or to entry of the Judgment. Any request for a Fee and Expense Award will be considered by the Court separately from the Court's consideration of the question whether the Settlement is fair, reasonable, adequate, and in the best interests of Align and Current Align Stockholders.

FINAL APPROVAL HEARING AND RIGHT TO APPEAR AND OBJECT

49. **Current Align Stockholders do not need to attend the Final Approval Hearing. The Court will consider any submission made in accordance with the provisions below even if a Current Align Stockholder does not attend the Final Approval Hearing.**

50. The Court has scheduled a Final Approval Hearing, to be held on [_____, 2024, at __:00 a.m./p.m.], either in person at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, or by telephone or video conference (in the discretion of the Court), to consider whether the Judgment, substantially in the form of Exhibit E to the Stipulation, should be entered: (i) approving the terms of the Settlement as fair, reasonable, and adequate; (ii) releasing all Released Claims against the Released Persons fully and finally, including dismissing with prejudice the Federal Derivative Action pursuant to the terms of the Stipulation; and (iii) approving the amount of attorneys' fees and expenses and of any service awards to the five Plaintiffs. The Court reserves the right to approve the Settlement, Plaintiffs' Counsels' request for a Fee and Expense award, and/or any other matter related to the Settlement at or after the Final Approval Hearing without further notice to Current Align Stockholders.

51. Any Current Align Stockholder may object to the proposed Settlement or Plaintiffs' Counsels' request for a Fee and Expense Award. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement. The Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, there will be no settlement, and the Federal Derivative Action and State Court Actions will continue. If this what you want to happen, then you must object.

52. **PLEASE NOTE:** The date and time of the Final Approval Hearing may change without further written notice to Current Align Stockholders. The Court may decide to conduct the Final Approval Hearing by video or telephonic conference, or otherwise allow Current Align Stockholders to appear at the Final Approval Hearing by video or telephone, without further written notice. **In order to determine whether the date and time of the Final Approval Hearing have changed, or whether Current Align Stockholders must or may participate by telephone or video, it is important that you monitor the Court's docket before making any plans to attend the Final Approval Hearing. Any updates regarding the Final Approval Hearing, including any changes to the date or time of the Final Approval Hearing or updates regarding in-person or remote appearances at the Final Approval Hearing, will be posted to that docket and on Align's investor relations website where the Notice and Stipulation and exhibits thereto are published at <https://investor.aligntech.com/>. If the Court requires or allows Current Align Stockholders to participate in the Final Approval Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to the Court's docket and on Align's investor relations website where the Notice and Stipulation and exhibits thereto are published at <https://investor.aligntech.com/>.**

53. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*In re Align Technology, Inc. Derivative Litigation*, Lead Case No. 5:19-cv-00202-LHK (N.D. Cal.)), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, and (c) be filed or *postmarked on or before* _____.

54. Any Current Align Stockholder who continues to hold the stock as of the date of the Final Approval Hearing may appear at the Final Approval Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why any application for a Fee and Expense Award should not be granted; *provided, however*, that no such Person shall be heard unless such person has filed with the Clerk of the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, as indicated above, a written and signed notice of objection that includes: (i) the objector's name, address, and telephone number (and, if represented, that of his, her, or its counsel), (ii) a representation as to whether the objector intends to appear at the Final Approval Hearing; (iii) proof that the objector owned shares of Align common stock as of January 12, 2024, and continues to hold common stock in Align; (iv) a statement of the objections to any matters before the Court, the grounds for the objections or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; and (v) if the objector has indicated that he, she or it intends to appear at the Final Approval Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Final Approval Hearing. Such persons may be heard orally at the discretion of the Court. Any such objection must be filed with the Court and received by the below-noted counsel by no later than _____, 2024, which is twenty-one (21) calendar days prior to the Final Approval Hearing.

55. Documentation establishing ownership of Align common stock must consist of copies of monthly brokerage account statements, or an authorized statement from objector's broker containing the information found in the account statement.

56. Unless the Court orders otherwise, no person shall be entitled to object to the approval of the Settlement, the Judgment to be entered approving the Settlement, any application for any Fee and Expense Award, or otherwise be heard except by serving and filing a written objection and supporting papers as prescribed above. Any Person who fails to object in the manner described above shall be deemed to have waived the right to object to any aspect of the proposed Settlement and any Fee and Expense Award (including any right of appeal or collateral attack); be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, or any Fee and Expense Award; and be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement or any Fee and Expense Award.

ORDER AND FINAL JUDGMENT OF THE COURT

57. The Settling Parties will jointly request at the Final Approval Hearing that the Court determine and enter the Judgment concluding that the Settlement is fair, reasonable, adequate, and in the best interests of Align stockholders. The Judgment shall, among other things:

- a. Determine that the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process have been satisfied in connection with this Notice;
- b. Approve the Settlement as fair, reasonable, adequate, and in the best interests of Align and Align stockholders;
- c. Dismiss the Federal Derivative Action against all Defendants without costs except as provided in the Stipulation, and release the Released Claims; and
- d. Determine the amount of any Fee and Expense Award.

58. The parties to the *Abbas* case shall make an appropriate filing to voluntarily dismiss it with prejudice within five (5) business days after the Court enters the Judgment.

SCOPE OF THIS NOTICE

59. This Notice does not purport to be a comprehensive description of the Federal Derivative Action and State Court Actions, the terms of the Settlement, or the Final Approval Hearing. For the full details of the Federal Derivative Action and State Court Actions, Align stockholders may inspect the pleadings, the Stipulation, and the orders entered by the Court by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the Office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. For the full terms and conditions of the Settlement, review the Stipulation which together with its exhibits and this Notice, is available on Align's investor relations website at <https://investor.aligntech.com/>, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the Office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

60. All inquiries concerning this Notice should be directed to:

ROBBINS LLP

Stephen J. Oddo
5060 Shoreham Place, Suite 300
San Diego, CA 92122
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: soddo@robbinsllp.com

Counsel for Stockholder Jessica McCall and Additional Counsel for Plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen

BRAGAR EAGEL & SQUIRE, P.C.

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810 Seventh Avenue, Suite 620
New York, NY 10019
Telephone: (212) 308-5858
E-mail: eigel@bespc.com

THE BROWN LAW FIRM, P.C.

Timothy Brown
767 Third Avenue, Suite 2501
New York, NY 10017
Telephone: (516) 922-5427
Facsimile: (516) 344-6204
E-mail: tbrown@thebrownlawfirm.net

Co-Lead Counsel for Plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

DATE: _____, 2024

BY ORDER OF THE COURT

United States District Court

Northern District of California

EXHIBIT D

States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Because the Settlement involves the resolution of derivative actions, which were brought on behalf of and for the benefit of the Company, and not individual or class actions on behalf of Align stockholders, the benefits from the Settlement will go to Align. Individual Align stockholders will not receive any direct payment from the Settlement. **ACCORDINGLY, THERE IS NO PROOF OF CLAIM FORM FOR STOCKHOLDERS TO SUBMIT IN CONNECTION WITH THIS SETTLEMENT. STOCKHOLDERS ARE NOT REQUIRED TO TAKE ANY ACTION IN RESPONSE TO THIS SUMMARY NOTICE.**

This Summary Notice describes the legal rights you may have in the Federal Derivative Action and State Court Actions and pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement.

In consideration of the Settlement and the releases provided therein, and subject to the terms and conditions of the Stipulation, the Settling Parties have agreed to the following Settlement Consideration for Align:

1. The Company will adopt and maintain the following reforms, which shall remain in effect for at least three (3) years after the Court's final approval of the Settlement, including but not limited to the following: (i) the Company will formalize its management-level Disclosure Committee by adopting a management-level Disclosure Committee Charter; (ii) the Disclosure Committee will now be comprised of the Chief Financial Officer, Chief Legal Officer, the EVP Global Human Resources and the head of Investor Relations; (iii) the Company increased the number of directors on the Audit Committee by adding an independent director who has expertise in cybersecurity; (iv) the Company will partner with a well-regarded university, such as Yale University or Harvard University, or outside counsel of its choosing for regular Board trainings conducted at least annually; (v) the Company enhanced its disclosures in its Form 10-K filings concerning human capital; (vi) the Company amended its Audit Committee Charter to include new obligations; (vii) the Compensation Committee will continue to review and make recommendations to the Board periodically regarding the stock ownership guidelines applicable to the Executives and the Board; (viii) the Compensation Committee will continue to periodically review the human capital management strategies, programs and policies; (ix) the Compensation Committee will continue to periodically review and report to the Board on non-CEO Executive development and succession planning; (x) the Company amended its Corporate Governance Guidelines to include that in the Nominating and Governance Committee's annual review of the skills and characteristics required of members of the Board, the Committee shall also consider gender and ethnic diversity and Compensation and Human Capital Committee will report to the Board on the succession planning for executive officers below the level of the CEO; (xi) After adoption of its Global Speak Up Policy, Align increased the frequency and circumstances under which conduct that may be inconsistent with Align's Global Code of Conduct is brought to the attention of the Board; (xii) the Company made certain membership changes to its Executive Management Committee; (xiii) the Company appointed a Global Compliance & Ethics Officer, a Vice President of Global Antitrust & Competition, and a Chief Legal Regulatory Officer; (xiv) the Company launched a new Global Code of Conduct, including a revised Free and Fair Competition section; (xv) the Company made certain changes to its annual proxy statement, including the use of a board diversity matrix; (xvi) the Company expanded training regarding Regulation FD and insider trading, expanded notifications it provides regarding the trading window, and adopted additional controls to refine access to material nonpublic information; and (xvii) the former President and Chief Executive Officer, Thomas M. Prescott, retired from the Board effective May 19, 2021, increasing the percentage of independent directors from 81% to 90%.

2. Subject to approval of the Court, Plaintiffs' Counsel will seek a Fee and Expense Award not to exceed \$575,000.

3. Defendants shall cause their insurers to pay the full amount of any Fee and Expense Award awarded by the Court.

4. Plaintiffs' Counsel also may apply to the Court for a service award of up to \$2,000 for each of the five Plaintiffs, only to be paid upon Court approval, and to be paid from Plaintiffs' Counsel's Fee and Expense Award.

5. Align stockholders are not personally liable for any such fees or expenses.

6. Upon the Effective Date, the Plaintiffs and all Current Align Stockholders will release the Released Defendant Persons from the Released Plaintiffs' Claims. Upon the Effective Date, Align will further release the Individual Defendants and their Related Persons from the Released Plaintiffs' Claims.

Current Align Stockholders do not need to attend the Final Approval Hearing. The Court will consider any submission made in accordance with the provisions below even if a Current Align Stockholder does not attend the Final Approval Hearing.

The Court has scheduled a Final Approval Hearing, to be held on _____, 2024, at ___:00 a.m./p.m., either in person at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, or by telephone or video conference (in the discretion of the Court), to consider whether the Judgment, substantially in the form of Exhibit E to the Stipulation, should be entered: (i) approving the terms of the Settlement as fair, reasonable, and adequate; (ii) releasing all Released Claims against the Released Persons fully and finally, including dismissing with prejudice the Federal Derivative Action pursuant to the terms of the Stipulation; and (iii) approving the amount of attorneys' fees and expenses and of any service awards to the five Plaintiffs. The Court reserves the right to approve the Settlement, Plaintiffs' Counsels' request for a Fee and Expense award, and/or any other matter related to the Settlement at or after the Final Approval Hearing without further notice to Current Align Stockholders.

Any Current Align Stockholder may object to the proposed Settlement or Plaintiffs' Counsels' request for a Fee and Expense Award. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement. The Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, there will be no settlement, and the Federal Derivative Action and State Court Actions will continue. If this what you want to happen, then you must object.

PLEASE NOTE: The date and time of the Final Approval Hearing may change without further written notice to Current Align Stockholders. The Court may decide to conduct the Final Approval Hearing by video or telephonic conference, or otherwise allow Current Align Stockholders to appear at the Final Approval Hearing by video or telephone, without further written notice. **In order to determine whether the date and time of the Final Approval Hearing have changed, or whether Current Align Stockholders must or may participate by telephone or video, it is important that you monitor the Court's docket before making any plans to attend the Final Approval Hearing. Any updates regarding the Final Approval Hearing, including any changes to the date or time of the Final Approval Hearing or updates regarding in-person or remote appearances at the Final Approval Hearing, will be posted to that docket and on Align's investor relations website where the complete Notice and Stipulation and exhibits thereto are published at <https://investor.aligntech.com/>. If the Court requires or allows Current Align Stockholders to participate in the Final Approval Hearing**

by telephone or video conference, the information for accessing the telephone or video conference will be posted to the Court's docket and on Align's investor relations website where the Notice and Stipulation and exhibits thereto are published at <https://investor.aligntech.com/>.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*In re Align Technology, Inc. Derivative Litigation*, Case No. 5:19-cv-00202-LHK (N.D. Cal.)), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, and (c) be filed or *postmarked on or before* _____.

Any Current Align Stockholder who continues to hold the stock as of the date of the Final Approval Hearing may appear at the Final Approval Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why any application for a Fee and Expense Award should not be granted; *provided, however*, that no such Person shall be heard unless such person has filed with the Clerk of the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 5 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, as indicated above, a written and signed notice of objection that includes: (i) the objector's name, address, and telephone number (and, if represented, that of his, her, or its counsel), (ii) a representation as to whether the objector intends to appear at the Final Approval Hearing; (iii) proof that the objector owned shares of Align common stock as of January 12, 2024, and continues to hold common stock in Align; (iv) a statement of the objections to any matters before the Court, the grounds for the objections or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; and (v) if the objector has indicated that he, she or it intends to appear at the Final Approval Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Final Approval Hearing. Such persons may be heard orally at the discretion of the Court. Any such objection must be filed with the Court and received by the below-noted counsel by no later than _____, 2024, which is twenty-one (21) calendar days prior to the Final Approval Hearing.

If you have any questions regarding this Summary Notice, the Federal Derivative Action and State Court Actions, or the Settlement, you may contact Plaintiffs' Counsel:

ROBBINS LLP

Stephen J. Oddo
5060 Shoreham Place, Suite 300
San Diego, CA 92122
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: soddo@robbinsllp.com

Counsel for Stockholder Jessica McCall and Additional Counsel for Plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen

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THE BROWN LAW FIRM, P.C.

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Facsimile: (516) 344-6204
E-mail: tbrown@thebrownlawfirm.net

Co-Lead Counsel for Plaintiffs Michelle Tran, Jill Dooley, and Christopher Nguyen

DATE: _____, 2024

EXHIBIT E

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE ALIGN TECHNOLOGY, INC.
DERIVATIVE LITIGATION

Lead Case No.: 5:19-cv-00202-LHK

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

This Document Relates to:

ALL ACTIONS.

[PROPOSED] ORDER

1
2 A hearing having been held before this Court on _____, 2024, pursuant to this Court’s Order of
3 _____, 2024 (the “Preliminary Approval Order”), upon a Stipulation and Agreement of Settlement and
4 Release, dated January 12, 2024 (the “Stipulation”) of the Federal Derivative Action and State Court
5 Actions,¹ which are incorporated herein by reference; due notice of said hearing having been given in
6 accordance with the Preliminary Approval Order; the respective parties having appeared by their
7 attorneys of record; the Court having heard and considered the submissions presented in support of the
8 proposed Settlement and the application of an award of attorneys’ fees and litigation expenses; the
9 attorneys for the respective parties having been heard; an opportunity to be heard having been given to
10 all other persons requesting to be heard in accordance with the Preliminary Approval Order; the Court
11 having determined that notice to the Current Align Stockholders pursuant to the Preliminary Approval
12 Order was adequate and sufficient; the Court having considered, among other matters, the benefits of the
13 proposed Settlement and the risks, complexity, expense and probable duration of further litigation; and
14 the entire matter of the proposed Settlement and the application for an award of attorneys’ fees and
15 expenses having been heard and considered by the Court;

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2024
17 that:

18 1. The Notice of Pendency and Proposed Settlement of Derivative Actions and Final
19 Approval Hearing (“Notice”) and Summary Notice of Pendency and Proposed Settlement of Derivative
20 Actions and Final Approval Hearing (“Summary Notice”), substantially in the form attached as Exhibits
21 C and D to the Stipulation, have been disseminated to the Current Align Stockholders, pursuant to and
22 in the manner directed by the Preliminary Approval Order; counsel for Defendants has filed proof of
23 publication of the Summary Notice and posting of the Notice and Stipulation with the Court and full
24 opportunity to be heard has been offered to all parties, the Current Align Stockholders and persons in
25 interest. The form and manner of Notice is hereby determined to have been the best notice practicable
26 under the circumstances and constitutes due and sufficient notice to all persons entitled thereto, and it

27 _____

28 ¹ Capitalized terms used but not defined herein have the same meaning attributed to them in the Stipulation.

1 is further determined that all Current Align Stockholders are bound by the Order and Final Judgment
2 herein.

3 2. The Court finds and concludes that the Settlement is fair, reasonable and adequate and in
4 the best interests of Align and its stockholders, and hereby approves the Settlement and all transactions
5 preliminary or incident thereto. The Court dismisses the Federal Derivative Action and State Court
6 Actions and the claims asserted therein as to all Defendants with prejudice and without Court costs to
7 any party as against any other party.

8 3. The parties to the Stipulation are hereby authorized and directed to comply with and to
9 consummate the Settlement in accordance with the terms and provisions of the Stipulation, including the
10 adoption and maintenance of the Settlement Consideration, and the Clerk of the Court is directed to enter
11 and docket this Order and Final Judgment in the Federal Derivative Action.

12 4. This Order and Final Judgment (i) is not and may not be deemed to be or offered,
13 attempted to be offered, or used or referred to in any way by the Settling Parties as a presumption, a
14 concession, an admission, or evidence of any fault, wrongdoing, or liability of any of the Settling Parties
15 or of the validity of any Released Claims; and (ii) is not and may not be deemed to be or used as a
16 presumption, concession, admission, or evidence of any liability, fault, or omission of any of the
17 Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency,
18 or other tribunal. Neither this Order and Final Judgment, nor any act performed or document executed
19 pursuant to or in furtherance thereto, or the Stipulation, shall be admissible in any proceeding for any
20 purpose, except to enforce the terms of the Settlement, and except that the Released Persons may file the
21 Stipulation and/or this Order and Final Judgment in any action or proceeding that may be brought against
22 them to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full
23 faith and credit, release, standing, good faith settlement, judgment bar or reduction, or any other theory
24 of claim preclusion or issue preclusion or similar defense or counterclaim.

25 5. In the event that the Settlement fails to become effective in accordance with its terms, or
26 if this Order and Final Judgment is reversed, vacated, or materially modified on appeal (and, in the event
27 of material modification, if any party elects to terminate the Settlement), this Order and Final Judgment
28 (except this Paragraph) shall be null and void, the Settlement shall be cancelled and terminated, and the

1 Settling Parties shall return to their positions as provided for in the Stipulation except that neither
2 Plaintiff nor Plaintiffs' Counsel shall be responsible to reimburse or otherwise bear any cost or expense
3 in connection with the Notice.

4 6. Upon the Effective Date, the Plaintiffs and all Current Align Stockholders shall be
5 deemed to have, and by operation of this Order and Final Judgment shall have, released the Released
6 Defendant Persons from all claims, rights, demands, obligations, controversies, debts, disputes, damages,
7 losses, issues, liabilities, charges, and causes of action of every nature and description, in law or equity,
8 including known claims and Unknown Claims, whether arising under state, federal, local, common,
9 statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether
10 fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated
11 or unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in
12 nature, that (a) were or could have been asserted by Align, Plaintiffs, or any Current Align Stockholders
13 derivatively on behalf of Align and (b) arise out of or relate in any way to the allegations, transactions,
14 facts, matters, disclosures, or non-disclosures set forth in the Federal Derivative Action or State Court
15 Actions, including any communications or demands in connection therewith, except for claims relating
16 to the enforcement of the Settlement ("Released Plaintiffs' Claims"). Upon the Effective Date, Align
17 shall be deemed to have, and by operation of this Order and Final Judgment shall have, released the
18 Individual Defendants and their Related Persons from the Released Plaintiffs' Claims.

19 7. Upon the Effective Date, the Individual Defendants and Align shall be deemed to have,
20 and by operation of this Order and Final Judgment shall have, released the Released Stockholder Persons
21 from all claims, rights, demands, obligations, controversies, debts, disputes, damages, losses, issues,
22 liabilities, charges, and causes of action of every nature and description, in law or equity, including
23 known claims and Unknown Claims, whether arising under state, federal, local, common, statutory,
24 administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or
25 contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or
26 unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature
27 that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against
28 the Individual Defendants and Align in the Federal Derivative Action or State Court Actions, except for

1 claims relating to the enforcement of the Settlement (“Released Defendants’ Claims,” together with
2 Released Plaintiffs’ Claims, “Released Claims”).

3 8. “Unknown claims,” as used herein and in the Stipulation, means any and all of the
4 Released Claims that any of the Settling Parties or any Current Align Stockholder does not know or
5 suspect to exist in his, her, or its favor at the time of the release of such claims, including claims which,
6 if known by him, her, or it, might have affected his, her, or its decision to settle or the terms of his, her,
7 or its settlement with and releases provided to the Released Persons, or might have affected his, her, or
8 its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling
9 Parties stipulate and agree that, upon the Effective Date, the Settling Parties and all Current Align
10 Stockholders shall expressly waive, and, with respect to Released Claims that could have been asserted
11 derivatively on behalf of the Company, all other Align stockholders by operation of the Judgment shall
12 have expressly waived, the provisions, rights, and benefits of California Civil Code § 1542 (“**Section**
13 **1542**”), or any other law of the United States or any state or territory of the United States, or principle
14 of common law that is similar, comparable, or equivalent to Section 1542, which provides:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
16 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
17 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

18 The Settling Parties and each Current Align Stockholder may hereafter discover facts in addition to or
19 different from those which he, she, or it now knows or believes to be true with respect to the subject
20 matter of the Released Claims, known or unknown, suspected or unsuspected, contingent or non-
21 contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any
22 theory of law or equity now existing or coming into existence in the future, including, but not limited to,
23 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, but
24 the Settling Parties and each Current Align Stockholder shall expressly, fully, finally and forever settle
25 and release, and upon the Effective Date and by operation of this Order and Final Judgment shall have
26 settled and released, fully, finally, and forever, any and all Released Claims as applicable without regard
27 to the subsequent discovery or existence of such different or additional facts.

1 9. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on behalf
2 of Align) and any Current Align Stockholder shall, by operation of this Order and Final Judgment, be
3 forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Plaintiffs'
4 Claims against any of the Released Defendant Persons or any action or other proceeding against any of
5 the Released Defendant Persons arising out of, relating to, or in connection with the Released Plaintiffs'
6 Claims or the filing, prosecution, defense, settlement, or resolution of the Federal Derivative Action or
7 the State Court Actions. Upon the Effective Date, Align shall be forever barred and enjoined from
8 commencing, instituting, or prosecuting any of the Released Plaintiffs' Claims against any of the
9 Individual Defendants or their Related Persons or any action or other proceeding against any of the
10 Individual Defendants or their Related Persons arising out of, relating to, or in connection with the
11 Released Plaintiffs' Claims or the filing, prosecution, defense, settlement, or resolution of the Federal
12 Derivative Action or the State Court Actions. Nothing herein shall in any way impair or restrict the
13 rights of any Settling Party to enforce the terms of the Stipulation.

14 10. Upon the Effective Date, the Individual Defendants and Align shall, by operation of this
15 Order and Final Judgment, be forever barred and enjoined from commencing, instituting, or prosecuting
16 any of the Released Defendants' Claims against any of the Released Stockholder Persons or any action
17 or other proceeding against any of the Released Stockholder Persons arising out of, relating to, or in
18 connection with the filing, prosecution, defense, settlement, or resolution of the Federal Derivative
19 Action or the State Court Actions. Nothing herein shall in any way impair or restrict the rights of any
20 Settling Party to enforce the terms of the Stipulation.

21 11. The parties to the *Abbas* case shall make an appropriate filing to voluntarily dismiss it
22 with prejudice within five (5) business days after the Court enters the Judgment.

23 12. Plaintiffs' Counsel is hereby awarded fees and litigation expenses in the aggregate
24 amount of \$ _____, which fees and expenses the Court finds to be fair and reasonable
25 and which shall be paid to Plaintiffs' Counsel in accordance with the terms of the Stipulation.

26 13. Each of the five Plaintiffs in the Federal Derivative Action and State Court Actions are
27 awarded a service fee of _____ to be paid from Plaintiffs' Counsel's fees and litigation expenses as
28

1 awarded in Paragraph 12 herein. Neither Align nor any of the Individual Defendants shall be liable for
2 any portion of any service award to the Plaintiffs.

3 14. An appeal directed solely to the issue of the award by the Court of attorney fees and
4 expenses or the service fee to Plaintiffs does not affect or prevent this Order and Final Judgment from
5 becoming final as defined in the Stipulation.

6 15. Without affecting the finality of this Order and Final Judgment, the Court reserves
7 jurisdiction of all matters relating to the consummation and administration of the Settlement.

8 **IT IS SO ORDERED** this ____ day of _____, 2024.

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UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA