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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SEB INVESTMENT MANAGEMENT AB,
Individually and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

ALIGN TECHNOLOGY, INC., JOSEPH M.
HOGAN, and JOHN F. MORICI,

Defendants.

Case No. 5:18-cv-06720-LHK

CLASS ACTION

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

Courtroom: 8, 4th Floor
Judge: Hon. Lucy H. Koh

1 This Stipulation and Agreement of Settlement dated as of June 30, 2021 (“Stipulation”) is entered
 2 into between: (a) Court-appointed Lead Plaintiff SEB Investment Management AB (“Lead Plaintiff”), on
 3 behalf of itself and the Settlement Class (as defined below); and (b) Align Technology, Inc. (“Align” or
 4 the “Company”), Joseph M. Hogan, and John F. Morici (collectively, “Defendants” and, together with
 5 Lead Plaintiff, the “Parties”), by and through their respective undersigned counsel, and embodies the terms
 6 and conditions of the Parties’ settlement of the above-captioned action (“Action”).¹ Subject to the approval
 7 of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully,
 8 finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all
 9 claims asserted therein.

10 WHEREAS:

11 A. On November 5, 2018, a putative securities class action complaint, styled *Xiaojiao Lu v.*
 12 *Align Technology, Inc., et al.*, Case No. 5:18-cv-06720-LHK (“*Lu* Action”), was filed in the United States
 13 District Court for the Northern District of California (“Court”) on behalf of certain purchasers of Align
 14 common stock. ECF No. 1. This case was assigned to the Honorable Lucy H. Koh. ECF No. 4.

15 B. On December 12, 2018, a similar securities class action complaint, styled *David Infuso v.*
 16 *Align Technology, Inc., et al.*, Case No. 3:18-cv-07469-WHA (“*Infuso* Action”), was filed in this Court.
 17 On January 2, 2019, the Court granted an administrative motion to relate the two cases. ECF No. 11.

18 C. By Order dated March 22, 2019, the Court consolidated the *Lu* and *Infuso* Actions,
 19 appointed SEB Investment Management AB as Lead Plaintiff, and approved Lead Plaintiff’s selection of
 20 Kessler Topaz Meltzer & Check, LLP as Lead Counsel for the class. ECF No. 72.

21 D. On May 10, 2019, Lead Plaintiff filed the Consolidated Class Action Complaint for
 22 Violation of the Federal Securities Laws (“Consolidated Complaint”). ECF No. 87. The Consolidated
 23 Complaint asserted claims under Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934
 24 (“Exchange Act”), 15 U.S.C. §§ 78j(b) 78n(a), and 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5,
 25 promulgated thereunder, against Align, Joseph M. Hogan, John F. Morici, Raphael S. Pascaud, and Emory
 26 M. Wright (collectively, “Consolidated Complaint Defendants”).

27
 28 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 of this Stipulation.

1 E. The Consolidated Complaint Defendants moved to dismiss the Consolidated Complaint on
2 June 24, 2019 (“First Motion to Dismiss”). ECF No. 92. The Consolidated Complaint Defendants also
3 submitted a Request for Judicial Notice and Notice of Incorporation in support of their First Motion to
4 Dismiss (“First Request for Judicial Notice”). ECF No. 93. Lead Plaintiff opposed the First Motion to
5 Dismiss on August 13, 2019 (ECF No. 97), and the Consolidated Complaint Defendants filed replies in
6 support of their First Motion to Dismiss and First Request for Judicial Notice on September 12, 2019 (ECF
7 Nos. 98 & 99).

8 F. By Order dated October 29, 2019, the Court granted the First Motion to Dismiss (“First
9 MTD Order”), but provided Lead Plaintiff leave to file an amended complaint within 30 days. ECF No.
10 107.

11 G. In accordance with the First MTD Order, Lead Plaintiff filed the Amended Consolidated
12 Class Action Complaint for Violation of the Federal Securities Laws on November 29, 2019 (“Amended
13 Consolidated Complaint”). ECF No. 120.² The Amended Consolidated Complaint asserts claims under
14 Sections 10(b), 20(a), and 20A of the Exchange Act, 15 U.S.C. §§ 78j(b) 78n(a), and 78t(a), and SEC Rule
15 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, against Defendants. The Amended Consolidated
16 Complaint alleges that Defendants made materially false or misleading statements regarding the impact of
17 competition on Align’s business, particularly its comprehensive clear aligner business. The Amended
18 Consolidated Complaint further alleges that the price of Align common stock was artificially inflated
19 during the period between May 23, 2018, and October 24, 2018, as a result of Defendants’ allegedly false
20 or misleading statements, and declined when the alleged truth was revealed after the close of the market
21 on October 24, 2018.

22 H. Defendants moved to dismiss the Amended Consolidated Complaint on July 17, 2020
23 (“Second Motion to Dismiss”). ECF No. 122. Defendants also submitted a Request for Judicial Notice and
24 Notice of Incorporation in support of their motion (“Second Request for Judicial Notice”). ECF No. 123.
25 Lead Plaintiff opposed the Second Motion to Dismiss on March 2, 2020 (ECF No. 130), and Defendants

26 _____
27 ² The Amended Consolidated Complaint does not allege claims against two of the Consolidated
28 Complaint Defendants (Ralph Pascaud and Emory Wright), and changed the class period start date from
April 25, 2018 to May 23, 2018.

1 filed replies in support of their Second Motion to Dismiss and Second Request for Judicial Notice on April
2 1, 2020 (ECF Nos. 131 & 132).

3 I. By Order dated September 9, 2020, the Court granted in part and denied in part Defendants'
4 Second Motion to Dismiss ("Second MTD Order"). ECF No. 138.

5 J. On September 23, 2020, Defendants filed their Answer to the Amended Consolidated
6 Complaint. ECF No. 142. Defendants amended their Answer on February 4, 2021. ECF No. 152.

7 K. Following the issuance of the Second MTD Order, the Parties began discussing the
8 possibility of resolving the Action through settlement and agreed to mediate before Gregory P. Lindstrom
9 of Phillips ADR ("Mr. Lindstrom"). A mediation session with Mr. Lindstrom was scheduled for November
10 23, 2020. In advance of the mediation, the Parties exchanged detailed mediation statements addressing
11 liability and damages issues. The Parties were unable to resolve the Action at the November 2020
12 mediation, and commenced discovery immediately thereafter.

13 L. While discovery was ongoing, the Parties agreed to participate in a second mediation
14 session before Mr. Lindstrom, to occur on June 10, 2021. In advance of the mediation, the Parties engaged
15 in discovery, presented certain discovery disputes to Magistrate Judge Virginia K. DeMarchi, and reviewed
16 the documents each side had produced to date. Following hard-fought, arm's-length negotiations at the
17 mediation and over the course of the following day, the Parties reached an agreement in principle to resolve
18 the Action and memorialized their agreement in a binding Confidential Term Sheet executed on June 11,
19 2021 ("Term Sheet"). The Term Sheet sets forth, among other things, the Parties' agreement to settle the
20 Action and release all claims against Defendants in return for a cash payment of \$16,000,000 for the benefit
21 of the Settlement Class. This Stipulation (together with the exhibits hereto) incorporates all of the Term
22 Sheet's material provisions, and reflects the final and binding agreement between the Parties.

23 M. Based upon their investigation, prosecution, and mediation of the case, Lead Plaintiff and
24 Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and
25 adequate to Lead Plaintiff and the other Settlement Class Members, and in their best interests. Based on
26 Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of Lead Counsel,
27 Lead Plaintiff has agreed to settle and release the Lead Plaintiff's Released Claims (as defined below)
28 pursuant to the terms and provisions of this Stipulation, after considering, among other things: (i) the

substantial financial benefit that Lead Plaintiff and the other Settlement Class Members will receive under the proposed Settlement; and (ii) the significant risks and costs of continued litigation and trial.

N. This Stipulation constitutes a compromise of all matters that are in dispute between the Parties. Defendants are entering into this Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or allegation of any fault, liability or wrongdoing whatsoever, the appropriateness of class certification, or the scope of damage (if any), or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants expressly deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of Defendants' defenses to liability had any merit.

O. NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiff (individually and on behalf of all Settlement Class Members) and Defendants, by and through their respective undersigned counsel, and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Lead Plaintiff's Released Claims as against the Released Defendants' Parties and all Defendants' Released Claims as against the Released Lead Plaintiff's Parties shall be settled and released, upon and subject to the terms and conditions set forth below.

DEFINITIONS

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means *SEB Investment Management AB et al. v. Align Technology, Inc. et al.*, Case No. 18-CV-06720-LHK (N.D. Cal.).

(b) "Align" or the "Company" means Align Technology, Inc.

1 (c) “Alternate Judgment” means a form of final judgment that may be entered by the
2 Court herein but in a form other than the form of Judgment provided for in this Stipulation.

3 (d) “Amended Consolidated Complaint” means the Amended Consolidated Class
4 Action Complaint for Violation of the Federal Securities Laws filed by Lead Plaintiff in the Action on
5 November 29, 2019 (ECF No. 120).

6 (e) “Authorized Claimant” means a Settlement Class Member who or which submits a
7 Claim Form to the Claims Administrator that is approved by the Court for payment from the Net Settlement
8 Fund pursuant to the terms of the Court-approved Plan of Allocation.

9 (f) “Claim” means a paper claim submitted on a Proof of Claim Form or an electronic
10 claim that is submitted to the Claims Administrator.

11 (g) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form
12 attached hereto as Exhibit 2 to Exhibit A, that a Claimant must complete and submit if that Claimant seeks
13 to share in a distribution from the Net Settlement Fund.

14 (h) “Claimant” means a person or entity who or which submits a Claim Form to the
15 Claims Administrator seeking to be eligible to share in the Net Settlement Fund.

16 (i) “Claims Administrator” means JND Legal Administration (“JND”), the firm retained
17 by Lead Counsel, subject to approval of the Court, to administer the Settlement, including providing all
18 notices approved by the Court to potential Settlement Class Members and processing Proof of Claim
19 Forms.

20 (j) “Class Distribution Order” means an order entered by the Court authorizing and
21 directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

22 (k) “Court” means the United States District Court for the Northern District of
23 California.

24 (l) “Defendants” means Align Technology, Inc., Joseph M. Hogan, and John F. Morici.

25 (m) “Defendants’ Counsel” means the law firm of Wilson Sonsini Goodrich & Rosati,
26 P.C.

27 (n) “Defendants’ Released Claims” means all claims and causes of action of every nature
28 and description, whether known or Unknown Claims, whether arising under federal, state, local, common,

1 statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether
2 fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or
3 unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature
4 that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Action
5 against Defendants. Defendants' Released Claims shall not include any claims relating to the enforcement
6 of the Settlement.

7 (o) "Effective Date" with respect to the Settlement means the first date by which all of
8 the events and conditions specified in ¶ 35 of this Stipulation have been met and have occurred or have
9 been waived.

10 (p) "Escrow Account" means an account maintained at The Huntington National Bank
11 wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

12 (q) "Escrow Agent" means The Huntington National Bank.

13 (r) "Escrow Agreement" means the agreement between Lead Counsel and the Escrow
14 Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

15 (s) "Final," with respect to the Judgment or, if applicable, the Alternate Judgment, or
16 any other court order means: (i) if no appeal is filed, the expiration date of the time provided for filing or
17 noticing of any appeal under the Federal Rules of Appellate Procedure, i.e., thirty (30) days after entry of
18 the Judgment or order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal
19 of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the
20 Judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of
21 certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if
22 certiorari or other form of review is granted, the date of final affirmance following review pursuant to that
23 grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order
24 issued with respect to: (i) attorneys' fees, costs, or expenses; or (ii) the plan of allocation for the Settlement
25 proceeds (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment or,
26 if applicable, the Alternate Judgment, from becoming Final.

27 (t) "Final Approval Hearing" means the hearing set by the Court under Rule 23(e)(2) of
28 the Federal Rules of Civil Procedure to consider final approval of the Settlement.

1 (u) "Immediate Family Members" means, as defined in 17 C.F.R. §229.404, Instructions
2 1(a)(iii) and 1(b)(ii), children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-
3 in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and any persons (other than a tenant
4 or employee) sharing the household.

5 (v) "Judgment" means the order, substantially in the form attached hereto as Exhibit B,
6 to be entered by the Court approving the Settlement.

7 (w) "Lead Counsel" means the law firm of Kessler Topaz Meltzer & Check, LLP.

8 (x) "Lead Plaintiff" means SEB Investment Management AB.

9 (y) "Lead Plaintiff's Released Claims" means all claims, demands, rights, and causes of
10 action, or liabilities of every nature and description, whether known or Unknown Claims, whether arising
11 under federal, state, 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 direct,
14 representative, class, or individual in nature that (a) Lead Plaintiff or any other member of the Settlement
15 Class: (i) asserted in the Action or (ii) could have asserted in any court or forum that arise out of or are
16 based upon any of the allegations, transactions, facts, matters or occurrences, representations, or omissions
17 set forth in the Action; and (b) relate to the purchase or other acquisition of Align common stock during
18 the Settlement Class Period. Lead Plaintiff's Released Claims shall not include: (i) any claims asserted by
19 shareholders on behalf of Align in the two related derivative lawsuits that have been stayed pending the
20 resolution of this Action (*In re Align Tech., Inc. Deriv. Litig.*, Case No. 19-CV-00202-LHK (N.D. Cal.)
21 and *Muhammad Abbas v. Joseph M. Hogan, et al.*, Case No. 19CV346429 (Sup. Ct. Cnty. of Santa Clara));
22 (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of any person or entity who
23 or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

24 (z) "Litigation Expenses" means costs and expenses incurred in connection with
25 commencing, prosecuting, and settling the Action for which Lead Counsel intends to apply to the Court
26 for payment or reimbursement from the Settlement Fund.

1 (aa) “Net Settlement Fund” means the Settlement Fund less: (i) Taxes;
2 (ii) Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any
3 attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court.

4 (bb) “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlement;
5 (II) Final Approval Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses, substantially
6 in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

7 (cc) “Notice and Administration Costs” means the costs, fees, and expenses that are
8 incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notices to the
9 Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims process, as
10 well as the costs, fees, and expenses incurred in connection with the Escrow Account.

11 (dd) “Parties” means Defendants and Lead Plaintiff, on behalf of itself and the Settlement
12 Class.

13 (ee) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement
14 Fund set forth in the Notice or any other plan for allocating the Net Settlement Fund as shall be approved
15 by the Court. Neither Defendants nor Defendants’ Released Parties shall have any responsibility for or
16 liability with respect to the Plan of Allocation.

17 (ff) “Preliminary Approval Order” means the order, substantially in the form attached
18 hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that
19 notice of Settlement be provided to the Settlement Class.

20 (gg) “PSLRA” means the Private Securities Litigation Reform Act of 1995, as amended.

21 (hh) “Released Claims” means all Defendants’ Released Claims and all Lead Plaintiff’s
22 Released Claims.

23 (ii) “Released Defendants’ Parties” means (I) each Defendant, (II) each of their
24 respective Immediate Family Members (for individuals) and each of their direct or indirect parent entities,
25 subsidiaries, related entities, and affiliates, any trust of which any individual Defendant is the settlor or
26 which is for the benefit of any Defendant and/or member(s) of his or her family, and (III) for any of the
27 entities listed in parts (I) or (II), their respective past and present general partners, limited partners,
28 principals, shareholders, joint venturers, members, officers, directors, managers, managing directors,

supervisors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, and any entity in which a Defendant has a controlling interest.

(jj) “Released Lead Plaintiff’s Parties” means (I) Lead Plaintiff, all Settlement Class Members, Lead Counsel, and (II) each of their respective family members, and their respective general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such.

(kk) “Releasee(s)” means each and any of the Released Defendants’ Parties and each and any of the Released Lead Plaintiff’s Parties.

(ll) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

(mm) “Settlement” means the settlement between Lead Plaintiff and Defendants on the terms and conditions set forth in this Stipulation.

(nn) “Settlement Amount” means \$16,000,000 in cash to be paid pursuant to ¶ 8 of this Stipulation.

(oo) “Settlement Class” means all persons and entities who purchased or otherwise acquired the common stock of Align between May 23, 2018 and October 24, 2018, both dates inclusive, and who were damaged thereby. Excluded from the Settlement Class are: (I) Defendants; (II) present or former executive officers and directors of Align during the Settlement Class Period and their Immediate Family Members; (III) any of the foregoing entities’ and individuals’ legal representatives, heirs, successors or assigns; and (IV) any entity in which Defendants have or had a controlling interest, or any affiliate of Align. For the avoidance of doubt, “affiliates” are persons or entities that directly, or indirectly through one or more intermediaries, control, are controlled by or are under common control with one of the Defendants. Also excluded from the Settlement Class are any persons and entities who or which submit a request for exclusion from the Settlement Class that is accepted by the Court.

1 (pp) "Settlement Class Member" means each person and entity who or which is a member
2 of the Settlement Class.

3 (qq) "Settlement Class Period" means the period of time between May 23, 2018 and
4 October 24, 2018, both dates inclusive.

5 (rr) "Settlement Fund" means the Settlement Amount plus any and all interest earned
6 thereon.

7 (ss) "Settlement Website" means the website created specifically for the Settlement on
8 which the Notice and Claim Form, as well as other information related to the Action and the Settlement,
9 will be posted.

10 (tt) "Summary Notice" means the Summary Notice of (I) Pendency of Class Actions and
11 Proposed Settlement; (II) Final Approval Hearing; and (III) Motion for Attorneys' Fees and Litigation
12 Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth
13 in the Preliminary Approval Order.

14 (uu) "Taxes" means: (I) all federal, state, and/or local taxes of any kind (including any
15 interest or penalties thereon) on any income earned by the Settlement Fund; and (II) the expenses and costs
16 incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by
17 the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

18 (vv) "Unknown Claims" means any Lead Plaintiff's Released Claims which Lead
19 Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at
20 the time of the release of such claims, and any Defendants' Released Claims that any Defendant does not
21 know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by
22 him, her, or it, might have materially affected his, her, or its decision(s) with respect to this Settlement or
23 the Releases, including his, her, or its decision(s) to object or not to object to the Settlement. With respect
24 to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the
25 Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class
26 Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if
27 applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law
28

of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §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.

Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

CLASS CERTIFICATION

2. Solely for purposes of the Settlement, Defendants stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) appointment of Lead Plaintiff as Class Representative for the Settlement Class; and (c) appointment of Lead Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

PRELIMINARY APPROVAL OF SETTLEMENT

3. As soon as possible following the execution of this Stipulation, and by no later than July 13, 2021, Lead Plaintiff will move for preliminary approval of the Settlement, authorization to provide notice of the Settlement to the Settlement Class, and the scheduling of a hearing for consideration of, *inter alia*, final approval of the Settlement, which motion shall be unopposed by Defendants. Concurrently with the motion for preliminary approval, Lead Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

RELEASE OF CLAIMS

4. The obligations incurred pursuant to this Stipulation are (a) subject to approval by the Court, and the Judgment (or the Alternate Judgment, if applicable) reflecting such approval becoming Final; and (b) in consideration of the full and final disposition of the Action with respect to the Releasees and any and all Released Claims provided for herein.

5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and each of their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Lead Plaintiff's Released Claim against the Released Defendants' Parties, and shall forever be barred, enjoined, and estopped from prosecuting any or all of the Lead Plaintiff's Released Claims against any of the Released Defendants' Parties.

6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and each of their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Defendants' Released Claim against the Released Lead Plaintiff's Parties, and shall forever be barred, enjoined, and estopped from prosecuting any or all of the Defendants' Released Claims against any of the Released Lead Plaintiff's Parties.

7. Notwithstanding ¶¶ 5–6 above, nothing in the Judgment, or the Alternate Judgment, if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if applicable.

THE SETTLEMENT CONSIDERATION

8. In consideration of the full settlement of the claims asserted against Defendants in this Action, Align agrees that it and/or its D&O liability insurers ("D&O Insurers") shall pay a total of \$16,000,000 (SIXTEEN MILLION DOLLARS) in cash. The Settlement Amount shall be paid into the interest-bearing Escrow Account established for the Settlement and controlled by Lead Counsel, subject to the authority of the Court, within thirty (30) days after the later of: (i) the Court having entered an order preliminarily approving the Settlement, and (ii) Align and/or the D&O Insurers having received customary written instructions for the Settlement Amount to be sent by check or wire into the Escrow Account and

an IRS Form W-9 for the Escrow Account. Any portion of the Settlement Amount to be funded by the D&O Insurers will be paid directly into the Escrow Account by the D&O Insurers.

9. Other than Align's obligation to pay (or cause to be paid) the Settlement Amount within the time provided for in ¶ 8 of this Stipulation, neither Defendants nor any of the other Released Defendants' Parties shall have any responsibility for, interest in, or liability with respect to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any Claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any federal, state or local tax returns.

USE OF THE SETTLEMENT FUND

10. The Settlement Fund shall, with the approval of the Court or as provided in this Stipulation, be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees awarded by the Court; and (e) any other costs and fees approved by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 22-32 below.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. At the written direction of Lead Counsel, the Escrow Agent shall invest any funds in the Escrow Account exclusively in instruments or accounts backed by the full faith and credit of the United States government or fully insured by the United States government or an agency thereof, including a United States Treasury Fund or bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC"), or (b) secured by instruments backed by the full faith and credit of the United States government. The Escrow Agent shall reinvest the proceeds of these instruments or accounts

1 as they mature in similar instruments or accounts at their then-current market rates. Neither Defendants
2 nor any Released Defendants' Parties shall have any responsibility for, interest in, or liability with respect
3 to investment decisions or the actions of the Escrow Agent, or the transactions executed by the Escrow
4 Agent.

5 12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund
6 within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the
7 Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible
8 for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate
9 (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the
10 Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the
11 Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants
12 will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel,
13 as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall
14 timely make such elections as are necessary or advisable to carry out this paragraph, including, as
15 necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j)(2), to
16 cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or
17 cause to be taken all actions as may be necessary or appropriate in connection therewith.

18 13. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be
19 paid, by Lead Counsel and without further order of the Court. Any tax returns prepared for the Settlement
20 Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all
21 events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the
22 Settlement Fund as provided herein. Neither Defendants nor any Released Defendants' Parties shall have
23 any liability or responsibility whatsoever for the payment of Taxes.

24 14. The Settlement is not a "claims-made" settlement. Upon the occurrence of the Effective
25 Date, neither Align nor any other person or entity who or which paid any portion of the Settlement Amount
26 (including the D&O Insurers) shall have any right to the return of the Settlement Fund or any portion
27 thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the
28

collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

15. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Lead Counsel may pay from the Escrow Account, without further approval from Defendants or further order of the Court, up to \$250,000 in Notice and Administration Costs actually incurred and paid or payable (“Notice and Administration Costs Cap”). Following the Effective Date, Lead Counsel may pay from the Escrow Account, without further approval from Defendants or further of the Court, all Notice and Administration Costs exceeding the Notice and Administration Costs Cap. Notice and Administration Costs shall include, without limitation, the actual costs of printing and mailing the Notice and Claim Form, publishing the Summary Notice, reimbursements to nominee owners for searching and providing the names/addresses of potential Settlement Class Members for noticing or forwarding the Notice and Claim Form directly to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and administering the Settlement (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Align, any of the other Defendants’ Releasees, or any other person or entity (including the D&O Insurers) who or which paid any portion of the Settlement Amount.

ATTORNEYS’ FEES AND LITIGATION EXPENSES

16. Lead Counsel will apply to the Court for an award of attorneys’ fees to be paid solely from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for Litigation Expenses to be paid solely from (and out of) the Settlement Fund. Lead Counsel’s application for an award of attorneys’ fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Counsel other than what is set forth in this Stipulation.

17. Any attorneys’ fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel’s obligation to make appropriate refunds or repayments to the Settlement Fund, plus

1 accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated
2 pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand,
3 or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or
4 reversed and such order reducing or reversing the award has become Final. Lead Counsel shall make the
5 appropriate refund or repayment in full no later than thirty (30) calendar days after: (a) receiving from
6 Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the
7 award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or
8 Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement
9 embodied herein. Neither Lead Plaintiff nor Lead Counsel may cancel or terminate the Settlement based
10 on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

11 18. The Released Defendants' Parties shall have no responsibility for or liability whatsoever
12 with respect to Lead Counsel's attorneys' fees and/or Litigation Expenses. The attorneys' fees and
13 Litigation Expenses that are awarded to Lead Counsel shall be payable solely from the Escrow Account.

14 **NOTICE AND SETTLEMENT ADMINISTRATION**

15 19. As part of the Preliminary Approval Order, Lead Counsel shall seek appointment of the
16 Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited
17 to receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject
18 to the jurisdiction of the Court. Other than Defendants' obligation to provide Align's shareholder lists as
19 provided in ¶ 20 below, none of Defendants, nor any of the other Released Defendants' Parties, shall have
20 any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims
21 Administrator, the development or application of the Plan of Allocation, the administration of the
22 Settlement, the Claims process, or the disbursement of the Net Settlement Fund, and shall have no liability
23 whatsoever to any person or entity, including, but not limited to, Lead Plaintiff, any other Settlement Class
24 Members, or Lead Counsel in connection with the foregoing. Counsel for the Parties shall cooperate in the
25 administration of the Settlement to the extent reasonably necessary to effectuate its terms.

26 20. In accordance with the terms of the Preliminary Approval Order to be entered by the Court,
27 Lead Counsel shall cause the Claims Administrator to disseminate the Notice and Claim Form to those
28 members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also

1 cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the
2 Preliminary Approval Order to be entered by the Court. For the purposes of identifying and providing
3 notice to the Settlement Class, within five (5) business days after the Court's entry of the Preliminary
4 Approval Order, Defendants shall provide to the Claims Administrator in electronic format, such as Excel,
5 at no cost to the Settlement Fund, Lead Plaintiff, the Settlement Class, Lead Counsel, or the Claims
6 Administrator, lists (consisting of names, addresses, and e-mail addresses (if available)) of shareholders of
7 Align common stock during the Settlement Class Period, to the extent such lists are reasonably available
8 from Align's stock transfer agent.

9 21. No later than ten (10) calendar days following the filing of this Stipulation with the Court,
10 Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.*
11 ("CAFA"). Defendants are solely responsible for the costs of the CAFA notice and administering the
12 CAFA notice. At least seven (7) calendar days before the Final Approval Hearing, Defendants shall cause
13 to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, regarding
14 compliance with CAFA § 1715(b).

15 22. The Claims Administrator shall receive Claims and determine first, whether the Claim is a
16 valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement
17 Fund based upon each Authorized Claimant's Recognized Claim compared to the total Recognized Claims
18 of all Authorized Claimants (as set forth in the Plan of Allocation included in the Notice attached hereto
19 as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court may approve).

20 23. The plan for allocating the Net Settlement Fund is being proposed solely by Lead Counsel,
21 subject to the Court's approval. The Plan of Allocation proposed in the Notice is not a necessary term of
22 the Settlement or of this Stipulation, and it is not a condition of the Settlement or of this Stipulation that
23 any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel
24 or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with
25 respect to the Plan of Allocation. Any objections or appeals with respect to the Plan of Allocation (or other
26 plan of allocation) will not affect the validity or finality of the Settlement (including the Releases herein).
27 Any order of the Court modifying or rejecting the Plan of Allocation will not operate to terminate the
28 Settlement or affect the finality or binding nature of the Settlement.

24. Any Settlement Class Member who does not submit a valid Claim will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or the Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Released Defendants' Parties with respect to the Lead Plaintiff's Released Claims in the event that the Effective Date occurs with respect to the Settlement.

25. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice. No Defendant, nor any other Released Defendants' Parties, shall have any involvement in the administrative decisions of the Claims Administrator or Lead Counsel with respect to the Claims received in connection with the Settlement.

26. For purposes of determining the extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Claimant shall be required to submit a Claim in paper form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form, in accordance with the instructions for the submission of such Claims, and supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claims must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice. Any Settlement Class Member who fails to submit a Claim by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement Class Member's Claim is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Defendants' Parties with respect to any Lead Plaintiff's

Released Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked if received with a postmark indicated on the envelope. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the Plan of Allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claims that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall provide the Claimant with a written communication, advising the Claimant that it may endeavor to remedy any curable deficiencies in the Claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above or a lesser time period if the Claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot otherwise be resolved, Lead Counsel shall thereafter present the request for review to the Court. Defendants shall not take a position on the administrative determinations of the Claims Administrator.

27. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, including but not limited to, all Releases provided for herein and in the Judgment, or Alternate Judgment, if applicable, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure; *provided, however*, that such investigation and

1 discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and
2 amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action (including any
3 discovery from Defendants) or of the Settlement in connection with the processing of Claims.

4 28. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class
5 Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the
6 acceptance and rejection of the Claims submitted; (b) approving payment of any unpaid administration
7 fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c)
8 if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants
9 from the Escrow Account.

10 29. As detailed in the Plan of Allocation, following the initial distribution of the Net Settlement
11 Fund to Authorized Claimants, the Claims Administrator will conduct additional re-distributions of the
12 funds remaining in the Net Settlement Fund (i.e., from uncashed checks, returned funds, etc.) to Authorized
13 Claimants until Lead Counsel, in consultation with the Claims Administrator, determines that a further re-
14 distribution would not be cost effective. At that time, the balance remaining in the Net Settlement Fund,
15 after deduction of any additional fees and expenses incurred in administering the Settlement, shall be
16 contributed, subject to Court approval, to Charitable Smiles, a 501(c)(3) organization helping people who
17 cannot afford dental treatment get the care they need (*see* www.charitablesmiles.org).

18 30. Payment pursuant to the Class Distribution Order shall be final and conclusive against all
19 Claimants. All Settlement Class Members whose Claims are not approved by the Court for payment shall
20 be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound
21 by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate
22 Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and
23 will be permanently barred and enjoined from bringing any action against any and all Released Defendants'
24 Parties with respect to any and all of the Lead Plaintiff's Released Claims.

25 31. No person or entity shall have any claim against Lead Plaintiff, Lead Counsel, the Claims
26 Administrator or any other agent designated by Lead Counsel, or the Released Defendants' Parties and/or
27 their respective counsel, arising from distributions made substantially in accordance with the Stipulation,
28 the Plan of Allocation approved by the Court, or any order of the Court. Lead Plaintiff and Defendants,

1 and their respective counsel, and Lead Plaintiff's damages consultant and all other Releasees shall have no
2 liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund,
3 the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim or
4 nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and
5 penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

6 32. All proceedings with respect to the administration, processing, and determination of Claims
7 and the determination of all controversies relating thereto, including disputed questions of law and fact
8 with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Settlement Class
9 Members, other Claimants, and Parties to this Stipulation expressly waive trial by jury (to the extent any
10 such right may exist) and any right of appeal or review with respect to such determinations.

11 **TERMS OF THE JUDGMENT**

12 33. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel
13 and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached
14 hereto as Exhibit B.

15 34. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in
16 Exhibit B hereto, that shall, upon the Effective Date, permanently bar, extinguish, and discharge to the
17 fullest extent permitted by law any and all claims for contribution or indemnity (or any other claim or
18 claim-over, however denominated on whatsoever theory, for which the injury claimed is that person's or
19 entity's alleged liability to Lead Plaintiff or any Settlement Class Member) among and against the Released
20 Defendants' Parties arising out of the Action and the claims that were asserted or could have been asserted
21 therein. The Bar Order shall be consistent with, and apply to the full extent of, the PSLRA.

22 **CONDITIONS OF SETTLEMENT AND EFFECT OF** 23 **DISAPPROVAL, CANCELLATION OR TERMINATION**

24 35. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver
25 of all of the following events:

26 (a) the Court has entered the Preliminary Approval Order, substantially in the form set
27 forth in Exhibit A attached hereto, as required by ¶ 3 above;
28

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of ¶ 8 above;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement described in ¶ 39 below);

(d) Lead Plaintiff has not exercised its option to terminate the Settlement pursuant to the provisions of ¶ 37 of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment, and the Judgment has become Final, or the Court has entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

36. Upon the occurrence of all of the events referenced in ¶ 35 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

37. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Lead Plaintiff exercises its right to terminate the Settlement as provided in this Stipulation; (iii) the Court does not approve the Settlement; (iv) the Judgment or Alternate Judgment (if any) does not or cannot become Final; or (v) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated;

(b) Lead Plaintiff and Defendants shall revert to their respective litigation positions in the Action immediately prior to the execution of the Term Sheet on June 11, 2021;

(c) The terms and provisions of this Stipulation, with the exception of this ¶ 37 and ¶¶ 15, 17, 40, and 61, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment (or Alternate Judgment, if applicable), or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and

(d) Within thirty (30) days after joint written notification of termination is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued

1 interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds
2 received by Lead Counsel consistent with ¶ 17 above), less any Notice and Administration Costs actually
3 incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to
4 the D&O Insurers who paid into the Settlement Fund according to the amounts paid by each. In the event
5 that the funds received by Lead Counsel consistent with ¶ 17 above have not been refunded to the
6 Settlement Fund within the thirty (30) days specified in this paragraph, those funds shall be refunded by
7 the Escrow Agent to the D&O Insurers who paid into the Settlement Fund according to the amounts paid
8 by each immediately upon their deposit into the Escrow Account consistent with ¶ 17 above.

9 38. It is further stipulated and agreed that Defendants, provided they unanimously agree, and
10 Lead Plaintiff, shall each have the right to terminate the Settlement and this Stipulation, by providing
11 written notice of their election to do so (“Termination Notice”) to the other Parties to this Stipulation within
12 thirty (30) days of: (a) the Court’s final refusal to enter the Preliminary Approval Order in any material
13 respect; (b) the Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s
14 final refusal to enter the Judgment in any material respect as to the Settlement, or an Alternate Judgment;
15 (d) the date upon which the Judgment is modified or reversed in any material respect by the United States
16 Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon which an
17 Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals
18 for the Ninth Circuit or the United States Supreme Court, and the provisions of ¶ 37 above shall apply.
19 However, for the avoidance of doubt, any decision or proceeding, whether in this Court or any appellate
20 court, with respect to an application for attorneys’ fees or Litigation Expenses or with respect to any plan
21 of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment
22 or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

23 39. In addition to the grounds set forth in ¶ 38 above, Align shall also have the option, in its
24 sole and absolute discretion, to terminate the Settlement in the event that Settlement Class Members timely
25 and validly requesting exclusion from the Settlement Class meet the conditions set forth in Align’s
26 confidential supplemental agreement with Lead Plaintiff (“Supplemental Agreement”). Any Settlement
27 Class Member seeking to exclude himself, herself, or itself from the Settlement Class must timely submit,
28 as required in the Notice, details regarding his, her, or its transactions in Align common stock during the

Settlement Class Period sufficient to calculate the number of shares of Align common stock purchased/acquired during the Settlement Class Period and the amount of his, her, or its alleged losses as calculated under the Plan of Allocation. The terms of the Supplemental Agreement, which is being executed concurrently herewith, shall not be disclosed (other than in the statements herein, in the Notice, and in Lead Plaintiff's briefing in support of the Settlement, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless the Court otherwise directs. If the Parties agree to file the Supplemental Agreement in connection with Lead Plaintiff's motion for preliminary approval of the Settlement, or a dispute arises between Lead Plaintiff and Align concerning the interpretation or application of the Supplemental Agreement, the Parties shall file the Supplemental Agreement (or at the very least, the Opt-Out Threshold defined in the agreement) under seal or shall submit the Supplemental Agreement to the Court for an *in camera* review and request that the Court afford it confidential treatment.

NO ADMISSION OF WRONGDOING

40. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), nor the negotiations leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Parties with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Parties or in any way referred to for any other reason as against any of the Released Defendants' Parties, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Lead Plaintiff's Parties, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the

Released Lead Plaintiff's Parties that any of their claims is without merit, that any of the Released Defendants' Parties had meritorious defenses, or that damages recoverable under the Amended Consolidated Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Lead Plaintiff's Parties, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

provided, however, that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it: (i) to effectuate the protections from liability granted hereunder; (ii) to support a defense or counterclaim in any action brought against them based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; or (iii) otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

41. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

42. Align warrants that, as to the payments made or to be made in connection with this Settlement, at the time of entering into this Stipulation and at the time of such payment it, or to the best of its knowledge any persons or entities contributing to the payment of the Settlement Amount, was/were not insolvent, nor will the payment required to be made by or on behalf of it render it/them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including Sections 101 and 547 thereof.

43. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a

1 preference, voidable transfer, fraudulent transfer, or similar transaction and any portion thereof is required
2 to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the
3 election of Lead Plaintiff, the Parties shall jointly move the Court to vacate and set aside the Releases given
4 and the Judgment, or Alternate Judgment, if applicable, entered in favor of Defendants and the other
5 Released Defendants' Parties pursuant to this Stipulation, in which event the Releases and Judgment, or
6 Alternate Judgment, if applicable, shall be null and void, and the Parties shall be restored to their respective
7 positions in the Action as provided in ¶ 37(b) above and any cash amounts in the Settlement Fund (less
8 any Taxes paid, due, or owing with respect to the Settlement Fund and less any Notice and Administration
9 Costs actually incurred, paid, or payable) shall be returned as provided in ¶ 37(d) above.

10 44. The Parties intend this Stipulation and the Settlement to be a final and complete resolution
11 of all disputes asserted or which could be asserted by Lead Plaintiff and any other Settlement Class
12 Members against the Released Defendants' Parties with respect to the Lead Plaintiff's Released Claims.
13 No Party shall assert or pursue any action, claim, or rights that any Party or their respective counsel violated
14 Rule 11 of the Federal Rules of Civil Procedure with respect to the institution, prosecution, defense, or
15 settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement
16 were negotiated at arm's length and in good faith by the Parties, including through a mediation process
17 supervised and conducted by Mr. Lindstrom, and reflect a settlement that was reached voluntarily after
18 extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess
19 the strengths and weaknesses of their respective clients' claims or defenses.

20 45. While retaining their right to deny that the claims asserted in the Action were meritorious,
21 Defendants and their counsel, in any statement made to any media representative (whether or not for
22 attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny
23 that the Action was commenced and prosecuted in good faith and is being settled voluntarily after
24 consultation with competent legal counsel. In all events, Lead Plaintiff and its counsel and Defendants and
25 their counsel shall not make any accusations of wrongful or actionable conduct by either Party concerning
26 the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement
27 constitutes an admission of any claim or defense alleged.
28

1 46. The terms of the Settlement, as reflected in this Stipulation, may not be modified or
2 amended, nor may any of its provisions be waived except by a writing signed on behalf of both Lead
3 Plaintiff and Defendants (or their successors-in-interest).

4 47. The headings herein are used for the purpose of convenience only and are not meant to have
5 legal effect.

6 48. Pending approval of the Court of this Stipulation and its exhibits, all proceedings in this
7 Action shall be stayed. The Parties agree to seek an order barring, enjoining and estopping all Settlement
8 Class Members from prosecuting any of the Lead Plaintiff's Released Claims against any of the Released
9 Defendants' Parties.

10 49. The administration and consummation of the Settlement as embodied in this Stipulation
11 shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering
12 orders providing for awards of attorneys' fees and Litigation Expenses to Lead Counsel, including
13 determining any disputes as to any awards of attorneys' fees and Litigation Expenses, and enforcing the
14 terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be
15 approved by the Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

16 50. The waiver by one Party of any breach of this Stipulation by any other Party shall not be
17 deemed a waiver of any other prior or subsequent breach of this Stipulation.

18 51. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire
19 agreement between Lead Plaintiff and Defendants concerning the Settlement and this Stipulation and its
20 exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements
21 have been made by any Party hereto concerning this Stipulation, its exhibits, or the Supplemental
22 Agreement other than those contained and memorialized in such documents.

23 52. This Stipulation may be executed in one or more counterparts, including by signature
24 transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed
25 counterparts and each of them shall be deemed to be one and the same instrument.

26 53. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns
27 of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with
28 which any Party hereto may merge, consolidate or reorganize.

54. The construction, interpretation, operation, effect, and validity of this Stipulation and all documents necessary to effectuate it shall be governed by the internal laws of the State of California without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

55. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in this Court.

56. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

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

58. If any Party is required to give notice to another party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiff or Lead Counsel: Kessler Topaz Meltzer & Check, LLP
Attn: Jennifer L. Joost, Esq.
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: (415) 400-3000
Facsimile: (415) 400-3001
Email: jjoost@ktmc.com

If to Defendants:

Wilson Sonsini Goodrich & Rosati, P.C.
Attn: Gregory L. Watts, Esq.
701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036
Telephone: (206) 883-2617
Facsimile: (206) 883-2699
Email: gwatts@wsgr.com

Wilson Sonsini Goodrich & Rosati, P.C.
Attn: Catherine Moreno, Esq.
650 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: cmoreno@wsgr.com

59. Except as otherwise provided herein, each Party shall bear its own costs.

60. All agreements made and orders entered during the course of this Action relating to the confidentiality of information, including the Stipulated Protective Order filed April 7, 2021, ECF No. 169, shall survive this Settlement.

61. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of June 30, 2021.

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

/s/ Jennifer L. Joost

Jennifer L. Joost (Bar No. 296164)³
Stacey M. Kaplan (Bar No. 241989)
One Sansome Street, Suite 1850
San Francisco, CA 94104

³ In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of the document has been obtained from each of the other Signatories.

Telephone: (415) 400-3000
Facsimile: (415) 400-3001
jjoost@ktmc.com
skaplan@ktmc.com

- and -

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MELTZER & CHECK, LLP**

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*Counsel for Lead Plaintiff SEB Investment
Management AB and Lead Counsel for the Class*

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Catherine Moreno
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-and-

EXECUTION COPY

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Joseph M. Hogan, and John F. Morici*