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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MISTY SNOW, et al.,  
Plaintiffs,  
v.  
ALIGN TECHNOLOGY, INC.,  
Defendant.

Case No. 21-cv-03269-VC (TSH)

**ORDER FOR SMILEDIRECTCLUB TO  
SHOW CAUSE**

Re: Dkt. No. 169

The parties have filed a joint discovery letter brief concerning documents from five arbitrations between Defendant Align Technology, Inc. (“Align”) and non-party SmileDirectClub (“SDC”). ECF No. 169. As clarified at a hearing on September 29, 2022, Plaintiffs are asking that Align be ordered to produce all deposition transcripts of Align executives in the arbitrations, all transcripts of arbitration proceedings, all substantive pleadings filed by Align in the arbitrations, and all Align expert reports in the arbitrations. Align states that it would be willing to produce these materials, but SDC has asserted confidentiality objections pursuant to the protective orders in the arbitrations and section 12.1 of SDC’s operating agreement with Align. Align observes that both the protective order and the operating agreement have exceptions to the confidentiality restrictions for arbitration documents that are compelled to be produced by a court.

Because the confidentiality objection is being asserted by SDC, it is best for SDC to explain its position to the Court. Accordingly, the Court **ORDERS** SDC to **SHOW CAUSE** why the Court should not order Align to produce to Plaintiffs all deposition transcripts of Align executives in the arbitrations, all transcripts of arbitration proceedings, all substantive pleadings filed by Align in the arbitrations, and all Align expert reports in the arbitrations.

If the Court orders this production, its tentative thought is to order Align to produce these

1 materials to Plaintiffs and SDC within 14 days of the date of the order, and then order SDC to  
2 serve any confidentiality designations pursuant to the protective order at ECF No. 34 on Plaintiffs  
3 and Align within 14 days of that production. SDC may comment on this tentative procedure in its  
4 response to this OSC.

5 SDC's response to this OSC shall be filed no later than October 7, 2022. SDC's failure to  
6 file a response will be treated as a waiver of any objection to the Court ordering this production  
7 (but not a waiver of SDC's ability to designate these materials as confidential under the terms of  
8 the protective order in this action). Plaintiffs and Align may respond to SDC's filing no later than  
9 October 14, 2022. The Court orders Align to serve this order on SDC today and to file a  
10 certificate of service showing that it has done so.

11 **IT IS SO ORDERED.**

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13 Dated: September 29, 2022

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15 THOMAS S. HIXSON  
16 United States Magistrate Judge  
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