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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)

**DISCOVERY ORDER**  
Re: Dkt. No. 352

This order follows up on the Court’s Discovery Order at ECF No. 339. In that order the Court noted that it has issued several orders requiring SmileDirectClub (“SDC”) to produce materials from the multiple Align-SDC arbitrations. These orders allowed SDC to redact information that is competitively sensitive and irrelevant to the Section 1 claim. The Court’s view is that for relevant materials, any concerns about competitive sensitivity can be addressed by the existing protective order in this case. But the Court also explained that a non-party should not have to suffer the production of its competitively sensitive materials in the absence of a showing of relevance.

In ECF No. 339, the Court determined that four categories of redactions made by SDC were improper. As relevant here, the Court determined that SDC’s business model and corporate organization (category two) and the way SDC uses doctors in its business model (category three) were relevant and therefore that redactions of that information were inappropriate. The Court explained that “the Section 1 claim in this case is that Align and SDC allocated the DTC market to SDC so that it could earn supracompetitive profits, which Align would reap the benefit of through its ownership stake in SDC. Align says it wants to have evidence about SDC’s business model to show if it actually did make supracompetitive profits. SDC opposes, observing that the Court has

1 already ordered it to produce documents that show the basis for its product pricing.” ECF No. 339  
2 at 3.

3 The Court explained that it “agrees with Align’s second relevance argument. Documents  
4 that show the basis for product pricing tend to assume the existence of a business – how it is run,  
5 how it is structured, what it sells, what its expenses are, what pressures there are to reduce  
6 expenses, and so on. That’s the stuff Align needs to have to be able to develop any sort of  
7 argument that SDC was trying very hard to sell a low cost product (if that is what the evidence  
8 shows), not to earn supracompetitive profits. To shroud SDC’s internal business operations in  
9 redactions threatens to kneecap Align’s ability to argue (if the evidence will support it) that the  
10 antitrust injury is made up.” *Id.* The Court explained that “even though SDC is not a party to this  
11 case, it is Align’s alleged co-conspirator. All of the alleged antitrust injury occurred through  
12 SDC’s business operations and pricing.” *Id.*

13 The Court ended its order by observing that “Align has moved on categories of redactions  
14 but not on specific documents.” *Id.* at 4. Accordingly, the Court ordered the parties to meet and  
15 confer regarding the application of ECF No. 339 to specific documents and to file a further joint  
16 discovery letter brief by yesterday if they could not reach agreement. They did file one. ECF No.  
17 352. Thankfully, there are disputes about redactions in only one document – the Final Award in  
18 the Swift Arbitration – and only five redactions in dispute in that document. At SDC’s suggestion,  
19 the Court reviewed the redacted information *in camera* to determine if the redactions comply with  
20 the Court’s order at ECF No. 339.

21 They do not. The redacted information is relevant to whether SDC was running its  
22 business as cheaply as possible to sell a low cost product, as opposed to earning supracompetitive  
23 profits. This information is therefore relevant to whether Plaintiffs suffered any antitrust injury at  
24 all. And it’s not at or near the outer bounds of relevance, either. While Judge Chhabria on class  
25 certification, and the trier of fact at trial, will have to decide how much weight to give to any  
26 particular piece of evidence, the redacted information is sufficiently relevant that it would be  
27 unfair to deny Align the ability use it in litigation. Accordingly, the Court **ORDERS** SDC to  
28 produce SDC\_SNOW\_00009573 without the challenged redactions. As a reminder, this doesn’t

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mean that the information is public because SDC can still designate it under the protective order in this case.

**IT IS SO ORDERED.**

Dated: May 2, 2023



THOMAS S. HIXSON  
United States Magistrate Judge