PUBLIC VERSION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS WACO DIVISION

ALIGN TECHNOLOGY, INC.,

Plaintiff,

v.

CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., INSTITUT STRAUMANN AG, & STRAUMANN USA, LLC,

Defendants.

CLEARCORRECT OPERATING, LLC, CLEARCORRECT HOLDINGS, INC., & STRAUMANN USA, LLC,

Counterclaim-Plaintiffs,

v.

ALIGN TECHNOLOGY, INC.,

Counterclaim-Defendant.

Case No. 6:24-cv-00187-ADA-DTG

PATENT CASE

JURY TRIAL DEMANDED

PLAINTIFF AND COUNTERCLAIM-DEFENDANT ALIGN TECHNOLOGY, INC.'S OPPOSED MOTION TO STAY JUNE 17, 2025 DISCOVERY ORDER REGARDING ALIGN'S PRODUCTION OF CUSTOMER CONTRACTS PENDING REVIEW OF ALIGN'S RULE 72 OBJECTIONS (EXPEDITED)

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I. INTRODUCTION

Plaintiff and Counterclaim-Defendant Align Technology, Inc. respectfully asks that the Court temporarily stay a portion of the recent Discovery Order (Dkt. No. 190) to allow Align to timely seek district court review under Rule 72.[1] Specifically, the Discovery Order requires Align to "produce all contracts between Align and any Align customer in the United States regarding … the sale of Invisalign or iTero" by July 18, 2025. (Dkt. No. 190). Align is working diligently in parallel to comply, but the full scope of compliance will require Align to expend significant resources attempting to search for, collect, review, and produce [redacted]

Staying the Discovery Order will not harm ClearCorrect. First, [redacted] Second, [redacted] Third, this case is about supposedly exclusionary contracts with dental practices and dental and orthodontic support organizations, and on that front, Align is producing [redacted] This is more than sufficient to allow

[1] Counsel for both parties met and conferred on June 26, 2025, to discuss Align's motion pursuant to Local Rule 7(g). The parties were unable to resolve the matter, and ClearCorrect subsequently indicated that it intends to oppose the present motion.

ClearCorrect to evaluate its claims and prepare for depositions and expert discovery while the district judge adjudicates Align's Rule 72 objections.

Absent the requested stay, Align will be deprived of its ability to seek review with the district judge while also expending substantial resources attempting to comply with the Discovery Order. Align thus respectfully asks that the Court stay the Discovery Order regarding the production of Align's customer contracts pending review of Align's Rule 72 objection.

II. BRIEF STATEMENT OF RELEVANT FACTS

On May 2, 2025, ClearCorrect filed a discovery dispute chart relating to its Request for Production Nos. 2-3. Those requests sought all of Align's customer contracts related to the sale of Invisalign or the iTero and all documents relating to those customer contracts. Align objected to these requests as overly broad, unduly burdensome, and not proportional to the needs of this case because they effectively encompassed every email, receipt, and other document ever exchanged between Align and its thousands of customers over many years.[2]

On June 4, 2025, Judge Gilliland held a sealed discovery hearing. Align explained that ClearCorrect's request for all customer contracts was not proportional to the needs of this case and was overly broad on its face. Align also explained that there are minimal, if any, benefits to ClearCorrect from receiving "all" customer contracts. This is because Align is fulfilling its Rule 26 and 34 obligations by producing [redacted]

[2] Ironically, ClearCorrect has objected to Align's RFP No. 37, which sought documents concerning and including ClearCorrect's relevant customer contracts, on the grounds that producing all customer contracts would be overly broad, unduly burdensome, and not proportional to the needs of the case. During a July 5, 2024, meet-and-confer, ClearCorrect indicated that it would not produce all customer contracts despite expecting Align to do so.

[redacted]

After the discovery hearing, Judge Gilliland directed the parties to submit a proposed discovery order by June 13, 2025. (Dkt. No. 183). The parties' proposed discovery order contained differing language, as shown below:

Align's Proposed Language	**ClearCorrect's Proposed Language**
With respect to the Discovery Dispute Chart submitted on May 2, 2025, regarding ClearCorrect's request that in response to ClearCorrect's Request for Production Nos. 2 and 3, and ClearCorrect's Interrogatory Nos. 1, 6, 7, 8, Align be ordered to produce its agreements with customers relating to Invisalign and iTero: It is **ORDERED** that Align must produce all contracts between Align and any Align customer in the United States regarding the sale of Invisalign or the iTero from January 1, 2019, through July 10, 2024, that Align is able to locate through a reasonably diligent search of its files by the deadline for substantial completion set by the Court. *See Baker v. Walters*, 652 F. Supp. 3d 768, 786 (N.D. Tex. 2023) (explaining that "a reasonably inquiry must be made" "[i]n responding to [Rule 34] discovery requests") (citing *VeroBlue Farms USA, Inc. v. Wulf*, 345 F.R.D. 406, 420-21 (N.D. Tex. 2021)). Align need not produce duplicates of standard-form agreements regarding individual patient orders for Invisalign, or duplicates of standard-form agreements regarding individual iTero purchases.	With respect to the Discovery Dispute Chart submitted on May 2, 2025, regarding ClearCorrect's request that in response to ClearCorrect's Request for Production Nos. 2 and 3, and ClearCorrect's Interrogatory Nos. 1, 6, 7, 8, Align be ordered to produce its agreements with customers relating to Invisalign and iTero: It is **ORDERED** that Align must produce all contracts between Align and any Align customer in the United States relating to the sale of Invisalign or iTero effective on or after January 1 of 2019, through July 10, 2024 by the deadline for substantial completion set by the Court.

On June 17, 2025, Judge Gilliland issued the Discovery Order adopting ClearCorrect's language above. (Dkt. No. 190 at 3).

On July 1, 2025, Align filed an objection to the Discovery Order. (Dkt. No. 192). In its objection, Align explains that the Discovery Order is contrary to law and clearly erroneous for failing to properly assess the proportionality of ClearCorrect's discovery requests and account for

Align's burdens and the minimal benefit of the discovery sought. *See generally* (Dkt. No. 192). Align files this motion for a limited stay of the Discovery Order pending the district judge's resolution of Align's objection.

III. ARGUMENT

The portion of the Discovery Order dealing with Align's production of customer contracts should be stayed pending resolution of Align's objection. "[T]he general, four-factor test for a stay pending appeal governs the analysis of a request for a stay pending an objection or appeal of a magistrate judge's order resolving a non-dispositive matter." *LEG Q LLC v. RSR Corp.*, No. 3:17-cv-1559-N-BN, 2017 WL 4222690, at *2 (N.D. Tex. Sept. 22, 2017); *see also Canchola v. Allstate Ins. Co.*, No. 8:23-cv-00734-FWS-ADS, 2025 WL 1377817, at *3 (C.D. Cal. Apr. 17, 2025) (collecting cases). Those four factors include "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770 (1987)).

Here, the balance of all four factors favors the requested stay.

A. Align Has Made a Strong Showing That it is Likely to Succeed on the Merits.

Align has made a strong showing that its objections are likely to succeed on the merits. "The district judge in the case must consider timely objections [to a magistrate judge's non-dispositive order] and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A). Factual findings are reviewed under a "clearly erroneous standard," whereas "legal conclusions are reviewed *de novo*." *Moore v. Ford Motor Co*., 755 F.3d 802, 806 (5th Cir. 2014).

The portion of the Discovery Order addressing Align's production of customer contracts

is contrary to law and clearly erroneous because it contradicts the proportionality analysis required under Rule 26. *See* Fed. R. Civ. P. 26(b)(1) (stating that discovery must be "nonprivileged," "relevant," and "*proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit") (emphasis added). Indeed, Rule 26's proportionality analysis was not considered at the corresponding June 4 hearing at all and is not addressed in the Discovery Order. *See generally* (Dkt. No. 190); Hr'g Tr. at 57:4-82:19. This alone warrants vacating the Discovery Order regarding Align's production of customer contracts. *See, e.g.*, *In re Bofl Holding, Inc. Sec. Litig.*, No. 15-CV-2324-GPC-KSC, 2021 WL 4460751, at *6 (S.D. Cal. Sept. 29, 2021) ("fail[ure] to appropriately weigh relevance and the proportionality factors enumerated in the text of Rule 26" rendered the order "clearly erroneous and contrary to the law"). The same is true of the Discovery Order's rejection of the "reasonable search" standard. *See* (Dkt. No. 192 at 7).

Furthermore, as Align explains at length in its objection, the proportionality analysis favors Align, not ClearCorrect. Between January 1, 2019, and July 10, 2024, [redacted] The number of responsive documents implicated by ClearCorrect's requests for "all" contracts is voluminous, to put it mildly. *See* (Dkt. No. 192 at 7-8). Further, [redacted] This makes it impractical—if not impossible—to produce *all* relevant customer contracts even after a reasonably diligent search. *See* Hr'g Tr. at 70:22-71:3; *see also Baker v. Walters*, 652 F. Supp. 3d 768, 786 (N.D. Tex. 2023) (explaining that "a reasonable inquiry must be made" "[i]n responding to [Rule 34] discovery requests") (citing

VeroBlue Farms USA, Inc. v. Wulf, 345 F.R.D. 406, 420-21 (N.D. Tex. 2021)).

The effort to identify and collect customer agreements from January 1, 2019, to July 10, 2024, is no small undertaking. [redacted] The Discovery Order overlooks these significant and excessive burdens in searching for, collecting, and reviewing [redacted] by July 18.

Moreover, the burdens that the Discovery Order imposes on Align substantially outweigh the minimal benefit to ClearCorrect from obtaining *all* Invisalign and iTero customer contracts. During the June 4 hearing, ClearCorrect indicated that it seeks all Align customer contracts to support its foreclosure allegations. Hr'g Tr. at 60:25-61:10; 63:14-18. In response, Align explained both in its dispute chart and at the discovery hearing itself that it will satisfy its Rule 26 and Rule 34 response obligations in multiple ways for ClearCorrect to test its antitrust allegations. These include:

- [redacted]
- [redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted] ClearCorrect will thus receive voluminous discovery regarding Align's customer contracts, including [redacted], to the extent Align maintains such information in the ordinary course. There are marginal returns, if any, to ClearCorrect from obtaining *all* customer contracts, including thousands of duplicate standard-form agreements of no utility. Those marginal returns also are substantially outweighed by the excessive burdens on Align from searching for, collecting, and attempting to produce all agreements.

In sum, the Discovery Order does not reflect consideration of the mandatory proportionality analysis. Had the appropriate analysis been conducted, it would have revealed that the burdens of attempting to locate, review, and produce *all* U.S. customer contracts for Invisalign and iTero from January 1, 2019, through July 10, 2024, far exceed any benefit to ClearCorrect from receiving those documents. Accordingly, Align has made a strong showing that its objections are likely to succeed on the merits.

B. Align Will be Irreparably Injured Absent a Stay.

The second factor also favors a stay. A party may suffer irreparable harm absent a stay when it is forced to engage in the disputed discovery "prior to the court's decision on the motion

[3] Align's ESI searches were conducted across [redacted] ESI custodians that ClearCorrect selected and based on search terms that ClearCorrect chose. Hr'g Tr. at 70:2-21.

for review, and thus would be effectively deprived of its ability to seek review of the Discovery Order." *Canchola*, 2025 WL 1377817, at *3. That is the case here. Because the substantial-completion deadline for document production, "including customer contracts," is currently scheduled for July 18, 2025 (Dkt. No. 188 at 2), Align will effectively be stripped of its objection rights under Rule 72 absent a stay. *See* Fed. R. Civ. P. 72(a) (permitting a party to "serve and file objections" to a non-dispositive order "within 14 days after being served with a copy").

Align previously filed an objection to Judge Gilliland's Report and Recommendation regarding Align's Motion to Dismiss ClearCorrect's Counterclaims on February 21, 2025, and that objection remains pending. (Dkt. No. 159). If the Court similarly is unable to resolve Align's pending objection on an accelerated timeline, Align will be forced to incur the unnecessary burdens and expenses of researching, collecting, reviewing, and producing agreements—efforts that will be completely unnecessary if the Court agrees with Align's objection. As things stand, unless this motion is expedited, it will barely be briefed by the July 18 compliance date. Other courts have found that the deprivation of a party's opportunity to seek review of a magistrate's discovery order alone warrants a stay. *See, e.g.*, *Alvarez v. Larose*, No. 3:20-CV-00782-DMS-AHG, 2020 WL 5632659, at *2 (S.D. Cal. Sept. 21, 2020) (granting in part motion to stay where immediate enforcement of magistrate judge's order "might preclude the district judge's ability" to review Rule 72 objections, "which would effectively deprive Respondents of their right to reconsideration of the Discovery Order by the district judge altogether"); *Jones v. PGA Tour, Inc.*, No. 22-CV-04486-BLF, 2023 WL 2541326, at *2 (N.D. Cal. Mar. 15, 2023) (finding irreparable harm where complying with the ordered discovery "before the Court rule[d] on [the party's] Rule 72 motion" would result in the challenging party being "effectively denied the relief sought in that motion"). The Court should do the same here.

C. Issuing A Stay Will Not Substantially Injure ClearCorrect.

The third factor further favors Align's requested limited stay. The fact discovery cutoff is set for October 17, 2025. (Dkt. No. 188). ClearCorrect has indicated during meet-and-confers that it does not intend to take depositions before document production is completed. The parties also have recently identified a second set of ESI custodians, and the substantial completion date for documents from those ESI custodians is not until September 12, 2025. *Id.* Furthermore, Align has already produced extensive transactional data and a substantial volume of relevant customer agreements. It also has committed to further producing additional customer contracts that it can locate through ESI searches and reasonably diligent searches of its files. For all of these reasons, ClearCorrect will *not* suffer any injury (much less substantial injury) if the Court grants a limited stay. *See Smith v. Garland*, No. EP-23-cv-00390-KC, 2024 WL 4683689, at *9 (W.D. Tex. Nov. 1, 2024) (there "is no obligation on the part of a responding party to examine every scrap of paper in its potentially voluminous files," and "[c]ourts cannot and do not expect that any party can meet a standard of perfection") (cleaned up); *Grae v. Corr. Corp. of Am.*, No. 3:16-cv-2267, 2019 WL 1746492, at *1 (M.D. Tenn. Apr. 18, 2019) (finding stay warranted in part because it was "a relatively narrow request," making it "unlikely to injure [the non-moving party] or any third party," and considering "the harms [the moving party] would face from potentially unnecessary, invasive and burdensome discovery").

D. The Public Interest Favors a Stay.

The fourth and final factor also supports staying the Discovery Order regarding Align's production of "all" customer contracts. Stays comport with the public interest when they "avoid potentially wasteful and unnecessary litigation costs" and the objector "has shown a substantial likelihood of success." *Earl v. Boeing Co.*, 21 F.4th 895, 900 (5th Cir. 2021). That is the case here, as Align has shown a substantial likelihood of success on its objection, *see supra* III.A., and a

narrow stay may avoid its incurring undue, expensive discovery costs. *See Canchola*, 2025 WL 1377817, at *4 (fourth factor favored a stay in part "because the public interest favors 'just, speedy, and inexpensive determination of every action'") (quoting Fed. R. Civ. P. 1).

Texas courts likewise have concluded that staying a non-dispositive order pending resolution of a Rule 72 objection favors the public interest where compliance with the challenged order would impose undue and unnecessary burdens on the movant. For instance, in *LEG Q LLC*, the court stayed discovery pending resolution of a Rule 72 objection in part because the "[p]ublic interest clearly favor[ed] protecting [parties] from being forced to suffer potentially unnecessary burdens that the Court could subsequently determine to be unjustified." 2017 WL 4222690, at *5. The court further acknowledged that "[i]t would be impossible to restore the *status quo* once [the party has] incurred the expense of responding to" the contested discovery. *Id.* The same is true here. Complying with the Discovery Order will impose undue and unnecessary burdens on Align for the reasons articulated above and more fully in Align's objection.

IV. CONCLUSION

For the foregoing reasons, Align respectfully asks that the Court stay the Discovery Order specifically concerning Align's production of customer contracts for the sale of Invisalign and iTero pending the Court's review of Align's concurrently filed objection. (Dkt. No. 192).

DATED: July 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via email on July 1, 2025.

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