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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

JF

16 SECURITIES AND EXCHANGE COMMISSION
17 Plaintiff,
18
19 vs.
20 SAIYED ATIQ RAZA,
21 Defendant.

CV 08

Case No. **0375**

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF

22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 **SUMMARY OF THE ACTION**

24 1. This matter involves insider trading by a director of OrthoClear Holdings, Inc.
25 ("OrthoClear"), who reaped nearly \$1.5 million in unlawful profits by trading on confidential
26 information he learned as a member of OrthoClear's board of directors. Defendant Saiyed Atiq Raza
27 was entrusted with information about a confidential legal settlement between OrthoClear and its
28 primary competitor, Bay Area public company Align Technology, Inc. ("Align") that would
significantly benefit Align. Raza then misused this confidential information for his own advantage
by purchasing large amounts of Align's securities before news of the settlement was made public.

1 2. On the night of September 19 and the early morning of September 20, 2006,
2 OrthoClear’s CEO informed Raza about a confidential agreement that OrthoClear had reached with
3 Align to resolve ongoing and contentious litigation between the two companies. As part of the
4 settlement, OrthoClear agreed to no longer compete against Align in the transparent teeth-
5 straightening market. On September 22, Raza purchased a large number of Align call options –
6 securities that would increase significantly in value if Align’s stock price rose in the short term.
7 When Align announced the settlement with OrthoClear the following week, Align’s stock price rose
8 nearly 50%, allowing Raza to realize profits of \$1,450,900.

9 3. As a member of OrthoClear’s board of directors, Raza owed a fiduciary duty
10 of trust and confidence to OrthoClear, and violated this duty by using confidential business
11 information he obtained from OrthoClear for his own personal profit. By trading Align securities
12 based on material nonpublic information, Raza violated Section 10(b) of the Securities Exchange Act
13 of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder.
14 The Commission seeks a court order enjoining defendant Raza from future violations of the federal
15 securities laws; prohibiting him from serving as an officer or director of any publicly traded
16 company; requiring him to disgorge his ill-gotten gains plus prejudgment interest; and imposing civil
17 money penalties.

18 **AUTHORITY TO BRING THIS ACTION**

19 4. The Commission brings this action pursuant to Section 21(d), 21(e), and 21A
20 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1(c)].

21 5. Defendant directly engaged in transactions, acts, practices and course of
22 business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule
23 10b-5 [17 C.F.R. 240.10b-5] promulgated thereunder.

24 6. Defendant will, unless enjoined, continue to engage in the acts, practices and
25 courses of business alleged herein, or in transactions, acts, practices and course of business of similar
26 purport and object.

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1 **JURISDICTION AND VENUE**

2 7. This Court has jurisdiction over this action pursuant to Section 21(e), 21A and
3 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa].

4 8. Defendant, directly or indirectly, made use of the means or instrumentalities of
5 interstate commerce, or of the mails, or of the facilities of a national securities exchange in
6 connection with the transactions, acts, practices and courses of business alleged herein.

7 9. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15
8 U.S.C. § 78aa]. Defendant resides and transacts business in the Northern District of California.

9 10. Intra-district assignment to the San Jose Division is appropriate pursuant to
10 Civil Local Rule 3-2(c) and (e) because a substantial part of the events or omissions that give rise to
11 this claim occurred in Santa Clara county.

12 **DEFENDANT**

13 11. Saiyed Atiq Raza, age 58, resides in Palo Alto, California. At all relevant
14 times, Raza was a member of the board of directors of OrthoClear Holdings, Inc. Raza has served as
15 both an officer and director of several publicly-traded companies.

16 **RELEVANT ENTITIES**

17 12. OrthoClear Holdings, Inc. (“OrthoClear”), a private company founded in
18 January 2005, was headquartered in San Francisco, California. OrthoClear manufactured and sold a
19 transparent system for treatment of teeth misalignment. OrthoClear, now known as Ocuementa, is in
20 the process of ceasing operations.

21 13. Align Technology, Inc. (“Align”) is a Delaware corporation, with its principal
22 place of business in Santa Clara, California. Align is engaged in the design, manufacture and
23 marketing of transparent teeth straightening systems. Align’s common stock is registered with the
24 Commission pursuant to Section 12(b) of the Exchange Act and is publicly quoted on the NASDAQ
25 Global Market.

26 **RAZA’S INSIDER TRADING**

27 14. Since shortly after its January 2005 business inception, OrthoClear was
28 embroiled in patent and other litigation with Align, its primary competitor in the transparent teeth-

1 straightening market. Prior to OrthoClear's entry into the market in 2005, Align dominated the
2 market for transparent teeth-straightening.

3 15. Throughout 2006, Raza, along with the rest of OrthoClear's Board, received
4 confidential status reports on the Align litigation and settlement prospects. These updates increased
5 in frequency shortly before a mandatory settlement conference scheduled before the U.S.
6 International Trade Commission ("ITC") for September 18, 2006. In connection with the settlement
7 conference, the ITC ordered OrthoClear and Align to keep all settlement discussions between the
8 parties confidential.

9 16. Align and OrthoClear participated in the confidential settlement conference on
10 September 18, 2006. Late the following day, September 19, Align and OrthoClear agreed to terms of
11 a settlement-in-principle that would result in, among other details, OrthoClear ceasing business in the
12 teeth aligner market in return for a \$20 million payment from Align. On September 20, 2006, Align
13 and OrthoClear designated the signed settlement-in-principle as confidential and filed it under seal
14 with the ITC.

15 17. Prior to signing the agreement, OrthoClear's CEO contacted members of
16 OrthoClear's board of directors to seek approval of the settlement terms. On September 19 and 20,
17 2006, the CEO had two telephone calls with Raza. In these conversations, the CEO informed Raza
18 about the settlement terms and the fact that it would result in OrthoClear terminating its business
19 operations. Raza understood that the CEO called him because he was an OrthoClear director, and
20 that the information conveyed to him was confidential.

21 18. On September 22, 2006, two days after learning from OrthoClear's CEO that
22 the company was going out of business and would no longer compete against Align, Raza purchased
23 3,500 Align call options, or the contractual right to buy Align stock in the future at a set price. These
24 purchases accounted for over 45 percent of the total Align option trading volume and represented
25 approximately 36 percent of the total open interest in the Align option class for that trade date. Raza
26 also purchased 60,000 share of Align common stock at an average price of \$6.92 per share. Prior to
27 these trades, Raza had never before purchased Align options and had last purchased Align stock in
28 2002.

1 19. On September 28, 2006, shortly before the market opened, Align publicly
2 announced the settlement with OrthoClear. By the close of trading, Align's stock price rose 48%,
3 from \$7.80 to \$11.46. The spike in Align's stock price resulted in an immediate paper profit for Raza
4 of \$1,450,900.

5 20. In May 2006, in anticipation of OrthoClear becoming public in the future,
6 Raza, as an OrthoClear board member, ratified an Insider Trading Policy. Among other provisions,
7 OrthoClear's Insider Trading Policy prohibited directors, officers or employees from trading in the
8 securities of third party companies where, in the course of working for OrthoClear, such OrthoClear
9 insiders learn of material nonpublic information regarding the third party companies.

10 21. When Raza purchased Align options and common stock with the knowledge
11 that the settlement-in-principle between Align and OrthoClear was material, confidential and non-
12 public, he did so in breach of his fiduciary duty of trust and confidence to OrthoClear.

13 22. Based on his position as a director of OrthoClear, his experience as a director
14 and officer of several other public companies, and his ratification of OrthoClear's insider trading
15 policy, Raza knew, or was reckless in not knowing, that he had a duty to refrain from trading the
16 material, non-public information about the settlement between OrthoClear and Align.

17 **CLAIM FOR RELIEF**

18 **Insider Trading: Fraud in Connection with the Purchase Or Sale of Securities**
19 **In Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

20 23. Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

21 24. Defendant Raza, with scienter, directly or indirectly:

22 a) employed devices, schemes, or artifices to defraud;
23 b) made untrue statements of material fact or omitted to state a material
24 fact necessary in order to make the statements made, in the light of the circumstances under which
25 they were made, not misleading; and

26 c) engaged in acts, practices, or courses of business which operated or
27 would operate as a fraud or deceit upon other persons in connection with the purchase or sale of
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1 securities, by the use of means or instrumentalities of interstate commerce, of the mails, or the
2 facilities of a national securities exchange.

3 25. By reason of the foregoing, Defendant Raza violated, and unless restrained and
4 enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule
5 10b-5 thereunder [17 C.F.R. § 240.10b-5].

6 **PRAYER FOR RELIEF**

7 I.

8 Permanently enjoin Defendant Raza from directly or indirectly violating Section 10(b)
9 of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

10 II.

11 Prohibit defendant Raza, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C.
12 §78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered
13 with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required
14 to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

15 III.

16 Order Defendant Raza to disgorge ill-gotten gains derived from the unlawful trading
17 alleged herein, plus prejudgment interest;

18 IV.

19 Order Defendant Raza to pay civil penalties pursuant to Section 21A of the Exchange
20 Act [15 U.S.C. § 78u l]; and

21 V.

22 Retain jurisdiction of this action in accordance with the principles of equity and the
23 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
24 decrees that may be entered, or to entertain any suitable application or motion for additional relief
25 within the jurisdiction of the Court.

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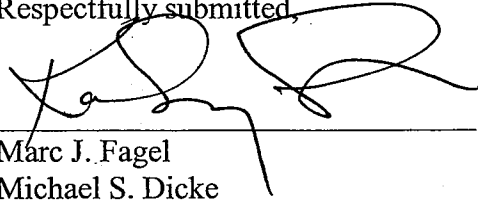
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VI.

Grant such other relief as this Court may deem just and necessary.

Respectfully submitted,



Dated: January 22, 2008.

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Kashya K. Shei
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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