

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
TODD C. DOUCETTE,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the “Commission”) alleges as follows:

I. INTRODUCTION

1. This case involves two incidents of insider trading by Defendant Todd C. Doucette, the former Vice President of Business Transformation for Align Technology, Inc. (“Align” or the “Company”), a publicly-traded company that designs and manufactures medical devices for orthodontic and restorative treatment. In his role, Doucette obtained, and was aware of, material, nonpublic information concerning the financial performance and business operations for Align’s Americas region in advance of Align’s earnings announcement for the first quarter of 2018 on April 25, 2018 (the “First Quarter 2018 Earnings Announcement”) and its earnings announcement for the third quarter of 2020 on October 21, 2020 (the “Third Quarter 2020 Earnings Announcement”).

2. Prior to the announcements, Doucette learned the Company had exceeded financial expectations for its Americas region. As a senior-level employee of Align, Doucette owed the Company a duty of trust and confidence, which explicitly prohibited him from trading on the basis

of material, nonpublic information. Despite this clear duty, on April 2, 2018, Doucette knowingly or recklessly purchased 5,331 shares of Align common stock while in possession material, non-public information in advance of Align’s positive First Quarter 2018 Earnings Announcement. On October 20, 2020, Doucette again, knowingly or recklessly, purchased 2,200 shares of Align common stock while in possession of material, non-public information in advance of Align’s Third Quarter 2020 Earnings Announcement. By trading ahead of the public announcements, Doucette reaped approximately \$88,121 in illicit profits from his April 2, 2018 trade, and \$260,568 from his October 20, 2020 trade.

3. By engaging in the conduct alleged in this Complaint, Doucette violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

4. The Commission requests the Court enter an order permanently enjoining Defendant from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; directing Defendant to pay disgorgement with prejudgment interest; and requiring that Defendant pay a civil money penalty.

II. JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa, and pursuant to 28 U.S.C. § 1331.

6. The Court has personal jurisdiction over Defendant and venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because, among other

things, Defendant resides or transacts business in this District, and many of the acts and transactions constituting the violations alleged in this Complaint occurred in this District.

7. In connection with the conduct alleged in this Complaint, Defendant, directly and indirectly, singly or in concert with others, has made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

III. DEFENDANT AND RELATED ENTITY

A. Defendant

8. **Doucette**, age 50, is a resident of Hampton, New Hampshire. From March 2016 through July 2021, Doucette was an employee of Align. Most recently, until his resignation on July 6, 2021, Doucette served as Align's Vice President of Business Transformation for the Company's Americas region.

B. Related Entity

9. **Align**, a Delaware corporation headquartered in Tempe, Arizona, is a global medical device company engaged in the design, manufacture, and marketing of Invisalign clear aligners and other dental products. Align's common stock is quoted on NASDAQ under the ticker "ALGN." Align's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Align's fiscal year ends December 31.

IV. FACTUAL ALLEGATIONS

A. Align's Operations and Key Financial Metrics

10. Align groups its operations into two reportable segments: (i) Clear Aligner; and (ii) Imaging Systems and Services. For fiscal years 2018 and 2020, Align's Clear Aligner net revenues represented approximately 86% and 85%, respectively, of Align's worldwide net

revenues. Align sells the majority of its products directly through a dedicated and specialized sales force to its customers, which include orthodontists, dentists, oral surgeons, and dental laboratories.

11. Align uses various financial data and metrics to assess its financial condition and business operations on an ongoing basis. These metrics include, among others: (i) gross and net revenues (revenue generated in a given period, whether paid or outstanding); (ii) shipments of Invisalign clear aligner cases; and (iii) gross and net receipts (number of patient orders for Invisalign clear aligners, both before and after order cancellations). Each of these metrics provide valuable and significant insight into Align's financial performance and business operations. Align reports net revenues on a quarterly and annual basis in filings with the Commission, and tracks revenue on a monthly basis.

12. The number of Invisalign clear aligner case shipments in a given period is also an important metric of the Company's financial performance because it is directly relevant to revenue. As noted in Align's quarterly report for the third quarter of 2020, Align's "net revenues are largely dependent on the sales of [its] Invisalign System of clear aligners and iTero intraoral scanners." According to Align, of these two products, "Invisalign [clear aligners] . . . will continue to account for the vast majority of [Align's] net revenues for the foreseeable future." Align reports the number of aligner case shipments on a quarterly and annual basis in reports filed with the Commission.

13. Align's number of gross receipts measures the number of initial patient orders for Invisalign clear aligners and net receipts is the gross receipt number minus those patients that cancelled their orders. These are material, non-public metrics which correlate with the amount of revenues Align will earn after it ships the clear aligners to the patients – *i.e.*, the larger the number of gross or net receipts will generally indicate a higher revenue number for a given period.

14. In addition to these metrics, Align utilizes other metrics concerning the number of patients and doctors utilizing the Company's various products, technologies, and treatment plans, and measures growth by region and product line over various time periods. These metrics also allow Align to assess its financial condition and operations on a monthly, quarterly, and annual basis.

B. Doucette's Role as Vice President of Business Transformation for Align Americas, and His Access to Material, Non-Public Information

15. Doucette was employed at Align from March 2016 until he resigned in July 2021. During the relevant period, Doucette served as Vice President of Business Transformation for the Company's Americas region. In that role, Doucette was responsible for various aspects of marketing Align products in North America.

16. In the course of performing his regular duties at Align, Doucette regularly received material, non-public information concerning Align's business operations and financial performance for the Americas region, including, among other key metrics, information about the Company's net revenues, the number of Invisalign clear aligner case shipments, and net receipts.

C. Doucette Was Aware of Align's Prohibitions Against Insider Trading

17. As a senior-level employee of the Company, Doucette owed a duty of trust and confidence to the Company. Doucette was also subject to the Company's Insider Trading Policy, which expressly prohibited employees from trading in Align securities while the employee was "*aware of* material non-public information about Align." (Emphasis in original.) The Insider Trading Policy listed common examples of material, non-public information, including financial results, earnings pre-announcements, guidance, projections, or forecasts.

18. Align's Insider Trading Policy further prohibited all employees, including Doucette, from trading in the Company's securities during certain blackout periods surrounding quarterly earnings announcements. Align's Insider Trading policy explains that a blackout "period is a particularly sensitive time for transactions involving Align's common stock . . . due to the fact that, during this period, individuals may often possess or have access to material nonpublic information relevant to the expected financial results for the quarter."

19. Align sent all employees, including Doucette, quarterly emails notifying them when the trading window was closed and/or open for each quarterly blackout period, which began "at the close of business on the last day of the second month of each quarter and end[ed] after *two full trading days* have elapsed following public disclosure of Align's financial results for such quarter." (Emphasis in original.) The Company Insider Trading Policy also advised employees that during the blackout periods for each quarter, "individuals may often possess or have access to material nonpublic information relevant to the expected financial results for the quarter."

20. Doucette received all the quarterly emails, as well as additional emails reminding him of the Company's Insider Trading Policy while employed at Align, including prior to Align's First Quarter 2018 Earnings Announcement and Third Quarter 2020 Earnings Announcement.

21. As part of Align's overall Global Code of Conduct, Align employees are required to complete periodic trainings, which includes training on the Company's Insider Trading Policy. During the time he was employed at Align, Doucette completed the Company's insider trading training.

D. Doucette Trades Ahead of Align's First Quarter 2018 Earnings Announcement

22. In the weeks leading up the Company's First Quarter 2018 Earnings Announcement, Doucette received material, non-public information concerning the business

operations and financial performance of Align's Americas region in the course of performing his duties as VP of Business Transformation for Align Americas.

23. Doucette received weekly emails providing updates and revised estimates on certain key financial metrics for Canada, United States, and Latin America, which make up Align's Americas region. Align Americas region generated approximately 60% of the Company's net revenues during its first quarter of 2018. The key metrics included, among others, the number of net receipts and Invisalign clear aligner case shipments. These emails generally showed positive year-over-year and quarter-over-quarter growth in these metrics each week throughout March 2018.

24. For example, on March 26, 2018, Doucette received an email in the course of his regular duties that provided him with material, non-public information concerning Align's performance for the first quarter of 2018 for the Americas region, including net receipts data. That email provided Doucette with the final forecasted number of net receipts for Align's first quarter of 2018, and confirmed that the final forecast for net receipts for the first quarter of 2018 was higher than predicted. The email also indicated a significant increase in the number of patients utilizing treatment plans in connection with Align's Invisalign product for the first quarter of 2018.

25. On April 1, 2018, one day after Align's first quarter of 2018 closed, Doucette received an email providing updates on Align's net receipts growth, and the growth of orthodontists and dentists utilizing the Company's products in its North America segment ("NA"), its largest segment of the Americas region. The email listed key financial metrics concerning Align's NA business and showed, among other things, that net receipts grew by 22.5% year-over-year for the quarter and, for the preceding week, net receipts grew 20.1% year-over-year.

26. The very next day, on April 2, 2018, Doucette purchased 5,331 shares of Align common stock at an average price of \$243.36 per share, at a total cost of approximately \$1,297,359. Doucette purchased Align stock while in possession of material, non-public information and, in direct contravention of Align's Insider Trading Policy, during the blackout period in advance of the Company's First Quarter 2018 Earnings Announcement.

27. On April 25, 2018, Align issued its positive First Quarter 2018 Earnings Announcement after the market closed, causing the stock to increase from \$245.63 at the close on April 25, 2018 to \$259.89 at the close on April 26, 2018, an increase of 5.8%. On May 11, 2018, Doucette sold the 5,331 shares of Align common stock for a realized profit of approximately \$88,121.

E. Doucette Trades Ahead of Align's Third Quarter 2020 Earnings Announcement

28. In the weeks leading up the Company's Third Quarter 2020 Earnings Announcement, Doucette received material, non-public information concerning the business operations and financial performance of Align's Americas region, which generated at that time approximately 52% of the Company's net revenues. Doucette received weekly emails providing updates and revised estimates on certain key financial metrics, including, among others, (i) net revenues; (ii) Invisalign clear aligner case shipments; and (iii) gross and net receipts.

29. For example, on October 4, 2020, Doucette received an email providing sales summaries for the Americas region that revealed final Invisalign clear aligner case shipments, gross receipts, and other material, non-public information concerning Align's products and services. Specifically, the email showed that gross receipts in connection with Invisalign case shipments for the Company's third quarter experienced 34.6% year-over-year growth, and provided other non-public metrics indicating positive year-over-year growth for the third quarter.

30. On October 7, 2020, Doucette received a PowerPoint presentation that included a detailed financial update for the third quarter of the Americas region. Among other items, the financial update stated, “Q3 finished strong” with “Revenue \$390 [million] (+15%).” The presentation also contained slides showing positive “Q3 Growth Trends” for other non-public metrics that Align tracks internally to measure its business performance. Further, the financial update provided third quarter financial information, including gross receipts, volume of Invisalign case shipments, total revenue, cash flows, and gross profit metrics, showing actual results were higher than the Company’s latest estimates for September 2020 for the Americas region.

31. On October 10, 2020, Doucette received an email providing a weekly financial update for the Americas region stating that in connection with closing out the third quarter, there were “[v]ery positive results on volume, revenue, margin, and cash.” The email also noted that gross receipts for the first week of October 2020 experienced “+42%” year-over-year growth. Doucette received additional emails on October 12 and 19, 2020 that provided similar positive financial and performance metrics concerning gross receipts, metrics for Align’s Invisalign clear aligners and other products for the Americas region.

32. From October 13 through October 20, Doucette made three separate \$250,000 cash deposits into a brokerage account where he maintained an average cash balance of \$1.00 for two years and through which he had not done any trading.

33. On October 20, 2020, the day before the Company’s Third Quarter 2020 Earnings Announcement, Doucette purchased 2,200 shares of Align common stock at an average price of \$334.79 per share, at a total cost of approximately \$736,538. Doucette purchased Align stock while in possession of material, non-public information and, in direct contravention of Align’s

Insider Trading Policy, during the blackout period in advance of the Company's Third Quarter 2020 Earnings Announcement.

34. On October 21, 2020, Align issued its positive Third Quarter 2020 Earnings Announcement after the market closed causing the stock to increase from \$335.81 at the close on October 21, 2020 to \$453.23 at the close on October 22, 2020, an increase of 34.9%. On November 2, 2020, Doucette sold the 2,200 shares of Align common stock for a realized profit of approximately \$260,568.

IV. CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

35. The Commission repeats and realleges Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. As Vice President of Business Transformation for Align, Doucette owed a duty of trust and confidence to Align and its shareholders. Doucette breached his duty of trust and confidence by trading in Align securities while in possession of material, non-public information in advance of the Company's First Quarter 2018 Earnings Announcement and the Company's Third Quarter 2020 Earnings Announcement.

37. Doucette knew, or was reckless in not knowing, that the information he possessed concerning Align's financial performance and business operations prior to the Company issuing its First Quarter 2018 Earnings Announcement and Third Quarter 2020 Earnings Announcement was material, non-public information. Doucette also knew or was reckless in not knowing that he owed a fiduciary or other duty of trust and confidence to Align and its shareholders to not trade in Align securities while in possession of material, non-public information.

38. By engaging in the conduct described above from April through May 2018 and from October through November 2020, Doucette, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

39. By engaging in the foregoing conduct, Doucette violated, and unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

V. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court find that Doucette committed the violations alleged, and:

A. Permanent Injunctive Relief

Issue a Permanent Injunction enjoining Doucette, and his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who received actual notice of the judgment by personal service or otherwise, from violating Section 10(b) the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

B. Disgorgement and Prejudgment Interest

Issue an Order directing Doucette to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

C. Civil Money Penalties

Issue an Order directing Doucette to pay a civil money penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

D. Retention of Jurisdiction

The Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

E. Further Relief

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: September 6, 2022

Respectfully submitted,

/s/ Teresa J. Verges

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