

1 STEVEN H. FRANKEL (Bar No. 171919)  
steven.frankel@dentons.com  
2 ROBERT A. COCCHIA (Bar No. 172315)  
robert.cocchia@dentons.com  
3 ALISHA N. ORTIZ (Bar No. 308180)  
alisha.ortiz@dentons.com  
4 DENTONS US LLP  
4655 Executive Drive, Suite 700  
5 San Diego, California 92121  
Telephone: (619) 236-1414  
6 Facsimile: (619) 232-8311

7 Attorneys for Defendants  
ONE CALL MEDICAL, INC., D/B/A ONE  
8 CALL CARE MANAGEMENT and ALIGN  
NETWORKS, INC.  
9

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12  
13 INDEPENDENT PHYSICAL  
THERAPISTS OF CALIFORNIA, on  
14 behalf of itself and members,

15 Plaintiff,

16 vs.

17 ONE CALL MEDICAL, INC., D/B/A  
ONE CALL CARE MANAGEMENT  
18 AND ALIGN NETWORKS, INC.; and  
DOES 1-10, inclusive,

19 Defendants.  
20

No. '17CV773 MMAJMA

**NOTICE OF REMOVAL BY  
DEFENDANTS ONE CALL  
MEDICAL, INC., D/B/A ONE  
CALL CARE MANAGEMENT  
AND ALIGN NETWORKS, INC.**

[28 U.S.C. §§ 1332, 1441(a)]

[Diversity Jurisdiction]

DENTONS US LLP  
4655 EXECUTIVE DRIVE, SUITE 700  
SAN DIEGO, CALIFORNIA 92121  
(619) 236-1414

1 **TO THE UNITED STATES DISTRICT COURT FOR THE**  
2 **SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND ITS**  
3 **COUNSEL OF RECORD:**

4 PLEASE TAKE NOTICE that defendants ONE CALL MEDICAL, INC.,  
5 D/B/A ONE CALL CARE MANAGEMENT and ALIGN NETWORKS, INC.  
6 (“Defendants”) file this Notice of Removal pursuant to 28 U.S.C. sections 1441 and  
7 1446, asserting original federal jurisdiction under 28 U.S.C. section 1332(a), to  
8 effect the removal of the above-captioned Action, which was originally commenced  
9 in the Superior Court of the State of California in and for the County of San Diego.

10 This Court has original subject matter jurisdiction under 28 U.S.C.  
11 § 1332(a)(1) for the following reasons:

12 **I. BACKGROUND**

13 1. On March 13, 2017, Plaintiff Independent Physical Therapists of  
14 California, on behalf of itself and members (“Plaintiff”) filed a Complaint against  
15 Defendants in the Superior Court of California, County of San Diego – North  
16 County, Case No. 37-2017-0008817-CU-BT-NC (“the Complaint”). Exhibit A  
17 (“Ex. A”).

18 2. The Complaint asserts a single cause of action for violation of  
19 California Business and Professions Code § 17200, *et seq.* Specifically, Plaintiff  
20 alleges that Defendants’ contracting and patient referral business constitutes an  
21 unlawful, unfair, deceptive and/or fraudulent business act and practice. *Id.* ¶¶ 69-  
22 94.

23 3. The Complaint requests the Court to issue injunctive and declaratory  
24 relief, and seeks a declaration stating that the contracts offered and imposed by  
25 Defendants are void as against public policy. *Id.* ¶ 95. In addition, the Plaintiff  
26 seeks attorneys’ fees and costs pursuant to, *inter alia*, California Code of Civil  
27 Procedure § 1021.5. *Id.*

DENTONS US LLP  
4655 EXECUTIVE DRIVE, SUITE 700  
SAN DIEGO, CALIFORNIA 92121  
(619) 236-1414

1           4.       Plaintiff alleges that it is a corporation organized under the laws of  
2 California with its principal place of business in Encinitas, California. *Id.* ¶ 13.  
3 Plaintiff alleges that Defendant One Call Medical, Inc. is a New Jersey corporation  
4 with its principal place of business in Jacksonville, Florida. *Id.* ¶ 15. Plaintiff  
5 alleges that Defendant Align Networks, LLC is a Florida corporation with its  
6 principal place of business in Jacksonville, Florida. *Id.* ¶ 16.

7       **II.   TIMELINESS OF REMOVAL**

8           5.       The Complaint was filed and a summons was issued on March 13,  
9 2017. Ex. A; Ex. B. Defendants were served on March 16, 2017. This notice of  
10 removal is timely because it is filed within thirty days from the date Defendant was  
11 served with the Complaint and summons. 28 U.S.C. § 1446(b)(1); Fed. R. Civ. P.  
12 6(a)(1)(A)-(C); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,  
13 354 (1999).

14       **III.   ORIGINAL JURISDICTION: DIVERSITY OF CITIZENSHIP**

15           6.       This Court has original jurisdiction over this matter under 28 U.S.C.  
16 § 1332(a)(1) because the matter in controversy exceeds the sum or value of  
17 \$75,000, exclusive of interest and costs, and Plaintiff and Defendants are citizens of  
18 different States. 28 U.S.C. § 1332(a)(1).

19           **A.   Diversity Of The Citizenship Of The Parties.**

20           7.       Under 28 U.S.C. § 1332(c)(1), “a corporation shall be deemed to be a  
21 citizen of every State . . . by which it has been incorporated and of the State . . .  
22 where it has its principal place of business[.]” The phrase “principal place of  
23 business” in 28 U.S.C. § 1332(c)(1) refers to the “place where a corporation’s  
24 officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v.*  
25 *Friend*, 590 U.S. 77, 92-93 (2010). This is “normally . . . the place where the  
26 corporation maintains its headquarters – provided that the headquarters is the actual  
27 center of direction, control, and coordination, i.e., the ‘nerve center’ . . . .” *Id.*  
28

DENTONS US LLP  
4655 EXECUTIVE DRIVE, SUITE 700  
SAN DIEGO, CALIFORNIA 92121  
(619) 236-1414

1                   **1. Plaintiff’s Citizenship.**

2           8. Plaintiff concedes that it is a corporation organized under the laws of  
3 the State of California with its principal place of business in Encinitas, California.  
4 Ex. A ¶ 13. Accordingly, Plaintiff’s allegations establish that it is a citizen of  
5 California.

6                   **2. Defendants’ Citizenship.**

7           9. One Call Medical, Inc. is a New Jersey corporation with its principal  
8 place of business in Jacksonville, Florida. Declaration of Craig Radulovich in  
9 Support of Defendants’ Notice of Removal (“Radulovich Decl.”), ¶ 2. Plaintiff  
10 does not dispute this. Ex. A ¶ 15. Accordingly, One Call Medical, Inc. is a citizen  
11 of New Jersey and Florida for diversity purposes. 28 U.S.C. § 1332(c)(1).

12           10. Align Networks is a Florida corporation with its principal place of  
13 business in Jacksonville, Florida. Radulovich Decl. ¶ 3. Plaintiff does not dispute  
14 this. *Id.* ¶ 16. Accordingly, Align Networks is a citizen of Florida for purposes of  
15 diversity jurisdiction. 28 U.S.C. § 1332(c)(1).

16           11. This action is therefore properly removable pursuant to 28 U.S.C.  
17 § 1441 because Plaintiff and Defendants are not citizens of the same State, and  
18 because Defendants are not California citizens.

19                   **B. Amount In Controversy.**

20           12. “‘In actions seeking declaratory or injunctive relief, it is well  
21 established that the amount in controversy is measured by the value of the object of  
22 the litigation.’” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (*quoting*  
23 *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977); *see also In re*  
24 *Ford Motor Co./ Citibank*, 264 F.3d 952, 958 (9th Cir. 2001) (“Under ‘either  
25 viewpoint rule,’ the test for determining the amount in controversy for purposes of  
26 diversity jurisdiction is the pecuniary result to either party which the judgment  
27 would directly produce; in other words, when value of plaintiff’s potential recovery  
28 is below the jurisdictional amount, but the potential cost to defendant of complying

1 with the injunction exceeds that amount, it is the latter that represents the amount in  
 2 controversy for jurisdictional purposes.”); *Rodgers v. Cent. Locating Serv.*, 412  
 3 F.Supp. 2d 1171, 1179-80 (W.D. Wash. 2006) (“[T]he value of injunctive relief is  
 4 determined by calculating the defendant’s costs of compliance: where the value of  
 5 plaintiff’s potential recovery is below the jurisdictional amount, but the potential  
 6 cost to the defendant of complying with the injunction exceeds that amount, it is the  
 7 latter that represents the amount in controversy for jurisdictional purposes.”)

8 13. Plaintiff seeks declaratory relief voiding the contracts that Defendants  
 9 have entered into with physical therapy providers in California. Ex. A ¶ 95. The  
 10 cost to Defendants if these contracts were declared void exceeds the \$75,000  
 11 jurisdictional threshold. Radulovich Decl. ¶ 4-5.

12 14. Attorneys’ fees may be included in the amount in controversy if  
 13 recoverable by statute or contract. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,  
 14 1155-56 (9th Cir. 1998); *Richmond v. Allstate Ins. Co.*, 897 F.Supp. 447, 450 (S.D.  
 15 Cal. 1995).

16 15. The Complaint seeks recovery of attorneys’ fees under California  
 17 Code of Civil Procedure § 1021.5. Although such fees would necessarily accrue  
 18 until the action is resolved, California district courts are split as to whether the  
 19 removing party may include prospective attorneys’ fees, as opposed to only those  
 20 incurred up to the time of removal, in the amount in controversy calculation.  
 21 *Compare Brady v. Mercedes-Benz USA, Inc.*, 243 F.Supp. 2d 1004, 1010-11 (N.D.  
 22 Cal. 2002) (“Where the law entitles the prevailing plaintiff to recover reasonable  
 23 attorney fees, a reasonable estimate of fees likely to be incurred to resolution is part  
 24 of the benefit permissibly sought by plaintiff and thus contributes to the amount in  
 25 controversy.”), and *Simmons v. PCR Technology*, 209 F.Supp. 2d 1029, 1034-35  
 26 (N.D. Cal. 2002) (“The Ninth Circuit clearly considers attorneys’ fees when  
 27 assessing amount in controversy . . . . Such fees necessarily accrue until the action  
 28 is resolved. Thus, the Ninth Circuit must have anticipated that district courts would

1 project fees beyond removal . . . . [T]he measure of fees should be the amount that  
 2 can reasonably be anticipated at the time of removal, not merely those already  
 3 incurred.”), with *Faulkner v. Astro-Med, Inc.*, 1999 WL 820198, at \* 4 (N.D. Cal.  
 4 1999) (“When estimating attorney’s fees for the purposes of establishing  
 5 jurisdiction, the only fees that can be considered are those incurred as of the date of  
 6 removal.”), and *Conrad Associates v. Hartford Acc. & Indem. Co.*, 944 F.Supp.  
 7 1196, 1200 (N.D. Cal. 1998) (“Defendants contention that attorney fees are likely  
 8 to total at least \$20,000 is too speculative to support its burden of establishing  
 9 jurisdiction by a preponderance of the evidence.”). While acknowledging a split in  
 10 authority on the issue of whether anticipated attorneys’ fees can be considered for  
 11 purposes of satisfying the amount in controversy for removal on the basis of  
 12 diversity, Defendants submit that under *Brady* and *Simmons* the anticipated  
 13 attorneys’ fees in this matter provide a separate and independent basis for removal.  
 14 Thus, in addition to the potential cost to Defendants in voiding the physical therapy  
 15 contracts, which well exceeds \$75,000, a reasonable estimate of Plaintiff’s  
 16 attorneys’ fees contributes to the amount in controversy.

17 16. Because diversity of citizenship exists, and because the amount in  
 18 controversy exceeds the \$75,000 jurisdictional threshold, this Court has original  
 19 jurisdiction over this action under 28 U.S.C. § 1332(a)(1). Removal to this Court is  
 20 thus proper under 28 U.S.C. § 1441(a).

#### 21 **IV. VENUE**

22 17. Venue lies in the Southern District of this Court pursuant to 28 U.S.C.  
 23 §§ 1441(a), 1391(b) and 84(d) because the state court action was filed in this  
 24 District, and a significant part of the acts complained of giving rise to Plaintiff’s  
 25 claims at issue allegedly occurred in this District.

#### 26 **V. PROCESS AND PLEADINGS ON FILE WITH STATE COURT**

27 18. This Notice of Removal will be promptly served on Plaintiff and filed  
 28 with the Clerk of the Superior Court of the State of California in and for the County

1 of San Diego.

2 19. In compliance with 28 U.S.C. § 1446(a), true and correct copies of all  
3 “process, pleadings, and orders” on file in the state court action are attached hereto  
4 as the following exhibits:

5 Exhibit “A”: Complaint

6 Exhibit “B”: Summons

7 WHEREFORE, Defendants requests that the above action pending before the  
8 Superior Court of the State of California for the County of San Diego be removed  
9 to the United States District Court for the Southern District of California.

10 Dated: April 17, 2017

DENTONS US LLP

11  
12 By: s/Robert A. Cocchia  
13 STEVEN H. FRANKEL  
14 ROBERT A. COCCHIA  
ALISHA N. ORTIZ

15 Attorneys for Defendants  
16 ONE CALL MEDICAL, INC., D/B/A  
17 ONE CALL CARE MANAGEMENT  
AND ALIGN  
18 NETWORKS, INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DENTONS US LLP  
4655 EXECUTIVE DRIVE, SUITE 700  
SAN DIEGO, CALIFORNIA 92121  
(619) 236-1414