IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

REBECCA SMITH; ELLEN LARSON; JUSTINE LUND; and JAIME and JARED BEARD, individually and on behalf of all others similarly situated, **Plaintiffs,** **v.** **THE ALIERA COMPANIES, INC.; formerly known as ALIERA HEALTHCARE, INC., a Delaware corporation;** **TRINITY HEALTHSHARE, INC., a Delaware corporation;** **ONESHARE HEALTH, LLC, formerly known as UNITY HEALTHSHARE, LLC and as KINGDOM HEALTHSHARE MINISTRIES, LLC, a Virginia limited liability corporation,** **Defendants.**	)	**CIVIL ACTION NO.: 1:20-cv-02130-RBJ**

DEFENDANTS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants The Aliera Companies Inc. ("Aliera"), Trinity Healthshare, Inc. ("Trinity") and OneShare Health, LLC ("OneShare") file this response to Plaintiff's Notice of Supplemental Authority, which attaches a decision of a federal court in Missouri. (Docs. 58 & 58-1). In Missouri, Aliera and Trinity have filed a Motion Alter or Amend that decision and a Notice of Appeal with the Eighth Circuit. Moreover, the Missouri court applied Missouri law to the precise facts presented in that case – facts, law, and parties that are different from those presented here. None of the Plaintiffs in the instant action is a plaintiff in the Missouri action. Defendant OneShare is not a party to the Missouri action. Plaintiffs' Notice has no precedential weight, bearing, or preclusive effect on Defendants' Motion to Compel Arbitration pending before this Court.

The Missouri court concluded, without analysis of each element, that "the dispute

resolution 'agreement' lacks offer, acceptance, and bargained for consideration." *Kelly v. Aliera Companies, Inc.*, 6:20-CV-05038-MDH, 2020 WL 6877574, at *5 (W.D. Mo. Nov. 23, 2020). The court focused primarily on the timing of when the Missouri plaintiffs received their Member Guides, finding that the plaintiffs could not be bound by the terms of Member Guides provided to them after they signed emails indicating their consent to join the relevant healthcare sharing programs. The court placed heavy emphasis on its finding that the plaintiffs had not reviewed the arbitration provisions when they provided their signatures – even though the documents they signed expressly stated that they incorporated the membership guidelines, and the plaintiffs voluntarily chose to continue their memberships and ratify the terms and conditions by repeatedly making monthly payments over-and-over again after receiving the applicable Member Guides containing arbitration provisions.

Courts in Colorado applying Colorado law have reached the opposite conclusion under virtually identical facts. *Vernon v. Qwest Communs. Int'l, Inc.*, 925 F. Supp. 2d 1185, 1191 (D. Colo. 2013) ("[I]f one chooses to 'sign' a contract and to accept its benefits without reading and understanding its terms, he generally must accept the consequences of his decision."); *Wagner v. Discover Bank*, No. 12-cv-02786, 2014 U.S. Dist. LEXIS 3682, at *9 (D. Colo. Jan. 10, 2014) ("Mr. Wagner continued using his card and thereby manifested his assent to the terms of the Cardmember Agreement."); *Martinez v. TCF Nat'l Bank*, No. 13-cv-03504, 2015 U.S. Dist. LEXIS 23326, at *9 (D. Colo. Feb. 25, 2015) (compelling arbitration when plaintiff accepted new dispute resolution terms by continuing employment, and plaintiff had reasonable notice of terms that were later sent to her and that were available on the company website). As in *Vernon*, here, Plaintiffs expressly agreed that they would be bound by the terms and conditions contained in the Member Guides and "received repeated instructions" that by enrolling and participating in the sharing

program, they agreed to be bound by the program's terms and conditions, which are set out in their respective Member Guides. *Vernon*, 925 F. Supp. 2d at 1191. Plaintiffs had a "reasonable opportunity" to review the terms of the Member Guides prior to the effective dates of their memberships, including ample time to cancel their memberships and receive a refund if they did not agree to those terms prior to the effective date of their memberships. *Id.* Plaintiffs accepted the benefits of the healthcare sharing programs and now rely on the terms of the same Member Guides containing arbitration provisions as the basis for their claims in this action.

Additionally, the Missouri court's focus on signature further distinguishes the decision due to relevant Colorado authority. Neither Colorado law nor the Federal Arbitration Act require that an arbitration agreement be signed; it merely must be in writing. *Todd Habermann Constr., Inc. v. Epstein*, 70 F. Supp. 2d 1170, 1174 (D. Colo. 1999). "A signature is not required to establish the existence of an enforceable arbitration agreement. Parties can be bound to agreement of essential contract terms by their conduct." *Frazier v. W. Union Co*., 377 F. Supp. 3d 1248, 1260 (D. Colo. 2019) (citing *E-21 Eng'g, Inc. v. Steve Stock & Assoc., Inc.*, 252 P.3d 36, 39 (Colo. App. 2010); *Habermann*, 70 F.Supp.2d at 1174, and *Yaekle v. Andrews*, 195 P.3d 1101, 1107 (Colo. 2008). Thus, because the Missouri court's finding was based on the fact the arbitration agreement itself was not signed, it has no relevance to a court applying Colorado law.

Respectfully submitted this 31st day of December, 2020.

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CERTIFICATE OF SERVICE

I certify that on December 31, 2020, I electronically filed the foregoing **RESPONSE TO PLAINTIFFS' SUPPLEMENTAL AUTHORITY** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Sarah R. Craig
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