UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

NOELLE LeCANN, KRISTIN SELIMO, and TANIA FUNDUK, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Civil Action File

THE ALIERA COMPANIES, INC., formerly known as ALIERA HEALTHCARE, INC.,

No. 1:20-cv-2429-AT

Defendant.

PLAINTIFFS' MOTION FOR CLERK'S ENTRY OF DEFAULT

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, Plaintiffs Noelle LeCann, Kristin Selimo, and Tania Funduk hereby move the Clerk of Court to enter default against Defendant The Aliera Companies, Inc. ("Aliera").

Plaintiffs filed this lawsuit on June 5, 2020. [Doc. 1]. Defendants filed their motion to dismiss or compel arbitration on July 16, 2020. [Doc. 12]. Aliera's motion to dismiss or compel arbitration was denied on June 22, 2021. [Doc. 49]. Under Rule 12(a)(4)(A) of the Federal Rules of Civil Procedure, Aliera's answer was due fourteen days later, i.e., by July 6, 2021. Fed. R. Civ. P. 12(a)(4)(A); *Beepot v. JP Morgan Chase Nat'l Corp. Servs., Inc.*, 626 F. App'x 935, 937 (11th Cir. 2015) ("When

the court denies a motion to dismiss, a party must answer within 14 days unless the court sets a different time.") (internal punctuation omitted).

More than two months has passed since the deadline for Aliera to file its answer, and no answer has been filed. While it is true that Aliera filed a motion to stay proceedings on August 9—by which point it was already more than a month in default—that motion has not been ruled upon yet, so it provides no basis to excuse the default even if it had been filed before the answer was due. A motion to stay proceedings is not self-executing; it requires court action to excuse a party from any impending deadlines. *See*, *e.g.*, *Omega Pats.*, *LLC v. Fortin Auto Radio*, *Inc.*, No. 6:05CV1113 ORL 22DAB, 2006 WL 2038534, at *3 (M.D. Fla. July 19, 2006); *United States Commodity Futures Trading Comm'n v. Brown*, No. 3:15-CV-354-J-39MCR, 2016 WL 3136847, at *2 (M.D. Fla. Jan. 28, 2016) ("[I]t is clear that the filing of a motion to stay does not automatically stay the proceedings.").

Aliera is in default of its obligations under Rule 12, and the Clerk should enter default against Aliera pursuant to Rule 55(a).

Submitted this 1st day of October, 2021.

/s Jennifer K. Coalson
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CERTIFICATE OF SERVICE

I certify that on the date below, I served a true and correct copy of PLAINTIFFS' MOTION FOR CLERK'S ENTRY OF DEFAULT on Defendant by filing it using the Court's Case Management and Electronic Case Filing (CM/ECF) system, which will automatically serve all counsel of record.

This 1st day of October, 2021.

/s Jennifer K. Coalson

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