

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GERALD JACKSON, ROSLYN JACKSON,  
DEAN MELLOM, JON PERRIN, and JULIE  
PERRIN, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., a  
Delaware corporation; ALIERA  
HEALTHCARE, INC., a Delaware  
corporation; TRINITY HEALTHSHARE  
INC., a Delaware corporation,

Defendants.

NO. 2:19-CV-01281-BJR

**THE ALIERA COMPANIES INC.'S  
OPPOSITION TO MOTION TO LIFT  
STAY**

Defendant The Alieria Companies Inc. ("Alieria") hereby submits its Response in Opposition to Plaintiffs' Motion to Lift Stay ("Motion") on the grounds that (1) the Arbitrator erred in deciding whether the Parties formed an agreement to arbitrate because that decision was already made by this Court, and regardless, the Arbitrator does not have jurisdiction to decide whether the Parties formed an agreement to arbitrate; and (2) this action also is due to be stayed in light of Defendant Trinity Healthshare, Inc.'s, n/k/a Sharity Ministries ("Trinity") on-going bankruptcy proceedings.

The Court held a hearing on this date, October 6, 2021, regarding Plaintiffs' Motion to Lift Stay and counsel for Alier's Motion to Withdraw. Alier recognizes that the Court ruled that it intends to issue an order granting Plaintiffs' Motion to Lift Stay and counsel for Alier's Motion to Withdraw, with fifteen (15) days for Alier to obtain substitute counsel. This Response is being filed at this time because the Court has not yet entered these orders; thus, this filings is an effort to preserve Alier's rights while the above-referenced Motions remain pending on the docket.

## I. ARGUMENT

### A. The Arbitrator Exceeded His Jurisdiction In Ruling On Whether The Parties Formed An Agreement To Arbitrate.

As this Court is aware, it is within the jurisdiction of the court to decide whether the parties formed an agreement to arbitrate. "The FAA reflects the fundamental principle that arbitration is a matter of contract," and "places arbitration agreements on an equal footing with other contracts . . . and requires courts to enforce them according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (citation omitted) (emphasis added). Whether parties have agreed to arbitrate a particular dispute is typically an "issue for judicial determination," *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002), as is a dispute over an arbitration contract's formation. *See, e.g., First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).<sup>1</sup>

On August 18, 2020, this Court compelled arbitration of Plaintiff Perrins' claims and stayed proceedings with regard to the Perrins, (Dkt. 105), and on October 6, 2020, the Court compelled arbitration of the remaining Plaintiffs' claims and stayed proceedings pending arbitration, (Dkt. 131). Defendants' motions to compel arbitration contended, among other matters, that Plaintiffs' challenges to the validity of the agreements – e.g., that the arbitration agreements were unenforceable based on Washington insurance law, unconscionable, etc. – were delegated to the arbitrator for resolution. This Court agreed, finding that "Plaintiffs [] challenged Defendants'

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<sup>1</sup> Questions of validity of the arbitration agreement, however, are to be resolved by an arbitrator, where the parties have agreed to arbitrate arbitrability. The Supreme Court repeatedly has held that when plaintiffs advance a challenge to "the validity of the contract as a whole, and not specifically to the arbitration clause," the challenge "must go to the arbitrator." *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006).

1 motion to compel arbitration on the basis that the arbitration clause is unenforceable under  
 2 Washington law” and that “challenge[s] to the arbitration clause must be decided by the arbitrator.”  
 3 (Dkt. 131, at pp. 14-15.)

4 However, instead of determining whether the Parties’ arbitration agreements were  
 5 “unenforceable under Washington law,” the Arbitrator determined that there was no arbitration  
 6 agreement at all. (*See* Ex. A attached hereto). The Arbitrator found that there was “no evidence of  
 7 an offer and acceptance by the Claimants or consideration for the alleged arbitration clause. At  
 8 best, Respondents’ presentation of the arbitration clause after Claimants enrolled was an offer  
 9 which Claimants did not accept.” (Ex. A, at p. 2.)

10 Because the Arbitrator found that he does not have jurisdiction based on his view that the  
 11 Parties did not form an agreement to arbitrate, he exceeded his jurisdiction and acted outside his  
 12 delegated duties. Alieria submits that the Court should compel arbitration again, with specific  
 13 direction to the Arbitrator to arbitrate whether the Parties’ arbitration agreement is enforceable in  
 14 light of Washington insurance laws and Plaintiffs’ other claims of invalidity.

15 **B. This Action Is Due To Be Stayed As A Result Of Trinity’s Bankruptcy Proceedings.**

16 **1. *Factual Background.***

17 Trinity operates a health care sharing ministry (“HCSM”) that Alieria administered on  
 18 Trinity’s behalf. Under various contracts with Trinity, Alieria provided technology services,  
 19 marketing, sales, and customer-service support for Trinity’s HCSM. Plaintiffs in this case claim  
 20 that Trinity did not operate a valid HCSM but instead operated an illegal insurance program under  
 21 Washington law and that Alieria (as Trinity’s administrator) is liable for selling that illegal  
 22 insurance.

23 In July of 2021, Trinity filed bankruptcy. *See In re Sharity Ministries, Inc., Debtor*, Case  
 24 No. 21-11001-JTD (Bankr. D. Del.). Since then, courts around the country have stayed similar  
 25 cases in their entirety due to Trinity’s bankruptcy filing, reasoning that judicial economy and  
 26 efficiency weigh in favor of a stay—the United States Court of Appeals for the Tenth Circuit  
 27

1 stayed appeals filed by Alieria and Unity due to Trinity's bankruptcy "in the interest of judicial  
 2 efficiency," (Exhibit B). The Eastern District of Kentucky stayed a case against Trinity, Alieria,  
 3 and Unity, reasoning that "judicial economy and efficiency weigh in favor of staying this matter  
 4 in its entirety," (Exhibit C). And the Eastern District of California stayed a case against Trinity,  
 5 Alieria, and Unity due to Trinity's bankruptcy, finding that "[a]n analysis of Trinity's HCSM status  
 6 and Alieria's role in administering plans for Trinity will arguably mirror an analysis of Unity's  
 7 HCSM status and Alieria's role in administering plans for Unity. The Court believes Trinity should  
 8 participate in adjudicating these overlapping issues to prevent inconsistent decisions and wasted  
 9 effort. Accordingly, judicial economy weights in favor of a stay." (Exhibit D.) And the Montana  
 10 District Court stayed a similar case due to Trinity's bankruptcy, *see Moeller v. The Alieria Cos.*,  
 11 Case No. 6:20-cv-00022-SHE, ECF No. 219 (D. Mont. July 16, 2021). This Court should follow  
 12 suit and stay the entire case pending resolution of Trinity's bankruptcy.

13 **2. *Applicable Law Supporting Stay.***

14 "A court has the "power to stay proceedings as part of its inherent power to control the  
 15 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and  
 16 for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In this case, it is the fairest and most  
 17 efficient course to stay the entire case until the resolution of Trinity's bankruptcy.

18 **3. *Arguments In Support of Stay Due To Trinity's Bankruptcy Proceedings.***

19 **a. A Stay Will Prevent Prejudice to Alieria.**

20 Plaintiffs allege that Alieria sold illegal health insurance plans *for Trinity*, which purports  
 21 to be a HCSM. If Trinity is a valid HCSM, however, then it necessarily does not provide insurance  
 22 and Plaintiffs' claims against both Trinity and Alieria would fail. A key question, then, is whether  
 23 Trinity is a valid HCSM. Trinity—not Alieria—is in the best position to speak on its status as a  
 24 HCSM. Alieria is not a HCSM and does not purport to be one. Trinity's participation is thus integral  
 25 to Alieria's defense, and Alieria would be prejudiced without Trinity's participation in the case.  
 26  
 27

1 While Alieria kept application records, sharing requests, and membership information for  
 2 Trinity, that information alone will not answer the question of whether Trinity is a valid HCSM.  
 3 Instead, determining whether Trinity is a HCSM requires more, including whether Trinity (*not*  
 4 Alieria) is a 501(c)(3) entity, whether Trinity or its predecessor (*not* Alieria or its predecessor) has  
 5 been in existence since December 31, 1999, and whether Trinity (*not* Alieria) conducts an annual  
 6 audit. *See* 26 U.S.C. § 5000A(d)(2)(B)(ii). Alieria has no access to what Trinity has done through  
 7 its Board and executive team to secure and defend its HCSM status. Trinity needs to participate in  
 8 the litigation of this question, which directly impacts Alieria's liability in the case.

9 **b. A Stay Will Prevent Prejudice To Trinity.**

10 Another reason that this Court should stay the entire case is that Trinity would likely be  
 11 prejudiced if the case against Alieria proceeds without it. Any decision by this Court on the issues  
 12 raised by Plaintiffs will effectively bind Trinity because Alieria was an administrator for Trinity –  
 13 it is not the non-profit healthcare sharing ministry. Should this action move forward without  
 14 Trinity, Alieria alone would be placed in the position of having to defend *Trinity's* agreement with  
 15 Plaintiffs and *Trinity's* status as a valid HCSM under Washington law. Trinity should be able to  
 16 participate in the litigation of these issues, which directly impact its sharing ministry.

17 **c. Staying The Case Does Not Prejudice Plaintiffs.**

18 Plaintiffs' claims are directly implicated in Trinity's bankruptcy proceeding. Plaintiffs  
 19 (along with their counsel and other former Trinity members) have asked the bankruptcy court to  
 20 allow them to join the bankruptcy case "in order to protect their interests." (*See* Trinity Bankruptcy,  
 21 Case No. 21-22001-JTD, Dkt. No. 85 at 3.) They assert that they "are creditors of the Debtor,"  
 22 which would likely be true if Plaintiffs are correct that Trinity's sharing program is insurance. (*Id.*  
 23 at 18.) This is an issue to be determined by the bankruptcy court in allocating Trinity's assets to  
 24 various creditors. If Plaintiffs feel so strongly about proceeding with the case, then they can ask  
 25 the bankruptcy court to lift the stay.

Besides that, any prejudice to Plaintiffs by the imposition of a stay is outweighed by the prejudice to Alieria (and Trinity) if the case proceeds without Trinity, for the reasons explained above.

**d. Staying The Case Is The Most Efficient Course.**

This Court has a strong interest in ensuring the orderly course of justice and preventing the inefficient use of judicial resources. Consider, for example, if the case proceeds without Trinity on the issue of whether Trinity operates a valid HCSM, Alieria (an entity that has never purported to be a HCSM) would be defending Trinity's HCSM status. Suppose the Court rejects Alieria's arguments on this issue, but then Trinity resumes its participation in the litigation and is able to convince the Court that it is, in fact, a valid HCSM. Alieria would then be placed in the peculiar and untenable position of competing rulings: (1) when Alieria alone was participating in the action, the Court ruled that Trinity is not a valid HCSM and is insurance, and therefore Alieria improperly sold insurance; but when (2) Trinity participated in the action, the Court ruled that Trinity is a valid HCSM and is not insurance, and therefore Alieria did not be engaged in the improper sale of insurance. Which ruling binds? This legal conundrum could be avoided by simply staying this matter until Trinity may fully participate.

In the end, staying the entire case until Trinity can participate makes the most sense. A stay prevents a disjointed case schedule. It prevents potential inconsistent adjudications. And it prevents this Court from having to duplicate work when Trinity's stay is lifted. As other courts have held in similar cases involving Alieria, Trinity, and Unity, "judicial economy weighs in favor of a stay." (*See Ex. D.*)

**II. CONCLUSION**

For these reasons, the Court should maintain the stay in this case pending discharge and

1 dismissal of Trinity's bankruptcy proceedings.

2  
3 Dated October 6, 2021.

4 /s/ Elizabeth B. Shirley  
5 Elizabeth B. Shirley (*pro hac vice*)  
6 Robert H. Rutherford (*pro hac vice*)  
7 BURR & FORMAN LLP  
8 420 20th Street North  
9 Suite 3400  
10 Birmingham, Alabama 35203  
11 Telephone: 205-251-3000  
12 Email: [bshirley@burr.com](mailto:bshirley@burr.com)  
13 [rrutherford@burr.com](mailto:rrutherford@burr.com)

14 *Attorneys for The Alier Companies Inc.*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on October 6, 2021, I electronically filed the foregoing with the Clerk  
17 of the Court using the CM/ECF system, which will send notification of such filing to all counsel  
18 of record.

19 /s/ Elizabeth B. Shirley  
20 Elizabeth B. Shirley (*pro hac vice*)  
21  
22  
23  
24  
25  
26  
27

# Exhibit A





AMERICAN  
ARBITRATION  
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FOR DISPUTE RESOLUTION®

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In the Matter of the Arbitration between

Case Number: 01-21-0001-0892

Gerald and Roslyn Jackson,

Dean Mellom,

Jon and Julie Perrin

-vs-

The Alieria Companies, Inc.

f/k/a Alieria Healthcare, Inc.

and

Trinity Healthshare, Inc.

n/k/a Sharity Ministries, Inc.

ARBITRATION AWARD

This matter is in arbitration pursuant to the Orders of United States District Court Judge Barbara Rothstein. On April 13, 2021, the American Arbitration Association appointed the undersigned to serve as arbitrator.

Claimants enrolled in health care coverage plans offered by Respondents The Alieria Companies, Inc. ("Alieria") and Trinity Healthshare, Inc. ("Trinity"). The parties dispute the enforceability of an arbitration clause in Respondents' Member Guide which called for disputes to be resolved "in accordance with the Rules and Procedure of the American Arbitration Association." Judge Rothstein's Orders of August 18, 2020 and October 6, 2020 provide that Claimants' challenge to the enforceability of the arbitration clauses must be decided by the arbitrator.

This matter has been stayed as to Trinity because of its Suggestion of Bankruptcy dated July 9, 2021.

Claimants' Motion to Determine Jurisdiction provided evidence and legal authority to establish they never agreed to arbitrate disputes with Respondents. They asserted they signed enrollment forms which authorized Alieria to immediately bill their credit cards for the first monthly fees due and the one-time application fee. The forms provided that Alieria could collect the monthly amount as a "recurring monthly transaction." The enrollment form did not mention arbitration. After enrolling and making their

initial payments, Claimants received an email which indicated a Member Guide would be mailed within 14 days of the plan's effective date. The disputed arbitration clause could be found near the end of the Member Guide.

The enrollment forms provide under the heading "Terms and Conditions" that "This is not a contract" and the Member Guide provides that the guidelines ". . . do not create a legally enforceable right on the part of any contributor."

Claimants' Motion cited legal authority to establish there is no mutual assent to an arbitration clause in an agreement if the clause is not provided until after the agreement is established. *Burnett v. Pagliacci Pizza, Inc.*, 196 Wn. 2d 38 (2020), *Norcia v. Samsung Telcoms. Am., LLC*, 845 F.3<sup>rd</sup> 129 (9<sup>th</sup> Cir. 2017). The motion asserted there was no evidence that the Claimants received, reviewed, or acknowledged the arbitration clause set out in the Member Guide prior to their enrollment in and payment for the Respondents' health care plans.

Aliera submitted two pleadings in response to Claimants' Motion to Determine Jurisdiction: The Aliera Companies Inc.'s Motion to Stay, or in the Alternative, Response, and in the Alternative Response to Claimants' Motion to Determine Jurisdiction, dated July 19, 2021 and The Aliera Companies Inc.'s Response in Opposition to Claimants' Motion to Determine Jurisdiction dated August 12, 2021.

Neither pleading, nor the exhibits attached to the pleadings, provided factual or legal authority to dispute the Claimants' assertion that they never agreed to arbitrate their disputes with Respondents. The July 19, 2021 pleading asserts Judge Rothstein "has already determined that there is an enforceable arbitration agreement among the Parties." Judge Rothstein did not order that the arbitration clause is valid and enforceable. Aliera's assertion misreads Judge Rothstein's Orders which state:

Claimants' "challenge to the arbitration clause . . . must be decided by the arbitrator" and ". . . the arbitrator must decide the threshold issue of whether the arbitration clause is enforceable" [August 18, 2020 page 7] and plaintiffs' ". . . challenge to the arbitration clause must be decided by the arbitrator." [October 6, 2020 pages 14-15]

Claimants' enrollment in and payment for Respondents plans was complete before they were presented with the arbitration clause. Aliera has submitted no evidence of an offer and acceptance by the Claimants or consideration for the alleged arbitration clause. At best, Respondents' presentation of the arbitration clause after Claimants enrolled was an offer which Claimants did not accept.

Claimants have established that I have no jurisdiction to hear this arbitration. Therefore, Claimants' Motion to Determine Jurisdiction is granted, this arbitration is dismissed, and this matter is returned to proceed in the United States District Court for the Western District of Washington.

Dated September 2, 2021



Charles Burdell, Arbitrator

# Exhibit B

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**August 2, 2021**

**Christopher M. Wolpert  
Clerk of Court**

REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

THE ALIERA COMPANIES, INC., a  
Delaware corporation, f/k/a Aliera  
Healthcare Inc.,

Defendant - Appellant,

and

TRINITY HEALTHSHARE INC., a  
Delaware corporation, et al.,

Defendants.

No. 21-1185  
(D.C. No. 1:20-CV-02130-RBJ)  
(D. Colo.)

REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

ONESHARE HEALTH LLC, f/k/a Unity  
Healthshare, LLC and as Kingdom  
Healthshare Ministries, LLC, a Virginia  
limited liability corporation,

Defendant - Appellant,

and

THE ALIERA COMPANIES, INC., a  
Delaware corporation, f/k/a Aliera

No. 21-1186  
(D.C. No. 1:20-CV-02130-RBJ)  
(D. Colo.)

Healthcare Inc., et al.,

Defendants.

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REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

TRINITY HEALTHSHARE INC., a  
Delaware corporation,

Defendant - Appellant,

and

ONESHARE HEALTH LLC, f/k/a Unity  
Healthshare, LLC and as Kingdom  
Healthshare Ministries, LLC, a Virginia  
limited liability corporation, et al.,

Defendants.

No. 21-1187  
(D.C. No. 1:20-CV-02130-RBJ)  
(D. Colo.)

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**ORDER**

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Before **MATHESON** and **BACHARACH**, Circuit Judges.

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These matters are before the court on: (1) Appellant Trinity Healthshare Inc.'s *Suggestion of Bankruptcy* filed in Appeal No. 21-1187, which the court has construed as a motion to abate these consolidated appeals; (2) Appellant The Aliera Companies, Inc.'s response in support of the abatement of these consolidated appeals; (3) Appellant Oneshare Health LLC's response in support of the abatement of these consolidated appeals; and (4) Appellees' response, indicating that they do not object to the abatement

of Appeal No. 21-1187 but do oppose the abatement of Appeal Nos. 21-1185 and 21-1186.

Upon consideration, the court grants the motion to abate as construed. Pending further order of the court, Appeal No. 21-1187 is abated pursuant to 11 U.S.C. § 362, and Appeal Nos. 21-1185 and 21-1186 are abated in the interest of judicial efficiency. All pending deadlines are vacated.

Within 30 days from the date of this order, Appellant Trinity Healthshare Inc. shall file a written report advising this court as to the status of the bankruptcy proceedings and whether the abatement should continue. Any status report shall address, *inter alia*, whether a motion seeking relief from the automatic stay has been filed in the bankruptcy court and the status of any such motion. In addition, within 5 days of an order lifting the automatic stay, or of any other event affecting the abatement of these appeals, Appellant Trinity Healthshare Inc. shall file an appropriate motion or status report with this court.

Entered for the Court  
CHRISTOPHER M. WOLPERT, Clerk



By: Candice Manyak  
Counsel to the Clerk

# Exhibit C

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
**CENTRAL DIVISION at LEXINGTON**

HANNA ALBINA and AUSTIN )  
WILLARD, individually and on )  
behalf of others similarly )  
situated, )

Plaintiffs, )

v. )

THE ALIERA COMPANIES, INC., )  
et al., )

Defendants. )

Civil Case No.  
5:20-cv-496-JMH

**MEMORANDUM OPINION  
AND ORDER**

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This matter comes before the Court on the Parties' briefs regarding whether this action should be stayed in its entirety due to Defendant Trinity Healthshare, Inc.'s bankruptcy proceedings. [DE 59; DE 60]. Previously, the Court directed the Parties to file a joint status report indicating whether they believe it would be efficient or preferable to continue forward with Defendants The Aliera Companies, Inc. ("Aliera") and Oneshare Health, LLC d/b/a Unity Healthshare, LLC ("Unity"), who are not subject to the bankruptcy stay, or whether this entire action should be held in abeyance during the pendency of the bankruptcy proceedings. [DE 54]. After discussing the matter as directed, Aliera and Unity agreed that a stay is appropriate, but Plaintiffs believed this case should proceed against Aliera and Unity. See [DE 57]. The Court then directed the Parties to file simultaneous briefs



explaining their respective positions for why this case should or should not be stayed in its entirety due to the intertwined nature of both the claims and the briefing on the pending dispositive motions. [DE 58]. Since this matter has been briefed, [DE 59; DE 60], the Court turns to the Parties' arguments.

### **I. DISCUSSION**

While the Court agrees with Plaintiffs that "the automatic stay provision in 11 U.S.C. § 362 only applies to the debtor (here, Trinity)" and, therefore, cannot be invoked by Alieria and Unity, that does not mean the Court may not otherwise stay this matter while Trinity's bankruptcy proceedings are ongoing. [DE 59, at 2 (quoting *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983)). Indeed, "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). When determining whether to grant a stay, courts typically consider the following factors: "(1) the need for a stay; (2) the stage of litigation; (3) whether the non-moving party will be unduly prejudiced or tactically disadvantaged; (4) whether a stay will simplify the issues; and (5) whether burden of litigation will be reduced for both the parties and the court." *Abington Emerson Capital, LLC v. Adkins*, No. 2:17-CV-143, 2018 WL 2454601, at \*2 (S.D. Ohio June 1, 2018)

(citations omitted). The party seeking the stay "bears the burden of showing both a need for delay and that 'neither the other party nor the public will suffer harm from entry of the order.'" *Id.* (quoting *Ohio Env'tl. Council v. U.S. Dist. Court, S. Dist. of Ohio, E. Div.*, 565 F.2d 393, 396 (6th Cir. 1977)).

In the present case, Alieria asks the Court to stay this matter pending the dismissal of Trinity's bankruptcy proceedings because (1) Alieria is inextricably intertwined with Plaintiffs' claims against Trinity; (2) Alieria's role as administrator of Trinity's sharing program and indemnification provisions in the agreements between Alieria and Trinity are at issue in the bankruptcy proceedings; (3) Alieria and Trinity would be prejudiced if Trinity is not able to participate in the defense of Plaintiffs' claims; and (4) judicial economy and efficiency weigh in favor of granting a stay. [DE 60]. Unity consents to Alieria's request for a stay and agrees that judicial economy and efficiency weigh in favor of a stay, but Unity does not formally join Alieria's brief because it includes arguments and information regarding Alieria and Trinity's relationship that Unity is not familiar with. *See id.* at 1 n.1.

Plaintiff alleges that Alieria administered health insurance plans for Unity and Trinity, both of which purport to be healthcare sharing ministries ("HCSM"), that were unauthorized and illegal under Kentucky law. *See* [DE 1]. Alieria contends, "If Trinity and Unity operate valid HCSM programs, then they are necessarily not

insurance, and Plaintiffs' substantive counts fail. As to Trinity, this issue is in the purview of the Bankruptcy Court." [DE 60, at 4]. Specifically, Alieria asserts that whether "Trinity's sharing program is insurance . . . is an issue to be determined by the Bankruptcy Court in allocating assets and determining sources of the assets." *Id.* at 6.

Alieria further asserts that Trinity's status as an HCSM is of great import because that determination affects Alieria's indemnification claims. *Id.* at 5-6. Since the Bankruptcy Court must decide the issue of whether Trinity's sharing program is, in fact, insurance, it is indisputable that a stay will simplify the issues before this Court while also reducing the burden of litigation on issues stemming therefrom. By not granting the request for a stay and opting to decide the pending Motions [DE 32; DE 33; DE 35] requesting either dismissal or arbitration, the Bankruptcy Court and this Court could reach different determinations on the same issue. Moreover, if this Court were to send this matter to arbitration while the bankruptcy proceedings are ongoing, Trinity would be unable to participate in arbitration, and the arbitrator could reach an inconsistent decision regarding whether Trinity's sharing program qualifies as insurance. Accordingly, judicial economy and efficiency weigh in favor of staying this matter in its entirety.

While the Court acknowledges that the pending Motions [DE 32; DE 33; DE 35] are fully briefed and require no discovery, the Court disagrees with Plaintiffs' argument that "it is better to decide the issue now rather than to start the case anew following resolution of the bankruptcy." [DE 59, at 3]. Plaintiffs' concerns that the stay will result in a delay that prejudices Plaintiffs are not entirely unfounded, but they are general concerns that arise from any delay, such as witnesses becoming unavailable, memories fading, and the dissipation of assets. *Id.* at 3-4. However, as Alieria correctly asserts, Trinity's bankruptcy proceedings are pursuant to Subchapter V of Chapter 11 of the Bankruptcy Code, which "was designed to expedite the bankruptcy process for small business debtors to allow them to reorganize quickly, inexpensively, and efficiently . . . ." [DE 60, at 2 (citing *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 336 (Bankr. S.D. Fla. 2020); *In re Trepetin*, 617 B.R. 841, 846-47 (Bankr. D. Md. 2020))].

The same day Trinity filed its petition for bankruptcy, it filed its plan of reorganization. [DE 60, at 2]. Thus, there is no indication that the bankruptcy proceedings will take longer than necessary or that Trinity is purposely delaying this matter. Whatever delay results from the stay would be offset by the benefit the Parties and Court would receive by the Bankruptcy Court narrowing some of the issues. Any prejudice to Plaintiffs would be

minimal, and Plaintiffs would not be placed at a tactical disadvantage.

On the other hand, if this matter is not stayed pending the bankruptcy proceedings, and assuming the bankruptcy stay pertaining to Trinity is no impediment to Alieria procuring information from Trinity for Alieria's defense, as Plaintiffs claim, [DE 59, at 5], a decision limited to Alieria and Unity would decide issues that affect Trinity. Since Trinity would be unable to participate following this Court's decision and prior to the conclusion of the bankruptcy proceedings, Trinity would be prejudiced by its inability to appeal this Court's decision or otherwise defend itself either in this Court, the Sixth Circuit Court of Appeals, or during arbitration. If Trinity can participate again, depending on this Court's decision, the Parties may be forced to relitigate certain matters that were decided in Trinity's absence or participate in discovery twice. For the foregoing reasons,

**IT IS ORDERED** as follows:

(1) This matter is **STAYED** in its entirety pending the termination of the automatic stay imposed by Defendant Trinity Healthshare, Inc.'s bankruptcy proceedings; and

(2) No later than **fourteen (14) days** after termination of the automatic stay in Trinity Healthshare, Inc.'s bankruptcy

proceedings, the Parties shall file a joint status report with the Court explaining the results of the bankruptcy proceedings.

This 10th day of August, 2021.



**Signed By:**

**Joseph M. Hood** *JMH*

**Senior U.S. District Judge**

## Exhibit D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CORLYN DUNCAN and BRUCE  
DUNCAN,

Plaintiffs,

v.

ALIERA COMPANIES, INC.; TRINITY  
HEALTHSHARE, INC.; and ONESHARE  
HEALTH, LLC,

Defendants.

No. 2:20-cv-00867-TLN-KJN

**ORDER**

This matter is before the Court on Defendant Alieria Companies, Inc.’s (“Alieria”) Motion to Stay. (ECF No. 80.) Plaintiffs Bruce and Corlyn Duncan (collectively, “Plaintiffs”) filed an opposition. (ECF No. 85.) Alieria filed a reply. (ECF No. 87.) For the reasons set forth below, the Court GRANTS Alieria’s motion.

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**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs were enrolled in a health care plan provided by Aleria and Trinity Healthshare, Inc. (“Trinity”) from January 1, 2018 through December 31, 2019. (ECF No. 19 at 1.) Aleria marketed, sold, and administered insurance plans for Oneshare Health, LLC when it was known as Unity Healthshare, LLC (“Unity”) and then subsequently acted in a similar capacity for Trinity. (*Id.* at 2.) Plaintiffs allege Aleria, Unity, and Trinity (collectively, “Defendants”) sold inherently unfair and deceptive health care plans to California residents and failed to provide the coverage the purchasers believed they would receive. (*Id.* at 3.) More specifically, Plaintiffs allege Aleria exploited an exception under the Affordable Care Act by falsely representing that Unity and Trinity were Health Care Sharing Ministries (“HCSMs”), which allowed Defendants to sell illegal insurance plans that did not comply with the minimum basic requirements for authorized health care plans under state or federal law. (*Id.* at 3–5.)

Plaintiffs filed the operative First Amended Complaint for this purported class action on June 26, 2020. (ECF No. 19). Plaintiffs allege claims for: (1) illegal contract; (2) violation of California’s Unfair Competition Law; (3) violation of California’s False Advertising Law; (4) breach of fiduciary duty as to Aleria and Trinity; (5) breach of fiduciary duty as to Aleria and Unity; and (6) unjust enrichment against Aleria. (*Id.*)

Several motions to dismiss and/or compel arbitration are currently pending. (ECF Nos. 36, 37, 38, 45, 50.) Prior to the Court ruling on those motions, Trinity filed a notice of bankruptcy on July 9, 2021. (ECF No. 76.) As such, the Court stayed the action as to Plaintiffs’ claims against Trinity. (ECF No. 79.) The Court further noted “absent any argument to the contrary, the action may proceed against the other Defendants.” (*Id.*) Aleria filed the instant motion to stay the case in its entirety on July 30, 2021. (ECF No. 80.) Unity did not join in the motion but instead consented to a stay. (*Id.* at 2 n.3.)

**II. STANDARD OF LAW**

A district court has the “power to stay proceedings” as part of its inherent power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254–55 (1936). “A trial court

1 may, with propriety, find it is efficient for its own docket and the fairest course for the parties to  
2 enter a stay of an action before it, pending resolution of independent proceedings which bear  
3 upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979).  
4 “This rule . . . does not require that the issues in such proceedings are necessarily controlling of  
5 the action before the court.” *Id.*

6 “Where it is proposed that a pending proceeding be stayed, the competing interests which  
7 will be affected by the granting or refusal to grant a stay must be weighed.” *CMAX, Inc. v. Hall*,  
8 300 F.2d 265, 268 (9th Cir. 1962). Those competing interests include “[1] possible damage  
9 which may result from the granting of a stay, [2] the hardship or inequity which a party may  
10 suffer in being required to go forward, and [3] the orderly course of justice measured in terms of  
11 the simplifying or complicating of issues, proof, and questions of law which could be expected to  
12 result from a stay.” *Id.*

### 13 III. ANALYSIS

14 Alieria moves to stay this action in its entirety due to Trinity’s bankruptcy proceedings.  
15 (ECF No. 80 at 2.) Alieria argues the Court should stay the action pursuant to its discretionary  
16 powers because: (1) Plaintiffs’ claims against Trinity are “inextricably intertwined” with their  
17 claims against Alieria; (2) Alieria’s right to seek indemnification from Trinity is at issue in  
18 Trinity’s bankruptcy; (3) Alieria and Trinity would be prejudiced if the case proceeds without  
19 Trinity; and (4) the interests of judicial economy weigh in favor of a stay. (*Id.*)

20 In opposition, Plaintiffs argue the Court should not stay the entire action because: (1)  
21 Alieria and Unity are independently liable to Plaintiffs; (2) the Trinity bankruptcy is unlikely to  
22 conclude in a reasonable time; (3) prosecution of this matter will not prejudice Alieria; and (4) a  
23 stay will not promote judicial economy. (ECF No. 85.)

24 Another district court recently addressed a nearly identical scenario involving these same  
25 Defendants and Trinity’s bankruptcy. *See Albina v. Alieria Companies, Inc.*, No. 5:20-CV-496-  
26 JMH, 2021 WL 3519460 (E.D. Ky. Aug. 10, 2021). The *Albina* court concluded Plaintiffs’  
27 general concerns about delay did not outweigh “the benefit the [p]arties and [c]ourt would receive  
28 by the Bankruptcy Court narrowing some of the issues.” *Id.* at \*2. The court further concluded

1 “[a]ny prejudice to Plaintiffs would be minimal, and Plaintiffs would not be placed at a tactical  
2 disadvantage.” *Id.* The court found the potential prejudice to Trinity in denying the stay was  
3 much greater, explaining,

4           Since Trinity would be unable to participate following this Court’s  
5 decision and prior to the conclusion of the bankruptcy proceedings,  
6 Trinity would be prejudiced by its inability to appeal this Court’s  
7 decision or otherwise defend itself either in this Court, the Sixth  
8 Circuit Court of Appeals, or during arbitration. If Trinity can  
9 participate again, depending on this Court’s decision, the Parties may  
10 be forced to relitigate certain matters that were decided in Trinity’s  
11 absence or participate in discovery twice.

12 *Id.* For these reasons, the *Albina* court stayed the action in its entirety pending the termination of  
13 the automatic stay imposed by Trinity’s bankruptcy. *Id.* at \*3.

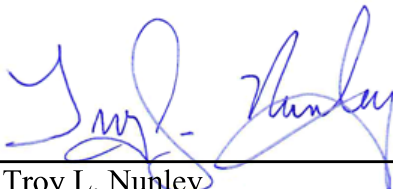
14           The Court is persuaded by the well-reasoned *Albina* decision, which considered facts  
15 nearly identical to those at issue here. As in *Albina*, the parties seem to agree that Trinity’s  
16 bankruptcy is proceeding pursuant to Subchapter V of Chapter 11 of the Bankruptcy Code, which  
17 “was designed to expedite the bankruptcy process for small business debtors to allow them to  
18 reorganize quickly, inexpensively, and efficiently.” *Id.* at \*2. Although Plaintiffs argue recent  
19 developments suggest the bankruptcy may be unable to proceed under the expedited procedures  
20 of Subchapter V, Plaintiffs raise the same general concerns about delay that were rejected in  
21 *Albina*. (See ECF No. 85 at 4–5 (“Delaying this proceeding indefinitely will increase the danger  
22 of prejudice to Plaintiffs resulting from loss of evidence, including the inability of witnesses to  
23 recall specific facts.”)); *Albina*, 2021 WL 3519460, at \*2. The Court concludes Plaintiffs’  
24 general concerns about delay are insufficient, especially considering the significant prejudice  
25 Trinity would suffer in the absence of a stay. *Id.* (“On the other hand . . . a decision limited to  
26 Alieria and Unity would decide issues that affect Trinity.”). More specifically, Plaintiffs do not  
27 dispute that Trinity’s HCSM status is a key issue in Plaintiffs’ claims against Alieria. An analysis  
28 of Trinity’s HCSM status and Alieria’s role in administering plans for Trinity will arguably mirror  
an analysis of Unity’s HCSM status and Alieria’s role in administering plans for Unity. The Court  
believes Trinity should participate in adjudicating these overlapping issues to prevent inconsistent  
decisions and wasted effort. Accordingly, judicial economy weighs in favor of a stay.

**IV. CONCLUSION**

For the foregoing reasons, the Court GRANTS Alier's Motion to Stay. (ECF No. 80.) This action is STAYED and is now ADMINISTRATIVELY CLOSED pending the termination of the automatic stay imposed by Defendant Trinity Healthshare, Inc.'s bankruptcy proceedings. The case may be reopened at the request of the parties.

IT IS SO ORDERED.

September 9, 2021

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Troy L. Nunley  
United States District Judge