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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORLYN DUNCAN, et al.,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., f/k/a ALIERA
HEALTHCARE, INC., a Delaware corporation;
TRINITY HEALTHSHARE, INC., a Delaware
corporation; and ONESHARE HEALTH, LLC,
formerly known as UNITY HEALTHSHARE, LLC
and as KINGDOM HEALTHSHARE MINISTRIES,
LLC, a Virginia limited liability corporation,

Defendants.

Case No. 2:20-CV-00867-TLN-KJN

**PLAINTIFFS' OMNIBUS
REPLY/SUPPLEMENT TO THEIR
MOTIONS FOR FINAL APPROVAL
OF SETTLEMENT AGREEMENT
AND FOR ATTORNEY FEES,
COSTS, AND CLASS
CONTRIBUTION AWARDS**

Hearing

Date: January 11, 2024

Time: 1:30 p.m.

Courtroom: 2

Hon. Troy L. Nunley

I. INTRODUCTION

On August 24, 2023, Plaintiffs filed their Motion for Final Approval of the Settlement Agreement. ECF No. 115. The claims deadline had not yet passed by that date, nor had the deadline for opt-outs or objections passed. Accordingly, Plaintiffs pledged to file this Supplement to their Motion to report to the Court and the Class regarding the status of objections and opt-outs as well as an update on claims processing. Now that the claims deadline has passed, Plaintiffs also request that the Court direct the Claims Processor to consider, process, and adjudicate claims received after the November 13 claims deadline but on or before December 13, 2023 (“Late Claims”), as if they had been timely received. Defendant OneShare has indicated to Class Counsel that it has no objection to the inclusion of Late Claims. Hamburger Decl., ¶5. Finally, this brief serves as the Class’s Supplemental Reply in support of their Motion for Final Approval of Settlement Agreement (ECF Nos.115 and 121) and their Motion for Attorney Fees, Costs, and Class Representative Case Contribution Payments (ECF No. 116). No objection has been filed to either Motion. Hamburger Decl., ¶2.

This Supplement does not repeat the facts and argument in the initial Motions and incorporates them by reference.

II. EVIDENCE RELIED UPON

Plaintiffs rely upon the Declarations of Eleanor Hamburger and Tinamarie Feil in Support of this Supplement to Plaintiffs’ Motions for Final Approval of Settlement Agreement and for Attorney Fees, Costs, and Case Contribution Awards, both filed herewith, the Omnibus Declaration of Richard E. Spoonemore, filed August 24, 2023 (ECF No. 117), and all Declarations of Class Counsel (ECF Nos. 116-2 through 116-8) and all attachments thereto, as well as the evidence and pleadings in the record.

III. FACTS

A. Settlement Fund

Defendant OneShare has been steadily and timely making payments into the Settlement Fund. As of December 19, 2023, the Settlement Fund consists of a total of \$3,446,569.66,

1 including interest. Hamburger Decl., ¶6. For the purposes of this Motion, Plaintiffs assume that
2 OneShare will meet the deadline to complete its payments, and payment from OneShare’s assigned
3 claim in the Alera Bankruptcy will have been made by December 31, 2024, and that the Fund will
4 have a total of at least \$6.5 million to distribute. *Id.*, ¶7.

5 **B. Claims Process**

6 The claims process closed on Sunday, November 12, 2023. ECF No. 114, at 7, ¶19. Since
7 the deadline fell on a Sunday, the Claims Processor accepted claims received on November 13,
8 2023, consistent with federal civil rules. *See* Fed. R. Civ. P. 6(1)(c).

9 A total of 1,795 claims were timely filed (“Timely Claims”) (including all claims that were
10 timely submitted but misdirected to the Court). Feil Decl., ¶4. The total unadjudicated amount of
11 the Timely Claims is \$19,421,058.87. *Id.* A preliminary review of the Timely Claims shows that
12 approximately 45% of the value of the claims is for premiums paid or medical expenses incurred
13 outside of the Class Period. Without any additional adjudication, the Claims Processor has
14 determined that the total value of the Timely Claims, excluding claims outside of the Class Period,
15 is \$10,615,481.49. *Id.*, ¶7(a).

16 **C. No Objections and Only One Opt-Out**

17 No objections were received by the Court, Claims Processor, or Class Counsel by
18 November 13, 2023, or even to date. Hamburger Decl., ¶2. No comment or concern was raised by
19 any state or federal official in response to the CAFA notice. *Id.* Only one class member chose to
20 opt out. *See id.*, *Exh. 1*.

21 **D. Response from Class Members**

22 To the extent class members commented on the adequacy of the settlement, those
23 comments were positive. *See id.*, ¶4. Most comments from class members related to confusion
24 about the claims process. *Id.*

25 Many class members contacted Class Counsel and/or the Claims Processor expressing
26 confusion about the deadline for submission of claims. *Id.* Many were confused because they had
27

1 already submitted claims in either the Trinity/Sharity or Alieria bankruptcies. *Id.* Others were
2 confused about the deadline falling on a Sunday. *Id.* Some class members complained about the
3 notice for the settlement arriving in their spam or junk folders of their emails. *Id.* Others reported
4 that they had moved and did not find out about the settlement until too late. *Id.* Some stated that
5 they required additional time to put together the claims information, particularly after the passage
6 of so many years. *Id.* Some were confused because they did not know whether or when they were
7 Unity or Trinity members, and whether their claim, or a portion of their claim, fell within the Unity
8 class period. *Id.*

9 The Claims Processor and Class Counsel agreed to encourage class members to submit
10 their claims as quickly as possible, indicating that it would be up to the Court to determine whether
11 or not late claims would be considered. Ultimately, Class Counsel concluded that they would
12 request that the Court permit consideration of all Late Claims through December 13, 2023, thirty
13 days after the original deadline. *Id.* Class Counsel has told all callers inquiring about late claims
14 that they should get their claims in as soon as possible but by no later than December 13, 2023. *Id.*
15 At all times, class members filing Late Claims were informed that the decision to allow Late
16 Claims was within the Court's discretion. *Id.*

17 **E. Late Claims**

18 A total of 209 claims were received by the Claims Processor between November 14, 2023,
19 and December 13, 2023 (including Late Claims that were misdirected to the Court by these dates),
20 for an unadjudicated total of \$1,430,979.30. Feil Decl., ¶5. The Claims Processor has conducted a
21 preliminary review of the Late Claims, which shows that approximately 26% of the Late Claims
22 fall outside of the Class Period. Without any additional adjudication, the Claims Processor
23 estimates that the total value of the Late Claims, excluding those outside of the Class Period, is
24 \$1,061,821.97. *Id.*, ¶7(b).

25 The total unadjudicated amount of both Timely and Late Claims is \$21,801,339.06, of
26 which \$11,677,303.46 has been preliminarily determined to fall within the claim period. *Id.*, ¶7(c).

F. Pro Rata Reduction

Class Counsel estimates that the total Settlement Fund, after all payments under the Settlement Agreement are made, will be approximately \$6.64 million. Hamburger Decl., ¶7. Timely and Late Claims submitted for the Class Period, totaling approximately \$11.7 million, exceed the amount of the anticipated Settlement Fund. Accordingly, distributions will likely be made based on a *pro rata* reduction. If only Timely Claims are considered, using this unadjudicated total value of claims, and comparing it to the assumed Settlement Amount, after deducting for attorney fees, litigation costs, cost of class notice and claims administration, and taxes, approximately 42% of the value of valid and approved claims will be paid. Hamburger Decl., ¶8. If both Timely and Late Claims are considered, again using the unadjudicated total value of these claims, approximately 38% of the value of valid and approved Timely and Late Claims will be paid. *Id.*

As the Claims Processor reviews and adjudicates the claims, the actual value for the total adjudicated claims will change, as claims may be denied for a variety of reasons apart from being outside of the Class Period, and claims that initially appear to be outside of the Class Period may prove to be properly included. *See* Hamburger Decl., ¶9; Feil Decl., ¶8. Nonetheless, Class Counsel believes that the presently calculated pro rata reduction of 38-42% is a fair estimate of the likely payment of claims under the Settlement Agreement.

IV. LAW AND ARGUMENT

A. No Objections

The absence of any objections establishes “overwhelming support among class members.” *Norton v. LVNV Funding, LLC*, No. 18-cv-05051-DMR, 2022 U.S. Dist. LEXIS 33001, at *18 (N.D. Cal. Feb. 24, 2022) (quotation omitted). Here, no class member objected, and only a single class member opted out of the class. Hamburger Decl., ¶2, *Exh. 1*. Where there are an exceedingly low number of opt-outs and no objections from class members, this factor weighs in favor of approval. *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015). “[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class

1 presents at least some objective positive commentary as to its fairness.” *Hanlon v. Chrysler Corp.*,
2 150 F.3d 1011, 1027 (9th Cir. 1998).

3 Importantly, no state or federal regulators objected to or even voiced concerns about the
4 settlement. Hamburger Decl., ¶2. Although CAFA does not require a response by state or federal
5 regulators, given the dozens of regulatory actions regarding Defendants Alieria and Trinity, *id.*, the
6 silence by the same regulators regarding this settlement speaks volumes. *See In re LinkedIn User*
7 *Privacy Litig.*, 309 F.R.D. at 589 (inaction by state or federal regulators to CAFA notice favors
8 the settlement).

9 **B. Consideration of Late Claims**

10 The Court has the inherent equitable authority to modify the terms of its Orders when
11 justice requires. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380 (1992) (courts have
12 “flexibility in administering consent decrees”); *Sys. Fed’n No. 91 Ry. Emps.’ Dep’t v. Wright*, 364
13 U.S. 642, 651 (1961); *New York v. Microsoft Corp.*, 531 F. Supp. 2d 141, 169 (D.D.C. 2008).
14 Courts may modify judicially mandated deadlines for court-approved settlements to allow the
15 consideration of late-filed claims. *See, e.g., In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1128
16 (9th Cir. 1977) (late filed claims permitted by the trial court if they were “timely set in motion” by
17 the deadline); *Zients v. La Morte*, 459 F.2d 628, 630 (2d Cir. 1972) (the court’s “traditional equity
18 powers” permits the modification of orders to allow processing of late claims); *Welch & Forbes,*
19 *Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 233 F.3d 188, 191 (3d Cir. 2000). Class
20 Counsel has served as class counsel in numerous settlements in which the courts have allowed for
21 the processing of late-filed claims. Hamburger Decl., ¶10.

22 Here, where class members expressed confusion regarding the deadline for the filing of
23 claims, and the submission of claims required extraordinary effort given the lengthy passage of
24 time, Late Claims should be permitted, provided they were received by December 13, 2023.
25 Moreover, Defendants do not object to the proposed Order, which directs the Claims Processor to

administer Late Claims received by December 13, 2023, as if they were timely received. Hamburger Decl., ¶5.

C. Attorney Fees, Costs, and Case Contribution Payments Should Be Approved

Plaintiffs timely moved for an award of attorney fees, costs, and case contribution payments on August 24, 2023. ECF No. 116. That motion was supported by declarations of Class Counsel. ECF Nos. 116-2 through 116-8 and 117. No objection to the motion was filed or received.

For the reasons set forth in Plaintiffs' Motion, fees of 28% of the Settlement Fund, costs of \$61,521.42, and case contribution payments totaling \$10,000 to each of the class representatives should be awarded. Class Counsel has estimated the amount of the Settlement Funds that will be available for distribution to the class members, after all approved fees, costs, and payments are made, at approximately 38-42% of their unadjudicated claims. *See* Hamburger Decl., ¶8.

D. Anticipated Disbursements

The proposed Order allows the Claims Processor, in consultation with Class Counsel, to disburse Settlement Funds over time. The Claims Processor and Class Counsel: (a) anticipate that upon final approval of the Settlement Agreement, Attorney Fees, Litigation Costs, and Case Contribution Awards, and if no appeal is taken, the following payments from the Settlement Fund will occur; and (b) request approval of the following:

(1) The Claims Processor will reimburse itself for the cost of class notice and claims administration through December 13, 2023, totaling \$ 20,070. *Feil Decl.*, ¶10.

(2) The Claims Processor will pay Class Counsel's court-approved litigation costs of \$61,521.42. *See* ECF No. 116 at 20, and ECF No. 117, ¶27 and 117-2.

(3) The Claims Processor will pay the court-approved Case Contribution awards.

(4) The Claims Processor will pay an interim attorney fee award to Class Counsel, representing 28% of the total amount of the Settlement Fund received to date (\$3,446,569.66), or \$965,039.51, and any additional funds at a final disbursement to ensure that Class Counsel receives a total of 28% of the Settlement Fund. *See* Hamburger Decl., ¶6.

1 (5) The Claims Processor will complete adjudication of the Timely and Late Claims
2 and inform Claimants about the result of the adjudication and their right to arbitration if they
3 disagree with the decision.

4 (6) Once the claims have been adjudicated and the arbitrations, if any, completed, the
5 Claims Processor will make an Initial Disbursement to Claimants for their pro rata share of the
6 remaining funds, reserving sufficient funds to pay for additional administration of the Settlement
7 Fund (including a second disbursement of funds) and taxes. The Claims Processor has discretion
8 to delay this Initial Distribution until after December 31, 2024, and complete only a single
9 distribution, if deemed necessary and/or appropriate.

10 On or after December 31, 2024, the Claims Processor and Class Counsel will have the
11 discretion to determine the timing of any Subsequent Disbursement(s) based upon whether
12 Defendant OneShare completes its payment obligations by December 31, 2024. Class Counsel will
13 report to the Court when all disbursements are completed and the Settlement Fund is exhausted.

14 V. CONCLUSION

15 Plaintiffs, on behalf of the Class, respectfully request that the Court:

- 16 (a) finally approve the Settlement Agreement;
- 17 (b) direct the Claims Processor to accept and adjudicate Late Claims received through
18 December 13, 2023, as if they were timely received;
- 19 (c) authorize the Claims Processor to disburse the Settlement Amount to pay approved
20 claims, attorney fees, litigation costs, the cost of claims administration and class notice, and taxes
21 consistent with the approved Settlement Agreement and as set forth in Section C above; and
- 22 (d) order Class Counsel to submit a final report regarding the distribution of the
23 Settlement Amount when all disbursements are completed.
- 24
- 25
- 26
- 27

DATED: December 22, 2023.

/s/ Eleanor Hamburger

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORLYN DUNCAN, BRUCE DUNCAN,
REBECCA WHITE, f/k/a REBECCA SMITH,
ELLEN LARSON; JARED BEARD, JAIME
BEARD, HANNA ALBINA, AND AUSTIN
WILLARD, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., f/k/a ALIERA
HEALTHCARE, INC., a Delaware corporation;
TRINITY HEALTHSHARE, INC., a Delaware
corporation; and ONESHARE HEALTH, LLC,
formerly known as UNITY HEALTHSHARE, LLC
and as KINGDOM HEALTHSHARE MINISTRIES,
LLC, a Virginia limited liability corporation,

Defendants.

Case No. 2:20-CV-00867-TLN-KJN

[PROPOSED] ORDER

- (1) FINALLY APPROVING
SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS
PURSUANT TO THE
SETTLEMENT AGREEMENT;
- (3) APPROVING PAYMENT OF
ATTORNEY FEES,
LITIGATION COSTS AND CASE
CONTRIBUTION AWARDS;
- (4) ESTABLISHING A LATE CLAIM
DEADLINE; AND
- (5) ORDERING FINAL REPORT

Hearing

Date: January 11, 2024

Time: 1:30 p.m.

Courtroom: 2

Hon. Troy L. Nunley

I. BACKGROUND

On June 13, 2023, the Court preliminarily approved an agreement of a class-wide settlement of claims against Defendant OneShare Health, LLC. ECF Nos. 111 and 114 (amending the 6/13/23 Order). The Court directed the Claims Processor to issue notice to the Settlement Class. ECF No. 114, ¶¶8–9. Class Notice and Claim Form Materials were emailed and mailed in accordance with the Court’s Order and Settlement Agreement on or about August 4 through September 13, 2023. ECF No. 120, ¶4. The Claims Processor updated notice recipients’ addresses when the notices were returned and re-mailed the notices to all updated addresses located. *Id.*

Class Counsel also established a settlement webpage within 30 days of the date of this Order that contained the Class Notice, the Claim Form Materials, and key filings in the litigation. ECF No. 117, ¶17. The website includes Plaintiffs’ Motion for Attorney Fees, Litigation Costs, and Contribution Award. *See* <https://www.symslaw.com/unitysettlement> (last visited 12/21/23). Defendant OneShare provided the required notice under the Class Action Fairness Act (“CAFA”). ECF No. 112.

The Order also provided that class members who wished to comment on or object to the proposed Agreement were required to do so by November 12, 2023. ECF No. 114, ¶14. Class members were informed of their rights and of this deadline in the notices that were mailed to them and on Class Counsel’s website.

The Order further scheduled a final settlement hearing, which was held on January 11, 2024, at 1:30 p.m. PT, to consider objections and comments by class members and to determine whether the proposed Agreement is fair, reasonable, adequate, and should be approved by the Court. *Id.*, ¶20.

II. FINDINGS AND CONCLUSIONS RELATED TO MOTION FOR FINAL APPROVAL OF SETTLEMENT

1. The parties reached a Settlement Agreement resolving claims brought in three nearly identical class action lawsuits brought against OneShare Health LLC (“OneShare”), formerly known as Unity Healthshare, LLC (“Unity”), on behalf of former members of both Unity

1 and The Alieria Companies, Inc. (“Alieria”). *See Rebecca Smith, et al. v. The Alieria Companies, et*
2 *al.*, No. 1:20-cv-02130-RBJ, in the United States District Court for the District of Colorado (the
3 “Colorado Lawsuit”), and *Hanna Albina, et al. v. The Alieria Companies, Inc., et al.*, Case No.
4 5:20-CV-00496-DCR, in the United States District Court for the Eastern District Kentucky (the
5 “Kentucky Lawsuit”), in addition to this case.

6 2. Alieria is in bankruptcy, and its plan of liquidation was recently confirmed. ECF
7 No. 117, ¶8. Recovery for Unity members from Alieria will occur pursuant to the Alieria Plan of
8 Liquidation. *Id.*

9 3. The parties negotiated a nationwide Settlement Agreement to resolve all claims of
10 Unity members against OneShare that will ensure some financial relief to class members who
11 submit a claim. Specifically, the settlement requires:

- 12 • OneShare to make an initial payment of \$3 million into a Settlement Trust Account;
- 13 • OneShare to pay another \$3-\$7 million to the Trust Account over time according
14 to a detailed payment plan in the Settlement Agreement;
- 15 • Assignment of OneShare’s \$3.75 million claim in the Alieria Bankruptcy to the
16 Class;
- 17 • OneShare must cooperate with the Class and the Alieria Liquidating Trust to obtain
18 further compensation for class members; and
- 19 • Class members are entitled to an opportunity to correct their claim and participate
20 in an arbitration process in the event of a dispute over whether a claim should be
21 paid and/or the amount of such payment.

22 Plaintiffs provided a full description of the lengthy history of the case and settlement in their
23 Motion for Certification of Settlement Class and Preliminary Approval of Settlement. ECF
24 No. 100-1.

25 4. As of December 19, 2023, OneShare has paid a total of \$3,366,666.63 into the
26 Settlement Fund that is held in a Settlement Trust Account, pursuant to the Settlement Agreement.
27 Together with accrued interest, the amount of the Settlement Fund, as of December 19, 2023, is
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1 \$3,446,569.66. The Court finds that the Settlement Fund is sufficient to make an Initial
2 Distribution and to pay costs and expenses before all sums under the Settlement Agreement are
3 received, and that Subsequent Distribution(s) may be made after the remaining sums due under
4 the Settlement Agreement are received.

5 5. The Court's Preliminary Approval Order appointed BMC Group Inc. ("BMC") as
6 Claims Administrator and directed the parties to work with BMC to email and mail the approved
7 Class Notice package to Settlement Class Members. ECF No. 114. The parties worked with BMC
8 and Alieria's bankruptcy counsel to locate what is believed to be a list of former Unity/Alieria
9 enrollees.

10 6. On August 4, 2023, BMC emailed the court-approved Class Notice package to the
11 list provided by Alieria's bankruptcy counsel. ECF No. 120, ¶¶2–4. BMC has also mailed the Class
12 Notice package to any class members for whom it does not have a valid, working email, when a
13 mailing address can be located. *Id.*

14 7. Defendant timely provided notices and materials required under the Class Action
15 Fairness Act ("CAFA"), 28 U.S.C. §1715(b). ECF No. 112.

16 8. No class members objected to the Settlement Agreement. Hamburger Decl., ¶2.
17 Only one class member opted out of the Settlement Agreement. *Id.* No comments or concerns were
18 received from any of the state attorneys' general offices. *Id.*

19 9. Class Counsel and BMC received hundreds of calls and emails inquiring about the
20 settlement and the claims process. *Id.*, ¶¶3–4. All were positive about the settlement, although
21 many contacts were related to the submission of late claims. *Id.*

22 10. A total of 1,795 claims were received by the Claims Administrator by
23 November 13, 2023 (the deadline of November 12, 2023, fell on a Sunday, so the Claims
24 Administrator properly accepted claims on November 13, 2023, as timely). The total value of these
25 claims, before they are adjudicated by the Claims Administrator, is approximately \$19.4 million.
26 Based upon the initial review of these claims, a significant portion of the claims fall outside of the
27
28

1 Class Period and are thus ineligible for compensation. *Id.* Eliminating the claims outside of the
2 Class Period, the total value of the claims (without further adjudication) is \$10,615,481.49.

3 11. A total of 209 additional claims were received by the Claims Administrator after
4 November 13, 2023, through December 13, 2023 (30 days after the original deadline) (“Late
5 Claims”). The total value of these Late Claims before they are adjudicated by the Claims Processor
6 is approximately \$2.38 million. Eliminating claims outside the Class Period, the total value of all
7 claims, including the Late Claims, is \$11,677,303.46. Based upon the claims received, no claims
8 will be paid in their valid and approved amounts, and all claims will be paid on a *pro rata* basis.

9 12. Class Counsel and BMC represent that any partial or full denial of claims will
10 include information on how the claimant may submit additional information and the right to
11 arbitrate any dispute over the payment of claims. Feil Decl., ¶8.

12 13. Rule 23(e) provides that “a class action shall not be dismissed or compromised
13 without the approval of the court....” Compromise and arbitration of complex litigation is
14 encouraged and favored by public policy. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th
15 Cir. 1999).

16 14. A presumption of fairness and adequacy attaches to a class action settlement
17 reached in arm’s-length negotiations by experienced class counsel after meaningful discovery. *See,*
18 *e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982); *Pickett v.*
19 *Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 209, 35 P.3d 351 (2001).

20 15. The following factors are generally considered when determining whether a
21 settlement is fair, adequate, and reasonable: the likelihood of success by plaintiff; the amount of
22 discovery or evidence; the settlement terms and conditions; recommendation and experience of
23 counsel; future expense and likely duration of litigation; recommendation of neutral parties, if any;
24 number of objectors and nature of objections; and the presence of good faith and absence of
25 collusion. *Officers for Justice*, 688 F.2d at 625.

26 16. Based upon these factors, the Court finds that the Agreement is fair, reasonable,
27 and in the best interests of the class. The requirements of Fed. R. Civ. P. 23 have been satisfied.
28

1 With the representations by Class Counsel and BMC that claimants whose claims are not approved
2 in full will have the opportunity to (a) submit additional information and (b) participate in
3 arbitration, due process is also satisfied.

4 17. Specifically, the Court concludes that the Agreement was the result of arm's-length
5 bargaining. It was reached after sufficient discovery and other litigation activity, and after
6 mediation with Judge Thomas B. Griffith (D.C. Cir., Ret.). Although the Plaintiffs believed that
7 their claims had a strong likelihood of success, they faced years of appeals related to the validity
8 of the arbitration claims in the Unity/Aliera guide before the merits of the dispute could be reached.
9 The litigation likely involved complex questions of federal and state insurance regulation,
10 consumer protection law, damages calculations, and class certification issues. Given the
11 bankruptcy of Aliera, there was a significant risk that even if Plaintiffs were successful on the
12 merits, they might be unable to collect against OneShare. The Court finds that there is no evidence
13 of collusion between the parties, and the Agreement was reached in good faith.

14 18. The class was provided with adequate notice, and due process has been satisfied in
15 connection with the distribution of the Class Notice. No objections to the proposed Agreement
16 were received by the Court or any of the parties.

17 **III. FINDINGS AND CONCLUSIONS RELATED TO PLAINTIFFS'**
18 **MOTION FOR ATTORNEY FEES, LITIGATION COSTS, AND**
19 **CASE CONTRIBUTION AWARDS**

20 19. Plaintiffs moved for payment of attorney fees, litigation costs, and case contribution
21 awards on August 24, 2023, in compliance with the schedule the Court specified in its Order
22 granting preliminary approval. ECF No. 116. No objection to this motion has been filed.

23 20. Where a class action settlement creates a common fund, as has been created here,
24 the Court has discretion to choose either the percentage-of-the-fund or lodestar method in
25 calculating the fee award. *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir. 2002).
26 Typically, however, courts apply the percentage-of-the-fund method where the settlement involves
27 a common fund. *Kinney v. Nat'l Express Transit Servs. Corp.*, Case No. 2:14-cv-01615-TLN-DB,
28

1 2018 U.S. Dist. LEXIS 10808, *11 (E.D. Cal. Jan. 22, 2018). The Court adopts the percentage-of
2 -the-fund method here.

3 21. The Court concludes that 28% is a reasonable percentage for payment of attorney
4 fees in this settlement. In so concluding, the Court has considered the following facts:

5 (a) Class Counsel obtained an excellent result through this settlement. *See In re*
6 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377–78 (N.D. Cal. 1989) (“nearly all common fund
7 awards range around 30%”). The settlement results in a substantial monetary benefit for the Class
8 by creating a fund of a minimum of \$6 million over time. The Settlement Fund currently has over
9 \$3.4 million and is sufficient for an Initial Distribution to class members. OneShare is obligated to
10 pay an additional \$2.6 million into that Settlement Fund if paid in full by December 31, 2024, but
11 that amount will increase over time, incentivizing it to pay promptly. The settlement also requires
12 assignment of a \$3.75 million proof of claim in the Alera bankruptcy with an estimated value of
13 between \$562,500 and \$1,312,500. Hamburger Decl., ¶7.

14 (b) Class Counsel undertook a significant risk in taking on these class action lawsuits
15 on a contingent basis, and paid costs and expenses for which they would not be entitled to
16 reimbursement absent a recovery. The claims that Defendants were selling illegal insurance struck
17 at the heart of Defendants’ business model, and Class Counsel expected Defendants to mount a
18 vigorous defense to those claims. There was also a substantial risk that litigation could leave
19 Defendants without the means to pay a judgment, and indeed, two of the Defendants are in
20 bankruptcy.

21 (c) This case is complex and required a great deal of skill in achieving the settlement,
22 including the navigation of different states’ insurance laws, arbitration, a variety of plans, and the
23 bankruptcy of two of the Defendants, including the bankruptcy of Alera, which possessed the
24 relevant member data.

25 (d) The settlement generates benefits beyond the cash settlement through OneShare’s
26 cooperation agreement with respect to the Aleira bankruptcy.

1 (e) Class Counsel has taken special efforts to assist class members who have large
2 unpaid medical bills.

3 22. The Court also finds that 28% is reasonable after performing a lodestar cross-check.
4 The total common Settlement Fund that will be created, assuming OneShare's early payment of
5 \$6 million and an estimated payment of 15% of OneShare's \$3.75 claim in the Alera bankruptcy,
6 will be \$6,562,500, and applying 28% to that amount, the total attorney fees will be \$1,837,500.
7 Class Counsel have provided declarations outlining their hours spent in connection with the three
8 class action lawsuits settled here, and their respective hourly rates. The total lodestar is
9 \$2,130,428.04. The Court finds this reasonable for the extensive work performed to achieve the
10 settlement here, and considering additional work not included in the lodestar that will be required
11 in order to finalize the settlement. That number represents a negative multiplier from the 28%
12 award. Even if the hourly rates were reduced by 20% so that the lodestar would be reduced to
13 \$1,704,342.43, the multiplier would be only 1.07, well within reason.

14 23. Class Counsel are entitled to 28% of the Settlement Fund under the terms of the
15 Settlement Agreement, subject to Court approval. That approval is granted, and the Court awards
16 28% of the total Settlement Fund paid as attorney fees to Class Counsel.

17 24. Class Counsel have paid costs of \$61,521.42 out of pocket. The Court has reviewed
18 the costs and finds them reasonable.

19 25. The Settlement Agreement provides that upon the occurrence of the conditions set
20 forth in Section 2 of that Agreement, Named Plaintiffs Corlyn and Bruce Duncan, Rebecca White,
21 Ellen Larson, Jaime and Jared Beard, Hanna Albina, and Austin Willard shall be awarded \$10,000
22 each as described in the Settlement Agreement, subject to the Court's approval. ECF No. 110-2,
23 §13.2. That approval is granted, and the Claims Administrator is ordered to pay the approved case
24 contribution awards to the Named Plaintiffs as required by the Settlement Agreement.

25 26. The Settlement Agreement provides that upon the occurrence of the conditions set
26 forth in Section 2 of the Settlement Agreement, the Claims Administrator is authorized to pay the
27 approved attorney fees and litigation costs to Class Counsel, subject to Court approval. ECF
28

No. 100-2, §13.1. That approval is granted. Specifically, the Claims Administrator shall pay Class Counsel's approved litigation costs with the Initial Disbursement of funds from the Settlement Fund. Additionally, the Claims Processor shall pay Class Counsel on *pro rata* basis whenever distributions are made to class members (*i.e.*, if the Claims Processor has \$3 million to distribute, 28%, or \$840,000, shall be distributed to Class Counsel as attorney fees). Whenever additional distributions are made to Claimants, the Claims Administrator shall distribute 28% of the gross distributions to Class Counsel. The Claims Administrator shall ensure that the total payment of attorney fees to Class Counsel equals 28% of the total Settlement Fund.

IV. APPROVAL OF DISBURSEMENTS AND PAYMENTS TO CLASS MEMBERS

27. To facilitate payments from the Settlement Fund, Class Counsel is authorized to delegate authority to the Claims Administrator to make all necessary distributions from the Settlement Fund required pursuant to this Order and/or the Settlement Agreement.

28. Upon the occurrence of the conditions set forth in Section 2 of the Settlement Agreement, the Court authorizes the payment of valid and approved class member claims. The Court authorizes the disbursement of these funds from the Settlement Fund and authorizes the Claims Administrator, in consultation with Class Counsel, to make disbursements on a *pro rata* basis in whole or in part until all of the funds are distributed, consistent with the terms of the Settlement Agreement.

29. Claimants must negotiate their checks within 90 days of issuance. The Claims Processor may extend this deadline on request from a class member and issue replacement checks for lost checks without further approval of the Court or additional cost to the claimant, provided the cost of replacing the check does not exceed the value of the lost check.

V. CLASS NOTICE AND CLAIMS ADMINISTRATION COSTS

30. The Claims Administrator is authorized to reimburse itself for the cost of Class Notice and claims administration through December 15, 2023, totaling \$20,070.

31. The Claims Administrator may reimburse itself for the cost of claims administration, taxes, etc. incurred after December 15, 2023, after notifying Class Counsel regarding such payments at least 14 days in advance.

VI. AUTHORIZATION OF LATE-FILED CLAIMS

32. The Claims Administrator reports that 209 claims were filed within 30 days of the deadline for submitting claims (“Late Claims”). The estimated amount of the Late Claims is \$1,061,821.97. Adjudication and payment of Late Claims may result in a slight reduction of the *pro rata* payments to other class members. Specifically, Class Counsel anticipates that the reduction will be approximately 4%. The Court concludes that this reduction does not unduly prejudice the class members who timely filed their claims. Courts have equitable authority to permit the inclusion of Late Filed claims. *Cf. Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1993).

33. The Court orders the Claims Administrator to accept all Late Claims filed through December 13, 2023. The Claims Administrator is ordered to adjudicate and pay those claims as if they were timely filed.

VII. CLASS COUNSEL’S FINAL REPORT AND DISMISSAL

34. Class Counsel shall submit a final report to the Court regarding claims processing and disbursement of funds from the Settlement Fund by no later than 30 days after the Settlement Fund is fully funded and the Claims Administrator has processed and paid all valid and approved claims, including any Late Claims authorized for payment by the Court, and any claims allowed as a result of the arbitration process. The report shall detail the payment of court-awarded attorney fees and litigation costs, case contribution awards, payment of claims, as well as any other activities necessary to close the Settlement Fund. At the same time, Class Counsel shall file a proposed Order of Dismissal.

VIII. ORDER

It is hereby ORDERED that:

1. The Settlement Agreement is approved as fair, reasonable, and adequate under Fed. R. Civ. P. 23, and its terms shall bind all class members.

2. Class Counsel are awarded attorney fees of 28% of the Settlement Fund and litigation costs of \$61,521.42, as set forth above. These amounts are ordered to be paid by the Claims Administrator from the Settlement Fund.

3. The Claims Administrator is ordered to accept, adjudicate, and pay all late-filed claims and emailed claims received by December 13, 2023, as if the claims were timely received.

4. The Claims Administrator is ordered to make payments and distribute checks to class members and the Named Plaintiffs in accordance with the Agreement and this Order, as approved by the Claims Administrator or on appeal by the Arbitrator, in whole or in part based upon the distributions to be made. These amounts are authorized to be paid from the Settlement Fund.

5. Case contribution awards of \$10,000 each to Named Plaintiffs Corlyn and Bruce Duncan, Rebecca White, Ellen Larson, Jaime and Jared Beard, Hanna Albina, and Austin Willard shall be awarded as described in the Settlement Agreement.

6. Class Counsel is ordered to submit a Final Report in accordance with the Agreement and this Order.

7. The Court shall retain jurisdiction over this matter until the Settlement Amount is fully disbursed and an Order of Dismissal is entered.

IT IS SO ORDERED.

DATED: _____, 2024.

Troy L. Nunley
United States District Judge