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9 THE ALIERA COMPANIES INC.

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 CORLYN DUNCAN and BRUCE
13 DUNCAN, individually and on behalf of all
14 others similarly situated,

15 Plaintiffs,

16 v.

17 THE ALIERA COMPANIES INC., formerly
18 known as Alieria Healthcare, Inc., a Delaware
19 corporation; TRINITY HEALTHSHARE,
20 INC., a Delaware corporation; and
21 ONESHARE HEALTH, LLC, formerly
22 known as UNITY HEALTHSHARE, LLC
23 and as KINGDOM HEALTHSHARE
24 MINISTRIES, LLC, a Virginia limited
25 liability corporation,

26 Defendants.

CASE NO. 2:20-cv-867-TLN-KJN

**MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO
COMPEL ARBITRATION**

Hearing

Date: October 29, 2020

Time: 2:00 PM

Ctrm: 2

Hon. Troy L. Nunley

27 Defendant The Alieria Companies Inc. ("Alieria") moves this Court to dismiss Plaintiffs'
28 Amended Complaint without prejudice because it is evident from the Amended Complaint that
Plaintiffs Corlyn and Bruce Duncan ("the Duncans") have not complied with a condition precedent
to bringing this suit -- a contractual obligation to mediate their claims with Defendants.
Alternatively, if this Court decides not to dismiss this case, Alieria moves under 9 U.S.C. §§ 3-4 for
the Court (i) to compel Plaintiffs to submit their claims to arbitration, and (ii) then either to stay all
proceedings in this case during the pendency of the arbitration proceedings, or dismiss the case. In

1 that situation, the arbitrator can decide whether arbitral proceedings should be dismissed or stayed
2 until mediation first occurs. And, the arbitrator can decide all other issues between the parties.

3 **I. FACTUAL & PROCEDURAL BACKGROUND**

4 Plaintiffs filed suit alleging state law claims based on the false contention that Plaintiffs
5 purchased health insurance from Alera. (Doc. 19 at 2.) But Plaintiffs in fact never purchased
6 insurance from Alera. Rather, Plaintiffs purchased a non-insurance product that included
7 membership in the healthcare sharing ministry ("HCSM"), first of Unity HealthShare ("Unity") and
8 then of Trinity Healthshare, LLC ("Trinity"), both separate companies from Alera. (K.
9 Kromodimedjo Decl. ¶¶ 4-5, 6, 13 (hereinafter "K. Decl."), attached hereto as Ex. A.) Alera or its
10 subsidiaries was the administrator for the HCSMs. (*See id.* at ¶¶ 4-5.)

11 Plaintiffs allege that they enrolled in AleraCare Comprehensive Gold offered by Unity on
12 November 28, 2017, with membership effective January 1, 2018. (Doc. 19, ¶ 69.) Upon joining,
13 Plaintiffs received a Unity Membership Guide. (*Id.* ¶ 67; Doc. 19-5.) The Membership Guide
14 contains a multi-tiered dispute resolution provision. (Doc. 19-5 at 12; K. Decl., ¶ 9.) The Duncans
15 did not notify Alera of any objections they had to the arbitration provisions in the Member Guide
16 nor complain that they felt the arbitration provisions were unfair. (K. Decl., ¶ 11.) The first tiers
17 require internal appeals. (*Id.* ¶ 9.) Should those fail, the dispute resolution provision provides for
18 mediation and then, if necessary, "legally binding arbitration." (*Id.*) In 2019, the Duncans changed
19 their enrollment from Unity to Trinity's HCSM. (Doc. 19, ¶ 72.) The Duncans again received a
20 Member Guide, this time for Trinity's HCSM, detailing virtually identical alternative dispute
21 resolution procedures. (*Id.* ¶ 70; Doc. 19-4; K. Decl., ¶ 16.) Again, the Duncans did not notify
22 Alera of any objections they had to the arbitration provisions in the Member Guide nor complain
23 that they felt the arbitration provisions were unfair. (K. Decl., ¶ 18.) The Duncans affirmed their
24 membership and assent to the respective Member Guides by making monthly payments after
25 receiving the Member Guides. (Doc. 19, ¶ 75; K. Decl., ¶¶ 7, 14.)

26 Ms. Duncan alleges that she needed surgery and that she obtained some form of advance

1 approval from Alera for the surgery. (Doc. 19, ¶ 77.) Alera and/or Trinity have paid some costs of
2 the surgery, but Ms. Duncan states that she has been left "with a hospital bill of over \$70,000." (*Id.*
3 ¶ 78.) The Duncans claim to have attempted to appeal the decision by phone. (*Id.* ¶ 79.) They
4 further state that, after receiving correspondence from Alera regarding the surgery and the bases
5 for denying payment for it, they "submitted additional information in support of their appeal,"
6 although it is unclear to whom or how. (*Id.*) The Duncans did not complete the appeals process, or
7 engage in mediation or arbitration before filing this lawsuit. (*See* K. Decl., ¶¶ 12, 17.)

8 Plaintiffs' transactions with Alera, Unity, and Trinity involve interstate commerce. (K.
9 Decl., ¶¶ 19-20.) Alera receives membership contributions in Georgia from HCSM members
10 across the country on behalf of Trinity (and previously Unity). (*Id.*) Alera facilitates approved
11 payments to healthcare providers across the country. (*See id.*) In this specific case, Alera, a
12 Georgia company, accepted contributions from the Duncans sent from California on behalf of
13 Unity and Trinity, sent payments from Georgia to Plaintiffs' healthcare providers in California, and
14 exchanged information with Plaintiffs across state lines. (*See id.*)

15 **II. ARGUMENT**

16 **A. This Case Should Be Dismissed Without Prejudice Because Plaintiffs Failed to** 17 **Mediate Their Disputes.**

18 The Duncans never attempted to mediate their disputes with Unity, Trinity, or Alera. (K.
19 Decl., ¶¶ 12, 17.) Their Amended Complaint never suggests otherwise. (Doc. 19.) This means that
20 their claims are due to be dismissed without prejudice for failure to comply with a condition
21 precedent in their agreements.

22 Failure to mediate a dispute pursuant to an agreement to mediate warrants dismissal of
23 litigation. *Delamater v. Anytime Fitness, Inc.*, 722 F. Supp. 2d 1168, 1180–81 (E.D. Cal. 2010);
24 *Brosnan v. Dry Cleaning Station Inc.*, No. C-08-02028 EDL, 2008 WL 2388392, at *1 (N.D. Cal.
25 June 6, 2008); *B & O Mfg., Inc. v. Home Depot U.S.A., Inc.*, No. C 07-02864 JSW, 2007 WL
26 3232276, at *8 (N.D. Cal. Nov. 1, 2007). Where a contract requires mediation followed by

1 arbitration, the strong federal principles favoring arbitration weigh in favor of dismissal. *RLED,*
2 *LLC v. Dan Good Distrib. Co.*, No. CIV. S-08-851 LKK/DAD, 2008 WL 11389039, at *6 (E.D.
3 Cal. Aug. 29, 2008) (dismissing claims subject to mediation and arbitration). This is a result
4 "apparently uniformly reached by courts of this circuit." *Id.* at *6 n.6.

5 While Plaintiffs may attempt to avoid this precedent by claiming they did not receive the
6 Member Guides until after they enrolled, this effort must fail. Plaintiffs affirmed their agreement to
7 mediate by making continued voluntary payments under the Member Guides.¹ (*See* K. Decl., ¶¶ 7,
8 14; Doc. 19-4 at 3 and 19-5 at 4 (reflecting that monthly share payments are voluntary).) The
9 "reasonable meaning of their words and acts, and not their unexpressed intentions or
10 understandings," indicates that they assented to the terms of the Member Guides, including the
11 alternative dispute resolution procedures. *See Mangahas v. Barclays Bank Del.*, No. SACV 16-
12 00093 JVS, 2016 WL 11002179, at *2 (C.D. Cal. May 9, 2016) (citation omitted) (enforcing
13 agreement to arbitrate based on California law and finding of mutual assent manifested by
14 objective acts, including assent to terms and conditions provided after initial credit card
15 application). *See also Gonzales v. Credit One Bank, N.A.*, No. 19-CV-00733-DAD-BAM, 2020
16 WL 1274268, at *4 (E.D. Cal. Mar. 17, 2020) (compelling arbitration where plaintiff received
17 arbitration agreement after signing up for credit card). Here, if Plaintiffs did not assent to the
18 dispute resolution procedures in the Member Guides, then they could have terminated their
19 enrollment. Instead, by all objective measures, they manifested their assent to the alternative
20 dispute resolution procedures by making monthly sharing contributions and by receiving the
21 benefits of provider payments relating to their medical expenses. (Doc. 19-12, at 2.)

22 Plaintiffs also cannot reasonably allege that the dispute resolution procedures set forth in
23 the Member Guides will not resolve their claims. Certainly the assertion that Ms. Duncan was
24 improperly denied payment for the claims she filed is grist for the dispute resolution mill – there is
25

26 ¹ Additionally, the Duncans received the Member Guide prior to the effective date of their
27 membership. (*See* K. Decl., ¶¶ 6, 7, 13, Ex. 1.)

1 a multi-step process (including mediation) designed to resolve precisely those claims. The
2 alternative claims can also be resolved through mediation. Thus, Plaintiffs' claims should be
3 dismissed without prejudice at the outset, because they failed to comply with the mediation
4 requirement.

5 **B. Alternatively, This Matter Should Be Sent To Arbitration.**

6 This Court is not an appropriate forum for the Duncans to maintain their claims for another
7 fundamental reason. Their agreements with Unity and Trinity contain a binding arbitration
8 provision. (See K. Decl., ¶¶ 9, 16; Doc. 19-4 at 18-19; Doc 19-5 at 12-13.) So, if the Court does
9 not dismiss due to the Duncans' failure to mediate, this Court should at least compel them to submit
10 all their claims to arbitration. The arbitrator can then decide whether the Duncans' claims can
11 proceed until a mediation occurs. See *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 35
12 (2014) (arbitrators usually decide whether pre-arbitration procedural requirements have been
13 followed).

14 Some background is needed to understand why arbitration should be compelled here. For
15 centuries, there was a widespread judicial (and legislative) antipathy to arbitration agreements.
16 *Hall Street Assoc., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008). When Congress passed the
17 Federal Arbitration Act ("FAA") in 1925, "it was 'motivated, first and foremost, by a desire' to
18 change this anti-arbitration rule," *Allied Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270-71
19 (1995) (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220 (1985)), and "to overrule
20 the judiciary's longstanding refusal to enforce agreements to arbitrate." *Byrd*, 470 U.S. at 219-20.
21 Congress therefore enacted the FAA in order to place arbitration agreements "'upon the same
22 footing as other contracts, where [they] belong[]." *Id.* at 219 (quoting H.R. Rep. No. 96, 68th
23 Cong., 1st Sess., 1 (1924)).

24 The FAA accomplishes these purposes by establishing that a written arbitration provision
25 contained in a "contract evidencing a transaction involving commerce ... shall be valid,
26 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation

1 of any contract." 9 U.S.C. § 2. The Act mandates that "the court shall make an order directing the
2 parties to proceed to arbitration in accordance with the terms of the agreement," upon application
3 of one of the parties, if there has been a "failure, neglect, or refusal of another to arbitrate under a
4 written agreement for arbitration." 9 U.S.C. § 4 (emphasis added). The Act also provides that a
5 court "shall" stay its proceedings if it is satisfied that an issue before it is arbitrable under the
6 parties' agreement "until such arbitration has been had in accordance with the terms of the
7 agreement." 9 U.S.C. § 3 (emphasis added). By its terms, "the Act leaves no place for the exercise
8 of discretion by a [trial] court, but instead mandates that [trial] courts shall direct the parties to
9 proceed to arbitration on issues as to which an arbitration agreement has been signed." *Byrd*, 470
10 U.S. at 218 (emphasis in original) (citing 9 U.S.C. §§ 3, 4). To abide by this Congressional
11 mandate, courts must "rigorously enforce agreements to arbitrate." *Shearson/American Express*,
12 *Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (quoting *Byrd*, 470 U.S. at 221).²

13 Section 2 of the FAA states that such an agreement is enforceable "save upon such grounds
14 as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. But this "saving
15 clause" does not allow for "defenses that apply only to arbitration or that derive their meaning from
16 the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S.
17 333, 339 (2011). A state law or rule forbidding or limiting arbitration can find no help from the
18 "saving clause" of section 2 of the FAA if it "prohibits outright the arbitration of a particular type
19 of claim." *Id.* at 341. Nor can a state law or rule be saved if it would "interfere[] with fundamental
20 attributes of arbitration." *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1418 (2019) (citing
21 *Concepcion*, 563 U.S. at 344); *see also Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct.

22
23 ² The FAA actually accomplishes much more than merely creating a mechanism to enforce
24 an arbitration agreement. It establishes "a liberal federal policy favoring arbitration agreements" as
25 a preferred method of dispute resolution. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*,
26 460 U.S. 1, 24 (1983). This federal policy favoring arbitration is strong, so strong that it preempts
27 any state law "to the extent that [the state law] stands as an obstacle to the accomplishment and
28 execution of the full purposes and objectives of Congress." *Volt Info. Scis., Inc. v. Bd. of Trs. of*
Leland Stanford Junior Univ., 489 U.S. 468, 477 (1989) (citation omitted).

1 1421, 1426-28 (2017) (just as state rules outright prohibiting arbitration agreements are barred by
2 the FAA, so too are rules that "covertly accomplish the same objective" by subjecting arbitration
3 agreements to standards "tailor-made" to single such agreements out "for disfavored treatment").
4 *Accord Ortiz v. Hobby Lobby Stores*, 52 F. Supp. 3d 1070, 1076 (E.D. Cal. 2014) (courts may not
5 apply traditional contract defenses in a "broader or more stringent manner to invalidate arbitration
6 agreements").

7 Under the FAA, an arbitration agreement must be enforced where: (1) the parties entered a
8 written agreement to arbitrate claims, (2) the transaction has a nexus to interstate commerce, and
9 (3) the arbitration clause encompasses the claims. 9 U.S.C. § 2. *See Aoki v. Gilbert*, No. 2:11-cv-
10 02797-TLN-CKD, 2015 WL 5734626, at *5 (E.D. Cal. Sept. 29, 2015). Given the strong federal
11 policy favoring arbitration, "the party resisting arbitration bears the burden of proving that the
12 claims at issue are unsuitable for arbitration." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S.
13 79, 91 (2000).

14 **1. The Agreement to Arbitrate Is Valid and in Writing.**

15 "The federal law of arbitrability under the [FAA] governs the allocation of authority
16 between courts and arbitrators." *Morgan v. Xerox Corp.*, No. 2:23-cv-00409-TLN-AC, 2013 WL
17 2151656, at *1 (E.D. Cal. May 16, 2013) (quoting *Cox v. Ocean View Hotel Corp.*, 553 F. 3d 1114,
18 1119 (9th Cir. 2008)). State contract law controls the question of whether a valid agreement to
19 arbitrate has been formed. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).
20 Under California law, a written agreement to submit an existing controversy or a controversy
21 arising thereafter to arbitration is valid and enforceable. Cal. Civ. Proc. § 1281. "Doubts about
22 whether an agreement to arbitrate applies to a particular dispute are to be resolved in favor of
23 sending the parties to arbitration." *Metalclad Corp. v. Ventana Envtl. Organizational P'ship*, 1 Cal.
24 Rptr. 3d 328, 333 (Cal. Ct. App. 2003).

25 The Duncans concede that they received the Unity and Trinity Member Guides, and even
26 attached them to their complaints. (*See* Doc. 19, ¶¶ 69-73; Doc. 19-4 and Doc. 19-5.) The Trinity
27

1 **3. The Arbitration Agreement Encompasses All of Plaintiffs' Claims.**

2 The arbitration agreement here unquestionably encompasses each claim in this case. When
3 determining the scope of an arbitration provision, "due regard must be given to the federal policy
4 favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor
5 of arbitration." *Volt Info.*, 489 U.S. at 476. The presumption of arbitrability, created by the mere
6 existence of an arbitration clause, may be rebutted only if "it may be said with positive assurance
7 that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.
8 Doubts should be resolved in favor of coverage." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*,
9 475 U.S. 643, 650 (1986) (quoting *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363
10 U.S. 574, 582-83 (1960)). If a court concludes that the arbitration provision before it is a "broad"
11 one, then the presumption in favor of arbitrability applies with even greater force. *See AT&T*
12 *Techs., Inc.*, 475 U.S. at 650. Where, as here, the arbitration agreement contains a broad delegation
13 to the arbitrator, that is all the more reason that an arbitrator should decide whether a claim falls
14 within the scope of the agreement. *Gadomski v. Wells Fargo Bank, N.A.*, 281 F. Supp. 3d 1015,
15 1020 (E.D. Cal. 2018).

16 The present dispute is clearly within the scope of the Unity and Trinity Member Guides'
17 broad arbitration provisions. Both of the Member Guides refer to arbitration of "any dispute"
18 between Plaintiffs and either Unity or Trinity. (*See* Doc. 19-4 at 18-19; 19-5 at 12-13.) The
19 "disputes" contemplated by the Trinity Member Guide specifically include any "determination"
20 made by Trinity or its associates with which Plaintiffs disagree. (Doc. 19-5 at 18.) The Unity
21 Member Guide is equally broad. (*See* Doc. 19-5 at 12.) The Duncans allege that Alieria, Unity, and
22 Trinity improperly refused to pay her medical expenses. (Doc. 19, ¶¶ 69-80.) A determination as to
23 covered medical expenses is exactly the sort of dispute contemplated in the alternative dispute
24 resolution procedures of the Membership Guides. Plaintiffs' disputes therefore should be arbitrated
25 in accordance with the express written agreement of the parties.

1 All of the claims asserted by the Duncans, moreover, are the types that courts have already
2 determined are arbitrable:

- 3 • Illegal Contracts: See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440,
4 448-49 (2006).
- 5 • Violations of California's Unfair Competition Law: See *Ferguson v. Corinthian*
6 *Colleges, Inc.*, 733 F.3d 928, 938 (9th Cir. 2013).
- 7 • Violation of California's False Advertising Law: See *Concepcion*, 563 U.S. at 345.
- 8 • Breach of Fiduciary Duty: See *Boyko v. Benning Fin. Grp., LLC*, 737 F. Supp. 2d
9 1140, 1143-45 (E.D. Cal. 2010) (compelling arbitration of claims including breach
10 of fiduciary duty).
- 11 • Unjust Enrichment: See *GAR Energy & Assocs., Inc. v. Ivanhoe Energy Inc.*, No.
12 1:11-CV-00907 AWI, 2011 WL 6780927, at *10-12 (E.D. Cal. Dec. 27, 2011), *R. &*
13 *R. adopted*, 2012 WL 174952 (E.D. Cal. Jan. 20, 2012); *Guadagno v. E*Trade*
14 *Bank*, 592 F. Supp. 2d 1263, 1272-74 (C.D. Cal. 2008).

15 **4. All Possible Challenges To The Enforceability Of The Arbitration**
16 **Provision Must Also Be Resolved By The Arbitrator.**

17 Not only are each of Plaintiffs' substantive claims subject to arbitration, but any potential
18 defenses Plaintiffs may have to the arbitrability of their claims must also be submitted to arbitral
19 resolution. Binding precedent forecloses any contrary arguments.

20 First, Plaintiffs certainly cannot challenge the validity of the arbitration provisions by
21 asserting that the Unity and Trinity contracts containing them are illegal. The Supreme Court has
22 directly foreclosed such an approach in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440
23 (2006), holding that where a party advances a challenge to "the validity of the contract as a whole,
24 and not specifically to the arbitration clause," the challenge "must go to the arbitrator." *Id.* at 449.
25 *Accord Preston v. Ferrer*, 552 U.S. 346, 353-54 (2008) (holding that an arbitrator had to decide a
26 contractual dispute even though one of the parties alleged that the contract containing the

1 arbitration provision was illegal under California law).³

2 Second, the parties in this case have delegated all issues as to the validity or enforceability
3 of the arbitration agreement to the arbitrator. They accomplished this in the Unity Member Guide
4 by incorporating the rules of the Institute for Christian Conciliation, and in the Trinity Member
5 Guide by incorporating the rules of the American Arbitration Association. (*See* Doc. 19-5 at 13;
6 Doc. 19-4 at 19.) Under both sets of arbitration rules, the arbitrator is given the power to rule on
7 his or her own jurisdiction, including any challenges to the existence, scope, or validity of the
8 arbitration agreement. *See* ICC Rule 34(B); AAA Commercial Rule 7(a); AAA Consumer Rule
9 14(a).⁴ The FAA's mandate that courts must rigorously enforce arbitration agreements according
10 to their terms applies with equal force to terms specifying "*with whom* the parties choose to
11 arbitrate their disputes and the *rules* under which that arbitration will be conducted." *Epic Sys.*
12 *Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (citation omitted).

13 Both the Supreme Court and the Ninth Circuit have concluded that these types of clauses
14 that delegate all gateway issues to the arbitrator, whether expressly stated in the agreement or
15 incorporated by reference in arbitral body rules, are enforceable and provide clear and
16 unmistakable evidence that the parties agreed to arbitrate arbitrability. *See Rent-A-Center W., Inc.*
17 *v. Jackson*, 561 U.S. 63, 72-73 (2010); *Brennan v. Opus Bank*, 796 F.3d 1125, 1132 (9th Cir.
18 2015); *Oracle Am., Inc. v. Myriad Grp., A.G.*, 725 F.3d 1069, 1074 (9th Cir. 2013). Under *Rent-A-*
19 *Center* and *Brennan*, unless a plaintiff can successfully challenge the delegation clause itself,
20 separate and apart from any challenge to the overall agreement or the arbitration agreement as a
21

22 ³ Following these two Supreme Court decisions, the Ninth Circuit has concluded that in
23 order to escape an obligation to arbitrate, the plaintiff has to base the challenge on "reasons
24 independent of any reasons the remainder of the contract might be invalid." *Bridge Fund Capital,*
Corp. v. Fastbacks Franchise Corp., 622 F.3d 996, 1000 (9th Cir. 2010).

25 ⁴ The sets of rules are easily accessible over the internet on each forum's website. *See*
26 <https://peacemaker.training/guidelinesforchristianconciliation/>;
27 <https://adr.org/commercial/>;
<https://adr.org/consumer>. Where that is true, this Court has rejected arguments by a plaintiff that
28 he was not bound by the rules incorporated by reference into the arbitration agreement. *See Ortiz,*

1 whole, the entire matter must be submitted to arbitration.

2 Finally, Plaintiffs cannot successfully mount a challenge to an arbitration provision that
3 will require a court to decide the ultimate merits issue in the case (*e.g.*, whether Unity or Trinity
4 offered programs that were actually "insurance"). As the Supreme Court recently made clear, a
5 court seeking to determine whether a claim should be arbitrated "may not 'rule on the potential
6 merits of the underlying' claim that is assigned by contract to an arbitrator." *Henry Schein, Inc. v.*
7 *Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (quoting *AT&T Techs.*, 475 U.S. at 649-50
8 (a court has "no business weighing the merits of the grievance" – that is for the arbitrator)); *S.*
9 *Jersey Sanitation Co. v. Applied Underwriters Captive Risk Assurance Co.*, 840 F.3d 138, 146 (3d
10 Cir. 2016) (an arbitrator, not the court, had to decide the ultimate merits issue of whether the
11 transactions at issue constituted insurance); *Milan Express Co. v. Applied Underwriters Captive*
12 *Risk Assurance Co.*, 590 F. App'x 482, 486 (6th Cir. 2014) (same); *see also On v. Stephen*
13 *Vannucci, M.D., Inc.*, No. 2:14-cv-02714-TLN-CMK, 2018 WL 489157, at *2 (E.D. Cal. Jan. 19,
14 2018) (decisions about the merits of claims and defenses are reserved for the arbitrator).

15 **C. Aliera May Enforce the Alternative Dispute Resolution Procedures.**

16 The agreement requiring mediation followed by arbitration covers not only the claims of
17 the Duncans against Unity or Trinity, but also their claims against Aliera. Both Unity and Trinity's
18 Member Guides provide that all disputes that a member may have with an "**associate**" of Unity or
19 Trinity must also be submitted to mediation in the first instance, followed by arbitration. (Doc. 19-
20 4 at 19; Doc. 19-5 at 12.) Aliera was unquestionably an "associate" of Unity and Trinity and it was
21 the entity responsible for administering their HCSMs during the time frames that the Duncans were
22 members. (*See* K. Decl., ¶¶ 4-5.) The Unity and Trinity Member Guides also refer to Aliera
23 extensively throughout, providing contact information for Aliera and detailing the services it would
24 provide to each HCSM's sharing members. (*See* Docs. 19-4, 19-5.)

25
26 52 F. Supp. 3d at 1080; *Morgan v. Xerox Corp.*, 2013 WL 2151656, at *3-4.

1 Merriam-Webster Dictionary defines the noun "associate" as "one associated with another,"
2 and lists "business associates" as an example. *Associate*, Merriam-Webster Dictionary, *available at*
3 <https://www.merriam-webster.com/dictionary/associate>. *See also* Webster's Third New
4 International Dictionary 132 (1992) ("associate" means a person "closely connected, joined, or
5 united with one another"). Plaintiffs repeatedly allege associations between Alera, on the one
6 hand, and Trinity and Unity, on the other hand, including: that (i) Alera designed, marketed, sold,
7 and administered Unity's plan; (ii) that Unity and Trinity authorized Alera to sell allegedly "illegal
8 health insurance plans" to California residents; (iii) that Unity delegated all authority and
9 responsibility to Alera in connection with the marketing, sale, and administration of Unity's
10 HCSM to such an extent that Alera allegedly "controlled" the Unity HCSM; (iv) that "Trinity was
11 created by Alera;" (v) that Alera entered into an Agreement with Trinity, which "allowed Alera
12 to use Trinity's non-profit status to sell health care plans;" (vi) that Alera, using Trinity as a
13 purported HCSM, then created, marketed, sold and administered unauthorized health insurance
14 plans in California; and (vii) that "Alera markets, sells, and administers insurance plans for Trinity
15 and is solely responsible for the development of HCSM plan designs, pricing, marketing materials,
16 vendor management, recruitment and maintenance of a sales force on behalf of Trinity." (Doc. 19
17 at ¶¶ 5-6, 13, 15, 36, 41, 48-49.) Thus, as alleged in the complaints, Alera unquestionably qualifies
18 as an "associate" of Trinity and Unity.

19 There are at least three other, non-textual reasons why Alera can enforce the arbitration
20 agreements in the Unity and Trinity Member Guides. First, it is clear from Plaintiffs' complaint that
21 they assert Alera was acting in the role of an agent for Unity and then Trinity in the offer, sale, and
22 administration of those entities' HCSMs. (Doc. 19, ¶¶ 5-6.) Under California law, a nonsignatory
23 *agent* of a signatory may enforce an arbitration agreement. *Dryer v. Los Angeles Rams*, 709 P.2d
24 826, 834 (Cal. 1985); *Rowe v. Exline*, 63 Cal. Rptr. 3d 787, 793 (Cal. Ct. App. 2007); *see also*
25 *Garcia v. Pexco, LLC*, 217 Cal. Rptr. 3d 793, 797 (Cal. Ct. App. 2017) (permitting non-signatory
26 to compel arbitration based on the fact that non-signatory acted as agent of signatory); *Keller*

1 *Constr. Co. v. Kashani*, 20 Cal App. 3d 222, 229 (Cal. Ct. App. 1990) (holding that a non-
2 signatory general partner of a limited partnership is subject to arbitration when he was an agent and
3 beneficiary of the partnership).

4 Second, Alieria is clearly an intended beneficiary of the agreements between Unity, Trinity,
5 and the Duncans. Plaintiffs allege that Alieria benefitted by obtaining substantial revenues from its
6 role in marketing, selling, and administering the Unity and Trinity HCSMs. (Doc. 19 ¶ 48.) "It is
7 well established that a non-signatory beneficiary of an arbitration clause is entitled to require
8 arbitration." *Harris v. Superior Court*, 233 Cal. Rptr. 186, 188 (Cal. Ct. App. 1986); *see also*
9 *Cione v. Foresters Equity Servs., Inc.*, 58 Cal. App. 4th 625, 636 (Cal. Ct. App. 1997) (permitting
10 express beneficiary of agreement containing an arbitration clause to compel arbitration).

11 Finally, the doctrine of equitable estoppel supports Alieria's position that it is covered by the
12 arbitration agreements at issue. "The federal circuits that have considered the doctrine of equitable
13 estoppel have uniformly accepted it, in appropriate factual circumstances, as a basis for compelling
14 signatories to a contract containing an arbitration clause to arbitrate their claims against
15 nonsignatories." *Metalclad Corp.*, 1 Cal. Rptr. 3d at 335. This doctrine applies when a signatory to
16 a contract is attempting to enforce certain rights under the contract against a non-signatory while
17 simultaneously claiming that the arbitration provision does not apply. *Montoya v. Comcast Corp.*,
18 No. 2:15-cv-02573-TLN-DB, 2016 WL 5340651, at *4 (E.D. Cal. Sept. 23, 2016). Likewise,
19 courts have applied equitable estoppel principles to allow a nonsignatory defendant to invoke an
20 arbitration clause to compel a signatory plaintiff to arbitrate its claims where, as here, the causes of
21 action against the nonsignatory are "intimately founded in and intertwined" with the underlying
22 agreement. *Victrola 89, LLC v. Jaman Props. 8 LLC*, 260 Cal. Rptr. 3d 1, 13 (Cal. Ct. App. 2020)
23 (quoting *Molecular Analytical Sys. v. CIPHERGEN Biosystems, Inc.*, 111 Cal. Rptr. 3d 876, 886 (Cal.
24 Ct. App. 2010); *see also Montoya*, 2016 WL 5340651, at *5; *Laswell v. AG Seal Beach, LLC*, 117
25 Cal. Rptr. 3d 310, 317-18 (Cal. Ct. App. 2010) (same).

1 In sum, the allegations of the Amended Complaint document how Alera operated as an
2 "associate" or agent of Unity and then Trinity. Moreover, the Amended Complaint further shows
3 that Alera is a beneficiary of the agreement, receiving payments arising therefrom. Plaintiffs have
4 also received payments for some of their medical expenses pursuant to the sharing guidelines in the
5 Member Guides. And all of Plaintiffs' claims against Alera arise from the member relationship
6 that Unity, Trinity, and Alera had with the Duncans, a relationship whose existence is defined by
7 the Member Guides. Consequently, under theories California courts consistently recognize, Alera
8 is entitled to enforce the dispute resolution procedures found in the Member Guides.

9 **D. Either a Stay Pending Arbitration or a Dismissal Is Proper.**

10 Under 9 U.S.C. § 3, a court, "upon being satisfied that the issue involved in such suit or
11 proceeding is referable to arbitration under such an agreement, *shall* on application of one of the
12 parties stay the trial of the action until such arbitration has been had in accordance with the terms
13 of the agreement." (emphasis added). Consequently, if this Court does not dismiss this matter
14 entirely for failure to comply with conditions precedent to suit, Alera requests that this Court
15 follow the mandate of Section 3 and stay the proceedings until arbitration is completed.
16 Alternatively, this Court has discretion to dismiss the case where, as here, all of the claims are
17 subject to arbitration. *Gadomski*, 281 F. Supp. 3d at 1021; *Ortiz*, 52 F. Supp. 3d at 1076.

18 **III. CONCLUSION**

19 Plaintiffs' membership in the Unity HCSM, and subsequently the Trinity HCSM, was
20 subject to the specific alternative dispute resolution processes and arbitration provisions set forth in
21 the respective Member Guides. These provisions constitute valid, enforceable contractual
22 obligations for Plaintiffs to follow prior to initiating litigation. Plaintiffs failed to do so. As a result,
23 Alera respectfully moves this Court to either (1) dismiss this case without prejudice for the
24 Plaintiffs' failure to pursue mediation or arbitration, or in the alternative (2) stay all proceedings
25 pending the conclusion of the arbitral process.

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Dated: August 18, 2020

BURR & FORMAN LLP

By: /s/ Alan D. Leeth
Alan D. Leeth

BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Phone: (205) 458-5499
Fax: (205) 244-5670
E-mail: aleeth@burr.com

Attorneys for Defendant
THE ALIERA COMPANIES INC.

CERTIFICATE OF SERVICE

A copy of the foregoing **DEFENDANT ALIERA'S MOTION TO DISMISS, OR ALTERNATIVELY, TO COMPEL ARBITRATION** has been filed this 18th day of August, 2020 through the Court's CM/ECF system, which will send notification of such filing to all parties of record. All parties may access the foregoing via the Court's CM/ECF system.

s/ Alan D. Leeth
Alan D. Leeth

EXHIBIT A

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CORLYN DUNCAN and BRUCE
DUNCAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES INC., formerly
known as Alieria 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-867-TLN-KJN

**DECLARATION OF KATHLEEN
KROMODIMEDJO**

Hon. Troy L. Nunley

DECLARATION OF KATHLEEN KROMODIMEDJO

I, Kathleen Kromodimedjo, declare as follows:

1. I am over the age of twenty-one years, and I am competent to testify regarding the matters contained herein. I make this Declaration based on my personal knowledge and my review of relevant business records, true and correct copies of which are attached hereto.

2. I am the Director of Risk and Compliance for The Alieria Companies Inc. (formerly known as Alieria Healthcare, Inc.) (or “Alieria”). I am authorized by Alieria to execute documents on its behalf. I am familiar with the business and operations of Alieria.

3. Alieria is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Georgia.

4. Alieria was an administrator for Unity HealthShare, LLC, n/k/a OneShare Health, LLC (or “Unity”), which is a health care sharing ministry (“HCSM”). As the administrator of

1 Unity’s HCSM, Alera developed and marketed for sale a product entitled “AleraCare,” which
2 includes membership in Unity’s HCSM. It is Alera’s understanding that Unity is organized under
3 the laws of the State of Virginia, and its principal place of business is in Georgia. Alera and Unity
4 are different companies, with different management and operations. They had various business
5 contracts between them, negotiated at arms-length. Alera was an associate of Unity. Alera is not
6 an HCSM.

7 5. After termination of Alera’s business relationship with Unity, Alera and Trinity
8 Healthshare, Inc. (“Trinity”) entered into a business relationship. Currently, Alera’s subsidiaries
9 provide various services related to the operation and administration of Trinity’s HCSM. Alera’s
10 subsidiaries are ASO (administrative services only) administrators for Trinity. Alera and Trinity
11 are different companies, with different management and operations. Alera (more specifically, its
12 subsidiaries) and Trinity have various business contracts between them, negotiated at arms-length.
13 Alera is an associate of Trinity. Alera is not an HCSM.

14 6. Plaintiffs Corlyn and Bruce Duncan (or the Duncans”), enrolled in Unity’s HCSM
15 on November 28, 2017, with membership effective as of January 1, 2018. (Exhibit 1 hereto, which
16 is a true and correct copy of an email to Ms. Duncan, welcoming the Duncans to Unity’s HCSM
17 and with a link to Unity’s Member Guide.)

18 7. The Duncans received the Unity Member Guide. (*See* Doc. 19-5, which is Appendix
19 E to Plaintiffs’ Amended Complaint.)) In conjunction with becoming Unity members and after
20 receiving the Unity Member Guide, the Duncans made voluntary member sharing contributions
21 monthly for the period of January 1, 2018 to May 31, 2019.

22 8. Among other provisions, the Duncans’ Member Guide provides within the first few
23 pages a conspicuous disclaimer that membership in Unity is a faith-based, voluntary sharing
24 membership, and it is not insurance:
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1 **Disclaimer**

2 Unity HealthShareSM is a faith-based medical need sharing
3 membership. Medical needs are only shared by the
4 members according to the membership guidelines. Our
5 members agree to the Statement of Beliefs and voluntarily

6 submit monthly contributions into an escrow account with
7 Unity HealthShareSM acting as a neutral clearing house
8 between members. Organizations like ours have been
9 operating successfully for over fifty years. We are including
10 the following caveat for all to consider:

11 *This publication or membership is not issued by an insurance
12 company, nor is it offered through an insurance company. This
13 publication or the membership does not guarantee or promise
14 that your eligible medical needs will be shared by the
15 membership. This publication or the membership should never
16 be considered as a substitute for an insurance policy. If the
17 publication or the membership is unable to share in all or part of
18 your eligible medical needs, or whether or not this membership
19 continues to operate, you will remain financially liable for any
20 and all unpaid medical needs.*

21 *This is not a legally binding agreement to reimburse any
22 member for medical needs a member may incur, but is instead,
23 an opportunity for members to care for one another in a time of
24 need and to present their medical needs to other members as
25 outlined in the membership guidelines. The financial assistance
26 members receive will come from other members' monthly
27 contributions that are placed in a sharing account, not from
28 Unity HealthShareSM.*

(Doc. 19-5, at ECF 2-3.)

9. The Member Guide also provides for alternative dispute resolution, including
appeal, mediation, and arbitration The Unity Member Guide provides for an alternative dispute
resolution process, including mediation and arbitration:

1 **DISPUTE RESOLUTION AND APPEAL**

2 Unity HealthShareSM is a voluntary association of like-minded people
3 who come together to assist each other by sharing medical
4 expenses. Such a sharing and caring association does not lend itself
5 well to the mentality of legally enforceable rights. However, it is
6 recognized that differences of opinion will occur, and that a
7 methodology for resolving disputes must be available. Therefore, by
8 becoming a Sharing Member of Unity HealthShareSM, you agree that
9 any dispute you have with or against Unity HealthShareSM, its
10 associates, or employees will be settled using the following steps of
11 action, and only as a course of last resort.

12 If a determination is made with which the sharing member disagrees
13 and believes there is a logically defensible reason why the initial
14 determination is wrong, then the sharing member may file an appeal.

15 **A. 1st Level Appeal.** Most differences of opinion can be resolved
16 simply by calling Unity HealthShareSM who will try to resolve the
17 matter within ten (10) working days in writing.

18 **B. 2nd Level Appeal.** If the sharing member is unsatisfied with
19 the determination of the member services representative, then
20 the sharing member may request a review by the Internal
21 Resolution Committee, made up of three Unity HealthShareSM
22 officials: the needs processing manager, the assistant director,
23 and the executive director. The appeal must be in writing,
24 stating the elements of the dispute and the relevant facts.
25 Importantly, the appeal should address all of the following:

- 26 1. What information does Unity HealthShareSM have that is
27 either incomplete or incorrect?
- 28 2. How do you believe Unity HealthShareSM has
misinterpreted the information already on hand?
3. Which provision in the Unity HealthShareSM Guidelines do
you believe Unity HealthShareSM applied incorrectly?

Within thirty (30) days, the Internal Resolution Committee will
render a written decision.

18 **C. 3rd Level Appeal.** Should the matter remain unresolved, then
19 the aggrieved party may ask that the dispute be submitted to
20 three sharing members in good standing and randomly chosen
21 by Unity HealthShareSM, who shall agree to review the matter
22 and shall constitute an External Resolution Committee. Within
23 thirty (30) days the External Resolution Committee shall render
24 their opinion in writing.

25 **D. Final Appeal.** If the aggrieved sharing member disagrees with
26 the conclusion of his/her fellow sharing members, then the
27 aggrieved party may ask that the dispute be submitted to a
28 medical expense auditor, who shall have the matter reviewed
by a panel consisting of personnel who were not involved in the
original determination and who shall render their opinion in
writing within thirty (30) days.

E. Mediation and Arbitration. If the aggrieved sharing member
disagrees with the conclusion of the Final Appeal Panel, then
the matter shall be settled by mediation and, if necessary,
legally binding arbitration in accordance with the Rules of
Procedure for Christian Conciliation of the Institute for Christian
Conciliation, a division of Peacemaker Ministries. Judgment
upon an arbitration decision may be entered in any court
otherwise having jurisdiction. Sharing members agree and

1 understand that these methods shall be the sole remedy for any
2 controversy or claim arising out of the Sharing Guidelines and
3 expressly waive their right to file a lawsuit in any civil court
4 against one another for such disputes, except to enforce an
5 arbitration decision. Any such arbitration shall be held in
6 Fredericksburg, Virginia, subject to the laws of the
7 Commonwealth of Virginia. Unity HealthShareSM shall pay the
8 fees of the arbitrator in full and all other expenses of the
9 arbitration; provided, however, that each party shall pay for and
10 bear the cost of its own transportation, accommodations,
11 experts, evidence, and legal counsel, and provided further that
12 the aggrieved sharing member shall reimburse the full cost of
13 arbitration should the arbitrator determine in favor of Unity
14 HealthShareSM and not the aggrieved sharing member. The
15 aggrieved sharing member agrees to be legally bound by the
16 arbitrator's decision. The Rules of Procedure for Christian
17 Conciliation of the Institute for Christian Conciliation, a division
18 of Peacemaker Ministries, will be the sole and exclusive
19 procedure for resolving any dispute between individual
20 members and Unity HealthShareSM when disputes cannot be
21 otherwise settled.

22 (Doc. 19-5 at ECF 12-13.)

23 10. Alieria construes the arbitration provisions to also require Alieria and Unity to
24 arbitrate disputes they may have with a member.

25 11. Upon receiving the Member Guide containing the arbitration provisions, the
26 Duncans did not notify Alieria of any objections they had to the arbitration provisions in the
27 Member Guide, and they did not complain that they felt the arbitration provisions were unfair or
28 unclear.

12 12. The Duncans have not completed the dispute resolution process. More specifically,
13 they have not requested or engaged in mediation or arbitration.

14 13. On May 13, 2019, the Duncans authorized Alieria in a DocuSign form to transfer
15 their Unity membership to an equivalent membership with Trinity's HCSM. (Exhibit 2 hereto,
16 which is a true and correct copy of the Duncans' DocuSign form.) The Duncans became members
17 of Trinity's HCSM effective June 1, 2019. The Duncans have not had a business relationship with
18 Unity, as administered by Alieria, since that time.

19 14. The Duncans remained Trinity members, making monthly sharing contributions,
20 from June 1, 2019 to December 31, 2019, which is the cancellation date of the Duncans' Trinity

1 membership. The Duncans have not had a business relationship with Trinity or Alera since that
2 time.

3 15. The Duncans received the Trinity Member Guide. (*See* Doc. 19-4, which is
4 Appendix D to Plaintiffs' Amended Complaint.) Among other provisions, Duncans' Member
5 Guide provides within the first few pages a conspicuous disclaimer that membership in Trinity is a
6 faith-based, voluntary sharing membership, and it is not insurance:

7 **Disclaimer**

8 AlleraCare offering by Trinity HealthShare, through
9 Allera Healthcare, Inc., is a faith-based medical needs sharing
10 membership. Medical needs are only shared by the members
11 according to the membership guidelines. Our members
12 agree to the Statement of Beliefs and voluntarily submit
13 monthly contributions into a cost-sharing account with
14 Trinity HealthShare, acting as a neutral clearing house
15 between members. Organizations like ours have been
16 operating successfully for years. We are including the
17 following caveat for all to consider:

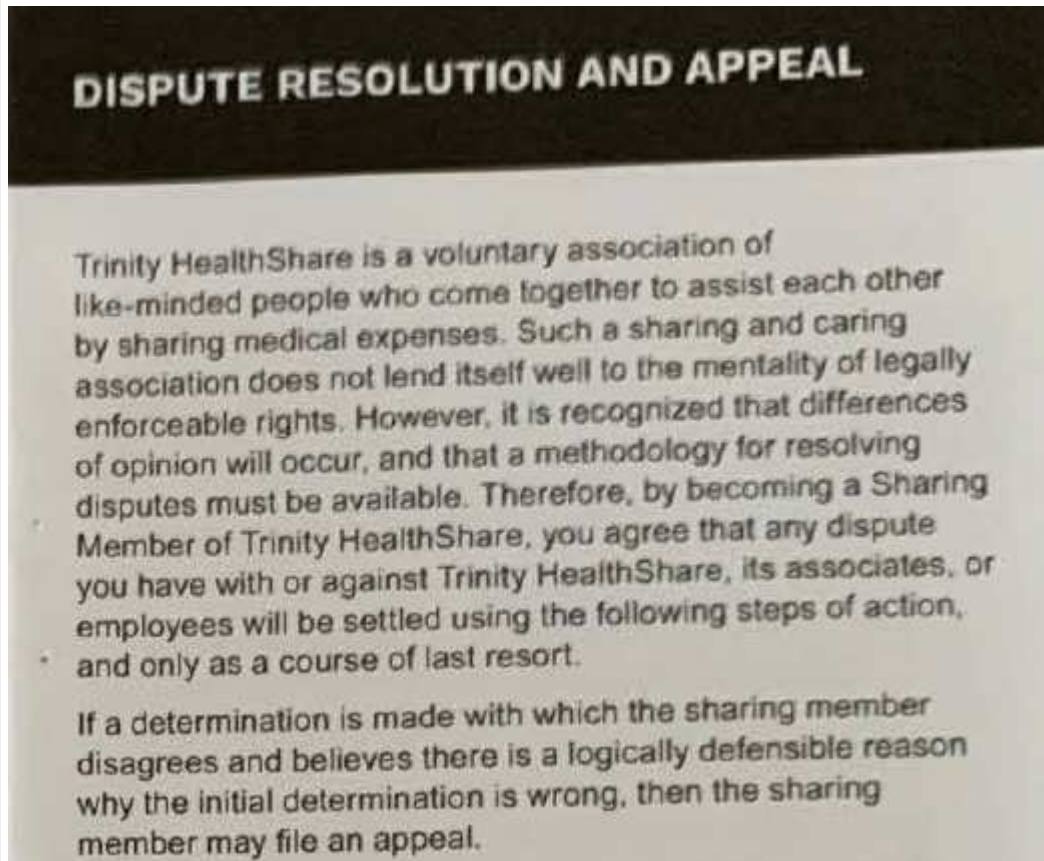
18 This publication or membership is not issued by an
19 insurance company, nor is it offered through an insurance
20 company. This publication or the membership does not
21 guarantee or promise that your eligible medical needs
22 will be shared by the membership. This publication
23 or the membership should never be considered as a
24 substitute for an insurance policy. If the publication or
25 the membership is unable to share in all or part of your
26 eligible medical needs, or whether or not this membership
27 continues to operate, you will remain financially liable for
28 any and all unpaid medical needs.

29 This is not a legally binding agreement to reimburse
30 any member for medical needs a member may incur,
31 but is instead, an opportunity for members to care for
32 one another in a time of need, to present their medical
33 needs to other members as outlined in the membership
34 guidelines. The financial assistance members receive will
35 come from other members' monthly contributions that are
36 placed in a sharing account, not from Trinity HealthShare.

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(Doc. 19-4, at ECF 4.)

16. The Trinity Member Guide also provides for an alternative dispute resolution process, including mediation and arbitration:



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A. **1st Level Appeal.** Most differences of opinion can be resolved simply by calling Trinity HealthShare who will try to resolve the matter telephonically within a reasonable amount of time.

B. **2nd Level Appeal.** If the sharing member is unsatisfied with the determination of the member services representative, then the sharing member may request a review by the Internal Resolution Committee, made up of three Trinity HealthShare officials. The appeal must be in writing, stating the elements of the dispute and the relevant facts. Importantly, the appeal should address all of the following:

1. What information does Trinity HealthShare have that is either incomplete or incorrect?
2. How do you believe Trinity HealthShare has misinterpreted the information already on hand?
3. Which provision in the Trinity HealthShare Guidelines do you believe Trinity HealthShare applied incorrectly?

Within thirty (30) days, the Internal Resolution Committee will render a written decision, unless additional medical documentation is required to make an accurate decision.

C. **3rd Level Appeal.** Should the matter remain unresolved, then the aggrieved party may ask that the dispute be submitted to three sharing members in good standing and randomly chosen by Trinity HealthShare, who shall agree to review the matter and shall constitute an External Resolution Committee. Within thirty (30) days the External Resolution Committee shall render their opinion in writing, unless additional medical documentation is required to make an accurate decision.

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D. Final Appeal. If the aggrieved sharing member disagrees with the conclusion of his/her fellow sharing members, then the aggrieved party may ask that the dispute be submitted to a medical expense auditor, who shall have the matter reviewed by a panel consisting of personnel who were not involved in the original determination and who shall render their opinion in writing within thirty (30) days, unless additional medical documentation is required to make an accurate decision.

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E. Mediation and Arbitration. If the aggrieved sharing member disagrees with the conclusion of the Final Appeal Panel, then the matter shall be resolved by first submitting the disputed matter to mediation. If the dispute is not resolved the matter will be submitted to legally binding arbitration in accordance with the Rules and Procedure of the American Arbitration Association. Sharing members agree and understand that these methods shall be the sole remedy to resolve any controversy or claim arising out of the Sharing Guidelines, and expressly waive their right to file a lawsuit in any civil court against one another for such disputes; except to enforce an arbitration decision. Any arbitration shall be held in Atlanta, Georgia, and conducted in the English language subject to the laws of the State of Georgia. Trinity HealthShare shall pay the filing fees for the arbitration and arbitrator in full at the time of filing. All other expenses of the arbitration shall be paid by each party including costs related to transportation, accommodations, experts, evidence

25 (Doc. 19-4, at ECF 18-19.)

26 17. The Duncans have not completed the dispute resolution process. More specifically,
27 they have not requested or engaged in mediation or arbitration.
28

1 18. Upon receiving the Member Guide containing the arbitration provisions, the
2 Duncans did not notify Alieria of any objections they had to the arbitration provisions in the
3 Member Guide, and they did not complain that they felt the arbitration provisions were unfair or
4 unclear.

5 19. Alieria's business model necessarily involves interstate commerce. For instance, the
6 Duncans allege that they are residents of the State of California, and they were members of Unity's
7 HCSM and then Trinity's HCSM, which were administered by Alieria in Georgia. Moreover, it is
8 Alieria's understanding that Trinity is incorporated pursuant to the laws of the State of Delaware,
9 and its principal place of business is in Georgia. Based on Alieria's records, the Duncans received
10 medical treatment in California. Sharing payments for medical expenses originated from Georgia
11 and were sent interstate. The Duncans, as California residents, sent share payments to Alieria, in
12 Georgia, on behalf of Unity and then Trinity.

13 20. These are but some examples of how Alieria's business necessarily involves
14 interstate commerce and involved interstate commerce with regard to the Duncans. Indeed, Trinity
15 has members throughout the United States, for which Alieria serves as an ASO (administrative
16 services only) administrator. While Alieria was in a business relationship with Unity, Unity had
17 members throughout the United States.

18 21. Alieria keeps true and correct records of applications to become members of Unity's
19 HCSM and Trinity's HCSM, as well as true and accurate records of members' choices to cancel
20 their membership in these different programs. Alieria also keeps true and correct records of requests
21 for sharing, membership information (such as the plan(s) that a member chooses to purchase and
22 member guides), payments pursuant to members' plans, information and documents that are sent to
23 Unity and Trinity members, both electronically and in hard copy, members' signatures and
24 agreements to join certain programs, and the like. These documents, including all of the Exhibits
25 that are attached to this Declaration, are prepared, signed (as applicable), and maintained in the
26 regular course of the business of Alieria, and it is and was the regular practice of Alieria to prepare,
27 have signed, and maintain such documents. Based on my role and responsibilities with Alieria, I
28

1 have personal knowledge of the matters set out herein, as well as access to and familiarity with the
2 documents and information discussed herein.

3 I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true
4 and correct and based upon my personal knowledge.

5 Executed this 17th day of August, 2020.

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Kathleen Kromodimedjo

KROMODIMEDJO DECLARATION

EXHIBIT 1

Opened: 11/28/2017 - 10:10:27 PM

[Email Batch - Batch Member Only](#)

From: info@alierahealth.com

To: bkduncan@sbcglobal.net

CC:

BCC:

Subject: UNITY HEALTHSHARE - Welcome - ID 672555982

Attachment:

Dear corlyn duncan,

Thank you for joining Unity HealthShare. Our Healthcare Sharing Ministry is looking forward to serving your healthcare needs. Please be sure to print this page for your records. Your ID cards and membership packet will be received at your mailing address within 10 to 14 business days after your effective date.

As a Healthcare Sharing Ministry at our core is our Statement of Beliefs. If you do not or did not agree with the Statement of Beliefs below, please let us know and we will be happy to answer any of your questions or help you understand what is like to be a member of Unity HealthShare.

Below is a review of the Statement of Beliefs you have agreed to:

1. We believe that our personal rights and liberties originate from God and are bestowed on us by God.
2. We believe every individual has a fundamental religious right to worship God in his or her own way.
3. We believe it is our moral and ethical obligation to assist our fellow man when they are in need according to our available resources and opportunity.
4. We believe it is our spiritual duty to God and our ethical duty to others to maintain a healthy lifestyle and avoid foods, behaviors or habits that produce sickness or disease to ourselves or others.
5. We believe it is our fundamental right of conscience to direct our own healthcare, in consultation with physicians, family or other valued advisors.

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ORDER INFORMATION
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Product: Unity Healthshare - Gold - Individual plus 1 Dependent
Order Date: November 28, 2017
Effective Date: December 15, 2017
Amount Paid: \$1,412.56 - November 28, 2017 - Credit Card - SALE - Approved - Payment 1 - Completed - - - 3885177046 - 185185 - Products: Unity Healthshare - Gold (17186)

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MEMBER INFORMATION
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ID: 672555982
Name: corlyn duncan
Address: [REDACTED]
City: benicia
State: CA
Zip Code: 94510
Day Phone: ([REDACTED])
Email: [REDACTED]

bruce duncan - Spouse - M - [REDACTED]

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YOUR MEMBER LOGIN
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To view and update your member information, please visit our Unity Partner Alieria

Username: bkduncan@sbcglobal.net

Password: 311h9mbnr0

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MEMBER CARE

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Whether you have a question regarding your services, need assistance, or have a special request, our friendly and highly experienced staff is always ready to assist you with all your questions and concerns.

You may contact a Member Services Representative at (844) 834-3456, Monday through Friday from 9:00 AM until 5:00 PM, Eastern Standard Time, or by email at memberservices@unityhealthshare.com.

CONFIDENTIALITY NOTICE and HIPAA Compliance Disclosure: This e-mail, and any documents accompanying this e-mail, may contain confidential information belonging to the sender that is legally privileged. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled, unless otherwise required by state law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately.



Welcome to your family of healthcare cost sharing. We look forward to serving your healthcare needs. Please read this welcome letter as it contains:

- your member portal login information
- temporary ID card
- other valuable information

As a new member, what are your next steps?

1. Before your plan is effective, become familiar with the benefits of your membership.

- Your Unity Bronze, Silver, Gold Quick Guide contains everything you need to know regarding your healthcare plan. For your product Quick Guide, please click [here](#).
- The Quick Guide booklet is included in your membership kit which will arrive at your mailing address within 14 business days ***after your plan's effective date***.
- Your temporary card is included below. Please print it and use it until you receive your permanent card in your membership kit.

2. On or after your effective date

- ***Begin by completing your registration with FirstCall Telemedicine.*** Access FirstCall by visiting www.FirstCallTelemed.com to register your account or call 1-866-920-DOCS (1-866-920-3627) for assistance. Click [here](#) for instructions. Until

Case 2:20-cv-00867-TLN-KJN Document 36-2 Filed 08/18/20 Page 4 of 6

you complete the account set-up, your status will be listed as "Pending" in their system and you will be unable to use their services. **FirstCall Telemedicine login information is not provided, please complete registration to obtain login information.**

- **Activate your card and verify your membership.** Click [here](#) and follow the instructions.
- **Access your member login** for ability to manage your information and get answers to benefit, provider, and claims questions. Go to www.alierahealthcare.com and select "Members" in the top menu bar on the left and then select "Login" and click on "New Member Registration" to access your login information.
- **Access your Member Plan Portal** to view and update your personal or payment information. Go to www.alierahealthcare.com and select "Member Resources" in the navigation menu, and then select "Plan Portal." Enter your username and password information:

Username: bkduncan@sbcglobal.net
Password: 311h9mbnr0

Keep your login information in a safe place for future reference.

3. Using your benefits

- Until you receive your permanent ID card, use the temporary card. Your membership is active and you can immediately begin to take advantage of your benefits.
- If you have a medical emergency, call 911.
- For individual plans, you may contact your provider to schedule an appointment, or you may call Unity's Concierge line at 877-649-7466 for assistance. You can also request an appointment at <http://www.alierahealthcare.com/appointments/>

At the core of our Healthcare Sharing Ministry is our Statement of Beliefs. If you do not or did not agree with the Statement of Beliefs below, please let us know and we will be happy to answer any of your questions or help you understand what it is like to be a member of Unity HealthShare.

Below is a review of the *Statement of Beliefs* you have agreed to:

1. We believe that our personal rights and liberties originate from God and are bestowed on us by God.
2. We believe every individual has a fundamental religious right to worship God in his or her own way.
3. We believe it is our moral and ethical obligation to assist our fellow man when they are in need according to our available resources and opportunity.
4. We believe it is our spiritual duty to God and our ethical duty to others to maintain a healthy lifestyle and avoid foods, behaviors or habits that produce sickness or disease to ourselves or others.
5. We believe it is our fundamental right of conscience to direct our own healthcare, in consultation with physicians, family or other valued advisors.

Notice: This publication is not issued by an insurance company nor is it offered through an insurance company. It does not guarantee or promise that your medical bills will be published or assigned to others for payment. No other subscriber will be compelled to contribute toward the cost of your medical bills. Therefore, this publication should never be considered a substitute for an insurance policy. This activity is not regulated by the State Insurance Administration, and your liabilities are not covered by the Life and Health Guaranty Fund. Whether or not you receive any payments for medical expenses and whether or not this entity continues to operate, you are always liable for any unpaid bills.

Member Care

Our friendly and highly experienced staff is ready to help you with all your questions and concerns about your membership. Whether you have a question regarding your services, need assistance, or have a special request contact a Member Services Representative at (844) 834-3456, Monday through Friday from 9:00 AM until 5:00 PM, Eastern Time, or by email at memberservices@alierahealthcare.com.

Order Information

Please review the information below to ensure all details are correct. If you need to make any changes please call Member Care.

Product: Unity Healthshare - Gold - Individual plus 1 Dependent
Order Date: November 28, 2017
Effective Date: December 15, 2017
Amount Paid: \$1,412.56 - November 28, 2017 - Credit Card - SALE - Approved - Payment 1 - Completed - - 3885177046 - 185185 - Products: Unity Healthshare - Gold (17186)

*The entry on your bank or credit card statement for your healthcare payments is "HEALTHPASS".

Member Information

ID: 672555982
Name: corlyn duncan
Address: [REDACTED]
City: benicia
State: CA
Zip Code: 94510
Day Phone: ([REDACTED])
Email: [REDACTED]

bruce duncan - Spouse - M - [REDACTED]

Your Temporary ID Card

Until you receive your permanent Member Card in the mail, please print and use the temporary card shown below.

			Effective Date: 12/15/2017 Plan ID: UnityGold MSRA*: 1000
Primary: corlyn duncan Primary ID: 672555982 Dependents: bruce duncan	Hospital: YES In-Patient: YES Out-Patient: YES	ER: Verify Eligibility Specialty: Verify Eligibility	
 855-798-2538 www.MyRxValet.com			
This program is not insurance nor is it offered through an insurance company. This program does not guarantee or promise that your medical bills will be paid or assigned to others for payment. Whether anyone chooses to pay your medical bills will be totally voluntary. As such, this program should never be considered as a substitute for an insurance policy. Whether you receive any payments for medical expenses and whether or not this program continues to operate, you are always liable for any unpaid bills.			
*MSRA = Member Shared Responsibility Amount			
Verify eligibility for payment: 800-UHS-9794 (800-847-9794)			

	Mail claims forms to: Alera Healthcare Unity P.O. Box 16818 Lubbock, TX 79490-6818 or EDI # : ALH01 1-800-252-3684	Member Services: 800-847-9794 Telemedicine: 866-920-3627 Pharmacy: 855-798-2538 Eligibility: 800-847-9794
		MyQuest.QuestDiagnostics.com
PROVIDER should verify eligibility before providing treatment or service.		
Unity HealthShare Plans*		
PCP Visit: Bronze: \$50 Silver: \$35 Gold: \$20	Emergency Room: Bronze: \$500 Silver: \$300 Gold: \$150	Preventive: \$0 X-Ray and Imaging: Bronze: 60% after MSRA Silver: 70% after MSRA Gold: 80% after MSRA
Urgent Care Visit: Bronze: \$100 Silver: \$75 Gold: \$75	Specialty Visit: Bronze: \$125 Silver: \$75 Gold: \$75	Visit multiplan.com or call 800-922-4362 for your PHCS provider.
MSRA = Member Shared Responsibility Amount * Consult fees shown are in-network rates.		
www.alerahealthcare.com www.unityhealthshare.com		

CONFIDENTIALITY NOTICE and HIPAA Compliance Disclosure: This e-mail, and any documents accompanying

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KROMODIMEDJO DECLARATION

EXHIBIT 2



Plan Update Authorization Form

Important Information About Your Plan Update:

Alieria is no longer selling your current healthcare plan with Unity HealthShare, LLC component. We do have a new plan available through our alliance with Trinity HealthShare that offers the same plan services and benefits.

Plus, the following track with each member:

- Medical history and historical claims
- Payments toward member shared responsibility amount (MSRA)
- Time spent on the plan

Member Information:

Last Name: Duncan	First Name: Corlyn	MI:	Date of Birth: <input type="text"/>
Member ID: 672555982			

Acknowledgement:

I hereby authorize Alieria Healthcare to change my current Alieria/Unity plan to an equivalent Alieria/Trinity plan and receive the first month's payment will be waived.

I, the Primary Account Holder, understands and agrees to all fees, regulations, and limitations of the above said plan. Effective the next billing cycle, I understand that my coverage on the existing plan will be terminated, and coverage on the new plan will initiate.

DocuSigned by:  <small>7A43A2E93BAE4EA...</small>	Printed Name: Bruce K Duncan
Date: 5-13-19	