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18 **UNITED STATES DISTRICT COURT**

19 **EASTERN DISTRICT OF CALIFORNIA**

20 **SACRAMENTO DIVISION**

21
22
23 CORLYN DUNCAN and BRUCE
DUNCAN, individually and on behalf of all
24 others similarly situated,

25 Plaintiffs,

26 vs.

27 THE ALIERA COMPANIES, INC., f/k/a
ALIERA HEALTHCARE, INC.; TRINITY
HEALTHSHARE, INC.; and ONESHARE
28 HEALTH, LLC, f/k/a UNITY

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

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO STAY PROCEEDINGS
PENDING RESOLUTION OF MOTIONS
TO DISMISS OR COMPEL
ARBITRATION;**

**MEMORANDUM OF POINTS AND
AUTHORITIES**

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HEALTHSHARE, LLC and as KINGDOM
HEALTHSHARE MINISTRIES, LLC,

Defendants.

Hon. Troy L. Nunley
Complaint Filed: April 28, 2020
Amended Complaint Filed: June 26, 2020

NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS

PLEASE TAKE NOTICE that on December 3, 2020, at 2:00 p.m., in Courtroom 2 of the United States District Court for the Eastern District of California, located at 501 I Street, Suite 4-200, Sacramento, California 95814, Defendants OneShare Health, LLC (“OneShare”), The Alieria Companies Inc. (“Alieria”), and Trinity Healthshare, Inc. (“Trinity”) will, and hereby do, move to stay this action pending resolution of Defendants’ respective motions to dismiss or to compel arbitration, which are currently before the Court. (ECF Nos. 36, 37, 38).

This motion is made on the grounds that (1) the pending motions to dismiss or to compel arbitration will potentially dispose of the entire case; (2) the Court does not require additional information to decide the motions to dismiss or to compel arbitration as they concern purely legal questions; and (3) allowing discovery and pre-trial proceedings would subject Defendants to prejudice, undue burden, and expense, whereas a temporary stay would not prejudice Plaintiffs.

This motion is supported by the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and such other matters that may be presented to the Court at hearing.

Dated: October 16, 2020

Respectfully submitted,

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*Attorneys for Defendant
OneShare Health, LLC*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants OneShare Health, LLC (“OneShare”), The Alera Companies Inc. (“Alera”),
4 and Trinity Healthshare, Inc. (“Trinity”) respectfully move this Court for an order staying pretrial
5 proceedings, including discovery, pending resolution of Defendants’ respective motions to
6 dismiss or to compel arbitration, which are currently before the Court.¹ As explained in
7 Defendants’ Motions, (ECF Nos. 36, 37, 38), Plaintiffs, who were members of OneShare’s sharing
8 program from November 2017 to May 2019 and then members of Trinity’s sharing program from
9 June 2019 to December 2019, entered into binding arbitration agreements that require them to
10 individually arbitrate all of the claims that they assert in this litigation. A stay pending resolution
11 of the Motions is appropriate and prudent because it would allow the parties to conserve resources
12 and avoid unnecessary expense, while giving effect to the parties’ agreements that these matters
13 be resolved in arbitration, rather than litigated in court. By contrast, if the parties are required to
14 proceed with pretrial proceedings and discovery, and the Court ultimately concludes that the
15 matters should be sent to arbitration, Defendants will have been deprived of the full benefit of the
16 parties’ arbitration agreements. Defendants therefore respectfully request that the Court exercise
17 its discretion to stay this case pending resolution of the Motions.

18 **II. BACKGROUND**

19 Plaintiffs filed their First Amended Class Action Complaint on June 26, 2020. (ECF No.
20 19). Plaintiffs assert claims for “illegal contract,” violation of California’s Unfair Competition
21 Law (UCL) and California’s False Advertising Law (FAL), breach of fiduciary duty, and unjust
22 enrichment. (*Id.*). Plaintiffs also seek to represent a putative class of California residents. (*Id.* at
23 ¶ 19).

24 On August 18, 2020, Defendants filed motions to dismiss and to compel arbitration, in
25 which Defendants seek dismissal or stay of the case in favor of arbitration and to compel

26 _____
27 ¹ OneShare and Alera have both moved to compel arbitration of Plaintiffs’ claims. (ECF Nos. 36 and 37).
28 Because Plaintiffs were not members of Trinity’s sharing program in 2018 when they allege injury, Trinity
has moved to dismiss the claims against it for lack of standing. (ECF No. 39). In the alternative, to the
extent any of Plaintiffs’ claims survive, Trinity has moved to compel arbitration. (*Id.*)

1 arbitration pursuant to the Federal Arbitration Act (“FAA”), among other arguments. (ECF Nos.
2 36, 37, 38). Trinity’s motion also raises a threshold issue of whether Plaintiffs have standing to
3 assert any claims against Trinity. (ECF No. 38). As explained in Defendants’ Motions, by joining
4 each of OneShare’s and Trinity’s sharing programs and consenting to the terms and conditions set
5 out in each’s Member Guides, Plaintiffs entered into arbitration agreements that require them to
6 individually arbitrate any claims that they attempt to assert in this litigation (and, in the case of
7 Trinity, any claims that Plaintiffs have standing to assert). The scope of the arbitration agreements
8 is broad, applying to all disputes between Plaintiffs and Defendants, including all of the claims
9 that Plaintiffs seek to bring here. Accordingly, if granted, Defendants’ Motions would be
10 dispositive of the entire case— dismissing claims against Trinity for lack of standing and sending
11 the entirety of the disputes to arbitration.

12 **III. ARGUMENT**

13 The Court has “wide discretion in controlling discovery,” and may grant a motion to stay
14 discovery pending resolution of a potentially dispositive motion for good cause. *Little v. City of*
15 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *Spearman v. I Play, Inc.*, No. 2:17-cv-1563-TLN-KJN,
16 2018 WL 1382349, at *1 (E.D. Cal. Mar. 19, 2018).

17 Good cause exists to stay discovery and other pretrial proceedings where a party has
18 moved to compel arbitration of the dispute.² Indeed, the Ninth Circuit has recognized that if parties
19 were required to proceed with discovery and other pre-trial obligations while the enforceability of
20 an arbitration provision is still under judicial review, “the advantages of arbitration—speed and
21 economy—are lost forever,” a consequence it described as “serious, perhaps irreparable.”
22 *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984) (citations omitted);
23 *Mahamedi IP Law, LLP v. Paradice & Li, LLP*, No. 5:16-CV-02805-EJD, 2017 WL 2727874, at
24 *1 (N.D. Cal. Feb. 14, 2017). By contrast, staying discovery and pre-trial proceedings pending
25 resolution of a motion to compel arbitration furthers the interests of efficiency and economy,
26 allowing the parties to conserve resources and avoid potentially unnecessary discovery.

27 _____
28 ² These arguments equally apply to Trinity’s motion on the threshold issue of standing, as well as its
alternative motion to compel arbitration.

1 *Mahamedi*, 2017 WL 2727874, at *1; *On v. Stephen Vannucci, M.D. Inc.*, No. 2:14-cv-02714-
2 TLN-CMK (E.D. Cal. Aug. 17, 2017) (ECF No. 38) (Nunley, J). Such a stay also ensures that the
3 party seeking to compel arbitration receives the benefits of its agreement to arbitrate—a
4 “streamlined” and “expeditious” proceeding—which would be defeated if subject to litigation
5 burdens in court. *See e.g., Andrus v. D.R. Horton, Inc.*, No. 2:12-CV-00098-ECR, 2012 WL
6 1971326, at *3 (D. Nev. June 1, 2012) (granting motion to stay discovery pending court’s decision
7 on defendant’s motion to compel arbitration); *Mahamedi*, 2017 WL 2727874, at *1 (agreeing that
8 defendant would “forever lose the advantages of arbitration—speed and economy”—if the court
9 allowed discovery to proceed only to compel arbitration, and adding that plaintiff would suffer
10 “no prejudice from a temporary stay”).

11 Consequently, courts routinely grant stays pending resolution of motions to compel
12 arbitration. *See Stiener v. Apple Computer, Inc.*, No. C 07-4486 SBA, 2007 WL 4219388, at *1
13 (N.D. Cal. Nov. 29, 2007) (describing district courts’ granting of motions to stay under similar
14 circumstances as “prudent”); *Mahamedi*, 2017 WL 2727874, at *1 (“[c]ourts routinely grant stays
15 under similar circumstances[,]” and granting defendant’s motion to stay pending arbitration
16 decision); *Hill v. Asset Acceptance, LLC*, No. 13CV1718-BEN (BLM), 2014 U.S. Dist. LEXIS
17 42304, at *6 (S.D. Cal. Mar. 27, 2014) (denying motion to compel arbitration and staying all
18 discovery pending resolution of motion to compel arbitration); *see also Intertec Contracting v.*
19 *Turner Steiner Int’l, S.A.*, No. 98-CIV-9116 (CSH), 2001 WL 812224, at *7 (S.D.N.Y. July 18,
20 2001) (“As is the general practice of district courts, a stay of discovery was imposed in this case
21 while the motion to compel arbitration was pending before the Court.”). For example, in *On v.*
22 *Stephen Vannucci M.D. Inc.*, this Court granted a stay while it considered whether to enforce an
23 arbitration agreement. *See* No. 2:14-cv-02714-TLN-CMK (ECF No. 38). Because “Defendants’
24 motion to dismiss would dispose of the entire case,” this Court concluded that a stay of discovery
25 was “prudent,” particularly since a stay would “conserve the parties’ resources pending
26 determination of whether the matter will be sent to arbitration, where the arbitrator would define
27 the bounds of discovery.” *Id.* at 2.

28 In determining whether to grant a motion to stay discovery pending the outcome of a

1 dispositive motion, courts employ a two-part test. The court considers whether the pending motion
2 would be potentially dispositive of the entire case, and whether the pending motion can be decided
3 without additional discovery. *See, e.g., Spearman*, 2018 WL 1382349, at *2; *Bosh v. United States*,
4 No. C19-5616 BHS, 2019 WL 5684162, at *1 (W.D. Wash. Nov. 1, 2019) (citing *Little v. City of*
5 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988)). Applying that test, from a prejudice perspective, courts
6 have recognized that a brief delay in conducting discovery is preferable to exposing the parties to
7 the unnecessary burden and expense of discovery. *See Bosh*, 2019 WL 5684162, at *1 (finding
8 that “a stay would advance the efficiency for the Court and the litigants by avoiding the burden of
9 discovery costs until [the jurisdictional question is resolved]”); *Gonzales v. Gonzales*, No. 1:19-
10 CV-00459, 2020 WL 3977598, at *2 (E.D. Cal. July 14, 2020) (granting motion to stay all merits-
11 related discovery pending resolution of dispositive motion); *Spearman*, 2018 WL 1382349, at *2
12 (same). Here, all of those factors—the dispositive nature of the motions, the lack of a need for
13 discovery regarding those motions, and prejudice considerations—point to the need for a stay.

14 **A. The Court Should Stay Pretrial Proceedings and Discovery Pending Its**
15 **Ruling on Defendants’ Motions Because The Motions Are Potentially Case-**
16 **Dispositive.**

17 As explained in Defendants’ Motions, Defendants seek arbitration as to all of Plaintiffs’
18 claims, and with regard to Trinity, for all of Plaintiffs’ claims for which they have standing. Under
19 the plain language of the governing agreements, Plaintiffs agreed to resolve “*any dispute*” they
20 have with or against Defendants through alternative dispute resolution, including binding
21 arbitration. (*See* ECF Nos. 36, 37, 38 (emphasis added)). Thus, if the Court grants Defendants’
22 motions, the entire matter would be dispatched to arbitration. Because there would necessarily be
23 no further proceedings in this Court, a stay of pretrial proceedings and discovery now will promote
24 judicial economy while the Court determines whether litigation can continue here, or whether this
25 case should be sent to arbitration. *See, e.g., Stiener*, 2007 WL 4219388, at *1; *Mahamedi*, 2017
26 WL 2727874, at *1; *PCH Mut. Ins. Co.*, 569 F. Supp. 2d at 78.

27 **B. Defendants’ Motions to Compel Arbitration Do Not Require Discovery to be**
28 **Decided Because they Concern Purely Legal Questions.**

1 A stay of proceedings is also appropriate where, as here, discovery has no potential bearing
2 on the pending dispositive motions. *Little*, 863 F.2d at 685. As the Ninth Circuit has recognized,
3 “The FAA provides for discovery . . . in connection with a motion to compel arbitration only if
4 ‘the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be
5 in issue.’” *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999) (quoting 9 U.S.C. § 4)).

6 Here, Defendants’ Motions can be decided without discovery. Plaintiffs cannot show that
7 discovery into the making of the arbitration agreement or the merits of Plaintiffs’ claims or class
8 certification requirements is necessary to respond to the arbitration motions; it is not. In fact, in a
9 similar case brought by Plaintiffs’ counsel against Alera and Trinity in the Western District of
10 Washington, the court applied the law of the Ninth Circuit to grant the defendants’ motion to
11 compel arbitration without discovery. *Jackson v. Alera Cos.* No. 19-cv-01281-BJR, 2020 U.S.
12 Dist. LEXIS 149772 at *6-10 (W.D. Wash. Aug. 18, 2020). That decision recognizes that the
13 issues before this court are legal ones, and discovery is unnecessary to resolve the pending,
14 dispositive arbitration motions. Accordingly, because there are only legal questions (not factual
15 arguments) pending, the Court should grant a brief stay until the pending motions are resolved.
16 *See Mahamedi*, 2017 WL 2727874, at *1.

17 **C. Allowing Discovery and Pre-Trial Proceedings Would Subject Defendants to**
18 **Prejudice, Undue Burden, and Expense, and a Temporary Stay Would Not**
19 **Prejudice Plaintiffs.**

20 The parties in this matter agreed to arbitrate “any dispute” among them. (ECF Nos. 36, 37,
21 38). By filing their claims in court, and seeking to engage in costly, broad, and time-consuming
22 discovery, Plaintiffs willfully violated their agreements with Defendants to their prejudice. That
23 prejudice will only worsen if Defendants are forced to proceed with discovery and other pre-trial
24 proceedings—including as to Plaintiffs’ class allegations—while the arbitration motions are
25 pending. *Mahamedi*, 2017 WL 2727874, at *1; *Stiener*, 2007 WL 4219388, at *1; *Chavous v. D.C.*
26 *Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D. D.C. 2005).

27 A stay of discovery and any other proceedings as to Plaintiffs’ class allegations is
28 particularly appropriate, since the agreements at issue do not permit class arbitration. *See* (ECF

1 Nos. 36, 37, 38); *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1417 (2019) (“Neither silence nor
2 ambiguity provides a sufficient basis for concluding that parties [agreed to class arbitration.]”).
3 Requiring a party to engage in class discovery that would not be available in arbitration while a
4 motion to compel arbitration is pending is inherently prejudicial. As one court explained:

5
6 Proceeding with discovery before determining which claims are arbitrable or
7 subject to class action waivers would allow Plaintiffs to obtain extensive discovery
8 on class-wide issues. Yet much of this information will be irrelevant to individual
9 arbitrations. Such voluminous discovery will likely be costly in terms of money and
time. Without a temporary stay, CenturyLink's potential right to have an arbitrator
manage discovery would be negated. This prejudice cannot be undone if the
disputes are later found to be arbitrable.

10 *In re CenturyLink Sales Practices & Sec. Litig.*, No. MDL172795MJDKMM, 2018 WL 2122869,
11 at *2 (D. Minn. May 8, 2018); *Mundi v. Union Sec. Life Ins. Co.*, No. CV-F-06-1493 OWW/TAG,
12 2007 WL 2385069 at 6 (E.D. Cal., Aug. 15, 2007) (parties “should not be required to endure the
13 expense of discovery that ultimately would not be allowed in arbitration”). Plaintiffs agreed to
14 resolve their disputes individually, and Defendants should not be made to undertake the immense
15 and potentially needless burden of participating in discovery to defend against class allegations
16 until the correct forum is decided.

17 Finally, a temporary stay will cause Plaintiffs no prejudice. Neither of the Plaintiffs remain
18 members of either OneShare’s or Trinity’s sharing program. *See* (ECF No. 19) at ¶ 1 (membership
19 terminated as of December 31, 2019). And Plaintiffs can show no prejudice for any delay when
20 they created that consequence themselves by pursuing litigation instead of arbitration in
21 accordance with their written agreements. *See, e.g., Martin v. Yasuda*, 829 F.3d 1118, 1126 (9th
22 Cir. 2016) (“To prove prejudice, plaintiffs must show more than “self-inflicted” wounds that they
23 incurred as a direct result of suing in federal court contrary to the provisions of an arbitration
24 agreement.”) Courts have further recognized that “a stay would advance the efficiency for the
25 Court and the litigants by avoiding the burden on discovery costs until [the arbitration question is
26 resolved].” *See Bosh*, 2019 WL 5684162, at *1; *Mahamedi*, 2017 WL 2727874, at *1. So too here.
27 A temporary stay will allow the Court to determine the correct forum and allow the case to proceed
28 in an equitable and efficient manner, with neither party prejudiced.

1 **IV. CONCLUSION**

2 In order to promote efficiency and judicial economy, Defendants respectfully request that
3 the Court stay all proceedings in this action, including discovery, until after it issues its rulings on
4 Defendants' pending Motions to Dismiss or Compel Arbitration.

5
6 DATED: October 16, 2020

Respectfully submitted,

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24 DATED: October 16, 2020

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DATED: October 16, 2020

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Trinity Healthshare, Inc.*

CERTIFICATE OF SERVICE

I certify that on October 16, 2020, I caused a copy of this **Defendants’ Notice of Motion and Motion to Stay Proceedings Pending Resolution of Motions to Dismiss or Compel Arbitration; Memorandum of Points and Authorities** to be served on all counsel of record via the Court’s Electronic Filing system.

Dated: October 16, 2020

/s/ Stuart C. Plunkett

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OneShare Health, LLC*

ATTESTATION

I hereby attest that I have obtained concurrence of the above noted signatories as indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: October 16, 2020

/s/ Stuart C. Plunkett

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

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

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., f/k/a
ALIERA HEALTHCARE, INC.; TRINITY
HEALTHSHARE, INC.; and ONESHARE
HEALTH, LLC, f/k/a UNITY HEALTHSHARE,
LLC and as KINGDOM HEALTHSHARE
MINISTRIES, LLC,

Defendants.

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

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO STAY
PROCEEDINGS PENDING RESOLUTION
OF MOTIONS TO DISMISS OR COMPEL
ARBITRATION**

[PROPOSED] ORDER

1
2 This matter is before the Court on Defendants OneShare Health, LLC (“OneShare”), The
3 Alieria Companies Inc. (“Alieria”), and Trinity Healthshare, Inc.’s (“Trinity”) Motion to Stay
4 Proceedings Pending Resolution of Motions to Dismiss or Compel Arbitration, filed October 16, 2020
5 (the “Motion”). Having considered the moving and opposing papers, arguments, and all other matters
6 presented to the Court,

7 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. Discovery and pre-trial
8 proceedings are hereby stayed pending resolution of Defendants’ motions to dismiss or to compel
9 arbitration.

10
11
12 Dated: _____

THE HONORABLE TROY L. NUNLEY
UNITED STATES DISTRICT JUDGE